

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



Migrant workers from Nepal cleaning the windows of a Kuwaiti tower block, 2012. © Dominique Berbain / Gamma-Rapho via Getty Images

## 6. Measures to prevent fraudulent and abusive recruitment

*“It all comes down to money. We all just want the cheapest access to workers. Regardless of how much money a company has, we all more or less operate according to the same logic.”* QATARI BUSINESSMAN

### Summary

The two core, interlinked practices of exploitative recruitment – firstly, the charging of illegal and exorbitant recruitment fees to migrant workers to secure jobs, and secondly, the use of deception or contract substitution to persuade workers to commit to these fees - are prevalent in both the Nepal-Kuwait and Nepal-Qatar corridors. Nepal has attempted, with limited success, to implement a cap on worker fee payment without banning fees outright. Despite clear evidence that shows how the practices of employers and recruitment agencies in destination countries directly contributes to and perpetuates the charging of fees to workers, Kuwait and Qatar have largely seen fee payment as an origin state concern. Nepal and Qatar have

both invested in new systems to address contract substitution, although the impact of these initiatives is not yet clear.

Nepal continues to allow workers to be charged recruitment fees. The government has attempted to cap the limit at 10,000 rupees (US\$ 83) for most workers - what it calls “zero cost” recruitment - and to enforce this through new bilateral agreements. In reality the vast majority of workers pay far in excess of this amount. The fact there is not a complete ban on fees, and poor policing of the upper limit, creates a grey zone for agencies to charge in excess of the limit, and the business model of recruitment agencies has therefore not changed since the introduction of the 2015 “Free Visa Free Ticket” policy. The vast majority of recruitment agencies



still rely on charging workers extremely high fees, partly in order to be able to generate demand from employers in destination states, who are seeking the cheapest recruitment costs available and may have better offers from other origin states. While the Free Visa Free Ticket policy may have slightly reduced costs for workers, ultimately there is still no real market for ethical recruitment in Nepal. Meanwhile, the Nepali authorities have attempted to make contracts more transparent and accessible to migrant workers. However, serious problems with implementation persist. Many workers are not issued contracts, receive them just before travelling, or are given them in languages they do not understand. Since 2018 the government has sought to insert its embassies into the recruitment processes, to carry out proper checks on employers and their ability to offer the terms and conditions, but limited resources at embassies are a problem, and contract substitution remains widespread. Some experts believe the Foreign Employment Information Management System (FEIMS) may help to reduce the prevalence of contract substitution.

Kuwaiti law only explicitly prohibits the charging of recruitment fees to domestic workers. Its attempts to regulate recruitment fees also seem limited to domestic workers, with the newly created public-private Al-Durra domestic worker recruitment agency charged with reducing fees that Kuwait employers incur, rather than focusing on fee payment by workers. In general, the expectation appears to be that origin states should regulate this issue. Contract substitution and related deception

over terms and conditions is widespread in Kuwait. It has been documented in detail with respect with domestic workers but prosecutions for deceptive recruitment are still rare.

While Qatari law clearly prohibits the payment of fees by migrant workers to entities in Qatar, the government has until very recently treated recruitment fee payment as a problem for origin states. As a result, there has generally been limited scrutiny of the interactions of employers and Qatari agencies with origin state recruiters. When Qatari entities refuse to pay appropriate professional fees to agencies in origin states, those agencies in turn offer discounted or free services, and even pay kickbacks to secure demand letters, passing these costs onto workers. Recently, high profile initiatives have sought to address employers' non-payment of recruitment fees with guidance and contractual requirements, notably the Qatar 2022 Supreme Committee for Delivery and Legacy. It is yet to be seen what steps Qatar will take against the many employers outside such high-profile projects who consider worker payment of recruitment fees to be the norm. The main role of the new Qatar Visa Centers to introduce greater control into the contracting process. These provide workers with clarity on the content of their job offers and provide them with an opportunity to reject adverse terms and conditions. While it is too early to fully assess their impact, there is some suggestion that the centers may reduce the incidence of substitution, but with Nepali recruitment agencies remain in control of the wider process, the risk of exploitation remains high.

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## Recommendations to the Government of Nepal:

- Adopt the ILO's definition of recruitment fees and related costs and mandate that Nepali employment agencies require foreign employers to pay all the costs of recruiting Nepali workers, including training and medical costs.
- Stipulate in law that the full extent and nature of costs charged by recruitment agencies should be transparent to employers in destination states.
- Provide explicit protection in law for workers who do not have a written contract.
- Discuss with Qatar ways to increase the effectiveness of the QVC, including by allowing workers to "walk in" without an agent making an appointment for them, and for increasing the focus the QVC pays to fee payment.

- Cooperate with other origin states to share information about abusive and exploitative employers in the Gulf.

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### Recommendations to the Government of Kuwait:

- Fully prohibit the payment of recruitment fees and related costs, in line with the ILO definition, by migrant workers to employers and / or recruitment agencies, whether in Kuwait or an origin state.
- Stipulate in law that the full extent and nature of costs charged by recruitment agencies should be transparent to employers in Kuwait.
- Provide explicit protection in law for workers who do not have a written contract.
- Establish and promote a process for all migrant workers to safely disclose to the authorities and seek reimbursement for any illegal payment of recruitment fees.
- Incentivise ethical recruitment by requiring companies to budget transparently, and non-competitively, for recruitment costs in public procurement bidding processes.

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### Recommendations to the Government of Qatar:

- Amend the law to prohibit the payment of recruitment fees and related costs, in line with the ILO definition, by migrant workers to any entity, including third parties who may be located outside Qatar.
- Stipulate in law, by amending Ministerial order 8 of 2005, that the full extent and nature of costs charged by local recruitment agencies should be transparent to employers.

- Establish and promote a process for all migrant workers to safely disclose to the authorities and seek reimbursement for any payment of recruitment fees; task the QVCs to proactively identify and log cases of illegal recruitment fees and share information with Qatari investigatory bodies;

- Building on work by the ADLSA, Institute for Business & Human Rights, the Chamber of Commerce, and the ILO, require companies to budget transparently and non-competitively for recruitment costs, including in their contracting chains, in public procurement bidding processes.

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## 6.1 Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers?

### Nepal

Nepal continues to allow workers to be charged recruitment fees. While workers going to some countries legally pay between USD 166 and USD 815 (for example Mauritius or South Korea),<sup>613</sup> the government has attempted to cap the limit at NPR 10,000 (USD 83) for most workers - what it calls “zero cost” recruitment - and to enforce this through new bilateral agreements. In reality the vast majority of workers pay far in excess of this amount. While government policy on allowable fees has shifted, the business model of recruitment agencies has not, and the vast majority still rely on charging workers fees that exceed the national legal limit in order to be able to generate demand from employers in destination states, who are seeking the cheapest recruitment costs available and may have better offers from other origin states.

Until 2015, Nepal allowed recruitment agents to charge workers up to NPR80,000 (USD 740) as processing fees for Malaysia and NPR70,000 (USD 592) for the Gulf states.<sup>614</sup> In 2015 the Free Visa, Free Ticket (FVFT) policy limited to NPR 10,000 (USD 83) the amount that recruitment agents could legally charge migrant workers

613. National Human Rights Commission, “Research-Report on The Situation of the Rights of Migrant Workers Recruitment Practices and Access to Justice of Migrant Workers”, (November 2019): 62.

614. The Kathmandu Post, “Free visa, ticket provision: Recruiting agencies start indefinite strike”, (8 July 2015).

going to work in the seven countries that (excluding India) host the vast majority of Nepali workers - Malaysia, Qatar, Saudi Arabia, United Arab Emirates, Kuwait, Bahrain and Oman. The Nepali government said the new measure would prevent the exploitation of migrant workers and began to champion what it termed “zero cost” migration.<sup>615</sup>

The FVFT policy was contentious - it was announced with significant fanfare and attracted considerable resistance from recruitment agents, and led some agents to go on “strike”.<sup>616</sup> Although it is not compliant with the “employer pays principle”, it would, if implemented successfully, have significantly reduced the fees that workers pay to migrate. However, several studies have concluded in recent years that the policy is not achieving its goal. A labour migration expert told us that the FVFT policy “was introduced on an ad-hoc basis”, and said that migrants continue to pay more than the maximum charge of NPR 10,000 (USD 83): “The only difference now is they do not get a receipt for anything more than NPR 10,000”.<sup>617</sup> A 2017 Amnesty International report found that the policy was undermined by limited resources for monitoring and implementation as well as hostility from the private recruitment industry, and as a result had limited impact on charges incurred by migrant workers.<sup>618</sup> Reports published by the NHRC<sup>619</sup> and a parliamentary sub-committee<sup>620</sup> have also expressed concern that migrant workers continue to pay fees in excess of the legal limit for their recruitment, and receive inaccurate recruitment receipts for fees paid to recruitment agencies. They also concluded that despite

the negotiation of numerous BLAs in recent years, employers continue to ignore their legal obligations and workers are still paying the costs associated with their recruitment.<sup>621</sup> In 2019, the Supreme Court ordered government bodies to enforce the FVFT policy effectively.<sup>622</sup>

The imposition of the FVFT policy may in some cases have reduced costs for workers. As the assistant director of the Centre for the Study of Labour and Mobility told us, “‘zero cost’ and the employer pay model is not working effectively. But one thing that has happened is migrant recruitment fees now revolve around 70,000 rupees (USD 592) where before it was 1,500 to 2,000 dollars.”<sup>623</sup> A representative of the PNCC civil society organisation also told us that sometimes “the workers get 50% discount and instead of 100,000 rupees (USD 850) they are asked to pay 50,000 (USD 425).” He told us that when workers complain that they are being asked to pay more than the legal limit of 10,000 rupees (USD 83), government officials “sometimes say that they should take the deal otherwise they will have nothing.”<sup>624</sup>

The IOM’s 2019 Migration Profile report includes a comparative chart produced by Nepal Rastra Bank (the Central Bank of Nepal) displaying the costs borne by Nepali migrants in the process of migrating for work to Malaysia and the GCC countries. The estimates clearly exceed the legal limit, despite excluding the costs of trips from rural locations to Kathmandu to complete DOFE administrative processes.<sup>625</sup>

615. Migrant Forum in Asia, “Stand firm with Nepal: Zero fees as a first step towards migrant worker empowerment”, (6 January 2017).

616. The Kathmandu Post, “Free visa, ticket provision: Recruiting agencies start indefinite strike”, (8 July 2015).

617. Interview with Kathmandu-based expert (name withheld) January 2020.

618. Amnesty International, “Turning people into profits”, (6 June 2017): 39-51

619. National Human Rights Commission, “Research-Report on The Situation of the Rights of Migrant Workers Recruitment Practices and Access to Justice of Migrant Workers”, (November 2019): 108.

620. myRepublica, “Parliamentary panel finds govt officials involved in human trafficking to Gulf countries”, (8 August 2017)

621. NYU Stern Center for Business and Human Rights, “Less than One Percent: Low-Cost, Responsible Recruitment in Qatar’s Construction Sector”, (31 May 2019).

622. The Kathmandu Post, “Labour market reforms”, (31 December 2019).

623. Interview with Dr Jeevan Baniya, Assistant Director, Centre for the Study of Labour and Mobility at Social Science, 8 June 2020.

624. Interview with Som Prasad Lamichhane, Director at PNCC, 13 June 2020.

625. International Organisation for Migration, *Migration in Nepal: a country profile 2019*, (2019): 59

Costs borne by labour migrants in the process of foreign employment (Source: Nepal Rastra Bank)

<i>Migration costs</i>	<i>For Malaysia-bound workers</i>	<i>For Gulf country-bound workers</i>
Item	Cost in USD	Cost in USD
Passport	From 43.80 (regular processing) to 1131.39 (one day processing)	From 43.80 (regular processing) to 1131.39 (one day processing)
Migram	27.15	
Health check	39.42	39.42 (56.94 for Saudi Arabia)
ISC	28.03	Varies depending on country (24.53 for Saudi Arabia)
One-Stop Centre	52.56	
Visa Stamping	6.13	
Welfare Fund	13.14	13.14
Insurance	Varies depending on age	Varies depending on age
Pre-departure Orientation	6.13	6.13
Recruitment Service Charge	87.60	87.60
Maximum Total	216 (NPR 24,700)	103 (NPR 11,700)
Maximum Total	400 (NPR 45,700) plus insurance	304 (NPR 34,700) plus visa stamping and insurance

A prospective migrant due to depart for Qatar told us that in addition to the costs listed in the Nepal Rastra Bank survey, he had also spent approximately NPR 10,000 -15,000 (USD 83-125) on bus fares, accommodation and food to undertake three round-trips from his hometown to Kathmandu during the recruitment process.<sup>626</sup> 38 of the 40 Nepali migrant workers we interviewed remotely in Kuwait and Qatar had paid recruitment fees in excess of the legal FVFT limits.

Many workers take out loans to pay for their recruitment fees, at sometimes punitive interest rates, which can be as high as 36%.<sup>627</sup> This puts them at significant risk of exploitation during their migration. Others sell jewelry or other valuable possessions, use personal savings or borrow money from relatives and friends. Some migrant workers interviewed for this report said that when they refused to pay fees above 10,000 NPR (USD 83) citing the

FVFT policy, they were told that the policy did not apply to their particular jobs or that their employers refused to pay any costs associated with their migration. Others reported not receiving any receipts for the payment of recruitment fees or receiving receipts only for 10,000 NPR (USD 83); being forced to sign statements or record video messages confirming that they only paid the maximum legal amount; being told that their visas would not be processed, or being threatened with losing their jobs or deportation in case they reported to any Nepali officials at Kathmandu airport or their employers in destination countries how much they actually paid.<sup>628</sup> One man, who sold his bike and some gold in order to pay 116,000 NPR (US 965) to fund his migration to Kuwait, was asked on the day he travelled to switch off his mobile phone and record a video clip in English stating that he had only paid 10,000 NPR (USD 83), the legal maximum.<sup>629</sup>

626. Remote interview with Nepali worker migrating to Qatar, August 2020.

627. See for example: Amnesty International, "Unpaid and abandoned: the abuse of Mercury MENA workers", (26 September 2018).

628. Remote interviews with migrant workers in Qatar and Kuwait, August 2020.

629. Remote interview with Nepali migrant worker in Kuwait, 2 August 2020.

Attempts have been made by some recruitment agencies in Nepal to engage in “ethical recruitment”, in which the non-payment of fees by migrant workers is fundamental. There have been successes on a small scale. For example, a 2019 Tufts University review concluded that a small pilot scheme to recruit Nepali women as garment workers in Jordan was effective in implementing the employer pays principle and had knock-on positive impacts for the workers and employer.<sup>630</sup> However, translating such schemes to scale presently seems a distant prospect. Ethics Practitioners Association of Nepal (EPAN), a group of agencies who aim to “make sure aspiring migrant workers are deployed in Zero Cost i.e. No visa fee, No joining ticket; No service charge”,<sup>631</sup> had until mid-2020 been unable to mobilise any workers, which it says is due to lack of demand among destination state employers for ethical recruitment, when other firms will charge employers less by passing on costs to workers.<sup>632</sup> An EPAN representative told us that the government’s ethical policies were merely “paper” and that no incentives were offered to agencies to implement the FVFT policy.<sup>633</sup>

An ILO official stressed that in government-to-government schemes with Israel and Korea, workers were still legally paying fees up to NPR90,000 (USD 761). This contradiction, they explained, makes it more difficult to “work with the private sector to make them much more responsible towards adopting a more ethical or fair business model.... This acts as a very big disincentive for the private sector to adopt ethical recruitment.”<sup>634</sup> A representative of an agency meanwhile told us that the government was not acknowledging the effect that no-fee recruitment had on demand: “agencies have to invest their own resources in bringing demand letters [from employers] from destination countries.<sup>635</sup> The international labour markets are really competitive, [agencies] have to make extra efforts to bring the demand letters to Nepal.... The zero cost scheme has reduced the rate of demands from destination countries.” Such difficulties are likely to be compounded by agents in other origin states charging

more to workers, and therefore less to employers. A former MOLESS policy advisor explained that Nepali agencies were also facing fierce competition from recruiters in neighbouring countries, which undermines any incentives for ethical recruitment even further: “EPAN has very little success in terms of mobilising workers but this is not just about Nepal. We do need to be wary of Bangladesh and Pakistan where workers are being charged three or four times more. The threat of jobs going to other places where people are willing to pay is a credible threat in this environment [...] Nepal by itself cannot achieve zero cost migration.”<sup>636</sup>

Nepali recruitment agents reported similar concerns about market pressure to Amnesty International for the organisation’s 2017 report, and admitted paying kickbacks to employers in destination states in order to secure demand letters. The fact that, according to the NNSM, fees for Nepalis are less commonly required in Jordan, where employers (international garment brands) are often more conscious of working conditions and better regulated, lends some credence to agencies’ argument.<sup>637</sup> However, some agencies also told Amnesty they charged workers even when employers paid them, to ensure client satisfaction by making sure the workers remained in their jobs, with one quoted as saying: “If they do not have to pay money for their jobs ... they will think they can just come back to Nepal whenever they like.”<sup>638</sup>

MOLESS has acknowledged the challenges with implementation of the FVFT policy and said in 2020 that “efforts to ramp up the monitoring of recruitment agencies by DOFE are ongoing”. More broadly it recognised that “implementing the policy unilaterally can be a challenge” and pointed to MOUs with destination countries as part of the solution to that problem.<sup>639</sup> Its statement did not mention any plans for enhanced cooperation with other origin states.

The fact that Nepal - like many other origin states - allows any fee payment by workers has come under

630. ILO, “The benefits of fair recruitment, results of the impact study on the Nepal-Jordan Corridor”, (August 2019).

631. EPAN: About us

632. Nepali Times, “Brokers going for broke”, (29 July 2020).

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

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

635. Interview with representative from Help Overseas Recruitment Agency, 10 June 2020.

636. Former policy advisor to MOLESS, remote interview, 2 November 2020.

637. Interview with Nilambar Badal, Policy and Campaign Coordinator at National Network for Safer Migration (NNSM), 13 December 2019; The Kathmandu Post, “Jordan’s garment sector remains barred for Nepali workers over low wage issue”, (18 November 2019).

638. Amnesty International, “Turning people into profits”, (6 June 2017): 27.

639. MOLESS, Labour Migration Report 2020, (2020): 60.



scrutiny, in particular since the ILO published its comprehensive definition of recruitment fees in 2019. Experts and activists have told us that the fact that it is legitimate for agents to collect some fees opens the door to them being charged much larger amounts. An IOM study notes that “the expectation of paying something and the lack of policing has led to workers paying far more than what is allowed.”<sup>640</sup> Indeed, interviewees agreed that the payment of recruitment fees is now so normalised that aspiring workers refuse to believe that they can access a good job without paying, and often relate the amount that they pay to the quality of the work. “People are more willing to pay for a job as a driver or security guard compared to a construction worker,” according to a former MOLESS policy advisor.<sup>641</sup>

Allowing fee payments also undermines legislation in destination states that bans worker payment of recruitment fees entirely, and prevents effective collaboration. An ILO official working on the Asia-Gulf migration corridor told us that bans on recruitment fees, “should be mainstreamed between labour sending and receiving countries. It should be zero across the board, and there should be no transition period. There should be consistency across borders.”<sup>642</sup>

## Kuwait

Kuwaiti law only explicitly prohibits the charging of recruitment fees to domestic workers. Its attempts to regulate recruitment fees also seems limited to domestic workers, with a newly created public-private domestic worker recruitment agency charged with reducing fees that Kuwait employers incur. In general, the expectation appears to be that origin states should regulate this issue.

The 2010 Private Sector Labour Law, covering workers other than domestic workers, states that “the Minister shall issue a resolution setting forth the procedures, documents and fees that shall be paid by the employer”. To our knowledge no Ministerial Order has been issued

to that effect.<sup>643</sup> For domestic workers, who are excluded from the 2010 Labour Law and regulated instead by Law No. 68 of 2015, the law is clear and thorough, prohibiting recruiters, employers and their intermediaries overseas from charging domestic worker fees to secure a job: “The licensee or its employees or its associates within or outside Kuwait are not permitted to charge the domestic worker (and the like) any fees in return for employing the worker with an employer or arranging for the worker to stay employed with the employer, whether such charges are direct or indirect.”<sup>644</sup>

It is however very common for migrant workers to arrive in Kuwait having paid high recruitment fees: as the US State department notes, “many migrant workers pay exorbitant fees to recruiting agents in their countries of origin and/or are coerced into paying labor broker fees in Kuwait”.<sup>645</sup> Data collected in World Bank KNOMAD studies and shared by the ILO in 2017 found Bangladeshi workers paying on average USD 3,136 for their jobs in Kuwait - the equivalent of 9 months wages, compared to USD 1,248 for Indian and USD 319 for Sri Lankan workers.<sup>646</sup> A Nepali woman who paid 140,000 rupees (USD 1200) for her job working in a salon in Kuwait told us that she had negotiated down her fees from 250,000 rupees (USD 2100) and sold her gold jewellery to migrate.<sup>647</sup> Substantial concerns have been raised in particular about the potential for fee payment to place domestic workers in place at risk of trafficking or forced labour. The UN Special Rapporteur on trafficking in persons, especially women and children reported in 2017 after her visit to Kuwait that “widely reported abuses and exploitation that further contribute to the trafficking situation include...excessive recruitment fees”.<sup>648</sup>

In 2017 the government established the state-backed Al-Durra domestic worker recruitment agency - a closed joint stock company - to “bring in new workers” including from Nepal with one of the aims being to “lower recruitment fees”.<sup>649</sup> Al-Durra has promoted its efforts to prevent fees being paid by domestic workers

640. IOM, “Transnational Culture of Corruption in Migrant Labour Recruitment”, (2017).

641. Former policy advisor to MOLESS, interview, 2 November 2020.

642. ILO official working on the Asia-Gulf migration corridor, interview, September 2020.

643. ILO, “Kuwait: Regulatory framework governing migrant workers”, (November 2019): 1

644. ILO NATLEX, *Law no 68 of 2015 on Employment of Domestic Workers*

645. US Department of State, *2019 Trafficking in Persons Report: Kuwait*, (2019).

646. Michelle Leighton, “ILO-WB partnership on measuring recruitment costs: progresses on SDG indicator 10.7.1”, ILO, (16-17 February 2017).

647. Interview with Nepali migrant worker in Kuwait, September 2020.

648. Maria Grazia Giammarinaro, “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait”, (2017): 5

649. KUNA, “Labor from new countries to lower recruitment fees - Al-Durra”, (22 February 2018).

through its partnerships with agencies in origin states, but its bigger focus is to lower the cost of recruitment for Kuwaiti employers of domestic workers rather than the workers themselves.<sup>650</sup> An Al-Durra representative told us that “our main goal was to bring down the price of importing workers to 990 dinars (USD 3,300), which is reasonable and affordable, because the market has become insane in recent years and we saw prices reach 2,500 dinars (USD 8,200), which is too much.”<sup>651</sup> This cap of 990 dinars (USD 3,300) was set by the Ministry for Commerce and Industry in 2018, seemingly in response to concerns that agencies were exploiting employers.<sup>652</sup> Other, smaller agencies have reportedly opposed Al-Durra’s creation and the lowering of fees.<sup>653</sup> 2021 has seen the fee brought down further, to 890 dinars (USD 2950).<sup>654</sup> According to the US State department, workers have still ultimately ended up paying at least some of these capped fees: “in actuality, a portion of these fees were transferred to the domestic employees”.<sup>655</sup>

There is little information available about any proactive steps by the Kuwait authorities to prevent the payment of recruitment fees by migrant workers. A representative of a civil society organisation providing assistance to migrant workers in Kuwait told us that she did not believe the government was active on this issue: “I mean the law is there, where it says the employer has to pay all fees. But I haven’t seen a campaign or any action from the government to prevent these fees. It is in the law, and that’s it.”<sup>656</sup> Al-Durra’s representative largely held origin states responsible, telling us: “You have countries like Nepal and the Philippines that ... do not have any oversight of the operations of the recruitment agencies of their countries, who send us workers that we then discover to have paid. The real problem is over there.”<sup>657</sup> One expert on labour rights in Kuwait told us: “I got the impression [Al Durra] were ... asking the countries of origin to do the work of keeping the supply chain clean, so that then they can just come in and get the workers without any liability themselves.”<sup>658</sup>

In addition to recruitment fees in the country of origin, it is very common for migrant workers to have to pay residence permit renewal fees. This applies particularly to workers working irregularly, who need to make payments to their sponsors in order to remain in the country. The UN Special Rapporteur on Trafficking in Persons found workers being “required to pay the bogus “employer” fees to renew their work and residence permits in order to enable them to stay in the country” and argued that this placed them at risk of labour trafficking.<sup>659</sup> A Kuwaiti owner of two restaurants staffed by migrant workers told us that concerns about such practices were overstated: “the worker wants to stay in Kuwait and does not mind paying to do so. And the employer wants the money. There is no victim in a lot of these transactions”.<sup>660</sup>

## Qatar

Qatari legislation prohibits the payment of fees by migrant workers to their recruitment agent or prospective employer in Qatar. However Qatar treats recruitment fee payment as a problem largely located in origin states. As a result there is limited oversight and scrutiny of the way in which employers and Qatari agencies interact with agencies in origin states. The refusal in many cases of Qatari entities to pay appropriate fees to agencies in origin states leads to those agencies offering services for free and even paying kickbacks to secure demand letters, passing these costs onto workers. High profile initiatives have sought to address this with employers through guidance and contractual requirements, but it seems that outside these schemes many employers still expect to be able to recruit as cheaply as possible.

Employers or recruitment agencies are banned from receiving any fees, expenses or any other cost from workers for their recruitment in Qatar under Article 33 of the 2004 Labour Law. A 2005 Ministerial decision on

650. Arab Times, “Kuwait government OKs Al-Durra for recruiting domestics from India, (4 July 2018).

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

652. MENAFN, Kuwait- Philippine domestic workers to cost KD 990 as set by MoCI, (19 June 2018)

653. Kuwait Times, “Embassies, agencies, wary of new maid recruiting company”, (5 September 2017).

654. Gulf News, “Kuwait: Recruitment fees for domestic workers reduced to KD 890”, (4 February 2021)

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

656. Representative of Kuwait-based civil society organisation working with domestic workers, interview, 14 July 2020.

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

658. Labour migration expert, remote interview, July 2020.

659. Maria Grazia Giammarinaro, “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait”, (2017): 4.

660. Kuwaiti owner of two restaurants, remote interview, May 2020.

recruitment agencies also bans holders of recruitment licences from “receiving any amounts from the worker in form of fees or charges imposed to bring him from abroad or any other costs.”<sup>661</sup> The Minister of Labour is authorised to cancel an authorised work permit if “the licensee obtains any sums of money from a foreign worker in return for his/her recruitment”.<sup>662</sup>

Nevertheless, multiple research reports have continued to find that low-income migrant workers from a wide range of origin states continue to arrive in Qatar having paid recruitment fees in order to secure their jobs. For example, a 2018 Amnesty International report interviewed 34 Nepali workers who paid between US \$867 to US \$1,156 for their jobs in Qatar. At least eight of the workers had also taken out loans with high interest rates, often up to 36% per annum.<sup>663</sup> Data collected in World Bank KNOMAD studies and shared by the ILO in 2017 found Nepali workers paying on average \$1,054 for their jobs in Qatar - the equivalent of 3.3 months wages, compared to \$1,149 for Indians and \$480 for Filipino workers.<sup>664</sup> “I honestly do not know a single domestic worker who did not pay money to come here,” a Filipino domestic worker told us in June 2020.

The government has said that the QVCs are designed to “help in reducing the number of labour disputes, such as over fraudulent contracts and illegal fees”.<sup>665</sup> However, many expert interviewees indicated to us that the main focus of the QVCs is on preventing contract substitution, rather than eliminating fees.<sup>666</sup> A Nepal-based migrant rights specialist told us: “anecdotal evidence indicates that recruitment costs have not been reduced [by the QVC].”<sup>667</sup> A group of Nepali workers who migrated to Qatar in late 2019 told us they paid between NPR 130,000 and 150,000 (USD 1100 - USD 1300) to recruitment agents in Kathmandu. Some paid fees in advance to agents to arrange their QVC appointments,

while others said that after they completed the official processes, their agent informed them that unless they paid additional recruitment fees, their tickets would not be issued.<sup>668</sup> A senior ADLSA official told us that the abuses faced by migrants prior to their cases being processed through the QVC process (i.e. recruitment fees and other debt accrued at the village and district level prior to arriving in Kathmandu) were not something the Qatari government could be responsible for addressing.<sup>669</sup> A woman preparing to travel to Qatar told us that she would not pay the QVC itself any fees but was still taking a loan to pay a recruitment agent: “I have to pay about NPR 50,000-60,000 (USD 422-507) to the recruitment agency once all my documentation is completed and I have the flight ticket in my hand... I plan to take a loan to make this payment.”<sup>670</sup> A 47-year-old man, who said he was illiterate, told us that QVC officials talked him through his benefits package and in Qatar he received “the same wages and benefits as briefed to me”, but nevertheless he had needed to pay 56,000 rupees (USD 471) to an agency before travelling. A researcher who has carried out large numbers of interviews with workers who migrated through the QVC told us that there are “all kinds of ways that people can make money from it, directing people to go there, giving them direction, having them paid bits here with different packages and different trainings. There’s no proper place at the QVC where you can complain ... if you paid fees or if your recruitment agency is requiring you to pay fees.”<sup>671</sup>

The Qatari government acknowledges the impact of workers paying recruitment fees but has tended in the past to point to the responsibility of origin states in relation to such issues, telling an ILO tripartite committee in 2017 that “the practice of imposing on workers high fees for their recruitment from abroad ... starts mainly in the labour-sending countries.”<sup>672</sup>

661. Ministerial Order no.8 of 2005 (governing the conditions and procedures of the permit for bringing workers from abroad for a third party), Article 19; 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, (31 October 2017): 25-26.

662. Ministerial Order No. 8 of 2005, Section 14.

663. Amnesty International, “Unpaid and abandoned: the abuse of Mercury MENA workers”, (26 September 2018).

664. Michelle Leighton, “ILO-WB partnership on measuring recruitment costs: progresses on SDG indicator 10.7.1”, ILO, (16-17 February 2017).

665. Gulf Times, Qatar’s first overseas visa centre set to open, (2 October 2018)

666. For example, the US State Department said of the QVCs in its 2020 Trafficking in Persons report: “The QVCs aimed to reduce instances of contract bait-and-switch, in which recruiters lured workers under one contract in home countries and subsequently forced them to sign new ones with lower wages upon arrival in Qatar.” See 2020 Trafficking in Persons report: Qatar

667. Nepal-based migrant rights specialist, interview, Kathmandu, 3 January 2020.

668. Interviews with Nepali migrant workers, Doha, December 2019. These items are all classified as recruitment fees under the ILO definition.

669. Meeting with ADLSA official, December 2019.

670. Interview with Nepali migrant worker preparing to migrate to Qatar, Kathmandu, 13 January 2020.

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

672. 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, (31 October 2017): 27

Qatar's law align with this approach, only containing an explicit prohibition of fee payment in Qatar itself. A 2016 ILO White Paper notes the risk this brings: "these laws [in Qatar and other Gulf states] have sometimes been interpreted by employers and recruitment agencies as a prohibition of the deduction of wages for recruitment fees in the destination country. Thus, the fees are taken prior to departure in the origin countries."<sup>673</sup> Furthermore, as both Article 33 of the 2004 Labour Law and the 2005 Ministerial decision focus on payment of fees to the "licensee" or "permit holder", payment by workers of recruitment fees to other intermediaries in the origin or destination country risks being overlooked.<sup>674</sup> While no legal reforms have been made, the government does appear as part of its cooperation programme with the ILO to have recognised that it has a responsibility to ban fees imposed in origin states, with the Minister of Labour telling a 2019 conference that Qatar wanted to be "a role model" even if this legal principle may be difficult to apply.<sup>675</sup>

The principle is relevant because research indicates that it is common for representatives of both employers and recruitment agencies located in Qatar to receive payments from origin state recruitment agencies, which are then passed on to workers. A 2016 report by Verité found that on average "\$300 - \$500 per worker is paid in illegal 'kickback' commissions by Nepali manpower agents to Qatari recruitment agents acting on behalf of Qatari employers, or to employer representatives directly, in order to secure 'demand letters' or job orders for workers ... These illegal payments are ultimately passed onto workers in the form of recruitment fees".<sup>676</sup> One HR manager in Qatar told us that, "some of my clients (employers) do this... I would say it is mostly out of greed in the cases I have seen."<sup>677</sup> Competition for demand letters is strong enough that Qatari recruiters and employers are able to demand that recruiters

cover all costs of recruitment as well as providing these kickbacks. While some employers that use Qatari agents pay a fee and a portion of recruitment related expenses, "the reality is that the duly appointed Nepali manpower agents are not paid professional services fees by their client or principal [the Qatari employers]".<sup>678</sup> Research by NYU Stern in 2017 noted that recruitment costs are rarely factored into the budgets for construction and engineering contracting bids, demonstrating the expectation that such costs will be borne by other actors further down the supply chain.<sup>679</sup>

In this context, parastatal entities have imposed specific standards and monitoring programmes to try to reduce the prevalence of recruitment fees payment by migrant workers in their supply chains, targeting employers who are ultimately responsible for workers' recruitment. Most notably the Supreme Committee for Delivery and Legacy (SC), responsible for the staging of the 2022 World Cup, has since 2017 under its "universal reimbursement scheme" required its contractors to reimburse recruitment fees to workers even if they don't have proof of payment. Eleven contractors have extended this scheme to workers not employed on the SC's projects.<sup>680</sup> The Supreme Committee for Delivery and Legacy's Worker Welfare Standards include a clearer definition of 'recruitment and processing fees' than currently provided in Qatari Law, and also require all contractors to conduct due diligence on their recruitment agencies.<sup>681</sup> Initiatives have been trying to address the need for employers to engage with the issue of recruitment fees - the IHRB and ILO have been working with Qatar's hospitality sector to address exploitation in recruitment.<sup>682</sup> A pilot project supported by the Qatari government, ILO and BWI trade union sought to recruit workers from Bangladesh for the French / Qatari company QDVC without the payment of recruitment fees.<sup>683</sup> At a 2019 conference, a group of major clients,

673. Professor Ray Jureidini, "Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor", ILO White Paper, (2016): 9

674. Recruitment fees, as defined by the ILO include: payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment; payments made in the case of recruitment of workers with a view to employing them to perform work for a third party; payments made in the case of direct recruitment by the employer; or payments required to recover recruitment fees from workers. Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment.

675. Gulf Times, "Qatar ensures fair labour recruitment procedures: minister", (21 May 2019).

676. Freedom Fund and Verité, "An Exploratory Study on the Role of Corruption in International Labor Migration", (2016): 9.

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

678. Freedom Fund and Verité, "An Exploratory Study on the Role of Corruption in International Labor Migration", (2016): 9

679. NYU Stern, "Making Workers Pay: Recruitment of the Migrant Labor Force in the Gulf Construction Industry", (11 April 2017): 15-16

680. Supreme Committee for Delivery and Legacy, Recruitment

681. "Recruitment and Processing Fees Means any fees, costs or expenses charged by a Recruitment Agent or a Contractor in respect of a proposed Worker obtaining employment in the State of Qatar including any fees, costs or expenses related to medical tests, police clearances, recruitment advertisements, interviews, insurance, government taxes in the country of origin, pre-departure orientations, airline tickets and airport taxes and any fees, costs or expenses charged by the Recruitment Agent to recuperate any Placement Fees." Supreme Committee for Delivery and Legacy: Worker Welfare Standards: 6

682. IHRB, "Promoting fair recruitment and employment: Guidance tool for Qatar hotels", ILO, (2020).

683. BWI, Vinci and QDVC, BWI-VINCI-QDVC Joint Audit Report 8-9 January 2019 Doha, Qatar, (January 2019).



including the SC, Qatar Rail, Manateq, Qatar Museums and the US Army Corps of Engineers Middle East District, pledged to commit to include recruitment costs in public procurement bidding processes.<sup>684</sup> This is potentially a significant development as it acknowledges that the practices of destination side employers can drive greater transparency and responsible recruitment, breaking with the dominant narrative that recruitment charges and costs are uniquely a problem of the origin country.

Outside these high-profile initiatives, Qatari employers who we spoke to indicated that the issue of recruitment fees was still low on their priority list. One HR manager told us, “it is the worker’s problem with the recruitment company. They can go to the labour ministry or the police if they want, but it is not our problem. Legally, we just need to present proof of salary payment to be in the clear.”<sup>685</sup> A Qatari owner of multiple companies told us: “it all comes down to money. We all just want the cheapest access to workers. Regardless of how much money a company has, we all more or less operate according to the same logic.”<sup>686</sup> The situation is largely accepted in many worksites, according to a contractor, who said: “I actually used to ask the Nepalese workers we hired if they were forced to pay for anything and I remember they were shocked and so was everyone else who knew that I did that, because of how accepted it is not to ask.”<sup>687</sup> It is early to tell whether more progressive intentions on the part of major public sector clients will affect such attitudes among smaller businesses. One expert based in Doha told us it should have a positive trickle-down effect: “The work that the Supreme Committee has done pushed contractors and subcontractors to take due diligence more seriously because the cost was going to be there [i.e. budgets for projects would include recruitment costs]. There has been some effect, mainstreaming is not perfect but has improved awareness of this issue.”<sup>688</sup>

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## 6.2 Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them?

### *Nepal, Qatar and Kuwait*

None of the relevant laws in Nepal, Kuwait or Qatar stipulate that the full extent and nature of costs charged by recruitment agencies should be transparent to employers in destination states.

Opaque payment processes mean that there is effectively no accountability for recruitment agencies and allows “double dipping”, as noted in section 6.1. A 2014 study on recruitment of Asian workers in the Gulf noted that “where employers pay the recruitment costs and fees, many agencies also charge workers, receiving payment from both. Neither employers nor employees ask one another if they have paid the agency or how much; nor do regulatory bodies in the origin or destination countries question migrant workers about how much they have paid”.<sup>689</sup> This confusion and lack of clarity greatly hinders any efforts by workers to recover illegal recruitment fees they have incurred, and provides little incentive to businesses to act responsibly, if they believe agencies will charge workers anyway whether or not they agree to pay professional service fees.

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## 6.3 Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker’s language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements?

### *Nepal*

The Nepali authorities have taken a number of steps in recent years to ensure that employment contracts are more transparent and accessible to migrant workers. However, Nepal’s linguistically diverse migrant population may limit their impact. More generally, serious problems with the implementation of legal requirements persist.

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

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

686. Qatari business owner, remote interview, July 2020.

687. Contractor building hotels in Doha, interview, July 2020.

688. Expert in labour migration, based in Doha, remote interview, September 2020.

689. Gulf Labour Markets and Migration, “Arab Gulf States: Recruitment of Asian Workers”, European University Institute (EUI) and Gulf Research Center (GRC), (2014).

Contracts between the employer and the worker, and contracts between the prospective migrant and the licensed recruitment agencies must be submitted to DOFE, under Section 25 of the FEA.

Though the model employment contract appended to the 2005 Qatar-Nepal BLA is not publicly available, the agreement requires that recruitment offers must include the duration of contract, the conditions of employment, especially the salary, end of service gratuity, probationary period, information about work conditions, transport and accommodation.<sup>690</sup> More recently negotiated agreements with Japan, Jordan, Israel, Malaysia, Mauritius and the UAE all contain a standard employment contract, which requires the employer to list the terms and conditions of the employment, wage and benefits, accommodation, leave entitlement, repatriation and dispute settlement provisions, as well as medical and accidental insurance.<sup>691</sup>

These recent agreements also include requirements for translation of contracts. For example, the MOU with Malaysia mandates that the contract of employment be available in three languages (Malay, Nepali and English) while the MOU with UAE requires the Arabic contract to be translated into Nepali and English. The Joint Secretary at the Ministry of Law, Justice and Parliamentary Affairs told us that a priority objective for the government in bilateral negotiations was to ensure that contracts are translated into Nepali, as well as the destination country language and English.

Nevertheless, considering the diversity of languages spoken in Nepal (approximately 129), and taking into account the fact that the majority of migrant workers come from non-Nepali speaking communities,<sup>692</sup> it is still often challenging for workers to make sense of essential terms and conditions. For instance, Maithili is the mother tongue of 45.3% of Nepal's total population, making it the most widely spoken language in Province Two.<sup>693</sup>

In his 2018 report on Nepal, the UN Special Rapporteur on the human rights of migrants noted the problem of contracts not being translated into languages that migrant workers understand.<sup>694</sup> Additionally Nepal's literacy rate is 68%, meaning some workers cannot read their contracts.<sup>695</sup> Workers unable to read their contracts, because they can't read or because it is not in a language they read, are reliant on recruitment agencies to explain terms and conditions to them (with the exception of those who migrate through the Qatar Visa Center - see below - where officials brief workers individually). A Nepali woman who had migrated to work in a beauty salon in Kuwait told us that, "the contract was in Arabic, and they showed me that 130 KWD [USD 425] will be my salary in the contract. I can't remember if I signed it or not."<sup>696</sup>

A senior official at the Ministry of Law, Justice and Parliamentary Affairs acknowledged that it was a major problem that contracts were not explained to the employee well in advance of departure. He explained that "documents like contract papers are not provided on time and are often made available only a day before or a few hours before departure. In such a situation, [migrant workers] are in no position to change their decision even when they become aware of being cheated".<sup>697</sup> The Nepali NHRC has also highlighted the impact on workers of obtaining contracts late: "[workers] are in no position to change their decision even when they become aware of being cheated."<sup>698</sup> Amnesty's 2017 report documented cases of this kind, in which workers were already indebted and had to migrate to pay this off, despite discovering immediately prior to departure that they had been deceived over their term and conditions.<sup>699</sup> CESLAM told us that, "there are issues regarding providing a contract on time. Recruiters in the cycle of the recruitment process have to be more responsible".<sup>700</sup>

Our interviews with Nepali migrants in Qatar and Kuwait are consistent these findings. Of 40 workers interviewed

690. Governments of Nepal and Qatar, "Agreement Between his Majesty's Government of Nepal and the Government of the State of Qatar Concerning Nepalese Manpower Employment in the State of Qatar", 21 March 2005, Article 4.

691. CESLAM, *Bilateral Agreements*

692. "Provinces 1 and 2 witnessed the highest share of labour migration in 2018/19, comprising over 24 per cent of the migrant workers": MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 17.

693. Subhash Nepali, Subha Ghale and Krishna Hacchethu, "Federal Nepal: Socio-Cultural Profiles of the Seven Provinces", (8 October 2018).

694. Felipe González Morales, "Report of the Special Rapporteur on the Human Rights of Migrants on his mission to Nepal: note / by the Secretariat", A/HRC/38/41/Add.1, (2018).

695. UNESCO, *Nepal*

696. Remote interview with Nepali migrant worker in Kuwait, September 2020.

697. Senior official, Ministry of Law Justice and Parliamentary Affairs, Interview, 8 January 2020.

698. NHRC, "Research Report on The Situation of the Rights of Migrant Workers Recruitment Practices and Access to Justice of Migrant Workers", (November 2019): 91

699. See for example the case of Sana. Amnesty International, "Turning people into profits", (6 June 2017): 24

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

remotely, who migrated to these countries between late 2018 and the beginning of 2020, four stated that they received their contracts just before travelling, either on the day of, or the day before, their scheduled flight, and when it was too late to back out of the migration process even though the contracts did not match the promises made by the agencies. Seven said that they were only explained the terms and conditions of their offers verbally, but that they never received their contracts prior to leaving Nepal, and in three other cases, workers reported being given contracts in either English or Arabic, which they did not understand.<sup>701</sup>

## Kuwait

Kuwait introduced a new model contract in 2016 and there is strict guidance on the content of domestic workers' contracts. However, it is still common for workers to arrive with no contract, or only to have a copy in a language they cannot understand.

The Kuwait Private Sector Labour Law (Law 6. of 2010) permits labour contracts to be verbal or written. If written, they must be in Arabic. Contracts can be translated into an additional language but there is no requirement for the written contract to be in a language that the worker understands. In the event of a dispute, the Arabic text prevails.<sup>702</sup> If the contract is written, three copies are required, one for the employer, one for the worker, and the third to be submitted to the Public Authority for Manpower.<sup>703</sup> Article 28 of the Labour Law requires all workers to be given contracts that clearly and accurately state the duration of the contract, nature and location of the work, and the monthly salary. They must also include the daily working hours, the probation period, end of service benefits, the annual leave period, insurance against work injuries, and state that the work must be consistent with the skills and credentials of the employee, amongst other requirements. In 2016 Kuwait issued a new "short form model contract" for all private sector employees.<sup>704</sup> Some embassies, including the Nepali embassy, require

the contract to be submitted for attestation by the Labour Attaché before a visa is issued.<sup>705</sup>

Ministerial Decision No. 2194 of 2016 provides the rules for enforcement of the 2016 Domestic Worker Law. Article 1 explicitly defines a domestic worker as "every male or female mandated with manual labor inside private homes (and anything that falls within that scope) for individuals, in accordance with a written contract". The 2015 Domestic Workers Law specifies that the contract must include: the employer's obligations to provide food, housing, medical treatment and clothing; a maximum 12-hour working day with breaks; a paid weekly break and paid annual leave; and an acknowledgement that the domestic worker's passport is the worker's personal document and must not be held by the employer.<sup>706</sup> Ministerial Decision No. 2302 of 2016 provides the implementing regulations and includes a template model contract.

The US State Department said in 2020 that "in some cases, officials do not provide workers copies of their contracts, or the contracts are not written in a language they can read".<sup>707</sup> A Nepali domestic worker told us she never received a contract: "it was an oral contract in Nepal. Later, when we reached Kuwait, the [recruitment] agent here took us to an office. There, the agent signed some papers in Arabic. I was not asked to sign anything."<sup>708</sup>

## Qatar

As part of its labour reform programme, Qatar has been taking steps to introduce greater consistency into the contracting process.

Under Qatar's key 2015 immigration law, migrant workers cannot enter Qatar without a contract: "no entry visa shall be granted to a migrant worker for the purpose of work unless there is a contract concluded with the recruiter certified and approved by the competent authorities in the country, in accordance with the specified rules and procedures".<sup>709</sup> Qatar's 2004

701. Remote interviews with 40 migrant workers in Kuwait and Qatar, August 2020.

702. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 29, 2010.

703. ILO, "[Kuwait: Regulatory framework governing migrant workers](#)", (November 2019).

704. Taylors Vinters, Kuwait: [New standard form employment contract in Kuwait](#), (17 May 2016).

705. Kuwait Trade Union Federation, "[Your Rights at Work: A Guide for Migrant Workers in Kuwait](#)", (July 2017).

706. [Law No. 68 of 2015 on Employment of Domestic Workers](#)

707. US Department of State, [2020 Trafficking in Persons Report: Kuwait](#), (2020).

708. Remote interview with Nepali migrant worker in Kuwait, 11 August 2021

709. 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](#), (31 October 2017): 25-26.

Labour Law specifies what needs to be included in a valid, legally enforceable contract.<sup>710</sup> ADLSA certifies all employment contracts of migrant workers, including domestic workers, in spite of their exclusion from the provisions of Qatar’s Labour Code.<sup>711</sup> While it is possible to attach a second copy translated into another language, in case of a dispute, the Arabic version prevails.<sup>712</sup> In a 2020 report, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance received reports of contract substitution whereby workers signed contracts in their native language “only to later discover that the Arabic versions of their contracts has unfavourable terms” and reported that this was “a common practice affecting all migrant workers.”<sup>713</sup> A 2014 report for the Qatar Foundation found that many workers did not understand the provisions set out in their contracts, other than details of the wages they would receive, and most workers interviewed did not have a copy of their contracts.<sup>714</sup>

Qatar has a large number of bilateral agreements (see 3.3) that have model contracts attached and has promoted their use, with the government reporting to the ILO that it “has encouraged such countries to be guided by the model employment contracts attached to bilateral agreements, which are prepared in conformity with the provisions of the Labour Code in Qatar, and which observe the human rights of migrant workers and their protection”.<sup>715</sup> However, in 2017, ADLSA issued a standard contract to be used by recruiters and employers, with a copy to be handed to each party to the contract.<sup>716</sup> This appears to take precedence over the contracts attached to bilateral agreements. In 2020 ADLSA introduced what it called a Digital Authentication System for a Multilingual Employment Contract that “allows companies to create new work contracts for employees, by entering the contract details online and printing it”.<sup>717</sup> The ILO says that workers who want to download copies of their contracts can do so.<sup>718</sup>

In 2021, Qatar introduced a standard employment contract for domestic workers addressing a number of disparities between legal protections afforded under Qatar’s 2004 Labour Law, from which domestic workers are excluded. Key components in the new standard employment contract include specification of legal working hour restrictions, overtime rates, provision for sick leave and reaffirmation that employers are responsible for any recruitment costs. Domestic workers may “request” to work on their weekly day-off, and to convert this into annual leave.<sup>719</sup>

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## 6.4 Are there effective measures to prevent contract substitution?

### Nepal

The government acknowledges that contract substitution is prevalent in Nepal, calling it a malpractice which “cannot be overlooked”. Since 2018 it has sought to address these practices through inserting its embassies and consulates into the recruitment processes and requiring “demand letter attestation”. The intention appears to be to put this system online through the FEIMS to allow labour attachés to “play a more active role in recordkeeping”.<sup>720</sup>

A journalist specialising in labour migration told us that “the government has not been able to address fraudulent activities.”<sup>721</sup> In this regard, the 2018 report of the UN Special Rapporteur on the human rights of migrants confirmed that contract substitution continues for Nepali workers, reporting that “terms of employment, remuneration, employing company or the type of work agreed upon in Nepal were changed upon arrival in the destination country; contracts were

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710. [Qatar Labour Law](#), Article 38, 2004.

711. 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](#), (31 October 2017): 14

712. [Qatar Labour Law](#), Article 9, 2004.

713. [Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to Qatar](#), A/HRC/44/57/Add.1, (2020)

714. Professor Ray Jureidini, “[Migrant Labour Recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative](#)”, Qatar Foundation, (2014): 84.

715. 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](#), (31 October 2017): 25-26.

716. ILO, “[Qatar: Regulatory framework governing migrant workers](#)”, (November 2019): 1

717. Hukoomi Government portal, [Create a Work Contract through the Multilingual E-Contract System for Companies](#)

718. State of Qatar, [Changing employers in Qatar Key information for workers](#)

719. ADLSA, [Standard Employment Contract for Domestic Workers](#)

720. MOLESS, [Nepal Labour Migration report 2020](#), (March 2020): 4, 53

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



substituted<sup>722</sup> Nepali workers described to us a range of deceptive practices, including arriving in Kuwait and Qatar to find that their job had been changed, that they had been “sold” to a different employer, or that their wages were lower than expected, or that their contract was significantly shorter than promised.<sup>723</sup> Some workers discover the difference between the conditions they have signed up to and the reality shortly before travelling (see 6.3): by the time they discover this, it is too late and they have committed to migrating. One migrant rights researcher in Kathmandu told us that female migrants often have to sign a disclaimer with recruitment agencies stating that they fully understood their contract and signed it willingly.<sup>724</sup> This suggests that agents are well-aware of the significant possibility of workers reporting that their terms and conditions in the destination are not what they were promised and attempt to legally protect themselves against this eventuality.

Under the FEA, Nepali recruitment agencies are required to pay for the repatriation of workers whose terms of employment are found to be different to those stipulated in the original contract.<sup>725</sup> However, in its 2017 report, Amnesty International noted that this provision is not implemented and “did not identify a single case in which a recruitment agency had acted on its obligation to workers who experienced these circumstances”.<sup>726</sup>

The government’s main effort to tackle this issue has been through technical measures. Until 2018, an attestation from the Chamber of Commerce or public notary in the destination country was sufficient for an employer to issue a demand letter, specifying a requirement for a number of workers, to a Nepali recruitment agency.<sup>727</sup> To address the issue of demand letters including false promises of wages and other working and living conditions, the government in 2018 required employers to gain attestation from Nepali embassies.<sup>728</sup> Demand letters - for which Nepali

embassies in Qatar and Kuwait supply sample templates - are required to set out information including on the number and gender of workers required, working hours, basic salary, working days, food allowances, accommodation, transportation, medical insurance, plane tickets and other benefits.<sup>729</sup> Before they approve demand attestation requests, embassy officials are supposed to “enquire about the employer, which ideally entails site visits.” Embassies are expected to check whether any wages being offered by employers go below the Nepali government “minimum referral wage” for the destination country in question.<sup>730</sup>

The concept behind this reform, as articulated by the Minister responsible for its introduction, was to move beyond a simple check on legal status to a more detailed assessment: “The Chamber of Commerce and Notary Public would give permission to those companies to invite Nepali workers only after checking the legal status of the company, but not their financial condition, facilities and services being given to workers.” In many cases recruitment agencies were complicit in the inclusion of unrealistic promises in demand letters, he said.<sup>731</sup> However, the Ministry in 2020 acknowledged that in key destination countries, the ability of embassies to carry out the detailed assessments required is severely stretched. Referring specifically to the attestation process, the MOLESS 2020 report says that, “human and financial resource support at Missions to fulfil their mandate is inadequate in major destination countries.”<sup>732</sup>

As stated above, the government is also attempting to use technology to bring more control and transparency to the recruitment process through the FEIMS, which brings together “all migration-related stakeholders to one platform” and aims to “minimiz[e] ill practices.”<sup>733</sup> According to a DOFE official, registration with the Foreign Employment Information Management System (FEIMS) is mandatory for both recruitment agencies and

722. Felipe González Morales, “Report of the Special Rapporteur on the Human Rights of Migrants on his mission to Nepal : note / by the Secretariat”, A/HRC/38/41/Add.1, (2018).

723. Remote interviews with 40 Nepali migrant workers in Qatar and Kuwait, August 2020.

724. Migrant rights researcher, interview, Kathmandu, 3 January 2020.

725. Foreign Employment Act 2064, Act number 18 of the year 2064 (2007), Sections 33 and 75, 2007

726. Amnesty International, *Turning people into profits*, (6 June 2017): 11

727. The Kathmandu Post, “Govt sets new rule to protect Nepalis working abroad”, (9 May 2018).

728. Directive on the Inquiry of Demand Letter for Foreign Employment, 2018, Clause 3, FEA 4th amendment, 2019. Sec 15(f)

729. See <https://kw.nepalembassy.gov.np/download/> and <https://qa.nepalembassy.gov.np/download/>

730. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 56

731. The Kathmandu Post, “Govt sets new rule to protect Nepalis working abroad”, (9 May 2018).

732. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 90

733. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 55

migrant workers. “For agencies the pre-approval [of a permit] is incomplete and impossible without FEIMS, while the workers who are not found registered in this system are not allowed to leave the country from Nepal’s airport.”<sup>734</sup> Nepali consulates and embassies are also on the system. One civil society organisation told us that through this system, the government is attempting to act as a bridge in the contract agreement phase, rather than relying on Nepali recruitment agencies and private destination country entities to manage the migration.<sup>735</sup> MOLESS acknowledges that FEIMS is essentially a “unilateral” measure, done outside the framework of its bilateral agreements.<sup>736</sup> As far as we are aware, FEIMS is not connected to the QVC, for example - which raises the question of whether the two systems may duplicate in the Nepal-Qatar channel.

Civil society actors were generally positive about the potential for FEIMS to help combat fraudulent practices in the contract negotiation phase. A journalist specialising in migration told us that “if FEIMS is implemented effectively, it could be very beneficial,”<sup>737</sup> and the manager of a shelter for domestic workers told us it was a “good effort” by the government to stop contract substitution.<sup>738</sup> There is not yet data available to show how many demand letters, and foreign work permits, have been issued through the system. It is too early to assess the impact of this measure on contract substitution, particularly since for most of the time the system has been active, the Covid-19 pandemic has heavily restricted outward migration. A key question will be workers’ ability to access and operate FEIMS independently without requiring the continued support from intermediaries (see 4.2), and the degree to which foreign employers are engaged in the system.

## Kuwait

Contract substitution and related deception over terms and conditions is widespread in Kuwait. The UN

Special Rapporteur on Trafficking reported cases of “migrant women who are college graduates and trained professionals who had been deceptively recruited with offers of high salaries as nurses, private tutors or in the hotel industry, and who find themselves employed as domestic workers.” Equally women recruited as domestic workers “report experiencing work conditions substantially different from those described in the contract.”<sup>739</sup> A group supporting migrant workers in Kuwait also told us that contract substitution remains a big problem.<sup>740</sup> A Sandigan Kuwait 2019 report with the Global Alliance Against Traffic in Women, based on detailed interviews with domestic workers in the Philippines embassy shelter, described how “despite signing a written contract prior to migration, participants declared that their contracts were manipulated as soon as they came in the country.” Recruiters in the Philippines, the report argues, “may hold back such information [about the reality of the job] for fear that recruits would opt out of the process”<sup>741</sup> The UN Special Rapporteur notes that when women try to complain, some Kuwait-based recruitment agencies engage in “physically and psychologically abusing migrant domestic workers shortly after their arrival in Kuwait in order to frighten them and discourage them from leaving or complaining about their employers.”<sup>742</sup>

Deception in the contract stage does not only affect domestic workers in Kuwait. According to a Nepali community group supporting migrant workers in Kuwait, a major issue is that contracts do not provide specific information on work conditions, and whether the job is meant to be carried out indoors or outdoors: “Workers often arrive and are surprised that they are working on a site in the open air; this is particularly problematic given the extreme temperatures in the summer.” A Nepali community activist said that contract substitution is particularly problematic in small companies or those providing cleaning or other services: “multinationals and larger companies tend to be better in respecting the terms of the contracts.”<sup>743</sup>

734. Interview with DOFE official, 20 September 2020.

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

736. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 5

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

738. Muna Gautam, Aaprabasi Mahila Kamdar Samuha (AMKAS), interview, 17 January 2020.

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

740. Interview in December 2019, name withheld

741. SANDIGAN Kuwait, *Expectations and Realities in Labour Migration: Experiences of Filipino Domestic Workers in a government-run shelter in Kuwait*, (2018-19): 22

742. Maria Grazia Giammarinaro, “*Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait: note / by the Secretariat*”, A/HRC/35/37/Add.1, (2017): 5

743. Remote interview with Nepali community activist in Kuwait, 5 October 2020.

A 30-year-old Nepali man told us that he migrated to Kuwait thinking he would work for his employer but discovered his employer was an “outsourcing” company, and he would actually be working for a different company as a bike delivery driver. “It would be better if agencies make the placement of migrant workers after thoroughly studying the employers in future... We were sold to another company”.<sup>744</sup> One issue commonly reported is workers arriving to entirely illusory jobs, with the Kuwait Society for Human Rights reporting in 2018 that it had “received a number of complaints from workers who were brought to Kuwait by fictitious companies (residence traders). They stated that they paid amounts of more than 1,500 KD (USD 5,000). Upon arrival, they tried to contact the sponsor to complete the residency procedures to no avail.”<sup>745</sup>

Some workers found themselves without valid jobs from the point at which they arrive and find the jobs they have been promised do not exist - a result of corrupt visa selling. One organisation that provides support to workers in the Gulf told us: “a lot of the cases we are receiving now from Kuwait, like even yesterday we had about 17 Nepali women who have been recruited by cleaning company, and then there’s no job, they’re stranded and we have to help them with food.”<sup>746</sup>

Many workers who arrive to find themselves in conditions different to, and often worse than, expected seek to leave these jobs and find better work, placing them into irregular immigration status and putting them at further risk of exploitation and arrest. A representative of a domestic worker shelter in Kathmandu told us that “agents in Kuwait often lure the Nepali workers working in Kuwait with the promise of a higher salary and better working conditions. In many cases these women end up running away from their employers, putting them in a very vulnerable position.”<sup>747</sup> There is of course no guarantee that such promises are any more credible than those made before migrating.

Deceptive recruitment is a key indicator of trafficking, a practice Kuwait has been accused of failing to tackle

- traditionally treating violations against migrant workers as administrative infractions rather than potential criminal offences. In January 2019, the Public Prosecutor’s Office and the Ministry of Interior launched a new policy requiring (among other things) that all cases of forcing individuals into jobs different from those contractually agreed upon be prosecuted under the anti-trafficking law rather than the labour law. According to the US State department, the new policy has resulted in a “slight but noticeable institutional shift”, though prosecutions of contract substitution under the anti-trafficking law remain very rare: in 2019, “only severe cases of domestic worker abuse—usually involving significant bodily injury or death—were prosecuted as violations of other criminal laws”.<sup>748</sup> The UN Special Rapporteur flagged the same concerns in her 2017 report, additionally warning of a tendency to place responsibility only on agencies in origin states, removing the “accountability of institutions in Kuwait that are also part of the trafficking chain.”<sup>749</sup>

## Qatar

To reduce the prevalence of contract substitution, Qatar has introduced dedicated visa centres in key origin states. These provide workers with clarity on the content of their job offers and give them more of a chance to reject adverse terms and conditions than previously. However, in view of the fact that recruitment agencies remain in control of the wider process, the risk of exploitation remains high.

Contract substitution or deception has typically been a common experience among migrant workers in Qatar. There is limited data on this issue, but a 2013 survey of migrant workers in Qatar found that 15% of low-income migrants interviewed were put to work in a different position from the one they agreed to, while 20% arrived to a salary different from the one promised to them in the origin state.<sup>750</sup> A 2020 Human Rights Watch report spoke to 13 workers who said they faced contract substitution in their migration journey to Qatar.<sup>751</sup>

744. Remote interview with migrant worker in Kuwait in 2019, 2 August 2020.

745. Kuwait Society for Human Rights, “Migrant workers in Kuwait between law redress and abuses”, 2018: 17.

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

747. Muna Gautam, Aaprabasi Mahila Kamdar Samuha (AMKAS), interview, 17 January 2020.

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

749. Maria Grazia Giammarinaro, “Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, on her mission to Kuwait : note / by the Secretariat”, A/HRC/35/37/Add.1, (2017): 13.

750. Andrew Gardner, Silvia Pessoa, Abdoulaye Diop, Kaltham Al-Ghanim, Kien Le Trung and Laura Harkness, A Portrait of Low-Income Migrants in Contemporary Qatar, Journal of Arabian Studies, (27 June 2013): 10

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

According to Nepali community activists in Qatar, contract substitution is particularly prevalent amongst low-income workers, including domestic workers, who primarily rely on agents and sub-agents that give false assurances: “Domestic workers are not allowed to come here but they come under a different visa, as a cleaner for example. They receive fake contracts, and when they arrive [in Qatar], their job contracts are changed, and they are issued a different ID”.<sup>752</sup> A Nepali woman said she was told by a recruiter that she would be selling coffee in a market told us that when she arrived in Qatar: “it was completely different. I am currently working as a household cleaner which was exactly what we were told we would not be doing.”<sup>753</sup> A 2014 report for the Qatar Foundation found that workers were “either not given a copy of their contract (whether the original or the substitute) or told to destroy the first contract when they arrive in Qatar... When workers complain of the discrepancies ... they are routinely told that if they do not accept it, they can return home.”<sup>754</sup> An employer told us that it was not uncommon to find that workers were expecting different terms and conditions, though he was only fully aware of this for higher income roles: “It just comes up as you go after the introductions, but that only tends to happen with skilled workers because people do not always conduct interviews with every single cleaner and labourer, for example.”<sup>755</sup>

Monitoring and enforcement of this issue within Qatar appears to be limited, with inspections tending to focus on other issues. As one migrant rights expert with many years’ experience in Qatar put it: “labour inspections are not really going to pick up a contract substitution, they’re just going to look at worksite safety.”<sup>756</sup>

As with recruitment fees, Qatar previously argued that the problem of contract substitution was primarily the

responsibility of origin states.<sup>757</sup> However, under the ILO Technical Cooperation Programme it committed to addressing this issue, including as part of a National Action Plan on Forced Labour.<sup>758</sup> The government has established 14 Qatar Visa Centers (QVCs) in six key origin states (Nepal, India, Bangladesh, Pakistan, Philippines and Sri Lanka), with more planned. The Centers are operated by the Singapore-based company Biomet,<sup>759</sup> and according to the government, they “form a milestone in the elimination of fraud associated with payments and recruitment and also provide the necessary protection for workers against any exploitation”.<sup>760</sup>

In its response to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the government told the UN that the QVCs, “allow electronic signing of the contract by the worker with the possibility of contracts read in a mother tongue language and that will give the employee a better chance of understanding the contract and of bargaining when not satisfied with any of the contract’s provisions. It also guarantees the non-existence of any contradiction between the employment offers which are announced by the recruiting offices in the labour sending countries and the legal terms of the contract.”<sup>761</sup>

The Qatar Visa Center was opened in Kathmandu in May 2019, although it did not start processing the migration of prospective Nepali workers to Qatar until August 2019,<sup>762</sup> and its operations were heavily disrupted by the Covid-19 pandemic for much of 2020.<sup>763</sup> One activist working on migrant worker rights across the Gulf and who had visited several QVCs told us that the centers had “great potential for making sure there’s no contact substitution” but noted their limitations in relation to

752. Nepali community activists in Qatar, remote interview, 10 October 2020.

753. Remote interview with migrant worker in Qatar, 12 August 2020.

754. Professor Ray Jureidini, “Migrant Labour Recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative”, Qatar Foundation, (2014): 97.

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

756. GCC labour specialist, interview, 7 July 2020.

757. “The Government points out that the practice of imposing on workers high fees for their recruitment from abroad and for tampering with their contracts starts mainly in the labour-sending countries”: 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, (31 October 2017): 27

758. 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, (31 October 2017): 31

759. Qatar Visa Center [website](#)

760. A/HRC/44/57/Add.1 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to Qatar, (2020): 9

761. A/HRC/44/57/Add.1 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance: Visit to Qatar, (2020): 9

762. Gulf Times, “QVC protects Nepali job seekers’ rights, ensures their welfare”, (14 August 2019).

763. The Peninsula, “Reopening of visa centres to boost businesses”, (9 December 2020)



the payment of recruitment fees.<sup>764</sup> (see 6.1) Several workers gave positive feedback on the QVC's role in ensuring they understood their contracts, with one who had migrated via the Center telling us that officials, "make sure that workers are well aware about their job and salaries and confirm with the workers if they agree to undertake the same."<sup>765</sup> There is anecdotal evidence that some workers are rejecting contracts because they discover discrepancies at the QVC. That said, one researcher who had interviewed many workers going through the QVC noted that for most workers, agents still remained in overall control of the migration process despite being prohibited from entering the QVC premises with workers (something workers confirmed to us), meaning that the risk of deception over terms and conditions remained. She spoke to one worker who spotted irregularities in his contract at the QVC, was poised to reject it, and his agency talked him into migrating anyway:

*"He was calling up his recruitment agents and the recruitment agent said, 'no no, look it just says that [lower salary] on the piece of paper, once you get to Qatar you're actually going to be making more, just trust me."<sup>766</sup>*

There is no data available on how many people reject their contracts after reviewing them at the QVC. A representative of FSI Worldwide, however, argued that it is too late in the recruitment process for the majority of workers to be able to reject their contracts after reaching the QVC even if they are made aware of the differences in the terms and conditions: "There's no way that you are going to jeopardize your job because of the debt that you have accrued, which is repayable whether you are working or not. People don't have much of a choice at this stage."<sup>767</sup>

In its 2020 report, Human Rights Watch noted a range of measures that Qatar had taken with regard to contract substitution, including the QVCs and the use of model contracts, observing that, "these measures have been unable to stamp out this abusive practice, but when

these measures are implemented in a widespread manner there may be progress."<sup>768</sup>

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## 6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

### Nepal

There are no specific provisions in Nepali law regarding the situation of migrant workers who migrate without a written contract. Many workers report not being issued written contracts, causing acute issues for those seeking remedy during or after their migration. An Amnesty report in 2017 found that "most migrant workers' cases registered at the DOFE suffer from a lack of evidence, usually because recruitment agents and agencies ensure there is no paper trail – such as receipts or contracts – to provide proof of their abuse."<sup>769</sup> In principle, such cases are accepted and investigated. A former investigating officer at DOFE told us that "where written contracts have not been issued, "verbal contracts are also taken into consideration if there is some connection between workers and agencies proved by some document of transaction of money. Such proof of transaction of money is enough to provide compensation for victims, regardless of any contract submitted to the investigation officers."<sup>770</sup> As Amnesty notes, this approach means that workers without receipts for payment are particularly unlikely to prevail with their cases - the report notes that some NGOs advise workers who do not have written proof, including contracts and receipts and payments, not to pursue cases with the authorities.<sup>771</sup>

### Kuwait

Article 28 of the 2010 Private Sector Labour Law, which excludes domestic workers, provides for situations in which a worker does not have a contract, and places

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764. GCC labour specialist, interview, 7 July 2020.

765. Remote interview with migrant worker in Qatar, 10 August 2020.

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

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

768. Human Rights Watch, "[How can we work without wages?](#)", (24 August 2020)

769. Amnesty International, [Turning people into profits](#), (6 June 2017): 10

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

771. Amnesty International, [Turning people into profits](#), (6 June 2017): 34

the burden on workers to prove their “rights through all evidencing methods”.

For domestic workers, Ministerial Decision No. 2194 of 2016 provides the rules for enforcement of the 2016 Domestic Worker Law. Article 1 explicitly defines a domestic worker as “every male or female mandated with manual labor inside private homes (and anything that falls within that scope) for individuals, in accordance with a written contract”. This raises some concern that domestic workers without a valid written contract may face difficulties claiming the protections afforded by the Domestic Worker Law and its accompanying Ministerial Rules.<sup>772</sup> In 2016, Human Rights Watch wrote to the Kuwaiti government expressing concern about this point, noting that several entitlements such as the right to paid annual leave and weekly rest appear only under Article 22 of the law regarding contracts and are not addressed anywhere in the law, raising the question of whether workers without a contract could enforce these rights through grievance processes.<sup>773</sup>

Many domestic workers do not have contracts: in a 2018 survey of domestic worker employers carried out by Arab Times Online, 56.64% of employers said they did not conclude an employment contract with domestic workers.<sup>774</sup> This is consistent with a 2015 ILO report based on interviews with employers.<sup>775</sup> For Nepali women working in Kuwait as domestic workers, this is a particular concern since many migrate through India without formal processes or the involvement of the Nepal authorities. A 33-year-old woman who migrated

on the basis of an oral contract told us she had no rest days and was now having to clean three houses rather than two as the sons of the family had married and moved out.<sup>776</sup>

Workers on “free visas”, working irregularly, are highly unlikely to have contracts, and are at elevated risk in Kuwait. Employers of irregular workers generally take no responsibility for them. As one study on Kuwait found, “since these workers do not have a contract, the school [employer] would not acknowledge them as employees and would not protect them in case of a police raid.”<sup>777</sup>

## Qatar

Article 38 of the 2004 Labour Law provides for situations in which a worker does not have a contract and places the burden on workers to prove “the labour relationship and the rights which have arisen therefrom.”<sup>778</sup> While workers who have migrated regularly and do not have contracts ought in theory to be able to retrieve copies of their contract via an ADLSA electronic portal, workers on “free visas”, working irregularly, are at elevated risk since they are highly unlikely to have contracts that relate to the reality of their terms and conditions.

In its 2020 report on wage theft, HRW noted that undocumented workers, who do not have ID cards, cannot file claims at the the Labour Dispute Resolution Committees, nor benefit from Qatar’s Wage Support and Insurance Fund.

772. Ministerial Order No. 2194 of 2016 Concerning the Executive Rules for Law No. 68 of 2015 on Domestic Workers, (17 July 2016).

773. Human Rights Watch, Letter to His Excellency Sabah Al-Khalid Al-Sabah, (30 September 2016).

774. Albawaba, “62.2 Percent of Employers in Kuwait Break Domestic Workers Law”, (12 December 2018).

775. ILO, “Employers’ perspectives towards domestic workers in Kuwait”, (2015).

776. Interview with Nepali domestic worker in Kuwait, 8 August 2020.

777. Nasra M. Shah and Lubna Al-Kazi, Irregular Migration to and within Kuwait: Enabling and Sustaining Factors, GLMM, (2017): 107

778. 2004 Labour Law, Article 38.

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