

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

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# Acronyms

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<b>ADLSA</b>	Ministry of Administrative Development, Labour and Social Affairs
<b>BLA</b>	Bilateral Labour Agreement
<b>CDO</b>	Chief District Officer
<b>CIAA</b>	Commission for the Investigation of Abuse of Authority
<b>DAO</b>	District Administration Office
<b>DOFE</b>	Department of Foreign Employment
<b>DWD</b>	Domestic Workers' Department
<b>FEA</b>	Foreign Employment Act
<b>FEB</b>	Foreign Employment Board (formerly the Foreign Employment Promotion Board)
<b>FEIMS</b>	Foreign Employment Information Management System
<b>FEP</b>	Foreign Employment Policy
<b>FER</b>	Foreign Employment Rules
<b>FET</b>	Foreign Employment Tribunal
<b>FVFT</b>	Free Visa, Free Ticket policy
<b>GCC</b>	Gulf Cooperation Council
<b>GEFONT</b>	General Federation of Nepalese Trade Unions
<b>HTTCA</b>	Human Trafficking and Transportation (Control) Act
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organisation for Migration
<b>ITUC</b>	International Trade Union Confederation
<b>KCCI</b>	Kuwait Chamber of Commerce and Industry
<b>KTUF</b>	Kuwait Trade Union Federation
<b>KUDLO</b>	Kuwait Union of Domestic Labor Offices
<b>LDRC</b>	Labour Dispute Resolution Committees
<b>LRD</b>	Labour Relations Department
<b>MOLESS</b>	Ministry of Labour, Employment and Social Security
<b>MOU</b>	Memorandum of Understanding
<b>MRC</b>	Migrant Resource Centre
<b>NAFEA</b>	Nepal Association of Foreign Employment Agencies
<b>PAM</b>	Public Authority of Manpower
<b>QCCI</b>	Qatar Chamber of Commerce and Industry
<b>QF</b>	Qatar Foundation
<b>SC</b>	Supreme Committee for Delivery and Legacy
<b>WPS</b>	Wage Protection System
<b>WSIF</b>	Workers' Support and Insurance Fund

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# Overview

## An **overview** of fair recruitment in the Nepal to Kuwait and Qatar labour migration corridors

Outward labour migration plays an important role in Nepal's economy and society. Extreme poverty, high unemployment and natural disasters have led to nearly one in ten Nepalis seeking work abroad. With remittances making up almost a third of its GDP, Nepal is one of the largest remittance recipient countries in the world. The Arab Gulf states are a major destination for Nepalis. In 2017/2018, the six GCC countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE) hosted 65% of all Nepali workers migrating to countries other than India (where the Nepali government does not issue workers with labour permits, meaning data is not available). Remittances received from GCC countries and Malaysia accounted for more than half of Nepal's total remittances between 2014/2015 and 2017/2018, with 12 percent coming from Qatar alone. The GCC states have among the world's highest GDP per capita, and receive hundreds of thousands of migrant workers each year, mainly from South Asia, to develop and service their economies. In both Qatar and Kuwait, the subjects

of this study, migrants far outnumber nationals in the workforce.

Given its importance to the national economy, foreign employment features centrally in Nepal's economic planning and legislation. Labour migration has featured as a priority in Nepal's periodic development plans since the mid-1980s. Initially, Nepal set targets with a view to increasing the number of Nepalis travelling abroad, but the focus in the past decade has shifted somewhat towards retaining Nepalis, creating jobs in the country and more priority has been given to ensuring that those who migrate do so in a safe and dignified manner. This reflects an increased global focus on human rights in the migration process and a growing sensitivity among the Nepali public to the treatment of their compatriots abroad.

Nevertheless, Nepal's legal and regulatory framework is yet to conform with international standards. Laws remain overly focussed on administrative processes,

and offer only limited rights protections to migrant workers. Policies are often adopted without realistic implementation plans, adequate resources or public engagement, and their actual purpose is often to consolidate power, appease party politics or to maintain popular legitimacy. As a result, even seemingly well-intentioned initiatives often lead to unintended negative consequences for migrant workers, particularly those most vulnerable to abuse such as women or undocumented workers. For example, in 2017, Nepal introduced a ban on migration to GCC countries for domestic work, which disproportionately affected women and drove many to seek irregular migration routes to the Gulf, via India. This exposed them to a greater risk of recruitment-related abuses, and deprived them of consular assistance in destination countries.

In recent years, Nepal has sought to conclude new MOUs on labour migration with destination states, investing considerable time and political capital to reach agreements that include specific provisions on worker protections. These efforts caused a backlash with Nepal's powerful recruitment industry. Nepal's faith in MOUs as a protective mechanism contrasts with its Gulf partners, who have generally seen bilateral labour migration instruments as a way to open up recruitment channels rather than as a means of worker protection. Nepal and Qatar agreed two largely insubstantial agreements in 2005 and 2008, while there is no Nepal-Kuwait MOU on labour migration. Nepal has been seeking to conclude a more substantial agreement with Qatar, but as yet there is no indication that these efforts will prevail.

Nepalis choosing to migrate to Qatar and Kuwait usually work in low-paid jobs in construction, hospitality, retail, security and domestic work. Migration policies in both Qatar and Kuwait are driven by the need to balance a long-term reliance on low-paid migrant workers against the perceived threat that demographic imbalance poses to national identity. Foreign nationals outnumber nationals in Qatar by nine to one, while in Kuwait, they make up 72% of the country's total population, and as much as 82% of the total workforce. There is limited precise data broken down by nationality, but there are estimated to be more than 70,000 Nepalis in Kuwait and at least 365,000 Nepalis in Qatar. Migration policies prevent them from settling, bringing their family members with them, or obtaining citizenship. The "kafala" systems deny migrant workers' job mobility

and place them under the control of their employers. The abuse of Nepali and other migrant workers in the Gulf states, in connection with kafala, has been well-documented for many years. The Gulf states have typically presented recruitment abuses as an origin state issue, and employers in Qatar and Kuwait face little pressure to ensure that arriving migrant workers have not been exploited during their migration.

Kuwaiti government policy, responding to public concerns about unemployment and lack of opportunity for young people, is particularly focused on reducing - and ideally reversing - the imbalance between nationals and foreigners in the workforce, whilst at the same time still developing the construction and hospitality sectors which rely on migrant workers. The incoherence of this policy of "Kuwaitisation" is exacerbated by the reluctance of Kuwaiti nationals to take up the lower-paid, often stigmatised, jobs in the private sector. This gap between official migration policy and actual labour market demand has also contributed to irregular migration and visa overstays, as well as "visa trading" - whereby workers in origin countries buy visas, either from recruiters in Kuwait or in the origin country, who have in turn bought them from "employers". The large population of irregular migrants, some of whom become undocumented after fleeing abusive employment conditions, has led the authorities to launch regular mass arrest and deportation campaigns, making migrant workers' lives highly insecure. Internationally, Kuwait has in recent years attracted negative attention for the poor treatment of the country's 660,000 domestic workers, and high profile murders of two women in 2018 and 2019 caused a bilateral rift with the Philippines.

Qatar came under intense and prolonged international pressure over the treatment of migrant workers, particularly Nepalis in the construction sector, after 2010 when it won the right to host the 2022 World Cup. Faced with the prospect of an ILO commission of inquiry into forced labour, it agreed a cooperation partnership with the ILO in 2017 and carried out a series of reforms including providing labour rights in law to domestic workers for the first time, overhauling the labour complaints system and establishing a national minimum wage. The most notable change came in September 2020 when workers were given the ability to change employers without the permission of their current employer, challenging a mechanism at the core of the kafala system. By early 2021, the impact of this step was

still being assessed, with question marks around its implementation and a strong push by the private sector to try to overturn it.

The outbreak of Covid-19 in 2020, which left tens of thousands of Nepali and other migrant workers with no jobs and unpaid wages, under strict lockdown in labour accommodation camps in Qatar and Kuwait, exposed their vulnerability even further, and highlighted the different legal regimes applicable to nationals and foreign workers. In Kuwait, in particular, concerns about the demographic imbalance re-emerged with greater intensity, leading the authorities to pursue Kuwaitisation even more aggressively and to clamp down, yet again, on irregular migration. This was accompanied by sharp anti-migrant rhetoric, including by elected politicians, with migrants demonised and stigmatised.

The following addresses the key recruitment-related issues driving positive and negative worker outcomes for Nepali workers migrating to Kuwait and Qatar.

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## **Intermediaries dominate the migration process**

The matching of Nepalis to employers in the Gulf is generally complex, with several layers of intermediaries controlling aspects of the process and very often extracting money from workers. There is no government-to-government recruitment in these corridors and private sector recruitment agents in Nepal control access to almost all the available jobs in the Gulf.

Employers could theoretically recruit directly in Nepal, but few do, most either contracting Nepali agencies themselves or using Gulf-based recruitment agencies to link with Nepali recruiters. Gulf recruiters and HR representatives of employers are the first intermediaries: many leverage the fact there is high demand in Nepal for jobs and insist on favourable terms from Nepali recruitment agencies, up to and including kickbacks, to give them business. Nepali agencies who offer their services to employers cheaply or for free, paying kickbacks, pass these costs down to workers in the form of recruitment fees.

Workers can in theory migrate without recruitment agents involved, but in practice most jobs are advertised

through agents, and workers need labour permits issued by the Department of Foreign Employment (DOFE). Nepal's 850 licensed agencies, mostly headquartered in Kathmandu, can navigate this lengthy and complicated application process. Aspiring migrants, mostly from rural areas, rely on the services of local "sub-agents" to find work and to reach the licensed agencies. The vast majority of these sub-agents are unlicensed and operate outside the law. In 2018, the government banned agencies from using sub-agents' services, and required them to establish branch offices instead. The move had little effect, however, and unlicensed sub-agents continue to be fundamental in people's decision-making process about labour migration.

Nepalis seeking jobs in Kuwait or Qatar have little option but to use the services of a recruitment agent and many not only expect to pay, but often do not believe they can access a good job without doing so. Many take out high-interest loans, sell land, or borrow money from relatives to pay the fees. Sub-agents and agencies may use deception to persuade workers to commit to these fees. Either just prior to boarding their flight when it is too late to back out, or once in Qatar and Kuwait, migrants can discover that their job, wages, benefits or contract length have been changed, or that they have been "sold" to a different employer. Others never receive a written contract or are given copies in Arabic or English – languages which most do not understand.

Many low-paid workers may be employed by "labour supply" or "manpower" companies in Kuwait or Qatar, which are effectively unlicensed recruiters, whose business model relies on bringing workers from overseas to distribute them onto construction projects needing to fill short-term labour demands. Being employed by such a company without any long-term contracts can leave workers in highly insecure and vulnerable situations, and many cases of wage theft are associated with financially unstable labour supply companies.

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## **Inconsistent approaches to addressing recruitment abuse**

All three governments have taken some steps to address illegal recruitment fees and contract substitution, but there has been a lack of a coordinated approach and

policies across the corridors have been inconsistent. Data collected in World Bank KNOMAD studies found Nepali workers paying on average USD 1,054 for their jobs in Qatar. A Nepali woman who paid NPR140,000 (USD 1,200) for her job in a salon in Kuwait told us that she had sold her golden jewelry to fund her job.

Nepal continues to allow workers to be charged recruitment fees - it has attempted to implement a cap on worker fee payment without banning it outright. Since 2015, the “Free Visa, Free Ticket” policy has limited the amount workers can be charged to NPR10,000 (USD 83) for most workers - what it calls “zero cost” recruitment - and to enforce this through new bilateral agreements. In reality, migrant workers routinely pay far in excess of the legal cap, with sums up to NPR160,000 (USD 1,350) not uncommon. Some workers we spoke to said that when they refused to pay fees above the legal cap, they were told that their jobs did not fall under the policy, or that their employers refused to cover any recruitment-related costs. Others reported not receiving any receipts for the payment of fees, receiving receipts only for NPR10,000 (USD 83), being forced to sign false statements or record video messages saying that they had only paid the maximum legal amount, or being threatened with deportation if they reported how much they had actually paid.

The failure to ban recruitment fees outright creates a grey zone that enables agencies to charge far in excess of the legal limit and in effect the business model of recruitment agencies remains much the same as prior to the “Free Visa Free Ticket” policy. The vast majority 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. The capacity of the government to enforce the fee limit is wholly inadequate in the face of the scale of abuse in the recruitment industry, and the role of DOFE has been undermined by a series of corruption cases involving senior officials. “Almost everyone who works in the division is corrupt”, one civil society organisation said. A 2020 agreement between DOFE and the police, which finally allows workers to bring recruitment cases to the police, may help increase the number of investigations. Additionally, the fact the Nepali government itself charges recruitment fees up to NPR90,000 (USD 760) through the government-

to-government migration schemes with some other destination countries acts as a major disincentive for private agencies to adopt fair recruitment. The fact that a group of agencies committed to “zero-cost recruitment” has so far been unable to mobilise any workers serves as an illustrative example. Agencies can lose their licence if they do not recruit at least 100 workers a year, sharply reducing the chances of them focusing on ethical employers prepared to pay for the full costs of recruitment.

Kuwaiti law only explicitly prohibits the charging of recruitment fees to domestic workers. The law does not prohibit other migrant workers from paying fees. Kuwait’s attempts to regulate recruitment fees are limited to domestic workers, but there is no indication that the government plans to take steps to ensure that workers do not pay fees in origin states. The recently established state-affiliated Al-Durra domestic worker recruitment agency is primarily charged with reducing fees for Kuwaiti employers rather than workers. Representatives of Al-Durra and the Kuwaiti Chamber of Commerce told us that origin countries need to drastically improve their oversight of recruitment agencies and that Kuwait has done its part in fighting human trafficking and protecting migrant workers. Kuwait has increased its capacities to inspect recruitment agencies that bring domestic workers into the country, although private residences – where abuses are rife – remain largely off-limits due to the country’s privacy laws. Generally, Kuwaiti authorities treat labour violations as administrative infractions, rather than criminal investigations and procedures, and rely on arbitration, fines, and blacklisting rather than criminal sanctions.

Qatar has also largely seen recruitment and fee payment as an origin state concern, and recruiters have generally been subject to relatively limited regulation. Although Qatari law prohibits the payment of fees by migrant workers to entities in Qatar, there has in practice been very limited scrutiny of employers’ and Qatari agencies’ interactions with origin state recruiters. Qatar’s labour inspectorate, which it has sought to upgrade with the ILO’s assistance, focuses mainly on payment of wages and working conditions, rather than issues that can drive forced labour and exploitation such as recruitment fees. Meanwhile the Ministry of Interior rarely uses its powers to investigate labour trafficking. 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, which has a scheme for the repayment of fees to workers, and preliminary pilot projects in the hospitality and security sectors. Outside such flagship projects, many employers consider worker payment of recruitment fees to be the norm.

Qatar has made some recent efforts to address contract substitution by establishing Qatar Visa Centers (QVCs) in six origin states, including Nepal, which allow workers to review contracts in their mother tongue before signing them. As a result some workers appear to be challenging or rejecting contracts because they discover discrepancies at the QVC. However, Nepali agencies and sub-agents still retain overall control of the migration process. As a result, the risk of deception over terms and conditions remains, and for many, it may be too late in the migration process to reject contracts, because of the debt that they have accrued. A Qatari employer told us that it was not uncommon to find that workers were expecting different terms and conditions when the company had induction conversations with new staff, though such meetings rarely happened for low-paid workers.

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## Domestic workers and informal recruitment

Nepal issued a ban on migration for domestic work to GCC countries in 2017, but since recruitment agencies in Kuwait and Qatar can still legally recruit Nepalese domestic workers, Nepali domestic workers in Qatar and Kuwait are classified as “informal” or “undocumented” by Nepal but not by these destination countries. According to a Nepali community activist, “the Kuwaiti [authorities] don't mind how people come to Kuwait as long as they have an entry visa”. Agencies in the Gulf rely on informal networks of agents in Nepal. These informal agents flout the Nepali ban and arrange for workers to leave the country legally, often via India, without certified contracts or Nepalese labour permits. In some cases, Kuwait and Qatari employers organise the recruitment by themselves relying on their former or existing employees or other Nepali contacts in the country. Women we spoke to were contacted by agents

via Facebook, through local contacts in their villages, or relatives and friends. The fact that women must navigate these informal migration routes places them at additional risk during the recruitment and employment phase. As a result of the ban, consular officials provide only limited assistance to domestic workers in the Gulf, with one suggesting to us that they could not be prioritised as they had “cheated the system”. In February 2021 the government proposed a new measure to replace the ban, under which women under 40 travelling for high-risk roles including domestic work in the Gulf had to obtain consent of their families before migrating. Women's rights activists slammed the proposal as revealing a “deeply rooted patriarchal mindset”.

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## Shortcomings of safe migration awareness initiatives

Public campaigns, supported by international development agencies and NGOs, and other outreach efforts across the two corridors aiming to alert aspiring Nepali migrants to recruitment-related fraud and general labour migration risks have not been successful in stopping abuses. Access to information alone does not, it seems, create better outcomes for workers: many migrants told us that they feel compelled to pay more for their recruitment even despite being aware of the “Free Visa, Free Ticket policy”, because of social and family pressures or the need to repay their debts. In addition to this central problem, the Supreme Court has ruled that the curriculum of the mandatory orientation training did not adequately address the problems faced by Nepalese workers abroad. And although considerable resources have been allocated to assisting migrants preparing for departure, these outreach and information campaigns often fail to reach those most vulnerable to abuse, including women, illiterate people and non-Nepali speakers.

In this context, the Nepali government's move to establish an integrated migration management software, the Foreign Employment Integrated Management System (FEIMS), has potential to reduce the prevalence of contract substitution and increase transparency - although again, it requires migrants to be internet literate. Since its launch in 2018, the Nepali authorities have required their embassies in destination countries

to carry out thorough checks on employers as part of the “demand letter” attestation process, and to upload them onto the FEIMS system. The system also allows both migrant workers and returnees to access all migration departments and services, and to verify the status of their visa approvals as well as details of their employers and recruitment agency used.

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## The kafala system in Kuwait and Qatar

The inability of workers to move jobs without the permission of their employers - a cornerstone of kafala - has long been associated with driving poor outcomes for Nepali migrant workers in the Gulf and locking them into abusive employment conditions. This is particularly the case when workers arrive having paid recruitment fees, since they often need to pay off loans and are left with little option other than to stay with their employers, even if the working conditions are abusive.

Migrant workers in Kuwait are subject to a 1959 residency law that ties them to a sponsor who controls their entry to the country, the renewal of residence permits and the termination of employment. The only circumstance in which a worker can transfer jobs without the permission of their employer is if three years have passed since their work permit was issued, and they give 90 days’ notice to their current employer. If a domestic worker cannot secure transfer approval from their original sponsor, they are only able to change employers after they have completed their contract. Those who do leave without their employers’ permission are at risk of being detained and deported for “absconding”. The ILO Committee of Experts has observed that this system exposes many workers to “abuse and undermines their ability to have recourse to means of redress.” Civil society groups note that abusive employers rarely release workers without charging them exorbitant fees for the privilege. A 2019 BBC Arabic investigation exposed sponsors using mobile applications to “sell” women domestic workers to other employers.

The kafala system in Qatar has been the subject of intense focus. In 2018 the government partially abolished its exit permit requirement, allowing most workers to leave the country without needing their employers’ permission. Domestic workers were

subsequently given this right in 2020, albeit with a requirement to notify their employer. Most significantly, a new law adopted in 2020 permitted all migrant workers to change jobs after six months employment without obtaining permission from their current employer, and within the first six months provided the new employer repay some recruitment fees to the original employer. The reform was widely welcomed and according to the government 78,000 workers moved jobs under the new scheme in the last quarter of 2020. However, in early 2021, NGO and media reporting suggested that workers were facing substantial barriers to moving jobs, seemingly in response to a pushback from the private sector. In February 2021, Qatar’s Shura Council, a government appointed legislative body, proposed regressive amendments which would effectively reverse the reforms only six months after their introduction.

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## Flawed grievance processes

When Nepali workers are subjected to abuse in the recruitment and employment cycle, they can seek assistance from their embassies, file labour complaints in the destination states, and make complaints against recruitment agencies in Nepal. At each stage, they encounter a potent mix of barriers that deter many from seeking justice.

Abroad, the FEA mandates the Nepali diplomatic missions to support citizens in vulnerable situations. However, workers in Qatar and Kuwait told us that the embassies are unresponsive and do not help them navigate the complex grievance mechanisms in the destination states. The government has acknowledged that the resources available to embassies are “inadequate”, while civil society groups say the embassies only take on the most serious “humanitarian” cases.

Kuwait’s laws provide for free access to a grievance mechanism for all categories of workers, which aims to settle most labour disputes within one month through a process of mediation with employers, with any unsettled disputes being then referred to the courts. In reality, disputes that are not resolved at the mediation stage can take up to three years to be addressed by the courts, during which time workers are unable to work and risk retaliation from employers. Many accept what they can get in mediation or abandon their cases.

Qatar has placed significant emphasis on upgrading its labour complaints process recently, establishing Labour Dispute Resolution Committees, which hear cases from all categories of migrant workers, regardless of nationality, job or status. The committees do not levy court fees. However, despite the intention that the committees would provide “fast track” remedy, it can still take many months for workers to recover unpaid wages, leaving many workers unpaid during that time. A government fund set up to repay wages to migrants, if their employer did not or could not pay up, became operational in August 2020 - it was too early to assess its efficacy at the time of writing. Most victims of exploitation and abuse only bring claims for lost wages, since the labour law does not provide for other damages, and there is a lack of clarity as to how the committees link up with other investigatory authorities.

DOFE is legally obliged to investigate complaints brought by workers against recruiters upon their return to Nepal, but most victims are unaware of their rights, and pursuing a claim is often a lengthy, complicated and expensive process which is beyond the means of all but a few. Filing a complaint generally means workers travelling to Kathmandu, although the authorities have taken steps to enable the filing of complaints remotely or at district level. These financial, geographical and personal obstacles force most victims either to abandon complaints against recruiters, or to accept mediation processes resulting in lower compensation. For undocumented workers, access to complaint mechanisms and state assistance is particularly limited.

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## Lack of freedom of association

The very limited ability for workers to organise in Qatar or Kuwait contributes directly to the many difficulties that Nepali migrants face in these countries.

Under Kuwaiti law, the right to establish trade unions is limited to Kuwaiti nationals working in certain specific sectors. Migrants are not explicitly prohibited from joining unions and, in comparison to other GCC countries, workers of all types in Kuwait enjoy a greater degree of freedom of association. With the support of a small number of NGOs, migrants have even actively campaigned to protect and advance their rights, including through public calls to abolish the kafala system. Nevertheless, unions still shy away from public reporting of labour rights violations, or any criticism of the state itself, as they are subject to tight government control and require official permission to strike. The International Trade Union Confederation regards Kuwait a country with “no guarantee of [trade union] rights”.

Freedom of association is highly restricted in Qatar, and there is no established trade union in the country. Qatari law allows only Qatari nationals to form or join tightly controlled associations. The technical cooperation programme with the ILO has had positive effects, with the labour ministry supporting the establishment of joint worker-employer committees in 20 companies, and engaging international trade unions, who report positively on their work with the government. These positive steps, which still do not give workers the full right to form or join trade unions, have however been limited to public bodies or major companies delivering Qatar’s large-scale infrastructure projects. Smaller companies, where abuse is known to be widespread and protections are weaker, lack worker representation. Meanwhile the May 2021 arrest of Malcolm Bidali, a Kenyan migrant worker who had blogged about his experiences highlighted the risks to workers who express their perspectives publicly.

## Priority recommendations to strengthen efforts to ensure fair recruitment.

### The **Nepal** authorities should:

- **Fully prohibit** the payment of fees and related costs, in line with the ILO definition, by migrant workers to recruitment agencies.
- **Pending the adoption of a zero-cost migration model, fully enforce** penalties against recruitment agencies charging fees above the legal limit, in accordance with relevant provisions of the FEA.
- **Increase** resources devoted to investigating and prosecuting corruption in the Department of Foreign Employment
- **Ensure** that all migrant workers, regardless of their job, gender, or whether they migrated through regular channels, have full access to consular assistance in destination countries and grievance mechanisms in Nepal.
- **Strengthen** the capacity of diplomatic missions in Qatar and Kuwait to support migrant workers facing exploitation and other abuses in seeking redress including by providing legal advice and representation; ensure that missions are adequately resourced to carry out thorough checks on prospective employers as part of the “demand letter” attestation process.
- **Provide** specialized pre-departure training for domestic workers and institute regular phone check-in procedures for domestic workers with Nepali consulates in Gulf states

### The **Kuwait** authorities should:

- **Conduct** a formal, independent, public review of Kuwait’s national migration policy. The review should solicit views from a wide range of stakeholders and should specifically examine the relationship between Kuwaitisation and the human rights of migrant workers, and measures to address xenophobia and discrimination against migrant workers.
- **Introduce** legislation that enables migrant workers to transfer employers without the permission of their employers, and complement this with mechanisms that enable them to exercise this right in practice. Remove the criminal charge of “absconding”.
- **Amend** legislation to explicitly ban the payment of recruitment fees for all categories of migrant workers. Undertake proactive investigations (and where there is sufficient evidence, criminal prosecutions) into corrupt recruitment practices on the part of employers and recruiters, including the payment of “kickbacks”, and human trafficking.
- **Strengthen** the capacity of the labour inspectorate and ensure that it has the necessary resources as well as linguistic and investigatory skills to conduct private interviews with workers during visits and identify cases of serious abuses beyond the non-payment of wages. Institute labour inspections of private residences hiring domestic workers - including unannounced visits.
- **Significantly reduce** the time period migrant workers have to wait for court processes to proceed and ease the process of sponsorship transfer during this period.
- **Protect** migrant trade union members and civil society groups from retaliation for carrying out activities protecting migrants’ human rights.

## The Qatar authorities should:

- Significantly increase the pressure on employers to ensure the safety and dignity of migrant workers during the recruitment process, including by:
  - Amending the Labour Law to hold employers responsible for the actions of third party intermediaries, including outside Qatar;
  - Strengthening the capacity of the labour inspectorate to identify cases of recruitment-related abuse, and requiring that employers provide evidence that they have paid for the costs of workers' recruitment;
  - Undertaking proactive investigations (and where there is sufficient evidence, criminal prosecutions) into corrupt recruitment practices on the part of employers and recruiters, including the payment of “kickbacks”, and human trafficking.
  - Incentivising ethical recruitment by requiring companies to budget transparently for recruitment costs, including in their contracting chains, in public procurement bidding processes.
  - Using the QVCs to identify and log cases of illegal recruitment fees and share information with Qatari investigatory bodies; work closely with the Nepali authorities to prevent contract substitution through the QVCs and sanction agencies charging illegal recruitments fees.
- Consider the introduction of special licensing requirements for “labour supply companies”, given the high risk workers employed by such firms can be exposed to, and their close involvement in the recruitment process.
- Institute labour inspections of private residences hiring domestic workers - including unannounced visits.
- Ensure that the 2020 reform allowing workers to move jobs without the permission of their employers is implemented effectively, that workers have simple procedures to change jobs, and that they are fully protected from retaliation. Remove the criminal charge of “absconding”
- Significantly reduce the average time taken to issue rulings at Labour Dispute Resolution Committees. Consider legislative changes to allow for collective complaints, when large number of workers make complaints. Where employers cannot or will not comply with court judgements, ensure that the Workers' Support and Insurance Fund (WSIF) disburses money owed to workers in a timely manner.

# Methodology

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## Project Aims

The aim of this research was to test the performance of the governments of Nepal, Kuwait and Qatar against a set of 44 indicators that cover nine areas of government policy. The indicators examine laws, policies and government practices in relation to recruitment and evaluate their effect on outcomes for migrant workers:

1. National migration policy (7 indicators)
2. Legal and regulatory framework (5 indicators)
3. Bilateral arrangements (5 indicators)
4. Licensing, registration and certification schemes (5 indicators)
5. Machinery to implement and enforce regulation (4 indicators)
6. Measures to prevent fraudulent and abusive recruitment (5 indicators)
7. Enforcement, access to grievance mechanisms and remedies (6 indicators)
8. Measures to provide accurate information to workers (5 indicators)
9. Freedom of association (2 indicators)

The indicators are anchored in existing international standards, in particular the ILO General Principles and Operational Guidelines on Fair Recruitment. Full details of each indicator, and how they are derived from ILO and other standards, is provided in the Five Corridors methodology.

The corridor research team comprised Fabien Goa, Anurag Devkota, Shareen Tuladhar, Magdalena Mughrabi, Abdulrahman Al-Turki, and James Lynch. Researchers were tasked to take account of the following considerations, in addition to relevant laws and formal policies.

- **The object and purpose of laws and policies:** What stated and unstated goal/s does the government have with regard to this intervention? Goals could include economic development, increasing remittances, migration management, protection of human rights, national security, immigration control etc.

- **The implementation of laws and policies:** What does the government do in practical terms to implement this measure? For example: financial and personnel commitment made to the policy; levels of professionalism and responsiveness of state institutions; whether key institutions have the appropriate mandate and authority; whether independent institutions scrutinise and report on performance; and whether there is transparency in the way the government carries out this measure.
  - **The effects and outcomes of laws and policies:** What is the effect of the government's intervention on migrant workers? In particular, to what degree does it ensure fair recruitment?
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## Sources of Information

In order to assess laws, policies and practices in Nepal, Kuwait and Qatar against the indicators, we conducted a thorough review of secondary source material, and sought information and perspectives from a wide range of individuals directly involved in, affected by, or knowledgeable about the regulation of migration and recruitment in these corridors. In total we carried out 133 in-depth individual interviews for the project.

**Legal and policy frameworks, and secondary sources:** We conducted a full analysis of relevant laws and policies in Nepal, Kuwait and Qatar, and a thorough review of secondary sources, including NGO and other institutional reports.

**Key stakeholders and experts in migration processes:** We interviewed a wide range of stakeholders and experts either remotely or in person, including NGOs working on migrant workers' rights, trade union representatives, academics, think-tanks, journalists, lawyers, recruitment agencies, and representatives of intergovernmental organisations such as the ILO and the IOM. We explained to interviewees our preference of attributing all comments to named individuals, but offered them the option of withholding their names. A large number of interviewees declined to be quoted directly or named.

The organisations we spoke to included but were not limited to Amnesty International, AMKAS Nepal, BWI, CESLAM, Do Bold (formerly known as Project 189), Ensaniyat, Equidem Research and Consulting, FSI Worldwide, GEFONT, the Institute for Human Rights and Business, the International Trade Union Confederation, Kuwait Trade Union Federation, Migrant-Rights.Org, Nepal National Human Rights Commission, People Forum for Human Rights, Non-resident Nepali Association, PNCC, Pourakhi Nepal, Sandigan Kuwait, Social Work Society, and Shramik Sanjal and Winrock. The individuals we interviewed included Dr Angela Sherwood and Professor Ray Jureidini (both of whom also served as specialist advisers to the project team), as well as Upasana Khadka, Gopal Sangrola, Francesca Ricciardone, Yasmena Mulla, Geoffrey Martin and Andy Hall. We held fifteen interviews with private sector actors across the three countries, including recruitment agents, employers and industry associations. We spoke to three foreign embassies in Kuwait and Qatar.

**Governments:** In Nepal we met with a number of current and former senior officials at the Department of Foreign Employment (DOFE), Ministry of Labour, Employment and Social Security (MOLESS), and the Ministry of Law Justice and Parliamentary Affairs. We also spoke to Nepali diplomats at missions in the Gulf. We wrote to the government in August 2020 and again in April 2021, sharing our key findings and recommendations, but we received no response. In Kuwait we met a government official directly involved in policies regarding migrant workers. We wrote to the government in August 2020 and again in April 2021, sharing our key findings and recommendations, but did not receive any response. In Qatar we met a senior ADLSA official. We wrote to the government in August 2020 and again in April 2021, sharing our key findings and recommendations. In May 2021 the government provided us with some information relating to its activities relating to the areas of focus in our study.

Where we lack detailed perspectives from the governments in question, we have had to rely on the insights of individuals and partners with extensive knowledge of government policy in our attempts to best reflect the position and perspectives of the governments of Nepal, Qatar and Kuwait in relation to their efforts to ensure fair recruitment.

**Migrant workers:** We interviewed a total of 57 migrant workers from Nepal (32 men and 25 women) in the course of this research. Our interviews with migrant workers were not designed to provide representative samples of workers, and we did not attempt to carry out large-scale quantitative surveys of migrant workers. We intended to interview workers in person, in a mixture of group and individual interviews. The Covid-19 pandemic prevented us from carrying out all the interviews in this way and 17 of three interviews were conducted in person, while the remaining 40 were conducted remotely. Of the 57 interviewed workers, 8 were in Nepal while 25 were in Qatar and 24 in Kuwait at the time of the interview. We arranged most interviews through Nepali community members in Kuwait and Qatar, while we met a small number of workers outside the Qatar Visa Center in Kathmandu in early 2020. We explained the purpose of our research and asked respondents if they would be willing to describe their experience of recruitment from Nepal to Kuwait or Qatar. Most of the detailed interviews were with workers engaged in the construction, hospitality, retail and services sectors. We used interview questionnaires structured around the recruitment process, including questions on the experiences of workers with regard to:

- Their decision to migrate;
- Introduction to and interaction with recruitment agents and officials;
- Payment of fees and exposure to debt, where applicable;
- Pre-departure experience, including contract processes and any orientation programmes;
- Arrival and working in the destination country;
- Getting support if something goes wrong; and
- Returning home after migration.

We explained the purpose of the interview and the wider project in advance and secured the express consent of all of the individuals we spoke to use the information they provided to us for the purpose of the project. Where we have cited worker comments directly, we have opted to withhold workers' names or any other identifying details, referencing only their age, gender, and the sector of employment.

**Acknowledgement:** We would like to thank Migrant-Rights.Org for the substantial assistance and advice they provided throughout the research period for this study.



Nepalese migrant workers in Kathmandu queue to receive official documents in order to leave Nepal, 2014. © Prakash Mathema / Stringer / Getty

## Recruitment pathways: How employers in Kuwait and Qatar hire Nepali workers

This is an examination of how Nepali nationals are recruited into low-paid work in Qatar and Kuwait. It primarily examines how Qatari or Kuwaiti companies, sometimes with the assistance of Qatari or Kuwaiti recruitment agents, bring Nepali workers into the Gulf, but it also examines the processes by which domestic workers are hired in Qatar or Kuwait.

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### Who facilitates recruitment from Nepal?

Private recruitment agencies in Nepal facilitated the issuance of 94% of all new labour approvals for workers migrating to Kuwait in 2017-2018, and 91% for Qatar. In 2018-2019, 747 recruitment agencies sent Nepali migrants to Qatar, and 178 agencies to Kuwait.<sup>1</sup> These agencies are responsible for finding the most suitable candidates for the specific job abroad, based on a “demand letter” issued by the authorities in the destination state, and for preparing the selected

candidate for foreign employment. Whilst Nepali nationals are allowed to migrate through official channels without using agents, the number of workers doing this has been decreasing steadily over the past decade and is currently very small, estimated at around 9,000 every year.<sup>2</sup> Nepalis who migrate to GCC countries for domestic work in defiance of an official ban imposed in 2017 generally bypass the official migration channels in Nepal.

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### Do employers also use recruitment agents based in Kuwait and Qatar?

Qatari and Kuwaiti laws enable companies to bring migrant workers into the country under their direct sponsorship. Companies in many cases liaise directly with recruitment agencies in Nepal to select workers and complete the necessary procedures there, while some others use intermediary agents based in Kuwait or Qatar.

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1. MOLESS, “[Nepal Labour Migration Report 2020](#)”, (2020): 26, 129, 130  
2. Jones, K., Morin, S., Dobree, P., & Irimu, W., “[The Migrant Recruitment Industry: Profitability and unethical business practices in Nepal, Paraguay and Kenya](#)”, (2015): 27

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## What is the recruitment process?

The **process in Qatar** is as follows. To hire non-Qataris for any jobs in the private sector (with the exception of domestic work), companies in Qatar must apply to ADLSA for a “block visa” specifying the country from which they would like to recruit workers, detailing also the particular skills, gender and numbers required, as well as the salary and overtime, and the provision of food and accommodation. The Ministry of Interior decides on the nationality and number of persons to be allowed under each group visa. Once the nationality quota has been approved, ADLSA issues “block visas” and a demand letter.<sup>3</sup>

The **process in Kuwait** is similar. Employers seeking to recruit non-Kuwaiti nationals for work in the private (non-domestic) sector must first secure an annual approval on the number of staff they require from the General Manpower Authority (GMA), which falls under the supervision of the Public Authority for Manpower (PAM).<sup>4</sup> Non-Kuwaiti workers can only be employed as long as there are no Kuwaiti nationals available to perform the job, the employer’s plan is consistent with their business needs, and a match between the worker and employer has been identified.<sup>5</sup> Their recruitment is facilitated under what is commonly known as “visa 18”, referring to Article 18 of Ministerial Decision 957 of 2019, concerning the implementation of the 1959 Residence of Aliens Act, which also outlines the scope of their labour mobility.

In both Kuwait and Qatar, once the approval is obtained, the company must send the demand letter, along with any relevant documents, to the Nepali embassies in Kuwait and Qatar for attestation. Consular staff examine the employer’s records, their legal and financial status, and the terms and conditions of the demand letter. Upon embassy approval, Nepal’s Department of Foreign Employment (DOFE) issues a pre-approval for the recruitment of workers at which point the demand letter can be sent to a recruitment agency in Nepal for them to publish the vacancy, or use their own databases of applicants to contact potential candidates. In some cases, workers respond directly

to the job advertisements by sending or bringing their CVs in person; in others, they rely on agents to do so on their behalf.<sup>6</sup> In others still, they may receive a job offer or information about the demand letter directly from friends and relatives in the destination countries, but still choose to rely on agencies or individual agents to assist them with the lengthy and complex labour permit and visa application process.

The worker selection process varies according to the resources and internal policies of the employer. Most in-person interviews and skill assessments are held in Kathmandu. Successful candidates go through pre-departure orientation course and medical tests. For anyone migrating to Kuwait, these tests must be done at a clinic offering the GCC Approved Medical Centers Association (GAMCA) examination, usually in Kathmandu. In Qatar’s case, as of August 2019, medical check-ups are done at the QVC, also in Kathmandu, where workers receive a copy of their contracts which they can reject if the terms do not correspond to their agreement with the recruitment agency, and where they have their biometric data taken as part of the process. Successful candidates must also provide proof of payment of their life insurance and contribution to the Welfare Fund. Once all of this has been completed, the employer in the destination country processes the worker’s visa on the worker’s behalf, and when issued, sends it back to the recruitment agency. After the visa is received, recruitment agencies can finalize all other administrative processes required to obtain the final labour approval permit from DOFE, which includes a submission of a copy of the worker’s contract with the employer, a copy of the worker’s contract with the recruitment agency, and a receipt showing the amount paid by workers as recruitment fees as well as health, training and insurance certificates. Once the labour permit (also known as a labour permission sticker) is issued, recruitment agencies can start organizing the worker’s travel.

The last stage of the recruitment process takes place in the destination countries where employers are required to finalize work permit procedures on the worker’s behalf within 90 days of his or her arrival. In the case of Kuwait, this also includes ensuring that workers complete mandatory medical examinations.

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3. Verité, “An Exploratory Study on the Role of Corruption in International Labor Migration”, (January 2016): 9

4. Articles 9 and 10 of the [Private Sector Labour Law](#)

5. Article 26, [The Public Authority for Manpower, Administrative Order 552 of 2018 Regulating the Rules and Procedures for Granting a Work Permit](#)

6. Professor Ray Jureidini, “[Migrant labour recruitment to Qatar, Report for Qatar Foundation Migrant Worker Welfare Initiative](#)”, (2014): 86

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## Who pays whom, in theory?

The **fee structure** for this model is supposed to work as follows.

- Migrant workers in Nepal pay recruitment agencies in Nepal a maximum of NPR 10,000 NPR (USD 83) for facilitating the process, and an additional NPR 600 (USD 5) for the mandatory orientation training.
- Employers in Kuwait and Qatar pay Nepali recruitment agencies a fee for their services and meet all the other costs of the migrant workers' recruitment into Qatar or Kuwait, including flight, visa and medical costs.

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## How much do workers actually pay?

In reality, most Kuwaiti and Qatari employers do not pay the full cost of recruitment and in some cases they charge kickback payments from the Nepalese recruitment agencies that compete for their business. As a result, these costs are passed on to migrant workers. If private recruitment agents are involved in Kuwait and Qatar, their administrative costs should be borne by the employer (the service they provide is the removal of the administrative burden associated with the recruitment process) but are often also passed on to the migrant worker. Despite the implementation of Nepal's "Free Visa, Free Ticket" policy in 2015, the majority of workers pay fees significantly in excess of the legal cap with sums up to NPR 160,000 (USD 1,350) documented in this report.

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## Do workers always work for the company that recruited them?

Once Nepali workers arrive in Qatar or Kuwait, they may not end up working for the employer with whom they signed a contract, either because they have actually been recruited by a "labour supply company" or because they were recruited on what is known as a "free visa".

Many private companies rely on "labour supply companies" to fill gaps in their workforce and save on

recruitment costs particularly when seeking to employ low-wage workers for jobs requiring less skills. These labour supply companies recruit migrant workers and sponsor their visas as employers through the process described above - often through a licensed recruitment agency that they operate as a recruitment arm - but then subcontract them onto construction and other worksites temporarily to help other companies with short-term labour shortages or seasonal work. This recruitment model may increase recruitment costs for migrant workers and can mean that workers perform work and earn salaries different to those originally agreed in Nepal.<sup>7</sup>

Kuwaiti and Qatari nationals, as well as foreign residents, continue to be involved in so-called "visa trading", or the sale of "free visas" through informal networks in the countries of origin, either to recruiters or directly to migrant workers. Sponsors effectively 'sell' the work visas that have been issued to them to migrant workers, allowing them to work on an open "black market" in return for a monthly fee for their residence permits. Nepali community activists told us some workers decide to migrate to the Gulf on a "free visa" because they prefer to have the option of changing employers more easily and believe that they can earn more money by finding a job on their own, but first time migrants may be more vulnerable to abuse, particularly contract substitution, when travelling on a free visa. Some workers believe they are migrating to begin a genuine job, but are informed by their employers on arrival that there is no job and they must find casual work, making them undocumented, and at risk of arrest and deportation, from the point of their arrival in the country.

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## What about domestic workers?

Private recruitment agencies are particularly widely used for the recruitment of live-in domestic workers in Kuwait and Qatar. Where Nepali domestic workers are concerned, there is no formal process in place for this model of recruitment, since Nepal issued a ban on migration for domestic work to GCC countries in 2017. Recruitment agencies in Kuwait and Qatar can still legally recruit Nepalese domestic workers, but to

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7. Professor Ray Jureidini, "Migrant labour recruitment to Qatar, Report for Qatar Foundation Migrant Worker Welfare Initiative", (2014): 62

do so they have to rely on informal networks of agents in Nepal. These informal agents in Nepal flout the ban and arrange for workers to leave the country legally, but without certified contracts or Nepalese labour permits. In some cases, Kuwait and Qatari employers organise the recruitment by themselves relying on their former or existing employees or other Nepali contacts in the country. Women interviewed for this report were contacted by agents via Facebook, through local contacts in their villages, or relatives and friends in Kuwait who put them in touch with people who organized their irregular migration to Kuwait. This is often via India or southeast Asia, as Nepali immigration officers in Kathmandu airport are not supposed to allow women to travel to the Gulf for domestic work. They only had to pay minimal fees for the issuance of their passports, health check-ups or criminal record certificate in Nepal as their travel and other recruitment fees were covered by their employers.

Upon arrival in Kuwait, domestic workers are issued a temporary three-month visa by Kuwait's state-run recruitment agency Al-Durra. According to a Nepali community activist, "the Kuwaiti [authorities] don't mind how people come to Kuwait as long as they have an entry visa". During this three-month period, their employers are required to apply for the workers' permanent visas and residence permits and ensure that they complete medical tests. Nepali domestic workers in Qatar can regularise their employment and immigration status once they arrive in the country on tourist visas. In September 2019, the Qatari Ministry of Commerce

and Industry set up WISA, a public company, which is responsible for the recruitment and placement of domestic workers in private households on a live-out and part-time basis, as part of an ILO supported initiative aimed at broadening recruitment models for domestic workers. Under the new scheme, workers' accommodation and transportation are meant to be provided by WISA, and workers are expected to receive a prepaid mobile phone card to be able to report any abuse. It is too early to assess the impact of the initiative. However, according to Amnesty International, the WISA model "could offer a viable alternative to the live-in model, and allow proper monitoring of domestic workers' working conditions, if fully and properly implemented."<sup>8</sup>

In 2017, Kuwait established a state-owned recruitment agency, Al-Durra, to facilitate the recruitment of foreign domestic workers and to bring costs down for employers. Even though Al-Durra initially received larger visa quotas than any other Kuwaiti recruitment agency, and had the ability to recruit domestic workers from a wide range of origin countries, it very quickly ended up relying on Kuwaiti agencies to facilitate the recruitment process as it did not have the required networks in countries of origin.<sup>9</sup> Given that it could not compete with private recruitment agencies, it became another layer in the final stages of the recruitment, usually to facilitate the issuance of a residence permit, although it is meant to retain oversight of the entire process. As a result, the recruitment of domestic workers to Kuwait continues to be largely facilitated by private recruitment agencies.

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8. Amnesty International, "Why do you want to rest? Ongoing abuse of domestic workers in Qatar", (2020): 30

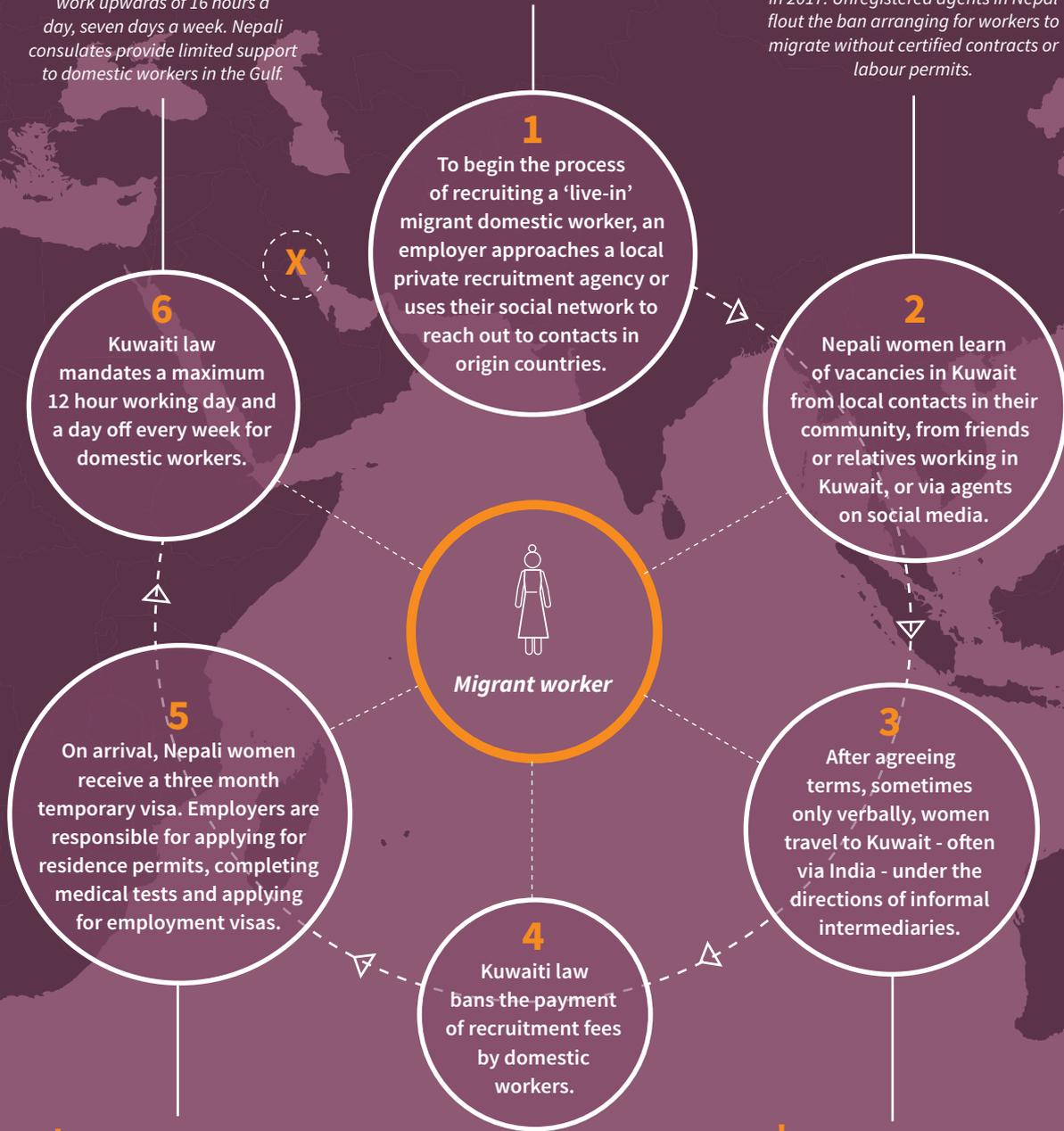
9. Vani Saraswathi, Director of Projects, Migrant-Rights.Org, remote interview, 23 July 2020

# A simplified impression of a typical recruitment process for a Nepali domestic worker employed in Kuwait

! Enforcement of these laws is extremely poor, and many women work upwards of 16 hours a day, seven days a week. Nepali consulates provide limited support to domestic workers in the Gulf.

! Licensed domestic worker recruiters in Kuwait must have "a history of good conduct". But monitoring of recruiter behaviour is not thorough, and many recruiters operate without licences.

! Nepal banned migration for domestic work to Gulf countries including Kuwait in 2017. Unregistered agents in Nepal flout the ban arranging for workers to migrate without certified contracts or labour permits.

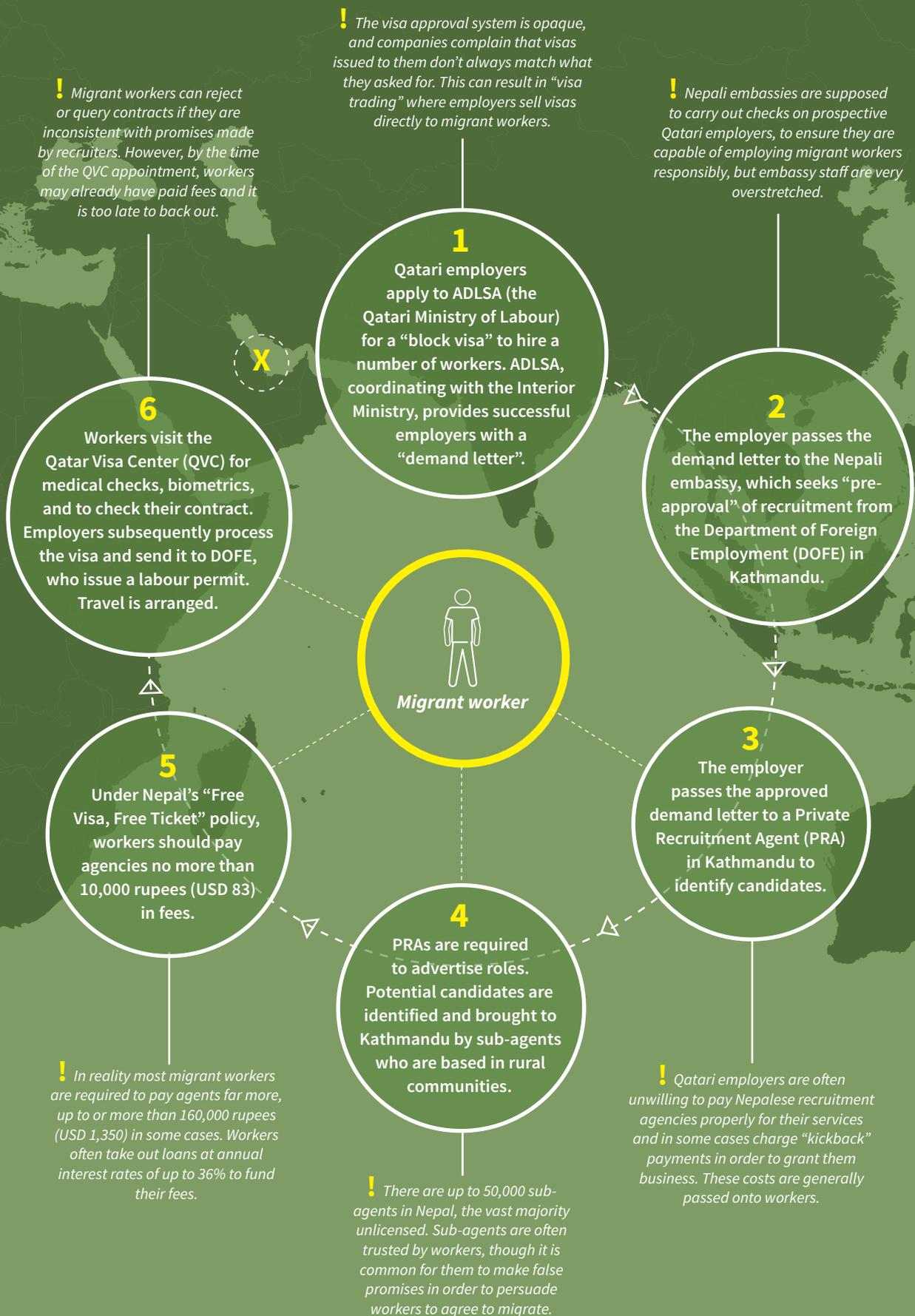


! Under Kuwait's laws, migrant workers are tied to their employer or "sponsors". Domestic workers who leave their employers without permission can be charged with 'absconding'.

! In practice the Kuwaiti authorities' focus is on reducing fees charged to employers, rather than tackling worker payment. Nepali women who migrate via intermediaries may have to repay recruitment costs via their wages.

! As Nepali domestic workers have to migrate outside formal channels, there is no real oversight from their government of their recruitment process.

## A simplified impression of a typical recruitment process for a Nepali migrant worker\* employed in Qatar



\*This describes a typical recruitment process for a worker who is not employed a domestic worker.

# Assessment against the Five Corridors indicators:

## 1. National migration policy

- 1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies? ..... 25
- 1.2 Does the government restrict countries that some or all workers can migrate to ..... 29
- 1.3 Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements? ..... 31
- 1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy? ..... 32
- 1.5 Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the employer need multiple permissions at different levels of the state to migrate?) ..... 37
- 1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country? ..... 39
- 1.7 Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship? ..... 42

# 1. National migration policy

*“[The] sponsorship system (kafala) system... which denies workers the opportunity of obtaining alternative employment, exposes migrant workers to abuse and undermines their ability to have recourse to means of redress”*

ILO COMMITTEE OF EXPERTS, COMMENTING ON KUWAIT, 2019

## Summary

Widespread extreme poverty and high unemployment, exacerbated by political conflicts and the effects of natural disasters, have led to nearly one in ten Nepalis seeking work abroad. Remittances make up almost a third of GDP. Although the government seeks to halt this flow by establishing more work opportunities at home, the current decline in agricultural output and international tourism is likely to keep pushing Nepalis to leave. Foreign employment therefore features centrally in Nepal’s economic planning and legislation, but whereas policies were previously focused mainly on developing labour opportunities to address unemployment, there has been a recent shift to greater emphasis on worker protections, and a push to sign Bilateral Labour Agreements (BLAs) with key destination countries. Regulation of the influential recruitment industry, which maintains close relationships with political parties, is a major challenge, given the rampant abuse of migrant workers and the intense competition - between recruiters and with other origin states - for jobs in wealthy destination countries. On top of these challenges the IOM has criticised the lack of coordination between the numerous ministries and committees managing migration policy, exacerbated by political instability, frequent changes in government and a high turn-over of labour ministers over the past decade. Policies are often adopted without clear implementation plans or adequate resources, and though seemingly well-intentioned, they produce adverse outcomes for migrants. In an attempt to increase coherence, Nepal is currently rolling out new software to manage migration data more efficiently. A lengthy and complicated labour permit application process means that most aspiring migrants use recruitment

agencies; three-quarters report abusive practices, including payment of recruitment fees far in excess of the national legal limit. Domestic work abroad – an area typically dominated by women – has also been at the intersection of the competing pressures of employment demand and worker protection. Despite prohibitions against gender-based discrimination in sending workers for foreign employment, and incremental improvements in legislation addressing the challenges faced by female migrant workers, the real-world effect of revolving travel bans on migration for domestic work (especially to Gulf countries) has been to unduly discriminate against women, and, contrary to a professed aim to protect, push female workers into irregular migration, placing them at greater risk of trafficking and abuse, and reducing their access to grievance mechanisms and consular assistance abroad.

Migrant workers – mostly men, working in low-paid, private sector jobs – make up more than two-thirds of Kuwait’s total population. Kuwaiti government policy is to reduce this imbalance, and ideally to reverse it, while at the same time developing the construction and hospitality sectors which rely on that very same workforce. The incoherence of this policy of “Kuwaitisation” has only been further deepened by the clear reluctance of Kuwaiti nationals to take up the lower-paid, stigmatised, jobs in the private sector. This gap between official migration policy and actual labour market demand has contributed to irregular migration and visa overstays, as well as “visa trading” – whereby workers in migrant countries buy visas, either from recruiters in Kuwait or in the origin country. The large population of irregular migrants, some of whom become undocumented after fleeing abusive employment conditions, has led the authorities

to launch regular mass arrest and deportation campaigns, making migrant workers' lives highly insecure. Kuwait also uses regular periodic amnesties to reduce the number of migrants with irregular status, which can result in workers forgoing unpaid wages and dues in order to regain regular status or return home without risking detention and/or additional fines. Migrant workers are subject to a 1959 residency law that ties them to a sponsor who controls their entry to the country, renewal of residence permits and termination of employment. They face significant restrictions in relation to changing jobs. Recent labour reforms, supported by the ILO, have largely focussed on the domestic work sector, perhaps because of its importance to the country and the scrutiny it has attracted. More than 660,000 domestic workers are employed in Kuwait - a country with a population of 1.3 million citizens, representing one domestic worker for every two Kuwaiti citizens. Ninety percent of Kuwaiti households have at least one domestic worker, the majority of them women, with many facing abuse, including physical and sexual violence. Seeking to address international criticism of its human rights record, since 2015, Kuwait adopted legal reforms that provide greater protections to domestic workers' rights by regulating employment, setting a minimum wage, banning the payment of recruitment fees, and establishing a state-owned recruitment agency to specifically recruit workers in this sector. However, there are deep failings in enforcement and a lack of knowledge of these laws. With allegations of abuse persisting, the government has banned recruitment of domestic workers from 27 countries that do not have diplomatic missions in Kuwait, while other countries have introduced bans to prevent their nationals from migrating to Kuwait.

Migrant workers outnumber nationals in Qatar by nine to one, attracted by opportunities for work created by a 20-year construction boom. This imbalance is viewed by government agencies as a social and security challenge, and policies are accordingly designed to maintain

the temporary basis upon which most of its low-skilled, overwhelmingly male, migrant workforce is recruited and to prevent them from settling and obtaining citizenship. Qatar's visa allocation policy appears to be in part linked to its political relationships, with the Ministry of Interior's distribution of "block" approvals for specific nationalities being one of the few areas that the government involves itself with the day-to-day management of migration. These block approvals in some cases do not align with the visas that employers request, driving the market for black-market "free visas". Otherwise, Qatar largely delegates its migration control to private recruitment agencies and employers. Qatar came under intense international pressure over the treatment of migrant workers after it won the right to host the 2022 World Cup, and faced the threat of an ILO commission of inquiry into forced labour. Under a cooperation partnership with ILO agreed in 2017, Qatar embarked on a program of labour reforms, including setting a non-discriminatory minimum wage and making changes to the migrant worker sponsorship system. New laws adopted since 2018 permit migrants to change jobs without obtaining permission from their current employer and to leave the country without an exit permit. The implementation of these laws has been closely scrutinized, in particularly the question of whether workers can change jobs as intended by the reforms, and it is too early to assess their effectiveness. While Qatar's migrant workforce is majority male, female domestic workers have long faced particularly severe abuses. Excluded from the provisions of the Labour Law, they obtained some protections through a 2017 law. However, failures of enforcement, in addition to weak guarantees for women's rights in the country in general, mean that women migrant workers continue to face abuses. In 2021, Qatar introduced a standard employment contract for domestic workers addressing a number of disparities between legal protections afforded under the domestic workers law and the 2004 Labour Law, from which domestic workers are excluded.

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## Recommendations to the Government of Nepal:

- Conduct a formal, independent, public review of Nepal’s national migration policy. The review should solicit views from a wide range of stakeholders and should address issues including gender-sensitivity and the potential and feasibility of increasing the rate of workers hired via government to government recruitment models.
- Ensure that all migrant workers, regardless of their job, gender, or whether they migrated through regular channels, have full access to consular assistance in destination countries and grievance mechanisms in Nepal.
- Provide women with regulated channels to migrate to the Gulf for domestic work, investing in dedicated gender-sensitive capacities - both in domestic institutions and in diplomatic missions - to protect women, including banning employers found to have abused domestic workers from hiring in future, insisting that standard contracts include requirements for women to have mobile phones, and establishing shelters in embassies. Abandon proposals to require women to seek permission from family members before migrating.

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## Recommendations to the Government of Kuwait:

- Conduct a formal, independent, public review of Kuwait’s national migration policy. The review should solicit views from a wide range of stakeholders and should specifically the relationship between Kuwaitisation and the human rights of migrant workers, and measures to address xenophobia and discrimination against migrant workers.
- Introduce legislation that enables migrant workers to transfer employers without the permission of their employers, and complement this with mechanisms that enable them to exercise this right in practice.

- Introduce a transparent visa allocation process so that employers can only receive the visas that they have requested.

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## Recommendations to the Government of Qatar:

- Ensure that the legal reforms to Qatar’s kafala system of sponsorship (Law no 18 of 2020 and Law no 19 of 2020) are implemented fully, with migrant workers provided with mechanisms that enable them to exercise their legal right to change employers;
- Remove the charge of “absconding” from Law No 21 of 2015;
- Introduce a transparent visa allocation process so that employers can only receive the visas that they have requested.

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### 1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies?

#### Nepal

Migration is a key part of Nepal’s economy in terms of the contribution of remittances and poverty alleviation, and historically, it has also been a means of offsetting Nepal’s long-term domestic unemployment and underemployment problems, especially amongst young people.<sup>10</sup>

Despite a recent decline, Nepal is still one of the world’s largest remittance recipient countries.<sup>11</sup> In 2018, it received 8.1 billion USD in remittances, ranking fifth in the world in terms of share of GDP for that year (28%).<sup>12</sup> With 18.7% of the total population living below the poverty line and one of the highest unemployment rates in the region (11.4%),<sup>13</sup> Nepali nationals continue to seek economic opportunities abroad, migrating primarily

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10. Rajesh Khanal, “Nepal’s unemployment rate estimated at 11.4 percent”, The Kathmandu Post, (27 April 2019).

11. World Bank, “Nepal Development Update”, (July 2020).

12. World Bank, “Migration and Development Brief No. 31”, (April 2019): 22

13. UNDP, “Rapid Assessment of socio-economic impact of Covid-19 in Nepal”, (July 2020): 27

to Gulf countries, Malaysia, and India - they can travel to the latter for work without labour approvals. More recently, land degradation as a result of natural disasters and climate change has also been pushing Nepalis to work abroad. Others migrate due to debt, or on account of their less favourable socio-economic status as minorities, women or low-caste people.<sup>14</sup>

According to the 2011 census, one in four Nepali households had a family member abroad, or approximately 7.3 % of the country's total population.<sup>15</sup> Nepali migrant workers are predominantly young men, doing low-skilled jobs on temporary contracts.<sup>16</sup> Despite their vulnerability to abuse and exploitation, many renew labour permits and choose to re-migrate shortly after their return.<sup>17</sup>

The prominence of foreign employment is reflected in Nepal's laws, as well as its national strategies relevant to all parts of the government. Over the years, Nepal has adopted laws and policies aimed, on the one hand, at strengthening protections for migrant workers, which nonetheless remain weak (see 2.2), and maximizing the benefits of labour migration, on the other. Labour migration has featured as a priority in Nepal's periodic development plans since the mid-1980s. While earlier plans saw it as a viable livelihood option for many households and even set targets for increasing the number of Nepalis travelling abroad, in the past decade, the focus has shifted towards retaining Nepalis, creating jobs in the country and ensuring that those who migrate do so in a safe and dignified manner.<sup>18</sup> An official from the Ministry of Law, Justice and Parliamentary Affairs told us: "The major priority of the government has been to reduce the rate of foreign employment and establish more employment opportunities at home. With regards to foreign employment, the sole focus is and always was on the rights and welfare of the workers."<sup>19</sup> A MOLESS official contextualised the increasing focus on rights-protection in migration which has emerged

and influenced Nepal's policy in recent years, telling us, "There has been a world-wide change in the migration principles and discussion on migration through international frameworks such as the Global Forum on Migration and Development, Sustainable Development Goals, and the Global Compact on migration. There has been a greater push on issues such as the employer pays principle, access to justice, and labour rights."<sup>20</sup> The 2020 Ministry of Labour, Employment and Social Security (MOLESS) migration report confirms that the government's overarching goal is to "actively prioritiz[e] domestic employment creation to ensure Nepali citizens can migrate out of choice and not necessity."<sup>21</sup> While the World Bank has noted important gains in this regard, Covid-19 is likely to affect job creation.<sup>22</sup>

Prior to the pandemic, more than 1,000 people were leaving Nepal each day to work abroad.<sup>23</sup> With an uncertain economic outlook affected by a decline in agricultural output and drop in international tourism,<sup>24</sup> the authorities have little choice but to focus on promoting safe and orderly migration. Three main instruments regulate and promote this: the 2007 Foreign Employment Act (FEA), the 2008 Foreign Employment Rules (FER) and the 2012 Foreign Employment Policy (FEP). The preamble to the 2007 FEA acknowledges the importance of adopting consolidated legislation on foreign employment to "promote and make such profession secured, organized and respectful as well as to protect the right[s] and interest[s] of employee[s] going for foreign employment".<sup>25</sup> The FER strengthened the FEA by including additional protections for migrant workers. The 2012 FEP in turn aims to: make foreign employment safe, organized and reliable; develop a skilled, capable and competitive labour force; promote regional cooperation in managing foreign employment; address the specific challenges of migrant women; and use economic resources obtained abroad to alleviate poverty by promoting the investment of remittances for economic and social development.<sup>26</sup>

14. OHCHR, "Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal", (April 2018): 3

15. IOM, "Migration in Nepal: A Country Profile 2019", (2019): 35

16. Ministry of Labour, Employment and Social Security (MOLESS), "Nepal Labour Migration Report 2020", (2020): XV

17. Amnesty International, "Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepal Migrant Workers", (2017): 69

18. MOLESS, "Nepal Labour Migration Report 2020", (2020): 4-5.

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

20. Senior official, Ministry of Labour, Employment and Social Security, interview, 10 January 2020.

21. MOLESS, "Nepal Labour Migration Report 2020", (2020): 5

22. World Bank, "Nepal Jobs Diagnostic" (2020): 2.

23. IOM, "Migration Governance Snapshot: Federal Democratic Republic of Nepal", (August 2018): 4

24. World Bank, Nepal Development Update: Post-Pandemic Nepal - Charting a Resilient Recovery and Future Growth Directions, (2020): xv

25. Foreign Employment Act, 2007

26. Foreign Employment Policy, 2012

Article 51 of Nepal's 2015 Constitution requires the government to "make foreign employment exploitation free, safe, and well-managed to guarantee workers' rights and employment ... encouraging the use of the capital, skills, technology and experience gained from foreign employment in productive sectors in the country".<sup>27</sup>

A MOLESS officer confirmed that past policies were focused exclusively on promoting employment opportunities in the international market, whereas now "policies are largely drafted keeping public welfare in mind".<sup>28</sup> Another MOLESS representative told us that the prioritization of negotiating Bilateral Labour Agreements (BLAs) with new destination countries is evidence of the government's efforts to ensure coherence in overseas migration policy.<sup>29</sup> Indeed, between 2017-19, Nepal signed agreements with Japan, Jordan, Malaysia, Mauritius, Israel and the UAE that contain strengthened protections for migrant workers in relation to equal pay, access to justice and requirements that employers bear recruitment costs (see section 3).<sup>30</sup> The government has also tried to open new migration corridors with European countries such as Poland, Turkey, Cyprus and Malta to secure access to more lucrative jobs for its nationals.<sup>31</sup>

However, despite these efforts and the importance of migration to Nepal's domestic agenda, according to the IOM, the authorities have failed to develop a comprehensive government plan specific to migration. As a result, migration governance and policy are spread across several ministries, departments, technical working groups and committees. In addition, experts interviewed for this report said that while some migration policies and laws affecting recruitment may appear as ill-thought-out or to have unintended consequences (see 2.5), they are often adopted as a means to consolidate power, appease party politics or to maintain popular legitimacy given the significance

of the migrant worker population.<sup>32</sup> One such example often cited is the 2015 "Free Visa, Free Ticket" policy, which set a limit on how much recruitment agencies could charge as fees for facilitating migration to seven major destination countries (see 6.1), but has never been enforced. According to an academic specializing in labour recruitment and the protection of Nepali migrant workers, the "Free Visa, Free Ticket" policy "is a classic illustration where no one has been able to roll back a policy that is dead in the water because of the legitimacy that it gives the state".<sup>33</sup> Another example is the contradiction between the "Free Visa, Free Ticket" policy and government-to-government agreements with Israel and the Republic of Korea, where the government itself is charging recruitment fees (see 4.4).<sup>34</sup> In general, though, policies tend to be adopted without real implementation plans, adequate resources or public engagement, and often remain unimplemented as a result. In some cases, strategic litigation by human rights groups has targeted the creation of positive outcomes for migrants where policy-making has failed.<sup>35</sup>

## Kuwait

As an oil-rich country, Kuwait has been a major destination for migrant workers from South Asia and the Middle East for decades. Today, migrant workers comprise 72% of Kuwait's total population,<sup>36</sup> making up 82% of the country's workforce. The vast majority are men and work in the private sector in low-paid jobs. By contrast, 74% of Kuwaiti nationals work in the public sector, where wages and benefits are much higher.<sup>37</sup> Kuwait's repeated efforts to reduce its reliance on foreign workers have been unsuccessful.

Kuwait's legal framework for migration is based on the 1959 Aliens Residence Law, which continues to govern migrant workers' employment and ties their residence status through the restrictive kafala (sponsorship)

27. [Constitution of Nepal](#), Article 51, 2015.

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

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

30. MOLESS, "[Nepal Labour Migration Report 2020](#)", (2020): 5

31. MOLESS, "[Nepal Labour Migration Report 2020](#)", (2020): 25

32. Dr Angela Sherwood, remote interview, 4 September 2020; remote interview with FSI Worldwide, 20 October 2020; ILO official, remote interview, 21 October 2020.

33. Dr Angela Sherwood, remote interview, 4 September 2020.

34. Upasana Khadka, "[The theory and practice of zero-cost migration](#)", Nepali Times, (4 October 2020).

35. For example, in 2018, the Supreme Court issued a [decision](#) on the regulation of agents used by recruitment agencies and the decentralisation of the grievance mechanism following a case filed by LAPSJO.

36. IOM, "[World Migration Report 2020](#)": 84

37. ILO, "[Decent Work Programme for Kuwait, 2018-2020](#)", (April 2018): 4

system.<sup>38</sup> Kuwait's migration, labour recruitment and employment policies are driven by a set of competing objectives, including on the one hand, the desire to reduce the demographic imbalance between nationals and foreigners and appease public and parliamentary opinion, which is often prejudiced against non-Muslim migrants from South Asia, and on the other, reform its economy, strengthen ties with origin states, and improve its international standing by assuaging concern over its treatment of migrant workers.<sup>39</sup> As a result, these policies often appear incoherent, and migration reforms tend not only to be half-hearted and incomplete but usually followed by crackdowns against migrant workers, further undermining their rights.

“Kuwaitisation” is a key overarching policy governing the country's labour market structure and influencing migration policy.<sup>40</sup> Kuwaitisation aims to incentivise the replacement of migrant workers with Kuwaitis in the labour market, mainly in the private sector, through various regulations, policies and educational reforms. This policy is articulated in “New Kuwait 2035”, Kuwait's national development plan, which seeks to transform the country into a financial and commercial hub by decreasing its reliance on oil and diversifying its economy through a set of public and private sector reforms, and increasing the participation of nationals in the private sector by 10%.<sup>41</sup> With the rise of xenophobia towards migrant workers who were blamed for the outbreak of the Covid-19 pandemic and a drop in global crude oil prices parliamentarians introduced a bill that goes far further, aiming to reduce the proportion of the country's foreign nationals from 70% to 30%. This followed statements from the Prime Minister in favour of such moves.<sup>42</sup>

In parallel, the government has set private sector employment quotas to increase the ratio of nationals in the private sector labour force. In 2018, the Ministry of Social Affairs and Labour (MSAL) introduced a US\$830 fee per “excess work permit” for companies

with foreign employees accounting for more than 50% of their workforce. Given that seven out of 10 Kuwaitis work in the public sector, the new policy was expected to result in most private sector companies having to pay extra fees for new foreign hires.<sup>43</sup> That same year, the government began assessing the validity of foreign nationals' university degree certificates before issuing or renewing residency documents and ceased hiring migrants under the age of 30 with university degrees in order to promote the employment of new Kuwaiti graduates.<sup>44</sup> In August 2020, the Kuwaiti authorities announced they would stop issuing work permits for foreign workers without a degree aged above 60.<sup>45</sup>

While the reduction of the foreign population is a long-stated goal, it does not correlate with labour market realities. As the ILO has noted: “Kuwait has a limited national labour supply and is, as most Gulf Cooperation Countries (GCC) countries, heavily reliant on foreign workers ever since the beginning of the oil age.”<sup>46</sup> The reluctance of Kuwaiti nationals to take up positions in the private sector, where wages are relatively lower than in the public sector, and where jobs come with an associated social stigma, is not consistent with the significant construction, infrastructure and hospitality sector growth envisioned in “New Kuwait 2035”. This means that demand for foreign labour – especially low-wage, low-skilled workers, particularly from South and South East Asia – continues.<sup>47</sup>

The number of migrants who find themselves in irregular situations as a result of overstaying their visas or because of lack of documents – often through no fault of their own such as escaping abusive work situations or migrating under the false promises of a job awaiting for them – is currently estimated at 120,000, according to Kuwaiti media.<sup>48</sup> A 2019 GLMM paper traces how in recent years, the government has declared a series of “amnesties” for undocumented migrants, usually followed by mass arrest and deportation campaigns. In 2011, 30,000 irregular migrants were deported, and the

38. Amiri Decree No. 17 of 1959 issuing the Aliens Residence Law, 1959.

39. Interviews with activists, trade union representatives and employers.

40. IOM, “Migration Governance Overview: The State of Kuwait”, (May 2018).

41. Sophie Olver-Ellis, “Building The New Kuwait Vision 2035 And The Challenge Of Diversification”, (January 2020): 7

42. Andrew Clarence, “India coronavirus: Kuwait's new expat bill has Indians worried”, BBC, (15 July 2020).

43. Gulf Business, “Kuwait introduces new \$830 fee for companies employing ‘excess’ foreigners”, (5 September 2017).

44. Gulf Business, “Kuwait to halt recruitment of foreign workers younger than 30”, (30 November 2017).

45. Al Arabiya English, “No work permits for those over 60, no visa extensions amid broad expat cut”, (18 August 2020).

46. ILO, “Kuwait Decent Work Programme 2018 – 2020”: 4.

47. Gulf Business, “Unemployed Kuwaitis unwilling to join the private sector”, (19 April 2016).

48. Al-Qabas, 9) وافد، 530 ألف للاستغناء عن August 2020).

following year MSAL stated that over 67,000 migrants had been stripped of their residency permits for overstaying their visas. In 2014, the Ministry of Interior decided to halt raids on migrant workers because of a lack of space in police stations and prisons. In 2018, 13,000 migrant workers were deported officially on account of their poor health conditions, labour law violations, or because they faced criminal charges.<sup>49</sup> Most recently, in August 2020, Kuwaiti media reported yet another government plan to deport the country's entire population of irregular migrants.<sup>50</sup>

## Qatar

Qatar's migrant population has grown from around only 14,000 people in 1960 to more than two million now, largely caused by a major boom in construction activities in the last 20 years. Qatar's foreign population vastly outnumbers Qatari nationals, accounting for more than 90% of the total population. The prominence of state-directed, long-term mega infrastructure projects, including the 2022 men's football World Cup, and the development of the hospitality and tourism sectors, have only increased labour recruitment demand.

Qatar National Vision 2030, the country's national development plan launched in 2008, articulated a concern about the implications of rapid growth:

*“Qatar must determine a suitable size and quality of its expatriate labor force. It must weigh the consequences of recruiting expatriate workers in terms of their cultural rights, housing and public service needs, as well as the potential negative impact on national identity, against the anticipated economic benefits that accrue from an increase in the numbers of foreign workers in the total labor force.”<sup>51</sup>*

Perhaps as a result of these concerns, while the Qatar National Vision 2030 prioritizes the recruitment of highly qualified foreign workers, the overwhelming majority of recruitment of foreign workers remains for low-paid

work on temporary contracts that are often no longer than two years. This policy has been maintained over the past decade, even as Qatar has intensively developed its infrastructure in a sustained and planned manner.<sup>52</sup>

This disconnect between an acknowledged long-term reliance on an imported workforce and a recruitment framework largely restricted to two-year contracts and residency permits, subject to renewal by the employer, suggests that a key policy concern is to prevent the settlement and integration of foreign workers in order to avoid concretising the demographic imbalance between Qatari and foreign nationals.<sup>53</sup> A labour migration expert told us that there is also a “financial incentive for high labour turnover”, given the kickback payments made by recruitment agencies in countries of origin to representatives of employers (see 6.1).<sup>54</sup>

Qatar's regional and international relations had a significant impact on its management of migration. It came under intense international pressure over its treatment of migrant workers after it won the right to host the 2022 World Cup, and as a result, unions launched a forced labour complaint to the ILO in 2014.<sup>55</sup> In 2017, with the prospect of a potential ILO commission of inquiry still looming, Qatar's Gulf neighbours cut off relations with Qatar over political differences and attempted to isolate it politically and economically. In this context, Qatar agreed a cooperation partnership with the ILO, under which several reforms have been taken, including most notably reform of the kafala (sponsorship) system.<sup>56</sup> It remains to be seen how Qatar will manage its migrant workforce after the international scrutiny provided by the World Cup recedes.

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## 1.2 Does the government restrict countries that some or all workers can migrate to?

### Nepal

Nepal currently prohibits its citizens from migrating to work in Iraq, Afghanistan and Libya due to the security

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49. GLMM, “Demography, Migration, and the Labour Market in Kuwait”, (2019): 6-7.

50. The New Arab, “Kuwait planning to deport 360,000 migrant workers”, (12 August 2020).

51. General Secretariat for Development Planning, “Qatar National Vision 2030”, (July 2008): 7

52. An examination of Qatar's bid for the 2022's Men World Cup bid illustrates that the scale of the country's construction programme was foreseeable. See FIFA, “2022 FIFA World Cup Bid Evaluation Report: Qatar”, (2010).

53. Zahra R. Babar, “Labor Migration in the State of Qatar Policy Making and Governance”, IFRI, (December 2013): 7.

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

55. Thomson Reuters Foundation, “ILO defers decision on whether to investigate Qatar on migrant abuses”, (22 March 2017).

56. See ILO, “Project Office for the State of Qatar”(2018).

situation in those countries. Nepali legislation also prohibits the departure for foreign employment via another country.<sup>57</sup> There are currently 111 approved labour destination countries. Further, Nepalis can obtain labour permits for migration to 172 countries when applying individually, and to 107 countries when applying through an institution.<sup>58</sup>

Temporary restrictions on specific countries are often adopted in response to disputes, or following incidents affecting Nepali workers in countries of destination that shock public opinion. Nepal temporarily suspended migration to Malaysia in 2019, for example, following a dispute over additional fees being charged to aspiring Nepali migrants during the visa application process.<sup>59</sup> Migration restarted in September 2019 after Malaysia and Nepal signed a new bilateral agreement.

Female migration and work in the domestic sector have also historically been subject to travel bans. Currently, the government does not permit Nepali nationals to work in the domestic sector unless a BLA has been signed between Nepal and the destination country, as is the case with Jordan.<sup>60</sup> Migration to Gulf countries and Lebanon has been particularly affected: the ban on female migration to the Gulf was first introduced in 1998 following the alleged sexual abuse and subsequent death of Kani Sherpa, a Nepali domestic worker in Kuwait, and lifted in 2003 on condition that the relevant diplomatic mission issues a certificate guaranteeing full security in the destination country.<sup>61</sup> In 2015, Nepal adopted guidelines prohibiting women younger than 24, or those with a child under the age of two, from seeking foreign employment as domestic workers.<sup>62</sup> A partial ban was reintroduced in 2017 after the parliamentary Labour and International Relations Committee instructed the Council of Ministers to prevent Nepali women from undertaking domestic employment in GCC countries, following its members' visit to the region.

The restriction on travel to Gulf countries for domestic work was partially lifted in August 2019 when a

parliamentary committee directed MOLESS to allow migrant workers who were doing domestic work, whether they had used legal channels or not, and were working under an accurate job description or not, to return to Nepal and apply for re-migration to work for the same employers.<sup>63</sup> The ban on aspiring domestic migrant workers remains, though in 2021 a contentious alternative was proposed by the government, which would have seen women under 40 needing authorisation from male relatives before migrating.<sup>64</sup> This issue is explored further in section 1.4.

## Kuwait

In 2019, Kuwait banned recruitment from 27 countries, including 25 African and two Asian countries. The list included: Djibouti, Kenya, Uganda, Nigeria, Togo, Ghana, Ethiopia, Burkina Faso, Guinea, Guinea-Bissau, Ivory Coast, Madagascar, Senegal, Malawi, Chad, Sierra Leone, Niger, Tanzania, the Gambia, Ghana, Chad, Zimbabwe, Cameroon, the Democratic Republic of the Congo and Burundi, in addition to Indonesia and Bhutan. For 13 of these countries, the ban applies only to women domestic workers.<sup>65</sup> Such restrictions were lifted, or partially lifted, at different times in order to address labour shortages in the domestic sector.<sup>66</sup>

In a December 2019 meeting, a Kuwaiti official told us that these measures were introduced following the alleged abuse of women domestic workers from Djibouti in Kuwaiti households, and the public criticism of Kuwait's policies towards migrants by Djibouti officials. The official said that the criticism was unfair, in that it failed to recognize Kuwait's efforts to assist workers who did not have access to a permanent diplomatic mission in Kuwait with the reissuing of official documents and visa or job reallocation processes. In response, Kuwaiti authorities decided to no longer permit the recruitment of nationals from countries without a permanent diplomatic presence in Kuwait, including those which rely on the embassies of regional neighbours.<sup>67</sup>

57. UN Human Right Council, "Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal", A/HRC/38/41/Add1, (30 April 2018).

58. Government of Nepal, MOLESS, "Recognised countries"

59. The Kathmandu Post, "Government to scrap fees unfairly levied on Malaysia-bound Nepali workers", (18 May 2018).

60. Senior official, Foreign Employment Board, interview, 13 January 2020

61. Uddhab Pd. Pyakurel, "Restrictive Labour Migration Policy on Nepalese Women and Consequences", Sociology and Anthropology, (August 2018): 652.

62. UN Human Right Council, "Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal", A/HRC/38/41/Add1, (30 April 2018): 13.

63. Official, Labour Office, MOLESS, interview, 10 January 2020.

64. The Kathmandu Post, "New rule requiring women under 40 to take approval from family, local ward office to go abroad draws criticism", (10 February 2021).

65. Khaled al-Hattab, "منع استخدام العمالة المنزلية من 27 دولة", Al Qabas, (30 November 2019).

66. Migrant-Rights.Org, "Kuwait lifts ban on domestic workers from several countries", (20 February 2019).

67. Kuwaiti official, interview, 13 December 2019.

Other countries have introduced bans on migration to Kuwait to protect their nationals. In January 2018, the Philippines issued a total prohibition on Filipino workers migrating to Kuwait, following reports of seven deaths of Filipino domestic staff in the country.<sup>68</sup> In 2015, Indonesia declared a temporary ban on sending new domestic workers to 21 Middle Eastern and North African countries, including Kuwait, following the execution of two Indonesian women in Saudi Arabia.<sup>69</sup>

### Qatar

A few weeks after the decision by Saudi Arabia, the UAE, Bahrain and Egypt to sever diplomatic ties with Qatar in June 2017, Qatar stopped issuing new work and family visas to Egyptians.<sup>70</sup> Qatar also stated in September 2017 that it would cease renewing visas for North Korean workers, following U.N. Security Council sanctions and pressure from the USA regarding the North Korean nuclear programme.<sup>71</sup>

More broadly, Qatar appears to prioritise visa distributions to specific countries with whom it has a BLA and/or MOU, or political, cultural, economic, religious or diplomatic ties. For example, Indian nationals make up the largest migrant community in Qatar due to strong economic relations between the two countries.<sup>72</sup> On the contrary, Qatar is yet to fulfill a commitment made in 2015 to hire 100,000 Pakistani skilled and semi-skilled workers. Although the authorities have not provided any official reason for the delay, many believe that Qatar was reluctant to issue visas to Pakistani nationals for political reasons.<sup>73</sup> Since coming into office, Pakistani Prime Minister Imran Khan has focussed on strengthening bilateral relations with Qatar, leading to the opening of Qatar Visa Centers in Pakistan in late 2018.<sup>74</sup>

## 1.3 Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements?

### Nepal

Nepal has signed a government-to-government agreement with the Republic of Korea to send workers under the Employment Permit System (EPS).<sup>75</sup> Nepali nationals can migrate for work to Japan under the Technical Intern Training Programme of the Japan International Training Cooperation Organisation (JITCO),<sup>76</sup> a public interest foundation, which promotes the recruitment of foreign nationals.<sup>77</sup> However, the Labour Minister in 2021 said that there have been problems implementing this programme, preventing Nepalis from accessing it.<sup>78</sup> Nepal and Israel have pursued various government-to-government recruitment programmes, though not at significant scale.<sup>79</sup>

However, according to a senior MOLESS official, Nepal does not prioritise the signing of government-to-government agreements and its experience with such agreements to date has been mostly negative.<sup>80</sup> A Ministry of Law official said that Nepal needed to work with private agencies, while continuing to monitor their activities to protect workers from any abuses and obstacles during the recruitment process: “government-to-government [agreements] are too costly, the government can’t fully afford them. The government-to-government agreements with Korea and Japan have had lots of challenges, so for countries like Qatar and Malaysia that host large numbers of migrant workers,

68. Human Rights Watch, “Kuwait/Philippines: Protect Filipino Migrant Workers”, (21 February 2018).

69. Equal Times, “Despite migration ban, Indonesian domestic workers still face forced labour and abuses in the Gulf”, (7 September 2017).

70. Fragomen, “Qatar Blockade and its impact on Immigration in the GCC”, (30 October 2017).

71. Reuters, “Qatar, Kuwait stop renewing visas for North Korean workers”, (19 September 2017).

72. Reuters, “India wants to delink Qatar gas supply deals from crude; Qatar says no”, (27 January 2020).

73. Tribune, “Why Qatar issues fewer ‘work visas’ to Pakistanis”, (13 October 2017).

74. Pakistan Today, “In Doha, Imran reiterates Pakistan’s continued support to Afghan peace”, (27 February 2020).

75. Embassy of Nepal, Seoul, Republic of Korea, “Bilateral relations: Nepal-Republic of Korea relations”; “Memorandum of Understanding between the Ministry of Labor and Transport Management, Government of Nepal and the Ministry of Labor of the Republic of Korea on the Sending of Workers to the Republic of Korea under the Employment Permit System”, (23 July 2007).

76. Japan International Trainee and Skilled Worker Cooperation Organisation, “Nepal: Sending Country Conditions”.

77. Ministry of Foreign Affairs of Japan, “Memorandum of Cooperation between the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Health Labour and Welfare and the National Police Agency of Japan and the ministry of Labour, Employment and Social Security of the government of Nepal on a basic framework for information partnership for proper operation of the system pertaining to foreign human resources with the status of residence of ‘specified skilled worker’”.

78. Deshpandya, सरकारी संयन्त्र मार्फत थप देशमा श्रमिक पठाउने प्रयास हुँदछ: मन्त्री चौधरी, (7 March 2021).

79. Nepali Times, “Demand grows for Nepali caregivers in Israel”, (27 September 2020).

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

we need to partner with private institutions”.<sup>81</sup> However, in 2021, recruitment agencies expressed concern when the Labour Minister announced plans to conclude a government-to-government recruitment programme with Qatar to provide security guards ahead of the 2022 men’s World Cup. At the time of writing in June 2021, the announcement did not appear to result in any concrete agreement and it was not clear that Qatar had agreed to the proposal.<sup>82</sup>

## Kuwait

The Kuwaiti state largely delegates the recruitment of foreign workers to the private sector. In 2017, Kuwait established a state-owned recruitment agency, Al-Durra, to facilitate the recruitment of foreign domestic workers.<sup>83</sup> However, Al-Durra does not enter into partnerships with governments in labour-sending countries. Instead, it works with licensed private sector recruitment agencies in Kuwait.<sup>84</sup>

## Qatar

Qatar effectively outsources migration control to the private sector, and with the exception of the Ministry of Interior’s role in the distribution of visa approvals, the government has minimal involvement in matching aspiring migrant workers with jobs.

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### 1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy?

## Nepal

Although Nepal has incorporated gender into the design of migration policies, significant gaps in legislation and an overly protectionist approach mean that women migrant workers continue to be discriminated against in practice, and to face physical abuse, trafficking and

other violations. Gender identity does not feature in Nepal’s migration policies.

Nepal ratified the Convention on the Elimination of Discrimination against Women (CEDAW) in 1991. In 2018, the CEDAW Committee identified three particular areas of concern with regards to the human rights situation of women migrant workers, namely: restrictions against women on access to foreign employment under the 2015 guidelines on women migrant domestic workers; lack of support for the reintegration of women migrants following their return to Nepal; and both freedom of movement restrictions and “limited pre-departure training programmes, which leave women exposed to discriminatory practices”.<sup>85</sup>

Although only approximately 8.7% of all labour permits issued in 2018/2019 were issued to women, according to DOFE data, female migration through official channels has been steadily on the rise over the past decade. Real numbers are likely much higher as more women migrate irregularly.<sup>86</sup> Despite the reintroduction of a ban on domestic work in the Gulf (see 1.2), between 2015-2019, the UAE was the top destination for Nepali women migrant workers, followed immediately by Qatar. Kuwait was the seventh most popular choice.

Article 8 of the 2007 FEA prohibits gender-based discrimination in sending workers for foreign employment. Article 9 states that special privileges may be provided to women migrating abroad for work and requires recruiters to send a set number of women for foreign employment. The 2008 FER also contains specific provisions aimed at protecting women migrants and addressing their specific needs. Amongst other things, Section 26 specifies the use of the Foreign Employment Welfare Fund for the reimbursement of fees paid by aspiring female migrants to attend the pre-departure orientation training and for the establishment of childcare centres to ensure adequate protection of the children of women workers who have gone for foreign employment. Section 43 requires the appointment of women labour attachés in countries where at least 1,000 women workers have been sent for foreign employment.<sup>87</sup>

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

82. The Kathmandu Post, “Recruiting agencies irked by ‘government intention’ to send workers to Qatar on its own”, (11 March 2021).

83. ILO, [قانون رقم 68 لسنة 2015 في شأن العمالة المنزلي](#), ILO.

84. Arab Times, “Al-Durra company fails to hire domestic workers from abroad at cheaper prices”, (5 January 2020).

85. CEDAW, “Concluding observations on the sixth periodic report of Nepal”, (14 November 2018): 13.

86. IOM, “Migration in Nepal, A country profile 2019”, (2019): 48 and 108.

87. [Foreign Employment Rules, 2008](#)

The 2012 FEP addresses the specific challenges faced by women migrant workers including low salaries, vulnerability to irregular migration, physical violence, sexual harassment and abuse and economic exploitation, and aims to protect their rights in the migration cycle through skills training and pre-departure orientation, extensive dissemination of information regarding the migration process, the establishment of mechanisms for the protection of women migrants and enhanced collaboration with key actors to prevent human trafficking as a result of contract substitution. The policy takes into account the issue of family members left behind and gender specific challenges in the reintegration process faced by returning migrants. It also acknowledges an increase in the number of female migrant workers especially in the domestic work and care industry.

However, despite these legal safeguards, in designing migration policies, the Nepali authorities have failed to consider the reasons why women choose to migrate and the context in which they make their decisions to seek foreign employment, which is not only highly discriminatory but also places an expectation on them to provide for their families.<sup>88</sup> As a result, they have over the years adopted a series of measures aimed officially at protecting women from “sexual violence, physical abuse and economic exploitation” in destination countries, but which discriminate against women in practice, and restrict their access to foreign employment through official channels.<sup>89</sup> Women were only allowed to migrate for work in certain sectors in 1997, having required the consent of a guardian prior to that. They were then banned from international labour migration altogether a year later, and although the restriction was lifted in 2000, it was maintained for migration to the Gulf for several years. Other general restrictive measures on female migration were imposed in parallel. All these were removed, along with travel bans, in September 2007 with the adoption of the FEA, but new

restrictions and conditions on women intending to migrate to the Gulf and Lebanon as domestic workers were reintroduced (see 1.2), some of which remain until today, officially for women’s own protection.<sup>90</sup>

However, not only do these restrictions fail to prevent human trafficking and expose women to a greater risk of exploitation<sup>91</sup> as they increasingly opt for irregular routes via India,<sup>92</sup> as well as newer routes via Myanmar, Sri Lanka and Thailand,<sup>93</sup> they also limit women’s access to grievance mechanisms and consular help in case of abuse in destination countries (see 2.3 and 7.1). According to a specialist at AMKAS, an NGO, which supports the reintegration of female migrants following their return to Nepal, women migrant workers are generally not aware of the ban on domestic workers or that travelling via India to the Gulf could lead to them having an irregular status upon arrival in the destination country. The psychosocial counsellor explained that although the policy was intended to protect women from abuse, the government has failed to ensure that they are adequately informed of restrictions: “There are no awareness-raising programmes or public service announcements. Messages are not available via social media, and migrants are not aware of the domestic workers directives introduced by the government. Agents are also not aware of this, especially at the village level.”<sup>94</sup>

Initially, the Nepali authorities justified these restrictions on domestic workers as necessary “for the security of women migrant workers in order to prevent exploitation and trafficking”.<sup>95</sup> However, today, with the introduction of guidelines on domestic workers, the government’s official position is that such bans are not specifically targeting women but merely that any migrant intending to work as domestic worker is banned from doing so.<sup>96</sup> This position ignores the reality that domestic work is a sector traditionally dominated by women, and that as a result, it effectively targets women and restricts their access to regular migration.

88. Dr Angela Sherwood, interview, 4 September 2020.

89. Uddhab Pd. Pyakurel, “Restrictive Labour Migration Policy on Nepalese Women and Consequences”, *Sociology and Anthropology*, (2018): 652

90. Uddhab Pd. Pyakurel, “Restrictive Labour Migration Policy on Nepalese Women and Consequences”, *Sociology and Anthropology*, (2018): 652

91. The Kathmandu Post, “For Nepali women seeking work in the Gulf, new routes and old risks”, (4 January 2020).

92. A study on Restrictive Labour Migration Policy on Nepalese Women and Consequences by Pyakurel found that 3,200 Nepali women had been intercepted at New Delhi Airport in 2012 within a few months after the government requested Indian authorities to stop Nepali women in transits en route to the Gulf on visitor visas. “Nepali Times (2012) quoted Immigration officials at New Delhi airport and reported that they (the officials) intercept up to five Nepali women every day on forged passports or visas”. See Uddhab Pd. Pyakurel, “Restrictive Labour Migration Policy on Nepalese Women and Consequences, *Sociology and Anthropology*”, (2018): 650-656.

93. Specialist at AMKAS, interview, 17 January 2020.

94. Specialist at AMKAS, interview, 17 January 2020.

95. Uddhab Pd. Pyakurel, “Restrictive Labour Migration Policy on Nepalese Women and Consequences”, *Sociology and Anthropology*, (2018): 652.

96. Senior official, Foreign Employment Board, interview, 13 January 2020.

Indeed, government-imposed bans and restrictions on domestic workers drive women to take irregular routes when migrating abroad for work, and to use the services of recruiting agencies and agents that charge them fees far in excess of the national legal limit. Following his visit to Nepal in 2018, the UN Special Rapporteur on the human rights of migrants expressed concern that such restrictions on domestic workers were exposing Nepalese women to a greater risk of abuse and exploitation by forcing them into irregular migration via India at the hands of unethical recruiters, or by allowing their travel with a labour permit for a different job only to find themselves hired as domestic workers upon arrival in the destination country.<sup>97</sup>

Some women who migrated to the Gulf via transit countries such as India told us they did not know the route was irregular, while others were aware of the government ban. One woman described knowingly taking an unauthorised route via India after a business contact stole money from her, leaving her family in debt and her children unable to continue their education.<sup>98</sup>

Other government actions, although seemingly well-intended, fail to take into consideration women's specific needs and challenges. In March 2019 the Nepali authorities amended the FEA to ban recruitment agencies from hiring sub-agents.<sup>99</sup> While the reform was aimed at preventing fraudulent activities, it disproportionately affected women migrants' access to foreign employment given their heightened reliance on sub-agents in their own villages, whom they often trust and know through other members of their communities, not only to obtain relevant information but also to assist them through the migration process as the first point of contact and interface with all external stakeholders (see 4.1). Importantly, it has not stopped fraud, according to a DOFE official.<sup>100</sup>

In February 2021 the Nepali government proposed a new law which would require Nepali women under the

age of 40 to seek permission of a male guardian before migrating to the GCC or an African country for work,<sup>101</sup> prompting significant outrage and protests against such regressive proposals which would further undermine women's rights and most likely endanger women further by making them more reliant on irregular migration processes.<sup>102</sup>

## Kuwait

Kuwait ratified CEDAW in 1994 but entered several reservations that discriminate against women with regards to marriage and nationality. In 2017, the CEDAW Committee expressed concern that women migrants remained "vulnerable to abuse, sexual harassment and forced labour".<sup>103</sup> The 2035 National Development Plan includes gender-specific goals and indicators, though none are related to fair recruitment or migration.<sup>104</sup>

Women migrants account for 32% of Kuwait's population.<sup>105</sup> 45% work in the domestic sector, although civil society organisations believe that the number of female migrant workers in Kuwait is much larger than official statistics indicate, as they do not capture significant numbers of undocumented.<sup>106</sup> Nine out of ten Kuwaiti households have at least one domestic worker, the majority of them women.<sup>107</sup>

The 2015 Domestic Workers Law guarantees migrant domestic workers a number of labour rights including one day of rest per week, a 12-hour working day with rest periods, and annual paid leave. By adopting this legislation, Kuwait recognized the specific challenges and risks faced by domestic workers, in particular women migrants, and built on protections contained in Law No. 91 of 2013 on Combating Trafficking in Persons and Smuggling of Migrants.<sup>108</sup>

Despite this, the 2015 Domestic Workers Law contains significant gaps and loopholes and fails to guarantee domestic workers the same protections as those found

97. Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal", A/HRC/38/41/Add.1, (13 April 2018).

98. Migrant worker in Kuwait, remote interview, 8 August 2020.

99. The Kathmandu Post, "Scrapping of sub-agents from foreign employment leads to drop in fraudulent cases", (11 February 2020).

100. Interview with DOFE official, January 2020.

101. The Kathmandu Post, "New rule requiring women under 40 to take approval from family, local ward office to go abroad draws criticism", (10 February 2021).

102. South China Morning Post, "'Nepal is becoming Afghanistan': activists hit out at plan requiring women to get male assent for foreign travel" (18 February 2021).

103. CEDAW, *Concluding Observations on the fifth periodic report of Kuwait*, CEDAW/C/KWT/CO/5, (November 2017): 10.

104. CEDAW, *Concluding Observations on the fifth periodic report of Kuwait*, CEDAW/C/KWT/CO/5, (November 2017): 10.

105. Trading Economics, "Kuwait Female Migrants (Percent of International Migrant Stock)".

106. Françoise De Bel-Air, "Demography, Migration, and the Labour Market in Kuwait", Gulf Labour Markets, Migration and Population, (2019) :8.

107. BBC, "Slave markets found on Instagram and other apps"; BBC, (31 October 2019).

108. CEDAW, *Concluding Observations on the fifth periodic report of Kuwait*, CEDAW/C/KWT/CO/5, (November 2017)

in the 2010 Private Sector Labour law, including in relation to the length of the working day, maternity leave, breaks for breastfeeding mothers, and non-discrimination on account of pregnancy.<sup>109</sup> It does not include any implementation and control mechanisms, nor does it provide for mandatory inspections.<sup>110</sup> Crucially, the right to a weekly rest can be dismissed if the worker gives his or her “consent”, which is problematic in such a severely imbalanced employer-employee situation in a private household, governed by Kuwait’s sponsorship system. In addition, domestic workers must prove that their sponsor has violated the terms of their contract in order to leave their job without penalty, and even then, they do not have the option of changing employers unless they have completed the contract period. Sponsors, on the other hand, can cancel the contract for any reason at any time. In March 2021 a significant Court of Appeal ruling rejected an employer’s claim that their former domestic worker who had run away should compensate the employer for failing to complete their two year employment contract. Kuwaiti media reported that the court’s judgement stated that, “forcing [a domestic worker] to work during the entire term of the contract represents one of the types of modern forced labor or slavery, which is what the laws in civil states try to fight.”<sup>111</sup>

In 2016, Kuwait became the first GCC country to set a minimum monthly wage of KD60 (USD 200) for domestic workers.<sup>112</sup> In 2018, it shifted the jurisdiction over domestic workers from the Ministry of Interior to PAM, which regulates the employment of migrant workers covered by the labour law.<sup>113</sup> An IOM representative welcomed this development and saw it as a sign of enhanced coherence in the implementation of Kuwait’s labour protections.<sup>114</sup> However, despite these reforms, abuses against domestic workers, the overwhelming majority of whom are women, persist not only because of legal gaps but also due to weak implementation. According to Migrant-Rights.Org, the enforcement of the 2015 Domestic Workers Law is “almost non-existent”

with migrant domestic workers considered to effectively be “beyond the reach of legal protection” given that their employment takes place within the private sphere. With the absence of investigatory powers and grievance processes detailed in the law, employers of domestic workers are “virtually self-regulatory”, with penalties only being issued in response to complaints.<sup>115</sup>

An Al-Durra recruitment company representative told us that employers are reluctant to grant domestic migrant workers freedom of movement: “These workers need to understand that we are a conservative society. Our women don’t leave the house alone, the same goes for our maids because they become part of the household. We worry about them because they do not speak Arabic and could fall victim to a crime.” He went on to say that there is, “widespread concern that they would engage in sexual relationships as well and come back to us with diseases and pregnancies. Why would I want my kids to be around something like that?”<sup>116</sup>

A survey conducted in 2018 by the Kuwait Society for Human Rights (KSHR) found that 71.59 % of domestic workers themselves are unaware of the law and that more than half of employers did not have a contract for their domestic worker, which suggests continuing high levels of abusive recruitment practices and insecure working conditions. About 28% of employers acknowledged that they do not allow their workers to have a weekly day off, only 42% permitted the weekly day off from time to time, and 51% denied workers annual leave.<sup>117</sup> In 2019, a BBC Arabic undercover investigation found that thousands of women domestic workers were effectively being illegally “traded” via online markets or apps hosted by Facebook, Google and Apple and recruited into highly abusive work situations where they continued to face exploitation, physical and sexual abuse. According to BBC Arabic, the vast majority of the “sellers” of these women migrants advocated “confiscating the women’s passports, confining them to the house, denying them any time off and giving them little or no access to a phone”<sup>118</sup>

109. Article 65 of the Private Sector Labour Law limits the working day to eight hours, while articles 24-25 guarantee women 70 days of paid leave and four months of unpaid leave for childbirth and grant female workers two hours off during the working day for breastfeeding.

110. Human Rights Watch, “Kuwait: New Law a Breakthrough for Domestic Workers”, (June 2015).

111. Al Jarida, 9) *محكمة الاستئناف: لا يجوز إجبار العمالة المنزلية على العمل طوال العقد*, (March 2021).

112. Françoise De Bel-Air, “Demography, Migration and the Labour Market in Kuwait”, Gulf Labour Markets, Migration and Population, (2019): 7.

113. Migrant-Rights.Org, “Lived Experience of Migrant Women: Qatar, Bahrain, and Kuwait”, (2019): 15-16.

114. Interview with IOM Kuwait official, December 2019.

115. Migrant-Rights.Org, “Lived Experience of Migrant Women: Qatar, Bahrain, and Kuwait”, (2019): 24.

116. Senior representative of Al-Durra, remote interview, May 2020.

117. Kuwait Society for Human Rights, “The Rights of Domestic Workers between Legislative System and Enforcement”, (2018): 30-37.

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

The Kuwaiti authorities do not appear to take into account gender identity when devising and implementing migration policies and continue to discriminate against LGBTI people both in law and in practice. Article 198 of the Penal Code criminalizes “imitating the opposite sex,” which exposes transgender people to the risk of arbitrary arrest. In recent years, Human Rights Watch has documented scores of cases in which Kuwait police subjected transgender women to torture and sexual violence on account of their gender identity.<sup>119</sup>

## Qatar

Qatar acceded to CEDAW in 2009 but made a number of reservations on fundamental provisions to the Convention, including in relation to inheritance, marriage, and citizenship.<sup>120</sup> NGOs report that women are inadequately protected against domestic violence, and face discrimination in law and in practice.<sup>121</sup>

Like many GCC states, Qatar has striking levels of gender imbalance. According to the World Bank, in 2019, women made up only 24.7% of Qatar’s total population, making it the smallest female proportion of any country’s population in the world.<sup>122</sup> This is a direct result of Qatar hosting large numbers of unaccompanied male migrants, working in the low-paid sectors of the labour market. Although many of these workers are married and have children, they cannot afford to bring their families to Qatar as the majority do not earn anywhere near the required minimum salary of 10,000 riyals (USD 2,620) that would enable them to do so.<sup>123</sup>

In 2017, Qatar adopted Law No. 15 of 2017 on Domestic Workers (2017 Domestic Workers Law) addressing significant gaps in Qatar’s labour rights protection predominantly impacting female migrants, in a move that acknowledged specific risks to women workers. Although it provides weaker protections than the 2004 Labour Law, which continues to exclude domestic workers, and does not outline enforcement mechanisms,

the law grants domestic workers three weeks of annual leave, one day rest a week, an end-of-service payment, and a maximum 10-hour workday.<sup>124</sup> In January 2020, a ministerial decision removed exit permit requirements for domestic workers (though they are still expected to notify employers 72 hours prior to leaving the country), and other previously excluded groups of foreign workers, in another step towards greater protection for migrant women’s rights.<sup>125</sup> However, major challenges with the enforcement of the 2017 Domestic Workers Law persist and, combined with harmful gender stereotypes and weak guarantees for women’s rights in general, female migrant workers continue to face abuses, highlighted in a 2020 report by Amnesty International on the situation of domestic workers.<sup>126</sup> And while the exit permit has been largely removed, employers can still lodge criminal “absconding” charges against domestic workers, providing another barrier to their ability to leave the country freely.

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>127</sup>

Since 2010, Qatar has adopted a series of laws segregating mainly unaccompanied male migrant workers and prohibiting them from living in large areas of the country, particularly the capital, designated as “family only” areas.<sup>128</sup> Most recently, Ministerial Decision No. 105 of 2020 issued by the Minister of Municipality and Environment banned groups of more than five workers from living in such “family areas”, and permitted forced evictions, electricity and water cuts and imprisonment in case of non-compliance.<sup>129</sup>

119. Human Rights Watch, “Kuwait: End Police Abuses against Transgender Women”, (15 January 2012); Human Rights Watch, “Kuwaiti Transgender Woman’s Video Sparks Worldwide Solidarity”, (10 June 2020).

120. CEDAW, “Qatar reservations”, (2009).

121. Human Rights Watch, “Qatar events of 2018”, (2018).

122. World Bank, “Female population (% of total population)”, (2019).

123. Professor Ray Jureidini, “Migrant labour recruitment to Qatar”, Qatar Foundation, (2014): 8.

124. Human Rights Watch, “Qatar: New Law Gives Domestic Workers Labor Rights”, (24 August 2017).

125. ILO, “Exit permits consigned to history for almost all migrant workers in Qatar”, (16 January 2020).

126. Amnesty International, “Qatar: Domestic workers share harrowing accounts of abuse and exploitation”, (20 October 2020)

127. ADLSA, *Standard Employment Contract for Domestic Workers*, (2021)

128. The Guardian, “Qatar’s ‘families only’ zones entrench segregation of migrant workers”, (13 April 2016).

129. Ministry of Municipality and Environment, “قرار وزاري بتحديد تجمعات العمال في مناطق سكن العائلات”, (April 2020).

There is no evidence indicating that gender identity is taken into account in the formulation and implementation of migration policies. In fact, Qatari legislation criminalizes consensual same-sex relations and punishes acts deemed to be immoral, discriminating against LGBTI people.

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### **1.5 Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the worker need multiple permissions at different levels of the state to migrate?)**

#### **Nepal**

Each aspiring migrant must obtain a labour permit in order to be able to travel abroad for work through a process which is regulated by the 2007 FEA and its 2008 Rules.<sup>130</sup> Labour permit requests can be initiated either by individuals or institutions and must be submitted through DOFE. However, the process is lengthy and complicated, and as a result, 90% of aspiring migrants go through recruitment agencies in order to obtain labour permits and visas, with more than 75% of workers reporting abusive practices, according to a 2019 National Human Rights Commission report.<sup>131</sup> Although recruitment agencies are responsible for facilitating the recruitment process on behalf of aspirant migrant workers, they must obtain a license from DOFE as per procedures mandated under the FEA. The recruitment process, as described to us by an agency, is as follows:<sup>132</sup>

1. Obtaining a “demand letter”, detailing the number of workers and skills required by employers in a destination country
2. Certifying the demand letter at the relevant Nepali diplomatic mission
3. Acquiring a labour permit from DOFE to begin the process of recruiting workers
4. Publishing an advertisement for workers’ recruitment

5. Completing the worker selection process
6. Ensuring that selected workers undergo medical examinations
7. Completing visa procedures on behalf of selected workers
8. Signing contracts with workers
9. Organising a pre-departure orientation training
10. Making insurance payments and contributions to the welfare fund
11. Collecting the final labour permit from DOFE
12. Handing over passports and labour permit papers to the workers
13. Organizing the travel of migrant workers for foreign employment

Article 19 of the FEA requires recruitment agencies to submit various documents to obtain labour permits on behalf of aspiring migrant workers. These include health and insurance certificates, a copy of the contract between the agency and the worker, a copy of the contract between the employer and the worker, and a receipt showing recruitment fees paid by workers.

In November 2019, DOFE introduced electronic labour permits (also referred to as e-stickers) with the aim of reducing document forgery and irregular migration, and to decrease costs associated with travel to Kathmandu for aspiring migrant workers to collect labour permits.<sup>133</sup>

#### **Kuwait**

Employers seeking to recruit non-Kuwaiti workers must first secure an annual approval on the number of staff they require from the General Manpower Authority (GMA), which falls under PAM’s supervision.<sup>134</sup> Misrepresenting or inflating the number of workers required can result in a fine of up to KWD500 (USD 1,634). Repeat offenders can be fined up to KWD1,000 (USD 3,628). Non-Kuwaiti workers can only be employed as long as there are no Kuwaiti nationals available to perform the job, the employer’s plan is consistent with their business needs, and a match between the worker and employer has been identified.<sup>135</sup> Once an approval

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130. Section 15 of [Foreign Employment Act, 2007](#)

131. 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): 163

132. Interview with representative of Trikon recruitment agency, 18 December 2020.

133. The Himalayan Times, “[Government starts issuing e-stickers to migrant workers](#)”, (14 November 2019).

134. [Private Sector Labour Law](#), Articles 9 and 10, 2010.

135. [The Public Authority for Manpower, Administrative Order 552 of 2018 Regulating the Rules and Procedures for Granting a Work Permit](#), Article 26, 2018.

has been granted, employers must apply for a work permit on behalf of the migrant worker within a month of his or her arrival in Kuwait, attaching the worker's travel document, the entry visa certified in a Kuwaiti consulate abroad, a copy of the employment contract, and an application form signed by the employer.<sup>136</sup> The work permit is valid for three years.<sup>137</sup>

Under Article 10 of the 2010 Private Sector Labour Law, employers are banned from recruiting foreign workers without providing them with employment and must "bear the expenses for returning the labourer to his country" if it becomes obvious that the worker is not needed.<sup>138</sup> Despite this, a 2014 KNOMAD pilot survey on migration costs in Kuwait found that many Kuwaiti nationals were involved in so-called visa trading, with "large amounts [being] paid by workers for their visas, [and] the money going to Kuwaiti citizens who have permission to recruit foreign workers, not the Kuwaiti government". Kuwaiti nationals also sell these visas to recruiters in countries of origin, who pass the cost on to workers.<sup>139</sup>

A Kuwaiti government official told us that visa trading remained rampant among migrant workers from countries with whom Kuwait did not have MOUs on migration. He said the introduction of such an agreement between Egypt and Kuwait had decreased visa trading and the number of Egyptians working in Kuwait on "free visas".<sup>140</sup> We have not seen any statistical evidence to support this claim.

## Qatar

The employment of migrant workers is regulated under Section 3 of the 2004 Labour Law. Under Article 18, priority in employment is given to Qatari nationals, and foreign workers can only be hired as long as there are no Qatari workers qualified for the required job, they have a residence permit and they are medically fit.

To hire non-Qataris, companies must apply to ADLSA, providing details of their request, which includes profession, nationality, gender, and number of workers.<sup>141</sup> Decisions on migrant worker recruitment applications are taken by committees operated by ADLSA and the Ministry of Interior. A Permanent Committee for Recruitment was established in 1995, under the auspices of the Ministry of Interior, to take decisions on the recruitment of migrant workers after reviewing the "type of workforce to be recruited, their nationalities and qualifications to perform the required works".<sup>142</sup> In 2003 this was turned into a cross-government committee, chaired by the labour ministry (now ADLSA) and including officials of the Ministry of Interior.<sup>143</sup> In 2013, a separate Permanent Committee for Recruitment was set up in the Ministry of Interior, with a specific mandate for decisions on the recruitment of domestic workers, among other issues.<sup>144</sup> The processes of the two committees and the relationship between them are opaque, with little official information provided on the basis for their decision-making, with a 2015 media article reporting that the cross-government committee, which met three to four times a week, processed companies' applications in less than a week, and that companies had to commit to having no preference with regard to nationality.<sup>145</sup> In 2018, ADLSA said it would cancel the Permanent Committee for Recruitment,<sup>146</sup> but this does not appear to have taken place.<sup>147</sup>

Once the nationality quota has been approved, ADLSA issues "block visas" and a demand letter, which then needs to be signed and stamped by the Ministry of Interior, the Ministry of Foreign Affairs and the Qatari Chamber of Commerce,<sup>148</sup> before being sent to the embassy of the origin country in Qatar for attestation. Once approved, the demand letter is granted to the employer, who can then provide this to either an agency in Qatar or directly to a recruitment agency in the origin country for them to start the worker selection process.

136. The Public Authority for Manpower, *Administrative Order 552 of 2018 Regulating the Rules and Procedures for Granting a Work Permit*, Article 28, 2018.

137. The Public Authority for Manpower, *Administrative Order 552 of 2018 Regulating the Rules and Procedures for Granting a Work Permit*, Article 29, 2018.

138. *Private Sector Labour Law*, Article 10, 2010.

139. Manolo Abella and Philip Martin, "Migration Costs of Low-skilled labor migrants: Key Findings from Pilot Surveys in Korea, Kuwait and Spain", KNOMAD, (2014): 10.

140. Kuwaiti government official, interview, December 2019.

141. *Hukoomi: Submit labour request*

142. Council of Ministers Resolution No (5) for 1995 Concerning the Establishment of the Permanent Committee for Recruitment

143. Council of Ministers Resolution No (26) for 2003 concerning the Permanent Committee for Recruitment

144. Council of Ministers Resolution No (49) for 2013 concerning the Establishment of the Permanent Committee for Recruitment in the Ministry of the Interior

145. The Peninsula, "Online facility to help recruit new workers", (21 November 2015).

146. Al Sharq, (18) "إنشاء مدينة عمالية جديدة بمواصفات عالمية نهاية العام الجاري", February 2018).

147. The ADLSA website still referred to the Permanent Recruitment Committee in June 2021.

148. Verité, "An Exploratory Study on the Role of Corruption in International Labor Migration", (January 2016): 9.

Employers expressed frustration to us regarding the lack of transparency and rigidity of the “block visa” system, which does not take into consideration their preferences as regards nationality and workers’ skills. One told us, however, that he respected the reason for this policy:

*“It is irritating when you go ask for a number of engineers or workers from a specific country that you trust and [the request is] only half granted, but I have never heard of a project dying because of that.... If the authorities do not keep the numbers diversified and allow companies to recruit as they please, we will start to see the expat community from some countries like India, the Philippines or Egypt grow even bigger, and that could empower these groups to organise. Imagine if we allow Qatari companies to rely mostly on Indians, what will happen if these communities decide to strike to demand more privileges? They would bring the country to a halt.”<sup>149</sup>*

Research conducted in 2014 on behalf of Qatar Foundation found that the visas which were issued as part of this process did not accord with the actual skills being sought, so that workers ended up with employment contracts showing positions that differed from the job descriptions listed on their visa, forcing them “to accept a fraudulent occupation on [their] ID card for which [they are] liable”.<sup>150</sup>

Another consequence of the lack of transparency in ADLSA’s quota system, and the complexity of the visa process in general, is that many companies and recruitment agencies resort to so-called “visa trading” or “free visas” because they are unable to secure visas for the jobs and skills they require.<sup>151</sup> A “free visa” one that is sold by sponsors, usually through informal networks in the country of origin,<sup>152</sup> to workers, who generally pay a monthly fee for their residence permits. In return, they are allowed to work for other employers, a practice which is illegal under Qatari law and places workers at

risk of arrest and deportation.<sup>153</sup> When working under a “free visa”, migrants perform jobs other than those listed on their residence permits which tie them to their sponsors. As a result, they are also vulnerable to extortion by sponsors who can threaten them with cancelling their contracts.<sup>154</sup> It is yet to be seen what impact the removal of the no objection certificate, which should allow more labour market mobility for workers, will have on the “free visa”. An expert familiar with the reform process told us they hoped these reforms would foster a local labour market with greater job mobility for migrants, reducing Qatar’s dependency on new arrivals from overseas using high-risk recruitment processes.<sup>155</sup> The Qatar Chamber of Commerce and Industry announced a new platform for local recruitment in August 2020, with further plans afoot to launch a portal for local employment by the government as well.<sup>156</sup>

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## 1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country?

### *Kuwait*

Kuwait’s kafala sponsorship system, derived from the amended 1959 Aliens’ Residence Law and its associated decrees, ties migrant workers to a local “sponsor”, who, as their employer, controls their entry to the country, renewal of their residence permits and termination of their employment.<sup>157</sup> This highly-imbalanced employer-employee power dynamic creates a permissive environment that, as the ILO Committee of Experts has observed, exposes many workers to “abuse and undermines their ability to have recourse to means of redress.”<sup>158</sup>

One of the most problematic effects of the sponsorship system is that workers face significant obstacles to change employers, since in almost all cases, this cannot be done without the permission of that current

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149. Interview with business owner in Qatar, July 2020.

150. Professor Ray Jureidini, “Migrant Labour Migration to Qatar”, Qatar Foundation, (2014): 91.

151. Professor Ray Jureidini, “Migrant Labour Migration to Qatar”, Qatar Foundation, (2014): 93.

152. Silvia Pessoa, Laura Harkness and Andrew M. Gardner, “Ethiopian Labor Markets and the “Free Visa” System in Qatar”, Human Organisation, (2014): 206.

153. Amnesty International, “Abusive Labour Migration Policies, Submission to the UN Committee on Migrant Workers”, (April 2014): 6.

154. Professor Ray Jureidini, “Migrant Labour Migration to Qatar”, Qatar Foundation, (2014): 93.

155. Interview with expert familiar with the reform process (name withheld), September 2020.

156. The Peninsula, “Labour re-employment platform now available for all companies: Qatar Chamber”, (20 July 2020).

157. ILO, “Employer-Migrant Worker Relationships in the Middle East: Exploring scope for internal market mobility and fair migration”, (March 2017): 12.

158. ILO, “Report of the Committee of Experts on the Application of Conventions and Recommendations”, (2019): 410.

employer. Even if the employer grants that permission, then workers must still have completed one year of continuous employment, or, if that period has not passed, pay a fee of KWD 300 (USD 989), as well as obtaining a further authorisation for the change from PAM itself.<sup>159</sup> For workers who were recruited to work on government contracts, the time of continuous labour residence in Kuwait extends to three years before any change can be sought. Those in the farming, fishing, and agricultural sectors also face additional restrictions.<sup>160</sup>

The only circumstance in which a private sector migrant worker can transfer jobs without the permission of their employer is if three years have passed since their work permit was issued, and they give 90 days' notice to their current employer.<sup>161</sup> This was the reform of Decree No. 378 of 2016 which PAM adopted as a step towards introducing some flexibility into the rigid kafala provisions. Migrant workers, who wish to change employment without the permission of their employer, and before the completion of three years of service, must file a complaint with PAM's Labour Relations Department.<sup>162</sup>

The provisions of Decree No. 378 of 2016 do not extend to domestic workers, however, who are excluded from the protections of the 2010 Private Sector Labour Law, and whose job mobility continues to be severely restricted even despite the introduction of the 2015 Domestic Workers Law. A previous directive had formerly enabled domestic workers to transfer to a different sponsor once every two years, with the sponsor's approval. However, a standardized labour contract for domestic workers was introduced by the Ministry of Interior in 2006, removing this right.<sup>163</sup> If a domestic worker cannot secure transfer approval from their original sponsor, they are only able to change employers after they have completed their contract.<sup>164</sup>

This situation clearly leaves many migrants without any means to escape abusive working environments, and

women migrant workers are particularly vulnerable to mistreatment when trying to change jobs. If workers try to obtain the employer's permission to leave, as Migrant-Rights.Org has pointed out, "an abusive employer is unlikely to release a worker, especially without charging the worker a high – though illegal – fee. It is difficult for workers to legally challenge rejection to a NOC [No Objection Certificate]. Most would be unaware of the procedure, and the burden of proof and associated costs are high in what is often a protracted and clunky process."<sup>165</sup>

If migrant workers decide to act independently, employers can file "absconding" or "runaway worker" charges for leaving without their consent. Such charges are filed by employers with either PAM or the police, and different protections exist depending on the category of workers. For those covered under the private sector law, absconding charges are registered 90 days after they were filed, while domestic workers are formally charged merely seven days after the employer's initial reporting of "absconding".<sup>166</sup> During this "grace" period, both categories of workers can contest the charge in PAM's offices provided that the original "absconding" was filed with PAM itself.<sup>167</sup> If workers' appeals are dismissed, their residency permits are automatically cancelled, putting them at risk of arrest, detention for up to six months with a fine of up to KWD600 (approximately USD 1,980), and eventually deportation and a six year re-entry ban to Kuwait.<sup>168</sup> In cases where employers report "absconding" directly to the police, migrants are usually unable to challenge the charge, and they are automatically placed under arrest, pending deportation. In some cases, employers have been found to have filed false absconding charges against workers in retaliation for a disagreement, or to prevent workers from accessing grievance mechanisms, or to avoid some legal obligations owed to the worker.<sup>169</sup> The only means for the worker to avoid the registration of the absconding charge is to attend the PAM shelter or to notify the

159. Kuwaiti Ministerial Order No. 227 of 2014 Amending Ministerial Order No. 200 of 2011 concerning the regulation of employment in the private sector, Article 2, 2014.

160. Kuwaiti Ministerial Decree No. 200 of 2011 on regulating work in the private sector, Al Kuwait Al Youm, Al Jarida Al Rasmiyya, 27-2-2010, No. 1016., Article 13, 2011.

161. ILO, "Application of International Labour Standards", (2019): 410.

162. Ministerial Decree No. 200 of 2011 on regulating work in the private sector, Article 16, 2010; Françoise De Bel-Air, "Demography, Migration and the Labour Market in Kuwait", The Gulf Labour Markets, Migration and Population, (2019): 7.

163. Maysa Zahra, "The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination", The Gulf Labour Markets, Migration and Population, (2014).

164. Migrant-Rights.Org, "Lived experiences of Migrant Women: Qatar, Bahrain and Kuwait", (2019): 16.

165. Migrant-Rights.Org, "Lived experiences of Migrant Women: Qatar, Bahrain and Kuwait", (2019): 24.

166. ILO, "Kuwait: Regulatory Framework governing migrant workers", (November 2019): 3

167. Migrants-Right.Org, "Huroob, Runaway, Absconding: Trapping migrants in extreme abuse", (30 September 2020).

168. ILO, "Kuwait: Regulatory Framework governing migrant workers", (November 2019): 3

169. Migrant-Rights.Org, "Kuwait drops all "absconding" cases reported during Covid-19 crisis", (9 July 2020).

Domestic Workers Department. The shelter however is open to women migrants only, and accessing it is not possible without a police referral. Once accepted in the shelter, women migrants cannot leave the premises freely, according to Social Work Society, which provides legal services in the facilities.<sup>170</sup>

Even if a worker manages to change jobs, they may face problems with their status: in January 2020, Kuwaiti media reported an increase in arrests of women migrants for working in non-domestic areas of the private sector despite having been recruited as domestic workers, therefore breaching provisions of the 2010 Private Sector Law and the 2015 Domestic Workers Law in relation to changing jobs.<sup>171</sup>

The grim reality of the position in which many workers find themselves was revealed by a 2019 BBC Arabic investigation, which exposed the online market trading of women domestic workers via mobile applications and social media (see 1.4 and 5.3). Following this exposé, the Director-General of the General Administration of Residency Affairs issued a circular updating the sponsorship transfer process for domestic workers, requiring both the current and new sponsor to be physically present in the Office of Residency Affairs, along with the domestic worker, to arrange a transfer of sponsorship. The worker's written consent is also now required for the transfer to be arranged.<sup>172</sup>

In March 2021, amidst a major employment crisis and labour shortages triggered by the Covid-19 pandemic, the Public Authority for Manpower (PAM) issued a new decision easing some restrictions on migrant workers' ability to change employers. Administrative decision no. (142) of 2021 allows locally-employed migrants to transfer between public, private and free trade zone sectors (until further notice) and before completing one year's service (as is normally required under article 5 of the administrative decision no. (842) of 2015), but only with the approval of their previous employer.<sup>173</sup>

## Qatar

Until 2020, migrant workers could not move jobs within their contract periods without the permission of their employers, under Law no 21. of 2015 (sometimes called "the sponsorship law"). The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance noted in December 2019, following her visit to Qatar, that "immense power imbalances persist[ed] between employers and migrant workers, imbalances rooted in the kafala (sponsorship)" resulting in many low-income workers [being] too afraid to seek justice for labor violations, and reasonably so."<sup>174</sup>

However, in a long-awaited breakthrough, on 30 August 2020, the Qatari authorities adopted Law No. 19 of 2020 removing restrictions on migrants' ability to change jobs before the end of their contracts, without having to first obtain a "No Objection Certificate" (NOC) from their employer.<sup>175</sup> Law No. 18 of 2020, adopted on the same day, set out procedures for the termination of contracts, allowing migrant workers to leave their jobs on the condition that they provide one month notice in writing, if they have worked for the employer less than two years, and two months' notice after the first two years of employment.<sup>176</sup> Amnesty International said that, "if implemented as promised, the removal of restrictions on workers changing jobs should make it easier for workers to escape abuse".<sup>177</sup>

However, some elements of kafala have remained. With Article 16 of Law No. 21 of 2015 unchanged, employers are still able to file criminal "absconding" charges against migrants who leave their positions without consent. Qatari media reported in late 2020 that this charge would be abolished "soon", but no subsequent announcements have been made in this regard.<sup>178</sup> In the meantime, some employers may continue to use them as a threat against those workers who dare to complain. Although foreign workers are able to leave for another job prior to the end of their six-month probation period, provided that they give one month's notice in writing, their new employers will still have to repay a

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

171. Arab Times, "Influx of visa holders to tighten", (14 January 2020).

172. Migrant-Rights.Org, "Kuwait and Saudi Arabia react to BBC's investigation of online 'maid trade'", (11 December 2019).

173. Migrant-Rights.Org, "Kuwait issues a new decision to ease job transfer of migrant workers", (5 March 2021).

174. UN Human Right Council, "End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Prof. E. Tendayi Achiume, at the Conclusion of Her Mission to Qatar Doha, Qatar", (1 December 2019).

175. Law No. 19 of 2020 amending certain provisions of Law No. 21 of 2015 related to organizing the entry and exit of expatriates and their residence. Migrant workers' job mobility was previously significantly more restricted under Law No. 21 of 2015, making them vulnerable to exploitation and other abuses by employers.

176. Law No. 18 of 2020 amending certain provisions of Law No. 21 of 2015 related to organizing the entry and exit of expatriates and their residence.

177. Amnesty International, "Qatar: New laws to protect migrant workers are a step in the right direction", (30 August 2020).

178. The Peninsula, "System of reporting absconding workers to be abolished soon", (20 October 2020).

proportion of their recruitment fees and air ticket to their old employers.<sup>179</sup> There is some concern that these costs could be passed onto workers. Workers will also continue to be dependent on their employers for the renewal and cancellation of their residence permits, maintaining a power imbalance in the employee-employer relationship.<sup>180</sup>

The government told media organisations that in the final quarter of 2020, 78,000 migrant workers switched jobs under the new law.<sup>181</sup> However by November 2020, there were signs that businesses were seeking to find ways of blocking workers from changing jobs, and reports of job transfers being conditional upon the current employer's signing of the workers' resignation letter suggested that the NOC was still de facto in operation in some sectors, in particular domestic work. One NGO called it "the de facto NOC".<sup>182</sup> In February 2021, the Shura Council put forward recommendations which would effectively undo the September 2020 reforms by requiring more workers to seek permission to exit the country and reintroducing restrictions on workers' ability to change employers during the duration of their contracts.<sup>183</sup> It was unclear how the government planned to respond to these proposals, at the time of writing in June 2021.

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## 1.7 Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship?

### *Kuwait*

Kuwait does not offer any meaningful pathway to permanent residence and naturalization for migrant workers. In theory, under Article 4 of the 1959 Nationality Law, Kuwaiti nationality can be granted by decree upon the recommendation of the Minister of Interior to anyone "of full age" who has been lawfully residing in Kuwait for 20 consecutive years (or 15 in the case of Arab nationals), has earned a living lawfully, has sufficient

knowledge of Arabic, is "qualified" or provides services needed in Kuwait, and has been a Muslim for at least five years.<sup>184</sup> While some low-paid migrant workers may be eligible in theory for this programme, the reality is that it is not intended for them. Indeed the direction of travel is in the opposite direction: in 2020, Kuwait banned the renewal of residence permits for migrant workers above the age of 60 without university degrees.<sup>185</sup>

Family reunification is only possible under specific circumstances, subject to earnings. Only male migrant workers are allowed to sponsor their spouses or children in Kuwait, but they must earn a (largely unattainable) minimum monthly salary. Furthermore, only female children above the age of 21 can be sponsored by their parents.<sup>186</sup>

### *Qatar*

Qatari laws do not provide a clear pathway to either long-term residency or citizenship for migrant workers. Law No. 10 of 2018 on Permanent Residence grants permanent residence to a maximum of 100 foreign nationals every year.<sup>187</sup> It gives priority to children and spouses of Qatari women, and allows migrant workers to apply for permanent residence in very limited circumstances: they must have lived in Qatar for at least 20 years, speak Arabic, "be of good behaviour and reputation", and importantly, have the required financial resources.<sup>188</sup> Alternatively, under Law No. 38 of 2015 on the Acquisition of Qatari Nationality, foreign nationals must reside in the country for at least 25 years, speak Arabic, have a "lawful means of income" and a "good reputation" in order to be granted Qatari nationality.<sup>189</sup> Dual citizenship is banned.

These laws aim to protect Qatar's national and political identity, and effectively exclude almost all of the country's two million migrant workers, who are low-paid, on temporary contracts, and normally know little Arabic.

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179. Law No. 19 of 2020 amending certain provisions of Law No. 21 of 2015 related to organizing the entry and exit of expatriates and their residence

180. Amnesty International, "Qatar: New laws to protect migrant workers are a step in the right direction", (30 August 2020).

181. Al Jazeera, "Labour law changes: Are Qatar's migrant workers better off?", (15 March 2021)

182. Migrant-Rights.Org, "A de facto NOC in Qatar?", (10 January 2021).

183. The Peninsula, "Shura Council makes recommendations on change of employer and expat worker's exit", (22 February 2021).

184. Nationality Law, 1959.

185. Kuwait Times, "Exemptions to over-60 expat ban mulled", (5 April 2021).

186. IOM, "Migration Governance Overview: the State of Kuwait", (May 2018): 3

187. Human Rights Watch, "Qatar's Permanent Residency Law a Step Forward but Discrimination Remains", (11 September 2018). The maximum number of permanent residency cards can be increased only by the Emir upon recommendation by the Ministry of Interior.

188. Law No. 10 of 2018 on Permanent Residency

189. Law No. 38 of 2015 on the Acquisition of Qatari Nationality

# Assessment against the Five Corridors indicators:

## 2. Legal and regulatory framework relating to fair recruitment

- 2.1** Has the government ratified core international human rights and core/relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies? \_\_\_\_\_ 45
- 2.2** Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated? \_\_\_\_\_ 48
- 2.4** Are workers' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? \_\_\_\_\_ 53
- 2.5** *Origin state:* Are recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?  
*Destination state:* Are employers' and recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? \_\_\_\_\_ 54

## 2. Legal and regulatory framework relating to fair recruitment

*“It is critical that [Qatar’s] reforms are followed by stringent implementation and prosecution of those who fail to comply.”* CIVIL SOCIETY ORGANISATION MIGRANT-RIGHTS.ORG, 2020

### Summary

Nepal has ratified seven of the nine core international human rights treaties, but it has not engaged in meaningful cooperation with international human rights mechanisms. Nepal has ratified seven of the eight ILO fundamental conventions but has failed to ratify several instruments specifically designed to protect migrant workers’ rights. The country’s 2007 Foreign Employment Act (FEA) regulates private recruitment agencies, and empowers the Department of Foreign Employment (DOFE) to investigate fraudulent activities. The FEA mainly focuses on procedures although it provides some protections for migrant workers throughout the arc of the recruitment process, granting the right to insurance, setting a limit to the fees recruitment agencies can collect from workers, and prohibiting gender-based discrimination. The Act requires pre-departure orientation sessions, Nepali-language contracts, and airport contact points, but offers limited provisions in relation to their return and reintegration. It also fails to offer protections for undocumented migrants who are excluded from accessing grievance mechanisms and legal assistance. In addition to the FEA, Nepal’s civil and criminal law addresses fraudulent practices in recruitment, human trafficking, bonded labour and slavery. Civil society actors were heavily involved from an early stage in the development of the FEA, although worker organisations currently report that they are being excluded from policy and legislative reforms, in a trend consistent with the wider shrinking of civic space in Nepal. Recruiters also complain they are left out of the process, despite concerns about the influence of opaque industry lobbying efforts.

Kuwait has ratified seven out of the nine core international human rights treaties, and seven of the eight core ILO conventions. Kuwait’s legislative and policy framework on fair recruitment processes is weak, with little clarity on who is liable for recruitment costs. Domestic work is the only sector where the law is clear on criminalising the acceptance of any recruitment costs from migrant workers, and in general there are almost no fair recruitment regulations. Indeed, there is a general perception across many of Kuwait’s business institutions that fair recruitment is a problem predominantly to be addressed in origin countries. Undocumented migrants, even those who lose their documents as a result of abusive employment, are vulnerable to arrest and deportation merely on account of their status. Whilst Kuwait has one of the GCC’s most progressive attitudes to workers’ organisations, collective bargaining rights are still severely restricted. There is no formal role for workers’ organisations in the process of drawing up new legislation and policy relating to fair recruitment, although the ILO has welcomed the establishment of an Advisory Committee for Labour Affairs, which brings together representatives of government, the Kuwaiti Chambers of Commerce and Industry, and the Kuwaiti Trade Union Federation.

Qatar has ratified seven out of nine of the core international human rights treaties, and five of the eight core ILO conventions. The country is currently three years into a technical cooperation agreement with the ILO, and has launched a series of significant fair recruitment reforms as part of a wide-ranging labour reform process. The 2004 Labour Law contains protections against

various abusive recruitment practices, including a prohibition on Qatari entities charging workers recruitment fees. Qatar's legislation fails to address these initial worker selection processes in the country of migrant origin and deals only with subsequent stages such as visa processing, work contracts and repatriation of workers at end of service. This means that migrant workers entering Qatar have typically been recruited through registered or unregistered recruitment agencies, sub-agents and local brokers in the country of origin and have paid for those services. The 2004 Law excludes several categories of migrant workers, including domestic workers, who are the subject instead of a subsequent 2017 Law that fails to

provide the same level of safeguards, and especially with regard to the payment of recruitment fees. Undocumented migrants including those who have fled from abusive employers are excluded from legal protections and face arrest and deportation. There are no Qatari worker organisations representing migrants. However, international trade unions have recently engaged in a sustained dialogue with the Qatari government to promote workers' rights, including fair recruitment, under the ILO Technical Cooperation Programme. Private sector organisations are invited to input on legislative proposals by Ministries, the Shura Council and Council of Ministers. Legislation and regulation on recruitment agencies has not been revised since 2005.

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### Recommendations to the Government of Nepal:

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and in keeping with its provisions, fully prohibit the payment of fees and related costs, in line with the ILO definition, by migrant workers to recruitment agencies.
- Review and update the Foreign Employment Policy, which dates to 2012, prior to the transition to federal governance.
- Increase the transparency of processes to develop new laws and policies around migrant workers, and invite more structured participation from unions, civil society and the private sector.

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### Recommendations to the Government of Kuwait:

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and in keeping with its provisions, amend the 2010 Private Sector Labour Law to explicitly prohibit the payment of recruitment fees and related costs by all migrant workers, in line with the ILO definition.

- Amend the 2010 Private Sector Labour Law to hold employers responsible for recruitment fees paid by their employees to third parties, including outside Kuwait.
- Provide domestic workers with the protection of the Private Sector Labour Law

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### Recommendations to the Government of Qatar:

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and amend legislation to align the definition of recruitment fees and related costs with the ILO definition.
- Provide domestic workers with the protection of the national Labour Law

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## 2.1 Has the government ratified core international human rights and core/relevant labour conventions? Does it meaningfully engage with UN and ILO oversight bodies?

### *Nepal*

Nepal has ratified seven of nine core international human rights treaties, acceding to both the International

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) without entering any reservations. It is not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families despite local NGOs' and the NHRC's repeated calls for its ratification.<sup>190</sup> According to a human rights lawyer specialising in migration issues, Nepal's failure to ratify the Migrant Workers Convention relates to its fears of accountability over its failure to protect migrant workers, including Indian nationals working in Nepal, and a perception that protection to Nepali migrants should be afforded by destination countries.<sup>191</sup>

Although Nepal has ratified seven of eight ILO fundamental conventions, it is not party to several instruments specifically designed to protect migrant workers' rights, such as the ILO conventions relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181) or the Domestic Workers Convention, 2011 (No. 189).<sup>192</sup> Nepal is also a signatory to the "Palermo" Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>193</sup>

Beyond legally binding conventions, Nepal endorsed the Global Compact for Safe, Orderly and Regular Migration (GCM) Subsequently, in partnership with the International Organisation for Migration (IOM), the government organized a series of multi-stakeholder consultations with development partners, government agencies, UN agencies, civil society organisations (CSOs), academia, private sector companies and the media to develop a national position paper on GCM.<sup>194</sup> The

government set out its commitment to achieving the Sustainable Development Goals (SDGs), including those relating to migration governance and eradication of forced labour, in its 2017 SDGs baseline report.<sup>195</sup> Nepal has increasingly played an active role in regional labour migration processes. In 2017, it assumed chairmanship of the Colombo Process, a regional consultative process of 12 Asian countries that focuses on the management of foreign employment and protection needs of contractual migrants. In this role, Nepal coordinated regional consultations on the GCM, and together with other member states developed recommendations, which were reflected in the GCM's framework document.<sup>196</sup> Nepal also participates in the Abu Dhabi Dialogue – a ministerial-level regional consultative process on migration between the Gulf States, Malaysia and the Colombo Process countries.<sup>197</sup>

However, Nepali research group CESLAM has expressed scepticism that these commitments on fair recruitment at an international level have not resulted in changes domestically: "despite chairing the recent Colombo Process as well as making international commitments for safe, orderly, and regular migration through the Global Compact on Migration (GCM) and Sustainable Development Goals (SDGs), [Nepal] has not considered prioritising these critically important issues that have far-reaching implications".<sup>198</sup> CESLAM's Assistant director told us that Nepal's participation in these processes lacked internal coordination and coherence across different parts of the government.<sup>199</sup>

Nepal has failed to bring national legislation governing labour migration in line with its international legal obligations. According to one researcher, "the government has [not] internalised international norms, standards and principles around recruitment because they are not inside ... the Foreign Employment Act".<sup>200</sup> Further, it has not engaged in meaningful cooperation

190. Krishna Neupane, Secretary General, People Forum for Human Rights, remote interview, 5 June 2020.

191. Anurag Devkota, Human Rights Lawyer, LAPSOJ, remote interview, 1 December 2020.

192. ILO, [Nepal's record of ILO Convention Ratification](#).

193. UN Human Right Council, "[Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#)", (2000).

194. IOM, "[Global Compact for Migration \(GCM\)](#)"; Migrant Forum Asia, "[Nepal National CSO Consultation on the Implementation of the Global Compact for Migration](#)."

195. National Planning Commission, Government of Nepal, "[Nepal's Sustainable Development Goals](#)", (June 2017).

196. Colombo Process, "[Colombo Process Engagement in the Global Compact for Safe, Orderly, and Regular Migration \(GCM\), Towards a Joint Contribution to the GCM](#)", (September 2017); Colombo Process, "[Joint Recommendations of the Colombo Process Member States to the Global Compact for Migration](#)", (November 2017).

197. IOM, "[Migration Governance Snapshot: Federal Democratic Republic of Nepal](#)", (August 2018): 4.

198. The Kathmandu Post, "[Forgetting about rights](#)", (26 February 2018).

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

200. Dr Angela Sherwood, interview, 4 September 2020.

with international human rights mechanisms. The Office of the High Commissioner for Human Rights was closed in 2012 after the Nepali government refused to extend its tenure,<sup>201</sup> and its engagement with UN Special Procedures – thematic human rights experts - over the past decade has been limited. Nepal has not issued a standing invitation for country visits to the Special Procedures of the Human Rights Council, although it accepted a visit by the special rapporteurs on the human rights of migrants and violence against women in 2018.<sup>202</sup>

The Nepali authorities work closely with the ILO office in Nepal, particularly on the implementation of the Decent Work Programme (2018-2022).<sup>203</sup> Nepal also engages with the ILO supervisory bodies, albeit in an inconsistent manner, with some delays in its mandatory reporting.

## Kuwait

Kuwait has ratified seven of nine core human rights treaties including both the ICCPR and ICESCR in 1996 but entered a number of reservations and interpretative declarations that discriminate on the basis of gender and nationality.<sup>204</sup> It stated that social security would only apply to Kuwaiti nationals, and that it would not apply the provisions of Article 8 (1d) of ICESCR regarding the right to strike.<sup>205</sup> Like other GCC countries, it has not ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Kuwait has ratified 19 ILO conventions, including seven out of eight fundamental conventions and two out of four governance conventions.<sup>206</sup> It has not ratified the ILO Convention 189 on Domestic Workers, C143 Migrant Workers Convention, and Members of Their Families, nor ILO Convention 181 on Private Employment Agencies.

Kuwait works with the local ILO office having entered into a Decent Work Programme in 2018.<sup>207</sup> The programme's priorities include enhancing the skills of women and men foreign workers, improving the governance of foreign labour, and strengthening social dialogue and tripartism.<sup>208</sup> To date, the collaboration between the ILO and the Kuwaiti authorities has resulted in a set of legislative reforms aimed at strengthening protections for domestic workers' human rights (see 1.5).<sup>209</sup> However, in 2019, the ILO Committee of Experts noted "with regret" Kuwait's repeated failure to submit Conventions, Recommendations and Protocols to its parliament (the National Assembly).<sup>210</sup>

The Kuwaiti authorities regularly engage with the UN system. In 2019, IOM's Director General described Kuwait "as one of IOM's biggest partners, contributing significantly to advancing migration governance".<sup>211</sup> Its partnership with IOM over the past 25 years has contributed to Kuwait's increased efforts to combat human trafficking and labour mobility management. Kuwait has also issued a standing invitation to all thematic procedures in 2010, and facilitated recent visits by the Special Rapporteur on trafficking in persons and the Working Group on the issue of discrimination against women.<sup>212</sup>

## Qatar

Qatar is party to seven of nine core human rights treaties.<sup>213</sup> In 2018, Qatar ratified the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, lodging reservations which undermine women's and migrant rights. The government stated that it would apply its own interpretation to the term "trade unions", in line with the 2004 Labour Law, which prohibits migrant workers from forming or joining unions.<sup>214</sup> Like

201. OHCHR, "Nepal country profile"

202. OHCHR, "Country visits of Special Procedures of the Human Rights Council since 1998".

203. ILO, "Federal Democratic Republic of Nepal, Decent work country programme 2018-2022", (October 2018).

204. UN, [Kuwait's full record of UN Treaty ratification](#)

205. UN, [ICESCR ratification and reservations status](#)

206. ILO, [Ratifications for Kuwait](#)

207. ILO, "Kuwait and ILO sign the country's first Decent Work Programme", (9 December 2018).

208. ILO, "Decent Work Country Programme For Kuwait", (2018).

209. "Kuwait and ILO sign the country's first Decent Work Programme", ILO, (9 December 2018).

210. ILO, "Observation on submission to competent authorities (CEACR) - adopted 2019, published 109th ILC session (2021)", (2019).

211. IOM, "Kuwait Renews Support for IOM's Lifesaving Humanitarian Operations", (18 January 2019).

212. OHCHR, [Kuwait homepage](#).

213. Qatar's full record on UN Treaty Ratification is available [here](#).

214. Human Rights Watch, "Qatar Joins Core Human Rights Treaties", (25 May 2018); Amnesty International, "Qatar finally joins two key human rights treaties - but what does it really mean for migrant workers?", (13 June 2018); Amnesty International, [Qatar: Promises yet to be fulfilled](#)", (February 2019).

other GCC states, it has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It is however party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), and it signed the Arab Charter on Human Rights in 2009.

Qatar was elected to the UN Human Rights Council for a fourth term from 2018 until the end of 2020 and engages with UN human rights mechanisms through regular communication. It issued a standing invitation to all thematic special procedures in 2010 and recently accepted, amongst others, visits by special rapporteurs on the human rights of migrants, racism, business and human rights and education in addition to the working group on arbitrary detention.<sup>215</sup>

Qatar has ratified five of eight core ILO Conventions.<sup>216</sup> It has not ratified the ILO's Freedom of Association, Collective Bargaining and Equal Remuneration Conventions or ILO Conventions No. 97 concerning Migration for Employment (1949), No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975), No. 87 concerning Freedom of Association and Protection of the Right to Organize (1948), No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (1949), No. 189 concerning Decent Work for Domestic Workers (2011), or No. 181 concerning Private Employment Agencies (1997).

In 2014, the ILO accepted a complaint brought against Qatar regarding non-compliance with its obligations as signatory to Conventions No. 29 on Forced Labour and No. 81 on Labour Inspections.<sup>217</sup> The complaint was closed after the Qatari authorities agreed to enter into a three-year technical cooperation agreement with the ILO in 2017. The ILO established a Project Office for the State of Qatar in Doha in April 2018, which works closely

with the Ministry of Administrative Development, Labour and Social Affairs (ADLSA).<sup>218</sup> While fair recruitment was not one of the five core workstreams for the technical cooperation programme, ADLSA and the ILO committed to ensuring, among other things that "recruitment practices are improved through better monitoring and regulation and the implementation of the Fair Recruitment guidelines in three migration corridors", and that "restrictions on migrant workers' ability to change employer and exit the country are removed".<sup>219</sup>

In annual progress reports submitted to the ILO Governing Body, ADLSA and the ILO have highlighted elements of the programme which promoted fair recruitment and labour mobility, including "partnerships with private companies and tailor-made capacity-building activities",<sup>220</sup> and "technical support [...] to recruiters, which entailed training and coaching to develop policies and tools required to ensure fair recruitment."<sup>221</sup>

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## 2.2 Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated?

### Nepal

The 2007 FEA sets the administrative and licensing requirements for private recruitment agencies. It regulates agencies' conduct and empowers DOFE to monitor recruitment and investigate offences, prescribing penalties for fraud and misrepresentation. It also established a welfare fund, Foreign Employment Tribunal (FET) and Foreign Employment Promotion Board (now

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215. OHCHR, [Qatar's visits of Special Procedures of the Human Rights Council since 1998](#).

216. Qatar is a party to the Forced Labour Convention (Convention No. 29), the Abolition of Forced Labour Convention (Convention No. 105), the Discrimination (Occupation and Employment) Convention (Convention No. 111), the Minimum Wage Convention (Convention No. 138) and the Worst Forms of Child Labour Convention (Convention No. 182). It has also ratified the Labour Inspection Convention (Convention No. 81).

217. ILO, "[Complaint alleging non-observance by Qatar of the Forced Labour Convention, 1930 \(No. 29\), and the Labour Inspection Convention, 1947 \(No. 81\), made by delegates to the 103rd Session \(2014\) of the International Labour Conference under article 26 of the ILO Constitution](#)", GB.323/INS/8(Rev.1), (March 2015).

218. See ILO, "[ILO Project Office for the State of Qatar](#)".

219. ILO, [Follow-up to the decision adopted by the Governing Body at its 331st Session to support the technical cooperation programme agreed between the Government of Qatar and the ILO and its implementation modalities](#), GB.334/INS/8, (October 2018): 7-8.

220. ILO, [Follow-up to the decision adopted by the Governing Body at its 331st Session to support the technical cooperation programme agreed between the Government of Qatar and the ILO and its implementation modalities](#), GB.334/INS/8, (October 2018): 3-5.

221. ILO, [Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO](#), GB.334/INS/8, (October 2019): 5.

called the Foreign Employment Board).<sup>222</sup> It is supported by the 2008 Foreign Employment Rules (FER) which provide more detail on the implementation of the Act.

Although the preamble to the FEA states that its aim is to protect both “the right[s] and interest[s] of employee[s] going for foreign employment and foreign employment entrepreneur[s]”,<sup>223</sup> the Act does not take a human rights-based approach to migration and does not include strong human rights provisions and safeguards that would protect those most vulnerable to abuse. As an ILO representative in Nepal explained, it is primarily administrative legislation, which outlines the procedures and steps required to enable aspiring migrants’ access to foreign employment through legal channels.<sup>224</sup> As a result, as one expert on Nepalese migration puts it, it does not recognise “the competing interests between recruiters and human rights principles”.<sup>225</sup> Crucially, it lacks a definition of fair recruitment, often leading government officials and recruiters to overly focus on recruitment fees and confuse fair recruitment with the 2015 “Free Visa, Free Ticket” policy, while omitting all the other principles and standards.<sup>226</sup>

Nonetheless, the procedures included in the FEA cover most stages of the recruitment process, ranging from authorization and licensing of private recruitment agencies to conduct foreign employment business to the distribution of labour permits and the negotiation of BLAs. The FEA requires agencies to obtain a prior approval from DOFE to place migrant workers in jobs overseas (section 15); mandates the publication of job advertisements (section 16); sets out the procedures relating to worker selection (section 17); stipulates that all workers must leave for foreign employment via the national airport and obligates agencies to seek permission if travel must be organized from a foreign airport (section 22); outlines the process for preparing a contract (section 25); grants the right to insurance

provided through the recruitment agency (section 26); and allows the government to specify the upper limit of the amount an institution can collect from each worker, including a service fee and promotional costs. However, aside from establishing a welfare fund to aid repatriation in specific cases such as injury, the FEA sets out limited provisions in relation to the processes of return and reintegration of returnee Nepali migrant workers. At the time of writing, a draft Reintegration Directive was in the process of being drafted, through a process led by the Foreign Employment Board.<sup>227</sup>

In addition to the FEA, fraudulent, abusive and deceptive practices in the labour recruitment process can be addressed in Nepal’s civil code and criminal law. The General Code of Nepal prohibits human trafficking and the subjecting of any person to slavery or bonded labour. However, the definition of human trafficking in the 2007 Human Trafficking and Transportation (Control) Act (the HTTCA) and its 2008 Rules is inconsistent with international standards. It is primarily focused on trafficking for the purpose of “prostitution” and sexual exploitation as well as child and organ trafficking, and does not address labour exploitation.<sup>228</sup> As a result, human trafficking cases continue to be prosecuted under the FEA, which provides for a lighter set of penalties. Following its ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in June 2020, Nepal is now legally obliged to bring its legislation on human trafficking in line with the legal framework and definitions of the Palermo Protocol.

The Foreign Employment Board reviews laws relating to foreign employment and provides recommendations to the government.<sup>229</sup> MOLESS publishes an annual Labour Migration Report reviewing trends and evaluating key policy issues relating to labour migration.<sup>230</sup> Although the FEA has been regularly updated since 2007, most

222. *Foreign Employment Act, 2007*, Sections 38 and 64.

223. *Foreign Employment Act, 2007*, Preamble: 1.

224. ILO representative, Nepal office, remote interview, 21 October 2020.

225. Dr Angela Sherwood, remote interview, 4 September 2020.

226. ILO representative, Nepal office, remote interview, 21 October 2020.

227. Currently reintegration programmes for returnee workers are entirely run by CSOs. Pourakhi Nepal run a reintegration programme for returnee women migrants. Pravasi Nepali Coordination Committee provides capacity-building trainings, counselling and other services for returnee migrants including a livelihood project whereby it provides returnees with seed money to start income generating activities.

228. *Human Trafficking and Transportation (Control) Act, 2064 (2007)*, Article 4: “To take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation”. See also Section 15(l)(g) of the HTTCA and Anurag Devkota, “[Breaking the chain](#)”, The Kathmandu Post, (26 December 2019).

229. Bandita Sijapati and Amrita Limbu, “[Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms](#)”, CESLAM, (2017): 46.

230. See MOLESS, “[Nepal Labour Migration report 2020](#)”, (2020).

recently in March 2019 (see 2.5),<sup>231</sup> it has not undergone a major review or reform aimed at addressing significant gaps in the regulatory framework and strengthen rights protections for migrant workers.<sup>232</sup>

## Kuwait

Kuwait's legislative and policy framework on fair recruitment at present is limited and weak and does not cover the entire spectrum of the recruitment process. It mainly addresses fraudulent licensing, the contracting process and work permit requests, but fails to regulate information dissemination, workers' selection, transport and placement into employment. It contains limited provisions related to advertisement and migrant workers' return to the country of origin.

Law No. 6 of 2010 concerning Labour in the Private Sector (the 2010 Private Sector Labour Law) regulates the recruitment and employment of the majority of Kuwait's migrant workers.<sup>233</sup> It does not explicitly prohibit the payment of recruitment fees and costs by workers, nor does it define who should be liable for them.<sup>234</sup> Under Article 10, the Minister is required to "issue a resolution setting forth the procedures, documents and fees that shall be paid by the employer", but no such decision has been issued to date.<sup>235</sup> Under the same article, employers must "bear the expenses of the worker's return to his country."

Unlike the Private Sector Labour Law, the 2015 Domestic Workers Law (see Kuwait 2.3), which was drafted with the support of the ILO, explicitly prohibits employers and recruiters from accepting recruitment charges from migrant workers and prescribes criminal penalties including prison sentences. However, the absence of a credible enforcement mechanism remains a significant shortcoming.<sup>236</sup>

By law, only Kuwaiti nationals can own recruitment agencies. These agencies are not subject to any fair

recruitment regulations, except for those recruiting domestic workers under the 2015 Domestic Workers Law and associated ministerial decisions.<sup>237</sup> Agencies recruiting staff for the domestic service sector are prohibited from using advertising methods for their services "which classify domestic workers on the basis of their religion, gender, race or cost of recruitment, or using any practices that degrade their humanity" under Article 5 of the 2015 Domestic Workers Law.<sup>238</sup> Article 51 of the same law obliges employers (or recruiters if it is within six months of the workers' hiring) to cover the return travel expenses for migrant workers who have left their jobs.

In a bid to strengthen national mechanisms for migration governance and ensure the fair recruitment of foreign workers, in September 2020, the Kuwaiti authorities signed "Tamkeen", a partnership between the General Secretariat for the Planning and Development, PAM, IOM and UNDP. The project aims to collaborate closely with recruitment agencies to apply international labour standards, and to "address the weaknesses in the current system" that were highlighted following the outbreak of Covid-19, including the extent of illegal visa trading in the country, due to the lockdown of areas inhabited by migrant workers and its economic impact on these communities.<sup>239</sup> At the time of writing, IOM was planning to work, in collaboration with PAM, with select recruitment agencies to prepare them for the IOM's IRIS fair recruitment certification scheme.<sup>240</sup>

## Qatar

In line with the ADLSA/ILO technical cooperation programme in 2017, the Qatari authorities have pledged to significantly reform their labour system and publicly stated their commitment to fair recruitment.<sup>241</sup> At present, Qatar's sponsorship, labour and recruitment licensing laws and regulations<sup>242</sup> address only the final stages of the recruitment process including the application and distribution of visas, contracting

231. IOM, "Migration in Nepal: A Country Profile 2019", (2019): 113

232. ILO representative, Nepal office, remote interview, 21 October 2020.

233. [New Private Sector Labour Law No 6 of 2010](#).

234. Professor Ray Jureidini, "Ways forward in recruitment of low skilled migrant workers in the Asia Arab State corridor", ILO, (2016): 14.

235. ILO, "Kuwait, Regulatory Framework Governing Migrant Workers", (November 2019): 1

236. ILO, "FAIRWAY: 10 things that governments can do to ensure fair recruitment."

237. Building Responsibly, "Kuwait, Labor Law Sheet", (August 2019).

238. [Law No. 68 of 2015 on Employment of Domestic Workers](#), Article 5.

239. KUNA, "'Tamkeen' is one of the steps to alter the country's demographics", (3 September 2020).

240. Remote interview with IOM representative, Kuwait office, 12 October 2020.

241. See for example: Gulf Times, "Qatar ensures fair labour recruitment procedures: minister", (21 May 2019).

242. These include: Law No 21 of 2015 regulating the entry, exit and residence of expatriates, the 2004 Labour Law and Ministerial Decision No 8 of 2015 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others.

of the successful candidate and repatriation of the migrant worker at the end of their service. However, they do not address processes that take place in the country of origin, such as advertisement, information dissemination, transport, worker selection and placement into employment.

Article 33 of the 2004 Labour Law prohibits charging any recruitment fees, expenses and any other costs to migrant workers during the recruitment process but does not set out any formal process for assessing if this has been respected when workers arrive in Qatar.<sup>243</sup> Agencies are banned from receiving “any amounts from the worker in form of fees or charges [...] or any other costs” associated with their recruitment abroad, under Article 19 of Ministerial Decision No 8 of 2015. A recruiter’s license may be revoked for receiving “any remuneration” associated with the recruitment of a foreign worker under Article 14 of the same ministerial decision.<sup>244</sup> The law does not hold recruiters or employers in Qatar responsible for the actions of third parties or intermediaries they may commission to recruit on their behalf in origin states.

Law No. 15 of 2011 on Combating Trafficking in Human Beings provides prison sentences and fines for the use of deceptive and abusive practices to transport someone for the purpose of exploitation in any form, including forced labour.<sup>245</sup> Article 19 of Law 21 of 2015 (Sponsorship Law) requires sponsors to repatriate a migrant worker at the expiry of their contract or whenever they are found to be in breach of their employment terms, and to assume the costs of burial in case of death.<sup>246</sup>

Qatar’s sponsorship system, currently elaborated in Law 21 of 2015, has been held responsible for undermining fair recruitment and employment of migrant workers by creating an excessive power imbalance in favour of employers. For example, the ILO Committee of Experts on the Application of Conventions called for its swift reform in 2016.<sup>247</sup> As a result, reform of this system was a central element of the Technical Cooperation

Agreement agreed between the ILO and the government in 2017. This has resulted in reforms to the sponsorship system that address the exit permit and the no objection certificate, which, respectively, prevented workers from leaving the country or changing jobs without their employers’ permission.<sup>248</sup> Law No. 13 of 2018, removed the powers of employers to ban migrant workers covered by the country’s labour law from leaving the country. Employers retained the power to request exit permits for up to 5% of their workforce, depending on the nature of their work. Domestic workers, who fall outside of the Labour Law, were excluded from this reform.<sup>249</sup> Ministerial Decision no. 95 of 2019 went further, removing the exit permit for almost all workers. However domestic workers are still required to give their employers advance notice and employers in other sectors can apply to the authorities to designate up to five percent of their foreign national staff to be required to seek prior consent due to the nature of their work.<sup>250</sup> Law No. 18 of 2020 abolished the ‘No-objection certificate’ requirement which prevented migrant workers from changing jobs without the permission of their employer. Workers are now able to leave their job by providing a one-month written notice if they have worked for the employer for less than two years, or a two month notice if they have worked for them for longer. They do not have to cover any costs. However, as detailed in 1.6, the reforms have not changed the specific article in the Sponsorship Law relating to the “absconding” charge and employers retain responsibility (and power) for renewing and cancelling their workers’ residence permits.

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### 2.3 Are all workers (formal, informal, regardless of category) covered by relevant legislation?

#### *Nepal*

Nepali legislation covers all categories of documented workers. Gender-based discrimination is prohibited under the FEA’s section 8, Chapter 2. Section 9 of the

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243. [Labour Law](#), Article 33 (1), 2004.

244. [Ministerial Decision No 8 of 2015 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others](#), 2005.

245. [Law No. 15 of 2011 Combating Trafficking in Human Beings](#), chapter 2, 2011.

246. [Law No 21 of 2015 regulating the entry, exit and residence of expatriates](#), Chapter 4, 2015.

247. ILO, “[Observation \(CEACR\) - adopted 2016, published 106th ILC session \(2017\)](#)”, (2017).

248. ILO, “[Dismantling the kafala system and introducing a minimum wage mark new era for Qatar labour market](#)”, (30 August 2020); Amnesty International, “[Qatar: New laws to protect migrant workers are a step in the right direction](#)”, (30 August 2020).

249. Amnesty International, “[Qatar: Partial abolition of ‘exit permit’ lifts travel restrictions for most migrant workers](#)”, (5 September 2018).

250. Human Rights Watch, “[Qatar: End of Abusive Exit Permits for Most Migrant Workers](#)”, (20 January 2021).

same chapter contains special provisions protecting the rights of vulnerable groups to migrate for overseas employment, including women, underprivileged people, indigenous nationalities, “oppressed” people, victims of natural disasters and inhabitants of remote areas, and requires that agencies include them in foreign recruitment as per quotas set by the government.<sup>251</sup>

Although the 2007 FEA does not explicitly exclude undocumented migrants, it defines a “worker” as “a Nepali Citizen who has obtained foreign employment”, which can only be granted by DOFE by leaving through legal migration channels. Undocumented and irregular migrant workers are, as a result, largely excluded from the protections of Nepal’s legal and regulatory framework,<sup>252</sup> including the 2018 MOLESS Guidelines on the provision of legal protection to migrant workers which state that undocumented workers “are not subject to protection and legal assistance from the government”.

A senior official of the Foreign Employment Board told us that the exclusion means that undocumented workers are unable to file complaints with DOFE against fraudulent recruiters, take shelter at a Nepali diplomatic mission abroad or benefit from the welfare fund for their repatriation under normal circumstances.<sup>253</sup> In September 2020, the Minister of Labour, Employment and Social Security announced that Nepal would start repatriating citizens stranded in destination countries as a result of the COVID-19 pandemic regardless of their legal status: “The government will ensure that all Nepali migrant workers, be it documented or undocumented, get the support to return home. The Nepal government will bear the repatriation expenses of the workers.”<sup>254</sup> The announcement came after the Supreme Court ordered the government to use the welfare fund to arrange stranded migrants’ travel.<sup>255</sup>

## Kuwait

With the exception of domestic workers, all documented migrants with regular status in Kuwait are covered by

the provisions and protections of the 2010 Private Sector Labour Law. As stated in other parts of this report, Article 8 of the Private Sector Labour Law excludes the country’s estimated 620,000 domestic workers<sup>256</sup> whose recruitment and employment are regulated by Law No. 68 of 2015 and Ministerial Order No. 2194 of 2016 Concerning the Executive Rules for Law No. 68 of 2015 on Domestic Workers.<sup>257</sup>

Undocumented migrants, including those who have lost their documents as a result of abuse by unscrupulous employers or recruiters, face criminal charges for “absconding” and are also at risk of arrest merely on account of their status and not being able to show valid identity documents whenever so requested.<sup>258</sup>

## Qatar

The entry, residence and exit of all categories of migrant workers is regulated by the recently amended Law 21 of 2015, known also as the Sponsorship Law, which ties a foreign national’s residency to their sponsor or recruiter.<sup>259</sup> The 2004 Labour Law regulates the recruitment and employment of all migrant workers with the exception of domestic workers and casual workers, and provides minimum standards in relation to working hours, health and safety, the contracting process and termination of employment.<sup>260</sup>

In 2017, the Qatari authorities introduced a Domestic Workers Law (Law No. 15), which regulates the recruitment and employment of domestic workers. Despite some positive legal protections, the law is not fully consistent with the ILO Domestic Workers Convention. Although Article 8 bans employers from deducting “any fees, expenses or commissions from a worker’s wage in return for the procedures of recruitment from abroad”, it falls short of explicitly prohibiting agents from charging recruitment costs or fees.<sup>261</sup> Despite their exclusion from the 2004 Labour

251. [Foreign Employment Act, 2007](#), Section 9, Chapter 2.

252. IOM, “[Migration in Nepal, a country profile 2019](#)”, (2019): 117.

253. Senior official, Foreign Employment Board, Interview, 13 January 2020.

254. The Kathmandu Post, “[Undocumented migrant workers to get government support for returning home](#)”, (12 September 2020).

255. The Kathmandu Post, “[Supreme Court orders government to use welfare fund to repatriate Nepali workers stranded abroad](#)”, (17 June 2020).

256. Migrants-Rights.Org, “[Domestic workers in the Gulf Statistics](#)”

257. [Ministerial Order No. 2194 of 2016 Concerning the Executive Rules for Law No. 68 of 2015 on Domestic Workers](#), 2015.

258. Under Article 8 of the [1959 Aliens Residence Law](#), foreign nationals must present their “passports or equivalent documents whenever so requested”. See Human Rights Council, “[National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Kuwait](#)”, A/HRC/WG.6/21/KWT/1, (2014): 16.

259. [Law No. 21 of 27 October 2015](#)

260. Maysa Zahra, “[Qatar’s Legal Framework of Migration](#)”, Gulf Labour Markets and Migration, (2018): 4.

261. [Law No. 15 of 2017 concerning Domestic Workers](#), Article 8. The charging of recruitment fees is prohibited under Ministerial Decision No 8 of 2015 Regarding the Conditions and Procedures for Obtaining a License to Recruit Foreign Workers for Others.

Law, domestic workers are able to file complaints with the Labour Dispute Resolution Committees<sup>262</sup> but their workplaces, including private homes, are not subject to labour inspections. With the introduction of Ministerial Decision no. 95 of 2019, the right to leave the country without requiring prior permission for one's employers was extended to domestic workers. However, these workers have a specific requirement to inform their employers that they wish to leave at least 72 hours in advance. Although the government justifies maintaining this notice period to "protect [domestic workers'] rights and ensure that they receive their financial benefits", Human Rights Watch noted that the legal requirement may lead many migrants to believe that "they do in fact require their employer's permission" to leave the country.<sup>263</sup>

Undocumented migrants, including those who have fled from abusive employers and are at risk of being charged with "absconding" do not enjoy legal protections and are at risk of detention and deportation. The crime of "absconding" has not been abolished as part of Qatar's reform programme, something that civil society organisations have noted with concern.<sup>264</sup>

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## 2.4 Are workers' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

### Nepal

Nepal's vibrant civil society played a significant role lobbying for reform of the 1985 FEA, which included no provisions protecting workers' rights, and eventually achieved stronger legal safeguards for migrants with the adoption of the new FEA in 2007. The FEA removed, amongst other things, the requirement for women to obtain the consent of a "guardian" to access foreign employment.<sup>265</sup>

MOLESS representatives told us that they consult workers' organisations when drafting legislation and designing new policies on fair recruitment. One official acknowledged however, that their recommendations are not always acted upon: "we cannot address all of their concerns, but we do hear from them as well."<sup>266</sup>

Nilambar Badal, Policy and Campaign Coordinator at the National Network for Safer Migration (NNSM) confirmed that the NGO is typically consulted by ministries developing new laws or migration policies. However, he said that civil society groups are generally invited to submit their comments and legal analysis in the preliminary phase of legislative development but are then excluded from discussions on the details of the final draft, which take place "behind closed doors. He said that, "when discussing gaps in legislation, organisations are consulted, but when the drafting [begins], they are not."<sup>267</sup>

The General Secretary of the General Federation of Nepalese Trade Unions (GEFONT) told us that there was a shared understanding in the past that no law or policy could be passed without prior consultation with worker organisations, and that MOLESS usually shared drafts with them. However, neither GEFONT nor the Joint Trade Union Coordination committee (JTUCC) had received drafts of recent amendments to the FEA and associated regulations, though members of GEFONT, which was aligned with the political party in power, had participated in discussions.<sup>268</sup>

Krishna Neupane of the People Forum for Human Rights said that although recruitment agencies and business owners were consulted on recent amendments to the FEA, the experiences and voices of migrants and the organisations representing them have largely been excluded.<sup>269</sup> Others said that civil society engagement in the policy-making process largely depended on the leadership at a specific time.<sup>270</sup> This change in practice may reflect a wider shrinking of space for civil society in Nepal, which has been documented in recent years by CIVICUS and other groups.<sup>271</sup>

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262. Amnesty International, "Qatar: All work, no pay: the struggle of Qatar's migrant workers for justice", (September 2019): 16.

263. Human Rights Watch, "Qatar: End of Abusive Exit Permits for Most Migrant Workers", (20 January 2020).

264. Amnesty International, "Qatar: New laws to protect migrant workers are a step in the right direction", (30 August 2020).

265. IOM, "Migration in Nepal: A Country Profile 2019", (2019): 113 and 117.

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

267. Nilambar Badal, Policy and Campaign Coordinator at National Network for Safer Migration, interview, 13 December 2019.

268. Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions, interview, 15 January 2020.

269. Krishna Neupane, People Forum, interview, 5 June 2020.

270. Som Prasad Lamichhane, Director, PNCC, interview, 13 June 2020.

271. Civicus and Freedom Forum, "Joint Submission to the UN Universal Periodic Review: 37th Session of the UPR Working Group", (9 July 2020).

## Kuwait

Kuwait has a relatively vibrant civil society and permits trade union activity in law.<sup>272</sup> However, according to the 2019 US State Department Human Rights report, trade union and collective bargaining rights in Kuwait remain severely restricted.<sup>273</sup> According to the IOM, the government holds consultations and participates in workshops with NGOs on migrant rights issues and collaborates with civil society on data collection regarding human trafficking.<sup>274</sup>

Even so, there is no formal process for consulting workers' organisations in the setting of legislation, regulation and policy relating to fair recruitment. The KTUF told us that they were not always formally consulted on new laws and policies and typically made recommendations through civil society forums.<sup>275</sup> However, they were involved in the drafting of the 2015 domestic worker law.<sup>276</sup>

The Advisory Committee for Labour Affairs (ACLA), established under article 143 of the 2010 Private Sector Labour Law, discusses labour issues on a quarterly basis.<sup>277</sup> The Committee is a national tripartite structure, composed of eight government representatives, two Kuwait Chambers of Commerce and Industry (KCCI) representatives, and four workers' representatives including two from the Kuwait Trade Union Federation (KTUF) and two consultants; it is headed by PAM's General Director. The ILO has acknowledged the establishment of ACLA as a good step towards the "institutionalization of social dialogue" but stressed that its role and vision need to be better defined in order to effectively influence policy and law-making processes as well as promoting sound industrial relations in Kuwait.<sup>278</sup>

## Qatar

Only Qatari workers have the right to form workers' associations or trade unions under Article 116 of the 2004 Labour Law. This prevents migrant workers from

organizing and bargaining collectively, and no such workers' associations or unions have been formed by Qatari workers (See 9.1). In the absence of trade union structures, there is no formal process for the government to consult workers in relation to the setting and review of legislation, regulations and policy relevant to fair recruitment.

However, under the ILO and the ADLSA/ILO Technical Cooperation Programme, international worker groups such as the ITUC, ITF, IDWF, UNI Global Union and BWI have been engaged in a sustained dialogue with the Qatari government to promote workers' rights, including fair recruitment, and have made recommendations with regards to the legislative reform agenda.<sup>279</sup>

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### **2.5 Origin state: Are recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?**

#### **Destination state: Are employers' and recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?**

## Nepal

According to MOLESS Under-Secretary Resham Raj Sigdel, the Nepalese government "consults with recruitment agencies while reviewing the legislation as they are one of the key stakeholders in this sector".<sup>280</sup> Their involvement in legislative and policy development is a contentious subject.

While there are no official records of recruitment industry lobbying efforts, a 2017 ILO study noted

272. Migrant-Rights.org, "Sandigan Kuwait: From Survivors to Defenders", (23 July 2018).

273. US Department of State, "2019 Country Reports on Human Rights Practices: Kuwait", (2020): Section 7. Worker Rights.

274. IOM, "Migration Governance Overview: The State of Kuwait", (May 2018): 5

275. KTUF General Secretary, interview, 13 December 2019.

276. Migrant-Rights.org, "The Kafala is a System of Slavery: an interview with the Kuwait Trade Union Federation", (2 August 2014).

277. Law No. 6/2010 concerning Labour in the Private Sector, Article 143, 2010.

278. ILO, "Decent Work Country Programme for Kuwait, 2018-2020", (2018): 18.

279. See for example: "Qatar's new labour law key to dismantle the kafala system", UNI Global Union, (31 August 2020).

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

that recruitment associations in Nepal “lobby their government to ‘open’ destination markets”.<sup>281</sup> The Nepal Association of Foreign Employment Agencies (NAFEA) – the recruitment industry’s trade association – engages in a range of lobbying and advocacy efforts on behalf of recruiters. In 2015, NAFEA organized a public campaign, including strikes and an unsuccessful legal action, against the “Free Visa, Free Ticket” policy which requires employers in destination countries to bear visa and travel costs for Nepali migrants.<sup>282</sup> In 2021, NAFEA coordinated a series of protests outside government offices to protest against enhanced monitoring.<sup>283</sup>

One recruitment agency however told us that laws were heavily influenced by both international and local NGOs. A Fusion International Private representative cited new regulations, which require agencies to increase their deposit to NPR 2 crore (around USD 181,818) and to recruit at least 100 migrant workers a year to maintain their licence (see 4.1 and 4.4). The representative stated that instead of encouraging fair recruitment, such initiatives will inevitably lead to recruiters placing workers in jobs without the required inquiries and scrutiny in order to fulfill the numbers: “Had the government taken [us] into consideration, these provisions that attacks recruitment agencies would have never been enshrined in law. We had been complaining against these provisions, but our voices were unheard.”<sup>284</sup>

Experts agreed that the government’s lack of consultation often results in the authorities adopting policies that are either ineffective or impossible to implement, but noted that some of the recruitment agencies’ criticisms relate primarily to the fact they do not like the new regulations. According to one researcher, “the government in some cases has not been consultative but that’s not the sole basis of why things aren’t accepted by business. It’s also because they have a particular interest, and they’re quite stuck on those interests, and I think they don’t want to yield too much.”<sup>285</sup>

When the Minister of Labour, who had pursued a series of reforms framed around fair recruitment of migrant workers, was removed from his post in 2019, NAFEA welcomed his successor and added that DOFE had been “making various decisions, demanding various documents and implementing new provisions without any contact, dialogue, cooperation and discussion... unilateral decisions and provisions [that] do not yield positive results.”<sup>286</sup> Nepali media accused recruitment agencies of lobbying for this downfall, with the Nepali Times editorial pointing at the NAFEA statement: “Is that a threat? You bet it is.”<sup>287</sup> Civil society groups and unions pointed to “the nexus between political parties and recruiting agencies, which fund such parties during elections” in explaining his removal.<sup>288</sup>

However, an ILO official warned against civil society’s “automatic tendency to vilify the recruitment industry” and stressed the need to involve agencies in social dialogue and the decision-making process given their importance in facilitating labour migration: “Not all actors in the recruitment industry is good, but we advocate that there needs to be consultations with them because they facilitate over 80% of labour migration through official channels, although it would be safe to say that it is 90% if we look at irregular channels. It is important to bring them into the fold and discuss with them.”<sup>289</sup>

The diametrically opposed views expressed by recruiters and worker organisations, and the serious concerns expressed by media and CSOs as well as the influence of the recruitment industry point to the urgent need for a more structured and transparent consultation process in the setting and review of legislation with all stakeholders being fully aware of the other’s involvement.

## Kuwait

The Kuwait Chamber of Commerce and Industry (KCCI), is one of the ILO’s three partners in the development and implementation of Kuwait’s ILO Decent Work

281. Dr Katherine Jones, ILO, “The Migrant Recruitment Industry Profitability and unethical business practices in Nepal, Paraguay and Kenya”, (September 2017): 2.

282. Amnesty International, “Turning People into Profit”, (2017): 47; BWI, “Nepal: Strong trade union support for “free ticket, free visa” scheme”, (16 May 2016).

283. The Kathmandu Post, [Foreign employment officials, recruiting agencies in confrontation mode](#), (18 June 2021)

284. Kumud Khanal, Fusion International Private, remote interview, 9 June 2020.

285. Dr Angela Sherwood, remote interview, 4 September 2020.

286. Facebook post: [Nepal Association of Foreign Employment Agencies \(NAFEA\)](#), (22 November 2019).

287. Nepali Times, “Blood, sweat and tears”, (25 November 2019).

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

289. ILO Nepal representative, remote interview, 21 October 2020.

Country Programme.<sup>290</sup> In recent years, KCCI has hosted ILO Fairway workshops and events for its members to discuss good practices on ensuring fair recruitment and decent working conditions for migrant construction workers.<sup>291</sup>

The Chamber of Commerce has not made public statements with regard to fair recruitment legislation or policy. Interviews conducted with representatives of the Chamber of Commerce and Head of the state-owned Al-Durra recruitment agency (see sections 4 and 6) show that both institutions perceive fair recruitment as an issue which predominantly needs to be addressed at the country of origin stage. Representatives of Al-Durra and the Kuwaiti Chamber of Commerce told us that the sending countries need to drastically improve their oversight of recruitment agencies and that Kuwait has done its part in fighting human trafficking and protecting migrant workers.<sup>292</sup>

## Qatar

As part of the ADLSA/ILO Technical Cooperation programme, both the Qatar Chamber of Commerce and Industry, an influential body representing commercial interests in Qatar, and the International Organisation of Employers (IOE), have increased their participation in labour reform, business and human rights events

and workshops and expand greater efforts to promote fair recruitment within Qatar's private sector.<sup>293</sup> Local recruitment agencies have also been invited to participate in events about fair recruitment.<sup>294</sup>

More broadly, the business community is influential and is able to provide input into government policymaking: the Qatar Chamber of Commerce and Industry notes that it provides the government with “all required data, information and views related to trade, industrial and agricultural issues in coordination with the competent authorities.”<sup>295</sup> The Chamber has a seat on the government's Permanent Committee for Recruitment.<sup>296</sup> While the Qatar Chamber has supported the ILO / ADLSA technical cooperation programme, when the Shura Council made proposals to reverse the 2020 reform to the sponsorship system, it did so “in order to develop the business sector in the State of Qatar”.<sup>297</sup> Amnesty International notes the influence of the business community in this respect:

*“These changes [to the No Objection Certificate] did not sit well with some businesses, which argued that the reforms stripped employers of their rights. Hashtags advocating for the “rights of employers” started to trend on social media - and the law was sent for review before the Shura Council.”<sup>298</sup>*

290. ILO, *Decent Work Country Programme For Kuwait*, (2018): 22.

291. ILO, “[The Kuwait Chamber of Commerce and Industry hosts discussion on migrant workers in the construction sector](#)”, (14 April 2018).

292. Interviews with senior officials from Al-Durra recruitment company and Kuwait Chamber of Commerce and Industry, March to May 2020.

293. See for example, ILO, “[Global Forum highlights role of business in labour reforms and migration governance](#)”, (1 October 2019)

294. See for example, ILO, “[Fair recruitment to the fore in Qatar](#)”, (6 February 2019)

295. [About Qatar Chamber](#)

296. [Council of Ministers Resolution No \(26\) for 2003 concerning the Permanent Committee for Recruitment](#)

297. The Peninsula, “[Shura Council makes recommendations on change of employer and expat worker's exit](#)”, (22 February 2021)

298. Amnesty International, “[Is Qatar planning a u-turn on reforms?](#)”, (4 March 2021)

# Assessment against the Five Corridors indicators:

## 3. Bilateral labour arrangements

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

### 3. Bilateral labour arrangements

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

#### Summary

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

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

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

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

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

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

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

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

#### Nepal

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

including Qatar, the UAE, South Korea, Israel, Bahrain, Japan, Jordan, Malaysia and Mauritius.<sup>299</sup> The government has begun to publish some of these agreements on the Nepalese language pages of the MOLESS website, though its practices in this regard are inconsistent: only the Mauritius, UAE and Malaysia agreements are available.<sup>300</sup>

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

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

#### Kuwait

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

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

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

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

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

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

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

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

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

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

## Qatar

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

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

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

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

### Nepal

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

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

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

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

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

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

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

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

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

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

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

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

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

316. Meeting at ADLSA, December 2019.

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

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

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

of middlemen in both countries for levees, visa fees, medical tests.”<sup>325</sup>

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

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

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

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

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

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

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

323. Dr Angela Sherwood, interview, August 2020.

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

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

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

## Qatar

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

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

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

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

336. Al Qabas, 25) «اتفاقية العمالة الفلسطينية، «فخ» ترفض» *العالم! الكويت ترفض* (November 2019)

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

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

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

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

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

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

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

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

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

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

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

#### Nepal

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

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

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

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

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

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

345. Meeting with ADLSA official, December 2019

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

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

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

349. [Agreement between His Majesty’s Government of Nepal and the Government of the State of Qatar concerning Nepalese manpower employment in the State of Qatar](#), (2005).

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

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

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

These high-level commitments in Nepal’s newer agreements with Jordan, Malaysia, Mauritius and UAE flow down into specific provisions that are not found in the earlier agreements concluded with Qatar, UAE and Bahrain. In particular they include specific provisions on the obligations of employers to bear recruitment costs - including travel expenses, insurance, medical expenses, work permit/ labour card fees and service fees. Bespoke model contracts have been attached to the public versions of these MOUs.<sup>357</sup> In the MOU with Mauritius, Nepali workers must be paid no less than the national minimum wage as applied to Mauritian nationals.<sup>358</sup> Discussions with Qatar over a revision to the 2005 MOU, to introduce “zero cost recruitment”, faltered in late 2019.<sup>359</sup>

## Kuwait

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

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

Kuwait’s 2018 agreement with the Philippines on domestic workers is something of an exception, being grounded in the “shared desire of [the two countries] to ensure the rights of Filipino domestic workers”. The agreement includes detailed commitments on the part of the Kuwaiti government to ensure employers meet their obligations to workers, including not retaining passports, providing a 24/7 telephone hotline and strictly enforcing wage commitments, which are to be made by bank transfer.<sup>361</sup> After lengthy negotiations, conducted against the backdrop of a Filipino ban on domestic workers going to Kuwait and with the Filipino side using its leverage to push the Kuwaitis hard, an accompanying standard employment contract was signed in February 2020,<sup>362</sup> based on a version originally proposed in 2018.<sup>363</sup>

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Nepal

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

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

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

#### Kuwait

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

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

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

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

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

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

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

371. CESLAM, “Bilateral Arrangements”

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

## Qatar

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

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

## Nepal

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

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

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

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

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

374. *Agreement between His Majesty's Government of Nepal and the Government of the State of Qatar, concerning Nepalese manpower employment in the State of Qatar* hosted by CESLAM, (2005): 4.

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

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

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

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

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

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

## Kuwait

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

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

## Qatar

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

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

In his 2014 report the UN Special Rapporteur for Migrants' Rights stated that such meetings did not take place regularly with all sending States.<sup>383</sup> This is perhaps not surprising given the large number of origin states that have agreements with Qatar. Meetings do evidently take place at least with significant origin states, albeit far less regularly than specified in the agreements. The third Nepal-Qatar joint committee since 2005 took place in 2019, after meetings in 2013 and 2016.<sup>384</sup> The fourth meeting of the Philippines-Qatar committee met in 2019,<sup>385</sup> while the 5th Bangladesh-Qatar committee meeting was in 2020.<sup>386</sup> Little detail is generally shared about discussions, making it difficult to assess whether any significant decisions are taken through them. The irregular nature of such meetings suggests Qatar does not see them as critical mechanisms for labour enforcement. For example, it is not clear that the 2016 meeting of the Nepal-Qatar joint committee had any input into decisions around the Qatar Visa Center in Nepal, which was opened in 2019.

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

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

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

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

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

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

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

# Assessment against the Five Corridors indicators:

## 4. Licensing, registration and certification schemes

- 4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work? \_\_\_\_\_ 71
- 4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers? \_\_\_\_\_ 75
- 4.3 Are worker and recruiter organizations consulted on the design and implementation of these schemes? \_\_\_\_\_ 77
- 4.4 Does the government put in place measures that incentivise ethical recruitment practices? \_\_\_\_\_ 78
- 4.5 Are employers and recruiters jointly liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment? \_\_\_\_\_ 80

## 4. Licensing, registration and certification schemes

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

### Summary

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

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

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

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## Recommendations to the Philippine government:

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

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## Recommendations to the Government of Kuwait:

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

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

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## Recommendations to the Government of Qatar:

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

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

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

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

##### Nepal

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

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

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

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

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

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

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

388. Foreign Employment Act, 2007

389. Foreign Employment Rules, 2008

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

391. DoFE, “Recruitment Agency”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

404. Written comments from Andy Hall, May 2021

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

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

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

## Kuwait

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Nepal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Nepal

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

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

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

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

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

#### Kuwait

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

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

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

#### Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

##### Nepal

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

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

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

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

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

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

455. Qatar Charity, "Board of Directors"

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

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

458. IOM, "Iris Pilot Testing"

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

##### *Nepal*

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

##### *Kuwait*

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

##### *Qatar*

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

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471. Interview with Kuwaiti official, December 2019.

# Assessment against the Five Corridors indicators:

## 5. Machinery to implement and enforce legislative and regulatory regimes

- 5.1** Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates? \_\_\_\_\_ 84
- 5.2** Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters? \_\_\_\_\_ 87
- 5.3** Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment? \_\_\_\_\_ 91
- 5.4** Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector? \_\_\_\_\_ 94

## 5. Machinery to implement and enforce legislative and regulatory regimes

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

REPRESENTATIVE OF KUWAIT’S SOCIAL WORK SOCIETY

### Summary

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

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

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

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

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

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

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## Recommendations to the Government of Nepal:

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

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## Recommendations to the Government of Kuwait:

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

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

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

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## Recommendations to the Government of Qatar:

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

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

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

#### **Nepal**

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

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

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

According to a senior official at the Ministry of Law, Justice and Parliamentary Affairs, there is close cooperation between his ministry, MOLESS, the Ministry of Foreign Affairs and labour attachés on specific issues affecting the recruitment and employment of migrant workers, such as the negotiation of BLAs.<sup>476</sup> However, there appears to be an absence of formal coordination between these ministries and technical committees, made even more challenging following Nepal's transition from a unitary state to a decentralized federal system in 2018.<sup>477</sup>

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

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

473. DoFE, *Introduction*

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

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

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

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

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

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

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

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

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

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

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

## Qatar

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

The two main Ministries in Qatar that have responsibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Nepal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

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

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

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

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

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

513. *Private Sector Labour Law*, Article 141

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

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

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

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

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

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

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

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

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

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

530. ILO, “Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference under article 26 of the ILO Constitution”, GB.326/INS/8 (Rev), (17 March 2016): 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Nepal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

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

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

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

553. On file with FairSquare.

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

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

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

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

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

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

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

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

## Qatar

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

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

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

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

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

Qatar’s 2011 anti-trafficking law provides for up to seven years’ imprisonment and a fine of up to 250,000 QAR (USD 68,680) for offenses involving adult male victims, and up to 15 years’ imprisonment and a fine of up to 300,000 QAR (USD 82,420) for offenses involving an adult female or child victim. Directors of private companies whose employees commit trafficking faced up to five years’ imprisonment and a fine of up to 200,000 QAR (USD 54,950).<sup>567</sup> Despite this law being in place and an absence of any obvious resource constraints, trafficking investigations are very rare. According to the US State Department, while “one prosecutor within the PPO specialized in trafficking crimes, and the government continued to build up its newly established, dedicated police and prosecution units”, the authorities investigated one trafficking case in 2019.<sup>568</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

##### *Nepal*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Kuwait

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Qatar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Assessment against the Five Corridors indicators:

## 6. Measures to prevent fraudulent and abusive recruitment

- 6.1** Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers? \_\_\_\_\_ 101
- 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? \_\_\_\_\_ 109
- 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? \_\_\_\_\_ 109
- 6.4** Are there effective measures to prevent contract substitution? \_\_\_\_\_ 112
- 6.5** Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts? \_\_\_\_\_ 117



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.

# Assessment against the Five Corridors indicators:

## 7. Access to grievance mechanisms, provision of remedy and accountability

- 7.1** Do workers irrespective of their presence in the country, have access to free or affordable grievance / dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process \_\_\_\_\_ 123
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Migrant workers from Nepal in their accommodation, Qatar, 2015. ©Marwan Naamani / Staff / Getty Images

## 7. Access to grievance mechanisms, provision of remedy and accountability

*“The embassy is useless, they don’t receive our calls. Even if they do, they just ask us about our complaints and mention that it has been documented in their record and repeat the same every other day.”* NEPALI MIGRANT WORKER.

### Summary

Nepal’s Foreign Employment Act (FEA) provides a framework for migrant workers seeking redress for recruitment-related abuses both at home and abroad. Practically, however, a nexus of obstacles – financial, legal, bureaucratic, geographical, and personal – lead most victims either to abandon complaints against recruiters, or to accept mediation processes resulting in lower compensation, and which fail to achieve accountability. This is even truer for undocumented workers, many of whom are women, than for those who migrate through official channels. Within Nepal, the FEA mandates a range of government bodies to investigate complaints against recruiters, affording them powers to oversee mediations, require payment of compensation, issue fines, withdraw licences, and even sentence perpetrators

to prison terms. Even assuming the victim is aware of the existence of these rights (which most are not), the reality of pursuing a claim is that it is so lengthy, complicated and expensive a process – often involving travel to Kathmandu despite measures to enable the filing of complaints by post or through an online system – as to be beyond the means of all but a few. Authorities have little capacity to conduct investigations, and even if victims win compensation at the Foreign Employment Tribunal (FET) level, they must spend more time and money obtaining an enforcement decision from district courts. All the while, claimants have little to no protection against threats or intimidation from recruitment agencies pressuring them to drop cases, and no access to state-funded legal aid, forcing them to rely on help from civil society organisations, which are often dependent on donor funding. As a result, most accept low settlements

through mediation. Abroad, the FEA mandates the Nepali diplomatic missions to assist citizens in whatever way required, often in coordination with migrant resource centres established in Nepal under the Swiss-Nepali Safer Migration initiative. However, Nepali migrant workers in Qatar and Kuwait consistently told us that their embassies are inefficient and do not provide sufficient assistance with navigating the complex grievance mechanisms in these countries. This appears to be due to such severe restraints on resources that they can only take on the most serious cases and a lack of case management or referral systems.

Kuwait's domestic workers and private sector laws provide for free access to a grievance mechanism, which envisages that most labour disputes will be settled within one month through a process of mediation, with any unsettled disputes being then referred to the courts. In reality however, the resolution of disputes is far from being swift and costless, and the whole system is actually weighted firmly against complainants. Key factors include: language barriers, since all documents need to be submitted in Arabic, and very few pro bono interpreters are available in the Public Authority of Manpower's labour relations or domestic work departments and in the courts; costs, since there is limited access to free legal aid, and little knowledge among workers of the basic free assistance provided by the Kuwait Bar Association; and time, since grievances that are not resolved at the mediation stage can take one to three years to be addressed by the courts. In addition, inadequate legal safeguards mean that migrants may place themselves at actual risk by commencing a grievance process, which involves submitting a complaint to PAM's offices either in person, online or through a mobile phone application as a first step before a mediation process with employers can begin. However, even this first stage may be impossible for the most vulnerable migrants, including domestic workers in abusive situations, who may fear that leaving work will result in a charge of "absconding", resulting in possible arrest and deportation. Furthermore, the Domestic Workers Law fails to address the issue of retaliation, which has created a culture of impunity regarding reprisals – including refusal to pay wages, verbal and physical abuse, and threats

of deportation or legal action – against workers who submit grievances.

The Qatari Labour Dispute Resolution Committees, which began operating in 2018, were set up to address the failings of the previous labour complaints system, where extensive delays to rulings, court fees for expert reports, and the need to obtain separate enforcement decisions, all colluded to prevent migrant workers' access to redress. The new Committees hear cases from all categories of migrant workers, regardless of nationality, job or immigration status. Claims can be submitted via a mobile application or hotline established by the labour ministry. The Committees do not levy court fees, provide free translation during hearings, hold some sessions outside of most migrants' working hours, and were designed to issue decisions that have executory force within a period of six weeks. In 2021, ADLSA launched an online platform to enable workers to submit complaints against employers, including as "whistle-blowers", meaning their employers would not be notified. Complaints can only be made in Arabic and English, though there are user guides in ten other languages. A government fund set up to pay migrant workers the sums awarded by the court, when their employers are unwilling or unable to do so, became operational in August 2020. These undoubtedly represent improvements on the previous system. Nevertheless, migrants continue to face obstacles that can in some cases be too difficult to surmount. Large cases cannot be heard collectively by the court, meaning that cases involving large numbers of workers almost identically subjected to wage theft by the same employers are split up, forcing migrant workers to each individually win their case and slowing down processes. Many employers simply fail to participate and despite efforts by the authorities to expedite the process, it can still in some cases take up to eight months to get a court decision issued. Enforcement of judgements can then be as time consuming as the court process itself. The absence of widely accessible state-funded legal aid means that claimants who seek legal advice can end up paying the equivalent of two months' wages for this, and then more for translation of documents.

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## Recommendations to the Government of Nepal:

- Provide legal aid programmes in locations where migrant workers live, to help victims reach out to appropriate agencies (DAO, local police) without having to travel to Kathmandu.
- Conduct an independent policy review to assess the effectiveness of current mediation processes. This review should specifically address the question of whether mediation by DOFE, as it functions presently, supports or prevents migrant workers from receiving an effective remedy.
- Significantly strengthen the capacity of diplomatic missions in Qatar and Kuwait to support migrant workers facing exploitation and other abuses in seeking redress including by providing legal advice and representation.
- Ensure that missions are adequately resourced to carry out thorough checks on prospective employers as part of the “demand letter” attestation process.
- Effectively implement the 2018 guideline on legal assistance abroad.
- Explore with groups such as the ILO the feasibility of video-technology in allowing returnee workers to access judicial and non-judicial grievance mechanisms in destination states.

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## Recommendations to the Government of Kuwait:

- Amend the Domestic Workers Law to expand the grounds for seeking compensation beyond refusal to pay for overtime work, to include access to compensation for passport confiscation, contract substitution, and any failure to provide adequate housing, food and medical expenses or labour exploitation.
- Significantly reduce the time period migrant workers have to wait for court processes to

proceed and ease the process of sponsorship transfer during this period.

- Increase availability of interpretation at all stage of grievance mechanism processes; provide easily accessible state-funded legal aid for migrant workers throughout grievance mechanism processes, and free services for translation of documents and complaint forms for submission.
- Amend the Private Sector Labour Law, Domestic Workers Law and Anti-Trafficking Law to criminalise retaliation against workers making complaints and protect victims from prosecution on fleeing abusive employers, and explicitly prohibiting dismissal from employment for any worker involved in lodging an official complaint against their employer.

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## Recommendations to the Government of Qatar:

- Significantly reduce the average time taken to issue rulings at Labour Dispute Resolution Committees. Consider legislative changes to allow for collective complaints, when large number of workers make complaints. Where employers cannot or will not comply with court judgements, ensure that the Workers’ Support and Insurance Fund (WSIF) disburses money owed to workers in a timely manner.
- Expand the scope of damages which can be recovered at Labour Dispute Resolution Committees, beyond loss of wages and end of service benefits, to include access to compensation for passport confiscation, contract substitution, recruitment fees, and any failure to provide adequate housing, food and medical expenses or labour exploitation.
- Provide state-funded legal aid for migrant workers throughout grievance mechanism processes, and free services for translation of documents and complaint forms for submission.
- Amend the 2004 Labour Law, Domestic Workers Law and 2011 Anti-Trafficking Law to explicitly

protect workers against dismissal for filing an official complaint by criminalising retaliation against workers making complaints and fleeing abusive employers. Prohibit dismissal from employment for any worker involved in lodging an official complaint against their employer.

- Significantly increase government provision of shelters for domestic workers and allow walk-in access.

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## 7.1 Do workers, irrespective of their presence in the country, have access to free or affordable grievance / dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process?

### Nepal

By law, Nepali migrant workers who have travelled abroad through regular channels have access to free grievance mechanisms both in the destination country and upon return to Nepal. Whilst not explicitly excluded from such mechanisms under relevant legislation, irregular and undocumented migrants, many of whom are women, experience the most significant obstacles when seeking justice.

Under the 2008 FEA, migrant workers seeking redress in Nepal can file claims for recruitment-related abuses with the following institutions: the DOFE, which handles complaints against individual agents and recruitment agencies and dispute resolutions; the Foreign Employment Tribunal (FET), which investigates and prosecutes more serious criminal cases against individuals, which carry a prison term; and, following a 2019 amendment to the FEA, the District Administration

Office (DAO) which receives complaints against institutions at a district level, with a requirement to refer them to DOFE within seven days.<sup>779</sup> Chief district officers at district administration offices have the power to mediate in grievance cases against individual agents,<sup>780</sup> while district courts are responsible for enforcing decisions issued by the FET.<sup>781</sup> There are no charges for filing complaints with DOFE or DAOs but workers choose to seek professional help from free legal aid workers working for NGOs.<sup>782</sup>

The Complaints Registration and Investigation Section at DOFE has the mandate to carry out investigations into complaints relating to the non-fulfilment of contractual liabilities by the employer in the destination country or recruitment agencies in Nepal as well as violations of license and labour approval requirements under the FEA.<sup>783</sup> This includes, amongst others, the following offences, which are not subject to a statute of limitations, and which may be referred to the FET for prosecution:<sup>784</sup> operating a foreign employment business without a proper license; sending a person for foreign employment without DOFE's permission or to an unauthorized country; sending a minor for foreign employment; and concealing or tampering with relevant documents.<sup>785</sup> Complaints for other widespread offences such as the charging of illegal recruitment fees, contract substitution, non-payment of compensation or violations related to the recruitment and selection process must be filed within a year of their commission, or, within a year of a worker's return to Nepal, for those working abroad. They are usually handled through mediation at DOFE.<sup>786</sup>

If the investigation proves the claim, DOFE can order the recruiting agency to compensate the worker for all expenses they have incurred in the foreign employment process.<sup>787</sup> DOFE may also impose fines and withdraw the license of recruitment agencies found to have been involved in fraudulent recruitment activities.<sup>788</sup> In the

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779. Following an amendment to the FEA adopted in the context of federalization reforms to enable workers' access to justice without having to make the costly travel to Kathmandu, as of 2019, workers or their family members can also seek compensation and register complaints and supporting evidence of fraudulent recruitment at District Administration offices, which forward them to DOFE within seven days. See MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 57.

780. Added by a new amendment to the FEA, Section 21 A (4). See MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 53.

781. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): XVIII.

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

783. *Foreign Employment Act, 2007*, Section 35(1).

784. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, "Migrant Workers' access to justice at home: Nepal", Open Society Foundations, (2014): 111.

785. *Foreign Employment Act, 2007*, Sections 43-47.

786. *Foreign Employment Act, 2007*, Section 60.

787. *Foreign Employment Act, 2007*, Section 36 (2).

788. *Foreign Employment Act, 2007*, Section 40. In 2019, for example, DOFE cancelled the license of 80 recruitment agencies "due to the increasing number of complaints related to fraudulent activities". The Himalayan Times, "DOFE has cancelled the licenses of 80 manpower agencies this fiscal year", (6 March 2019).

more serious criminal cases mentioned above, DOFE investigation officers must file a complaint (under their own names) at the FET, once they have completed their investigation.<sup>789</sup> Such cases then go through a prosecutorial review to assess the evidence, and if deemed sufficient for prosecution, DOFE investigators are required to submit a charge sheet, and a hearing date is set.<sup>790</sup> Migrant workers, who filed the original complaint are not party to these cases (which are prosecuted on behalf of the state) but may be asked to attend the FET hearing in Kathmandu at their own cost, as witnesses, placing an additional financial burden on them when they are already in a precarious situation. Verdicts are usually issued on the day of the hearings, which are brief, and may be appealed within 35 days.<sup>791</sup>

Although the FEA does not exclude irregular or undocumented migrants from filing complaints with DOFE, and in fact, stipulates that an investigation into alleged violations must be launched based on information from any source, or a complaint by “any person”, in practice, the lack of material evidence such as receipts for recruitment fees or copies of contracts in cases involving irregular migration means that claims by those who have migrated outside of official channels are extremely rare.<sup>792</sup> A senior official at DOFE told us, “we cannot file cases where migrants have gone through irregular routes and are undocumented. We cannot file cases without evidence, which is why complaints are filed for regular cases only. The cases of undocumented migrants need to be registered with the police.”<sup>793</sup> Such a position is not only inconsistent with international labour standards, which cover all workers irrespective of their nationality or immigration status, it also creates a division within the justice system between different categories of migrant workers without acknowledging the specific circumstances that may lead some to migrate irregularly or become undocumented.

In what could be a positive development for irregular migrants, in January 2020, DOFE and the Nepal Police

signed an MOU, which allows individuals to submit complaints relating to fraudulent recruitment practices directly to the police for preliminary investigation, following years of resistance by both DOFE and the recruitment industry.<sup>794</sup> In cases involving unregistered agents, the police is now able to conduct its own investigation but is required to refer all cases filed against registered recruitment agencies to DOFE. Although DOFE may still be able to exercise discretion, enabling police authority is likely to have positive outcomes for migrants. DOFE has also requested assistance from the Nepal Police in the monitoring and investigating of human trafficking cases occurring in the context of foreign employment. The cooperation may have an effect on DOFE’s capacity to identify human trafficking cases in the future, though as noted in 5.3 the police’s efforts in that respect have been traditionally limited to trafficking for sexual exploitation.

As for Nepali migrant workers in destination countries, they can access grievance mechanisms in Nepal through Nepali diplomatic missions, which have a mandate, under the FEA, to assist their nationals “in resolving problems arising [from] disputes between workers and the employing enterprises or license holders”, and to provide the “necessary counseling to workers and discourage [them] from getting engaged in work other than that specified in [their] contract”.<sup>795</sup> However, while Labour Attachés are now legally required to carry out checks on employers during the demand attestation process, they are not mandated under the FEA to verify that the job description included in the contract matches the one issued in the visa.

Under the newly amended FER, migrant workers can file grievances directly with diplomatic missions. The Department of Consular Services under the Ministry of Foreign Affairs is responsible for handling complaints related to the rescue and repatriation of migrant workers abroad.<sup>796</sup> Distressed migrants in destination countries, or their families, can also contact one of the

789. *Foreign Employment Act, 2007*, Section 64 (1).

790. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “*Migrant Workers’ access to justice at home: Nepal*”, Open Society Foundations, (2014): 112.

791. *Foreign Employment Act, 2007*, Section 66.

792. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “*Migrant Workers’ access to justice at home: Nepal*”, Open Society Foundations, (2014): 107.

793. Senior official, DOFE, interview, 15 January 2020.

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

795. *Foreign Employment Act, 2007*, Section 68(2). As specified by FEA and FER, the government can appoint a “gazetted officer” as the Labour Attaché in a country where 5000 or more Nepali workers are working. The duties of the attaché are to provide the necessary information to the Government of Nepal, resolve disputes, enter into bilateral agreements, consult with Nepali workers in destination countries, and supervise any activities that may adversely affect migrant workers.

796. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 59.

39 migrant resource centres, established under the Safer Migration project (SaMi), a joint initiative of the Swiss and Nepali governments which seeks to strengthen migrants' protection and improve their access to justice, information, financial literacy and skills (see also Section 7.2 and Section 8).<sup>797</sup> These centres provide free services, and coordinate on their behalf with Nepali diplomatic missions and civil society abroad to organise support for migrant workers in destination countries.<sup>798</sup> In reality however, assistance is very limited, and complaints reported by migrants are treated as humanitarian cases rather than labour abuses requiring accountability.

## Kuwait

Under Kuwait's 2010 Labour Law and 2015 Domestic Workers Law migrant workers have free access to a complaint mechanism, which in theory should settle labour disputes within a month. While the system favours mediation, unsettled disputes involving a financial claim are referred to the judiciary, which can take years to be resolved.

All workers, including undocumented and irregular migrants, have the right to submit a grievance to PAM's Labor Relations Department as long as they have a civil ID number which migrants who were recruited through regular channels usually receive once their residence permit is issued and a copy of their passports.<sup>799</sup> Both migrants working in the private (non-domestic) sector and domestic workers can file lawsuits against their employers free of charge, although under the Private Sector Labour Law, they may be ordered to cover "all or part of the court fees" if the case is dismissed by the court.<sup>800</sup> The 2015 Domestic Workers Law however, clearly stipulates that claims by domestic workers must be "free of judicial charges at all levels of the judicial proceedings."<sup>801</sup> Lawyers can pursue claims on behalf of workers who have left the country as long as they

left a power of attorney. Although this happens very rarely, it is usually the only way for accessing grievance mechanisms for migrant workers who are slated for deportation as a result of an absconding case filed against them.<sup>802</sup>

PAM is responsible for examining and mediating all individual labour disputes between workers and employers in the private sector related to financial entitlements (such as non-payment or underpayment of wages and contractually mandated financial benefits such as end-of-service lump sums), sponsorship transfer, absconding notifications, travel bans, and work-related injuries.<sup>803</sup> According to the 2020 Trafficking in Persons report for Kuwait, cases of illegal visa trading, "withholding of salaries and passports in excess of three months, or forcing individuals into jobs different from those contractually agreed upon" are prosecuted under the 2013 anti-trafficking law rather than the 2010 Private Sector Labour Law.

Workers covered by the private sector labour law must lodge a dispute at the Labour Relations Department in one of PAM's six offices across the country. Once workers file complaints, their employers are summoned for questioning and an investigation is usually opened. A PAM investigator then tries to mediate an outcome between the employer and worker. If no settlement is reached within a month, the PAM investigator refers the case to the Court of First Instance,<sup>804</sup> which must set a hearing within three days of receipt of the referral.<sup>805</sup>

Domestic workers are required to bring claims against their employers to PAM's Domestic Workers Department for an initial mediation.<sup>806</sup> If a settlement is not reached, disputes are referred to the competent court.<sup>807</sup> In such cases, domestic workers can also bring cases against their employers before the Labour Court with a request to "expeditiously consider the case before the Labour Circuit".<sup>808</sup> Complaints involving more serious abuses

797. The SaMi project is implemented jointly by MOLESS and HELVETAS, a Swiss development organisation, with an aim to support the Nepali authorities to fully manage the services offered by the migrant resource centres by 2022.

798. SaMi project website

799. According to Solidarity Center, which supports migrant workers in filing complaints to PAM, a worker's immigration status does not affect their ability to file a complaint as long as they have their civil ID number. Migrants do not lose their civil ID number as a result of becoming irregular.

800. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 144.

801. [Law No. 68 of 2015 on the Employment of Domestic Workers](#), Article 36.

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

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

804. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 146.

805. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 147.

806. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 31.

807. [Ministerial Order No. 2302 OF 2016 On the Rules and Procedures of enforcement of the Provisions of Kuwait Law No 68/2015 Concerning Domestic Workers](#)

808. [Law No. 68 of 2015 on the Employment of Domestic Workers](#), Article 35.

such as physical or sexual abuse against domestic workers are referred to the public prosecutor's office.<sup>809</sup>

## Qatar

Responding to a longstanding criticism of its labour court system, the Qatari authorities in 2017 established three new Labour Dispute Resolution Committees (Committees) with the purpose of resolving labour disputes between workers and employers within a matter of weeks, at no costs to claimants.<sup>810</sup> The technical cooperation programme signed between Qatar and the ILO in October 2017 further committed to strengthen the newly established national complaint mechanisms and to support workers in submitting complaints to ensure a “fair and speedy process without any retaliation.”<sup>811</sup>

The committees, established under Law No. 13 of 2017 at ADLSA, began receiving and processing labour dispute cases on 18 March 2018.<sup>812</sup> Composed of at least one ADLSA employee and chaired by a first instance court judge appointed by the Supreme Judicial Council,<sup>813</sup> they can hear cases from any worker, including all categories of migrant workers, regardless of their nationality, job or immigration status. Domestic workers, who until the adoption of the 2017 Domestic Workers Law, did not have any legal protections against labour abuses, were unable to file complaints before labour courts and had no access to any other grievance mechanisms. They are now able to file claims with the Committees.<sup>814</sup> When lodging complaints before the Committees, workers and employers first have to refer disputes relating to breaches of the 2004 Labour Law or terms of the employment contract to the Labour Relations Department or the Human Resources Department at ADLSA for mediation. If the ministry is unable to settle the dispute amicably within seven days, the case must be referred to one of the Committees

within three working days.<sup>815</sup> In cases of dismissal, employees are allowed to directly file complaints before the Committees. All disputes must be resolved within three weeks of the Committees' first session,<sup>816</sup> and both parties have the right to appeal the decision before the Court of Appeal within 15 days of its issuance. Decisions issued by the Committees are treated as court judgments and “have executory force.”<sup>817</sup>

Amnesty International has noted that cases examined by the Committees are generally limited to financial claims such as unpaid wages and end of service benefits:

*“Complaints related to harsh working conditions, working hours, overtime and passport confiscation are not examined. Cases of physical and sexual abuse are dealt with by the criminal courts, although the abuses need to be extremely serious for charges to be pressed against employers.”<sup>818</sup>*

Wages and benefits may be the most urgent priorities for most migrant workers affected by wage theft, but the sole focus of the Committees on these issues (and the extreme difficulty for migrants in pressing criminal charges against employers) means that there are limited grievance mechanisms offered by the state for workers to bring forward complaints on a range of other common and serious issues which are indicators of forced labour, including abuse in the recruitment process.

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## 7.2 Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures?

### Nepal

While the FEA provides for free access to grievance mechanisms both in Nepal and abroad, the complex and

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

810. In August 2017, the Emir and his Council of Ministers passed Law No. 13 of 2017 amending provisions of the Labour Law (No. 14 of 2004) and the Civil and Commercial Procedures Code (Law No. 13 of 1990), abolishing old labour courts and establishing new Labour Dispute Resolution Committees.

811. ILO Governing Body, [“Follow-up to the decision adopted by the Governing Body at its 331st Session to support the technical cooperation programme agreed between the Government of Qatar and the ILO and its implementation modalities”](#), (October 2018): Appendix: 7.

812. [Cabinet Decision No. 6 of 2018](#) on “The formation of Committees for the Settlement of Labour Disputes and the rules and procedures to be followed before them and the mechanism for implementing their decisions and determining remuneration”

813. [Law No. 13 of 2017 which amends several provisions of the Labour Law promulgated by Law No. 14 of 2004 and Law No. 13 of 1990 which promulgates the Civil and Commercial Proceedings Law](#)

814. Amnesty International, [“Why do you want to rest? Ongoing abuse for domestic workers in Qatar”](#), (October 2020): 25.

815. [Law No. 13 of 2017](#), Article 115bis.

816. [Law No. 13 of 2017](#), Article 115bis/2.

817. [Law No. 13 of 2017](#), Article 115bis/5.

818. Amnesty International, [“Why do you want to rest? Ongoing abuse for domestic workers in Qatar”](#), (October 2020): 25.

lengthy procedures for filing complaints, combined with significant budgetary and human resources constraints, and migrants' low understanding of their rights and enforcement processes, mean that they are effectively inaccessible to many low-wage migrant workers. Women migrant workers often face additional social, legal and evidentiary obstacles to justice.

DOFE data suggests that the number of complaints made by migrant workers is very low compared to the scale of abuse. For example, in the fiscal year 2018/2019, there were 855 complaints submitted against individuals and 1263 against recruitment agencies. Of these, 209 and 1,072 respectively were settled. The number of cases prosecuted at the Foreign Employment Tribunal remains alarmingly low despite a rise in the past four years.<sup>819</sup> Between 2009 and 2019, only 2,086 cases (about 200 per year) were referred to the FET, of which 1,778 were resolved.<sup>820</sup>

A 2014 OSF study noted that the location of the FET in Kathmandu as well as the complicated two-tiered process of DOFE investigations followed by referrals to the FET act as a major deterrent for many migrants, who lack the necessary resources to pursue their cases to the end of the proceedings which are very slow, and prefer to settle for some sort of compensation.<sup>821</sup> MOLESS stated in its 2020 report that "sufficient human and financial resources" need to be invested in all institutions handling grievances to ensure a timely response and follow-up.<sup>822</sup> According to the South Asia Director of Equidem Research & Consulting, there are only four case hearing officers at DOFE, who do not have the capacity to "investigate the multifaceted illegal activities of recruitment agencies".<sup>823</sup>

With the transition to a federal structure, and the devolution of power from Kathmandu to local bodies, the Nepali authorities have since 2017 adopted a set of policy and legislative measures to improve access to justice at a local level, including to address fraud-related

cases against recruitment agencies and individual agents facilitating foreign employment.<sup>824</sup> These reforms are introduced on top of already existing governmental and civil society initiatives at the district level.

Until recently, migrant workers or their representatives (family members or lawyers) had to travel to Kathmandu if they wished to file a complaint, leading many to drop their cases to avoid travel and accommodation costs associated with the lengthy journey. However, following a 2019 amendment to the FEA, they can now file complaints against recruitment agencies by post or online through the FEIMS system<sup>825</sup> and at the District Administration Office (DAO), which is required to forward them to DOFE within seven days. In cases of complaints against an individual, migrant workers must first seek the mediation of the Chief District Officer (CDO).<sup>826</sup> Where mediation is not successful or if the case is of a seriousness that it cannot be solved through mediation, CDOs must send the original complaint for DOFE's investigation and potential referral to the FET.

Given that the Nepali justice system is in general overloaded, in 2011, MOLESS partnered with the Swiss Development Agency to improve access to legal services and grievance mechanisms at a district level. Migrant workers can register complaints in one of the 39 migrant resource centres run by the SaMi Project, located in passport application offices of DAOs,<sup>827</sup> where they also have access to legal aid provided by People Forum for Human Rights, a respected NGO.<sup>828</sup> In less serious cases, where the victim and alleged perpetrator (agent or recruitment agency representative) reside in the same area, counsellors at migrant resource centres can advise mediation by civil society or other representatives as "a cheaper and faster" alternative to the justice system.<sup>829</sup> Despite these efforts, support is not yet proportionate to the scale of abuse: between July 2013 and July 2018, only some 13,500 migrant workers received legal services through these centres, resulting in merely 6,000 complaints (just over 20 a week) filed with DOFE during that same period.<sup>830</sup>

819. MOLESS, "Nepal Labour Migration Report 2020", (2020): 57.

820. MOLESS, "Nepal Labour Migration Report 2020", (2020): 59.

821. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, "Migrant Workers' access to justice at home: Nepal", Open Society Foundations, (2014): 114.

822. MOLESS, "Nepal Labour Migration Report 2020", (2020): XVIII.

823. Rameshwar Nepal, South Asia Director, Equidem Research & Consulting, 3 January 2020, interview

824. Gopal Sangrola, journalist covering migration issues, interview, 14 January 2020.

825. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): XVIII.

826. *Foreign Employment Act, 2007*, Section 21.1(b)

827. SaMi Project [website](#)

828. Safer Migration Project and Helvetas, "Lessons learned from the Safe Migration Project, Phase II (2013-2018)", (2019).

829. Safer Migration Project and Helvetas, "Lessons learned from the Safe Migration Project, Phase II (2013-2018)", (2019): 23.

830. Safer Migration Project and Helvetas, "Lessons learned from the Safe Migration Project, Phase II (2013-2018)", (2019): 13 and 25.

It is too early to assess the full impact of these reforms and whether they will lead to an increase in the number of cases being registered with DOFE, although some civil society representatives told us that if implemented effectively, elements of the decentralization and online system could improve access to justice for migrant workers, including from destination countries.<sup>831</sup> However, according to a former DOFE investigating officer, the chances of receiving a response to a complaint submitted online are very low, especially in cases involving compensation. For this reason, DOFE continues to encourage victims or their representatives (close relatives or lawyers), to be physically present in Nepal when filing complaints and to be available for in-person follow-up meetings at DOFE's offices.<sup>832</sup>

OSF's 2014 report identified specific challenges faced by women, which often prevent them from reporting abuses and filing complaints. These include social stigma associated with female migration, difficulties navigating a male-dominated justice system, which is heavily weighted against them, and a lack of sufficient evidence to support their claims due to the fact that many are compelled to migrate through irregular channels to circumvent the government ban.<sup>833</sup> According to the NGO AMKAS, victims of human trafficking and sexual abuse face the greatest difficulties, sometimes being blamed for the abuse they have been subjected to or being rejected by their families. As a result, many do not come forward out of fear of being shamed.<sup>834</sup>

## Kuwait

The grievance mechanism available to migrant workers is slow, complex and in practice, accessible to only a small minority. For these reasons, most workers do not pursue their claims through courts and settle for a small sum of money or drop the case altogether.

To start a grievance process, migrant workers must submit a complaint to PAM's Labor Relations

Department (for those whose work is regulated by the private labour law) or the Domestic Workers' Department.<sup>835</sup> Once a complaint is registered, PAM determines a competent legal investigator and the date of an initial hearing to consider the complaint. The attendance of both the worker and employer is required at that initial hearing, held in one of PAM's six offices, which aims to mediate a settlement to the dispute.<sup>836</sup> At this point, the worker may be accompanied by a legal representative or a social worker from a registered organisation. If the employer fails to appear, the investigator must issue a second notification, before proceeding with examining the complaint. In such cases, the investigator submits a formal legal opinion to the Labor Relations Department, which issues the final decision to either accept or reject the worker's complaint. Under the labour law, the decision may be appealed by either the worker or the employer within 15 days.<sup>837</sup> The 2015 Domestic Workers Law does not have similar provisions on time restrictions, but their cases are usually given the same treatment.

Lawyers told us that once in court, cases usually take anywhere between one to three years to reach a conclusion, although legal proceedings may now become even longer as a result of delays created by the Covid-19 pandemic. During this time, workers can only work if they managed to transfer the sponsorship to a different employer before filing the case, although that is subject to the permission of the former employer - with whom they are engaged in a court proceeding.<sup>838</sup>

All evidence and complaint forms must be submitted in Arabic, and as a result, migrant workers are often forced to pay translation fees, in addition to bearing the costs for print outs and stamps of official documents.<sup>839</sup> In general, communication in PAM's labour relations and domestic workers' departments is difficult for migrant workers - the majority of whom do not speak Arabic. NGO workers and a former ILO representative told us that, although there are pro bono translators at PAM and in courts, the languages they speak are limited, their

831. Gopal Sangrola, journalist covering migration issues, interview, 14 January 2020; Krishna Neupane, Secretary General, People Forum for Human Rights, Remote interview, 5 June 2020.

832. Former Investigation Officer, DOFE, interview, 29 December 2019.

833. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, "[Migrant Workers' access to justice at home: Nepal](#)", Open Society Foundations, (2014): 150.

834. Bijaya Gurung, Executive Chair, AMKAS, remote interview, 25 November 2020.

835. One Roof Campaign, "[Domestic Workers' Legal Guide](#)"; Kuwait Trade Union Federation, "[Your Rights at Work: A guide for migrant workers in Kuwait](#)", (2017): 12.

836. [Law No. 6/2010 concerning Labour in the Private Sector](#), Article 124.

837. Kuwait Trade Union Federation, "[Your Rights at Work: A guide for migrant workers in Kuwait](#)", (2017): 12.

838. Representative of Social Work Society, remote interview, 27 October 2020

839. Remote interview with representative of Migrant-Rights.Org, 13 October 2020.

number is very small, and they are rarely available.<sup>840</sup> Many workers rely on NGOs to support them: “to file a complaint in person is a struggle...that’s why many workers come to us, and we file complaints on their behalf.”<sup>841</sup>

The Kuwaiti authorities have in recent years taken a number of steps to improve accessibility to the grievance mechanism. In 2014, they established a shelter for women domestic workers who are at risk and wish to be either repatriated to their countries of origin or change employers,<sup>842</sup> and with the support of civil society, set up legal services there to assist them in filing complaints against their employers. In January 2018, they launched the Mobile Labor Disputes Office to enable workers in remote areas to file complaints against employers without having to take time off work to visit PAM’s offices or cover transportation costs. The mobile unit includes a team of investigators, inspectors, translators, lawyers, and volunteers. PAM also set up a hotline for women migrants and launched online services that allow workers and employers to submit complaints and track them electronically. The system is supposed to automatically alert workers if an employer files an absconding charge against them, notify the relevant embassy, and ensure that users are able to challenge any settlement incurred.<sup>843</sup> Migrant workers can also submit complaints, and follow their progress, via PAM’s mobile phone application provided that they have a civil ID number. With the sharp rise of employment-related complaints concerning mainly the non-payment of wages following the outbreak of Covid-19 in March 2020, PAM also set up a WhatsApp number to enable its emergency team to receive both complaints and inspection requests.<sup>844</sup> An NGO told us that the mobile phone application was unable to cope with the large number of complaints during Covid-19.<sup>845</sup>

A 2019 report by Migrant-Rights.org found that women domestic workers only attempted to file

official complaints if they received support from their embassies, recruitment agencies or community groups. They may be unaware of grievance processes or lack trust in the Kuwaiti justice system, and additionally they have restricted mobility and often can only leave their employers’ homes once a week, and may not have private access to a phone.<sup>846</sup> While the number of complaints filed to the Domestic Workers Department appears to have increased since the 2017 Domestic Workers Law was adopted, the majority of cases are settled through mediation. According to PAM’s data, between April and November 2019, the Domestic Workers Department received 2,087 complaints, of which only 256 were referred to courts, and “1,232 were settled amicably.”<sup>847</sup> Such amicable settlements usually involve a form of financial compensation paid to the worker.

## Qatar

The recently established Committees have sought with some success to improve the mechanism for settling disputes. As part of changes introduced since 2018, they now provide free translation services during hearings, do not charge fees and hold sessions in the afternoons from Sunday to Thursday in an attempt to make the system more accessible and allow a greater proportion of migrant workers to attend outside of their regular working hours.<sup>848</sup>

Qatar’s previous labour courts were criticized for subjecting claimants to extensive delays.<sup>849</sup> The Committees set a target of taking a maximum of six weeks from the moment a complaint is registered at ADLSA offices, to the provision of a court decision with executory force.<sup>850</sup> Delays have however continued to be a major problem. The US State Department in 2020 reported that “in practice cases took significantly longer to resolve” than the time limits specified in the law.<sup>851</sup> Amnesty International’s research into the effectiveness

840. Interview with ILO official, 12 December 2019, and remote interview with Migrant-Rights.Org representative, 13 October 2020.

841. Representative of Social Work Society, remote interview, 27 October 2020

842. UN Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21”, A/HRC/WG.6/35/KWT/1, (November 2019): 23.

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

844. Arab Times, “For labor complaints – complain over WhatsApp 55629845”, (9 May 2020).

845. Representative of Migrant-Rights.org, remote interview, 13 October 2020.

846. Migrant-Rights.org, “Lived experience of migrant women: Qatar, Bahrain, and Kuwait”, (2019): 34.

847. UN Human Rights Council, “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21”, A/HRC/WG.6/35/KWT/1, (November 2019): 16.

848. Amnesty International, “All Work, No Pay, The struggle of Qatar’s migrant workers for justice”, (2019): 16 - 17

849. Andrew Gardner and Silvia Pessoa, “Labour migrants and access to justice in contemporary Qatar”, LSE Middle East Centre, (2014): 28

850. Amnesty International, “All Work, No Pay: the struggle of Qatar’s migrant workers for justice”, (2019): 16.

851. US Department of State, “2020 Trafficking in persons report: Qatar”, (2020).

of the Committees, published in 2019, noted that they appear to have reduced the time in some cases, but that typically judgements still took three months and in some cases as long as eight months.<sup>852</sup> In 2020 Human Rights Watch also documented cases taking as long as eight months to resolve, “which can be incredibly costly for migrant workers”.<sup>853</sup> This forces workers to make difficult decisions about whether to continue pursuing remedy or to return home unpaid and with greater debts. In its 2020 update, the ILO appeared to acknowledge these concerns, noting various plans to “ensure a more efficient processing of complaints” as well as working with the Qatari authorities to ensure “rapid enforcement of agreements / adjudications through the Workers’ Support Fund”.<sup>854</sup>

A 2019 ILO review of the Wage Protection System (WPS), which holds electronic evidence of the non-payment of wages, recommended a greater use of WPS data in disputes resolution at the Committees as a way to expedite the process stating that “the information provided in the WPS should be more than sufficient to put the burden of proof squarely on the employer to provide evidence or testimony to the contrary”, and that “workers should not be required to travel and be physically present to advance their case through a lengthy adjudication process”.<sup>855</sup>

Large cases cannot be heard collectively by the court, meaning that cases involving large numbers of workers almost identically subjected to wage theft by the same employers are split up, forcing migrant workers to each bear the burden of individually winning their case, slowing down processes and reducing the attractiveness of labour cases for lawyers. Amnesty International notes that, “this means that rather than analysing one collective case for 900 workers, the judges must hear 900 individual cases.”<sup>856</sup> The ILO said in its 2020 update to the ILO that it would work with ADLSA on multi-worker complaints.<sup>857</sup>

The Committees do not charge workers to file complaints, and a court expert fee that previously was a major barrier to migrant workers has been removed. However, the Committees’ requirement to submit various forms in Arabic places a financial burden on migrant workers, who typically have to pay for these to be produced by private companies.<sup>858</sup>

Human Rights Watch has also argued that while that the Committees now do not exclude domestic workers from bringing complaints, their access is very restricted, owing to their highly controlled employment context.<sup>859</sup> The Qatari government told Amnesty in 2019 that they received 672 complaints from domestic workers in a two year period (though they appeared to suggest to the organisation that the number was much higher in a subsequent meeting).<sup>860</sup> In 2021, ADLSA launched an online platform to enable workers to submit complaints against employers, including as “whistleblowers”, meaning that employers are not notified that the complaint has been made. Third-party complaints can also be made. Complaints can only be made in Arabic and English, though there are user guides in ten other languages.<sup>861</sup> This may help some more domestic workers to access the Committees (see 7.4). Migrant-Rights.org said that, “the ability to file a complaint without revealing personal information will go a long way in reporting more violations as a lot of workers fear retribution if they file a formal complaint”, though noted that the requirement for complainants to provide a valid Qatari mobile number may dissuade some migrant workers.<sup>862</sup>

Migrant workers can also file claims via ADLSA’s hotline or mobile phone application “Amerni”, which can be used in Arabic or English.<sup>863</sup> Community activists told us that in their experience, Nepali migrant workers rarely use the mobile phone application, in part because their Arabic and English skills are insufficient to use it adequately.<sup>864</sup> The hotline is also not toll-free, which

852. Amnesty International, “All Work, No Pay, The struggle of Qatar’s migrant workers for justice”, (2019): 6.

853. Human Rights Watch, “How can we work without wages? Salary abuses facing migrant workers ahead of Qatar’s FIFA World Cup 2022”, (August 2020).

854. ILO, “Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, (October 2020): 8-9.

855. ILO Project Office for the State of Qatar, “Assessment of the wage protection system in Qatar”, (June 2019): 27.

856. Amnesty International, “All Work, No Pay: the struggle of Qatar’s migrant workers for justice”, (2019): 41

857. ILO, “Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, (October 2020): 9.

858. May Romanos, Amnesty International, remote interview, 7 October 2020.

859. Human Rights Watch, “Domestic Workers’ Rights in Qatar”, (26 June 2018).

860. Amnesty International, “Why do you want to rest? Ongoing abuse of domestic workers in Qatar” (October 2020): 26.

861. Unified Platform for Complaints and Whistleblowers

862. Migrant-Rights.org, Qatar launches whistleblower platform, 17 June 2021

863. The Peninsula, New version of Labour Ministry’s mobile app offers 33 services, (18 Jan 2020)

864. Nepal community activists in Qatar, interview, 10 October 2020.

Amnesty says causes many domestic workers to refrain from seeking help because, “they simply cannot afford the call”.<sup>865</sup>

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### 7.3 Are workers provided with remedy including compensation as a result of such grievance processes?

#### Nepal

Under the FEA, workers can submit a complaint with DOFE for financial compensation in the following cases: if the employer in the destination country fails to respect the terms prescribed in the contract;<sup>866</sup> if the worker is subjected to contract substitution and is forced to do a different job than that specified at the time of recruitment;<sup>867</sup> if a recruitment agency sends a migrant abroad for work by giving false assurances about the job in the destination country;<sup>868</sup> or, if a recruitment agency fails to send a worker for foreign employment after receiving payment through false assurances and deceit.<sup>869</sup>

In circumstances where the recruitment agency fails to provide compensation to workers, DOFE has the authority to recover the full compensation due to the worker via the recruitment agency’s security deposit submitted to DOFE as a condition of its license,<sup>870</sup> but only exercises this right in isolated cases.<sup>871</sup> The FEA provides also for the use of the Migrant Welfare Fund, established to compensate workers and provide assistance to returnees or to their families, although it does not define the grounds for compensation or amounts that may be used.<sup>872</sup> The FER provides measures for financial assistance of up to 100,000 NR (USD 853) to a worker if they are maimed, or to a

worker’s family if they die abroad during the contract period, if an application is made to the Foreign Employment Board for financial assistance, no later than six months after the certification of the death of the deceased worker.<sup>873</sup>

The FEA defines the amount due as compensation for some, but not all, of these offences, leaving room for negotiations between victims and recruitment agencies and calculations by DOFE investigation officers of the estimated amounts due to migrant workers.<sup>874</sup> In cases involving the non-respect of contract terms by employers, the victim is entitled to recover the full amount paid to the recruiter, while in cases of recruitment through deceit or failure to secure a job placement abroad, workers can additionally claim 50% of that total as compensation as well as the cost of the round trip flight ticket.<sup>875</sup> However, as a 2014 OSF report notes, in cases of contract substitution (under Section 55), the FEA is less clear about the compensation amount, making an assessment particularly difficult for DOFE officers if the victims do not have a copy of their contract or receipts, or if they were forced to do a completely different job for the same salary. In such cases, negotiations between the parties are inevitable, with unpredictable outcomes.<sup>876</sup> Such informal negotiations, as Amnesty noted in a 2017 report, “significantly increase the risk that migrant workers will be subjected to coercion,” and accept smaller compensation amounts, citing the case of a worker who was claiming US1124 from his recruiter, but accepted US290 after being intimidated by the recruiter, who told him he would otherwise “receive nothing”.<sup>877</sup>

Further, although the FET may order agencies or individuals to compensate the victim, it does not have any powers to enforce the decision, and victims must make a separate application to their local district court for a decision to be enforced, in yet another obstacle to

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865. Amnesty International, “[Why do you want to rest? Ongoing abuse of domestic workers in Qatar](#)” (October 2020): 26.

866. [Foreign Employment Act, 2007](#), Section 36 (1).

867. [Foreign Employment Act, 2007](#), Section 55

868. [Foreign Employment Act, 2007](#), Section 43

869. [Foreign Employment Act, 2007](#), Section 44

870. [Foreign Employment Act, 2007](#), Section 51

871. The Kathmandu Post, “[Nepali workers who had returned empty-handed from Qatar three years ago are set to get their due salaries](#)”, (3 February 2020).

872. [Foreign Employment Act, 2007](#), Section 33(1,b). Both migrant workers and recruitment agencies are required to make financial deposits into the fund during the visa processing stage, which can then be used to provide workers with assistance and compensation.

873. [Foreign Employment Rules, 2008](#), Rule 28.

874. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “[Migrant Workers’ access to justice at home: Nepal](#)”, Open Society Foundations, (2014): 101.

875. [Foreign Employment Act, 2007](#), section 43.

876. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “[Migrant Workers’ access to justice at home: Nepal](#)”, Open Society Foundations, (2014): 103.

877. Amnesty International, “[Turning People into Profits: Abusive Recruitment, Trafficking and Forced Labour of Nepal Migrant Workers](#)”, (2017): 26.

remedies. As noted in a 2014 OSF study, the process is “complicated, onerous, and time-consuming for victims and most are unaware of the requirements unless they have legal representation”, resulting in rare cases of compensation through the tribunal.<sup>878</sup>

As a result, although offences under the FEA are categorized as criminal cases, in reality, most cases are not referred to the FET and end in negotiated out-of-court settlements between recruiters and workers as per the FEA and Nepal’s Mediation Act.<sup>879</sup> Indeed, the 2019 NHRC annual report found that DOFE prioritizes mediation over the investigation of criminal acts during the recruitment process, effectively shielding agencies from prosecution: “rather than punishing the perpetrator, [...] DOFE has been practicing a closure of files after making the accused pay compensation to the victim [...] although the victim is provided with partial or full financial compensation, no action is taken against the recruitment agencies as per the law.”<sup>880</sup> While these negotiations tend to be informal, DOFE has made efforts in recent years to register independent mediators to make the process more impartial as prescribed under the Mediation Act.<sup>881</sup>

Compensation from the Migrant Welfare Fund is something few workers avail of, in part because few are even aware of their entitlement to it. Less than 1% of workers and their families interviewed by the National Human Rights Commission in 2019 were aware of the Migrant Welfare Fund’s existence, even though all migrants are legally required to make a contribution before departure, and the funds can be in theory used for compensation to workers who sustain major injuries or illnesses abroad, or to provide financial assistance to the families of deceased migrants.<sup>882</sup>

## Kuwait

According to the US State Department’s Trafficking in Persons report, in 2019, PAM’s Labor Relations

Department received 15,982 grievances filed by migrant workers. Of these, some 6,060 cases unresolved via mediation were referred to labour courts. Separately, PAM’s Domestic Workers’ Department received 2,887 complaints from domestic workers, resolving approximately 75% of them “amicably”, and referring some 499 complaints to labour and criminal courts for further investigation.<sup>883</sup> In general, cases settled by PAM involved “monetary compensation, and repayment of back-wages to victims” in addition to administrative fines and the closure of recruitment agencies.<sup>884</sup>

A lawyer working at an NGO told us that when migrant workers were able to pursue cases through the court process until the end, cases usually ended in their favour and included compensation, which could in some cases be significant and include damages. However, the barriers to them reaching this stage were so significant that only a minority made it this far.<sup>885</sup> This may be particularly the case for domestic workers. The US State department said in 2019 that, “the government was more effective in resolving unpaid salary disputes involving private sector laborers than those involving domestic workers.”<sup>886</sup> According to the government, in 2018, 108 domestic worker cases were referred to court, but only 2,560 Kuwaiti dinars (USD 8,400) in unpaid salaries and other entitlements was paid out - suggesting only a small minority of those filing cases were successful in securing backpay.<sup>887</sup>

## Qatar

Since the introduction of the Labour Dispute Resolution Committees, the number of cases resulting in a judicial verdict in favour of workers has increased. In 2019, workers made 11,703 complaints to the labour dispute resolution committees, resulting in 7,561 judiciary verdicts (84% in favour of workers), with the remainder resulting in amicable out-of-court settlements or being unresolved by the end of the year.<sup>888</sup>

878. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “Migrant Workers’ access to justice at home: Nepal”, Open Society Foundations, (2014): 113.

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

880. NHRC, “Research Report on The Situation of the Rights of Migrant Workers Recruitment Practices and Access to Justice of Migrant Workers”, (November 2019): 155.

881. Prasashan, वैदेशिक रोजगार विभागले स्वतन्त्र व्यक्तिमार्फत मेलमिलाप गराउने, सूचीकृत हुन सार्वजनिक सूचना, (31 December 2019); Mediation Act, 2068, (2011)

882. MOLESS, “Nepal Labour Migration Report 2020”, (2020): XVIII. Despite the officially stated purpose of the Fund, the Nepali authorities have been widely criticised for not using to provide assistance to workers abroad, including those stranded in destination countries during the Covid-19 pandemic.

883. US State Department, “2020 Trafficking in Persons report: Kuwait”, (2020).

884. US State Department, “2019 Trafficking in Persons report: Kuwait”, (2019).

885. Representative of Social Work Society, remote interview, 27 October 2020

886. US Department of State, “Kuwait 2019 Human Rights Report”, (2020): 39

887. ILO, *Observation (CEACR) - adopted 2018, published 108th ILC session (2019)*

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

When workers are able to pursue cases, in other words, they tend to win and receive court judgements ordering their employers to repay them unpaid wages and other benefits. Enforcement of these orders, however, remains a major problem. When employers fail to engage, or have gone bankrupt, long delays ensue, with workers in many cases going unpaid and being required to lodge separate enforcement proceedings through the civil courts.<sup>889</sup> As part of an effort to improve the enforce rulings of the Committees, ADLSA and the Supreme Judiciary Council (SJC) in 2019 signed a memorandum to cooperate on information exchange regarding labour disputes,<sup>890</sup> and in June 2020 they jointly established an office to facilitate judicial procedures for complainants.<sup>891</sup> A Nepali community activist highlighted the frustration for workers whose employers have gone bankrupt:

*“Even if the disputes committee issue a positive decision... the employer will not be able to pay the salaries... if the company has gone bankrupt. The dispute committee did its job, the worker got a positive result, but the question is how long can a worker wait for a settlement? How can they survive without a job?”<sup>892</sup>*

Seeking to tackle the issue of employers who cannot or will not pay, the Qatari authorities in 2018 established the Workers’ Support and Insurance Fund (WSIF).<sup>893</sup> For workers who have won their cases at the Committees but who have failed to secure any payment from their employers, the WSIF is meant to pay the money to workers directly and then seek reimbursement from the employer. This shifts the burden from workers to the WSIF, and means, in theory, that workers should no longer have to pursue their employer further in civil courts. The fund did not become operational until 2020. As of August 2020, it had apparently disbursed 14 million riyals (USD 3.85 million) to 5,500 workers.<sup>894</sup> Amnesty International has noted that “it is unclear under which circumstances and conditions workers are

eligible to collect their money from this fund”, and has called on the government to “adequately resourc[e] and systematically [implement] the Workers’ Support and Insurance Fund, taking into account the ongoing impact of COVID-19 and making it accessible to all workers whose employers have failed to pay them”.<sup>895</sup>

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## 7.4 Are workers raising grievances and whistleblowers effectively protected from retaliation?

### Nepal

Nepali law does not contain specific whistleblower protection provisions or measures to protect victims from retaliation, and there is no witness protection law.<sup>896</sup>

Civil society organisations, researchers and former officials told us that workers raising complaints are not effectively protected from retaliation in a system which favours mediation between victims and perpetrators as opposed to accountability. NNSM said that migrant workers seeking compensation and remedy often face further victimization as a result of having to experience a long process of negotiation with the same individuals who subjected them to fraud.<sup>897</sup> According to an independent expert researcher, this is further exacerbated by a bureaucratic system, which has established relations with the recruitment sector, and is therefore prone to bias.<sup>898</sup>

A former Investigation Officer at DOFE told us that during his service he “used to hear stories of intimidations of victims at hands of [recruitment] agencies”.<sup>899</sup> In a 2017 Amnesty International report, returnee migrants described dropping cases of overcharging and deception and accepting low settlements instead of pursuing full compensation with DOFE following intimidation, persuasion or threats of reprisals by recruitment agents.

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889. Amnesty International, “All Work, No Pay”, (2019): 37; Amnesty International, “Unpaid and abandoned: the abuse of Mercury MENA workers”, (26 September 2018).

890. Qatar Tribune, “SJC and ADLSA sign MoU”, (30 October 2019).

891. The Peninsula, “Labour Ministry and Supreme Judiciary Council open office for implementation of rulings”, (29 June 2019).

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

893. Law No. 17 of 2018 Establishing the Workers’ Support and Insurance Fund, Article 5.

894. ILO governing body, “Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, (October 2020): 4.

895. Amnesty International, “Reality Check 2020: Countdown To The 2022 World Cup Migrant Workers’ Rights In Qatar”, (2020): 20, 33

896. Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum, “Migrant Workers’ access to justice at home: Nepal”, Open Society Foundations, (2014): 114.

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

898. Dr Angela Sherwood, written comments, 31 October 2020.

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

Some mentioned that they feared recruiters would hire criminal gangs to intimidate and attack them.<sup>900</sup>

## Kuwait

Under Article 46 of the 2010 Labour Law (which does not apply to domestic workers), it is illegal to fire an employee for no cause or in retaliation for exercising their lawful rights, including participating in union activities or taking vacations, or on the basis of gender, origin or religion.<sup>901</sup> However, while the labour law guarantees the right to submit a complaint, it does not explicitly protect against dismissal for lodging an official complaint. The 2015 Domestic Workers Law does not address the subject of retaliation.

Adnan Abul, the secretary of the Kuwait Bar Association's Board of Directors, told us that the lack of specific legislation to protect workers raising grievances and the authorities' failure to protect them in practice are the main reasons why migrant workers rarely seek justice for labour abuses: "The gap [in the legislation] is bad and it prevents people from coming forward because they know that if they do, they would lose their jobs."<sup>902</sup> He told us that in some cases workers who have filed complaints are denied their wages, are frequently threatened with deportation or legal action, and subjected to verbal (and sometimes) physical abuse.

In 2018, the US State Department Trafficking in Persons report noted that "some workers who fled their employers without permission risked criminal penalties and arrest, detention at police stations, and deportation, even if they were fleeing an abusive sponsor... In addition, it was not uncommon for sponsors to file counter-grievances against trafficking victims who reported their own, which sometimes resulted in administrative deportation or detention of the employees"<sup>903</sup>

According to an independent researcher, workers usually only complain once they overcome their fear of retaliation and feel they have nothing to lose, after months of unpaid wages.<sup>904</sup> A Nepali community activist in Kuwait said workers are usually more confident to seek justice through the labour courts when their claim is part of a collective case, and they feel that they have the support of civil society or the embassy. Even so, they are scared of being falsely accused of "absconding" as a reprisal for their complaint.<sup>905</sup> A Sandigan Kuwait spokesperson told Migrant-Rights.org:

*"Many (workers) are afraid because they are worried that the employer will kick them out of the accommodation or that they will not receive their pending salaries or end of service payment."<sup>906</sup>*

## Qatar

There is no specific legislation in Qatar to protect whistleblowers.<sup>907</sup> While the 2004 Labour Law does not explicitly protect against dismissal for filing an official complaint, a 2019 decision adopted by ADLSA to regulate the elections of workers' representatives to joint committees in establishments with 30 or more employees contains a provision that requires employers to "assist workers' representatives so as to fulfill their duties [...] without taking any measures which obstruct this action"<sup>908</sup>

Nepali community activists in Doha told us migrant workers can be hesitant to file complaints because of a fear of retaliation from their employers, including termination and loss of income.<sup>909</sup> In a 2020 report, Human Rights Watch found that the threat of false, retaliatory "absconding charges" is a major barrier preventing workers from complaining to the Committees.<sup>910</sup> According to an Amnesty International researcher, the threat of the charge can still weigh

900. Amnesty International, "Turning people into profits: Abusive recruitment, trafficking and forced labour of Nepali migrant workers", (2017): 34, 60.

901. [Private Sector Labour Law](#), Article 46, 2010.

902. Adnan Abul, Secretary of the Kuwait Bar Association's Board of Directors, remote interview, 7 March 2020.

903. United States Department of State, "2018 Trafficking in Persons Report - Kuwait", (28 June 2018).

904. Francesca Ricciardone, independent expert on labour migration, remote interview, 12 July 2020.

905. Nepali community activist in Kuwait, remote interview, 5 October 2020.

906. Migrant-Rights.org, [Job loss and wage theft: The grim reality of Kuwait's F&B sector](#), (19 April 2021)

907. Thomson Reuters, "The case for whistleblower protection", (undated)

908. [Decision No.21 of 2019 by the Minister of Administrative Development, Labour, and Social Affairs Regulating the conditions and procedures of the election of workers' representatives to joint committees](#), section 7, (2019).

909. Nepali community activists in Qatar, 10 October 2020.

910. Human Rights Watch, "How can we work without wages? Salary abuses facing migrant workers ahead of Qatar's FIFA World Cup 2022", (August 2020).

heavy on workers, preventing them from accessing grievance mechanisms out of fear of retaliation.<sup>911</sup> A ADLSA official announced in October 2020 that the “absconding” charge would be “abolished soon” but this has not yet taken place.<sup>912</sup> Retaliation is a particular concern for domestic workers, who live in the homes of their employers. Amnesty International has noted in this respect that it is problematic that there is a lack of shelters for domestic workers. In 2019 the authorities opened a government-run shelter for victims of human trafficking, including domestic workers, but it had yet to become fully operational at the time of writing. Eligibility criteria were not clear and there was no walk-in centre.<sup>913</sup>

In 2020 the ILO said its goals on worker voice would include the ability of workers to submit complaints without retaliation.<sup>914</sup> In 2021, ADLSA launched an online platform to enable workers to submit complaints against employers, including as “whistleblowers”, meaning that employers are not notified that the complaint has been made. Complaints can only be made in Arabic and English, though there are user guides in ten other languages.<sup>915</sup> The impact of this platform is yet to be seen.

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## 7.5 Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy?

### Nepal

Although Nepal’s 2015 Constitution recognizes the right to free legal aid for anyone who cannot afford it,<sup>916</sup> state-funded legal aid is available in civil and criminal cases only from the moment charges are officially filed.<sup>917</sup> Migrant workers in Nepal are therefore not entitled to free legal aid during the preliminary negotiations

with recruitment agencies when their claims are being mediated by DOFE, although as noted elsewhere they can access legal support through migrant resource centres.<sup>918</sup> In general, even for those whose cases are referred to the FET and district courts, state-funded legal aid is difficult to access because people do not know where to find it, services are limited and mainly concentrated in urban areas, and there are few sources of affordable legal assistance.<sup>919</sup> These factors make it extremely difficult for workers to pursue their complaints against recruiters to the end of the process and significantly prejudice the amicability of mediation and settlement outcomes.

As a result, migrant workers generally rely on civil society with many seeking legal aid through migrant resource centres where NGOs such as People Forum for Human Rights help victims bring claims. Between July 2018 and July 2019, People Forum’s free legal aid clinic provided assistance to 2,115 migrant workers who sought their services following referrals, amongst others, by government bodies such as DOFE, the FET, the FEB and the police.<sup>920</sup> Trade unions such as GEFONT also provide legal aid to migrant workers including by filing complaints on behalf of migrants and representing them before DOFE, courts or in their dealings with Nepali embassies in cases involving rescue and repatriation.<sup>921</sup>

In 2018, MOLESS adopted guidelines to provide free legal aid to Nepali migrants facing criminal charges in destination countries.<sup>922</sup> Workers detained abroad can also in theory access legal aid through the welfare fund to which all workers contribute a deposit before departing abroad.<sup>923</sup> However, assistance is limited only to those who have migrated through regular channels, and is assessed on a case by case basis, creating a special disadvantage for many women migrants. Undocumented workers and those who migrate via irregular channels are effectively excluded from such

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911. May Romanos, Amnesty International, remote interview, 7 October 2020.

912. Business and Human Rights Resource Centre, “Qatar: Government announces planned cancellation of employer system to report “absconding” workers”, (21 October 2020).

913. Amnesty International, “Why do you want to rest? Ongoing abuse of domestic workers in Qatar”, (October 2020): 29.

914. ILO governing body, “Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, (October 2020): 16

915. [Unified Platform for Complaints and Whistleblowers](#)

916. [Constitution of Nepal](#), Article 20 (10), 2015.

917. UNODC, “Global Study on Legal Aid, Country Profiles”, (2016): 49.

918. Bassina Farbenblum, “Governance of Migrant Worker Recruitment: A Rights-Based Framework for Countries of Origin”, *Asian Journal of International Law*, (January 2017).

919. UNODC, “Global Study on Legal Aid, Country Profiles”, (2016): 43.

920. People Forum for Human Rights, “Free legal aid and paralegal services to migrant workers, yearly progress report, July 2018-July 2019”

921. Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), interview, 15 January 2020.

922. The Kathmandu Post, “Locked up abroad”, (17 January 2019).

923. [Third amendment to the Foreign Employment Rules, 2017](#)

support.<sup>924</sup> In practice, interviewed migrant workers told us that the provision of legal assistance by embassies in Kuwait and Qatar is almost non-existent.

In general, migrant workers in destination countries, including those who have become undocumented, and their relatives can access free legal aid by contacting migrant resource centres back in Nepal, who refer their cases to the Pravasi Nepali Coordination Committee (PNCC). The PNCC, which has an office in Qatar, coordinates support with Nepali diplomatic missions, but a MOLESS evaluation report of the SaMi project states that the impact of the organisation's interventions is "largely dependent on the network it has established with other human rights related organisations present in destination countries," thus reducing its efficacy. The project recognises the specific barriers faced by women when seeking justice and has recruited female counsellors to facilitate communication over the phone or in one of the migrant resource centres in Nepal upon their return.<sup>925</sup>

## Kuwait

There are several organisations - including one funded by the state - providing free legal assistance to migrant workers with labour cases. However, accessing these requires knowledge and connections which some workers lack.

The US State Department notes that migrant workers in Kuwait with third-party legal assistance tend to get a better and quicker outcome, as employers prefer to avoid trial.<sup>926</sup> However, according to an organisation providing legal counselling and other services to other migrants in the country, legal fees are very expensive, and the number of lawyers who are willing to take up the cases of low-wage workers or do pro bono work is limited.<sup>927</sup> One NGO told us that some lawyers agree to pro bono work only on the condition that they will take some of the compensation awarded to the worker as their fees.<sup>928</sup>

Workers who cannot afford representation can in theory obtain it for free from the Judicial Aid Committee at the Kuwait Bar Association which is funded by the state to represent all low-income Kuwaiti nationals and migrants. Anyone seeking assistance must submit salary slips or a bank statement for the three months preceding the date of the application.<sup>929</sup> However, according to a representative of the association, most migrants are not aware of the availability of these services, and as a result, end up paying relatively high fees before that point:

*"Apart from word of mouth, the main way most migrants hear about this committee is in court because they have offices there. But to get to court, that means the worker has already gone through the process of filling a complaint, failed to reconcile with their employer and has already had to beg multiple lawyers for free or cheap legal aid, usually for at least KWD200-300 [USD 663 - 995] to take on their case."<sup>930</sup>*

Sandigan Kuwait told us that typically migrant workers rely on the assistance and advice of migrant community groups, and wherever possible, their own embassies, who then usually refer them to trusted lawyers or NGOs that provide free legal aid.<sup>931</sup>

Social Work Society provides legal assistance to female domestic workers who seek protection in the government-run shelter, primarily to help them get their travel documents back from their employers, and to migrant workers detained by the police.<sup>932</sup> There are no state-funded legal services in the shelter, however. According to Social Work Society, the shelter recently started helping migrant workers file legal complaints.<sup>933</sup>

In 2019, Kuwait Society for Human Rights (KSHR) hired a number of lawyers to provide free legal assistance to migrants who earn less than 100KWD (approximately 325 USD) a month, and whose complaints require legal representation in courts. As part of this project, which is implemented in partnership with PAM and the Swiss

924. The Kathmandu Post, "Locked up abroad", (17 January 2019).

925. Helvetas Nepal and SaMi, "Lessons learned from the safer migration project, Phase II (2013-2018), Learning series 2019/3", (2019): 22.

926. US Department of State, "Kuwait 2019 Human Rights Report", (2020): 8.

927. Interview with organisation providing legal support to migrant workers in Kuwait, 12 October 2020.

928. Representative of Migrant-Rights.Org, 13 October 2020.

929. Kuwait Bar Association [website](#)

930. Adnan Abul, Secretary of the Board of Directors, Kuwait Bar Association, remote interview, 7 March 2020.

931. Representative, Sandigan Kuwait, Remote interview, 12 October 2020.

932. Social Work Society [website](#)

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

Development Cooperation, KSHR also set up a hotline to receive cases in Arabic and in English and via an online platform.<sup>934</sup> While welcome, the initiative does not appear to solve the lack of legal aid and counselling in the initial stages of the grievance process.

## Qatar

The Qatari authorities have to date not established a free legal aid programme to assist migrants in exploring judicial and non-judicial avenues to seek remedy. In fact, Amnesty International's 2019 review of Qatar's Labour Dispute Committees highlighted the lack of pro bono legal aid and representation as key obstacles to migrants' ability to successfully pursue and win claims for unpaid wages.<sup>935</sup> State-funded legal assistance appears to be very limited and only made available to specific human trafficking cases.<sup>936</sup> Some domestic workers can access legal aid either through the Law Clinic at Qatar University<sup>937</sup> or ADLSA.<sup>938</sup>

As a result, migrant workers either have to manage without a lawyer, or rely on law firms offering pro bono services, which may not allocate sufficient resources to the case, and may even struggle to communicate with their clients. One lawyer told us: "while the court does have translators, we, the lawyers, do not usually have translators and because we take on these cases for little to no money, out of charity, so we also cannot afford to hire translators and have difficulty communicating with our clients since they do not speak Arabic".<sup>939</sup>

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## 7.6 Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment?

## Nepal

Nepali law provides for consular support to Nepali migrant workers who find themselves in abusive situations abroad. The 2007 FEA requires the appointment of labour attachés in destination countries where five thousand or more Nepali migrant workers are employed.<sup>940</sup> Likewise, the 2008 FER provide for the appointment of female labour attachés in countries where one thousand or more Nepali women are employed.<sup>941</sup>

Labour attachés are entrusted with "the responsibility for the promotion of the interests of Nepalese workers" abroad, and some of their main duties include providing assistance in the resolution of disputes between workers, employers or licensed recruitment agencies; notifying the government of the employment and human rights situation in the destination country; arranging the repatriation of Nepali workers in distress; providing counseling to workers, and discouraging them to do any work other than that set forth in their contract.<sup>942</sup> However, such services are only legally available to workers who migrated through official channels, with irregular migrants not eligible for assistance such as repatriation or legal aid, which the Foreign Employment Board makes in principle available free of charge to all other categories of migrant workers.<sup>943</sup> The 2020 MOLESS labour migration report acknowledged that Nepali diplomatic missions need to be equipped with additional resources to provide support, including temporary shelter, for "vulnerable migrant workers" ineligible for welfare support on account of their irregular immigration status.<sup>944</sup>

The Nepali government has appointed labour attachés in nine destination countries,<sup>945</sup> including in Qatar and in Kuwait. However, in practice, Nepali migrant workers in Qatar and Kuwait interviewed for this report said that

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934. Kuwait Society for Lawyers, "Providing lawyers to defend workers' cases in Kuwait", (17 September 2019).

935. Amnesty International, "All Work, No Pay: The struggle of Qatar's migrant workers for justice", (2019): 40.

936. In its 2019 Trafficking in Persons report, the State Department noted that during 2018, the Qatari government provided "free legal services for 12 cases taken to court, including some potential trafficking cases". US Department of State, "2019 Trafficking in persons report: Qatar", (2019).

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

938. The Qatari Government's Communication Office noted in a letter sent to Amnesty International in August 2020 the availability of legal aid services to domestic workers through ADLSA. However, according to Amnesty International's research such assistance is not widely accessible. Amnesty International, "Why do you want to rest? Ongoing abuse of domestic workers in Qatar", (October 2020).

939. Lawyer who represents both employers and workers in Qatar, remote interview, 14 July 2020.

940. *Foreign Employment Act, 2007*, Section 68.

941. *Foreign Employment Rules, 2008*, Chapter 10.

942. *Foreign Employment Act, 2007*, Section 68.

943. UN Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants following his mission to Nepal", A/HRC/38/41/Add.1, (April 2018): 9.

944. MOLESS, *Nepal Labour Migration report 2020*, (March 2020): 91.

945. UN Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants following his mission to Nepal", A/HRC/38/41/Add.1, (April 2018): 9.

they hardly ever reach out to their embassy for help because of a perception amongst the community that the embassy is not responsive, and that staff are “rude”. Many said that they would only seek help from the Nepali embassy for legal matters such as the issuance of a new passport or loss of official documents, but that in case of disputes at work, wage theft or requests for financial assistance, they would usually reach out to Nepali community networks, recruitment agencies, their families, or their employers.

A 30-year-old Nepali man who was working as a food delivery driver in Kuwait recounted his experience of seeking help from the embassy after his employer took away his ATM card and stopped paying his wages following the outbreak of Covid-19:

*“The embassy is useless, they don’t receive our calls. Even if they do, they just ask us about our complaints and mention that it has been documented in their record and repeat the same every other day. The embassy just asked me to file a case in the high court, without recognizing my [lack of] status and position to afford the process. They further refused to extend any help.”<sup>946</sup>*

In another case, a 28-year-old baker told us that embassy staff accused him of putting himself in a difficult situation after he reached out to them for help during lockdown in Kuwait following the outbreak of Covid-19. He also tried to get help directly from MOLESS by calling the toll-free number but received no response.<sup>947</sup>

Nepali community activists told us that the ability of Nepali embassies to intervene on the ground was severely constrained by limited human and financial resources, the lack of a referral and case management system and facilities. They said that embassies limit their intervention to very serious cases only such as road accidents involving death or injury, sexual or physical abuse and in other cases, seek the assistance of known Nepali networks or NGOs.<sup>948</sup>

In 2018, the Special Rapporteur on the human rights of migrants made a recommendation for the Nepali authorities “especially labour attachés and consular services, to collect better data in terms of the complaints received” and encouraged the Foreign Employment Board to use its funds “to provide a roster of competent local lawyers” for migrant workers given the inadequate information on redress provided by the embassies.<sup>949</sup> In its 2020 annual labour migration report, MOLESS recognized that human and financial resources in diplomatic missions in major destination countries are “inadequate” for labour attachés to fulfill their mandate and to respond to the workload, which has only increased with recent reforms now requiring embassies to certify demand letters based on background checks on employers through field visits, and to renew workers’ labour permits.<sup>950</sup>

According to the Director of Projects at Migrant-Rights.Org, the lack of resources in embassies means that labour attachés are currently treating complaints as “charity cases”, dealing with whether workers have food and arranging their repatriation instead of seeing them as labour rights issues.<sup>951</sup>

946. Migrant worker in Kuwait, remote interview, 2 August 2020.

947. Migrant worker in Kuwait, remote interview, 2 August 2020.

948. Nepali community activists in in Kuwait and Qatar, remote interviews, 5 and 10 October 2020

949. UN Human Rights Council, “[Report of the Special Rapporteur on the human rights of migrants following his mission to Nepal](#)”, A/HRC/38/41/Add.1, (April 2018): 9.

950. MOLESS, [Nepal Labour Migration report 2020](#), (March 2020): 90.

951. Vani Saraswathi, Director of Projects, Migrants-Rights.Org, remote interview, 23 July 2020.

# Assessment against the Five Corridors indicators:

## 8. Information provided to workers

- 8.1** Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government publish online “how-to” guides on fair recruitment, deliver public service announcements on radio and/or television; or web seminars (webinars) or similar outreach efforts? \_\_\_\_\_ 142
- 8.2** Does the government carry out effective pre-departure orientations, including providing training regarding workers’ rights and fair recruitment for potential migrants? \_\_\_\_\_ 145
- 8.3** Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups? \_\_\_\_\_ 146
- 8.4** Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters? \_\_\_\_\_ 148
- 8.5** Does the government collaborate with the ILO and the most representative employers’ and workers’ organizations to provide education and training and /or conduct awarenessraising campaigns? \_\_\_\_\_ 149

## 8. Information provided to workers and others

*“There are workers who come from remote places with no access to internet and computers. The information does not reach these ... workers who need it the most.”* NEPALI MIGRANT WORKER

### Summary

Nepali migrants face difficulties making informed choices regarding their most suitable destination country despite the government’s efforts to produce substantive information detailing the specific labour needs abroad. A range of print and multimedia resources exist to assist migrants preparing for departure, all with differing levels of uptake and reach. A wealth of information about safe recruitment is available on two government websites, including relevant legislation, databases of blacklisted agencies, and orientation essentials for arrival in the destination country. These resources, though, are mostly used only by experienced or educated migrants. Aspiring migrants, particularly women and those from remote areas who do not speak Nepali, cannot write or read or have little or no experience of the internet, still rely primarily on agents and other migrants – often leaving them vulnerable to misinformation and fraud. All Nepali migrants travelling through regular channels must attend a two-day pre-departure course; those migrating irregularly, including many women, are excluded. First-time departees generally find the course useful; returnees are often critical about the lack of more country-specific information. Not all the private institutions that offer the trainings stick to the set curriculum, and there is little focus on fraud by recruitment agencies. Many training providers also certify individuals who have not attended classes, on payment of the course fee, and many have a business arrangement with recruitment agencies which can be a conflict of interest, and in some cases, another rent-seeking opportunity. Migrant resource centres have been set up in passport application offices in 39 districts across Nepal under a joint initiative with the Swiss government. These centres, along with their outreach volunteer, print and broadcast

programmes, are having some success in raising migrants’ awareness of their rights and potential abuses along their migration journey, although they do not address push factors or the powerlessness many face when making their decision to migrate. The Nepali authorities also work closely with the ILO to deliver trainings, campaigns and targeted publications. However, access to information alone does not prevent contract substitution or the payment of illegal recruitment fees and other associated costs with many migrant workers acknowledging that they felt compelled to pay despite being aware of the “Free Visa, Free Ticket policy”.

There is little current evidence of a concerted, joined-up effort by the Kuwaiti government to assist and inform migrants as to their rights, protections and opportunities. Initiatives tend to be driven by the ILO, or by private charitable organisations such as the Social Work Society. Information made available on government websites requires knowledge of Arabic to find, and is very basic – although brochures on workers’ rights are at least presented in a range of languages, and do provide contact details where it is stated that migrants can file complaints in confidence. The texts of relevant labour laws are provided on these websites, but not in translation. Although Kuwait has sought the assistance of the ILO and to carry out, there is not much available evidence of the Kuwaiti authorities’ active cooperation or leading role in the delivery of ILO’s awareness raising activities and trainings to civil society or migrant workers. Likewise, there do not appear to be any long-term government programmes encouraging outreach to workers by employers, workers’ organisations, recruiters or civil society groups.

The provision of labour information to migrants in Qatar is patchy but has improved, in the context

of the technical cooperation between Qatar and the ILO. Little information on fair recruitment practice appears on the ADLSA's website, and the Arabic sections – illegible to most low-wage migrants – are more developed and up-to-date than the English. These online resources lack essential legislative texts and offer no databases of recruiters or employers who have been banned because of malpractice. A recently launched migrant worker portal on Hukoomi, the government's official information website, provides more comprehensive information in the languages spoken by Qatar's largest migrant communities, but fails to reflect important legislative reforms governing labour migration and protecting migrant rights. Positive developments, though, have occurred. The Qatari Labour Ministry has launched a mobile phone application allowing migrants to submit permit extensions, and to file complaints against agencies and employers. During the COVID-19 pandemic,

Hukoomi launched a platform connecting migrant workers to volunteers speaking 10 different languages to enable them to seek health and other advice as well as providing contacts to ADLSA's complaints unit. In partnership with the ILO, the ministry has broadcast announcements on forced labour and human trafficking on Qatari radio and television as well as through social media platforms; has hosted a series of webinars and conferences for businesses regarding aspects of labour law; and has opened dialogue with global unions and federations. In March 2021, the Government Communications Office launched a Whatsapp service providing free information about Qatari labour law and regulation. The ILO has also assisted ADLSA in the production of a number of awareness-raising videos, in relevant languages, on topics as varied as heat stress, contracts and the minimum wage, domestic workers, and the operation of the wage protection system.

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### Recommendations to the Government of Nepal:

- Upgrade pre-departure training to include country-specific information, information regarding fraud risks, and grievance mechanisms.
- Provide specialized pre-departure training for domestic workers and institute regular phone check-in procedures for domestic workers with Nepali consulates in Gulf states
- Complement pre-departure seminars with post-arrival orientation seminars and hold country-specific information dissemination sessions upon workers' arrival and semi-regularly thereafter.
- Exclude private employment agencies from any role in the provision of pre-departure and post-arrival orientation seminars.

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### Recommendations to the Government of Qatar:

- Make key information for workers on the MADSLA website available in key worker languages
- Update the Hukoomi platform to include information on the 2017 Domestic Workers Law and the Labour Dispute Resolution Committees, and ensure that it is regularly updated to take account of legislation and policy changes.

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### Recommendations to the Government of Kuwait:

- Make online information, including key portals on Ministry of Interior's and PAM's websites available in workers' languages
- Conduct public information campaigns combatting xenophobic rhetoric against migrant workers.

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### **8.1 Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government publish online “how-to” guides on fair recruitment, deliver public service announcements on radio and/or television; or web seminars (webinars) or similar outreach efforts?**

#### *Nepal*

DOFE’s website provides a lot of recruitment-related information including copies of the 2007 FEA, the 2008 FER and 2012 FEP. It also contains a public database of all active, inactive, suspended and blacklisted recruitment agencies in Nepal; a list of over 60 foreign employers blacklisted for recruitment of Nepali nationals;<sup>952</sup> and a list of licensed orientation centres, certified insurance companies, banks, medical centres and recruitment agency branches. Data on the number of approvals of labour permits is regularly updated and MOLESS annual reports on labour migration are also available. The website is available in both Nepali and English, (although the English site is less comprehensive), and it is relatively easy to navigate for anyone familiar with the internet, which many aspiring workers are not, raising questions about the efficacy of any digital outreach campaigns. As part of an effort to minimize the risk of fraud, the website includes a step-by-step explanation of the procedures aspiring migrants must follow to obtain a labour permit, and enables them to verify the status of their application by entering their passport number. A guide on how to find a job abroad is also available on the website; there is also a range of information on complaint handling, contact details to DOFE’s offices in the provinces and links to Nepali embassies in the major labour destination countries.

The Foreign Employment Promotion Board’s website<sup>953</sup> also includes relevant information about safe migration,

as does “Baideshik Rojgari”, DOFE’s mobile phone application, which enables users to easily access latest news and regulations issued by the department as well as contacts to Nepali missions abroad, track complaints and listen to radio shows on safe migration produced by Radio Nepal.<sup>954</sup>

Video tutorials on how to use DOFE’s mobile phone application and website to find employment abroad and check the status of the labour permit application have been released by the SaMi project, a joint initiative by the Swiss and Nepalese governments (see 8.3).<sup>955</sup> Public service announcements on safe migration are produced by one of SaMi’s implementing partners, Ujyaalo Multimedia, a radio, TV and online portal, and are regularly broadcasted on its platforms.<sup>956</sup> In collaboration with the SaMi project, Ujyaalo Multimedia also produces a flagship radio show on migration called “Desh Paradesh”, which is aired at prime time, and covers issues ranging from the relevant legislation, to recruitment agency practices and customs in destination countries. The programme is interactive and allows listeners to send their comments and questions.<sup>957</sup>

Despite the availability of information on fair recruitment, and efforts by the authorities to increase its accessibility, our interviews with Nepali workers suggest that many migrants do not check official advice prior to travel. 30 out of 40 interviewed migrants, who had arrived in Kuwait and Qatar between late 2018 and early 2020, said that they did not check any government websites because they were unaware of their existence, were not interested, did not have the time to do so prior to travel, or relied on advice from returnees or information shared on social media by civil society. Those who did, found them a useful tool. However, those who checked these websites included primarily migrants who came from more privileged socio-economic classes, had a higher level of education or experience of foreign employment, suggesting that information may not be reaching individuals most vulnerable to abuse. One migrant worker, who is currently working as a barista in an international coffee chain in Kuwait, but who had worked in Nepal as a journalist, explained:

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952. The [list](#) includes 65 employers in Malaysia, the UAE, Qatar, Saudi Arabia and the Maldives. When we checked the list in June 2021, the version available was last updated on 30 June 2020.

953. [Foreign Employment Promotion Board](#)

954. [Baideshik Rojgari page on Apple App Store](#)

955. SaMi Project, [Information on Foreign Employment video](#)

956. [SaMi project](#)

957. The Freedom Fund and London School of Hygiene and Tropical Medicine, “[Safer labour-migration and community-based prevention of exploitation: The state of the evidence for programming](#)”, (February 2016): 59.

*“I checked my visa status, and also verified my approval letters and other details through the government portal before moving to Kuwait [...] but there are workers who come from remote places with no access to internet and computers. The information does not reach these [...] workers who need it the most.”<sup>958</sup>*

While radio and TV shows on fraudulent practices and abuses appear to reach some aspiring migrants that would normally not check websites, many continue to rely on agents, recruitment agencies and returnee migrants as their primary source of information prior to travel. In addition, our interviews show that even those migrants who have access to official information and are aware of the “Free Visa, Free Ticket” policy end up paying exorbitant recruitment fees way above the NPR10,000 legal cap.<sup>959</sup>

A Nepali man who attended the mandatory orientation training and checked government websites before he migrated to Kuwait in late 2019 to work as a delivery driver for a catering company explained that he had no choice but to pay the illegal fee of NPR 116,000 (around USD 985) to the recruitment agency given that all the other people recruited for the same job had agreed to pay. He said that despite his knowledge of the law he felt compelled to comply with the agency’s request to send a short video clip in which he was asked to introduce himself in English and state that he had only paid 10,000 NPR:

*“We were 20 people recruited for the same job, everyone paid a different sum. The amount did not include insurance, medical tests or the police report. I had to sell by motorcycle, gold and borrow money to pay for this. We know about the government cap on recruitment fees, but we are helpless. Knowing that there are other people who have paid more than us is our only consolation.”<sup>960</sup>*

This individual’s experience suggests that information campaigns have had some success raising awareness amongst some prospective migrants about legal limits

on recruitment fee payments, while also demonstrating the limitations of such campaigns.

According to AMKAS, an NGO supporting returnee migrant women, there is a particular lack of information for women who choose to migrate to GCC countries as domestic workers and who may be unaware of the implications of irregular migration via India (see section 1). There is a lack of specific TV and radio announcements concerning irregular migration, and the government’s messages do not appear to reach them, nor do they seem to reach sub-agents at the local level.<sup>961</sup>

## **Kuwait**

PAM’s website is available only in Arabic and includes Arabic versions of the relevant laws regulating work in the private sector in Kuwait; an English translation of the 2010 Private Labour Law is also available. It does not, however, include the 2015 Domestic Worker Law in either Arabic or English.

The website includes (on a page which requires navigation through three Arabic language pages) a brief one-page brochure outlining basic worker rights and obligations, including information on weekly working hours, the right to keep one’s passport and the right to paid public holidays. The booklet is available in English, Bangla, Urdu, Hindi, Tamil and Sinhala.<sup>962</sup> Given that most migrant workers in Kuwait do not read or write Arabic, it is unlikely that they would be able to find this information independently and make informed choices about migration to the country.

The Ministry of Interior’s website has an English portal and includes a brochure, outlining basic information on Kuwaiti labour and anti-trafficking laws including basic rights and obligations of migrant workers.<sup>963</sup> The brochure, which is available in Arabic and in English, includes contact details of the Criminal Investigations Department and invites both Kuwaiti and foreign nationals to file complaints. It instructs migrant workers to seek advice if they have been forced to sign a contract

958. Migrant worker in Kuwait, remote interview, 3 August 2020.

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

960. Migrant worker in Kuwait, remote interview, 2 August 2020.

961. AMKAS specialist, interview, 17 January 2020.

962. PAM, [حقوق وواجبات العمالة الوافدة داخل دولة الكويت](#)

963. Ministry of Interior, Criminal Investigations Department, [“Guidelines for foreign labours: Rights and duties”](#)

in a language they do not understand, were not given a copy of their contract or their full salary or were forced to pay a part of their income to their employer in order to be able to work for someone else. While potentially useful, the brochure is very difficult to find on the website in either Arabic or English.

According to Sandigan Kuwait, PAM has issued public announcements on FM radio concerning the 2015 Domestic Worker Law, mainly targeting employers.<sup>964</sup> PAM also occasionally issues awareness raising messages via its Instagram account, mainly focusing on warnings to employers about the illegality of visa trading.<sup>965</sup>

## Qatar

Recent years have seen an increased effort to provide workers and employers with more information about labour rights and protections, with many positive initiatives. Nevertheless, the provision of information remains somewhat patchy with some clear gaps.

To facilitate access to its services for workers and employers, ADLSA launched the Amerni mobile phone application, which enables users to submit labour approval and residency permit extensions, and file complaints against recruitment agencies and employers (see section 7). A user's guide is available on ADLSA's website.<sup>966</sup>

ADLSA's website also has a "Labour" page, which includes easy to understand (for workers who can read English or Arabic) information for both workers and employers about the minimum wage, labour dispute resolution system, and changing employers.<sup>967</sup> While these information sheets are helpful for workers, it is more difficult to find the actual laws in question. A copy of the 2004 Labour Law is available on the Arabic site, but we could not find one on the English site, nor any of the laws adopted since 2017 under the ILO cooperation programme, including Law 19 of 2020 removing restrictions on migrants' ability to change

jobs, Law 18 of 2020 on the termination of contracts and Law 17 of 2020 setting a non-discriminatory minimum wage are available on the website in either language. We could not find the 2017 Domestic Workers Law either in Arabic or in English.<sup>968</sup> Such documents can generally be located by experts, who already have an idea of what they are looking for and read Arabic (or sometimes an English translation), on the government's al-Meezan legal site, or via the ILO website.

The website does not contain a list of banned recruiters or employers as a result of fraud or other abusive practices.

Hukoomi, the Qatari government's official information and e-services website, has recently developed a specific portal for migrant workers providing information on the labour law, access to health and medical care, visa and permits in Nepali, Hindi and Filipino in addition to Arabic and English. The website also contains several e-learning guides on life in Qatar, the use of an ATM and a mobile phone application enabling money transfers. It additionally includes a simple document providing general guidelines to new migrants, information on workers committees as well as a "Workers' Rights" booklet drafted by Qatar's National Human Rights Committee and made available in 11 languages.<sup>969</sup> During the COVID-19 pandemic, Hukoomi launched a platform connecting migrant workers to volunteers speaking 10 different languages to enable them to seek health and other advice as well as providing contacts to ADLSA's complaints unit.<sup>970</sup>

Despite these positive steps, the portal fails to provide any information on the 2017 Domestic Workers Law, access to grievance mechanisms or updates on recent legislative reforms. Worryingly, it continues to provide outdated information, on the requirement for workers to obtain exit permits and non-objection certificates when seeking to either leave the country or change employers, potentially giving workers the impression that they require their employers' permission to leave the country or change jobs, and undermining wider trust in the reforms.<sup>971</sup>

964. Representative, Sandigan Kuwait, remote interview, 12 October 2020.

965. PAM Instagram [account](#)

966. ADLSA, "[Amerni](#)"

967. ADLSA, "[Labour](#)"

968. Checked on 20 June 2021. A press release announcing the 2020 reforms is however available: MADSLA, "[Statement from the Ministry of Administrative Development, Labour and Social Affairs on New Minimum Wage and Labour Mobility Law](#)", (30 August 2020).

969. Hukoomi Migrant Workers' [portal](#)

970. Hukoomi, "[Connecting for care](#)"

971. Checked on 20 June 2021. Hukoomi, "[Labour Law](#)"; Hukoomi, "[Exit permits](#)". Also see [National Human Rights Committee booklet](#), published April 2018.

Since the launch of the technical cooperation programme, ADLSA worked together with the ILO office to develop materials raising the public's awareness on labour rights and laws governing labour migration (see 8.5), and took part in outreach activities. A series of public service announcements on forced labour and human trafficking were broadcast in 2020 on Qatari radio and television as well as through social media platforms, while labour inspectors distributed print materials on passport confiscation during visits to workplaces on World Day against Trafficking in Persons.<sup>972</sup> In addition, ADLSA has been working with QCCI to deliver webinars aimed at raising private companies' awareness about the labour law and services provided by the ministry. According to QCCI, such webinars cover the following issues: procedures for changing employers, work contracts, the digital certification of contracts, working conditions, workers' accommodation, termination of contracts, and the wage protection system.<sup>973</sup> Finally, in March 2021, the Government Communications Office and ADLSA launched a free automated WhatsApp chatbot in six languages (Arabic, English, Urdu, Hindi, Nepali and Malayalam) providing up-to-date, information for employers and expatriate workers about labour law and regulations, Qatar Visa Centers, and answers to frequently asked questions.<sup>974</sup>

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## 8.2 Does the government carry out effective pre-departure orientations, including providing training regarding workers' rights and fair recruitment for potential migrants?

### Nepal

The completion of a pre-departure orientation training is mandatory for any Nepali national wishing to travel abroad for employment.<sup>975</sup> The Foreign Employment Board is in charge of setting the curriculum and

ensuring quality standards but the trainings are carried out by certified private institutions.<sup>976</sup> The mandatory training lasts two days although some workers have reported attending longer courses ranging from three to seven days.<sup>977</sup> Aspiring migrants are required to cover the official training costs of 700 NPR (around USD 6) per day, which the Foreign Employment Board then reimburses to women migrants, but not men.<sup>978</sup> Anyone who migrates for work irregularly, including domestic workers, who travel to GCC countries via India in defiance of the official ban (see section 1), is excluded from orientation trainings.

According to one migrant rights organisation, the training is general and can lack country specific information.<sup>979</sup> Workers travelling for employment to GCC countries are usually trained in the same course, and are provided general information ranging from aircraft and road safety to emergencies abroad, the basics of Islam, the Arabic language, Arab culture and general laws in the region. One labour migration expert told us that he feels these topics do not offer workers the practical insights they need ahead of migrating to the Gulf: "while these issues are essential where public relations with countries of destination is concerned, it is largely irrelevant. Workers should get training on how to live in labour camps."<sup>980</sup> The director of PNCC, who has experience of teaching in one of these courses and devised a new teaching manual, told us that many trainers do not even follow the official curriculum, and fail to adapt the sessions to the skills and knowledge of participants. As a result, participants, which include returnee migrants, who would benefit from a more advanced course on laws and policies in the destination country, and first-time migrants who need basic information, are effectively taught the same curriculum.<sup>981</sup> Given that some orientation centres are run by recruitment agencies, there are concerns that courses fail to cover Nepal's policies on fair recruitment, including the legal cap on recruitment fees. Another major challenge is the widespread practice of "certificate selling", whereby trainers grant the orientation training

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972. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.340/INS/11, (October 2020): 8

973. Qatar Chamber of Commerce and Industry, "QC, ADLSA held webinar to raise awareness on labour issues"

974. Government of Qatar, Government Communications Office launches Labour Laws and Regulations Information Service on WhatsApp in cooperation with Ministry of Administrative Development, Labour and Social Affairs, (2 March 2021).

975. Foreign Employment Act, 2007, section 27.

976. Foreign Employment Act, 2007, section 27.

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

978. Foreign Employment Rules, Third Amendment, (2017)

979. Nilambar Badal, Policy and Campaign Coordinator, National Network for Safer Migration, interview, 13 December 2019.

980. Professor Ray Jureidini, written comments, October 2020

981. Som Prasad Lamichhane, Director, PNCC, interview, 13 June 2020.

certificate to participants regardless of whether they actually attended the course, as long as they paid their fees and signed in and out on both days.<sup>982</sup> In an attempt to prevent this practice, the Nepali authorities introduced a fingerprint system to ensure attendance, yet trainers still allow participants to leave the classroom after providing their fingerprints. In addition, in 2018, the Special Rapporteur on the human rights of migrants noted that orientation centres are only available in Kathmandu and several specific districts, involving additional travel costs for participants, and that they fail to cover redress mechanisms and access to consular assistance.<sup>983</sup>

We spoke to first-time recruits, who had never travelled abroad, told us that they found the course useful. They were particularly pleased to hear the experiences of returnee migrants and receiving the contact details to Nepali embassies, labour offices and civil society organisations that assist migrants abroad, which they would not have otherwise obtained. Returnee migrants, however, reported that they were told to come only for one day, or allowed to skip the course altogether, and that they felt it was a “waste of time” as they had prior experience of work in the region. Some stated that they needed more country specific information on labour and immigration laws and policies. Only one interviewee out of 40 migrant workers stated that the course covered fraud by recruitment agencies, including the illegal practice of charging illegal fees.<sup>984</sup>

Recognising these shortcomings, the government has sought the ILO’s support in developing a new pre-departure orientation manual, which would be more accessible to worker and include more relevant, country-specific information.<sup>985</sup>

In addition to the general orientation courses, some progress has been made to develop thematic trainings, targeting individuals most vulnerable to fraud and abuse, including domestic workers. Although the Foreign Employment Board, developed a special 30-day-long curriculum for the orientation training of

domestic workers, in January 2020, the course was only being offered to Nepalis travelling to Jordan due to the existence of a BLA between the two countries.<sup>986</sup>

In addition to the mandatory two-day trainings, the Information unit at the Labour Office conducts short 30-minute pre-departure sessions for aspirant migrants who come to collect their labour permits, according to an official.<sup>987</sup> Prior to collecting their work permits, migrants usually receive a country specific booklet published by the ILO, containing detailed information about labour laws, migration policies and workers’ rights and responsibilities in the destination country, in addition to advice on how to seek redress, avoid fraud and contract substitution.<sup>988</sup>

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### 8.3 Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups

#### Nepal

In 2018, the Special Rapporteur on the human rights of migrants acknowledged the efforts made by the Nepali government to work closely with “United Nations agencies, international organisations, international donor agencies and NGOs to improve access to information, justice and skills development training”, and welcomed the establishment of migrant resource centres, to facilitate outreach.<sup>989</sup>

These centres, which were set up under the Safer Migration Project (SaMi), a joint initiative of the Swiss and Nepali governments, aim to provide aspiring migrants with information on the risks associated with migration to help them make an informed choice about foreign employment and avoid fraud, trafficking and exploitation. They are located in passport application offices of District Administration Offices (DAO) in 39 districts.<sup>990</sup> In parallel, SaMi project volunteers and

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982. Som Prasad Lamichhane, Director, PNCC, interview, 13 June 2020.

983. UN Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal”, A/HRC/38/41/Add.1, (2018): 9.

984. Migrant worker in Kuwait, remote interview, 6 August.

985. ILO official in Nepal, 21 October 2020.

986. Senior official, Foreign Employment Board, interview, 13 January 2020.

987. Official, Labour Office, interview, 10 January 2020.

988. Official, Labour Office, interview, 10 January 2020.

989. UN Human Rights Council, “Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal”, A/HRC/38/41/Add.1, (2018): 9.

990. See SaMi project

social mobilizers disseminate key messages about migration risks at the community level including through radio programmes. According to Helvetas, the project's implementing partner, between 2014 and 2017, some 49,000 aspiring migrants, 22% of them women, were provided with advice and information on foreign employment.<sup>991</sup> Several migrant workers told us they had videos and reading booklets produced by SaMi about pre-departure procedures prior to travelling to destination countries, and had learned about the risks of migration through SaMi street dramas and other artistic endeavours.

## Kuwait

We are not aware of any major governmental programmes to encourage outreach to workers by employers, workers' organisations, labour recruiters or civil society groups. Ministries appear to take part in one-off public events in cooperation with IOM and other UN agencies and Social Work Society, a charitable organisation founded by Sheikha Bibi Nasser Al Sabah, which strives to protect the rights of migrant workers in Kuwait including by providing legal aid.

In August 2019, IOM launched an awareness raising campaign about human trafficking in partnership with the Ministry of Interior and Social Work Society, with the aim of disseminating information about migrant workers' rights to the public.<sup>992</sup> Also in August 2019, and again in collaboration with Social Work Society, IOM marked international domestic workers' day through a series of public events aimed at recognizing the vital role of domestic workers in Kuwaiti society, and providing workers with information about their rights.<sup>993</sup>

The Kuwaiti authorities also facilitate Social Work Society's access to imprisoned and detained migrant workers, and allow its representatives to attend parliamentary sessions related to their cases. In 2018, Social Work Society launched "One Roof", a campaign

to raise workers' and employers' awareness about the 2015 Domestic Workers' Law, in partnership with Human Line Organisation and the Ministry of Interior. The campaign developed a legal guide concerning the rights and obligations of domestic workers, with an aim to also reach out to employers.<sup>994</sup> The guide was to be made available in primary care centres, hospitals, police stations, Kuwaiti embassies in labour sending countries as well as embassies of domestic workers in Kuwait and recruitment agencies.<sup>995</sup> However, the campaign was halted following the transfer of powers over the regulation of domestic work from the Ministry of Interior to PAM, and its plans for renewed activities have been disrupted by the Covid-19 pandemic.<sup>996</sup>

According to a development worker focussing on migration issues in Kuwait, the country's national development vision centred around the idea of Kuwaitisation, or reducing the demographic imbalance between Kuwaiti and non-Kuwaiti nationals, is the main reason behind a lack of proactive government efforts to encourage outreach to workers by employers, workers' organisations and others. As a result, a lot of initiatives are spearheaded by UN agencies and subsequently endorsed by the Kuwaiti authorities "because it looks good" and improves the country's international standing.<sup>997</sup>

## Qatar

The Qatari authorities have taken some small steps, under the technical cooperation programme with the ILO, to encourage outreach to workers by employers and some workers' organisations. Together with the ILO, since 2019, ADLSA has supported the establishment of joint committees, representing workers and employers, in 20 workplaces, including both private companies and public bodies (see section 9.2); set up working groups for committee members representing different sectors of economic activity; and facilitated the delivery of an online training course to these working groups by international trade unions and federations.<sup>998</sup> Amongst

991. See Helvetas [website](#)

992. [Video](#) of the press conference announcing the launch of the campaign, (4 August 2019).

993. [Video](#) of event and interview with IOM Project Manager Mayada Serageldin on state television KTV2, (4 August 2019).

994. See One Roof Campaign [website](#)

995. Al Naba, 17) [إطلاق حملة «سقف واحد» للتوعية بحقوق العمالة المنزلية](#) (April 2018).

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

997. Development worker in Kuwait focusing on migration issues, Remote interview, 12 October 2020.

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

participants was WISA Manpower, a public company set up for the recruitment of temporary domestic workers.<sup>999</sup>

In addition, ADLSA chairs Taawon, a community of practice on workplace cooperation, established in 2019 to promote the sharing of best practices on workplace cooperation between representatives of QCCI, the International Organisation of Employers, ITUC, ITF and BWI as well as some worker and employer representatives from joint committees.<sup>1000</sup> Further, since October 2018, ADLSA has chaired a biannual communities' leaders forum with representatives of the main migrant communities in the country following a dialogue initiative led by BWI.<sup>1001</sup> At first, the meetings included only representatives of the four largest migrant communities in the country (India, Nepal, Bangladesh and Pakistan) but then grew to also include community leaders from Pakistan and up to eight African countries. According to BWI, these meetings are an opportunity for migrant representatives, who include low-paid unskilled workers, to have a direct line of communication with the ministry and raise concerns and obtain clarifications about the recently introduced legislative reforms.<sup>1002</sup>

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#### **8.4 Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters?**

##### **Nepal**

Although the Central Bureau of Statistics has been conducting multiannual labour force surveys since 1998, with technical assistance from the ILO, there is little information on labour needs for Nepali migrants abroad. The Foreign Employment Board is required under the 2007 FEA to conduct studies of international labour markets, exploring new destinations and collecting and publishing information that promotes specific jobs.<sup>1003</sup> However, in practice, the Board fails to disseminate any

such information, and its website does not include any job advertisements, or information on required skills. In 2015, the ILO and GIZ published a research study to address this gap, stating that the lack of adequate information “regarding qualifications, skills, wages and how demand will evolve inhibits informed decisions by public and private institutions as well as by migrant workers” and “results in lost opportunities or mistakes with training investments in both origin and destination countries”.<sup>1004</sup>

##### **Kuwait**

In 2014, Kuwait's Central Bureau of Statistics launched a Labour Market Information System (LMIS) with a stated aim to make data on the labour force accessible to the public, enable better planning by the public, private and non-profit sectors, and monitor labour policies while assessing progress towards the objectives set out in Kuwait's national 2035 vision.<sup>1005</sup>

The LMIS website is available in both English and Arabic, and includes results of the 2014, 2015 and 2016 labour force surveys as well as an integrated database on the labour market, which has been updated on a quarterly basis since 2014. The integrated database contains some information, which could be of use to employers, recruiters and workers. However, given that it was designed to support Kuwait's long-term development objectives of ensuring a greater participation of Kuwaiti nationals in the private sector, it monitors primarily the division of the labour force between Kuwaiti and foreign nationals in the private and public sectors, taking into consideration gender, educational levels and marital status. It also provides a breakdown of the foreign workforce based on nationality and broad geographic area of origin, as well as information on the make-up of domestic workers divided by age, gender and nationality.<sup>1006</sup> Although it includes broad information on monthly average wages in the public and private sectors for both Kuwaiti and non-Kuwaiti nationals, it fails to provide a breakdown of wages for professional, skilled and lower income jobs or details of monthly salaries of

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999. ILO, “Joint committees strengthened through a major training initiative”, (24 June 2020).

1000. ILO, “Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO”, GB.340/INS/11, (October 2020): 8.

1001. BWI representative, remote interview, 18 October 2020.

1002. BWI representative, remote interview, 18 October 2020.

1003. *Foreign Employment Act, 2007*, Section 39.

1004. ILO and GIZ, “Labour Trend market analysis and labour migration from South Asia to Gulf Cooperation Council countries, India and Malaysia”, (2015): 1.

1005. Labour Market Information System, *نشرة عن نظام معلومات سوق العمل*

1006. Labour Market Information System, “Integrated database from March 2014 to June 2020”

domestic workers, and as a result can be misleading, giving an overall impression that wages are higher than what the large majority of migrants are paid in reality. Similarly, it lacks information and analysis on growing and declining sectors, future demand, job mobility and transferability of skills, career structure, hours of work, poverty or income distribution by economic class. Most of the information is included in pdf or excel formats, is therefore not user friendly, and it is doubtful that foreign workers or recruiters would use it as a tool to make an informed decision about labour migration. Importantly, the LMIS does not include any data or analysis of irregular or undocumented migrants.

In 2017, PAM issued new rules regulating private companies' assessment of needs for foreign workers, based on a decision it adopted the preceding year (No. 583 of 2016), in order to limit its foreign workforce and curb on the practice of visa trading.<sup>1007</sup> The rules, which are available on PAM's website in Arabic only, establish a maximum number of foreign workers per business and specific job description based on a set of general criteria such as office size or its use, availability of equipment and type of contracts.

## Qatar

The Qatari Planning and Statistics Authority regularly publishes labour market statistics, and makes them available on its website in Arabic and English.<sup>1008</sup> It has been conducting annual labour force surveys since 2006, providing data on socio-economic characteristics of the labour force, unemployment and reasons for it, employment, wages and working hours, aggregating it by sector and gender and providing a comparison between the economic participation of Qatari and non-Qatari nationals.

In addition to quarterly updates, the Planning and Statistics Authority publishes annual reports based on its labour force surveys, which include more in-depth

analysis.<sup>1009</sup> These reports could provide some useful general information for migrant workers. For example, in 2018, domestic workers worked the longest hours per week (with an average week of 54 hours) and received the lowest average monthly salaries out of any economic sectors (around 3,000 QAR or 795 USD).<sup>1010</sup> The study also noted that the construction sector had been steadily growing since 2015, and that the non-Qatari labour force increased by 2% since 2017. Overall, however, the data on wages by economic sectors and skill level (highly skilled, skilled, limited skill, unskilled) is too broad, failing to provide a breakdown of averages for specific jobs and nationalities, and there is no information on job mobility or career paths.

Hukoomi, the Qatari government's official portal, provides some limited information for jobseekers, including links to some recruitment agencies or media including job advertisements for highly skilled and skilled professionals, but fails to provide any such information for lower income workers, which constitute the majority of the country's migrant population.<sup>1011</sup>

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## 8.5 Does the government collaborate with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns?

### Nepal

The Nepali authorities work closely with the ILO office in Nepal to raise the awareness of aspiring migrants through two projects<sup>1012</sup> to deliver trainings, capacity-building and campaigns. In 2014, MOLESS signed a partnership agreement with the ILO to implement "Work in Freedom", a project aimed at protecting women and girls from human trafficking through information sharing and awareness raising and improvement of ethical recruitment practices.<sup>1013</sup>

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1007. Public Authority of Manpower, [لائحة تنظيم تقدير الاحتياج لأنشطة أصحاب الأعمال في القطاع الأهلي](#)

1008. Planning and Statistics Authority, "[Statistics, Labor Force](#)"

1009. Planning and Statistics Authority, "[Labor Force Sample Survey: Annual Report 2018](#)", (June 2019).

1010. Planning and Statistics Authority, "[Labor Force Sample Survey: Annual Report 2018](#)", (June 2019): 17 and 18.

1011. Hukoomi, "[Searching for a job](#)"

1012. ILO, "[Integrated Programme on Fair Recruitment, \(FAIR\), II](#)"

1013. In 2018, the project was extended until 2023. ILO, "[Signing of joint initiative with the Ministry of Labour and Employment \(MoLE\) to protect women and girls from trafficking](#)", (3 April 2014).

The ILO has also an ongoing partnership with the Foreign Employment Board on supporting the board in developing and revising the curriculum for pre-departure training courses. In addition, it has provided assistance to Migrant Resource Centres in four districts to enable the provision of information to aspiring migrants regarding official migration channels and legal routes, new legislation, insurance and benefits and specific bans, amongst other things.<sup>1014</sup> In 2015, the ILO Nepal office developed guides for Nepali nationals planning to migrate to Qatar and Kuwait, outlining foreign employment procedures, laws regulating labour migration in these countries, and providing advice on steps to take to avoid being subjected to fraud and other abuses.<sup>1015</sup> These are now outdated, however, and do not cover some developments, which have occurred since then such as legal reforms in Qatar or the establishing of the Qatar Visa Center in Kathmandu.

## Kuwait

According to the ILO, Kuwait has the longest history of tripartite consultation out of any Arab country,<sup>1016</sup> and has sought the ILO's technical assistance to build the capacity of PAM inspectors, and to carry out major legal reforms to protect the rights of domestic workers. While the ILO conducts awareness raising-campaigns and trainings on fair migration and recruitment that target workers' and employers' organisations, there is not much available evidence of the Kuwaiti authorities' active cooperation or leading role in the design or delivery of these activities. Rather, government institutions appear to be recipients of such trainings.

Although one of the key objectives of ILO's Fairway Programme, implemented across the MENA region including in Kuwait, is to "address the interlinked structural, behavioural, and practical barriers to improved labour migration" by improving migrant workers' access to information and changing discriminatory attitudes towards migrant workers,<sup>1017</sup> the ILO tends to implement such awareness-raising

activities directly with workers' and employers' organisations without the government's active participation. For example, in 2018, it provided support to the Kuwait Chamber of Commerce and Industry in holding a roundtable discussion with construction sector companies to share best practices with regards to ensuring fair recruitment and decent working conditions for migrant construction workers.<sup>1018</sup> Some of the feedback from these discussions was subsequently incorporated in a guidance tool for construction companies published by the ILO.<sup>1019</sup> The ILO also supported the establishment of Sandigan Kuwait Domestic Workers Association (SKDWA), the first member-based organisation of migrant domestic workers in Kuwait, building its capacity through an agreement with the International Domestic Workers Federation (IDWF) to conduct awareness raising activities amongst Filipino domestic workers and community support services.<sup>1020</sup>

The Kuwait Decent Work Country Programme signed in 2018 between the ILO, MSAL, KCCI and KTUF builds on the achievements of Fairway, and includes a number of awareness raising activities to achieve its three stated long-term objectives of enhancing the skills of women and men foreign workers, improving the governance of foreign labour, and strengthening social dialogue and tripartism. Amongst other things, it strives to raise the awareness of KTUF and employers on principles of fair recruitment and rights based approaches to fair migration, and to build the capacity of PAM staff in order to improve the implementation of the 2015 Domestic Workers Law.<sup>1021</sup>

## Qatar

Raising the awareness of migrant workers' rights and obligations is a key objective of the technical cooperation programme between the ILO and Qatar. Specifically, the programme aims to ensure that both workers and employers are aware of heat-related risks, rights at work, the prohibition on forced labour and the

1014. ILO Nepal official, interview, 3 January 2020.

1015. ILO, "Travel Smart, Work Smart: A guide for Nepali migrant workers in Qatar", (2015); ILO, "Travel smart, Work smart – A guide for Nepali migrant workers in Kuwait", (2015). Both are available in English and Nepalese.

1016. ILO, "Kuwait country page"

1017. ILO, "The FAIRWAY Programme"

1018. ILO, "The Kuwait Chamber of Commerce and Industry hosts discussion on migrant workers in the construction sector", (April 2018).

1019. ILO, "Guidance tool for construction companies in the Middle East", (2019).

1020. Michele Scala and Smita Premchander, "ILO Evaluation: Regional Fair Migration Project in the Middle East", RAB/15/03/CHE, (June 2019).

1021. ILO, "Decent Work Country Programme for Kuwait, (2018-2020)", (2018).

ILO's General principles and operational guidelines for fair recruitment.<sup>1022</sup> Since the programme's launch, the ILO supported ADLSA in the production of a number of awareness-raising videos, animations, flyers and posters on: heat stress mitigation measures,<sup>1023</sup> Law No. 13 of 2018 removing exit permits for some categories of workers, the mandate of ADLSA's labour inspectorate, the rights and responsibilities of domestic workers under Law No. 15 of 2017,<sup>1024</sup> the benefits and procedures required for the setting up and functioning of joint workers' and employers' committees in companies,<sup>1025</sup> and other workers' rights and protections<sup>1026</sup> such as the right to retain one's passport, the importance of understanding a work contract and work hours,<sup>1027</sup> and the introduction of a non-discriminatory minimum wage.<sup>1028</sup>

In producing and disseminating these materials, the ILO cooperated with ADLSA and employers, and at times, with civil society organisations such as Migrant-Rights, supporting the production of a booklet for domestic workers intended to be distributed in Qatar Visa Centers.<sup>1029</sup> In addition to providing information on domestic workers' rights, it also includes details on the ways in which domestic workers can lodge complaints with ADLSA. All awareness-raising materials were made available in both Arabic and English with some translated into Hindi, Nepali, Bengali, and other

languages. Some of them are uploaded on ADLSA's website.

In addition, as mentioned elsewhere (see Section 9.2) ADLSA started a regular dialogue with global unions and federations, since the start of the ILO cooperation programme. As one example of this cooperation, it worked with BWI to deliver a training session on the Violence and Harassment Convention to members of Bayanihan Construction Women Network, Bayanihan Domestic Workers, the South Asian Workers' Group and the African Workers' Group.<sup>1030</sup>

In May 2019, ADLSA co-hosted together with the ILO a conference, aimed at raising awareness among public sector clients of the prohibition on charging recruitment fees, and held discussions with private sector companies concerning recent legal reforms, including Law 13 of 2018 on the partial abolition of exit permits.<sup>1031</sup> In September 2020, the ILO launched a new guidance tool which supports fair recruitment and employment in Qatar's hospitality sector. The guidance, supported by an awareness-raising campaign, is the result of a one-year-long collaboration between ADLSA, the ILO office in Qatar, the Institute for Human Rights and Business (IHRB), the International Tourism Partnership (ITP), and representatives of more than 40 hotels in Qatar.<sup>1032</sup>

1022. ILO, "Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.337/INS/5, (October 2019): 11-12.

1023. See ILO animation, "Protect your workers with a heat stress mitigation plan"

1024. See ILO animation, "Your rights as a domestic worker in Qatar - Arabic"

1025. See ILO animation, "An introduction to Joint Committees - Arabic Subtitles"

1026. See for example ILO animation, "Make Qatar your success story! (Nepali)"

1027. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.340/INS/11, (October 2020).

1028. See video here: <https://www.youtube.com/playlist?list=PL8itJ-8CfpcxlcEshGCEcuwFhDPUCbYqQ> and infographic here: "The new minimum wage in Qatar"

1029. ILO, ADLSA, "Know your rights. A booklet for domestic workers in Qatar"

1030. ILO, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.340/INS/11, (October 2020).

1031. ILO, "Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", GB.337/INS/5, (October 2019): 11-12.

1032. ILO, "New guidance tool supports fair recruitment and employment in Qatar hospitality sector", (17 September 2020).

# Assessment against the Five Corridors indicators:

## 9. Freedom of association

- 9.1** Do workers have the legal right to form and join unions, and can they strike and collectively bargain? \_\_\_\_\_ 155
- 9.2** Can trade unions operate effectively in practice, are their activities free from disruption and harassment? \_\_\_\_\_ 159



Migrant workers among those on the Corniche in Doha, Qatar @ Jessica Moxham

## 9. Freedom of association

*“Freedom of association in Kuwait exists only on paper ... especially so for migrant workers.”* GULF LABOUR RIGHTS EXPERT.

### Summary

Nepal’s Constitution recognises the fundamental right of workers to associate freely, form and participate in unions, and bargain collectively. The country’s Labour Act and Trade Union Act codify these constitutional rights in law, for workers in both the formal and informal sectors of the economy. The two Acts set out the process of formation of trade unions and collective bargaining committees, and outline a range of occupational rights for both self-employed and salaried workers across a number of industries. The Labour Act also protects workers’ right to strike following the failure of a mandatory 21-day mediation period, although it withdraws this right from employees in certain essential sectors such as healthcare, banking, transportation and security. Despite these gains, it falls short of international labour standards by failing to provide adequate protection

against anti-union discrimination, promotion of collective bargaining and compulsory arbitration. Although politicised, Nepal’s workers’ movement is vibrant and has continued to grow in the past two decades, with unions generally being able to operate and engage publicly on labour reforms without state interference. The General Federation of Nepalese Trade Unions (GEFONT) is active in its efforts to protect the rights of Nepali migrant workers abroad, and has signed an agreement with partners in Kuwait that has succeeded in getting anti-union clauses removed from model employment contracts. Still, the International Trade Union Confederation (ITUC) has placed Nepal for the last two years in the category of countries that regularly violate trade union rights. This is the result of inadequate legal protections and an observed shrinking space for civil society in the country, with rising cases of arrests of trade unionists and other civil society actors.

Whilst the right to unionise is guaranteed under Kuwait's Constitution, the implementing legislation restricts the right to establish trade unions to Kuwaiti nationals working in certain sectors. Although migrant workers are therefore prohibited from forming unions, there is no explicit legal prohibition on them joining unions – and, in comparison to other GCC countries, workers of all types in Kuwait enjoy a relatively greater degree of freedom of association. This is helped by the presence in the country of a small number of non-governmental groups actively campaigning to protect and advance migrant workers' rights. The Kuwait Trade Union Federation, the umbrella organisation for the country's unions, has publicly advocated for migrant worker rights and the abolition of the kafala system, and has actively cooperated with migrant community groups and trade unions in origin countries. Despite that, it has still shied away from public reporting of labour rights violations, or any criticism of the state itself. Indeed, the 2010 Private Sector Labour Law allows the government a great deal of control over the activities of unions, and their ability to campaign freely and independently. Unions face an overly broad prohibition on engaging in political, religious or sectarian issues. They can be dissolved if they are found to have violated public order and morals, and have to obtain governmental consent in order to accept donations. Unions require permission from the Ministry of Interior to strike, and there are no legal protections for strikers against retaliation. Indeed, Kuwait's ratification of the ICESCR was accompanied by a reservation not to apply the covenant's provisions on the right to strike. So great is the cumulative effect of these many restrictions, that some international observers have been led to state that trade union rights exist in Kuwait really only on paper, and the ITUC continues to class Kuwait as a country with "no guarantee of rights" for workers. Still, unauthorised strikes are largely tolerated, and a group of volunteer group of Filipino workers has recently been able to establish, with ILO's support, the first membership-based organisation of migrant domestic workers in the Gulf following a decade of campaigning and organizing during which at least two of its members faced attacks seemingly on account of their activities.

Freedom of association is guaranteed under Qatar's Constitution, but the country's legislation fails to give application to that right. Only Qatari nationals are entitled to form or join associations or workers' committees, meaning that the overwhelming majority of the country's workers – foreign migrants – remain unable to bargain collectively. Qatar's Labour Law envisages the establishment of one trade union, made up of various workers' committees representing different trades, but it has not been established. Signs of positive change began in 2015 with the establishment of Workers' Welfare Forums by the Supreme Committee of Delivery and Legacy and its contractors, in the context of preparations to the FIFA World Cup, followed by the establishment – with the support of ILO – of joint worker-employer committees in 20 companies in which workplace issues can be discussed, including recruitment-related irregularities, since 2019. Both the ITUC and BWI have attested to the genuine engagement of ADLSA in these developments. While the joint committees are not a substitute for trade unions with collective bargaining status, the government has allowed five international unions and federations to operate in Qatar, seemingly without obstruction, although their mandate is limited to the terms set out in the ILO cooperation agreement. 2020 saw Qatar move from the ITUC's category of countries with no guarantee of workers' rights, to one with systematic violations of those rights. Given the starting point, these developments, when taken together, are positive. That said, changes have been limited to a relatively small number of major companies and large public bodies. Smaller companies, where abuse is known to be widespread and protections are weaker, still lack any form of legitimised worker representation. In May 2021 Uniglobal, the global union representing security guards, expressed alarm alongside civil society organisations when Malcolm Bidali, a Kenyan security guards who had blogged about his experiences was detained incommunicado by Qatari security agencies for reasons unknown. At the time of writing in June 2021 he had been released from detention but his legal situation remained unclear.

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## Recommendations to the Government of Nepal:

- Ensure that worker organisations including trade unions are able to participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements
- Ensure that diplomatic missions are tasked to protect any migrant worker in a destination state subject to retaliatory measures as a result of worker organising.

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## Recommendations to the Government of Kuwait:

- Amend the law to prohibit discrimination on the grounds of trade union membership or activities and guarantee the right the collective bargaining, in line with international labour standard.
- Ensure that worker organisations including trade unions are able to participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements
- Remove all legal restrictions on migrant workers' right to strike and prohibit retaliatory actions against anyone exercising that right or any other action to peacefully promote migrant workers' rights.

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## Recommendations to the Government of Qatar:

- Withdraw reservations submitted alongside Qatar's ratification of the ICESCR and amend the 2004 Labour Law to allow migrant workers to join and form trade unions.

- Ensure that worker organisations can participate in the development and review of legislation relating to migrant workers, as well in review and oversight mechanisms related to bilateral agreements.
- Remove all legal restrictions on migrant workers' right to strike and prohibit retaliatory actions against anyone exercising that right or any other action to peacefully promote migrant workers' rights.

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## 9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

### Nepal

Freedom of association and the right to form unions, participate in them and to organize collective bargaining are recognized as fundamental rights under Nepal's 2015 Constitution.<sup>1033</sup> The 2017 Labour Act guarantees workers in both the formal and informal sectors the right to form, operate, obtain membership and affiliation to a union, or to involve themselves in other activities related to unions.<sup>1034</sup> In addition, freedom of association and trade union rights protections are codified in the 1992 Trade Union Act.<sup>1035</sup> While Nepal has ratified the ILO Convention on the Right to Organise and Collective Bargaining (No. 98), it has not ratified the Freedom of Association and Protection of the Right to Organise Convention, (No.87),<sup>1036</sup> though a ratification is being actively considered by the authorities, according to the ILO.<sup>1037</sup> Nonetheless, in both 2019 and 2020, the International Trade Union Confederation (ITUC) has rated Nepal as a country with "regular violations" of trade union rights in the past two years.<sup>1038</sup>

The 1992 Trade Union Act codifies trade union rights of self-employed workers and workers across various industries, trades, professions and services.<sup>1039</sup> It also sets out the procedures required for the formation and

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1033. 2015 Constitution of Nepal, Articles 17 (2, b), 17 (2,d) and 34

1034. Labour Act, 2017, Section 8

1035. Also see: Contribution Based Social Security Act (SSA) 2018, Social Security Rules 2018, Social Security Schemes Operational Directives 2018, Employment Guarantee Act 2018 (2075 BS), and Right to Employment Act (REA) 2018 (2075 BS).

1036. ILO, Up-to-date Conventions and Protocols not ratified by Nepal

1037. ILO, International labour standards in Nepal

1038. ITUC, "2020 ITUC Global Rights Index, The World's Worst Countries for Workers," (2020): 13

1039. Unofficial English translation of the 1992 Trade Union Act

renewal of trade unions and federations, defines their duties and powers, and protects the right of working committees to present claims for collective bargaining on behalf of workers. However, it bars foreign nationals from being elected as trade union representatives.<sup>1040</sup>

The 2017 Labour Act sets out the procedures for the formation and functioning of collective bargaining committees in a workplace.<sup>1041</sup> At least 10 employees are required to establish a collective bargaining committee, which is then authorized to submit, negotiate and settle collective demands, among other things. It can be formed by an authorized trade union, or in its absence, by the signature of 60 percent of the workforce in the establishment.

The 2017 Labour Act guarantees the right to strike if a workplace dispute is not settled during a 21-day mediation period, which is the preferred dispute settlement mechanism under the law. In the case of a peaceful and lawful strike, carried out in accordance with the 2017 law, workers are to be paid half of their salaries.<sup>1042</sup> Employees providing essential services such as healthcare, banking, transportation and security, and those working in special economic zones, are however, denied the right to strike.<sup>1043</sup> However, workers in these sectors have been able to occasionally go on strike without facing any legal penalties.<sup>1044</sup>

Despite important protections, the ILO Committee of Experts has expressed concern that Nepali legislation fails to conform with international labour standards in relation to the requirement to provide adequate protection against anti-union discrimination, promotion of collective bargaining and compulsory arbitration.<sup>1045</sup> Indeed, neither the Constitution nor the Labour Act explicitly prohibit discrimination against workers, “by

reason of their trade union membership or participation in trade union activities,” and the Labour Act fails to clearly “specify the conditions under which trade unions are authorized to bargain collectively.”<sup>1046</sup>

## Kuwait

The right to form national unions and associations “by peaceful means” is guaranteed under Kuwait’s constitution, but is undermined by laws that fail to conform with international standards.<sup>1047</sup> Kuwait has ratified ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise and Convention No. 98 (1949) on the Right to Organise and Collective Bargaining (No. 98). However, when it ratified the ICESCR in 1996, it introduced a reservation not to apply the Covenant’s provisions on the right to strike (Article 8, paragraph 1(d)).<sup>1048</sup> The ITUC continues to class Kuwait as a country with “no guarantee of rights” for workers.<sup>1049</sup>

Under the 2010 Private Sector Labour Law, only Kuwaiti workers in the private, government and oil sectors can form trade unions.<sup>1050</sup> Although there is no explicit provision affording the right to migrant workers to join established unions and associations as members, the government has noted in its communications to the ILO Committee that “workers have the prerogative to organize, form and become members of unions”.<sup>1051</sup> However, this provision appears to only apply to workers who have a valid work permit and have resided in Kuwait for a minimum of five years.<sup>1052</sup> Although the law contains some protections against anti-union discrimination prohibiting the dismissal of workers based on their trade union activities or “as a result of claiming for or enjoyment of [their] legitimate rights”,<sup>1053</sup> it does not explicitly prohibit all acts of interference

1040. Article 10 (e), Trade Union Act, 1992

1041. Article 116.1, Labour Act 2017

1042. Section 127, Labour Act, 2017

1043. 2017 Labour Act and 2016 Law on Special Economic Zones; See also US Department of State, “2019 Country Reports on Human Rights Practices: Nepal”,

1044. US Department of State, “2019 Country reports on human practices: Nepal”

1045. ILO, [Observation \(CEACR\) - adopted 2018, published 108th ILC session \(2019\)](#)

1046. ILO, [Observation \(CEACR\) - adopted 2018, published 108th ILC session \(2019\)](#)

1047. [Kuwait Constitution](#), Article 43, 1962,

1048. UN Treaties Collection, [Declarations and Reservations made by states upon ratification, accession and succession to the International Covenant on Economic, Social and Cultural Rights](#)

1049. ITUC, [2020 ITUC Global Rights Index: 12](#)

1050. [Private Sector Labour Law](#) of 2010, Articles 98 and 99

1051. The 2010 Private Sector Labour law does not include an explicit provision allowing migrant workers to join trade unions. However, in its communication to the ILO Committee, Kuwait noted that under Kuwaiti legislation, “workers have the prerogative to organize, form and become members of unions. The Government refers to Ministerial Order No. 1 of 1964, which is based upon article 43 of the Constitution, and provides that no person may be compelled to join any association or union.” See [ILO Committee Observation \(CEACR\) adopted in 2017, published 107th session \(2018\)](#)

1052. [ILO Committee Observation \(CEACR\) adopted in 2017, published 107th session \(2018\)](#)

1053. Article 46, [Private Sector Labour Law](#), 2010

by employers or authorities.<sup>1054</sup> Further, it enables the courts to dissolve any trade union, which has been found to violate “public order and morals” laws, although the decision may be appealed.<sup>1055</sup>

The right to collective bargaining is recognised only for workers in the private (non-domestic sector) sector. It is also heavily restricted, and as a result, workers rarely exercise it. Domestic workers, who are excluded from the provisions of the labour law, and whose work is regulated by the 2015 Domestic Workers Law do not have the explicit right to form unions<sup>1056</sup> and negotiate collective agreements. In the public sector, the government engages in “consultation” with the workers’ federation of government employees on issues raised by civil servants but does not allow collective bargaining.<sup>1057</sup>

In the event of an unresolved collective dispute in the private sector, both union and employer representatives can ask for mediation by the MSAL.<sup>1058</sup> In case mediation fails, MSAL may intervene “without request by one of the dispute parties to settle the dispute amicably”, and refer it either to a reconciliation committee or arbitration board for compulsory arbitration, in violation of international labour standards.<sup>1059</sup> The ILO Committee has repeatedly expressed concern that this provision “could lead to a prohibition of strikes”.<sup>1060</sup> Indeed, industrial action is only possible after a two-month procedure is exhausted, and prior authorisation from the Ministry of Interior is needed before a union can declare a strike, making authorised strikes effectively impossible, according to ITUC.<sup>1061</sup> Importantly, the right to strike is denied to civil servants and migrant workers, including those in the domestic work sector. With no legal protection against retaliation for going on strike, migrant workers are the most vulnerable to dismissal, in addition to facing possible deportation.<sup>1062</sup> In practice however, both public and private sector workers have at times gone on strike in defiance of the ban.<sup>1063</sup>

## Qatar

Freedom of association is significantly restricted in Qatar, with migrant workers denied trade union rights. The right to freedom of association guaranteed under Qatar’s 2003 Constitution is heavily limited by restrictive laws.<sup>1064</sup> Qatar has not ratified the ILO’s Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), or the Right to Organise and Collective Bargaining Convention, 1949 (No.98).<sup>1065</sup>

In 2014, the ILO Committee expressed concern that Qatar’s 2004 Labour Law does not include clear provisions “referring to the rapid and effective protection against acts of anti-union discrimination and interference in trade union activities” and urged the Qatari authorities to amend it to “give effect to the fundamental principles of freedom of association and collective bargaining.”<sup>1066</sup> Noting that migrant workers comprised 93% of the economically active population at the time, it also urged Qatar to remove any restrictions placed on their freedom of association.<sup>1067</sup> Since then, Qatar has made some progress with regards to advancing freedom of association rights. However, in 2018, when it ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it entered reservations confirming that it would not be changing its policy of allowing only Qatari nationals to form associations and trade unions, thereby continuing to deny migrant workers their rights to freedom of association, and preventing them from acting and bargaining collectively.<sup>1068</sup>

The ITUC classes Qatar as a country with “systematic violations of [workers’] rights” but has determined that between 2018 – 2020, it made sufficient progress (under the ILO technical cooperation programme) to no longer be considered a country with “no guarantee of rights”.<sup>1069</sup>

1054. ILO Committee, *Direct Request (CEACR) - adopted 2010, published 100th ILC session* (2011),

1055. Article 108, *Private Sector Labour Law*

1056. Human Rights Watch, “*Kuwait: New Law a Breakthrough for Domestic Workers*,” (30 June 2015),

1057. ITUC, “*Internationally recognised core labour standards in Kuwait, Report for the WTO General Council Review of the trade policies of Kuwait*,” (February 2011),

1058. Article 125, *Private Sector Labour Law, 2010*

1059. Article 131, *Private Sector Labour Law, 2010*

1060. ILO Committee, *Observation (CEACR) - adopted 2017, published 107th ILC session* (2018),

1061. ITUC, “*Internationally recognised core labour standards in Kuwait, Report for the WTO General Council Review of the trade policies of Kuwait*,” (February 2011),

1062. Freedom House, “*Freedom in the World 2020, Kuwait*”

1063. See for example, AFP / Arab News, *Workers strike at Kuwait airport for better working conditions*, (11 November 2019)

1064. Qatar’s 2003 *Constitution*, Article 45

1065. ILO, *Up-to-date Conventions and Protocols not ratified by Qatar*

1066. ILO Governing Body, “*Reports of the Committee on Freedom of Association: 371st Report of the Committee on Freedom of Association*” (March 2014): 237

1067. ILO Governing Body, “*Reports of the Committee on Freedom of Association: 371st Report of the Committee on Freedom of Association*” (March 2014): 238

1068. Amnesty International, “*Qatar finally joins two key human rights treaties - but what does it really mean for migrant workers?*,” (13 June 2018)

1069. ITUC, *2020 ITUC Global Rights Index*: 11

Only Qatari workers have the right to form a “workers’ committee” in a workplace where there are at least 100 Qatari employees.<sup>1070</sup> Such committees representing various trades may then form a single trade union called the General Union of Workers of Qatar, in violation of freedom of association principles, as noted by the ILO Committee.<sup>1071</sup> Only upon approval from ADLSA, can the general union join any regional or international workers’ organisations.<sup>1072</sup> Migrants, casual workers and public sector employees are denied the right to join either workers’ committees or the trade union,<sup>1073</sup> whose activities are severely restricted. Both workers’ committees and the general union are prohibited from carrying out any political or religious activity, printing or distributing any materials deemed to offend the state or the government, and accepting gifts without ADLSA’s approval.<sup>1074</sup> The Minister of Labour has the authority to dissolve any workers’ organisation that engages in such activities.<sup>1075</sup>

In smaller enterprises, which employ at least 30 workers, the Labour Law allows employers and workers to form joint committees<sup>1076</sup> with a view to addressing work-related matters limited to the regulation of work, staff productivity, culture and training, occupational health and safety, provision of social services and the settling of individual and collective disputes.<sup>1077</sup> Employers and workers are granted the right to “conduct collective negotiation[s] and conclude joint agreements” however, the law fails to define the rules and procedures for such negotiations.<sup>1078</sup> It also provides a mechanism to file collective disputes, and enables ADLSA’s mediation, if disputes cannot be settled between workers and employers.<sup>1079</sup> Unresolved disputes may then be referred to a conciliation committee, and finally to an arbitration panel for compulsory arbitration.<sup>1080</sup>

Joint committees must include an equal number of worker and employer representatives with four to eight

members depending on the size of the institution.<sup>1081</sup> While there is no restriction on non-Qatari workers joining these committees, domestic and some other workers are denied this right, as they are excluded from the terms of Qatar’s 2004 Labour Law. Employers are able to nominate their representatives under Article 125 of the 2004 Labour Law. Workers’ representatives, however, must be nominated from amongst the members of a workers’ committee in workplaces where such committees have been established, or through direct elections in enterprises where they have not. Regulations setting out election procedures to joint committees were finally outlined in 2019 through a ministerial decision, adopted as part of a series of reforms under the ILO/Qatar cooperation programme, and a sustained dialogue between ADLSA and international unions and federations.<sup>1082</sup> Until then, there was effectively no mechanism allowing migrant workers to join such committees.

In addition to setting out criteria that candidates must meet to be able to stand in elections to the joint committees, the 2019 ministerial decision outlines the procedure for employers to notify the competent authority of their establishment.<sup>1083</sup> It also limits membership to a two-year term and establishes that joint committee meetings must take place once a month.<sup>1084</sup>

According to the ILO’s October 2020 update, between July 2019 and August 2020 joint committees were established in 20 enterprises, representing more than 17,000 employees - with more organisations expected to hold elections in the following months. The ILO also said that “a draft ministerial decision governing the rules and procedures of collective negotiation and joint agreements was prepared for discussion with the ADLSA”, without specifying further.<sup>1085</sup>

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1070. 2004 Labour Law, Article 116

1071. ILO Governing Body, “Reports of the Committee on Freedom of Association 371st Report of the Committee on Freedom of Association”, (March 2014): 233

1072. 2004 Labour Law, Article 123

1073. Ibidem, Article 3

1074. Ibidem, Article 119

1075. Ibidem, Article 119

1076. Ibidem, Article 124

1077. Ibidem, Article 126

1078. Ibidem, Article 127

1079. Ibidem, Article 129

1080. Ibidem, Article 130

1081. Ibidem, Article 124

1082. Government of Qatar, “Decision No. (21) Of 2019 by the Minister of Administrative Development, Labour, and Social Affairs Regulating the conditions and procedures of the election of workers’ representatives to joint committees”, (21 April 2019)

1083. Ibidem, Sections 2, 3, 4

1084. Ibidem, Sections 6 and 7

1085. ILO, Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO, GB.334/INS/8, (October 2019): 9

Although the right to strike is recognised under Article 120 of Qatar’s Labour Law, it is severely restricted and does not apply to workers in specified industries including petrol, oil and gas, electricity, water, ports, airports, transportation, hospitals and domestic work. Workers are only permitted to strike if they fail to reach a mediated solution with their employer and there is no other means of solving the dispute, and if 75% of the industry’s general committee has approved the strike - an excessive threshold effectively making strikes effectively impossible. At least two weeks’ notice must be given to the employer and the location and time of the strike must also be approved by ADLSA in coordination with the Ministry of Interior – an excessive and undue requirement.

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## 9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

### Nepal

Despite some legal restrictions that are inconsistent with international standards, in general, the Nepali authorities allow trade unions to operate effectively in practice, largely without interfering in their activities or threatening its leaders, although violations of trade union rights do occur.<sup>1086</sup> Nepal has a vibrant trade union movement, the majority of which are affiliated with political parties, and operate in coordination with them. The major bodies representing workers include the All Nepal Federations of Trade Unions (ANTUF), General Federations of Trade Unions (GEFONT) and its Home Workers Trade Union of Nepal affiliate, and Nepal Trade Union Congress (NTUC), which are all affiliated with the ITUC and operate under the Joint Trade Union Coordination Centre (JTUCC), an umbrella coordination body.<sup>1087</sup> Between 2000 and 2016, Nepali trade unions have seen their membership steadily grow including

in the informal sector,<sup>1088</sup> and the movement today includes hundreds of thousands of workers.<sup>1089</sup>

However, in recent years human rights groups have increasingly raised concern about a “shrinking space” for civil society in Nepal with rising cases of arrests and short-term detentions of trade unionists, journalists and human rights activists.<sup>1090</sup> In one example, leaders from the Nepal Press Union (NPU) and the Federation of Nepali Journalists (FNJ) were among nine journalists arrested on 16 September 2019 as they were protesting against job losses in Kathmandu, although they were released hours later.<sup>1091</sup> In January of that same year, the police arrested workers as they were holding a meeting to discuss the formation of a trade union at Global Hydropower Associate, following a call from the company’s management requesting an intervention.<sup>1092</sup>

In April 2015, Nepal’s Supreme Court barred trade unions from involvement in political activities, and restricted trade unions’ activities to collective bargaining. The ruling was issued in response to a petition requesting that all trade unions affiliated to political parties be declared illegal – on the basis that they had tarnished the government’s image - and a single authoritative trade union be formed.<sup>1093</sup>

The Secretary General of GEFONT, which holds close ties with the current ruling party and is particularly active on labour migration issues, told us that the union is able to operate without restrictions.<sup>1094</sup> Indeed, the trade union movement has been actively engaging on recent labour reforms, including those related to foreign employment, without any apparent disruptions or harassment. According to GEFONT between 2018 and 2019, advocacy by trade unions contributed to a review of the minimum wage, a cancellation by DOFE of the licenses of 197 recruitment agencies, the adoption of the 2018 Labour Rules and the Foreign Employment Integrated Management System (FEIMS), and the launch of a hotline by MOLESS to receive grievances by migrant workers (see section 7).<sup>1095</sup> However, GEFONT’s

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1086. US Department of State, “2019 Country Reports on Human Rights Practices: Nepal”

1087. ILO, *Workers and Employers Organisations in Nepal*

1088. Jelle Visser, “Trade unions in the balance”, ILO Actrav Working Paper, (2019): 15 and 41.

1089. According to its website, the NTUC has 35 affiliated unions, is represented in 75 districts across the country and includes more than 400,000 members.; GEFONT has 20 trade union affiliates and nearly 400,000 members, and is a founding member of the ITUC. See here: ANTUF has 30 affiliates, according to Wikipedia.

1090. See for example, Amnesty International, “Amnesty International staff detained in Nepal”, (27 January 2020),

1091. ITUC, “Nepal - Union officials arrested for protesting job losses”, September 2019. See also: The Himalayan Times, “Shrinking democratic space raises AI’s concern”, (31 January 2020).

1092. ITUC, “Nepal - Workers’ arrested at Global Hydropower Associate”, (undated).

1093. ITUC, “Global Rights Index”, (2016): 70.

1094. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1095. GEFONT, “The Beginning of a new era”, (2019): 14.

representative told us that some pre-departure trainings discourage migrants from joining trade unions abroad, warning them: “do not get involved in trade union, it is against the law”.<sup>1096</sup>

## Kuwait

In comparison with other GCC countries, there is a relatively vibrant civil society in Kuwait, and workers, including migrants, are able to exercise their right to freedom of association to a greater degree, while non-governmental groups actively campaign to protect and advance migrant workers’ rights.<sup>1097</sup> Still, trade unions must obtain the government’s permission to be able to operate legally, and although pluralism is allowed at a grassroots level, only one union per trade and one general union are authorised.<sup>1098</sup> Further, Kuwait’s Private Sector Labour Law includes provisions that place excessive restrictions and allow the state to maintain a considerable amount of control over unions’ activities, strategy and ability to freely advocate on any social justice or rights’ issues that may be considered contentious. Firstly, it prohibits trade unions from engaging in political, religious or sectarian issues and accepting donations without MSAL’s consent.<sup>1099</sup> Secondly, although it allows them to join Arab and international unions and federations by sending a notification to MSAL, it requires that such accession does “not violate the public order” or the state’s “public interest”.<sup>1100</sup>

As a result, one expert with knowledge of trade unions in the GCC described freedom of association in Kuwait as “existing only on paper [...], especially so for migrant workers”.<sup>1101</sup> The ITUC’s 2020 Global Rights Index continues to regard Kuwait as a country with “no guarantee of rights”, the lowest ranking possible for countries not affected by conflict. In 2019 the US State Department highlighted that the government uses its power to register associations as a means of political

influence, and that dozens of unofficial civil society groups had no legal status, in part owing to bureaucratic inconvenience frustrating their ability to reasonably meet required thresholds.<sup>1102</sup>

Although Kuwait’s Private Sector Law imposes a single trade union system under the umbrella of the Kuwait Trade Union Federation (KTUF), in practice, some unions operate outside of it.<sup>1103</sup> KTUF acts as a social partner for PAM and intergovernmental organisations in Kuwait such as the ILO and IOM. It is a member of the Arab Regional Network for Migrant Workers’ Rights and has publicly advocated for migrant workers’ rights and the abolition of the kafala (sponsorship) system.<sup>1104</sup> It is also able to openly cooperate with migrant community groups as well as trade unions in origin countries. In 2011, it signed an MOU with GEFONT in order to provide a basis for information-sharing and the formation of Nepali worker support groups in Kuwait.<sup>1105</sup> GEFONT’s Secretary General told us that the signing of the MoU has made it easier for GEFONT representatives to visit Kuwait and meet with Nepali workers in a safe environment, and has also resulted in the removal of anti-union clauses in template employment contracts in Kuwait, which stated that workers were not allowed to join or establish trade unions in destination countries.<sup>1106</sup> In 2019, KTUF provided an informal space in its offices for GEFONT as well as the unofficial local branch of the Non Resident Nepali Association (NRNA), a Nepali community group.<sup>1107</sup>

However, according to trade unionists with knowledge of KTUF, the organisation is very cautious to publicly report any labour or human rights abuses or to criticize the state. Whereas in the past, it was more active on migrant issues, the “leadership is now very politicised” and the union is run by individuals “close to the government”.<sup>1108</sup> KTUF is dominated by public sector unions, making it even more difficult for migrant workers to join them and start organising.<sup>1109</sup>

1096. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1097. Vani Saraswathi, Director of Projects, Migrants-Rights.Org, remote interview, 23 July 2020.

1098. ITUC, *Internationally recognised core labour standards in Kuwait*, Report for the WTO General Council Review of the trade policies of Kuwait, (February 2011): 2

1099. Article 104, *Private Sector Labour Law*, 2010

1100. Article 107, *Private Sector Labour Law*, 2010

1101. Labour expert, remote interview, July 2020.

1102. US State Department, “2019 Country Reports on Human Rights Practices: Kuwait”

1103. Examples include the Bank Workers’ Union and the Kuwait Airways Workers’ Union. See ITUC, “2012 Annual survey of violations of trade union rights – Kuwait”, (2012).

1104. ILO, “Cooperating out of isolation, the case of migrant domestic workers in Kuwait, Lebanon and Jordan”, (2015): 26

1105. ILO country office for Bangladesh, “Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding”, (2018): 54

1106. Advocate Nisha Baniya, General Secretary of General Federation of Nepalese Trade Unions (GEFONT), 15 January 2020

1107. Solidarity Center, “Kuwait union opens doors to all migrant workers”, (26 March 2019),

1108. Interview with trade unionists with experience of Kuwait trade unions, October 2020.

1109. Francesca Ricciardone, independent expert on labour migration, remote interview, 12 July 2020.

Despite the challenges, and the legal prohibition on migrant workers' right to form trade unions, since 2015, Sandigan Kuwait, an organisation of Filipino migrant volunteers providing legal counselling and other services, was able to make significant progress with regards to workers' organizing and representation. With ILO's and IDWF's capacity-building support, it established Sandigan Kuwait Domestic Workers Association (SKDWA), the first membership-based organisation of migrant domestic workers in the Gulf, which held its first congress in 2019. In late 2020 SKDWA had a membership base of some 1,000 Filipino domestic workers, of which at least 100 domestic workers were active members. SKDWA became an IDWF affiliate in July 2020.<sup>1110</sup> It trains domestic workers on leadership skills and collective bargaining techniques, and aims to empower them by encouraging them to pursue vocational training.<sup>1111</sup>

## Qatar

Both the Qatari authorities and private sector companies have in recent years started allowing greater worker representation following international pressure in the context of preparations to the men's FIFA World Cup and as part of the ILO technical cooperation programme. Nonetheless, independent trade unions are still not allowed to operate in practice. While migrant workers can be elected to the newly set up joint committees and Workers' Welfare Forums, in practice, their mandate is limited, and by virtue of representing both workers and employers, their activities are subjected to high levels of control.

In 2014, the Supreme Committee for the Delivery and Legacy (Supreme Committee), which is responsible for the staging of the 2022 World Cup, adopted Workers' Welfare Standards, and required that contractors working on its projects ensure full compliance with these standards by their subcontractors.<sup>1112</sup> Soon after, it

started establishing Workers' Welfare Forums to provide a "safe environment" for workers to raise concerns "such as accommodation, food, transport, and health and safety".<sup>1113</sup> It also sought BWI's engagement of BWI to conduct joint labour inspections and provide advice on the new forums.<sup>1114</sup>

Whilst members to Workers' Welfare Forums were initially appointed, following a sustained engagement with BWI, the Supreme Committee started organizing elections.<sup>1115</sup> Each elected worker now represents up to 200 colleagues and meets with Workers' Welfare Officers every month to raise any grievances, which officers (but not workers) are empowered to raise with management in case they remain unresolved.<sup>1116</sup> By October 2020, the Supreme Committee had organized 62 Workers' Welfare Forum elections in 32 worker accommodation sites, including 16,000 workers or some 57% of the Supreme Committee's total workforce.<sup>1117</sup> In parallel, it allowed ILO and ADLSA officials to observe elections and meetings as they prepared to start introducing joint worker-employer committees, provided under Qatar's 2004 Labour Law, in some companies.<sup>1118</sup>

Indeed, since elections of worker representatives to joint committees became possible following the issuance of a ADLSA decision in 2019 (No. 21 of 2019),<sup>1119</sup> the ministry and the ILO have supported the establishment of joint committees in 18 private companies and two public bodies. Some 107 workers' representatives were elected between July 2019 and August 2020 to represent almost 17,000 workers,<sup>1120</sup> in elections that were observed by ILO and ADLSA officials as well as representatives from global unions. Separately, the ILO/Qatar technical cooperation programme established five working groups for joint committees to discuss issues in the following sectors: maintenance and construction; hospitality, catering and cleaning; landscaping and agriculture; manufacturing; and transport.<sup>1121</sup> In parallel, private sector companies such as QDVC took their own initiatives to organize elections to Workers'

1110. Sandigan Kuwait Domestic Workers Association page on IDWF website

1111. Michele Scala, Smita Premchander, "ILO Evaluation: Regional Fair Migration Project in the Middle East", (30 June 2019); See also, ILO, "Fairway collaboration with the International Domestic Workers' Federation leads to strengthened domestic workers' association in Kuwait", (26 February 2020)

1112. Business and Human Rights Centre, "Qatar: Supreme Committee for Delivery & Legacy launches Workers' Welfare Standards, initiates internal and external monitoring for 2022 World Cup contracts", (6 March 2017).

1113. Supreme Committee for Delivery and Legacy, "Semi-annual Workers' Welfare Compliance Report", (September 2019): 32,

1114. Supreme Committee for the Delivery and Legacy, "SC shares Workers' Welfare Forum experiences with MoADLSA and ILO", (11 July 2019).

1115. BWI representative, 18 October 2020, Remote interview

1116. Supreme Committee for Delivery and Legacy, "Workers' Voice",

1117. ILO Governing Body, "Annual progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 8.

1118. Supreme Committee, "SC shares Workers' Welfare Forum experiences with MoADLSA and ILO", (11 July 2019).

1119. Decision No. (21) Of 2019 by the Minister of Administrative Development, Labour, and Social Affairs Regulating the conditions and procedures of the election of workers' representatives to joint committees" (unofficial translation), (21 April 2019).

1120. ILO Governing Body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9

1121. ILO Governing Body, "Progress report on the technical cooperation programme agreed between the Government of Qatar and the ILO", (October 2020): 9

Welfare Committees in collaboration with BWI, whose representatives noted that they were “free from company interference” and that “the comments from elected worker representatives show[ed] that they are speaking freely.”<sup>1122</sup>

Although the mandate of joint committees and welfare forums is largely limited to discussing issues of workers’ welfare, in practice, according to a BWI representative who has attended committee meetings, any issue of interest to workers can be raised: “The law does not specify that they can negotiate their salaries but in practice they do. It’s pretty much open to discuss anything and everything that is of interest to the workers. Even issues from recruitment up to [contract] termination, they can bring it up.”<sup>1123</sup> The BWI representative also noted that over time, workers’ representatives have become more assertive and confident to raise grievances, although in the absence of strong legal protections, many, especially low-wage workers, still experience fear of retaliation when conducting their duties.

According to an ITUC representative, there has been a genuine engagement from the government and proactive outreach with regards to the establishment of joint committees.<sup>1124</sup> Both the ITUC and BWI representatives nevertheless agreed that, whilst a positive step forward, these committees are not a replacement for trade unions. These initiatives are currently also limited to large public and private companies, mainly involved in the delivery of major infrastructure projects, while small and medium enterprises, including those providing cleaning services and labour supply – where abuses are known to be most widespread – do not have any worker representation to date.

Whilst the Qatari authorities have officially allowed five global unions, including ITUC, BWI, ITF, UNI Global Union and IDWF, to operate in Qatar, their operations and

activities are limited to the terms outlined in the ILO/ADLSA cooperation agreement. As a result, they cannot organize trade unions and engage with workers on such issues, although they do deliver information sessions and leadership trainings.

Given legal restrictions on the right to strike, it was previously not uncommon for migrant workers who suspend their work or engage in protests to be arrested, detained and deported.<sup>1125</sup> In recent years, the authorities have in some cases taken a more consultative approach, with Qatari officials engaging directly with striking workers to discuss their demands.<sup>1126</sup>

All of this activity takes place against a backdrop where the rights to freedom of expression, association and assembly are severely restricted and where there is effectively no independent civil society.<sup>1127</sup> In 2015, BBC journalists reporting on issues related to migrant workers were arrested and detained.<sup>1128</sup> In 2016, the Qatari authorities ordered internet service providers to block Doha News, Qatar’s only independent news website at the time.<sup>1129</sup> In 2018, Qatari police interrupted a meeting of the Federation of Nepali journalists on press freedom and arrested two journalists and deported them following interrogation.<sup>1130</sup> A year later, the Doha Centre for Media Freedom was closed.<sup>1131</sup> In May 2021 civil society organisations and Uniglobal, the global union representing security guards, expressed alarm when Kenyan security guard Malcolm Bidali was detained by security agencies, in circumstances that civil society groups called said amounted to forced disappearance. Bidali had blogged about his experiences as a migrant worker, and a week before his arrest, gave a presentation to a large group of international civil society organisations and trade unions.<sup>1132</sup> At the time of writing in June 2021 he had been released from detention but his legal situation remained unclear.<sup>1133</sup>

1122. Institute for Human Rights and Business, “Realising workers’ rights in Qatar – a Conversation”, (21 October 2019)

1123. BWI representative, 18 October 2020, Remote interview

1124. ITUC representative, 14 October 2020, Remote interview

1125. See for example, ITUC, “Labour Rights in Qatar: An ITUC briefing for trade union delegates to the UN Climate Changes talks in Durban”, (undated). See also: ITUC, “Qatar arrests 100 striking workers for deportation”, (26 November 2014)

1126. Human Rights Watch, “Qatar: Migrant workers strike over work conditions”, (8 August 2019)

1127. Freedom House ranked Qatar as “not free” in its “Freedom in the World 2020 report”.

1128. BBC, “Arrested for reporting on Qatar’s World Cup labourers”, (18 May 2015)

1129. Human Rights Watch, “Qatar: Independent news website blocked”, (7 December 2016). A successor version of the site, under different management, was restarted in 2020.

1130. Amnesty International, “Qatar: Promises yet to be fulfilled, Amnesty International’s submission for the UN Universal Periodic Review, 33rd session of the UPR working group May 2019”, (February 2019): 6,

1131. Gulf Centre for Human Rights, “Qatar: authorities arbitrarily close Doha centre for Media Freedom”, (6 May 2019)

1132. See: UNI Global Union, “In Qatar, UNI demands the immediate and unconditional release of Kenyan security guard Malcolm Bidali”, (21 May 2021). See also: Amnesty International, Business and Human Rights Resource Centre, FairSquare, Human Rights Watch, Migrant-Rights.org, “Qatar: Kenyan Labour Rights Activist In Solitary Confinement”, (28 May 2021)

1133. Migrant-Rights.org, [Twitter post](#), (2 June 2021)



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