

OUT ON A LIMB

NEPALESE MIGRANT WORKERS
FAILED BY STATE AND
RECRUITMENT INDUSTRY

AMNESTY
INTERNATIONAL



“I went abroad so that I could save enough money to build a house for my family and pay for my child’s education.

I went to Saudi Arabia 13 years ago and spent two years there. Then I went to Malaysia six years ago but I couldn’t earn enough money...

My two attempts to work in Iraq two years ago and Afghanistan this year have taken me only as far as Dubai, where the agents left me stranded without a job.

As I am uneducated, I have no opportunities to get a job [in Nepal], other than farming, which isn’t enough to survive on. Our family struggles financially, so I had no choice but to take the risk and find foreign employment.”

D.K., 43-year-old man, Chitwan district, Nepal

Hundreds of thousands of Nepalese migrate abroad every year to find work. Many end up in the Gulf states or Malaysia, working under abusive and exploitative conditions. Their journey abroad starts with the brokers and recruitment agencies in Nepal that are the middlemen in the migration process. These agents routinely deceive migrants about the work, pay and conditions awaiting them. As a consequence, migrants are exploited, including being trafficked for forced labour.

Despite government regulations, the lucrative recruitment industry acts with virtual impunity. Under-resourced government departments are failing in their duty to effectively monitor agents, inform migrants of their rights and help people secure justice and compensation when things go wrong.

The result can be a costly, deceitful and coercive lottery which increasing numbers of Nepalese are compelled to play if they wish to migrate abroad for work. However, things could be different, the migration process safer and more successful, if the government were to enforce its own existing regulations.

THE ECONOMIC IMPERATIVE

In the last 10 years, the official number of Nepalese migrating abroad for work each year has risen from 55,025 to 294,094. The true figure is thought to be double this. The sharp increase is the result of a lack of jobs at home and the need for cheap, low-skilled workers in destination countries. Money sent back home by migrant workers makes up nearly 20 per cent of Nepal’s Gross Domestic Product and is a major source of foreign exchange to one of the poorest countries in the world.

With unemployment figures estimated to be as high as 46 per cent, and wages low, going abroad for work offers economic hope to hundreds of thousands of people. Money earned is used to support families, build a home or pay for children’s education.

Migration does not come cheap. Many prospective migrants take out large loans to pay recruitment fees averaging US\$1,400. These loans are often from private money lenders who charge high interest rates, which average about 35 per cent annually but can reach 60 per cent – despite a legal requirement for rates to be no higher than



14 per cent. Migrants take out these loans based on promises by brokers (private recruitment agents) that they will receive a high salary abroad. By the time they discover their real salary, it is too late to back out. Lumbered with a huge debt, verbally or physically abused, or deprived of their identity documents, many workers feel compelled to work in circumstances they did not agree to, which is forced labour.

ABUSES START WITH DECEPTION

For many prospective migrant workers, abuses can begin even before they leave their home village. With most recruitment agencies based in the capital, Kathmandu, the vast majority of migrants use a local broker. Brokers provide people in rural areas a vital service, explaining the recruitment process and saving them the expense of travelling to the capital where services are centralized.

Brokers are often trusted more than recruitment agencies as they are locally based. In many cases this trust is misplaced. Brokers have been routinely found to lie about the type of job offered



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Left: Ason bazaar in Nepal's capital, Kathmandu. With unemployment figures estimated at almost 46 per cent, thousands of people leave the country to work abroad. Front cover: Construction worker in Bahrain. © Jonathan Lewis

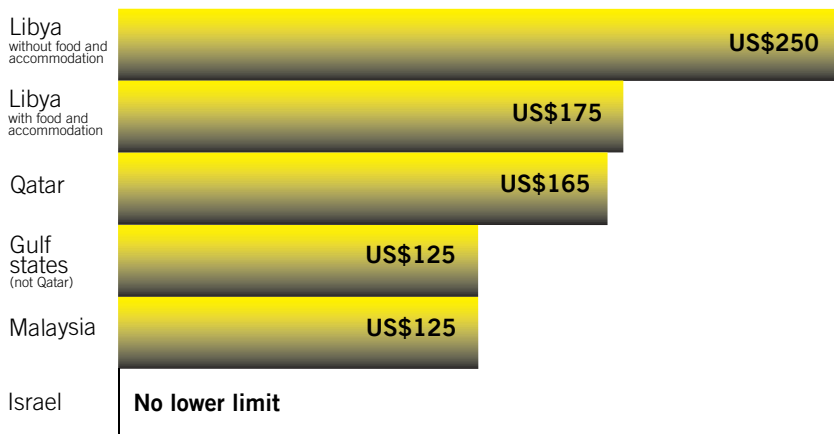
to the migrant and what they will be paid – increasing the potential for further exploitation abroad.

Recruitment agencies can similarly deceive. Amnesty International's research reveals that recruitment agencies are frequently involved in the trafficking of Nepalese

migrant workers and their subsequent exploitation, including forced labour. These abuses usually begin with contractual discrepancies – including pay, type of job and work hours. Of 115 migrant interviewees, 108 said that their recruitment agent or broker had deceived them about the terms and conditions of their employment contract.

“I found a job working at a bakery in Cyprus, for which my parents took out a loan for NPR 350,000 [Nepalese rupees, US\$4,900] to pay the recruitment fees. The agency promised that I would earn €500 [US\$720] per month, but when I received the contract at the airport, I found out that I would work as a domestic worker and earn only €150 [US\$215]. Although the agency had deceived me, there was nothing I could do about it. I still had to go because otherwise I wouldn't have a way to repay the large loan.”

S.N., a 29-year-old woman from Kathmandu



Minimum monthly salaries set by Nepal for Nepalese working abroad
(Source: Department of Foreign Employment)



Libya	NPR 90,000 (US\$1,250)
Malaysia	NPR 80,00 (US\$1,100)
Gulf states	NPR 70,000 (US\$970)
Israel	US\$915 + NPR 60,000 (US\$835)

Maximum recruitment fees for foreign employment set by Nepal (Source: Department of Foreign Employment)

“Our job and salary was not regular. Sometimes we were not given work or money. We didn’t work right away – had to wait one week, some up to two months without pay... In total, we were in Libya a maximum of 21 months. Out of these months, we didn’t get paid at least six months – didn’t work the last six months because the company had shut down. Some of us didn’t get paid for eight to nine months.”

Representative of 108 men sent to work in Libya

Government regulations require recruitment agencies to register all brokers they work with. However, high fees charged for each broker they register, as well as the unrealistic restriction that brokers (who are normally freelance) can only work for one agency, has in part contributed to just three agents being registered by August 2011. Without an effective registration system, it is impossible to monitor their activities and punish those who break the law. Recruitment agencies must also register, and although most do, the only criterion is for them to pay a deposit. The government has failed to adequately monitor agencies despite existing laws.

RECRUITMENT FEES

Migrant workers usually pay recruitment fees to their broker. Although the government has capped fees, overcharging is common. Of 57 migrant interviewees who responded, 42 paid more than the maximum set by Nepalese law.

Recruitment agencies are legally obliged to ensure that migrant workers have pre-departure orientation training but this

frequently does not take place. This training is meant to explain how the migration process works and inform migrants of their rights and duties in the destination country.

By law, workers must receive a contract before they leave Nepal, yet 27 out of 62 interviewees who had responded told Amnesty International that they had not. Those who did receive it only days or hours before their departure, often in a foreign language despite a legal provision requiring all contracts to be in Nepali. With so much committed and so little time left before leaving, most migrants find it impossible to change their minds even after the deception is exposed.

Even when jobs are not misrepresented, wages may be withheld or not paid at all. In such cases, it proves difficult for workers to gain redress because recruiters or employers are unwilling to rectify the situation. This is exacerbated by police inaction or obstacles to migrants lodging complaints in the destination country.

When workers are exploited, it is often difficult for them to leave their jobs as



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Back-breaking road work in temperatures of up to 50°C in Saar, Bahrain. Many Nepalese migrant workers end up on construction sites like this, having been promised other types of work.

it is common practice for employers to confiscate their passports. Visas are tied to particular employers, which prevents workers from changing jobs and can also prevent them from returning home.

WOMEN DOMESTIC WORKERS

Most women who migrate abroad to work do so as domestic workers. But they face a raft of obstacles, official restrictions and de facto bans. For example, the government requires women domestic workers to obtain written permission from their families before they migrate. Such obstacles have forced many to migrate through unofficial channels, and thus to work without a contract, training or insurance.

Even those who try to leave Nepal legally face corrupt practices. Pourakhi, a Nepalese NGO that works with migrant returnees, has documented over a hundred cases where domestic workers who departed from Kathmandu Airport, as required by law, were forced to pay a bribe of about NPR 10,000 to 60,000 (US\$140 to 850) to immigration officials just to leave the country.

“At the airport, there is a very organized and sophisticated network facilitating bribes from brokers and agents to immigration officials,” said Muna Gautam, Safe House Coordinator at Pourakhi. “Often the female migrant workers are not the ones paying the bribes directly to the officials. By the time the women pass through immigration control, their recruiters have already given the money to the officials who then let the women through without any problems.”

Due to the isolated nature of their work, women domestic workers are at greater risk of abuse. Of 17 domestic workers interviewed by Amnesty International, 11 reported being physically or verbally abused or threatened with violence, and most were not allowed to leave the house they worked in or have a rest day.

“I woke up at 5am and worked until 1am. I did not have a day off. I had to cook and clean all day and never had time to rest. My employers would constantly scold me. I was there for 15 days and survived only on black tea and pitta bread because I couldn’t eat the family leftovers. My employers wouldn’t let me go outside and they kept my passport. Even when I slept, I had nightmares of my employer shouting at me.”

G.M., 34-year-old woman, Kaski district, Nepal, describing her experience as a domestic worker in Kuwait

“I received the contract at the airport. It was in English so the broker verbally translated it for me. It said I would receive a salary of 1,250 [Malaysian] ringgit [US\$417] working 8 hours per day plus overtime and receive free accommodation with one day off per week. In truth my monthly salary was 450 ringgit [US\$150], working 12 to 16 hours per day without overtime or a rest day.”

Toya Prasad Sapkota, Kailali district, Nepal



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“I was tortured, hit with belts, starved and locked in the toilet all night,”

Sushila Ram, describing her harrowing experience working as a domestic worker in Kuwait



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“The left side of my body does not work. My leg is full of steel bolts and plates.”

Laxmi Kaderia, who was injured while working in the United Arab Emirates. He received no compensation for his accident.



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Puspa Ghale was hired as a mechanic in Saudi Arabia but given maintenance work on a construction site instead.



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Shyam Chaudhari shows the visa on his passport. He said he was told he was going to work as a driver in Saudi Arabia, but when he got there, his visa was cancelled and he was made to work grazing camels.



Workers take a nap on a hot afternoon at a construction site in Dubai, United Arab Emirates, June 2006. Many Nepalese migrant workers end up on construction sites like this, having been promised other types of work.

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JUSTICE

Government mechanisms do exist for migrant workers to seek justice in Nepal. They can access the Welfare Fund, a government assisted fund able to compensate migrant workers, or register a complaint with the Department of Foreign Employment. Once a complaint is registered, an investigation is carried out. If there is enough evidence against the accused, then the case is tried at the Foreign Employment Tribunal.

However, government offices are located in Kathmandu, far from the rural areas where the majority of migrants live. Most migrants are unaware of the government assistance available to them. And for the few who do actually make a complaint, the process can be lengthy. It is not unusual for migrants to give up and return home rather than bear the cost of staying indefinitely in Kathmandu.

“The Department of Foreign Employment creates backlogs of complaint cases in hopes that the migrant workers get frustrated and give up on their complaints and go home,” said Samar Thapa, Head of the Migrants Desk at the General Federation of Nepalese

Trade Unions (GEFONT). “This is why so few cases... end up in the Tribunal.”

PROTECTING THE RIGHTS OF MIGRANT WORKERS

Nepal is a state party to numerous international treaties protecting the rights of migrant workers. These require the government of Nepal to protect migrants' right to work – including freedom from discrimination, fair wages and safe working conditions – by effectively regulating recruitment agencies and brokers.

Under the Foreign Employment Act 2007, the government is obliged to monitor the recruitment process. However, Amnesty International's research indicates that the government has failed to do so. This is partly because resources for monitoring and investigating abuses are wholly inadequate to ensure agencies comply with the laws. In addition, effective implementation of the Act is hampered by widespread corruption and poor governance. According to the World Bank, Nepal currently ranks in the bottom quarter of countries in its governance indicators for control of corruption.

Amnesty International's research shows that no recruitment agencies have been fined, suspended, prosecuted or lost their license under the Act for deceiving or overcharging migrants. This means that agencies that have deceived migrants on their terms and conditions of work provided false contracts and collected fees higher than the government cap, have done so with impunity.

In this respect, the government has not taken adequate measures to ensure those responsible for trafficking and forced labour are punished by law and that the penalties are adequate and strictly enforced.

Forced labour: all work or service exacted from a person under threat of any penalty and which that person did not enter into voluntarily. (Article 2, Forced Labour Convention)

Human trafficking: recruiting, transporting, transferring, harbouring or receiving people through coercion, abduction, fraud or deception, or by paying or receiving money, for the purpose of exploiting them. (Article 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons)



The deception of migrant workers by brokers and recruitment agents on how much money they will earn, what type of jobs they will have and other work conditions, amounts to trafficking, leading to exploitation, including in conditions of forced labour. Although governments in destination countries are responsible for preventing abuses, the Government of Nepal must also ensure that the recruitment industry abides by the law. So far, the government has not taken effective action to address trafficking for forced labour of Nepalese migrant workers. As a result, it is failing to apply its own domestic laws and to fully comply with its international obligations.

Nepalese migrant workers recently returned from Libya listen to a representative of an employment agency outlining proposed compensation for withheld payment of wages. 108 migrants filed a case at the Department of Foreign Employment. GEFONT and Amnesty International have helped push the case.

RECOMMENDATIONS

Amnesty International calls on the Government of Nepal to:

- Ensure that the provisions of the Foreign Employment Act are fully implemented and that recruitment agencies failing to comply with their responsibilities face adequate enforcement measures.
- Ensure that all migrant workers have access to an effective complaints mechanism through which they can seek redress. These mechanisms should be decentralized, transparent, have adequate resources and streamlined procedures.
- End discriminatory practices against women migrants, such as introducing absolute bans based on gender alone, and

requiring women to get written permission from family members before receiving government permission to migrate.

- Ratify and fully implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, including incorporating into national legislation a definition of trafficking which includes trafficking for labour exploitation.



See Amnesty International's report, *False promises: Exploitation and forced labour of Nepalese migrant workers* (Index: ASA 31/007/2011) for a full set of recommendations.

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

Index: ASA 31/008/2011
English

December 2011

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