



# FALSE PROMISES

EXPLOITATION AND  
FORCED LABOUR OF  
NEPALESE MIGRANT  
WORKERS

**AMNESTY**  
INTERNATIONAL



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*Cover photo:* Men and women, many of whom may be prospective migrant workers, queue for passport applications at the Ministry of Foreign Affairs in Kathmandu, Nepal.  
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# 1. EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

**“Migrant workers from Nepal and other countries are like cattle in Kuwait. Actually, cattle are probably more expensive than migrant workers there. No one cares whether we die or are killed. Our lives have no value.”**

NR, domestic worker from Ilam district<sup>1</sup>

BR, a 30-year-old man from Kailali district, told Amnesty International that he was cheated by his recruitment agency. Sent on a tourist visa to Malaysia, he was only able to work for three months – for less salary than promised – before having to return home. Due to his mounting debt of over US\$2,000, his wife committed suicide.<sup>2</sup>

In order to escape poverty and unemployment, many Nepalese like BR migrate abroad for work in the hope of seeking a better life for themselves and their families. The official number of Nepalese migrant workers increased from 55,025 in 2000 to 294,094 in 2009-10<sup>3</sup> with true figures said to be double this amount. The major countries of destination are Gulf States and Malaysia<sup>4</sup> in low-skilled sectors, such as construction, manufacturing and domestic work.

Nepalese migrant workers make a considerable contribution to Nepal's economy with nearly 20 per cent of the country's Gross Domestic Product (GDP) in 2010-11 coming from their

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<sup>1</sup> Amnesty International interview with NR in Ilam, Nepal on 15 July 2011.

<sup>2</sup> Amnesty International interview with BR in Kailali, Nepal on 5 December 2010.

<sup>3</sup> Information provided by the Department of Foreign Employment on 18 May 2011. Nepal's fiscal year commences from mid July 2009 to mid July 2010. This figure excludes migration to India. Due to the open borders between the two countries, the Nepalese government has no statistics on migration to India.

<sup>4</sup> The official figures exclude India. Due to the open borders between the two countries, the Nepalese government has no statistics on migration to India. In addition, interviews with seasonal workers who worked in India, recruitment agencies and brokers all indicate that Nepalese workers normally do not go through brokers or recruitment agencies for employment opportunities in India due to the open borders.

remittances.<sup>5</sup> These also provide for the daily needs of migrants' families, as well as for the future of their children.

The vast majority of Nepalese migrants have these jobs arranged for them through recruitment agencies and brokers in Nepal. This generates huge profits for these companies – in 2008-09, an estimated US\$710,000 was paid to recruitment agencies per day by migrant workers.<sup>6</sup> The prevailing practices of many of these agencies, poorly regulated by the Nepalese government, undermine prospects for safe migration for many migrants even before they reach their country of destination.

Between September 2010 and May 2011, Amnesty International interviewed 149 returned or prospective migrant workers<sup>7</sup> and met the heads of seven recruitment agencies and numerous government officials.<sup>8</sup> Amnesty International's research has indicated that some recruitment agencies and brokers are involved in the trafficking of Nepalese migrants for exploitation and forced labour. This violates both ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930 (Forced Labour Convention), which Nepal ratified in 2002, and key provisions of Nepal's Foreign Employment Act, 2007. Documented cases include instances where migrants were forced to work long hours everyday without a rest day, accept lower than promised wages, were locked in, had their passport confiscated, and were physically beaten or denied food when they did not comply with their employer's demands.

#### **The role of recruitment agencies in trafficking and forced labour**

Some recruitment agencies and brokers have deceived migrants in relation to fundamental aspects of their contract. Nearly all of the migrants who responded to Amnesty International stated that they had been deceived on at least one substantive aspect of their employment terms and conditions: salary amount, the type of job offered, work hours, overtime pay or rest days.<sup>9</sup>

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<sup>5</sup> This is based on eight months data from Nepal's Ministry of Finance's Annual Preliminary Estimates for financial year 2010-2011 (pxxii), which states that remittances totalled NPR 259.53 billion out of the total GDP of NPR 1,346.81 billion, available at: [http://www.mof.gov.np/publication/budget/2011/pdf/main\\_english.pdf](http://www.mof.gov.np/publication/budget/2011/pdf/main_english.pdf), accessed 21 July 2011.

<sup>6</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p32.

<sup>7</sup> In cases of death (five) or when migrants were still abroad (11), interviews were conducted with their families. The individuals interviewed were not a random sample; Amnesty International sought to interview migrant workers who had returned since 2009 and reported having experienced problems during the migratory process; local NGOs and a trade union assisted Amnesty International in identifying interviewees. These interviews provide qualitative data to supplement the wider research done for this report.

<sup>8</sup> Government officials from the Department of Foreign Employment, Foreign Employment Promotion Board, Foreign Employment Tribunal, Ministry of Labour and Transport Management, Ministry of Foreign Affairs, Department of Immigration, Offices of the Attorney General and District Attorney General, and Commission for the Investigation of Abuse of Authority.

<sup>9</sup> Of those interviewed who were asked and responded to this question, 111 out of 120 interviewees had

Such deception in the recruitment and transfer of Nepalese migrant workers for the purpose of exploiting them constitutes trafficking in people.<sup>10</sup> In many cases, migrant workers will not know they have been deceived until they arrive at the country of destination, especially as their contract is normally in a foreign language and little effort is made by the agency or broker to explain the contents. Even if migrants, while still in Nepal, become aware of the discrepancies between what they were promised and what appears in their contract, it is generally too late to challenge this, as they only receive their contract, passport, work visa and flight ticket days or hours before their departure – frequently at the airport itself. At this point, migrants are usually already too deeply indebted to be able to refuse the job.

This is because the prospective migrants must pay the recruitment fees in advance and the vast majority can only do this by taking out large loans from private individuals at an average annual interest rate of about 35 per cent.<sup>11</sup> This is 150 per cent higher than the maximum acceptable interest charge of 14 per cent, as stipulated by the Government. However, as banks will generally not provide loans to migrants without adequate financial collateral, most prospective migrants have no choice but to accept the exorbitant terms offered by private lenders.

Amnesty International found that migrant workers paid an average of NPR 100,000 (US\$1,400)<sup>12</sup> in fees to recruitment agents before their departure, almost three times the average annual income for Nepalese in 2010,<sup>13</sup> which was US\$490. Three quarters of those interviewed paid more than the maximum that should be charged by recruitment agencies under Nepalese law.<sup>14</sup>

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been deceived by the recruitment agent or broker on at least one substantive aspect of their employment terms and conditions.

<sup>10</sup> Article 3(a) of the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2237 UNTS 319, in force 25 December 2003 (UN Trafficking Protocol), defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. While Nepal has not yet signed the Protocol, the definition in article 3(a) is widely-cited to explain the concept of trafficking more generally.

<sup>11</sup> 35 respondents took out loans ranging from 15 to 60 per cent annual interest.

<sup>12</sup> In this report, currency exchange into US dollars is provided as an approximate equivalent based on rates from April to July 2011.

<sup>13</sup> This is the Gross National Income (GNI) per capita, converted to US dollars using the World Bank Atlas method, divided by the midyear population. See: World Bank, “Gross national income per capita 2010, Atlas method and PPP”, available at: <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>, accessed 8 March 2011.

<sup>14</sup> Of those interviewed who were asked and responded to this question, 42 out of 57 interviewees paid more than the maximum fee permissible by law.

The initial deception by the broker or recruitment agency regarding the job abroad leads the migrants to take on heavy debts, which then compel them to work in circumstances to which they did not initially agree. If the migrants refuse to work in a different job for longer hours or for less money, then they will be left massively in debt, without any work and with no means of repaying their loan or supporting themselves or their families.

While the debt is normally sufficient to ensure the workers' compliance, their employer or local agent in the destination country will normally also confiscate the migrants' passport. This was the case for 58 out of 60 interviewees who responded to this question. The confiscation of identity documents increases the ability of the employer or agent to coerce and control migrant workers because they cannot seek other work without risking detention and deportation.

In some instances, physical and verbal abuse, and threats of violence were also used against migrant workers. Among those interviewed by Amnesty International, this was the case for all of the female migrants who were trafficked into prostitution and 11 out of 17 Nepalese women who were given jobs as domestic workers.

Clearly, governments in the destination countries have a responsibility to take the necessary action to prevent exploitation and forced labour of migrant workers, including the deprivation of documents, physical restrictions on workers' movements and the use of physical violence against migrants. However, Amnesty International believes that the Government of Nepal has not taken appropriate action in its own jurisdiction to reduce and eliminate incidences of trafficking for exploitation and forced labour among Nepalese migrant workers and is consequently not in full compliance with the Forced Labour Convention.<sup>15</sup>

#### **The Government of Nepal's failure to apply domestic legislation in respect of recruitment agencies**

With the enactment of the Foreign Employment Act (Act) in 2007, the Nepalese government has recognised the need to monitor and regulate the recruitment process in order to protect the rights of Nepalese workers migrating for foreign employment. However, Amnesty International's research indicates that the Government is not ensuring that recruitment agencies function in accordance with the provisions of the Act.

The Act specifically states that recruitment agencies must provide migrant workers with a written copy of their contract in Nepali in advance of travel (article 25) and must not charge migrants more than the government-imposed upper limit on service charges and promotional costs (article 53). The evidence cited above show that the Government has failed to regularly comply with these articles.

Similarly, the Act states that recruitment agencies should be punished if they do or cause anything to be done contrary to the contract or if they conceal or alter documents (articles 47

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<sup>15</sup> Article 2 of the Forced Labour Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".



and 55). However, no recruitment agency has been punished under the Act, other than for failing to pay bank guarantees or deposits in relation to their registration. As a consequence, agencies that have provided false or substituted contracts and collected fees above the maximum permitted by law, have all done so with impunity. In this respect, the Government of Nepal has not taken adequate steps to protect migrant workers from trafficking for exploitation and forced labour.

Although the Government has set up complaints and compensation mechanisms in Nepal, Amnesty International's research shows that migrants were generally unaware of how to access them. For example, the vast majority were unaware that they had paid into the Welfare Fund (a government-run assistance fund) or that the Fund was designed to help migrant workers who face problems abroad.<sup>16</sup>

Many interviewees also highlighted the lack of support they received from all of the relevant institutions when they tried to resolve disputes or seek compensation, including for industrial injuries or death. This includes brokers, recruitment agencies and government officials from the Department of Foreign Employment, Foreign Employment Promotion Board (government body that manages the Welfare Fund) and Nepalese diplomatic missions in countries of destination.

### **Female migration**

Officially only 3 per cent of Nepalese migrant workers are women. However, it is estimated that in reality women account for as much as 30 per cent of the total number of Nepalese migrant workers abroad.<sup>17</sup> This discrepancy is largely due to bans or conditions the Nepalese government has placed on women migrating to Gulf States for domestic work, including a discriminatory requirement that female migrants get written permission from a family member prior to migrating.

In May 2011, the Department of Foreign Employment told Amnesty International that since the Act was implemented in 2007, there have been no official government bans against women undertaking domestic work abroad.<sup>18</sup> However in September 2010, a news article quoted an official from the Nepalese Embassy in the UAE stating that "Currently, there is a ban on hiring Nepali maids throughout the Gulf and this is here to stay."<sup>19</sup>

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<sup>16</sup> Of those interviewed who were asked and responded to this question, two out of 43 were aware of the purpose of the Welfare Fund and that they had paid into it.

<sup>17</sup> Amnesty International meeting with Nepal Institute of Development Studies (NIDS) in Kathmandu, Nepal on 3 October 2010.

<sup>18</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 23 May 2011.

<sup>19</sup> Shuchita Kapur, "Ban on hiring Nepali maids to stay", *Emirates 24/7*, 30 September 2010, available at: <http://www.emirates247.com/news/emirates/ban-on-hiring-nepali-maids-to-stay-2010-09-30-1.297543>, accessed 1 August 2011. See also: Ramesh Mathew, "Nepal bans recruitment of maids to Gulf", *Gulf Times*, 28 September 2008, available at: <http://www.gulf->

These measures make it much more difficult for women to use regular migration procedures and consequently, many migrate through irregular channels to work abroad. As a result, female migrant workers face a higher risk of forced labour practices.

The following are some of Amnesty International's key recommendations to the Government of Nepal:

- Ensure that the Foreign Employment Act is fully implemented, particularly in relation to false or substituted contracts, the limits on service charges, the provision of a written contract in advance and in Nepali, and the notification and operation of complaints and compensation mechanisms. Recruitment agencies not complying with the Act must face adequate punishments;
- End discriminatory practices against women migrants, such as introducing bans based on gender alone, and requiring women to get written permission from family members before receiving government permission to migrate;
- Enforce laws around the regulation of loans to ensure that migrant workers are not charged excessive interest rates;
- If reserves remain in the Welfare Fund after its existing purposes, such as compensating workers, are effectively discharged, review whether they should be used to provide low-interest loans to Nepalese workers seeking to migrate or advice and assistance to returnees to help them establish small businesses;<sup>20</sup>
- Ensure that the prohibition of illegally exacted forced or compulsory labour is clearly defined in law with penalties that are adequate and strictly enforced, in accordance with its obligation under article 25 of the Forced Labour Convention;
- 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.

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[times.com/site/topics/article.asp?cu\\_no=2&item\\_no=244558&version=1&template\\_id=36&parent\\_id=16](http://times.com/site/topics/article.asp?cu_no=2&item_no=244558&version=1&template_id=36&parent_id=16), accessed 1 August 2011.

<sup>20</sup> In April 2011, the Bangladesh government opened the Prabashi Kalyan Bank (Expatriate Welfare Bank), which provides loans at 9 per cent annual interest to prospective migrants to fund their migration (e.g. recruitment fees). The government initially contributed BDT 1 billion (US\$ 13 million), with funds also coming from the Wage Earners Welfare Fund, similar to Nepal's Welfare Fund. See: <http://www.bdnews24.com/details.php?id=193550&cid=2>, accessed 20 September 2011.

## GLOSSARY OF TERMS

**Trafficking in persons:** “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. Consent is irrelevant where any of the listed means have been used. In respect of anyone under 18 years of age, use of force, coercion, etc. need not be involved so long as the purpose of the conduct was exploitation (article 3, Trafficking Protocol).<sup>21</sup>

**Forced or compulsory labour:** “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” with the exception of compulsory military service, normal civic obligations, emergency work required in the event of war or calamity, and work that is a consequence of a criminal conviction (article 2, Forced Labour Convention).<sup>22</sup>

## 2. Introduction

In February 1996, a civil conflict broke out between the Government of Nepal and the Communist Party of Nepal (Maoist)<sup>23</sup>, which ended in November 2006 with a Comprehensive Peace Agreement. As of 2009 the official death toll from the decade-long conflict stood at 16,278 people.<sup>24</sup> Still today, about 50,000 people are displaced<sup>25</sup> and more than 1,300 cases of enforced disappearances remain unresolved.<sup>26</sup>

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<sup>21</sup> See also: UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking: commentary (United Nations: New York and Geneva, 2010), pp33-36.

<sup>22</sup> See also: ILO, Report of the Director-General, Stopping Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 89th Session 2001, Report I(B), pp8-9.

<sup>23</sup> The Communist Party of Nepal (Maoist) formally unified with the Communist Party of Nepal (Unity Centre-Masal) in January 2009 and became the Unified Communist Party of Nepal (Maoist) or UCPN-M.

<sup>24</sup> “Nepal Raises Conflict Death Toll”, *BBC News*, 22 September 2009, available at: <http://news.bbc.co.uk/1/hi/8268651.stm>, accessed 8 March 2011.

<sup>25</sup> Internal Displacement Monitoring Centre, “Nepal: Failed implementation of IDP policy leaves many unassisted”, available at: <http://www.internal-displacement.org/countries/nepal>, accessed 4 August 2011.

<sup>26</sup> See for example: Amnesty International, *Open letter to Right Honorable Jhala Nath Khanal, Prime Minister, Nepal*, 24 May 2011, (AI Index: ASA 31/003/2011); *Nepal: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council, January 2011*, 5 July 2010, (AI Index: ASA 31/001/2010); *Nepal: Nepal descending towards full-spectrum impunity*

Political and economic instability have continued despite the Peace Agreement. For example, the resignation of Prime Minister Madhav Kumar Nepal in June 2010 left the country with a caretaker government until February 2011 when parliamentarians elected a new Prime Minister, Jhala Nath Khanal, but less than seven months later, following his resignation, Baburam Bhattarai took over.<sup>27</sup> The country's infrastructure is in need of massive investment; for example, the Government had to impose daily power cuts of 12 hours per day in the winter of 2010-11.<sup>28</sup>

The conflict and ongoing economic problems resulted in the number of Nepalese workers migrating abroad through official channels increasing from 55,025 in 2000 to 294,094 in 2009-10. True figures, including migration through unofficial channels, are said to be double this. It is estimated that nearly 20 per cent of the country's Gross Domestic Product (GDP) in 2010-11 came from remittances sent by Nepalese migrant workers from abroad.<sup>29</sup> These remittances are vital to the economy of Nepal and provide a lifeline to many families to meet their daily needs or provide for their future (e.g. by paying for their children's education, purchasing land for farming, building a home or investing in a small business).

Over the last five years, several national and international reports have documented how Nepalese migrant workers have been subjected to serious exploitation and human rights abuse during the migration process and highlighted how this is linked to the role of recruitment agencies and brokers.<sup>30</sup> In 2010-11, Amnesty International undertook research

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*for human rights abuses committed during the conflict: Joint open letter*, 10 December 2010, (AI Index: ASA 31/003/2010); *Nepal: Major accused of torturing girl to death must be arrested*, 8 December 2009, (AI Index: PRE01/007/2009); and International Committee of the Red Cross (ICRC), "Nepal: Shedding light on fate of missing persons", News Release 10/222, 6 December 2010, available at: <http://www.icrc.org/eng/resources/documents/news-release/2010/nepal-news-2010-12-06.htm>, accessed 10 March 2011.

<sup>27</sup> "Baburam Bhattarai elected prime minister of Nepal", *BBC News*, 28 August 2011, available at: <http://www.bbc.co.uk/news/world-south-asia-14700892>, accessed 29 August 2011.

<sup>28</sup> Joanna Jolly, "Nepal imposes daily 12-hour power cuts", *BBC News*, 19 January 2011, available at: <http://www.bbc.co.uk/news/world-south-asia-12229752>, accessed 10 March 2011.

<sup>29</sup> See: [http://www.mof.gov.np/publication/budget/2011/pdf/main\\_english.pdf](http://www.mof.gov.np/publication/budget/2011/pdf/main_english.pdf), accessed 21 July 2011.

<sup>30</sup> See in particular: Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011; Amnesty International, *Trapped: The exploitation of migrant workers in Malaysia*, 24 March 2010 (AI Index: ASA 28/002/2010); Anti-Slavery International and International Trade Union Confederation (ITUC), "New campaign to combat forced labour of Nepali migrant workers in the Gulf", 21 January 2011, available at: [http://antislavery.org/english/press\\_and\\_news/news\\_and\\_press\\_releases\\_2009/200111\\_new\\_campaign\\_to\\_combat\\_forced\\_labour\\_of\\_nepali\\_migrant\\_workers\\_in\\_the\\_gulf.aspx](http://antislavery.org/english/press_and_news/news_and_press_releases_2009/200111_new_campaign_to_combat_forced_labour_of_nepali_migrant_workers_in_the_gulf.aspx), accessed 11 September 2011; CEDAW Monitoring Committee Nepal, *Shadow Report on the Fourth and Fifth Periodic Report of Government of Nepal on CEDAW*, December 2009; ITUC, *Hidden faces of the Gulf miracle: Behind the gleaming cities of Doha (Qatar) and Dubai (UAE), stories of migrant workers with few rights and inhuman living conditions*, May 2011, available at: <http://www.ituc->

into this issue and what action could be taken by the Government of Nepal to prevent this happening in the future.

Amnesty International's previous reports on migrant workers in the Asia-Pacific region focused on the experiences of migrant workers, including Nepalese, in destination countries. This research also indicated the pressing need for effective measures to be taken by both sending and destination countries if exploitation and human rights abuses are to be tackled effectively.<sup>31</sup>

Amnesty International acknowledges that government and non-state actors (e.g. recruitment agencies and brokers) in both receiving and sending countries are responsible for the protection of migrant workers. However, the particular focus of this report is what Nepal, a sending country, can do to protect its workers from human and labour rights abuses.

The following sections document issues and abuses at different stages of the migration process and examine the inadequacies of existing protection mechanisms and avenues of redress. The report then recommends some key actions the Government of Nepal must take to fulfil its obligation to protect the rights of its citizens who migrate abroad for work.

### 3. Methodology

Between September 2010 and May 2011, Amnesty International interviewed 76 individual Nepalese migrant workers and prospective migrants, plus the families of five migrant workers who died while abroad. In addition, three group interviews were carried out: one with a group of 11 returnees, one with a group of 46 returnees and another with families representing 11 migrant workers still abroad. In this way, detailed interviews were carried out relating to the experience of a total of 149 migrant workers.

It should be noted that the interviews were not conducted with a random sample of returned Nepalese migrants. Amnesty International sought to interview migrant workers who had returned since 2009 and who reported they had experienced problems during the migratory process.

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csi.org/IMG/pdf/VS\_QatarEN\_final.pdf, accessed 26 August 2011; Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010; Nepal Institute of Development Studies (NIDS), *A Study on Migrant Recruitment Practice in Nepal* (unpublished), ILO/UNIFEM/EU, November 2008; NIDS, *Nepal Migration Year Book 2009*, September 2010; UNIFEM and NIDS, *Nepali Women and Foreign Labour Migration*, and UNIFEM and NIDS, June 2006; and US State Department, "Recruitment fees and debts for migrant workers: Precursor to servitude" and "Labor Trafficking through Legal Recruitment", *Trafficking in Persons Report*, June 2006, pp8-10, available at: <http://www.state.gov/documents/organization/66086.pdf>, accessed 6 September 2011.

<sup>31</sup> See for example: Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009); *Migrants Workers are also Human Beings*, August 2006 (AI Index: ASA 25/007/2006); and *Trapped: The exploitation of migrant workers in Malaysia*, 24 March 2010 (AI Index: ASA 28/002/2010).

Interviews were facilitated by local NGOs and a trade union.<sup>32</sup> The returnees were originally from 17 districts across the Far-Western, Western, Central and Eastern regions of Nepal (see map in Appendix 2), including the Terai region,<sup>33</sup> one of the poorest areas of Nepal where most migrant workers originate.<sup>34</sup> Out of the individual interviewees, 56 were men and 25 women.



**Figure 1: A Dalit community in Sunsari district where interviews took place (Source: Amnesty International)**

The interviewees came from different socio-economic backgrounds, ranging from those who are illiterate with no formal schooling to university graduates. There was also a wide representation of castes and ethnicities. The migrant workers interviewed generally described themselves as being poor, regardless of their socio-economic status. Studies show that women and certain castes and ethnicities, such as Dalits and Hill Janajatis, are particularly affected by poverty and unemployment.<sup>35</sup> These groups may well make up a greater

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<sup>32</sup> General Federation of Nepalese Trade Unions (GEFONT), Pourakhi, Pravasi Nepali Coordination Committee (PNCC), Shakti Samuha and Women's Rehabilitation Centre (WOREC).

<sup>33</sup> The Terai region, foothills of the Himalaya in southern Nepal bordering India, covered in Amnesty International's research included the districts of Bajura, Chitwan, Dhanusa, Jhapa, Kailali, Morang and Sunsari, which are located in the Far-Western, Central and Eastern regions of Nepal.

<sup>34</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, pp14-15.

<sup>35</sup> See: World Bank and DFID, *Unequal Citizens: Gender, caste and ethnic exclusion in Nepal*, January 2006; Harka Gurung, "Social Exclusion and Maoist Insurgency", Paper presented at National Dialogue Conference on ILO Convention 169 on Indigenous and Tribal Peoples, Kathmandu, 19-20 January 2005, available at: <http://ilo-mirror.library.cornell.edu/public/english/standards/norm/egalite/itpp/activity/nepal/maoist.pdf>; and Sharon Stash and Emily Hannum, "Who Goes to School? Educational stratification by gender, caste, and ethnicity in Nepal, *Comparative Education Review*, 45:3, August 2001.

proportion of migration across the open borders between Nepal and India, as many of the poorest find seasonal employment in India where no work permit is needed.<sup>36</sup> However, as recruitment agencies and brokers are generally not involved in this process, this report does not address seasonal workers migrating to India.

Interview questions<sup>37</sup> focused on the recruitment process for foreign employment, problems the migrants faced before departure and in the country of destination, and the challenges they faced in seeking redress or compensation. To protect the identities of migrant workers and their families, their names have been changed.

Throughout the report, different numbers of interviewees are given as responding to questions. This is due to: (1) the problems in the recruitment and migration system were gradually identified during the research so initial interviews did not necessarily raise all of the questions in the semi-structured interview questions; (2) group interviews did not necessarily provide sufficient information to be able to say with full confidence that the conditions were met by every individual in that group; and (3) even when questions were asked, some interviewees were unable to answer them because they were prospective migrants, traumatised or the questions were not relevant to their situation.

In carrying out this research, interviews were also undertaken with the associations of foreign employment agencies, recruitment agencies, brokers, local NGOs, trade unions, UN agencies and the National Human Rights Commission. In addition, meetings were held with the Department of Foreign Employment, Foreign Employment Promotion Board, Foreign Employment Tribunal, Ministry of Labour and Transport Management, Ministry of Foreign Affairs, Department of Immigration, Offices of the Attorney General and District Attorney General, and Commission for the Investigation of Abuse of Authority.

## 4. Government obligation to prevent trafficking for forced labour

The Government of Nepal has obligations under international and domestic law to monitor the recruitment process to ensure that Nepalese workers going abroad for employment are not subject to trafficking, including for forced labour. Nepal is a party to the ILO Convention No. 29 concerning Forced or Compulsory Labour (Forced Labour Convention), which sets out a number of specific measures that Nepal must take against forced labour, including as specified under article 25:

*“The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to*

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<sup>36</sup> See: World Food Programme (WFP) Nepal and Nepal Development Research Institute (NDRI), *Passage to India: Migration as a Coping Strategy in Times of Crisis in Nepal*, WFP and NDRI, December 2008, available at: <http://home.wfp.org/stellent/groups/public/documents/ena/wfp194034.pdf>, accessed 8 June 2011.

<sup>37</sup> See Appendix 1 for a full list of interview questions.

*ensure that the penalties imposed by law are really adequate and are strictly enforced.*<sup>38</sup>

According to the ILO, its definition, under article 2 of the Forced Labour Convention (see Glossary of terms), “comprises of two basic elements: the work or service is exacted under the menace of penalty and it is undertaken involuntarily”.<sup>39</sup> Furthermore, while forced labour involves a threat of a penalty, this penalty is not necessarily penal sanctions, but may mean a loss of rights and privileges. It can also take multiple different forms:

*“its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations [...] included threats to denounce victims to the police or immigration authorities when their employment status is illegal [...] Other penalties can be of a financial nature, including economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.”*<sup>40</sup>

The International Covenant on Civil and Political Rights (ICCPR), which Nepal ratified in 1991, also provides in article 8:

*“1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.  
2. No one shall be held in servitude.  
3. (a) No one shall be required to perform forced or compulsory labour [...]”*<sup>41</sup>

The Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, has also indicated that states should take measures to address human

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<sup>38</sup> In addition, the Forced Labour Convention, especially in articles 4, 23 and 24, imposes obligations to “completely suppress” all such forced labour, including by creating and enforcing criminal prohibitions.

<sup>39</sup> ILO, *A Global Alliance against Forced Labour*, 2005, p5, available at: <http://www.ilo.org/public/english/standards/reln/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

<sup>40</sup> ILO, *A Global Alliance against Forced Labour*, 2005, pp5-6, available at: <http://www.ilo.org/public/english/standards/reln/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

<sup>41</sup> In 2007, Nepal also ratified the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention). However, this Convention also has a limited definition of trafficking which, in article 1.3, only criminalises trafficking of women and children for “...prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking”. See also the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 266 UNTS 3 (in force 30 April 1957), to which Nepal acceded 7 January 1963, prohibiting “debt bondage”.



trafficking, including into situations of forced labour, in relation to states' obligations under article 8 of the ICCPR.<sup>42</sup>

In relation to trafficking in persons, Nepal has ratified several international standards under which it is obliged to prevent and suppress the trafficking of women and children. For example, the UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979, states in article 6 that:

*"State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."*

The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, noted that "Agents recruiting domestic workers become perpetrators of trafficking, if they deliberately deceive their clients about the conditions of work or engage in illegal practices of control (such as the withholding of passports), while knowing that such practices will result in the exploitation of their recruits".<sup>43</sup> These considerations on the role of recruitment agencies in trafficking for labour exploitation of domestic workers are valid, more generally, for all migrant workers.

These international responsibilities are also reflected in Nepal's domestic law; article 29 of the Interim Constitution of Nepal, 2063 (2007) clearly prohibit human trafficking, slavery and forced labour:

*"Right against Exploitation: (1) Every person shall have the right against exploitation. (2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited. (3) Traffic in human beings, slavery or serfdom is prohibited. (4) Force labour in any form is prohibited."*

However, this comprehensive prohibition of forced labour has not been fully incorporated into Nepal's labour or criminal laws. Where legislation does prohibit and punish forced labour, it is focused on specific groups of people, such as bonded labourers and children.<sup>44</sup>

Furthermore, Nepal's Human Trafficking and Transportation (Control) Act, 2064 (2007) addresses only certain categories of trafficking:

*"If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:*

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<sup>42</sup> See for example: Concluding Observations on: Thailand, UN Doc. CCPR/CO/84/THA (8 July 2005), para20; Bosnia and Herzegovina, UN Doc. CCPR/C/BIH/CO/1 (22 November 2006), para16.

<sup>43</sup> Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, UN Doc. A/HRC/15/20, 18 June 2010, para60.

<sup>44</sup> The Kamaiya Labour (Prohibition) Act of 2002, which prohibits bonded labour, is limited to Kamaiya bonded labourers and article 4 of the Child Labour (Prohibition and Regulation) Act, 2000 states: "Nobody shall engage in work a child as a labourer by pleasing, gratifying or misrepresenting him or under greediness or fear or threat or coercion or any other way against his will".

- (a) To sell or buy a person for any purpose,
- (b) To force someone into prostitution, with or without financial benefit,
- (c) To remove human organ except otherwise determined by law,
- (d) To engage in prostitution.” (article 4.1)

This is narrower than the definition provided under international law, such as article 3(a) of the Trafficking Protocol, which defines “exploitation” to include at a minimum “the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery”.<sup>45</sup> Moreover, when Nepal’s National Human Rights Commission established a National Rapporteur on Trafficking in 2002, its remit was limited to trafficking in women and children.

While addressing certain forms of trafficking, the Nepal government has not addressed the more general problem of trafficking for labour exploitation that affects migrant workers – women, men, girls and boys.

Similarly, while the *Muluki Ain* (General Code) states that “No person shall make any other person a Kamara, Kamari (sub-servant), slave or bonded labor”,<sup>46</sup> it does not contain a clear definition of illegal forced labour and its penalties.

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<sup>45</sup> As was noted earlier in this report, Nepal is not a party to the UN Trafficking Protocol, but the definition in the Protocol is widely cited as a definition of more general application.

<sup>46</sup> *Muluki Ain* (General Code), 2019 (1963), chapter 11, no. 3, p381, available at: <http://www.lawcommission.gov.np>, accessed 4 August 2011.

## 5. PREPARING TO MIGRATE

“My family is very poor and could not send me to school beyond class six. I decided to work abroad because a friend convinced me that we would make more money there than anywhere else in Nepal. Also, some of the women from our village had gone to Kuwait and from them we learned that the work was very good and it was possible to earn a lot of money.”

GA, domestic worker from Kavrepalanchok district <sup>47</sup>

### 5.1. The incentive to migrate for work abroad

Nearly three hundred thousand Nepalese officially migrated abroad for work in 2009-2010, with the great majority going to Malaysia, Saudi Arabia, Qatar, and the UAE (see Figures 2 and 3).<sup>48</sup> Men normally found work in construction, manufacturing, restaurants, gardening or as drivers and cleaners.<sup>49</sup> A study by UNIFEM<sup>50</sup> and the Nepal Institute of Development Studies (NIDS) found that 66 per cent of female Nepalese migrant workers were employed in domestic work with the rest working in factories, restaurants, offices, and as labourers and caregivers.<sup>51</sup>

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<sup>47</sup> Amnesty International interview with GA in Kavrepalanchok, Nepal on 28 September 2010.

<sup>48</sup> These figures do not include India because no official figures are kept due to the open border between the two countries.

<sup>49</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, pp10 and 16-17.

<sup>50</sup> Now UN Women.

<sup>51</sup> UNIFEM and NIDS, *Nepali Women and Foreign Labour Migration*, UNIFEM and NIDS, June 2006, p138.

| Nepal's Fiscal Year <sup>52</sup> | Male    | Female | Total   |
|-----------------------------------|---------|--------|---------|
| 2007-08                           | 244,366 | 4,685  | 249,051 |
| 2008-09                           | 211,371 | 8,594  | 219,965 |
| 2009-10                           | 284,038 | 10,056 | 294,094 |

**Figure 2: Flow of migrant workers, 2007-10 (Source: Department of Foreign Employment)**

| Country      | Male    | Female | Total   |
|--------------|---------|--------|---------|
| Malaysia     | 113,733 | 249    | 113,982 |
| Saudi Arabia | 63,217  | 183    | 63,400  |
| Qatar        | 55,656  | 284    | 55,940  |
| UAE          | 31,506  | 1,682  | 33,188  |

**Figure 3: Top four countries of destination for foreign employment, 2009-10 (Source: Department of Foreign Employment)**

Widespread unemployment, poverty, a lack of income generating opportunities, social inequalities and post-conflict uncertainties have undoubtedly played a key role in the sharp increase in the number of Nepalese migrants working abroad. According to the UN, Nepal is one of the 48 Least Developed Countries (LDCs)<sup>53</sup> in the world. Its Gross National Income (GNI) per capita in 2010 was US\$490, placing the country in the bottom 9 per cent.<sup>54</sup> About 42 per cent of Nepal's population of nearly 30 million people<sup>55</sup> lives below the poverty line<sup>56</sup> and the latest available figures for 2008 listed the unemployment rate at 46 per cent.<sup>57</sup>

<sup>52</sup> Nepal's fiscal year commences from mid July to mid July of the following year.

<sup>53</sup> The UN defines LDCs as representing the poorest and weakest segments of the international community. They have weak economies and lack the capacity to grow economically, often compounded by structural handicaps. See also: UN-OHRLLS, "Least Developed Countries: Country profiles", available at: <http://www.unohrlls.org/en/ldc/related/62>, accessed 7 March 2011.

<sup>54</sup> World Bank, "Gross national income per capita 2010, Atlas method and PPP", available at: <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>, accessed 8 March 2011.

<sup>55</sup> According to the latest (2009) statistics by the World Bank, the population of Nepal is 29,330,505. See: World Bank, "Data: Nepal", available at: <http://data.worldbank.org/country/nepal>, accessed 25 July 2011.

<sup>56</sup> UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), "Nepal", available at: <http://www.un.org/special-rep/ohrlls/ldc/LDCs-List/profiles/nepal.htm?id=524>, accessed 28 June 2011.

<sup>57</sup> CIA, "Country Comparison: Unemployment rate", *The World Factbook*, available at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2129rank.html>, accessed 7 March 2011.

A 2010 study, which looked at migration patterns over a six-year period (16 April 2003 to 15 December 2009) identified the Terai region as producing the largest proportion of people who migrated abroad in search of work with Dhanusa, Jhapa, Siraha and Morang as the top four districts.<sup>58</sup>



**Figure 4: KC and his family in Dhanusa district (Source: Amnesty International)**

Of a total of 65 interviewees who responded, 59 identified poverty or a lack of job opportunities as the principal reasons for migrating abroad. As one migrant worker from Kailali district explained, “I went abroad for work because of our poor economic situation. I needed to earn money for my family and my children’s education.”<sup>59</sup> Similarly, KK, a 27-year-old man from the same district, stated:

*“I went abroad to earn money because there are no job opportunities in Nepal. The salary is very low – you can only earn NPR 2,000 [US\$30] per month, which isn’t enough to support your family. I would go abroad again but I can’t because I have no money.”<sup>60</sup>*

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<sup>58</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p14.

<sup>59</sup> Amnesty International interview with TP in Kailali, Nepal on 6 December 2010.

<sup>60</sup> Amnesty International interview with KK in Kailali, Nepal on 5 December 2010.

DK, a 43-year-old man from Chitwan district who returned from Dubai, UAE in September 2010, explained his motivation for seeking foreign employment:

*"I am married with a wife and son. 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 so I had to look for another job abroad. But 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 here, 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 once again."<sup>61</sup>*

For those struggling to subsist or without access to jobs or a means of improving their family's lives, the offer of well paid jobs abroad from a local broker is a very tempting one.

## 5.2. The role of recruitment brokers

With the exception of those migrating to India, the vast majority of migrant workers find employment abroad through recruitment agencies (manpower agencies) and brokers (sub-agents).

As most recruitment agencies are only based in the capital of Kathmandu, the first point of contact for most migrant workers is a broker – an individual who is usually from the local area who acts as the intermediary between the prospective migrant and the recruitment agency, and makes any arrangements that are required to facilitate the process (e.g. obtaining travel documents, completing applications, or organizing travel to Kathmandu, which for many prospective migrant workers is a long and costly journey).

Aside from the financial disincentive of travelling to the capital, many migrant workers are also reluctant to seek employment directly with recruitment agencies. They have more confidence in brokers because they are based closer to where they live.

One returnee explained that he did not go to a recruitment agency because "I didn't want to be cheated – agencies lie about the wages, hours, types of job, etc."<sup>62</sup> Migrant workers believe, usually incorrectly,<sup>63</sup> that due to the brokers' ties to surrounding communities, they are more trustworthy than the recruitment agencies in Kathmandu.

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<sup>61</sup> Amnesty International interview with DK in Kathmandu, Nepal on 30 September 2010.

<sup>62</sup> Amnesty International interview with IS in Dhanusa, Nepal on 22 September 2010.

<sup>63</sup> According to Amnesty International meetings with Purna Chandra Bhattarai, then Joint Secretary, Ministry of Labour, in Kathmandu, Nepal on 30 November 2010; Puskar Raj Nepal, Investigation Officer, Department of Foreign Employment in Kathmandu, Nepal on 27 September 2011; and Narayan Paudel, Registrar, Foreign Employment Tribunal in Kathmandu, Nepal on 1 June 2011.

One migrant worker told Amnesty International that he chose to find foreign employment through a broker, instead of a recruitment agency because “the broker was from my village – he was like family”.<sup>64</sup> Another explained that “my broker was from my village so I blindly trusted him. But when I called my broker about my problem, he refused to help me”.<sup>65</sup>



Figure 5: RS was deceived by a village broker in Kailali district (Source: Amnesty International)

### Services provided by brokers

Brokers recruit clients interested in foreign employment through personal contacts, including family members, word of mouth and by travelling to rural towns and villages. They often frequent District Administration Offices, where passports used to be issued, or shops and other venues where people congregate. In the case of recruitment of women for domestic work or carer posts, brokers, normally women, visit households “door-to-door” in rural areas. This is so that they can gain the trust of family members, as it is less socially acceptable for women to migrate than men.

Brokers provide prospective migrant workers with important information on what jobs are available, in which countries, and the general terms and conditions of work. Some prospective migrants may enquire after specific jobs they saw advertised in national newspapers<sup>66</sup> while others tell the broker which country they want to work in and what type of job they are looking for.

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<sup>64</sup> Amnesty International interview with RS in Kailali, Nepal on 5 December 2010.

<sup>65</sup> Amnesty International interview with MK in Kailali, Nepal on 5 December 2010.

<sup>66</sup> Under article 16 of the Foreign Employment Act, once a job vacancy is approved by the Department of Foreign Employment, the agency that submitted the application must then publish the job advertisement in a national daily newspaper for at least one week.

At this stage, brokers will usually take the passport and in some cases a small percentage of the recruitment fee of those who are interested and, together with their application documents, pass on their clients' request to various recruitment agencies in Kathmandu or branches in the district headquarters. Once prospective migrants commit to the application process, many then take out loans at this initial stage so that they can pay for the recruitment fees once the application is complete.

Brokers can easily work for 10 or more recruitment agencies. On behalf of the migrant worker, they prepare all the necessary documents for the agencies and government offices. In some cases, brokers even applied for their client's passport, especially for those who could not afford to pay the fee or were illiterate.

Since December 2010, with the introduction of machine readable passports (MRPs), all Nepalese citizens have been required to directly apply for their passports at the Ministry of Foreign Affairs in Kathmandu.<sup>67</sup> This has meant added costs and a longer migration process for the migrant workers.

Brokers continue to play a crucial intermediary role by providing updates on the application process (e.g. regarding interviews, visas and departure dates). Once the Department of Foreign Employment (Department) approves the application for foreign employment, the agency, through the broker, will often ask the client to come for an interview. This is frequently done towards the end of the application process – weeks or days before departure – so that migrant workers only need to come to Kathmandu once. However, this means that the workers find out the details of their contract only at the final stage of the application process. Brokers may in some cases accompany the prospective migrant worker to his or her job interview, medical exam or other administrative requirements needed in Kathmandu, as well as to the airport.

Brokers offer an attractive service to prospective migrant workers, as these intermediaries are familiar with the recruitment process and have either direct or indirect links with recruitment agencies. They facilitate access to foreign employment through administrative arrangements, but also act as a “trusted” bridge between the migrant worker and the recruitment agency and government offices in Kathmandu. In other words, brokers make foreign employment happen for many who, otherwise, would not have seriously thought of going abroad or may have been unwilling or unable to make the arrangements themselves.

A case in point is RR, a 30-year-old Dalit woman from Sunsari district with no formal schooling. She returned to Nepal in November 2010 after two years in Saudi Arabia working as a domestic worker. Prior to this experience, she had never heard of the country and did not know how to migrate for foreign employment. She recalled how her broker informed her of the job opportunity and handled all aspects of the migration process for her:

*“The broker came to our house and told us that I could earn good money as a domestic worker in Saudi Arabia and that this would cost NPR 30,000 [US\$420] in fees. When I agreed to go, she took out a loan for me for this amount, borrowing from*

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<sup>67</sup> Kosh Raj Koirala, “MRP to be issued from Dec 26”, *República*, 12 December 2010.



*several different individuals. I'm not sure about the interest – whatever I earned, I sent home and my husband gave what was due to the broker. She applied for my passport and took me to Mumbai, India where another agent met us. While in Mumbai, I had a medical exam, which the broker paid for. She also paid for the rented room where I stayed for one week. On the day of my departure, the broker gave me my flight ticket, visa and passport."*

But when RR arrived in Saudi Arabia, she discovered that instead of the monthly salary of SAR 500 (US\$130) promised by her broker, she only received SAR 400 (US\$110). So her loan repayment took longer than she had anticipated.<sup>68</sup>

Brokers earn money through charging commission for their services. They receive between NPR 5-10,000 (US\$ 70-140) per client, depending on how much the client can pay and the earning potential of the foreign employment post for which they have applied. According to interviews with brokers and recruitment agencies, monthly earnings vary but for a reasonably established broker, they range between NPR 30,000 to 50,000 (US\$ 420-700). More established brokers who work from a branch office tend to earn from NPR 100,000 to 150,000 (US\$ 1,400-2,100) or more. Brokers may receive this commission from the recruitment agencies they work for or they may charge it directly to the migrant worker.

Unlike recruitment agencies, brokers are largely unregistered, thus their work is not regulated by government authorities. This fact and the migrant worker's dependence on brokers to facilitate their job abroad leave migrants vulnerable to exploitation. The broker's commission and income depend on convincing the migrant that taking the job abroad will ultimately be profitable for them. There is therefore an incentive for unscrupulous brokers to make false promises about the nature of the work or the reimbursements they will receive. By the time the migrant discovers the truth – either in Kathmandu or the country of destination – it is often too late for them to do anything about it because they are already heavily indebted and must start paying off their loan.

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<sup>68</sup> Amnesty International interview with RR in Sunsari, Nepal on 14 December 2010.

## 6. THE MIGRATION PROCESS

“To keep the costs of recruitment processes down, governments are opting for new forms of organising labour mobility. Increasingly, they delegate responsibilities in migratory processes, in particular the recruitment process, to non-state actors, such as private employment agencies. Yet, because they are usually left unregulated and unmonitored, recruitment and placement agencies play a pivotal role in the surge of forced labour.”

International Trade Union Confederation (ITUC) <sup>69</sup>

### 6.1. Engagement with recruitment agencies

There are approximately 976 manpower or recruitment agencies licensed to operate in Nepal. They are all based in the capital of Kathmandu with some maintaining branches in other districts, totalling an additional 275 recruitment offices.<sup>70</sup> These agencies are aligned under one of two umbrella organizations, the Nepal Association of Foreign Employment Agencies (NAFEA) and Foreign Employment Association Nepal (FEAN).

NAFEA, with 750 members, is the principal association representing recruitment agencies in the country and the only organization recognized by the Government.<sup>71</sup> FEAN formed in 2008 when some NAFEA members left to form their own association. It currently has a membership of 198 agencies, who according to its President, Prem Bahadur Katuwal, “have been vetted to ensure their high standards prior to gaining membership”.<sup>72</sup>

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<sup>69</sup> ITUC, "Migration: A decent work issue", General Council document no. 9GC/E/6(b)(i), 17-18 October 2011.

<sup>70</sup> Information provided by the Department of Foreign Employment on 18 May 2011.

<sup>71</sup> Amnesty International interview with Somlal Batajoo, NAFEA President, in Kathmandu, Nepal on 28 November 2010 and information provided by the Department of Foreign Employment on 18 May 2011.

<sup>72</sup> Amnesty International interview with Prem Bahadur Katuwal, FEAN President, in Kathmandu, Nepal

## Recruitment fees and charges

The fees charged by recruitment agencies vary considerably depending on several factors, including visa fees, attractiveness of the country of destination, level of difficulty or danger in the job, earning potential and commission charged.

In general, there are three types of job placement package offered by agencies for countries listed in Figure 6. The first is free: all costs are met by the employer, including visa, flight ticket, orientation, medical exam, insurance, government tax and fees, and agency service charge. This usually occurs when an agency has direct links with the employer and applies to various labour contracts, including construction work, service and hospitality industries, and domestic work. However, none of the interviewees for this report went abroad without paying recruitment fees.

For the second type of placement package, the employer normally provides the visa free of charge, but the migrant worker is expected to pay for some or all of the remaining fees. The cost varies considerably from NPR 10,000 to 50,000 (US\$140-700), depending on how much the employer pays, job type, and agency fee structure, which can range from NPR 5,000-25,000 (US\$70-350).

The third package is the most costly, from NPR 60,000 to 80,000 (US\$850-1,100), due to the commission, usually from US\$400-700, that Nepalese agencies have to pay to recruitment or placement agencies in the destination country. In this case, the migrant worker pays, in addition to the commission fee, for all other costs, including for the visa.

| Country <sup>73</sup> | Maximum recruitment fees       |
|-----------------------|--------------------------------|
| Gulf States           | NPR 70,000 (US\$970)           |
| Israel                | US\$915 + NPR 60,000 (US\$835) |
| Libya                 | NPR 90,000 (US\$1,250)         |
| Malaysia              | NPR 80,000 (US\$1,100)         |

**Figure 6: Maximum recruitment fees for foreign employment (Source: Department of Foreign Employment)**

Recruitment agencies also told Amnesty International that for “well-paying jobs”, for example as security guards, that pay NPR 50,000 (US\$350) or more, their agency fee is set at 25 per cent of the worker’s first month salary.

Article 39(l) of the Foreign Employment Act (implemented in 2007) allows for the Department to put a limit on the “service charges and promotional costs” that recruitment agencies can charge, which is currently set between NPR 70,000-127,000 (US\$970-

on 31 May 2011.

<sup>73</sup> There is no maximum recruitment fee for foreign employment for countries that are not listed in Figure 6.

1,750), depending on the destination country (see Figure 6). The Act also states under article 53 that the Department is responsible for ensuring that recruitment agencies charging in excess of these limits “return such fees not to be charged or such excess fees or costs to the concerned person and punish such licensee [recruitment agency] with a fine of one hundred thousand rupees [US\$1,400]”.

Interviewees for this report paid an average of NPR 101,208 (US\$ 1,420) with 42 out of 57 respondents paying recruitment fees to agencies, which exceeded the fees permitted under Nepalese law. In addition to the fees charged by recruitment agencies, migrants may also have to pay further commission directly to brokers. CS, a 41-year-old man from Dhanusa district who returned from Qatar in June 2010 after three years working in construction, described the difference in costs:

*“I found the work through a broker from another village and paid him NPR 100,000 [US\$1,400]. This broker had indirect ties, through another broker, to a recruitment agency in Kathmandu. If I had gone directly to the agency, it would have cost me only NPR 60-70,000 [US\$850-970].”<sup>74</sup>*

This is consistent with the explanation given by Trilok Chand Vishwas, NAFEA Vice- President and head of Mahakali Overseas, who explained the added costs for migrants:

*“We charge NPR 5,000 [US\$70] in agency fee to the migrant worker. If a sub-agent [broker] is used, then we pay them NPR 5-15,000 [US\$70-210]. If two sub-agents [brokers] are used for one client, they divide this sum amongst themselves. If it goes through a recruitment agency branch, we pay them NPR 5,000 [US\$70]. As we receive 80-90 per cent of our clients through sub-agents [brokers], the extra costs for migrants can be NPR 15,000-30,000 [US\$210-420]. For example, for a security guard job, which pays well, the total recruitment fee for the worker would be about NPR 135,000 [US\$1,800].”*

When it was pointed out that the fee for the security guard post exceeded the government guidelines, Vishwas responded:

*“Yes, but the Government is not being realistic. We have to pay extra charges so we have no choice but to increase the cost to the migrant worker. Otherwise, we wouldn't be able to send workers abroad.”<sup>75</sup>*

Recruitment fees for domestic work in Gulf States normally range from NPR 25,000-50,000 (US\$350-700). However, fees for domestic work in countries considered to have better wages and working conditions, such as Cyprus, for which the Nepal government has not set a maximum recruitment fee, are as high as US\$5,000.

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<sup>74</sup> Amnesty International interview with CS in Dhanusa, Nepal on 23 September 2010.

<sup>75</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

Very high recruitment fees were also demanded from predominantly female migrant workers applying for employment opportunities as caregivers in Israel. This was partly due to relatively high salaries compared with other destination countries.

Out of approximately 54,000 caregivers in Israel, 15 per cent are Nepalese and on average, migrants pay between US\$6,000-12,000 in recruitment or "mediation" fees to agencies in Nepal,<sup>76</sup> who share the profits with their partner placement agencies in Israel. Generally, migrant workers raise the necessary funds by taking out loans. This is consistent with the account by KG, a 38-year-old woman from Bajura district, who worked as a caregiver in Israel in 2006. She paid NPR 430,000 (US\$5,900) in recruitment fees plus NPR 30,000 (US\$420) for an orientation course.<sup>77</sup>

According to Kav La'Oved, an Israeli NGO that works with Nepalese migrant workers, it takes a migrant caregiver in Israel on average between one to two years of uninterrupted employment to repay a loan in full.<sup>78</sup> According to Kav La'Oved:

*"mediation [recruitment] fees which by forcing workers into debt, are the key factor binding caregivers to employers."*<sup>79</sup>

The organization has encountered hundreds of Nepalese caregivers currently working in Israel who are still struggling with debt repayment.<sup>80</sup>

Additionally, Kav La'Oved concluded that employment is often difficult to secure, due in particular to "flying visa" frauds, a practice described by Kav La'Oved as follows:

*"the worker pays for a work permit (against a valid employment permit) as required by law. But once the worker arrives in Israel work is not provided. The worker is often never picked up from the airport, or is taken to an employer who quickly dismisses him/her citing various excuses. Workers who come to Israel with a flying visa were left with no employer and were thus eligible for deportation, unless they were able to swiftly find work independently."*<sup>81</sup>

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<sup>76</sup> Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, pp4 and 35 and Rohit Malpani, *Legal Aspects of Trafficking for Forced Labour Purposes in Europe*, Special Action Programme to Combat Forced Labour, ILO, 2006, p38, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_082021.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_082021.pdf), accessed 31 August 2011.

<sup>77</sup> Amnesty International interview with KG in Kathmandu, Nepal on 17 December 2010.

<sup>78</sup> Kav La'Oved, *CEDAW shadow report on female migrant workers in Israel*, December 2010, p16, available at: [http://www.kavlaoved.org.il/media-view\\_eng.asp?id=3056](http://www.kavlaoved.org.il/media-view_eng.asp?id=3056), accessed 19 May 2011.

<sup>79</sup> Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, p85.

<sup>80</sup> Amnesty International correspondence with Kav La'Oved on 13 May 2011.

<sup>81</sup> Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, p51.

In April 2009, the Israeli government stopped receiving further caregivers from Nepal.<sup>82</sup> This “closing of the skies” was in response to the growing number of unemployed migrant caregivers, evidence collected on the charging of illegal brokerage fees from Nepalese workers, and numerous reported “flying visa” frauds. The aim of this measure was to prevent recruitment agencies from further exploiting Nepalese caregivers in Israel. However since April 2009, migrants from Nepal were still coming to Israel for these jobs, via India and without regular visas. Their irregular status means that they are even more vulnerable to abusive treatment.<sup>83</sup>

In November 2011, the Nepalese government announced that they have authorised 206 recruitment agencies to send Nepalese workers, including caregivers, to Israel.<sup>84</sup>

Recruitment agencies have no standard practice on the payment of commission to brokers – some pay brokers separately, while others include it in the recruitment fee charged to migrant workers. In some cases, migrant workers pay the commission directly to the broker.

### Receipts for recruitment fees

Itemised receipts for the recruitment fees paid would enable migrant workers to understand exactly what services they have paid for and consequently what responsibilities the recruitment agency has towards them. They would also reveal over-charging or billing for services, which have not been provided.

Amnesty International interviewed six members of the Nepal Association of Foreign Employment Agencies (NAFEA), including five board members, and the President of Foreign Employment Association Nepal (FEAN), all of whom also own and manage recruitment agencies. According to them, each client is provided with a receipt for their expenditure. However, out of the seven recruiters, only two stated that they provided a receipt with an itemised breakdown of all the charges made to the migrant worker. Trilok Chand Vishwas, NAFEA Vice- President and head of Mahakali Overseas, explained why this was not standard practice:

*“I provide an official receipt for all migrant workers, but not for the entire visa costs because if we did, then we would be taxed on it at 25 per cent. That would not be fair because we don't make profit in the purchase of flights, orientation training, Welfare Fund,<sup>85</sup> insurance, etc. So, we can only provide an official receipt for the*

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<sup>82</sup> Kav La'Oved, *Comprehensive Review of the Caregiving Field in Israel*, 2010, p7.

<sup>83</sup> Amnesty International correspondence with Kav La'Oved on 13 and 14 May 2011.

<sup>84</sup> “206 manpower agencies authorised to send Nepali workers to Israel”, *Kantipur Daily News*, 13 November 2011, available at: <http://www.ekantipur.com/the-kathmandu-post/2011/11/13/money/206-manpower-agencies-authorised-to-send-nepali-workers-to-israel/228190.html>, accessed 22 November 2011.

<sup>85</sup> Government-run social security and welfare fund managed by the Foreign Employment Promotion Board designed to help migrant workers and their families, for example, when workers face problems

*service charge of NPR 5,000 [US\$ 70]. But if the client insists, we're willing to provide a photocopy of the other receipts.*<sup>86</sup>

Somlal Batajoo, the current NAFEA President and Director of SOS Manpower Service, felt that an itemised bill was not necessary:

*"Why do the migrant workers need one? All they need is the total sum that they have paid. We follow the government rules and that's enough."*<sup>87</sup>

In contrast, the FEAN President and head of Blue Sky International, Prem Bahadur Katuwal, felt that it was an important step towards ensuring transparency in recruitment practices:

*"My agency always provides an itemised receipt to our clients with the total costs written on it. I think the provision of itemised receipts is important because you have to be transparent to be successful."*<sup>88</sup>

This is in line with FEAN's Code of Conduct, which states that:

*"The workers going on foreign employment should be made clear about the expenses like service charge, airfare charge, promotional charge and visa fee to be paid by worker; and more amount than prescribed should not be taken from them."*<sup>89</sup>

NAFEA's Code of Conduct similarly states that workers "should be made clear about the expenses like service charge, air charge, promotional expenditure and other expenses."<sup>90</sup>

Many of those interviewed by Amnesty International for this report did not receive any form of receipt.<sup>91</sup> BA, a 30-year-old man from Sindhuli district and representative of a group of 46 migrant construction workers who had returned from Libya in November 2010, described their situation:

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abroad or with their contractual agreements.

<sup>86</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

<sup>87</sup> Amnesty International interview with Somlal Batajoo, NAFEA President, in Kathmandu, Nepal on 28 November 2010.

<sup>88</sup> Amnesty International interview with Prem Bahadur Katuwal, FEAN President, in Kathmandu, Nepal on 31 May 2011.

<sup>89</sup> FEAN, The Code of Conduct, 2067 BS (2010).

<sup>90</sup> NAFEA Code of Conduct B.S.2062 (2005), 9 November 2005, available at: <http://www.nafea.org.np/index.php?linkId=35>, accessed 17 November 2011.

<sup>91</sup> This was not a specific question asked during interviews so data is only available when the migrant workers have mentioned the issue during interviews.

*“We paid NPR 125,000 to 130,000 [US\$1,730-1,810] in fees to agents in the branch offices in Jhapa, Morang and Sunsari districts. We borrowed this amount from private individuals at 36 to 60 per cent annual interest. None of us have repaid any of the principal amount. Our agents told us that this fee included visa, flight ticket and insurance. We had to pay for the medical exam, airport tax and orientation separately. Only about five per cent of us received a receipt for the total amount without any breakdown of costs. Some of the receipts were on plain paper, while others were on company letterhead. The vast majority of us did not receive any receipt, even though some asked for one. The branch agents merely promised us without delivering it.”<sup>92</sup>*



**Figure 7: Group representing 46 returnees from Libya (Source: Amnesty International)**

A 2009 survey conducted by the Nepal Institute of Development Studies (NIDS) of about 3,200 households found that “most migrants were also not familiar with the [...] fee involved in migration process”.<sup>93</sup> This is consistent with Amnesty International’s findings: 39 out of 41 interviewees who were asked responded that they did not know that they had paid the obligatory fee of NPR 1,000 (US\$14) into the Welfare Fund, a government-run assistance scheme, including for compensation. The Fund is managed by the Foreign Employment Promotion Board (Promotion Board) and intended for “*the social security and welfare of the workers who have gone for foreign employment and returned from foreign employment and their families*” (article 32.1 of the Act) and “*to promote the foreign employment business and make this business safe, systematic and decent and protect the rights and interests of workers going for foreign employment*” (article 38 of the Act).

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<sup>92</sup> Amnesty International group interview with 46 migrant workers in Kathmandu, Nepal on 2 December 2010.

<sup>93</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.



DB, a 25-year-old man from Jhapa district, worked in Malaysia for three years as a labourer. He returned in August 2010 and his experience was typical of many migrant workers:

*"I paid the branch office in Birtamod [in Jhapa] NPR 80,000 [US\$1,100], but the agent refused to give me a receipt claiming it wasn't necessary. I have no idea what this fee included and have never heard of the Welfare Fund."<sup>94</sup>*

In almost all cases, unregistered brokers do not provide receipts for the commission they charge to migrant workers. JU is a 31-year-old man from Kailali district who returned from Malaysia in November 2010 after working for four years at a shipping container port. He depicted a typical scenario for migrant workers:

*"I paid an agent from my village NPR 120,000 [US\$1,600], which I borrowed from a private individual at 36 per cent interest. I still have NPR 100,000 [US\$1,400] to repay. When I asked him for a receipt, he refused claiming that it was not the procedure and that I should just concentrate on getting the job. He told me that if I believed in him, then we could continue working together, but that he would not provide me with a receipt. I don't know what it included or what the Welfare Fund is."<sup>95</sup>*

## 6.2. Indebtedness

Instances of indebtedness are commonplace among migrant workers and their families, despite existing domestic legislation and standards against usury. According to Nepal's *Muluki Ain* (General Code), rates of interest for loans from private individuals should not be more than 10 per cent.<sup>96</sup> Moreover, article 51.1 of the Bank and Financial Institution Act 2063 (2006) states that "the rates of interest to be paid on deposits and to be charged on credits by the licensed institutions shall be as prescribed by the Rastra Bank [the national bank of Nepal]." Currently, the Rastra Bank has set the rates of interest for bank loans from 8 to 14 per cent per annum.<sup>97</sup> However according to Agni Prasad Thapaliya, a Labour Court judge who is one of three judges in the Foreign Employment Tribunal (see section 8.2), there are no penalties for violating the *Muluki Ain* on usury and to date no cases involving individuals who have violated this law.<sup>98</sup>

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<sup>94</sup> Amnesty International interview with DB in Jhapa, Nepal on 12 December 2010.

<sup>95</sup> Amnesty International interview with JU in Kailali, Nepal on 5 December 2010.

<sup>96</sup> *Muluki Ain* (General Code), 2019 (1963), chapter 17, no. 6, p268, available at: <http://www.lawcommission.gov.np>, accessed 23 June 2011.

<sup>97</sup> Nepal Rastra "Bank, Monetary Policy 2067-68 (2010-11) Mid Term Review", Table 15: Structure of Interest Rates (Percent Per Annum), available at: <http://www.nrb.org.np/index.php>, accessed 23 June 2011.

<sup>98</sup> Amnesty International interview with Agni Prasad Thapaliya, Labour Court and Foreign Employment Tribunal judge, in Kathmandu, Nepal on 9 September 2011.

The excessive and in many cases illegal charges levied on migrant workers as part of the recruitment process play a key role in increasing their vulnerability to exploitation and forced labour. As most migrant workers cannot borrow money from banks because they do not own property or other forms of collateral to offer as security against the loan, they must resort to borrowing from private individuals who charge up to four times the legal limit in annual interest rates.

Migrants do not know that the debt cannot be legally enforced, but despite this, they feel obligated to repay the loans because they are often owed to family members or individuals within their community. In fact, many interviewees felt a strong social obligation to pay the debt.

In order to raise the necessary funds for their migration, the majority of interviewees took out large loans – usually the full recruitment costs plus a little extra to provide for the family in the initial months. Some interviewees sold their land or borrowed from their parents to pay the costs of migration, but 54 out of 60 respondents told Amnesty International that they obtained loans from private individuals who charged between 15 and 60 per cent annual interest.

A source, who interviewed about 3,000 prospective caregivers for the Israeli Embassy in Kathmandu from June 2008 to February 2011, indicated that the migrants' debt and the obligation to repay it are key factors, which increase their risk to exploitation and forced labour:

*“Exorbitant recruitment fees are the main source of the problem for these caregivers. Israeli recruitment agencies worked together with Nepalese agencies to exploit them in the recruitment process. From my own experience of interviewing prospective caregivers, they paid on average about US\$7,000-10,000. They have to take out huge loans, sell land, etc. The sum is so large that it often takes the combined effort of an entire village, contributing their savings, to send someone to Israel. Therefore the caregiver feels the responsibility of her whole village resting on her shoulders to earn back the money and return with savings.”<sup>99</sup>*

Normally, migrant workers borrow money at the start of the application process. According to the FEAN President, Prem Bahadur Katuwal, the waiting period between initial application and departure for foreign employment varies between countries, but is normally between one to three months.<sup>100</sup>

However, two interviewees told Amnesty International that, after paying their recruitment fees, they had to wait 16 months and 1.5 years respectively before they departed for foreign employment,<sup>101</sup> while six interviews were still waiting to be sent abroad after waiting between

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<sup>99</sup> Amnesty International interview in Kathmandu, Nepal on 27 November 2010.

<sup>100</sup> Correspondence from Prem Bahadur Katuwal, FEAN President, on 29 June 2011.

<sup>101</sup> Amnesty International interviews with PS in Dhanusa, Nepal on 23 September 2010 and NS in Kathmandu, Nepal on 4 October 2010.

five and 13 months. None of the recruiters of the eight interviewees offered to return the recruitment fee. Long delays significantly increase the debt burden for migrant workers making it even more difficult for them to refuse exploitative work, as they become desperate to start working to begin repaying their loans. According to NS, a 30-year-old man from Nuwakot district who returned in August 2010:

*“I was originally supposed to go to Macau for work through a recruitment agency, but it didn’t work out. Initially I paid the agency NPR 213,000 [US\$3,000], which I borrowed from relatives at 24 per cent interest. After waiting for one and a half years, the agency offered to send me to Libya instead. So I paid them an additional NPR 100,000 [US\$1,400], also borrowed from relatives at 24 per cent interest. So far, it has taken me two years to just pay back NPR 150,000 [US\$2,100].”*

According to NS, his recruitment agency refused to return the money and instead “offered” to provide him with another foreign employment. He felt that he had “no choice” but to accept this new job placement.<sup>102</sup>

In other cases, contrary to promises made by their recruiter, migrants were not given work immediately on arrival in their destination country, but had to wait, sometimes for considerable periods, while their debts mounted. This waiting period has been documented in the 2009 survey by NIDS:

*“About 22 per cent of currently working migrants in destination country and 36 per cent of the returned migrants could not get work immediately after arrival. On an average, they had to wait 4.82 weeks to get the work. Only 0.8 per cent got the job immediately after arriving there, and a majority (58 per cent) got the job within two weeks.”<sup>103</sup>*

Irrespective of whether the delays in starting occur in Nepal or the countries of destination, this substantially increases the cost of the loan and explains why many migrant workers return home having failed to repay their loans.

The burden of repaying loans with excessive interest rate charges is one of the main reasons why migrant workers still take on jobs, even after they realize that their recruiters have deceived them as to the nature and/or remuneration of the work they had been offered. During the course of Amnesty International’s research, 16 migrants specifically stated that this was true for them, including two who were aware they had been deceived prior to departure.<sup>104</sup> As SN, a 29-year-old woman from Kathmandu, explained:

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<sup>102</sup> Amnesty International interview with NS in Kathmandu, Nepal on 4 October 2010.

<sup>103</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.

<sup>104</sup> This was not a specific question asked during interviews so data is only available when the migrant workers have mentioned the issue during interviews.

*"I found a job working at a bakery in Cyprus, for which my parents took out a loan for NPR 350,000 [US\$4,900] to pay the recruitment fees. The agency promised that I would earn EUR 500 per month [US\$680], but when I received the contract at the airport, I found out that I would work as a domestic worker and earn only EUR 150 [US\$200]. 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."<sup>105</sup>*

Tilak Ranabhat, former NAFEA President and head of a recruitment agency, pointed out that it was "more difficult for female migrant workers than male to get loans from banks or private individuals".<sup>106</sup> This statement is consistent with Amnesty International interviews with female migrants. Out of 23 female migrant workers interviewed for this report, only one borrowed directly from a private individual, while seven women were able to fund their migration through financial assistance from their parents or other relatives. In two instances, brokers themselves facilitated loans from private individuals with the usual high interest charges. This was the case of SC, a woman from Sunsari district:

*"My broker took out a loan for me from several private individuals to pay her the recruitment fee of NPR 30,000 [US\$420]. But in the end, I had to repay double that amount."<sup>107</sup>*

Seven other women, all recruited for domestic work, were told by their broker that they could pay the recruitment fee once they started work.

The fact that these women did not pay the recruitment fees in advance removes one mechanism of coercion. However in the case of migrant domestic workers, they were still compelled to provide forced labour through the use of violence, threats and restrictions on their freedom of movement (see sections 7.4 and 7.5). Many domestic workers are unable to withdraw their labour because of restrictions placed on their freedom of movement (confiscation of their identity documents and being locked in their place of employment). If they escape, they lose their regular visa status, thus, they are then subject to arrest and deportation.

The failure to repay the loan while abroad compels many migrant workers to seek further foreign employment, as this is the only way they will be able to clear their debt. For example, when AY, a 42-year-old man from Dhanusa district, returned from Saudi Arabia in July 2010, he was still in debt:

*"I took a loan from three different individuals at an interest rate of 48 per cent. I still have to pay back NPR 70,000 [US\$970] because I was paid less than the amount promised by my broker. Two months ago, I have spoken to him about finding me a new job abroad."<sup>108</sup>*

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<sup>105</sup> Amnesty International interview with SN in Kathmandu, Nepal on 19 September 2010.

<sup>106</sup> Amnesty International interview with Tilak Ranabhat, former NAFEA President, in Kathmandu, Nepal on 26 November 2010.

<sup>107</sup> Amnesty International interview with SC in Susari, Nepal on 14 December 2010.

<sup>108</sup> Amnesty International interview with AY in Dhanusa, Nepal on 24 September 2010.

## 6.3. Obligations of recruitment agencies

The Foreign Employment Act, 2064 (2007, Act) and the Foreign Employment Regulation, 2064 (2008, the Regulation) give specific guidelines on establishing recruitment agencies and their responsibilities. For example, every recruitment agency operating in Nepal must be registered with the Department and obtain a licence (article 10). To obtain a licence, each recruitment agency must make a mandatory one-off deposit of NPR 3 million (US\$41,500)<sup>109</sup> and the renewal fee of NPR 10,000 (US\$140) each year.<sup>110</sup>

Several NGOs and trade union representatives have told Amnesty International that prospective agencies are not properly vetted. Samar Thapa, Head of the Migrants Desk at the General Federation of Nepalese Trade Unions (GEFONT), pointed out:

*“The only requirement for establishing a recruitment agency in Nepal is to put down a deposit - there are no other criteria except for this financial one.”<sup>111</sup>*

Once established, recruitment agencies must comply with a number of obligations set out in the Act, some of which are outlined below.

### Publicising jobs and providing contract details

To recruit workers for foreign employment, article 15 of the Act specifies that “for prior approval”, agencies must submit an application to the Department with details including: the employer institution and country; the type of work and number of workers; salary, leave, working days and time; the original copy of the “demand letter and authority certified by the authentic body or diplomatic mission or labor attaché or chamber of commerce or notary public of the country”; a copy of the contract between the employer institution and the workers; and a copy of the contract between the licensee (recruitment agency) and workers.

Once approved, the agency must publish the job advertisement in a national daily newspaper for at least one week (article 16). This approval process in practice is ineffective, as there is no verification of the information supplied by recruitment agencies (see section 7.2 for examples of this problem).

### Medical exam

Under article 19 of the Act, each recruitment agency must submit a health certificate showing that the migrant worker is fit and healthy. Most countries of destination only accept

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<sup>109</sup> Or “seven hundred thousand rupees in cash and a bank guarantee of the remaining two million three hundred thousand rupees as a deposit” (article 11(2) of the Act).

<sup>110</sup> Article 12.3 of the Act does not state the amount of the renewal fee, which was provided by the Department of Foreign Employment on 18 May 2011.

<sup>111</sup> Amnesty International meeting with Samar Thapa, Head of the Migrants Desk, GEFONT, in Kathmandu, Nepal on 2 June 2011.

medical exams from a list of approved hospitals or clinics. Brokers often require submission of this certificate from the prospective migrant worker prior to application for a passport because, as one broker explained, “if a person fails the exam, there is no need to get a passport”.<sup>112</sup>

Migrant applicants normally have their medical exams done in Kathmandu, as agencies are less trusting of medical results from rural areas. The cost of exams varied greatly for interviewees, ranging from NPR 1,000 (US\$ 14) to NPR 3,500 (US\$50), and was usually paid separately, on top of the recruitment fees.

Some migrant workers told Amnesty International that they were required to undergo two separate exams - one in their district and another when they arrived in Kathmandu. Trilok Chand Vishwas, NAFEA Vice-President and Head of Mahakali Overseas Agency, explained the reason for this:

*“If the person lives far away and we have to apply for the visa quickly, then we will accept a medical exam from the district so that the application can be done on time. But once that migrant worker comes to Kathmandu, I ensure that he takes another medical exam. If any migrant worker returns because of medical reasons but passed the physical in Nepal, the medical centre will reimburse the worker's total recruitment costs.”<sup>113</sup>*

According to a broker from Dhanusa district, health certificates can be faked for “some countries like Malaysia, Qatar and the UAE. It is not possible for stricter countries like Saudi Arabia.”<sup>114</sup> In such cases, article 72.2 and 72.3 of the Act specifies that if a migrant worker undergoes a health check under the Act and:

*“(1) is compelled to return to Nepal because of a false health check up report given knowingly or recklessly or maliciously, the institution which has given such false health check up report shall bear the expenses incurred in going for foreign employment and returning to Nepal.  
(3) There shall be an expert committee as prescribed to make decision whether a false health check up report has been given or not pursuant to Subsection (2).”*

However in reality, two NAFEA board members and recruitment agencies owners told Amnesty International that if workers return due to a failed medical exam in the destination country, then the medical association, because it is the medical centre that gave the workers the check-up and the clean bill of health, will compensate them for NPR 50,000-60,000 (US\$700-850).<sup>115</sup> These amounts are far below the official fees that recruitment agencies

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<sup>112</sup> Amnesty International interview with HR in Janakpur, Nepal on 23 September 2010.

<sup>113</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

<sup>114</sup> Amnesty International interview with HR in Dhanusa, Nepal on 23 September 2010.

<sup>115</sup> Amnesty International interviews with Kumud Khanal, NAFEA Secretary General, in Kathmandu Nepal on 26 November 2010 and Kamal Tamang, NAFEA Secretary, in Kathmandu, Nepal on 26

can charge, which range from NPR 70,000-127,000 (US\$970-1,750), and do not include other expenses incurred (e.g. travel and accommodation in Kathmandu, commission to brokers).

Also, several interviewees who obtained certificates of good health under the Act told Amnesty International that they received no compensation despite having informed their recruiter that they were required to return to Nepal due to pre-existing medical problems.

SM, a 30-year-old man from Dhanusa district, went to work at a factory in Malaysia in July 2010. After one and a half months, his company cancelled his contract and sent him back to Nepal because he had failed a medical exam:

*"I had a spot on my chest so I had to return to Kathmandu. I had a check-up, but the doctor said it was just from my childhood and was not TB. Before I left for Malaysia, I had a medical exam in Kathmandu and that doctor had also detected a spot on my chest but my agent told me not to worry and told me not to say anything to my employers."*

When SM returned, he demanded that the broker return his money. The broker agreed to reimburse him minus the cost of the flight ticket and visa fee, plus to help him find employment in Saudi Arabia. At the time of writing, the broker had not delivered on any of his promises.<sup>116</sup>

Similarly, RM, a 20-year-old man from Dhanusa district, returned to Nepal in January 2010 after working for three months in Qatar as a construction worker. Despite having received a medical certificate in Nepal demonstrating good health, which was arranged by his broker, he returned early because a subsequent medical exam in Qatar had revealed a spot on his chest, which was later diagnosed as tuberculosis:

*"To go to Qatar, I had to borrow NPR 110,000 [US\$1,530] from a private individual at 60 per cent. So when I failed the second medical exam in Qatar, I had to return to Nepal jobless but I still have to pay back the whole loan that is growing everyday in interest."<sup>117</sup>*

RM did not receive any reimbursement or compensation from his recruitment agency, broker or the medical centre that provided his health certificate. He is currently being treated for TB.<sup>118</sup>

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November 2010.

<sup>116</sup> Amnesty International interview with SM in Dhanusa, Nepal on 23 September 2010.

<sup>117</sup> Amnesty International interview with RM in Dhanusa, Nepal on 23 September 2010.

<sup>118</sup> Amnesty International interview with RM in Dhanusa, Nepal on 23 September 2010.

## Orientation training

Article 27 of the Act stipulates that all migrant workers should be provided with orientation training prior to departure.<sup>119</sup> NAFEA's Code of Conduct also stipulates that a "Worker should be given required training before being sent on foreign employment".<sup>120</sup>

This training should facilitate the migration process and ensure that Nepalese migrant workers understand their rights and responsibilities in the country of destination. In cases where the worker is employed in any work requiring skill-oriented training, article 30 of the Act states that such training must also be obtained and from an approved institution.<sup>121</sup>



**Figure 8: Pre-departure orientation training at Sky Overseas recruitment agency in Kathmandu (Source: Amnesty International)**

There are 57 companies registered with the Department, which are authorized to conduct pre-departure orientation training for migrant workers, as required under article 27 of the Act. However, of 38 individual interviewees who responded, 31 indicated to Amnesty International that they were not offered orientation training.

When Amnesty International asked the Department why so many migrant workers were going abroad without the obligatory orientation training, it denied having:

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<sup>119</sup> "Training to be taken: Any worker who goes for foreign employment shall, prior to going for foreign employment, shall take orientation training, as prescribed, from the institution having obtained permission from the Department pursuant to Section 28."

<sup>120</sup> NAFEA Code of Conduct B.S.2062 (2005), 9 November 2005, available at: <http://www.nafea.org.np/index.php?linkId=35>, accessed 17 November 2011.

<sup>121</sup> "Skill -oriented training to be taken: A worker who goes for foreign employment to do any work requiring any skill-oriented training shall obtain such training from an institution recognized by the Government of Nepal."



*“any official or authentic report of workers who get permission without obtaining training and certificate. We are regularly monitoring the orientation institutes through the officials of Department and Foreign Employment Promotion Board's Secretariat jointly.”<sup>122</sup>*

Amnesty International also interviewed a group of 46 migrant workers who returned from Libya in November 2010. The testimony of one member of this group demonstrates how their recruitment agency's legal requirement was not consistently carried out, and when such training was delivered, the content contained little about their human and labour rights or how to access remedies if their rights were violated:

*“Some of us attended orientation training while others did not. It was held one and a half months prior to our departure. They were one hour each over two days. They told us about HIV/AIDS, what to expect at airport immigration and how to eat inside an airplane. The only thing we knew about Libya was that it was in Africa.”<sup>123</sup>*

In December 2010, Amnesty International conducted interviews in Kailali district in the Far Western Region of Nepal with 16 returnees of whom 12 had left Nepal between 2008 and 2010, well after the implementation of the Act in 2007. However, none of these returnees had attended pre-departure training of any kind. Several stated that they would have wanted it and felt that it was important.

Similarly, none of the 17 domestic workers interviewed for this report received any orientation training. A typical response was that they knew nothing about their country of destination prior to departure but some were given a few tips on house work. This is consistent with a 2009 survey by the NIDS that found 77 per cent of the migrant returnees interviewed had not taken any pre-departure orientation training.<sup>124</sup>

However, interviews indicate that caregivers employed in Israel were more likely to have received some orientation training, as explained by KG, a 38-year-old woman from Bajura district:

*“Before I went to Israel, I had to attend orientation training for one month, for which I paid NPR 30,000 [US\$420].<sup>125</sup> I learned about Israel's language, culture, climate and aspects of my job as a caregiver.”<sup>126</sup>*

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<sup>122</sup> Information provided by the Department of Foreign Employment on 18 May 2011.

<sup>123</sup> Amnesty International group interview with 46 migrant workers in Kathmandu, Nepal on 2 December 2010.

<sup>124</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.

<sup>125</sup> Migrant workers normally pay NPR 700 (US\$10). The high orientation fee for this caregiver may be due to relatively high salaries that caregivers earn in Israel compared with other destination countries.

<sup>126</sup> Amnesty International interview with KG in Kathmandu, Nepal on 17 December 2010.

## Employment contract

Article 25.1 of the Act specifies that prior to departure, each migrant worker must receive a written employment contract with the employer in the country of destination, as well as a written contract with the recruitment agency in Nepal, that sets out the “terms and conditions of employment, terms and conditions to be observed by both parties and remuneration to be received by the worker”. The contract is only be agreed “after getting the worker to clearly understand such terms and conditions and provisions of remuneration.”

This provision is clearly fundamental to ensuring that migrant workers are not subjected to labour exploitation or other violations of their rights. However, recruitment agencies frequently fail to provide migrant workers with a written contract. In fact, of 62 interviewees who told Amnesty International that they had experienced problems while abroad, 27 said they had not received a contract. This is in line with the 2009 survey by NIDS, which revealed that half of the returnees interviewed did not have a contract.<sup>127</sup>

Of the 17 domestic workers interviewed by Amnesty International, only one (who was working in Cyprus) had received a contract. None of the 13 domestic workers who had worked in Gulf States received a contract. For example, KR, a 30-year-old woman from Sunsari district who returned from Kuwait in November 2009 after eight months of domestic work, described what her broker had given her prior to departure:

*“At the airport in Delhi [India], my broker gave me my passport, flight ticket and visa. He didn’t give me a contract, just a piece of paper with the name of the family I would be working for.”<sup>128</sup>*

There is little justification for not providing migrant workers with contracts well in advance of their departure, as copies must be provided to the Department at the start of the process of obtaining a work permit “for prior approval” (article 15 of the Act). Also, to obtain a labour sticker on the migrant worker’s passport, which is required to pass through immigration, recruitment agencies must submit the “contract made between the employer institution and the worker” (article 19 of the Act). This would be at least one to three months in advance of their departure.

Migrant workers, who receive a written contract, typically receive it – along with their passport, work visa and flight ticket – days or hours before their departure, often at the airport. At this point, it is extremely difficult for them to pull out of the process or to challenge charges that have been imposed on them or changes to the terms and conditions of the work they were promised. Somlal Batajoo, President of NAFEA, justified this practice:

*“We give the migrant workers their passport, work visa and flight ticket, along with the receipt for the recruitment fee 24 hours before their departure in Kathmandu. 24*

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<sup>127</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.

<sup>128</sup> Amnesty International interview with KR in Sunsari, Nepal on 14 December 2010.

*hours is enough time because otherwise, these workers have more time and opportunity to lose their documents. So, it's safer this way.*"<sup>129</sup>

Even when migrant workers are given copies of their employment contracts, these are normally in a foreign language and little effort is made by the agency or broker to provide a written translation of the labour agreement.

The importance of the worker receiving a copy of the contract in the Nepali language is recognised in the Foreign Employment Act. Agencies are in fact required by the Act to have contracts translated. In addition to recruitment agencies, the Department is itself obliged to provide migrant workers with a copy of their contract in Nepali under article 25.2:

*"The licensee shall translate the contract referred to in Sub-section (1) [the labour contract] into the Nepali language and submit two copies thereof to the Department and the Department shall certify copies of such contract, retain one copy thereof in the Department and provide the other copy to the worker."*

However, interviews with several recruitment agencies confirmed that this requirement is currently not being met, as stated by Tilak Ranabhat, former NAFEA president:

*"All foreign labour contracts are in English. We verbally translate the content into Nepali for the migrant workers. Even though the Act says that the contract must be translated into Nepali, it's not enforced so recruitment agencies only need to submit the original contract, which is in English. If this requirement was enforced, it would cause delays and problems for the Department, as they would have to verify every translation."*<sup>130</sup>

In correspondence with Amnesty International on 18 May 2011, the Department maintained that "We are implementing the provision regularly".<sup>131</sup> The next day, the Department issued a notice (no. 4027) informing all recruitment agencies to attach a Nepali translation of the labour contract when submitting their applications for foreign employment. In a subsequent meeting with the Department, the then Director General, Chandra Man Shrestha,<sup>132</sup> admitted that "under the previous Director General, the requirement for translating labour contracts into Nepali was never implemented".<sup>133</sup>

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<sup>129</sup> Amnesty International interview with Somlal Batajoo, NAFEA President, in Kathmandu, Nepal on 28 November 2010.

<sup>130</sup> Amnesty International interview with Tilak Ranabhat, former NAFEA President, in Kathmandu, Nepal on 26 November 2010.

<sup>131</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>132</sup> On 4 June 2011, Chandra Man Shrestha was replaced by Janma Jaya Regmi as Director General of the Department of Foreign Employment. In less than two weeks, Janma Jaya Regmi was replaced by Narendra Raj Sharma. In November 2011, Purna Chandra Bhattarai replaced Sharma as Director General of the Department.

<sup>133</sup> Amnesty International meeting with Chandra Man Shrestha, then Director General of the Department

Illiterate migrant workers have little choice, irrespective of the language of the written contract, but to rely on the oral translation given by the recruiter if the document is only given to them right before their departure at the airport. RM, a 20-year-old man from Dhanusa district, told Amnesty International that, as he could not read, he was only able to verify his salary by asking his work colleagues after his arrival in Qatar.<sup>134</sup>

## Multiple or false contracts

In some instances, migrant workers fall victim to multiple contracts, a practice that all recruitment agencies interviewed for this report were familiar with and, according to Trilok Chand Vishwas, Vice-President of NAFEA, is known and permitted by the Nepalese government:

*“Under Nepalese law, the minimum wage for migrant workers is US\$125 per month but this can be US\$100 if food is provided. Two contracts are used when the basic salary is below this amount. The Government knows this and allows it to happen. For example, the basic salary for jobs in Qatar must be at least QAR 700 [US\$190]<sup>135</sup> but no company pays that amount. It’s usually around QAR 500 [US\$140]. So, the demand letter submitted to the Department for approval has the false salary and the Government approves it knowing that it is false. The migrant worker then goes to Qatar with two contracts. In order to pass through immigration in Kathmandu, the one with the false salary is given to the Nepalese official and upon arrival in Qatar, the real one is used.”<sup>136</sup>*

MK, a 29-year-old man from Kailali district, worked as a construction worker in Qatar for two years and returned in October 2010. His experienced confirms Vishwas’s account:

*“Two hours before my flight, I received my contract, which was written in Arabic. My agent verbally translated it for me. The salary listed was QAR 900 [US\$250] per month. He then gave me another contract and told me to sign it. In this version, my salary was only QAR 500 [US\$140] and the company name was different. The agent instructed me to show the first contract to the Nepalese immigration officer and the other version was for Qatar.”*

MK was subsequently paid QAR 500 (US\$140), which was paid at irregular intervals.<sup>137</sup>

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of Foreign Employment, in Kathmandu, Nepal on 23 May 2011.

<sup>134</sup> Amnesty International interview with RM in Dhanusa, Nepal on 23 September 2010.

<sup>135</sup> Currently QAR 600, see Figure 11.

<sup>136</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

<sup>137</sup> Amnesty International interview with MK in Kailali, Nepal on 5 December 2010.

## 6.4. Use of “native airport”

The Act requires that migrant workers depart from their “native airport” (article 22), that is Kathmandu’s Tribhuvan International Airport, so that authorities can document their departure from Nepal. However, a 2010 study commissioned by the Ministry of Labour and Transport Management (Ministry of Labour) and the International Organization for Migration (IOM) reported that 40 to 50 per cent of the total number of migrant workers went abroad through irregular channels.<sup>138</sup>

Using the national airport of Kathmandu is not so straightforward for female migrant workers, largely due to government bans or unofficial “discouragement” against women migrating to Gulf States for domestic work (see below). Pourakhi, a Nepalese NGO that works with migrant returnees, has documented over a hundred cases where domestic workers, all women, who abided by the law by departing from the national airport in Kathmandu were forced to pay a “setting fee” or a bribe of between NPR 10,000-60,000 (US\$140-850) to immigration officials in order to leave the country.<sup>139</sup>

SK, a 30-year-old woman from Sunsari district, who worked as a domestic worker in Dubai, UAE, said she had to pay a bribe to immigration authorities so that there would be no complications at the airport:

*“In order for me to depart from Kathmandu Airport, my broker paid the ‘setting fee’ to the airport officials, but I don’t know how much it was. This was done before I actually handed my passport to the immigration officer.”<sup>140</sup>*

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<sup>138</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p10.

<sup>139</sup> Amnesty International meetings with Pourakhi in Kathmandu, Nepal on 28 November 2010 and 26 May 2011.

<sup>140</sup> Amnesty International interview with SK in Kathmandu, Nepal on 10 December 2010.

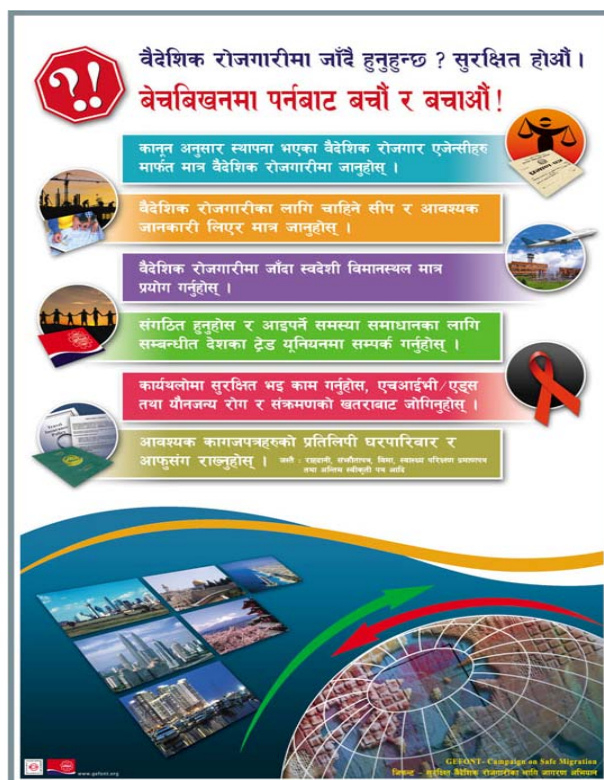


Figure 9: GEFONT's poster on safe migration (Source: GEFONT)

This is consistent with the experience of Muna Gautam, Safe House Co-ordinator at Pourakhi, who for the past three years has been making regular trips to Kathmandu Airport for monitoring purposes. She recounted:

*“At the airport, there is a very organized and sophisticated network facilitating bribes from brokers and agents to immigration officials. 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.”<sup>141</sup>*

## 6.5. Discriminatory measures in female migration

Officially in 2009-10, only 10,056 or 3 per cent of regular migrant workers were women. However, this figure does not include undocumented workers, which account for an estimated 80 per cent of the total number of women migrants.<sup>142</sup>

<sup>141</sup> Amnesty International interview with Muna Gautam, Safe House Co-ordinator at Pourakhi, in Kathmandu, Nepal on 26 May 2011.

<sup>142</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to*

Numerous credible reports, including by NGOs and UN bodies, have highlighted the increased risk of physical and sexual abuse, and forced labour faced by Nepalese women migrating for domestic work to countries, such as Gulf States and Malaysia.

Addressing this concern, the UN Committee on the Elimination of Discrimination against Women in its 2011 Concluding Observations on the Report of Nepal remained:

*“concerned about the situation of Nepalese women migrant workers, and in particular at the fact that a large number of Nepali women are undocumented, which increases their vulnerability to sexual exploitation, forced labour and abuse; their concentration in the informal sector; the limited initiatives to ensure pre-departure information and skills training; and the lack of institutional support both in the State party and in countries of employment to promote and protect the rights of Nepali women migrant workers.”*

The Committee urged the Government of Nepal to:

*“(a) Investigate the cause of women's migration, create employment or self-employment opportunities for women within the country and ensure provision of loan opportunities for women;  
(b) Establish mechanisms to promote safe migration procedures and protect and fulfil women's rights throughout the migration cycle;  
(c) Enforce and monitor standardized and comprehensive pre-departure orientation and skill training;  
(d) Sign bilateral agreements with the country of employment with adequate provisions ensuring the security of women migrant workers and establishing mechanisms in the country of destination dealing with violation of the rights of women migrant workers during employment;  
(e) Provide assistance for migrant women who seek for redress;  
(f) Create alternative livelihood opportunities for returnees and promote their reintegration; and  
(g) Prosecute and punish the perpetrators engaged in illegal recruitment processes fuelling trafficking of women in the name of foreign employment.”<sup>143</sup>*

When women attempt to migrate through official channels, they come across barriers. These include the widely held belief that migrating for domestic work to many countries, especially in the Gulf, is prohibited, the “setting fees” and other possible problems with Nepalese immigration authorities. Such realities encourage female migrant workers to migrate through irregular channels. Brokers take advantage of the open border between Nepal and India by arranging for female migrant workers to travel overland into India and then to fly on to their destination country.

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*Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p10.

<sup>143</sup> Concluding Observations of the Committee on the Elimination of Discrimination against Women on Nepal, UN Doc. CEDAW/C/NPL/CO/4-5, 29 July 2011, paras33-34.

Going through such irregular channels means that, although the women are in possession of valid work permits from the countries of destination, they still face an increased risk of exploitation and abuse because they do not have a labour sticker from Nepal documenting their foreign employment status (see Figure 10). Without the labour sticker, migrant workers have limited recourse to assistance from their own government. For example, as undocumented domestic workers have not made contributions to the Welfare Fund, they are not eligible for assistance from the Promotion Board (see section 8.2).



Figure 10: Labour sticker placed in passports verifying approval by the Ministry of Labour (Source: Department of Foreign Employment)

### Bans or conditions on migrating for domestic work

The Government of Nepal has recognised the problems faced by female migrant workers and taken some steps aimed at preventing their exploitation. From 1997 to 2008, it banned or imposed conditions on female migrant workers obtaining approval for foreign employment as domestic workers. The Government justified these measures as necessary to protect Nepalese women working abroad from exploitation and physical abuse, particularly domestic workers in Gulf States.<sup>144</sup>

However, government policies – both past and present – have in reality increased the risks these women face. The consequence of restrictions and de facto bans on domestic work by women is that it encourages women to migrate via more informal routes with even greater risk of exploitation and may exacerbate rather than cure the problem.

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<sup>144</sup> NIDS, *Nepal Migration Year Book 2009*, September 2010, pp64-65, available at: <http://www.nids.org.np/publications.htm>, accessed 7 March 2011.



With the implementation of the Act in 2007, gender discrimination in foreign employment was prohibited by law, as specified in article 8:

*“No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act.  
Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand.”*

This is in line with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 1 of CEDAW specifies that:

*“[...] the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*

Article 11(1) of CEDAW states that:

*“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:  
(a) The right to work as an inalienable right of all human beings;  
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; [...]”*

Although there are currently no official bans in place on women migrating for domestic work, Amnesty International interviews and meetings with recruitment agencies, brokers, NGOs and migrant workers indicate that many believe there is still an official ban on domestic work to Gulf States. Amnesty International’s interview with the FEAN President, Prem Bahadur Katuwal, exemplifies a typical response:

*“Yes, there is currently an official government ban against domestic work in most Gulf countries like Lebanon, Saudi Arabia, etc. These bans have been in existence since 1994. Therefore women have to go via India. I have never sent any women for domestic work to the Gulf because of the ban.”<sup>145</sup>*

Due to this perception of a ban, many recruiters like Prem Bahadur Katuwal are reluctant to recruit women for domestic work abroad.

In correspondence with Amnesty International in May 2011, the Department clarified the Government’s policy on bans:

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<sup>145</sup> Amnesty International interview with Prem Bahadur Katuwal, FEAN President, in Kathmandu, Nepal on 31 May 2011.

*“There is no official ban for Nepalese women to work in any country of the world as per prevailing Nepal law, though, we are trying to set some criteria for safeguarding the Nepalese women working as housemaid or domestic worker in Middle East and other countries because they are more vulnerable to be abused physically, mentally and [in] other ways.”<sup>146</sup>*

A meeting with the Department in May 2011 revealed new terms of reference<sup>147</sup> for employers hiring domestic workers in Kuwait, which would eventually be applied to all Gulf States. They must now submit documents verifying minimum salary requirement (set by the Nepalese government), insurance for the domestic worker, financial means and employment, provision of a safe workplace, and allowing the worker to contact her home and the Embassy on a regular basis.<sup>148</sup> This would require government monitoring on whether employers’ attempts to circumvent these pre-conditions result in increased irregular migration rather than effectively addressing domestic workers’ vulnerabilities. A more viable solution to addressing problems faced by domestic workers would be for the Government to bilaterally negotiate work visas, which allow domestic workers to change employers.

The Department told Amnesty International in May 2011 that since the Act was implemented in 2007, there have been no official government bans against domestic work abroad.<sup>149</sup> However, the confusion around bans is partly fuelled by contradictory official statements and practices. For example in September 2010, *Emirates 24/7* featured an article entitled “Ban on hiring Nepali maids to stay”, in which it quoted an official from the Nepalese Embassy in the UAE stating that:

*“Currently, there is a ban on hiring Nepali maids throughout the Gulf and this is here to stay. We are not aware of any move about lifting the ban.”<sup>150</sup>*

Bishnu Maya Khanal, an agent working at a branch recruitment office in Jhapa district, is one of many who believe there are still bans against women migrating for domestic work:

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<sup>146</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>147</sup> Article 4.1 of the “Guidelines on the Regulations for Migrant Workers going for Domestic work in Kuwait”, Ministry of Labour, 2011, submitted to Amnesty International by the Department of Foreign Employment on 23 May 2011.

<sup>148</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 23 May 2011.

<sup>149</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 23 May 2011.

<sup>150</sup> Shuchita Kapur, “Ban on hiring Nepali maids to stay”, *Emirates 24/7*, 30 September 2010, available at: <http://www.emirates247.com/news/emirates/ban-on-hiring-nepali-maids-to-stay-2010-09-30-1.297543>, accessed 29 July 2011. See also: Ramesh Mathew, “Nepal bans recruitment of maids to Gulf”, *Gulf Times*, 28 September 2008, available at: [http://www.gulf-times.com/site/topics/article.asp?cu\\_no=2&item\\_no=244558&version=1&template\\_id=36&parent\\_id=16](http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=244558&version=1&template_id=36&parent_id=16), accessed 29 July 2011.

*“We used to send many women to Lebanon for domestic work because the visa was completely free. The employer paid for the medical exam and flight ticket. The only thing the women had to do was give us their passports. Our branch office even provided a five-day training session on housework free of charge. But since November 2010, the Government has stopped approving our applications for domestic work in Lebanon so we can no longer send women there.”<sup>151</sup>*

The Department’s response was that the Government does not impose a ban on domestic workers going to Lebanon, but is “reluctant to issue a labour permission to the female workers” who are going there for the first time “due to inadequate institutional arrangement for safeguarding female workers”.<sup>152</sup>

## **Family permission to migrate**

The Department requires women who wish to migrate abroad for work to submit a written consent from their husband, parents or other “close family members”. Chandra Man Shrestha, the then Director General of the Department of Foreign Employment, explained the rationale:

*“This requirement is not specified in the Act because it would go against the non-discrimination clause under article 8, but in practice, we require family permission for the sake of the women’s security because some brokers will send them without family consent. Of course we don’t require family consent for male migrant workers because it’s unnecessary – it’s safe for them to go abroad.”<sup>153</sup>*

This measure, despite being imposed in the name of protecting women, is clearly discriminatory, based on stereotyped views of the role of women within marriage and the family, and entrenches such discrimination and stereotyping. This policy, along with actual or de facto bans on female migrant domestic workers, is entirely inconsistent with Nepal’s obligations under CEDAW.

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<sup>151</sup> Amnesty International interview with Bishnu Maya Khanal in Kathmandu, Nepal on 15 December 2010.

<sup>152</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>153</sup> Amnesty International meeting with Chandra Man Shrestha, then Director General of the Department of Foreign Employment, in Kathmandu, Nepal on 23 May 2011.

## 7. WORKING ABROAD

“Although forced labour is universally condemned, the ILO recently estimated that at least 12.3 million people are victims of forced labour worldwide. Of these, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking.”

International Labour Organization (ILO)<sup>154</sup>

### 7.1. Abusive practices by recruitment agencies

Many migrant workers recruited through recruitment agencies or brokers are given false or misleading information about their job. Typically this would relate to the wages they would receive, the type of work they will do and the number of hours they are contracted to work each day. These types of deception are often the first step in a chain of forced labour (see section 7.3).

The ILO has stated that intermediaries who carry out “abusive recruitment practices, which negate freedom of choice by the worker [...] with the deliberate intent of placing persons in a situation in which forced labour can be exacted from them can certainly be considered as accomplices to forced labour”<sup>155</sup>

### 7.2. Deception over contractual terms

#### Pay

The most common problems faced by migrant workers interviewed for this report were related to deception about the terms of work. Of 120 interviewees, 98 reported disputes over salary,

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<sup>154</sup> Available at: <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>, accessed 11 September 2011.

<sup>155</sup> ILO, *The Cost of Coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2009, para38, available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_106230.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_106230.pdf), accessed 22 November 2011.

most commonly over, under, late or non-payment of wages. When payment is withheld, workers are often forced to survive on their savings or, more commonly, to borrow from friends or colleagues, or contact family members in Nepal to send them money.

Many interviewees told Amnesty International that they were not paid what the recruiters promised them. For example, KC, a 34-year-old man from Dhanusa district, worked as a waiter in Saudi Arabia for two years and returned in January 2010. He recalled:

*“Before departure, I was told by the agency that I would be paid SAR 1,200 [US\$320]. In fact in my contract, it stated my name, the name of the company and a salary of SAR 1,200 [US\$320]. But when I received my first month's salary, I was surprised to receive only SAR 500 [US\$130]. I called the recruitment agency repeatedly from Saudi Arabia to complain about the wage difference. I even used my friend's phone, just in case the agent was avoiding my calls. But despite all my efforts, my agent didn't do anything about getting me the salary that I was due.”<sup>156</sup>*

TP, a 32-year-old man from Kailali district, worked at a plastic factory in Malaysia for only six months due to the multiple discrepancies between what was promised by both his broker and recruitment agency and the actual work:

*“My contract stated that I would work as a technician indoors for a monthly salary of MYR 1,250 [US\$410] for eight hours a day plus paid overtime and Sundays off. But instead, I was paid MYR 450 [US\$150] and had to work mostly outdoors 12-16 hours every day without a day off or overtime pay. The company also didn't pay us regularly or allow us days off even when we were sick.”<sup>157</sup>*

On at least 15 occasions, the actual salary amount interviewees received was below the minimum requirements set by the Nepalese government for that country (see Figure 11). While Amnesty International recognises that the Nepalese government cannot enforce minimum monthly salaries in destination countries, it can and does assess what is realistic in other countries and should ensure that recruitment agencies do not send workers to jobs that pay below these rates.

RM, a 20-year-old man from Dhanusa district who worked as a construction worker in Qatar from January to March 2010, was paid less than the minimum monthly salary stipulated by the Nepalese government:

*“I am illiterate so my colleagues told me that according to my contract, I would receive a monthly salary of QAR 600 [US\$165], but in reality, the company only paid me QAR 400 [US\$110].”*

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<sup>156</sup> Amnesty International interview with KC in Dhanusa, Nepal on 22 September 2010.

<sup>157</sup> Amnesty International interview with TP in Kailali, Nepal on 6 December 2010.

When RM complained to the agent in Kathmandu, the agent promised to pay the difference in salary, but this did not happen.<sup>158</sup>

RG, a 28-year-old woman from Sunsari district, returned from Kuwait in June 2010 after working as a domestic worker for two and a half years:

*"I was paid regularly but only half of what the broker in Nepal had promised me. I was supposed to receive NPR 14-15,000 [US\$200-210 per month], but the family only paid me NPR 7,000 [US\$100]."*<sup>159</sup>

| Country                      | Minimum monthly salary   |
|------------------------------|--|
| Gulf States other than Qatar | US\$125  |
| Israel                       | No lower limit   |
| Libya                        | US\$175 with food and accommodation<br>US\$250 without food or accommodation |
| Malaysia                     | US\$125  |
| Qatar                        | QAR 600 (US\$165)  |

**Figure 11: Minimum salaries for foreign employment (Source: Department of Foreign Employment)<sup>160</sup>**

Of the 17 migrant domestic workers interviewed, 11 specifically reported experiencing late or non-payment of wages. For example, SV, who was underage at the time, worked for a family in Kuwait. She was promised by her broker a monthly salary of KWD 40 (US\$150):

*"I received this amount but only for the first two months. With part of that money I had purchased a mobile phone [to take back to Nepal, but it was not connected to a local server]. Using that as a pretext, the employer said that she was worried that I would squander my pay so she told me that it would be sent directly to my family in Nepal. She even showed me bank transfer receipts but they were fake because my family never received any of my salary. Out of the 19 months of work, my employer only paid me for two."*<sup>161</sup>

SV was not able to raise this with her broker because her employing family did not allow her to make phone calls to Nepal.

SC, a woman in her thirties from Sunsari district, worked as a domestic worker in Saudi Arabia and returned to Nepal in June 2010. She also had her wages withheld:

<sup>158</sup> Amnesty International interview with RM in Dhanusa, Nepal on 23 September 2010.

<sup>159</sup> Amnesty International interview with RG in Kathmandu, Nepal on 10 December 2010.

<sup>160</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>161</sup> Amnesty International interview with SV in Kathmandu, Nepal on 3 December 2010.

*"I received SAR 500 [US\$130], as promised by my broker, but after the first year, I didn't get paid for eight months. When I asked the placement agency in Saudi Arabia why I wasn't being paid, they told me that my broker had taken this money. I don't know if this is true. So I left my job and went to the police to complain about my salary. They didn't help me get my money back. They just got my employer to pay for my flight ticket back to Nepal."<sup>162</sup>*

It was also not unusual for other migrant workers to receive no pay for their work. A case involving 108 Nepalese migrant workers,<sup>163</sup> who returned in August 2010 from Libya after 15 to 21 months, exemplifies the multiple levels of exploitation that migrant workers can face. According to one member of this group:

*"We returned from Libya because we had no work, no salary and no food. The work was not regular from the start. We had to wait one week, some of us up to two months, without work or pay. When we asked for our basic salary during this period, the recruitment agency owner (who was also our employer) told us that we would only get paid if we worked. The agency owner had promised us a salary of US\$500 after three months, but in reality, it ranged between US\$300-500. Out of the total 21 months, we didn't get paid for six to nine months. We also didn't get food on a regular basis – once a colleague wasn't given food for nine days – and we had to walk 20 minutes to get drinking water."<sup>164</sup>*

## Types of work

Another problem encountered by 26 interviewees was discovering on arrival that the job waiting for them was not what had been promised by the recruiters in Nepal. RS, a 27-year-old man from Kailali district who returned in October 2010, explained how he had been deceived by a broker from his village regarding his job in Qatar:

*"In Nepal, my broker promised that I would work as an electrician after training in Qatar, but there was none and I only worked as a labourer. I was also promised work indoors but I had to work outside at a construction site. Due to the extreme heat, I felt sick. I had chronic cough due to the dust, headaches and felt dizzy all the time."<sup>165</sup>*

Similarly, HL, a 26-year-old woman from Sunsari district who returned to Nepal in April 2010, was not only deceived about the type of job waiting for her but also the country of destination:

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<sup>162</sup> Amnesty International interview with SC in Sunsari, Nepal on 14 December 2010.

<sup>163</sup> There were originally a total of 118 Nepalese workers in the group, but 10 had returned to Nepal at an earlier date.

<sup>164</sup> Amnesty International interview with 11 representatives of the 108 migrant migrants in Kathmandu, Nepal on 4 October 2010.

<sup>165</sup> Amnesty International interview with RS in Kailali, Nepal on 5 December 2010.

*“My broker told me that I would work as a clerk at a department store in Lebanon. I travelled via India and received my flight ticket right before my departure. When I went through immigration, I discovered that my ticket was for Kuwait, not Lebanon. Upon arrival, the local agency picked me up and the next day, I went to my employer’s house. She then told me to start cleaning the house. I refused and said I didn’t apply for domestic work. When I called my broker in Nepal, he told me ‘You spent a lot of money to go there for work so you’d better start working to earn it back! Next time, I’ll send you to a better place.’”*

HL eventually ran away to work as a masseuse because of abusive treatment and poor working conditions.<sup>166</sup>

Another case involved HK, a 31-year-old man from Kailali, who was promised by his broker a job as an electrician in Abu Dhabi, UAE. His contract stated his job, place of work, period of two years, eight-hour work days, monthly salary of AED 800 (US\$220), one rest day per week and a return flight home after one year. The recruitment agency in Kathmandu also verbally promised him work indoors with opportunities for overtime pay. But upon arrival, HK discovered that the actual work, remuneration and work conditions were very different:

*“The company driver picked me up at the airport, along with four other Nepalese workers, and took our passports on the way to the office. That’s when I found out that I had to work in the middle of a desert as a labourer at a construction site. I worked outside in the extreme heat for 11 hours daily and received only AED 600 [US\$160] without any overtime pay.”<sup>167</sup>*

Some migrant workers found the conditions of the actual job so difficult that they were not able to continue. AY, a 42-year-old man from Dhanusa district who worked in Saudi Arabia until July 2010, was forced to work 12 to 14 hours a day without overtime pay, seven days a week with no rest day. Moreover, instead of the SAR 700 (US\$190) monthly salary he was promised, in reality he only received SAR 550 (US\$150):

*“I returned to Nepal after 11 months because my broker and the agency in Kathmandu both promised that I would work as a cleaner at an airport or a hospital, but instead I ended up working as a labourer at a construction site. I would even have been willing to work as a cleaner inside a building, but not outside in the unbearable heat. I was simply given a bucket and was subcontracted to work in the middle of a desert to sweep the streets, sometimes with a broom or at other times just with my bare hands.”*

The broker’s deception included excess charging of recruitment fees – AY paid the broker NPR 105,000 (US\$1,400), which is NPR 35,000 (US\$470) more than the government cap on recruitment fees for Gulf States. AY was given two different contracts and was instructed to give the one stating that he would work as a driver to the immigration officer at

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<sup>166</sup> Amnesty International interview with HL in Sunsari, Nepal on 11 December 2010.

<sup>167</sup> Amnesty International interview with HK in Kailali, Nepal on 6 December 2010.



Kathmandu Airport and the other stating that he would work as a cleaner to the Saudi immigration official. According to him, the broker also misrepresented AY's job and work conditions in Saudi Arabia knowing that AY had taken a large loan and would be compelled to accept the new job because of the need to pay back the debt.

AY had taken out a loan from three private individuals at an interest rate of 48 per cent. So for 11 months, AY was compelled to work under the menace of penalty, which in his case, was the inability to repay his loan:

*"There is still NPR 70,000 (US\$970) remaining. In 11 months, I was only able to save NPR 50,000 [US\$700]. I've complained to my broker, but he didn't return any of my money. He only said that he would talk to a recruitment agency in Kathmandu about finding me a new job abroad for free. He has my passport but I don't know whether he is earnest about sending me abroad again. In the meantime, I've found a job to help pay off at least part of the interest."<sup>168</sup>*

AY's premature return to Nepal meant that he has suffered a serious financial penalty – his outstanding debt is equivalent to two years average annual salary in Nepal.

YC, a 28-year-old man from Kailali district, returned from the UAE in February 2009 after discovering the job he was offered did not exist:

*"I had a three-year contract as a plumber in Dubai but I came back after only one month. The job was in the middle of the desert, 700 km from Abu Dhabi. A company staff gave me a shovel and told me to dig the ground and install PVC pipes underground. I refused to work because it was not the job that my broker promised me nor was I trained to do such work. But most importantly, it was clearly very dangerous – I could easily die doing that kind of work."*

YC complained to the recruitment agency in Nepal so the agency sent him a flight ticket home. Upon return, he went to see them and demanded a refund. The agency eventually returned NPR 55,000 (US\$760) out of NPR 95,000 (US\$1,300). Although YC wanted full compensation, he felt he had no option but to accept what was offered, as he did not know anyone in Kathmandu and felt that it would be too costly to stay there to pursue his case without any guarantee of getting the rest of his money back.<sup>169</sup>

Similar to AY, YC's refusal to work in the job offered resulted in the loss of NPR 40,000 (US\$550), which is more than the average annual salary in Nepal. As a result, he can only repay a portion of his loan of NPR 95,000 (US\$1,300), which he borrowed at 24 per cent interest.

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<sup>168</sup> Amnesty International interview with AY in Dhanusa, Nepal on 24 September 2010.

<sup>169</sup> Amnesty International interview with YC in Kailali, Nepal on 5 December 2010.



**Figure 12: HM, from Morang district, lost his right arm in Saudi Arabia (Source: Amnesty International)**

However, YC's case is exceptional, as most migrant workers do feel compelled to work in the job they were offered. For some, this had extremely serious consequences; out of the four interviewees who experienced serious industrial accidents, two had been working in a different job for which they were not trained. For example, HM, a 35-year-old man from Morang district, worked in Saudi Arabia from February to August 2010:

*"A broker who came to our village offered me a job washing cars, but in reality, I had to work at a quarry. While I was cleaning the crusher, a colleague turned on the machine. My arm got stuck in the machine and from the sheer pain, I lost consciousness. When I woke up two days later, I was in the hospital and my right arm had been amputated up to the shoulder."<sup>170</sup>*

### **Work schedule and duration**

Migrant workers often welcome the opportunity to do overtime and seek jobs that offer possibilities to earn more than the basic salary. However, many migrant workers were forced to work overtime without any remuneration. For example, a group of 46 migrant workers who returned from Libya in November 2010 worked seven days a week for five and a half months. According to one member of the group:

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<sup>170</sup> Amnesty International interview with HM in Morang, Nepal on 13 December 2010.

*“We worked on Fridays, which was supposed to be our day off, during Ramadan and all public holidays. The company promised to pay us overtime for these days – they owed each of us about NPR 30,000-50,000 [US\$420-700] – but when we asked, they refused. So in early October, we stopped working. That’s when they stopped giving us food and water on a regular basis. They would stop for four days and then we would get provisions again. What food they gave us was rotten and dirty. In order to buy food, we sold our mobile phones, sim cards and watches or borrowed money from Indian co-workers. When some of us became ill from food poisoning, we collected money and took them to the hospital.”<sup>171</sup>*

Working excessive hours without any rest day was particularly prevalent among migrant domestic workers. Of 17 domestic worker migrants interviewed by Amnesty International, 13 responded that they worked an average of 19 hours a day. Only two interviewees were given rest days, and both had left a previous job where they had to work everyday.<sup>172</sup>

SR, a 28-year-old woman from Sunsari district, worked for four months in Kuwait as a domestic worker and returned in July 2009. She described the conditions of her work:

*“I worked from 5am to 2am with no rest days. I cooked, cleaned, washed clothes, ironed and took care of four children. I had so much to do but the family didn’t give me enough food to eat – just twice per day. I was always hungry. They would lock the kitchen whenever they left. So when I knew they were about to leave, I stole some food from the fridge so that I could eat it after they left.”<sup>173</sup>*

SK is a 22-year-old woman from Sunsari district who was also a domestic worker in Kuwait and returned to Nepal in March 2010. Like SR, KS struggled with a heavy workload and no rest day:

*“In the family, there were 15 members – parents, six sons, one daughter, two daughters-in-law and five children. My work day started at 7am and finished at 12 midnight or 2am. I had no days off. I cleaned the house, washed the dishes, helped with the cooking, ironed and anything else they needed to be done in the house. I was provided with three meals per day but I had so much work to do that I often didn’t have time to eat.”<sup>174</sup>*

MG, a man in his thirties from Okhaldhunga district, worked as a security guard in Malaysia and returned in August 2010. He was also forced to work long hours and had no days off:

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<sup>171</sup> Amnesty International group interview with 46 migrant workers in Kathmandu, Nepal on 2 December 2010.

<sup>172</sup> Amnesty International interviews with SN in Kathmandu, Nepal on 19 September 2010 and with KS in Sunsari, Nepal on 14 December 2010.

<sup>173</sup> Amnesty International interview with SR in Sunsari, Nepal on 14 December 2010.

<sup>174</sup> Amnesty International interview with KS in Sunsari, Nepal on 14 December 2010.

*“My broker said I would earn MYR 1,500 [US\$490], work eight hours with four hours paid overtime and have one day off per week. But in reality, I was paid only MYR 1,250 [US\$410] minus MYR 130 [US\$45] for tax and hostel charge for 12-hour days without overtime pay and no rest days. If I took a day off, my employer deducted MYR 35 [US\$12] per day from my salary.”<sup>175</sup>*

### 7.3. Forced labour

As previously stated, forced labour occurs when any work or service is exacted from a person under the menace of any penalty and for which that person has not offered him or herself voluntarily. The actions of some recruitment agencies and brokers leave migrant workers vulnerable to labour exploitation and forced labour in the countries of destination.

Prospective migrant workers are generally promised a well-paying job abroad with good working conditions by recruiters. But upon arrival in countries of destination, 108 out of 115 interviewees for this report responded that they found that their jobs and conditions of work were considerably different from what was originally agreed.

When recruitment agencies and brokers use such deception or fraud to recruit these workers for labour exploitation, including forced labour, in destination countries, this constitutes trafficking, as defined under the Trafficking Protocol. According to the ILO:

*“Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.”<sup>176</sup>*

Although not an exhaustive list, the major examples of deception identified by the ILO include:

- *“Excess charging of fees for visas and other travel documents*
- *Processing and provision of fake travel documents without informing the migrant of their illegitimate status*
- *Recruitment for non-existent [sic] jobs*
- *Misrepresenting the job and work conditions (e.g. women going abroad who believe they will work as domestic help but end up in prostitution)*
- *Providing the future migrant worker with a loan that is hard to pay back (particularly since the interest on the loan and the loan itself tend to be falsely inflated, though*

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<sup>175</sup> Amnesty International interview with MG in Kathmandu, Nepal on 17 December 2010.

<sup>176</sup> ILO, *The Cost of Coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2009, para25 p6, available at: [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/---relconf/documents/meetingdocument/wcms\\_106230.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf), accessed 11 September 2011.

*the migrant is not usually aware of this), leading to situations of debt bondage and forced labour.*"<sup>177</sup>

Despite this deception, interviewees generally felt compelled to work in jobs and conditions to which they had not agreed. The reasons for this generally involved one or several of the following key components of forced labour, which the ILO acknowledge as indicators of either a lack of consent (or "involuntariness") or "menace of penalty": indebtedness;<sup>178</sup> withholding and non-payment of wages; retention of identity documents; physical and sexual violence and threats of violence; physical confinement; financial penalties (delaying start dates or penalizing for sick days); denunciation to authorities (police, immigration, etc.) and deportation; dismissal from current employment; and deprivation of food, shelter or other necessities.<sup>179</sup> Workers were even more vulnerable where, as is often the case, they did not speak the local language.

Debt is an important component of forced labour when it is used as a mechanism of coercion to compel migrants to accept terms and conditions to which they originally did not agree. In the case of many Nepalese migrants, onerous debts are only entered into on the basis of a specific job offer, which then proves to be inaccurate, but by then the loan has already been taken and they cannot refuse or leave the job without serious repercussions. Numerous migrant workers told Amnesty International that the reason they stayed in jobs they initially did not agree to was because they had no other way to repay their debt.

Interviews carried out by Amnesty International clearly indicate that recruitment agencies and brokers know that migrants have to take out substantial loans and will be under pressure to repay them and less able to refuse amended terms and conditions in their contract. Research findings also show that some recruiters do not operate in good faith, for example, by substituting contracts, not providing contracts in advance or in Nepali, and by endorsing the confiscation of identity documents by employers in countries of destination.

In addition, migrant interviewees also told Amnesty International that their recruiter refused to assist them when they discovered irregularities in their terms and conditions of work. In one example, a migrant worker was specifically told by a broker to remain in her job and focus on earning back the substantial amount paid for her recruitment fee (see page HL's case in section 7.2). According to the ILO, "manipulation of credit and debt, either by

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<sup>177</sup> ILO, *Trafficking for Forced Labour: How to monitor the recruitment of migrant workers*, Special Action Programme to Combat Forced Labour, January 2006, p21, available at: [http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS\\_081894/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_081894/index.htm), accessed 9 September 2011.

<sup>178</sup> The ILO specifies this to mean "Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)". See: ILO, *A Global Alliance against Forced Labour*, 2005, p6, available at: <http://www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

<sup>179</sup> ILO, *A Global Alliance against Forced Labour*, 2005, p6, available at: <http://www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

employers or by recruiting agents, is still a key factor that traps vulnerable workers in forced labour situations”.<sup>180</sup>

When indebtedness is combined with the other coercive elements (removal of documents, confinement, violence, etc.), the workers’ vulnerability to forced labour increases. For example, if upon realizing the true nature of their job, migrants decided to look for other employment with better terms and conditions, they would do so at the cost of losing their regular status – even if they had possession of their identity documents – because their work visa is tied to the employer. Loss of regular status exposes them to the risk of detention and deportation, which would also negatively impact on their ability to repay their debt. This is one of the reasons why only five interviewees gave up their legal employment in order to find work elsewhere with higher remuneration and/or better working conditions.

## FORCED LABOUR IN THE 21ST CENTURY

**“Lured from their homes by labor brokers making false promises of high wages, the trafficked workers often find themselves in a land where they don't speak the language, are saddled with impossible debts and are deprived of the passport they need to get home.**

‘The old way of slavery was that the boss really owned you. [...] But now legal recruiters and employers work in tandem to deceive workers who, vulnerable and isolated in a strange culture, are forced to accept harsh terms. It is in that context that you have endemic forced labor today.’ – Rene Ofrenco, Director of the Center for Labor Justice, University of the Philippines<sup>181</sup>

As the ILO has stated in its Handbook on Combating Forced Labour:

*“All workers shall have the right to enter into and leave employment voluntarily and freely, without the threat of a penalty, and taking into account the legal rights and responsibilities of both parties in the employment relationship. Coercion should not be used under any circumstances to threaten workers or pressure them into accepting or staying in a job. A worker's vulnerability should not be used to offer employment conditions below the legal minimum, and employers should refrain from using any practices that restrict a worker's ability to terminate employment, for example:*

- *Withholding employee identity documents, including passports;*
- *Imposing financial penalties on workers;*
- *Delaying or halting wage payments; or*
- *Threatening workers with violence.”*<sup>182</sup>

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<sup>180</sup> ILO, *The Cost of Coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, 2009, para40, available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_106230.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_106230.pdf), accessed 22 November 2011.

<sup>181</sup> George Wehrfritz, “Lured into bondage: A growing back channel of global trade tricks millions into forced labor”, *Newsweek*, 12 April 12, 2008.

<sup>182</sup> ILO, *Combating Forced Labour: A handbook for employers & business*, 2008, available at:

As outlined below, restrictions on the freedom of movement was a particular problem faced by Nepalese migrant workers.

## 7.4. Impediments to freedom of movement: Removal of identity documents

Confiscation of passports and other identity documents by employers restricts migrant workers' freedom of movement.<sup>183</sup> The aim is to maintain control over a migrant worker and prevent them leaving the jobs given to them or the country. As the ILO has stated, a threat of a penalty includes employers requiring "workers to hand over their identity papers", which can be used to exact forced labour.<sup>184</sup> The ILO has also said "where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of an employer; such practices represent a clear violation of the Convention [Forced Labour Convention]".<sup>185</sup>

In the interviews conducted by Amnesty International with migrant workers, 58 out of 60 who were asked and responded to this question revealed that their employers or placement agencies in destination countries kept their passport, which was usually taken shortly after their arrival. Eighteen interviewees specifically stated that they had asked for their passport to be returned and that their employers or placement agencies had refused to return it.

KK is 27 years old from Kailali district. He worked as a cook's assistant at a hotel in Saudi Arabia and returned in July 2009, although he tried to return home much earlier because he was being paid NPR 13,000 (US\$180) less per month than he had been promised. He asked for his passport back "so many times", but his employer refused. So when his two-year contract ended, KK tried again:

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[http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS\\_101171/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_101171/index.htm), accessed 15 August 2011.

<sup>183</sup> Although Nepal is not a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 UNTS 3 (in force 1 July 2003), it too recognises the role of passport confiscation in rendering migrant workers vulnerable, as its article 21 provides that: "It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits."

<sup>184</sup> ILO, *A Global Alliance against Forced Labour*, 2005, pp5-6, available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

<sup>185</sup> ILO, *Eradication of Forced Labour*, General Survey 2007, para39, Ilolex no. 252007G04, available at: [http://www.ilo.org/ilolex/cglex/pdconv.pl?host=status01&textbase=iloeng&document=221&chapter=25&query=\(%23docno%3D252007G\\*\)+%40ref&highlight=&querytype=bool&context=0](http://www.ilo.org/ilolex/cglex/pdconv.pl?host=status01&textbase=iloeng&document=221&chapter=25&query=(%23docno%3D252007G*)+%40ref&highlight=&querytype=bool&context=0), accessed 22 November 2011.

*“At the end of this period, I wanted to return to Nepal but the company again didn't allow me to go. So for one month, I refused to work and remained in my room. I eventually ran away and was caught by a police officer. I didn't have my passport with me so I bribed him by paying him SAR 1,000 [US\$ 270] in exchange for his help. He contacted the Nepalese Embassy to get me a temporary travel document and a flight ticket to Nepal. I was detained at the police station for one week before I finally returned home.”<sup>186</sup>*

Similarly, JN, a 26-year-old man from Kathmandu, was recruited to work as a gym instructor at a hotel in Saudi Arabia. But upon arrival in October 2007, he found that the hotel was not finished, so his employer made him work as a construction worker where he had to “carry a trolley full of bricks up the stairs to the eight and ninth floors, unload bags of sand, drill, fix pipes, help install large sheets of glass, and throw away heavy pieces of rubbish”. His agency had promised him a monthly salary of SAR 1,000 (US\$ 270), but JN received only SAR 400 (US\$110). When he tried to return to Nepal, his employer refused to let him go. So like KK, JN also waited until his two year contract ended:

*“I submitted a letter informing my employer that I wanted to return to Nepal, but my employer claimed that my contract was for three years. This wasn't true and when I asked him to show me the contract, he refused. But he still insisted that I work one more year and only then would I be allowed to go back home.”*

After his third year, the employer tried to make him stay longer but JN insisted that he be allowed to return to Nepal. After some negotiations, the company finally returned his passport and gave him a flight ticket home in September 2010.<sup>187</sup>

Due to a lack of work, IH, a 31-year-old man from Kailali district, decided to return home in July 2010. He explained how he had retrieved his passport from his workplace in Malaysia:

*“I paid a colleague MYR 500 [US\$165] to get my passport back. Because he worked at the company for eight to 10 years, he had a good relationship with the management and convinced them to return my passport. I then bought my own flight ticket back to Nepal.”<sup>188</sup>*

In interviews with Amnesty International, recruitment agencies showed a lack of understanding that the removal of identity documents constitutes a violation of migrant workers' rights. The recruiters also did not acknowledge that the removal of documents is used as a coercive mechanism to trap migrant workers in exploitative jobs, in violation of the terms of the workers' employment contract. In fact, all NAFEA board members interviewed for this report either supported or justified the actions of the employers.

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<sup>186</sup> Amnesty International interview with KK in Kailali, Nepal on 5 December 2010.

<sup>187</sup> Amnesty International interview with JN in Kathmandu, Nepal on 26 May 2011.

<sup>188</sup> Amnesty International interview with IH in Kailali, Nepal on 5 December 2010.



Somlal Batajoo, NAFEA President:

*“The employers in destination countries take the passports of migrant workers because they run away to better paying jobs. As sponsors, employers have made an investment so they lose money if this happens. It’s right that employers keep the workers’ passports because just in Saudi Arabia, 30,000 Nepalese migrant workers have run away to other companies in the past years.”<sup>189</sup>*

Trilok Chand Vishwas, NAFEA Vice-President:

*“Migrant workers run away many times to better paying jobs. Companies make us pay a penalty for the visa charge, so the removal of identity documents is a good idea because not all migrant workers are honest.”<sup>190</sup>*

Kumud Khanal, NAFEA Secretary General:

*“Passports of migrant workers are confiscated by their employers to prevent them from running away. I can understand why they have to do this – it’s a huge investment on the part of the companies.”<sup>191</sup>*

Kamal Tamang, NAFEA Secretary and head of Himarab Overseas Agency:

*“Removal of migrant workers’ passports is done because they run away to jobs with better wages. I know this is against ILO laws but I think that those laws are for western countries and not relevant here in Asia. The work visa is tied to the employer so they are not allowed to change jobs.”<sup>192</sup>*

Meetings with Nepal’s Department and Promotion Board revealed a similar lack of understanding of how the removal of identity documents is used as a tool to force migrants to work against their will in conditions to which they did not agree. Both government offices felt that the employers were well within their rights and the practice was “understandable”.<sup>193</sup>

Even without the removal of passports, Nepalese migrant workers are already under substantial pressure not to leave their jobs. All migrants interviewed for this research had

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<sup>189</sup> Amnesty International interview with Somlal Batajoo, NAFEA President, in Kathmandu, Nepal on 28 November 2010.

<sup>190</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

<sup>191</sup> Amnesty International interview with Kumud Khanal, NAFEA Secretary General, in Kathmandu Nepal on 26 November 2010.

<sup>192</sup> Amnesty International interview with Kamal Tamang, NAFEA Secretary, in Kathmandu, Nepal on 26 November 2010.

<sup>193</sup> Amnesty International meetings with the Department of Foreign Employment in Kathmandu, Nepal on 10 December 2010 and the Foreign Employment Promotion Board in Kathmandu, Nepal on 2 December 2010.

work visas which tied them to a single employer, so if they left their job – for whatever reason – they either had to return to Nepal or seek other work illegally, risking arrest or deportation at any time. Migrant workers with irregular status are clearly at greater risk of exploitation. MG, a man from Okhaldhunga district, found out upon arrival in Malaysia that despite a three-year contract, his work visa for a security guard was valid for only one year:

*“I worked as an undocumented worker for five years. During this time, I was arrested about 20 times by the local police. The police arrest us knowing that they will get money from us. I paid MYR 200-500 [US\$65-165] each time in bribery so that they would let me go. In total, I must have paid about MYR 5,000 [US\$1,650] in bribes to the police.”<sup>194</sup>*

However, simply returning to Nepal without regular status and/or identity documents is extremely difficult. YD, a 41-year-old man from Jhapa district, ran away from his workplace in Saudi Arabia because his pay was almost half of what his contract had stated. In 2009, he wanted to return to Nepal but found that as an undocumented worker, this was not a simple undertaking:

*“I couldn't get a flight ticket without permission from my original employer who still had my passport. Even the Nepalese Embassy couldn't send me back without a long process. So to return home, I needed to get arrested so I bribed a police officer to arrest me. I was in detention for two months where the conditions were terrible. There was no water, so I had to drink toilet water. They gave us food but only the physically strong would get it, as it was in a big pot for everyone to share. I became very ill but there was no access to a doctor at the detention centre.”*

The Saudi government eventually paid for YD's ticket home. He was so weak from his detention that he needed assistance to alight from the airplane.<sup>195</sup>

## 7.5. Domestic workers

Amnesty International's interviews with Nepalese migrant domestic workers provide testimony of exploitative working conditions, restrictions on freedom of movement, removal of identity documents, debt to recruiters, physical and psychological abuses, including sexual violence, and forced labour.

Normally, recruiters for domestic workers operate in conjunction with placement agencies in destination countries. Interviews with recruiters and domestic workers indicate that while abroad, placement agencies manage domestic workers, including liaising between the worker and the recruiter in Nepal.

Amnesty International recognises that the destination country has the primary responsibility to prevent these human rights abuses and punish those responsible, but as outlined already,

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<sup>194</sup> Amnesty International interview with MG in Kathmandu, Nepal on 17 December 2010.

<sup>195</sup> Amnesty International interview with YD in Kathmandu, Nepal on 1 October 2010.

the Nepalese government has not taken the appropriate action in its own jurisdiction to reduce and eliminate incidences of forced labour among Nepalese migrant workers, including domestic workers. Specifically, when domestics asked for assistance from a Nepalese embassy or consulate, it has been inadequate in resolving their problems (e.g. in relation to the regulatory framework for Nepalese migrant domestic workers and the monitoring and enforcement of the Act).

14 out of the 17 Nepalese domestic workers interviewed for this report stated that their employers told them not to leave the house or locked them inside the house whenever they went out. Of the two who were allowed to leave their workplace, one worked in Kuwait but had left the previous job where she was “locked in”, and the other worked in Cyprus.

RR, a 31-year-old from Sunsari who worked in Saudi Arabia for two years and returned in November 2010, told Amnesty International that her employer “didn’t allow me to go outside and locked me in whenever they left the house”.<sup>196</sup> GM, another domestic worker from Kaski district, worked for a family in Kuwait who prohibited her from leaving the house and “even when I went out to throw away the rubbish, they used to watch me from the door, to make sure that I didn’t go out the front gate”.<sup>197</sup>

The majority of domestic workers interviewed by Amnesty International were also prevented from using the telephone so they could not contact their families or anyone else for help. SV worked as a domestic worker in Kuwait when she was still a minor. Her employers prohibited her from contacting her family in Nepal:

*“During my 19 months in Kuwait, I was never allowed to call my family in Nepal. My mother, who was worried about me, contacted an NGO that had come to my village to raise awareness on trafficking. Through this NGO, I was rescued and thanks to this intervention, my broker had to pay for my flight back to Nepal and afterwards, the police arrested him.”<sup>198</sup>*

Due in part to the isolated nature of their work, domestic workers are at greater risk of violence and abuse. 11 out of the 17 migrant domestic workers interviewed for this report suffered some form of physical, verbal or sexual abuse, and/or threats of violence. Their situation was exacerbated by other coercive practices, such as the removal of identity documents, debts to their recruiter and being tied to a single employer. According to the ILO:

*“Today the growing numbers of migrant domestics to the Middle East and elsewhere, who hand over identity documents and find themselves tied to one household with restricted freedom of movement, are highly vulnerable to forced labour.”<sup>199</sup>*

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<sup>196</sup> Amnesty International interview with RR in Sunsari, Nepal on 14 December 2010.

<sup>197</sup> Amnesty International interview with GM in Kathmandu, Nepal on 17 and 19 September 2010.

<sup>198</sup> Amnesty International interview with SV in Kathmandu, Nepal on 3 December 2010.

<sup>199</sup> ILO, *A Global Alliance against Forced Labour*, 2005, p9, available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 9 September 2011.

Furthermore, the UN Special Rapporteur on Human Rights of Migrants has described the fact that “[e]mployers frequently take away the identity and travel documents of migrant domestic workers on arrival” as “one of the major concerns [...] since it places migrant domestic workers in a situation of complete dependence and hampers their movements, including their return to their country of origin without the employer’s consent.”<sup>200</sup>

Amnesty International has documented the following three cases involving women from Sunsari district who were physically and psychologically abused by their employers and local agents in Kuwait. In all cases, the women had their passports confiscated and were forced to fulfil their contract term because of their debt – not only to their broker in Nepal, but also to their placement agent in Kuwait.

SR, a 28-year-old woman, owed NPR 25,000 (US\$350) to her broker in Nepal who said that SR could repay once she started working. SR recounted the abuse inflicted by her employer:

*“The mother verbally and physically abused me. She yelled at me whenever she thought I did something wrong. Once she cut my right hand with a knife. Three or four times, she beat me with a belt on my shoulders and back. She also took me to the bathroom and beat me. I cried a lot when I worked there.”*

When SR told the family that she wanted to change employers, they took her to the local placement agency where she was subject to further abuse:

*“When I told them that I wanted to return to Nepal, the Bangladeshi agent and his Nepalese wife beat me with a belt and their hands. The agent said I had to pay them NPR 100,000 [US\$1,400], which they claimed that I owed. If I didn’t, he threatened to cut my throat and throw me away in Kuwait.”*

SR contacted her mother who negotiated with the broker to pay NPR 30,000 (US\$420) for her daughter’s return. For this amount, the mother had to take out a loan from a private individual at 60 per cent interest. For three months, until she was given a flight ticket home, SR stayed at the agency office, during which time she was periodically beaten by the agent.<sup>201</sup>

RG, a 28-year-old woman, worked as a domestic worker for two and a half years. She also did not pay up front the recruitment fee of NPR 30,000 (US\$420), as her broker said she could repay him from her earnings. After six months in Kuwait, she requested a job transfer due to the gruelling work hours, underpayment, and physical and psychological abuse from her employers:

*“The director of the local placement agency called me in and beat me – he kicked, slapped and hit me with a stick. When I asked for my passport to return to Nepal, the*

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<sup>200</sup> Report of the UN Special Rapporteur on the Human Rights of Migrants, UN Doc. E/CN.4/2004/76 (12 January 2004), para34.

<sup>201</sup> Amnesty International interview with SR in Sunsari, Nepal on 14 December 2010.

*agency refused and said that I had to complete two years – even if my employers beat me. He said that if I returned to Nepal early, I would have to pay them NPR 150,000 [US\$2,100]. As I didn't have that kind of money, I was forced to return to my abusive employers.”*

Like SR, RG also found out then that she “owed” the placement agency additional money, on top of what was owed to the broker in Nepal. When RG returned to work, the conditions did not improve:

*“For two years, I was subject to beatings and verbal insults but I had to finish my term in order to return home. But even after two years, my employers didn't allow me to return so I finally ran away. When I was walking on the streets, the police approached me and took me to a detention centre because I didn't have any identity papers. I was in detention for four days. My employers picked me up and took me home. They beat me up and told me that I could return to Nepal after five months. They deducted my flight ticket from my salary.”<sup>202</sup>*

KD, a 30-year-old woman also experienced similar abuse at the hands of her employer and local agent in Kuwait:

*“The local placement agency put a lot of pressure on me to continue working despite being sick. They said that if I wanted to return to Nepal, I had to pay them NPR 150,000 [US\$2,100]. They threatened to lock me up, beat me and sell me if I didn't do as they said. When I went to the police to complain, they just ignored me so I had to return to the agency because I couldn't leave the country without my passport. To punish me, the agent kicked me on the back with his boots, slapped and punched me in the head – my head still hurts and the doctor says that I may need an operation. I couldn't get up for two days. I had cuts, bruises and blood everywhere.”*

Through negotiations with the agency in Kathmandu, KD's parents were able to bring their daughter back after paying the Kuwaiti agency NPR 50,000 (US\$700).<sup>203</sup>

## Sexual violence

Some domestic workers were also subject to sexual harassment and violence in their workplace or by local agents. SD, a 29-year-old woman from Lalitpur district, worked as a domestic worker in Kuwait and returned in February 2011. She says she was raped by the agent from the local placement agency:

*“He called me and told me to come to the office one evening on the pretext of submitting some documents. By the time we were done with the paperwork, it was too late to return by public transport, so he offered to let me stay at his place. He*

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<sup>202</sup> Amnesty International interview with RG in Sunsari, Nepal on 10 December 2010.

<sup>203</sup> Amnesty International interview with KD in Kathmandu, Nepal on 10 December 2010.

*assured me that his sister was there and that it would be safe. However, when we got there, there was no one else in the apartment. That's when he raped me."*

SD did not go to the authorities in Kuwait because she was afraid of having her name publicized. When she realized that she was pregnant, she told the agent that he needed to send her back to Nepal but he refused. SD also told her employers but they did not believe her because she "wasn't showing". She eventually gave birth in a public toilet:

*"I was at a picnic with the family when I felt the contractions. I rushed to the toilet where I gave birth to my son. The family took me to the hospital. After 16 days of hospitalization, I was transferred to a detention centre where I remained for 27 days. The Nepalese Embassy gave me a flight ticket home."*

SD is currently staying at a shelter in Kathmandu with her baby. Her parents do not know she has given birth while abroad.<sup>204</sup>



**Figure 13: A shelter in Kathmandu run by Nepalese NGO Pourakhi (Source: Amnesty International)**

TS, a 31-year-old woman from Chitwan district, was promised by her recruitment agency a job as a cleaner at a hospital in Lebanon but ended up working as a domestic worker. She returned to Nepal in September 2009 after six months:

*"The wife was often out of the house and the husband worked from home. When she was not there, he would always ask me to come to his room and sit near him. He grabbed me towards him. I told him to stop and that I didn't like it, but he didn't*

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<sup>204</sup> Amnesty International interview with SD in Kathmandu, Nepal on 26 May 2011.

*care. I had to constantly fight him off. This happened many times when the wife was out. Once I tried to tell the wife, but before I could explain, her husband slapped me in the face three or four times and then punched me repeatedly on my back and upper body. I asked the wife to call my brother in Nepal. She allowed me to talk to him for three minutes. During this time, I explained everything and told him to get me out of Lebanon.”<sup>205</sup>*

SV experienced similar sexual harassment from a member of the employing family in Kuwait:

*“One time the second son told me he loved me and wanted to be with me. When I told him no, he became aggressive and grabbed me but I pushed him away. When the mother saw this, she blamed me and began to beat me. She slapped me in the face, pulled my hair, punched my arm and hit me with her shoes.”<sup>206</sup>*



**Figure 14: GA with her mother in Kavrepalanchok district (Source: Amnesty International)**

GA, a 19-year-old woman from Kavrepalanchok district, was a minor when she worked as a domestic worker in Kuwait and Saudi Arabia for a total of six months. She returned to Nepal in January 2010. As she still has difficulty speaking about her experience, the interview was conducted with the help of her mother. The following narrative is based on what GA gradually told her mother:

*“Health-wise I am not completely well. I still feel pain. I have back and head injuries from being beaten. When I arrived in Nepal, I still had injection marks on my upper*

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<sup>205</sup> Amnesty International interview with TS in Kathmandu, Nepal on 1 December 2010.

<sup>206</sup> Amnesty International interview with SV in Kathmandu, Nepal on 3 December 2010.

*and lower left arm, and my arms still hurt sometimes, but I don't remember exactly what happened to me."*

From the little she revealed over time to her mother and NGO workers, it was clear to them that GA was physically and sexually abused by her employer.<sup>207</sup>

## 7.6. Trafficking for sexual exploitation

Amnesty International has documented three cases where a broker recruited girls with promises of good jobs and educational opportunities abroad, but trafficked them for sexual exploitation in India. They and their families were lured by an offer of free services, such as handling all administrative matters, including obtaining a passport and taking care of the foreign employment application. In the end, the parents consented not only because of their poor economic situation, but also because they felt they could ill afford to pass up an opportunity for their daughters to lead better lives. The following three cases involved the same broker and in all three cases, the girls had to pay off their "debt" through forced prostitution.

In 2008, SS met the broker at a carpet factory in Kathmandu where the broker's wife was working. He promised her a good job as a domestic worker in Lebanon. The couple convinced her to take this job opportunity and gave her further incentive by assuring her that she didn't have to pay anything. It was only when the broker took SS to India that she began to discover the truth:

*"I was supposed to fly to Lebanon but instead, the broker confiscated my passport and sold me to a brothel for INR 100,000 (US\$2,200). At the brothel, I was forced to have sex with 35 customers per day and on Sundays, 45 customers. I worked all day and evening, and was only allowed to sleep from 11pm to 4am but if I had an overnight customer, then I had to continue working. I tried so many times to refuse, but the brothel owner would beat me with an iron pole until I changed my mind.*

*I was not allowed to contact my family, go outside, meet anyone or even talk to people. My movements were constantly controlled by the brothel owner. She did not pay me so the only money I had was from tips that customers gave me.*

*After six months, the police raided the brothel and imprisoned all the women and girls for one year and five months. The owner was arrested with us – she made us tell the police that she wasn't the brothel owner. The police knew the truth but released her five months earlier than us because she managed to bribe them.*

*When we were released, the owner made sure that we returned to the brothel. After one month, the owner sold me to another brothel for INR 300,000 (US\$6,600). I*

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<sup>207</sup> Amnesty International interview with GA in Kavrepalanchok, Nepal on 28 September 2010.



*realised then that I would never be able to pay off that debt so I made the decision to run away.”*

SS eventually found her way back to Nepal and is staying at a shelter in Kathmandu.<sup>208</sup> ST, one of the girls with whom she ran away, shared a similar experience:

*“I met the broker in my hometown in 2007-08. My family is very poor and he came to our house and told us that I could earn lots of money as a domestic worker in Lebanon. I didn't want to go but the broker convinced my mother that it would be a good and safe opportunity for me and she believed him.*

*There was no broker fee – in fact, the broker prepared all the documents for me. I was underage at the time. He didn't give me a contract and only explained to me what my job would entail. The broker took five of us to India where we were supposed to fly to Lebanon. He kept my passport.*

*We were there for two days. We realised then that we were being sold because we saw the broker exchanging money with someone. He asked us if we wanted to go back to Nepal or go abroad. We said 'return to Nepal', but despite this, he sold us to a brothel. I was sold for INR 170,000 (US\$ 3,800).*

*I cried a lot. The brothel had only Nepalese girls – about 20 to 25. I was forced to have sex with 25 to 30 customers per day and on Sundays, about 50 to 60 customers. When I refused, the brothel owner beat me, didn't give me food and kept me awake. Also, when we worked we had to wake up early and if we slept, the owner would throw water on us or put chilli in the fire which would give off a very bad smell and sting our eyes.*

*I didn't receive any salary, only the occasional tips from customers. They fed us twice per day – lunch and dinner. I couldn't go outside. I wasn't even able to see the sun. There were no windows in the house except for one where the brothel owner sat. The curtain covered the entire house.”<sup>209</sup>*

In 2008, the same broker visited SU's parents and convinced them that their daughter would receive a good education in India, which would eventually lead to a good job. Being “too poor” to educate her, they were convinced that this was a good opportunity for SU:

*“When the broker took me to India, he brought me to a brothel. I wasn't sold because it was owned by him but a woman managed it for him. For the first week, I had to have sex with five to six customers and then it increased to anywhere from 25 to 40 customers per day. On Sundays, it was over 35 customers. When I refused, the brothel manager beat me with a stick on my back. I was not allowed to go outside the brothel and never saw sunlight. I worked there for six months.”*

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<sup>208</sup> Amnesty International interview with SS in Kathmandu, Nepal on 3 December 2010.

<sup>209</sup> Amnesty International interview with ST in Kathmandu, Nepal on 3 December 2010.

With two other girls, SU managed to escape while the brothel manager was out. It was their “third attempt – we had failed the other two times because there were too many people outside”.<sup>210</sup>

The three families of the girls have filed a complaint with the police against the broker and the case is currently pending investigation. These cases illustrate the importance of registering brokers, as required under article 48 of the Regulation, which until now has been virtually unimplemented (see section 9.1).

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<sup>210</sup> Amnesty International interview with SU in Kathmandu, Nepal on 3 December 2010.

## 8. ATTEMPTING TO SECURE REDRESS AND COMPENSATION

“I wish I had died [in the UAE]. In that way, I would not have to worry about the loan. I was insured through the Nepalese government, but sadly they have not helped me at all with the [industrial accident] compensation.”

LK, road maintenance worker from Jhapa district<sup>211</sup>

### 8.1. Inability to resolve problems while abroad

Interviews indicate that when migrant workers face problems with their employment, they usually turn first to their broker and/or recruitment agency in Nepal, or the local placement agency in the case of domestic workers, for help and then to the nearest Nepalese diplomatic mission. Interviews also demonstrate that in many cases recruiters – brokers in particular – stop answering phone calls from unhappy clients. Those who respond typically placate the workers with promises of help or compensation, which are not fulfilled. Others respond by advising the workers to accept their situation and concentrate on their work, which would be rewarded with a better job the next time they go abroad.

Although these problems occur in the destination countries, the Nepalese government still has a responsibility to intervene to try and help resolve problems when they arise. For example, article 68 of the Act specifies the appointment of a labour attaché to all countries “where five thousand or more workers have been sent for foreign employment”. Their functions and duties include:

- “(b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute,*
- (c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment,*
- (e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died due to any cause, to Nepal with the assistance of the concerned country or employer institution,*
- (f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal.”*

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<sup>211</sup> Amnesty International interview with LK in Jhapa, Nepal on 14 July 2011.

However, the Ministry of Labour has despatched labour attachés to only six countries – Kuwait, Malaysia, Qatar, Saudi Arabia, South Korea and the UAE. According to the Ministry, it has plans to despatch four more to Japan, Israel, Oman and Hong Kong.<sup>212</sup>

When migrant workers were asked if they had contacted a Nepalese diplomatic mission, most said they did not because they “didn’t know the process or who to contact” or that it was not in their destination country or “too far away”. Others lacked faith in its ability to provide assistance. The collective experience of 46 migrant workers who returned from Libya in November 2010 because of unpaid wages was summarised by one migrant spokesperson:

*“We didn’t contact the Nepalese Embassy in Cairo because we didn’t have hope that they would come to our aid. From many of our previous experiences, the Embassy will take money from companies and side with them over the workers. We’ve never heard of the Embassy ever helping workers abroad when they’re in trouble. One of us had an experience in Qatar where he travelled often to the Embassy over a period of two months but in the end, the staff didn’t help him. We’ve seen Sri Lankan workers often get help from their Embassy when they were in trouble, but never Nepalese.”<sup>213</sup>*

In response to the allegation of corruption, Shyam Lal Tabador, Nepalese Ambassador to Egypt, stated that:

*“It is totally baseless and imaginary allegation. We request everyone to be pretty sure that no one has taken any money or taken side of the company. But if anyone can tell us with evidence or any reasonable explanations when and who has taken such money we will investigate it and take extreme action against that person.”<sup>214</sup>*

Of the seven interviewees who had contacted the Embassy/Consulate, none received assistance which resolved their problem. Nearly half of these cases involved migrant workers who needed help getting a flight back to Nepal. Of the other cases, one involved TP, a 44-year-old man from Kathmandu who worked in Dubai, UAE. In August 2009, his brother suffered a serious industrial accident resulting in paralysis of the left side of his body. When he was discharged from the hospital in April 2010, TP sought help from the Nepalese Embassy in Abu Dhabi:

*“I explained to the Embassy staff that the only compensation my brother had received from his company was AED 24,000 [US\$6,500] and a flight ticket back to Nepal. The Embassy knew that under UAE law, the company should have compensated him for AED 160,000 [US\$43,500], not AED 24,000 [US\$6,500]. The Embassy made*

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<sup>212</sup> Amnesty International meeting with Purna Chandra Bhattarai, then Joint Secretary, Ministry of Labour, in Kathmandu, Nepal on 3 June 2011 and 20 November 2011.

<sup>213</sup> Amnesty International group interview with 46 migrant workers in Kathmandu, Nepal on 2 December 2010.

<sup>214</sup> Correspondence from Shyam Lal Tabador, Nepalese Ambassador to Egypt, on 14 September 2011.

*one phone call to the company, but when it refused to cooperate, the Embassy didn't pursue it any further and left us with the problem.*"<sup>215</sup>

LB Chhetri, First Secretary at the Nepalese Embassy in Abu Dhabi, who dealt with this case recalled that:

*"We pursued the matter but the company was not responding properly. I could speak to a responsible person finally who informed on phone that they were waiting for their insurance company's response. He also said that the company was doing all its support to compensate and repatriate him to Nepal."*

According to LB Chhetri, TP contacted the Embassy to inform them that the company had offered compensation and "though too little, he was satisfied with the amount".<sup>216</sup>

TS, a 31-year-old woman from Chitwan district, was a domestic worker in Lebanon. When she was beaten by her employer, she called her brother in Nepal and asked for help. He sought help at a government office in Kathmandu, which resulted in a phone call from the Nepalese Consulate in Beirut:

*"The Consulate staff asked me about the problems I was facing with my employer. When I asked him to come to the employer's home, he said that wasn't possible but that he would ensure that I get treatment for my injuries. So after speaking to my employer, he hung up. All my employer did was give me some paracetamol and that was it. The Consulate didn't contact me again after that."*

Even after the phone call from the Consulate, TS continued to be physically abused by her employer.<sup>217</sup> When asked about TS's case, Dipendra Uprey of the Nepalese Consulate in Beirut stated that "I have no[t] any idea about the case"<sup>218</sup> and the Ministry of Foreign Affairs in Kathmandu declined to comment.<sup>219</sup>

Migrant workers who do not receive adequate assistance from the Embassy/Consulate or cannot access Nepalese officials for help face two choices: they can either go to the local authorities for help or run away. The experiences reported by the migrant workers in the limited number of relevant interviews conducted by Amnesty International suggest that the local authorities in destination countries are often unsympathetic. Out of eight cases where migrants did approach the local authorities, only two resolved their problems (Cyprus and Israel). In the other cases, two were returned to their workplace (Kuwait and UAE); another

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<sup>215</sup> Amnesty International interview with TP in Kathmandu, Nepal on 20 September 2010.

<sup>216</sup> Correspondence from LB Chhetri, First Secretary at the Nepalese Embassy in Abu Dhabi, UAE on 14 September 2011.

<sup>217</sup> Amnesty International interview with TS in Kathmandu, Nepal on 1 December 2010.

<sup>218</sup> Correspondence from Dipendra Uprey at the Nepalese Consulate in Beirut, Lebanon on 3 November 2011.

<sup>219</sup> Telephone request to the Ministry of Foreign Affairs for a response on 2 November 2011.

two were provided assistance in getting a flight ticket home but had to leave without resolving their unpaid wages (Kuwait and Saudi Arabia); one had to bribe a police officer for assistance in retrieving his passport and ticket home (Saudi Arabia); and another was turned away by the police (Kuwait).



Figure 15: Interviews with families in Morang district (Source: Amnesty International)

## 8.2. Seeking compensation in Nepal

A total of 103 migrant workers interviewed for this report returned to Nepal with unresolved grievances regarding their foreign employment, for which they were entitled to seek financial compensation under Nepalese law. Of these, only one received compensation from his recruiter, which did not come from any government funds. The majority of unresolved grievances related to contractual deception (different job, lower salary, forced overtime without compensation, late or non-payment of wages). These are in violation of article 55 of the Act where it specifically states the responsibility of the recruiter:

*“If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.”*

NAFEA's Code of Conduct also stipulates that "It is the prime duty of the Recruiting Agency to collect information whether the worker sent for foreign employment has got the assigned job in the company or not".<sup>220</sup> Furthermore:

*"It is the duty of the recruiting agency to notify immediately NAFEA and the concerned government authorities in case of receiving information relating to trafficking, human smuggling any female worker or children have been used or of persons working as bonded labour."*<sup>221</sup>

Other grievances faced by migrant interviewees included problems with their work visa and passport, and lack of compensation for industrial accidents.

## **Compensation through the complaints mechanism at the Department of Foreign Employment**

Under article 36.1 and 2 of the Act, migrant workers can request the Department to order their recruiter(s) to reimburse their expenses:

*"(1) If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.*

*(2) If, in making necessary inquiry into the complaint made pursuant to sub-section (1), the contents seem to be reasonable, the Department may order the licensee to provide compensation for all expenses incurred in going for foreign employment."*

Although article 36.2 specifies "licensee", in practice, migrant workers and their families can lodge a complaint with the Department against all recruiters – recruitment agencies and individuals (e.g. brokers), as long as the case is in relation to foreign employment.<sup>222</sup> The complaint may also include a compensation claim for damages against their recruiters for violation of the Act.

Once a complaint is lodged, an investigation officer from the Department initiates an enquiry. The findings and recommendation are then sent to the District Attorney General's Office where the merits of the case are reviewed and a final recommendation is given on whether

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<sup>220</sup> Article 3.23 of NAFEA Code of Conduct B.S.2062 (2005), 9 November 2005, available at: <http://www.nafea.org.np/index.php?linkId=35>, accessed 17 November 2011.

<sup>221</sup> Article 3.28 of NAFEA Code of Conduct B.S.2062 (2005), 9 November 2005. On NAFEA's website, the text varies slightly: "It should be immediately notified to the concerned association if any female worker or children have been used or trafficked or are bonded labour." See: <http://www.nafea.org.np/index.php?linkId=35>, accessed 17 November 2011.

<sup>222</sup> Amnesty International meeting with Puskar Raj Nepal, Investigation Officer, and Chandra Man Shrestha, then Director General, Department of Foreign Employment in Kathmandu, Nepal on 27 September 2011 and 23 May 2011.

the case should go to the Foreign Employment Tribunal (Tribunal). Cases can only come before the Tribunal through these procedures. All complaints regarding foreign employment must be filed at the Department, as the Tribunal is the only court in Nepal that handles cases related to foreign employment.

The Tribunal is an independent court that was established in February 2010 through the Ministry of Labour. As of 1 June 2011, the Tribunal received 262 new cases, of which 73 have been completed. More than 90 per cent of these cases found the recruiters guilty of the charges brought against them.<sup>223</sup> The maximum penalty is a fine of NPR 300,000-500,000 (US\$4,200-7,000) with imprisonment for a term of three years to seven years.<sup>224</sup> Where compensation is awarded by the Tribunal, it is taken directly from the recruiter.

In practice, one of the biggest obstacles to accessing compensation through the Department is that very few migrant workers are aware that this complaints mechanism exists. Indeed, many are not even aware that the Department exists. A typical response from numerous interviewees was “I have never heard of the Department of Foreign Employment” or “I don’t know what they do”. Out of 46 individual interviewees with unresolved grievances, only 63 per cent had heard about the Department and only five had filed complaints.

The Department’s location in Kathmandu means that it is difficult and costly for the majority of migrant workers living in rural and remote areas of the country to access. AY, a 42-year-old man from Dhanusa district who returned early from Saudi Arabia in July 2010 due to a number of serious discrepancies between the work he was given and the contract he had agreed to, explained the problems:

*“I don’t know what the Department does – even if I wanted government help, I couldn’t get it because I don’t have money to go to Kathmandu and there isn’t anyone who could help me get to the correct office and to speak to the relevant official.”<sup>225</sup>*

However, even when migrant workers go through the proper procedures for compensation, they still face obstacles in having their compensation settled. For example, BR, a 30-year-old man from Kailali district, had to return in July 2010 after only three months in Malaysia because he discovered that the branch office had given him a three-month tourist visa:

*“I paid the agent NPR 147,000 [US\$2,000], which I borrowed from multiple private individuals at 36 per cent interest and a bank at 12 per cent interest. I have not paid back any of my loan.”*

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<sup>223</sup> Amnesty International meeting with the Foreign Employment Tribunal on 1 June 2011. Figure 16 is based on data collected up until the first week in April 2011.

<sup>224</sup> Articles 43-59 of the Act list punishments for various violations, including in the event of “concealing or altering document or report” (article 47); “collecting visa fees, service charges and promotional costs in excess” (article 53); and “doing or causing to be done act contrary to contract” (article 55).

<sup>225</sup> Amnesty International interview with AY in Dhanusa, Nepal on 24 September 2010.



Despite many visits to the branch office and staff reassurance of a refund, BR has not received his money back. Due to the burden of the large loan, which was NPR 210,000 (US\$2,900) at the time of the interview, his wife committed suicide.<sup>226</sup> So, BR went to the Department to file a complaint against his recruitment agency in November 2010 after learning about this mechanism from a local NGO:

*“Nine days ago, I went to Kathmandu to submit my complaint to the Department. The officials told me that they would get back to me in a week but so far I have not heard from them.”<sup>227</sup>*

In December 2010, Amnesty International met with the Department and asked about BR’s case, but the officials were not able to locate his file.<sup>228</sup> Following a written request by Amnesty International in December 2010 further enquiring about BR’s case, the Department responded in May 2011 stating that “We have no idea about the case of Mr [his name] of [his village] of Kailali”.

Another man from Kailali district, 31-year-old HK, was actively discouraged from filing a complaint by two different government offices he visited. HK returned to Nepal in February 2010 after working only one month in the UAE because of major discrepancies between his contract and the actual job he was given. He worked as a labourer instead of an electrician for 11 hours a day without overtime pay and received lower wages than promised by his recruiters. HK refused to work under such conditions and asked to be sent back to Nepal, but the company refused. In the end, the broker and agency sent him a flight ticket home.

When HK returned to Nepal, he telephoned the Ministry of Labour and the Department. According to HK, both government offices instructed him to contact his recruitment agency and try to resolve the matter with them first:

*“They said that I should contact them only if the recruitment agency doesn’t compensate me. My agency returned the recruitment fee but deducted the amount for the flight ticket. During this time, I was staying at a guesthouse in Kathmandu and spent about NPR 5,000 (US\$70), which also reduced the amount of the money I had received. When I called the two government offices and complained that I should have received full compensation, they both said that it was the reality that agencies deducted the cost of the flight ticket from the compensation. They then said that I could only seek their help if I had failed to get any compensation at all.”<sup>229</sup>*

According to HK’s account, the information given by the Department and the Ministry of Labour went against article 36.2, which clearly states the obligation of recruitment agencies

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<sup>226</sup> Amnesty International interview with BR in Kailali, Nepal on 5 December 2010.

<sup>227</sup> Amnesty International interview with BR in Kailali, Nepal on 5 December 2010.

<sup>228</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 10 December 2010.

<sup>229</sup> Amnesty International interview with HK in Kailali, Nepal on 6 December 2010.

to fully compensate “all expenses incurred in going for foreign employment”. It is also worrying that neither of the officials concerned informed HK about his option of seeking compensation through the Welfare Fund (see section 8.2).

In September 2010, a group of 103 migrant workers filed a case against a recruitment agency upon their return from Libya. According to the Nepalese trade union, GEFONT, despite their support, the group encountered initial resistance from the Government to moving the case forward.<sup>230</sup> Upon completion of its investigation in the first quarter of 2011, the Department forwarded the case to the District Attorney General's office with the recommendation that it goes to the Tribunal. In February 2011, the Department provided NPR 3 million (US\$41,500) – taken from the recruiter's deposit for his licence – to the workers, but the workers stated that this was “wholly insufficient” and that full compensation be made with the sale of the land owned by their recruiter's family, which has been frozen by the Government. However at the time of writing, the case had not been settled.<sup>231</sup>

In relation to the amount of compensation provided in 2009-10, the Department noted that:

*“Generally, a person go[es] for foreign employment through licensee [recruitment agency] so that the cases are high in comparison to personal fraud. An individual person is not authorized to send anybody abroad. That is entirely fraud or illegal so that [is why] the number is lower than that of organizational [recruitment agencies].”<sup>232</sup>*

However in 2010-11, the opposite was true, as the Department filed 271 complaints from migrant workers against recruitment agencies and 421 complaints against brokers (see Figure 16). Similarly, the Department's statement contradicts the assessment of the Department's own Investigation Officer, Puskar Raj Nepal, who told Amnesty International in September 2010 that “most complaints are lodged against individuals, like brokers”,<sup>233</sup> which was confirmed by the Registrar, Narayan Paudel, at the Tribunal who estimated that “80 per cent of cases are against individuals, including brokers, and the remaining 20 per cent are against recruitment agencies”.<sup>234</sup>

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<sup>230</sup> Amnesty International meeting with GEFONT in Kathmandu, Nepal, on 2 June 2011.

<sup>231</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 23 May 2011 and GEFONT on 26 November 2011.

<sup>232</sup> Correspondence from the Department of Foreign Employment on 27 June 2011.

<sup>233</sup> Amnesty International meeting with Puskar Raj Nepal, Investigation Officer, Department of Foreign Employment in Kathmandu, Nepal on 27 September 2011.

<sup>234</sup> Amnesty International meeting with Narayan Paudel, Registrar, Foreign Employment Tribunal in Kathmandu, Nepal on 1 June 2011.

|   | 2009-10 <sup>235</sup>                        | 2009-10                                 | Mid-July 2010 - 1 <sup>st</sup> week in April 2011 | Mid-July 2010 - 1 <sup>st</sup> week in April 2011 |
|---|---|---|--|--|
|   | Complaints against individuals <sup>236</sup> | Complaints against recruitment agencies | Complaints against individuals                     | Complaints against recruitment agencies            |
| Complaints lodged at the Department           | 323   | 332                                     | 421  | 271  |
| Claimed amount for above complaints           | NPR 256,138,151                               | NPR 92,070,215                          | NPR 281,162,422                                    | NPR 48,254,660                                     |
| Amount provided <sup>237</sup>                | NPR 20,862,900                                | NPR 92,254,086                          | NPR 57,125,840                                     | NPR 31,953,107                                     |
| Settlement of complaints                      | 105   | 125                                     | 218  | 221  |
| Cases registered at the Tribunal              | 65  | 12                                      | 69   | 5  |
| Amount claimed at the Tribunal <sup>238</sup> | NPR 107,926,700                               | NPR 127,967,355                         | NPR 104,296,390                                    | NPR 30,595,444                                     |
| Complaints withdrawn                          | 17  | 65                                      | 84   | 183  |

**Figure 16: Individual complaints filed against recruiters (Source: Department of Foreign Employment)<sup>239</sup>**

Paudel also revealed that the number of cases reaching the Tribunal has not increased, despite the fact that the Tribunal is now in its second year and thus, more migrant workers should be aware of its existence. According to Samar Thapa, Head of the Migrants Desk at GEFONT, part of the problem is that:

*“The Department of Foreign Employment creates a backlog of complaint cases in hopes that migrant workers, frustrated, give up on their complaints and go home. This is why so few cases – compared to how many there are in reality – end up at the Tribunal. We have complained many times to the Government about this major impediment to accessing justice.”<sup>240</sup>*

<sup>235</sup> Although the Tribunal was established in February 2010, a total of 107 cases were transferred from the District Court.

<sup>236</sup> Including an “illegal broker, middleman, sub-agent or taut [sic]”, as clarified by the Department of Foreign Employment on 27 June 2011.

<sup>237</sup> The compensation includes settlements claimed in the previous year from the District Court.

<sup>238</sup> According to Bhim Pandey, Senior Administrator at the Tribunal, the Department decides how much can be claimed and the claimant will then be able to receive an extra 50 per cent in compensation depending on the seriousness of the case.

<sup>239</sup> Correspondence from the Department of Foreign Employment on 27 June 2011.

<sup>240</sup> Amnesty International meeting with Samar Thapa, Head of the Migrants Desk, GEFONT, in

In addition, as indicated in the interviews above, migrant workers face various obstacles to accessing compensation, including a lack of knowledge of the Department's complaints mechanism, difficulty in navigating government bureaucracy, discouragement from government officials and the financial disincentive of travelling to the capital. Therefore, the number of complaints in Figure 16 is likely to represent only a small proportion of the actual number of cases in which migrant workers have outstanding grievances with recruitment agencies or brokers.

## Welfare Fund

Every migrant worker who goes abroad for employment through official channels – either through a recruitment agency or via their own arrangements – pays NPR 1,000 (US\$14) into the Welfare Fund, which is operated by the Promotion Board<sup>241</sup> and can be used for the compensation of migrant workers, as specified in article 33.1 of the Act:

- “(a) Providing skill-oriented training to the workers who go for foreign employment,*
- (b) Repatriating workers to Nepal due to mutilation or reason referred to in sub-section (1) of Section 75, providing compensation to workers and providing financial assistance to the workers who have so come back or their families,*
- (c) Launching employment-oriented programs for the workers who have come back from foreign employment,*
- (d) Where a worker who has gone abroad for foreign employment dies there and his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family,*
- (e) Carrying out acts relating to foreign employment promotion,*
- (f) Carrying out other acts as prescribed.”*

Article 75 of the Act sets out the “provisions on sending workers back to Nepal”:

- “(1) Where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker has to return to Nepal, the concerned licensee shall arrange for the returning of such worker to Nepal.*
- (2) Where Nepalese workers have to be immediately brought back to Nepal due to a war, epidemic, natural calamity in the country where such workers are engaged in employment, the Government of Nepal shall make arrangements for repatriating workers through the diplomatic mission or Labor Attaché.”*

Article 28 of the Regulation specifies that under the Welfare Fund, families of migrant workers who died abroad are entitled to compensation of up to NPR 100,000 (US\$1,400) provided that the application is submitted within six months of the certification of death. Migrant workers who “gets mutilated due to any cause during the contract period” can also

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Kathmandu, Nepal on 2 June 2011.

<sup>241</sup> The Promotion Board, chaired by the Minister of Labour, is in charge of managing the Welfare Fund, as well as “carrying out acts required to promote the foreign employment business and make this business safe, systematic and decent and protect the rights and interests of workers going for foreign employment and the foreign employment entrepreneurs” (article 38.1 of the Act).

claim this compensation within sixty days of their return to Nepal and accompanied by “a copy of the contract” and “the prescription of hospital proving mutilation”.

Unlike the Department, the Welfare Fund provides compensation in very specific circumstances and does not have a complaints mechanism. Very few migrant workers are aware of the Welfare Fund even though it is funded through their direct contributions. In fact, of a total of 43 interviewees who responded, only two indicated knowledge of the Fund before going abroad. This may be partly due to their lack of knowledge of the components of the recruitment fee, as in the case of RS, a 27-year-old man from Kailali district who worked at a construction site in Qatar for two years from October 2008 to October 2010:

*“I paid a broker from my village NPR 40,000 [US\$550] plus I paid for my own flight. The fee included everything else, but I don't know what exactly. I've never heard of the Welfare Fund and don't know what that is.”<sup>242</sup>*

This response was typical of the great majority of interviewees. PG, a 38-year-old man from Nuwakot district, had never heard of the Welfare Fund until he returned to Nepal. Prior to his departure, PG was promised a job as a mechanic in Saudi Arabia but instead worked as a labourer at a construction site. He lost his left leg in an industrial accident but received no compensation from his employer. In fact, PG was paid for only three of the six months of his hospitalization. Upon return to Nepal, he sought compensation from his recruitment agency:

*“I called the agency within a week of my return to complain about being given a different job and the lack of compensation from my accident. As a way of getting out of the situation, the agency suggested that if I found someone to go abroad, they would pay me commission. I refused and after two months, the agency finally gave me NPR 40,000 [US\$550].”*

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<sup>242</sup> Amnesty International interview with RS in Kailali, Nepal on 5 December 2010.



**Figure 17: PG lost his left leg in Saudi Arabia (Source: Amnesty International)**

Although PG paid NPR 85,000 (US\$1,200) in recruitment fees and was entitled under Nepalese law to full compensation, he decided to cut his losses and accept what the agency had given him. Also, acknowledging the difficulty of finding another job abroad and the “impossibility of one in Nepal” with his disability, PG asked the recruitment agency about compensation for his injury. That is when the agency informed him about the Welfare Fund. But due to his lack of experience and confidence in dealing with government bureaucracy, which is common to most migrant workers, PG entrusted this task to the agency:

*“I left my documentation with the agency because I don’t know how the process works and wouldn’t know what to do at the Promotion Board. All I know is that my application has not reached the Board yet.”<sup>243</sup>*

Upon return to Nepal, most migrant interviewees were still not aware of the Welfare Fund. BL is a 31-year-old man from Dhanusa who worked in Malaysia for two years and returned in 2010. Before his departure to Malaysia, his broker returned someone else’s passport to BL insisting that there would be no problems. Initially, he refused to go but later was persuaded because “I had already paid and it was difficult to get my money back from the broker”. BL then encountered problems while abroad:

*“After one year, my company refused to renew my visa because it was a duplicate passport. So, I had to work as an undocumented worker. I was afraid to be arrested so I decided to come back to Kathmandu after one year of working without papers.”*

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<sup>243</sup> Amnesty International interview with PG in Nuwakot, Nepal on 2 October 2010.

When asked why he did not go to the Nepalese authorities upon return, he replied:

*"I didn't have any information on government help. So, I wouldn't know which office to go to and who to see in Kathmandu. I just went to see the recruitment agency and the broker twice about my passport, but both refused to help me. I don't know if I paid into the Welfare Fund. I just paid one lump sum of NPR 115,000 [US\$1,600] to my broker so I don't know what it was all for."<sup>244</sup>*

Both BL and PG's responses illustrate the lack of knowledge migrants have on the fees they have paid and their rights and entitlement under Nepalese law.

Furthermore, interviews with migrant workers indicate that returnees normally give up after their personal efforts to get compensation from their broker and recruitment agency have failed. Even after they are informed of the Welfare Fund, they do not see it as a viable option, as they do not have anyone to assist them in Kathmandu, plus the travel and living costs in the capital city would be prohibitive for most.

Given the above, it is not surprising that at the start of fiscal year 2009-10, there was a surplus in the Welfare Fund of NPR 199,249,432 (US\$2.8 million),<sup>245</sup> despite numerous cases of migrants with unresolved problems documented in this and other reports.<sup>246</sup> This means that the amount of NPR 44,389,567 (US\$620,000) spent on relief, compensation and other financial assistance to migrants in 2009-10 (see Figure 18) constituted only about 22 per cent of the total amount available in the Welfare Fund. Furthermore at the start of 2010-11, the surplus had increased to NPR 502,323,386 (US\$7 million).

| Expenditure   | Amount (NPR)   |
|---|----------------|
| Current expenditures                                  | 6,475,962.59   |
| Capital expenditures                                  | 1,192,248.00   |
| Programme visit expenditures                          | 4,256,769.50   |
| Promotional expenses related to foreign employment    | 15,590,598.63  |
| Relief, compensation and other financial assistance   | 44,389,567.00  |
| <b>Total expenses:</b>                                | 71,905,145.72  |
| Surplus carried over to the next fiscal year, 2010-11 | 502,323,386.60 |

**Figure 18: 2009-10 Expenditures (NPR) from the Welfare Fund (Source: Foreign Employment Promotion Board)<sup>247</sup>**

<sup>244</sup> Amnesty International interview with BL in Dhanusa, Nepal on 23 September 2010.

<sup>245</sup> Foreign Employment Promotion Board, Annual Report, 2066-67 (2009-10).

<sup>246</sup> US State Department, *Trafficking in Persons Report*, June 2011, p272, available at: <http://www.state.gov/documents/organization/164457.pdf>, accessed 11 September 2011.

<sup>247</sup> Foreign Employment Promotion Board, Annual Report, 2066-67 (2009-10).

## Compulsory insurance

All migrant workers going for foreign employment are required to be insured. Article 26.1 of the Act stipulates that recruitment agencies:

*“shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment pursuant to this Act dies from any cause at any time or gets mutilated.”*

As such, proof of insurance must be submitted to the Department with any claim. In the event of injury or death, the insurance will cover a worker or his family up to a maximum of NPR 500,000 (US\$7,000).<sup>248</sup>

## Injuries due to industrial accidents

Amnesty International has documented four cases where migrant workers suffered serious industrial accidents and in three of those cases, the workers were not compensated by their employer, recruiter, Welfare Fund or insurance policy. In the sole case where the worker received compensation, the amount was less than half of his recruitment fees. The main obstacles to accessing compensation were, again, a lack of knowledge of their rights to compensation and the process to obtain it, including the difficulty of navigating through the government bureaucracy.

PG, the 38-year-old man from Nuwakot district who lost his left leg in an industrial accident in Saudi Arabia (see section 8.2), was able to find out about the Welfare Fund through his agency, but he was still unaware that he was insured and entitled to compensation as a result of his injury. PG was reluctant to go to Kathmandu to visit the Promotion Board himself and preferred to have his agency handle the compensation claim.<sup>249</sup>

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<sup>248</sup> According to the correspondence from the Department of Foreign Employment on 18 May 2011, a maximum of NPR 500,000 (US\$7,000), not the “least” amount as outlined in article 26.1 of the Act, will be given to migrant workers or their families in cases of injury and death.

<sup>249</sup> Amnesty International interview with PG in Nuwakot, Nepal on 2 October 2010.





**Figure 19: LK, from Jhapa district, suffered multiple injuries in the UAE (Source: Amnesty International)**

LK, a 30-year-old man from Jhapa district, worked as a gardener in Dubai, UAE planting flowers at road sides. In 2009, he suffered brain damage and other severe injuries due to an accident at work. With the help of his father, LK explained:

*“I don’t remember what happened or any details about the accident. I was hospitalised for five months. There is a puncture in my throat so I can’t really utter words from my throat. I also can’t lift my left arm or leg, and there’s still a lot of pain in those areas. I go regularly to a hospital in India for medical treatment – it costs about INR 1,600 [US\$35] per month.”*

LK’s employer paid for the hospital costs in Dubai but, despite numerous promises, did not provide any compensation for his injuries:

*“Although my employer guaranteed compensation, it never happened – he kept changing his mind. Then he refused and threatened to take my case to court.”*

LK’s relatives went to the Nepalese authorities on his behalf,<sup>250</sup> but the officials refused to help, maintaining that LK had obtained a work visa directly with contacts in Dubai, instead of going through a recruitment agency. However, LK said that this was not the case:

*“When I received the work visa from my brother, I had to go to a recruitment agency to facilitate the migration process – so that I could go to Dubai faster. I gave the agency*

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<sup>250</sup> LK and his father were not sure which government office the relatives had visited in Kathmandu.

*my passport and visa, and paid them NPR 5,000 [US\$70] in service charge. It was this agency that got me my contract, insurance and visa approval. But because of my head injuries, I left all my documents in Dubai so I have no proof.”<sup>251</sup>*

HM, a 35-year-old man from Morang district, worked at a quarry in Saudi Arabia from February to August 2010. Due to an industrial accident while cleaning a crusher, he lost his right arm. But despite this injury, he was not compensated:

*“The company in Saudi Arabia paid all the hospital bills, but refused to give me compensation because the company name on my contract was different from the one where I actually worked. So, they refused to assume responsibility for me. They just gave me a flight ticket home and returned my passport. It was clear that they wanted me to return to Nepal as soon as possible.”*

When HM returned to Nepal, he went to the Promotion Board and his insurance company, but they both refused to compensate him due to the fact that he did not have hospital documentation, which according to HM, “the company refused to give them to me so I had to leave without them”.

HM then went to see his recruitment agency, which he had not met prior to his departure:

*“I went through a broker and only found out the name of my recruitment agency because it was written on a Ministry of Labour document. When I went to the agency, the director assured me that he would compensate me for the insurance amount. I returned to my village and when I didn't hear back from them, I called reminding him of his promise. I called about 15 to 20 times – I even called the agency today. In October [2010], I returned to Kathmandu to ask about the compensation but they continued to give excuses – ‘we have no money now so you need to wait’. The agency also promised to get my employer in Saudi Arabia to send me the hospital documents.”<sup>252</sup>*

HM still has not been compensated by his recruitment agency nor has he received his medical documents. During a meeting with the Ministry of Labour in May 2011, Amnesty International enquired after his case. Within hours of this meeting, the Ministry informed Amnesty International that the Promotion Board decided to provide HM compensation of NPR 70,000 (US\$970), which he received in July 2011.

In a subsequent correspondence to Amnesty International, Purna Chandra Bhattarai, then Joint Secretary at the Ministry of Labour, explained that:

*“To get the compensation from the FEBP [Promotion Board] according to the regulations, victim needs to produce some necessary documents like contract paper and doctor's prescription. In the absence of those documents, FEBP will [be] unable*

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<sup>251</sup> Amnesty International interview with LK in Jhapa, Nepal on 12 December 2010.

<sup>252</sup> Amnesty International interview with HM in Morang, Nepal on 13 December 2010.

*to provide the compensation. Although it has been already decided to provide him compensation but he needs to produce necessary documents. Same procedure must [be] follow[ed] to get insurance [compensation].”<sup>253</sup>*

These cases indicate the difficulties migrant workers face in seeking compensation from their recruitment agency, the Welfare Fund and their insurance company, and demonstrate the lack of support provided to migrant workers in pursuing compensation claims.

## Deaths

Although there are no official statistics on the number of deaths of migrant workers, research commissioned by the Ministry of Labour and IOM in 2010 acknowledged that approximately “three dead bodies of Nepali labour migrants come to Kathmandu every day”.<sup>254</sup>

The case of Ramesh Giri, an undocumented migrant worker from Morang district who died in a motorcycle accident in Saudi Arabia, became well-known in Nepal because his body was not returned until June 2010 – almost two years after his death. According to his cousin:

*“No one helped us bring the body back. Everyone, including the company he was working for and the manpower company [recruitment agency] that sent him, passed the buck on others.”*

Giri’s remains were returned to Nepal after the family was finally able to receive NPR 581,000 (US\$8,100) from the Promotion Board. Sthaneshwor Devkota, Director General of the Promotion Board, defended the delay in transferring the funds:

*“If they die during the contract period, they get NPR 100,000 [US\$1,400] as compensation. If they meet with [non-fatal] accidents, they get medical allowance of up to NPR 100,000 [US\$1,400].”*

But Giri’s case did not fall in either of these categories because he had run away from his employer before the end of his contract and found employment as an undocumented worker for another company. So the Saudi police refused to hand over his body, plus Giri’s previous and current employers refused to take responsibility as employers, as he had changed jobs illegally.<sup>255</sup>

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<sup>253</sup> Correspondence from Purna Chandra Bhattarai, then Joint Secretary, Ministry of Labour on 15 June 2011.

<sup>254</sup> Jagannath Adhikari and Ganesh Gurung, *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*, Ministry of Labour and Transport Management, and IOM, 2011, p35.

<sup>255</sup> Dikshya Singh, “22 months after death, body back from Saudi”, *The Himalayan Times*, 14 June 2010, available at: <http://www.thehimalayantimes.com/fullNews.php?headline=22+months+after+death%2C+body+back+from+Saudi&NewsID=246974>, accessed 23 June 2011.



**Figure 20: Ramesh Giri's remains at Kathmandu Airport (Source: Naresh Shrestha)**

In June 2011, Hom Karki, a journalist from Kantipur Daily News who writes exclusively on migrant issues, reported that nine bodies of Nepalese workers had been held at a hospital morgue in Kuwait for one year. The Nepalese Embassy in Kuwait stated that they did not know their cause of death nor were they able to send them to Nepal because “We cannot find their passport or their next of kin, so it’s difficult to hand over the bodies”.<sup>256</sup>

Another distressing experience for families of deceased migrant workers is the lack of notification and information given to them about the death of their loved one. Amnesty International interviewed five families of deceased migrant workers. Out of the five, no family received any notification from a Nepalese Embassy or government office in Kathmandu or at the district level. All families found out about the death of their family member through a phone call made by a friend or work colleague in the country of destination. A case in point is KT, a 38-year-old man from Kaski district who worked as a labourer in Malaysia and died in November 2010. His uncle described this lack of communication from the Government:

*“Neither the Nepalese Embassy in Malaysia nor the Nepalese government made a phone call to us or sent a letter to inform us of my nephew’s death. Furthermore, no Nepalese government official explained to us about the cause of death. This was*

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<sup>256</sup> Hom Karki, “Dead bodies of 9 women are in Kuwait since one year”, *Kantipur Daily News*, 10 June 2011 (in Nepali).

*explained to us by a Thai Airways staff who told us that he most likely died due to a heart attack.*"<sup>257</sup>

NM, a 42-year-old man from Sunsari district, found work as a security guard in Malaysia in March 2010 and died in September 2010. The body was returned with the following documents: death certificate, embalming service, permission to return the body and notice from the Nepalese Embassy of NM's death. The Embassy had clearly notified all relevant service providers in Malaysia, but no Embassy staff had contacted the family to inform them of NM's death, despite having his full contact details.

In a correspondence in May 2011 to Amnesty International, the Department confirmed that:

*"If a worker dies in foreign land, the first information is generally given by employers or friends abroad to the relative of deceased person. There is no[t] any clear cut provision of informing the relatives in the Act."*<sup>258</sup>

In NM's case, the cause of death listed in all the official documents was "pending investigation". His wife explained that many questions remained unanswered surrounding her husband's death:

*"My husband's friend and work colleague called us from Malaysia to inform us of his death. The friend said that [NM] 'got into an accident' but didn't give further details on how he died. He just advised us to seek compensation through the broker or agency. The next day, my brother-in-law met the broker who said that my husband began vomiting after breakfast and died a while later."*

NM's wife still does not know the circumstances around her husband's death. At the time of the interview, she expressed concerns about the growing debt due to the loan that NM had taken out; he had borrowed NPR 300,000 (US\$4,200) at 36 per cent annual interest, which still needs to be repaid by the surviving family member(s). She was unable to get compensation under her husband's insurance coverage because NM's passport had not been returned with the body.<sup>259</sup>

Families are also ill-informed about their rights to compensation. The family members of three of the five deceased migrant workers had little or no knowledge of their entitlement to compensation and how to access it. Only the family of KT had received compensation for the insurance claim at the time of the interviews:

*"We have already received the insurance compensation of NPR 496,403 [US\$6,950]. Originally the amount was NPR 500,000 [US\$7,000], but they deducted NPR 3,597 [US\$50] for government taxes. We are now waiting for the money from the Promotion Board."*<sup>260</sup>

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<sup>257</sup> Amnesty International interview with KT's uncle in Kathmandu, Nepal on 8 December 2010.

<sup>258</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>259</sup> Amnesty International interview with NM's wife in Sunsari, Nepal on 14 December 2010.

<sup>260</sup> Amnesty International interview with KT's uncle in Kathmandu, Nepal on 8 December 2010.

When Amnesty International asked the Department about the government tax on insurance compensation, it replied that “We have no[t] any report regarding the deduction of tax from insurance”.<sup>261</sup>

In an interview with another family, the elder brother of KM, a 24-year-old man from Rupandehi district who died in Malaysia in August 2010, stated that they had applied for compensation and “would receive it soon”. However, he only became aware of their entitlements by chance:

*“I have submitted my applications for compensation for the insurance and Welfare Fund for my brother’s death, but both the insurance company and Promotion Board failed to tell us how much compensation we would receive. I only came to learn from a newspaper article that we are entitled to NPR 500,000 [US\$7,000] from the insurance and NPR 100,000 [US\$ 1,400] from the Welfare Fund. Even though money is not everything, I think my brother’s employer should have provided compensation for his death.”<sup>262</sup>*

In cases of death and serious industrial accidents, no family interviewed for this report received compensation from the employers.

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<sup>261</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>262</sup> Amnesty International interview with KM’s brother in Kathmandu, Nepal on 8 December 2010.

## 9. CHALLENGES TO EFFECTIVE REGULATION

“Foreign employment recruiting agencies should [...] not work against the existing Nepali law, regulations and order. Judicial procedures should not be misused. Corruption in work should not be encouraged.”

Articles 3.25-3.27 of NAFEA's Code of Conduct<sup>263</sup>

### 9.1. Government obligation to regulate recruitment agencies and brokers

It is the responsibility of the Government of Nepal to ensure that it takes all appropriate measures to protect those who wish to migrate abroad for work from being trafficked or being subjected to forced labour (as outlined in section 4).

The Department has a duty to ensure that recruitment agencies are monitored and comply with the provisions set out in the Act, including issuing contracts, the provision of training, organising medical exams and paying for insurance and into the Welfare Fund. The recruitment agencies must ensure that labour contracts detailing the work and pay offered to migrant workers are accurate.

The Government has enabled its officials to play a proactive role in addressing situations in foreign countries, as well as in Nepal. As was described earlier, article 68 of the Act specifies the functions and duties of the labour attaché in certain countries to include assisting in the resolution of any dispute between a worker, employer institution or licensee.<sup>264</sup> Article 55 of

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<sup>263</sup> On NAFEA's website, part of the text varies slightly: “Should not in any way violate the rules and regulation and law of the country. Legal procedures should not be misused. Corruption in work should be discouraged.” See: <http://www.nafea.org.np/index.php?linkId=35>, accessed 17 November 2011.

<sup>264</sup> Article 68 states: “(b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute, (c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment, (e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died

the Act empowers Department officials to fine and order compensation from recruitment agencies that send workers abroad to different jobs or in jobs with lower pay or facilities than specified in their contract.<sup>265</sup>

The Nepalese government has a fundamental obligation, as party to the Forced Labour Convention, to prevent and punish forced labour and ensure the penalties under the law are adequate and strictly enforced.<sup>266</sup>

In addition, the Government of Nepal has a responsibility for verifying that the recruitment agencies fulfil all their obligations properly under the Act. Article 34.1 of the Act specifically states that the Government must:

*“monitor and inspect, from time to time, the office of the licensee in relation to whether this Act or the rules framed under this Act or direction given under this Act have been observed or not and for this purpose, it may inspect the records and other relevant documents maintained by the licensee.”*

In May 2011, the Department informed Amnesty International that recruitment agencies are regularly monitored through onsite inspections:

*“We are monitoring different licensee's offices and branch offices as per requirement. During the inspection, we go through their signboard, notice board, and layout, record keeping system, staff management and other necessary things.”<sup>267</sup>*

At a meeting with the Department in May 2011, the then Director General, Chandra Man Shrestha, noted that the Department had taken action against agencies, but purely on the basis that they had failed to make the financial payments required for registration of their companies:

*“236 recruitment agencies have been dismissed because they failed to pay the bank guarantees and/or deposit.”<sup>268</sup>*

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due to any cause, to Nepal with the assistance of the concerned country or employer institution, (f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal”.

<sup>265</sup> Article 55 states: “If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.”

<sup>266</sup> Articles 25 of the Forced Labour Convention.

<sup>267</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>268</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on



However, when asked how many recruitment agencies have been fined, suspended, prosecuted or forced to shut down or lost their licence since 2007, for failure to comply with other breaches of the Act, the Department replied:

*“After promulgation of [the] new Foreign Employment Act, 2007 there [has been] no [...] such action that has been done.”<sup>269</sup>*

This is despite the fact that there are several other criteria under which the Department has the authority to revoke the licences or otherwise punish agencies that have failed to comply with their duties under the Act. For example, under article 13.2, the Department can cancel an agency’s licence for a number of reasons, including “Doing any act contrary to this Act or the rules framed under this Act”.

However, since the Act was implemented in 2007, the Department has not revoked the licence of any agencies under this article. Furthermore, the Department has informed Amnesty International that no recruitment agencies were punished under the following three articles, despite evidence in this report that they have not been complied with:

*“47. Punishment to be imposed in the event of concealing or altering document or report [...];*

*53. Punishment to be imposed in the event of collecting visa fees, service charges and promotional costs in excess [...];*

*55. Punishment to be imposed in the event of doing or causing to be done act contrary to contract.”*

Under article 48 of the Regulation, recruitment agencies are required to register all brokers with whom they work. As of May 2011, only three brokers have been registered with the Department.<sup>270</sup> The Department’s then Director General, Chandra Man Shrestha explained the obstacles:

*“The problem is that the Act itself is not so reasonable. It requires that the recruitment agency deposit NPR 200,000 [US\$2,700] for the registration of each broker. This also means that brokers can only work for that one agency, which would greatly reduce their income. So for these financial implications, both agencies and brokers avoid the registration process.”<sup>271</sup>*

The absolute lack of monitoring of brokers makes it very difficult to estimate how many there are in Nepal. More worryingly, with officials themselves indicating that they do not intend to

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23 May 2011.

<sup>269</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>270</sup> Information provided by the Department of Foreign Employment on 18 May 2011.

<sup>271</sup> Amnesty International meeting with Chandra Man Shrestha, then Director General of the Department of Foreign Employment, in Kathmandu, Nepal on 23 May 2011.

enforce the system in place to regulate brokers, the brokers act with little fear of being punished by the authorities and prospective migrants have no way of identifying which brokers they can trust.

Nepal's international obligations require not only that appropriate legislation setting out the duties and responsibilities of recruitment agencies be enacted, but also that government officials act in a duly diligent manner in practice to take all appropriate measures to properly vet agencies, monitor their activities, and investigate, punish and redress any harm caused by such agency or individuals working on their behalf.

## 9.2. Corruption<sup>272</sup>

One of the major obstacles preventing the existing regulatory framework from functioning effectively is widespread corruption. Corrupt practices also place some migrant workers at greater risk of human rights abuses. According to the World Bank, Nepal currently ranks in the bottom quarter of countries in its governance indicators for control of corruption, and scores even lower on regulatory quality (bottom 24 per cent), government effectiveness (bottom 19 per cent) and rule of law (bottom 19 per cent).<sup>273</sup> Similarly, in 2010, Transparency International placed Nepal 146 out of 178 countries in its Corruption Perception Index (CPI)<sup>274</sup> with a CPI score of 2.2 out of 10, indicating a "high level of corruption".<sup>275</sup> The following cases demonstrate how corrupt practices impact on the human rights of migrants.

The "setting fee" or bribes that domestic workers have to pay to immigration officials at Kathmandu airport (see section 6.4) is, according to the Nepalese NGO Pourakhi, "rampant and widespread".<sup>276</sup> This corrupt practice can have the effect of exposing migrants to increased debt and greater risk of exploitation and abuse. As documented in this report, this practice disproportionately impacts upon women migrant workers.

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<sup>272</sup> Nepal ratified the UN Convention against Corruption in March 2011.

<sup>273</sup> For more information on the Worldwide Governance Indicators for Control of Corruption, see: World Bank, "Country Data Report for Nepal, 1996-2009", *Worldwide Governance Indicators*, available at: <http://info.worldbank.org/governance/wgi/pdf/c166.pdf>, accessed 11 March 2011.

<sup>274</sup> The Corruption Perception Index ranks countries according to perception of corruption in the public sector. Further details can be accessed at: <http://www.transparency.org/cpi>. See: Transparency International, Annual Report 2009, 2010, p49, available at: [http://www.transparency.org/publications/publications/annual\\_reports/ti\\_ar2009](http://www.transparency.org/publications/publications/annual_reports/ti_ar2009), accessed 3 March 2011.

<sup>275</sup> Amnesty International interview with Transparency International in Kathmandu, Nepal on 16 December 2010.

<sup>276</sup> Amnesty International interview with Muna Gautam, Safe House Co-ordinator at Pourakhi, in Kathmandu, Nepal on 26 May 2011.

Consistent with Pourakhi's assessment, Narayan Prasad Sanjel, Director General of the Department of Immigration (DOI), acknowledged to Amnesty International in May 2011 allegations of corruption in his Department:

*"Just recently, two or three officials have been suspended for three months due to suspicion that they have accepted bribes from domestic workers. These officials seem to have some links with recruitment agencies. After the three month period, the internal investigation will be complete and if they are found guilty of corruption, their case will be tried at the Special Court."*

Narayan Prasad Sanjel admitted that there were challenges to curbing corruption in his Department:

*"We are trying our best, but so far we have not been successful. Our work is difficult also because of political instability. Officials come and go, as many transfer to other government offices. One official starts a programme, for example, on monitoring corruption, but then he's transferred to another government office."*<sup>277</sup>

All seven heads of recruitment agencies interviewed for this report acknowledged that recruitment agencies pay bribes to government officials. As Kumud Khanal, Head of Fusion International, explained:

*"Recruitment agencies have to pay under the table money to government officials, about NPR 2-3,000 [US\$30-42] per migrant applicant. The bribery occurs because the government officials know that we have a tight deadline to meet so they take advantage of this by purposely delaying the application process."*<sup>278</sup>

This was confirmed by Bal Bahadur Tamang, Chairman of Sky Overseas:

*"You cannot do business in Nepal without paying under the table money to the Government, especially to the Department of Foreign Employment. Before civil servants wanted to work at the Customs Department due to the opportunities for taking bribes, but now, they want to work at the Department."*<sup>279</sup>

Trilok Chand Vishwas, Executive Director of Mahakali Overseas added:

*"Of course we sometimes give under the table money to government officials. This may be the case especially if a new recruitment agency works with the Government,*

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<sup>277</sup> Amnesty International meeting with Narayan Prasad Sanjel, Director General of the Department of Immigration, in Kathmandu, Nepal on 31 May 2011.

<sup>278</sup> Amnesty International interview with Kumud Khanal, NAFEA Secretary General, in Kathmandu Nepal on 26 November 2010.

<sup>279</sup> Amnesty International interview with Bal Bahadur Tamang in Kathmandu, Nepal on 1 December 2011.

*but once a relationship is formed, the bribery is not as constant but every once in a while, and the amount can be negotiated.*<sup>280</sup>

The Ministry of Labour, the Department for Foreign Employment and the Promotion Board have all denied that corruption occurs in their office.

Where bribery takes place, it inevitably results in a closer relationship between the Government and recruitment agencies that goes beyond their professional remits. This is clearly a problem, as the Department is the government office that handles both the foreign employment applications from recruitment agencies and complaints lodged against recruiters by migrant workers.

A case in point is the arrest of Puskar Raj Nepal, Investigation Officer at the Department, in December 2010. The Commission for Investigation of Abuse of Authority (CIAA)<sup>281</sup> initiated an investigation into allegations that Investigation Officer, Puskar Raj Nepal, accepted a NPR 50,000 (US\$700) bribe to dismiss a complaint against a man accused of running an unlicensed recruitment agency.<sup>282</sup> Upon completion of its investigation in February 2011, the CIAA transferred the case to the Special Court, due to the merits of the case, to begin trial proceedings against Puskar Raj Nepal.<sup>283</sup>

On 1 February 2011, the Government of Nepal recalled Hamid Ansari, Nepalese Ambassador to Saudi Arabia, due to allegations that he deposited into his personal account insurance compensation of over NPR 2.5 million (US\$36,000) intended for family members of at least three deceased migrant workers.<sup>284</sup> In August 2011, Amnesty International's meeting with the CIAA confirmed that it had investigated corruption charges against Ansari based on the complaints from two families. In June 2011, after Ansari admitted to taking the money and agreed to pay the two families NPR 2 million each, the CIAA closed the case against him.<sup>285</sup>

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<sup>280</sup> Amnesty International interview with Trilok Chand Vishwas, NAFEA Vice-President, in Kathmandu, Nepal on 28 November 2010.

<sup>281</sup> The CIAA is an apex constitutional body in Nepal established to investigate and probe cases against "persons holding any public office and their associates who are indulged in the abuse of authority by way of corruption and/or improper conduct". For more information, go to: <http://www.ciaa.gov.np>.

<sup>282</sup> Yogesh Khatiwada, "Department of Foreign Employment official arrested", *Kantipur Daily News*, 31 December 2010 (in Nepali), available at: [http://www.ekantipur.com/kantipur/news/news-detail.php?news\\_id=233674](http://www.ekantipur.com/kantipur/news/news-detail.php?news_id=233674), accessed 7 July 2011.

<sup>283</sup> Amnesty International meeting with Ishwori Prasad Paudyal, Joint Secretary and Spokesperson, Commission for Investigation of Abuse of Authority, in Kathmandu, Nepal on 30 May 2011.

<sup>284</sup> "Insurance claims: Government to recall envoy Ansari", *The Kathmandu Post*, 2 February 2011, available at: <http://www.ekantipur.com/the-kathmandu-post/2011/02/01/top-story/insurance-claims-government-to-recall-envoy-ansari/217922.html>, accessed 6 July 2011 and "Pandey new envoy at Riyadh," *The Himalayan Times*, 12 May 2011, available at: <http://www.thehimalayantimes.com/fullNews.php?headline=Pandey+new+envoy+at+Riyadh+&NewsID=287734&a=3>, accessed 6 July 2011.

<sup>285</sup> Amnesty International meeting with Ishwori Prasad Paudyal, Joint Secretary and Spokesperson,

## 9.3. Resources

Several government offices told Amnesty International that financial constraints limit their work around the migration of Nepalese citizens for foreign employment. For example, the Department stated in May 2011 that it is poorly funded and that “the budget allocation is so poor. We need adequate budget to run the Department smoothly with proper institutional and other physical arrangements including human resources.”<sup>286</sup>

In order to meet with Amnesty International in September 2010, Puskar Raj Nepal, the Investigation Officer at the Department, stopped taking complaints from a long queue of over 20 people waiting outside his office. At that time, there were only two investigation officers on rotational shifts who were responsible for both filing the complaints and conducting the investigation.<sup>287</sup>

In May 2011, Chandra Man Shrestha, the then Director General, told Amnesty International that they now have four full-time investigation officers (who are also responsible for monitoring), including Puskar Raj Nepal, but that all four have been seconded from other government ministries. He added that another challenge the Department faces is the access and retrieval of information, as currently all the information is manually filed. In 2011, Shrestha requested funds to replace this system with a computer database.<sup>288</sup>

Similarly in 2011, the Ministry of Labour requested the Budget Committee to double the Ministry's budget of NPR 500 million (US\$7 million) in the new financial year. In the area of foreign employment, the Ministry stated that technology to make machine readable labour stickers and smart cards would reduce fraud and increase awareness of the migration process among migrant workers.<sup>289</sup> In June 2011, Purna Chandra Bhattarai, then Joint Secretary at the Ministry of Labour, explained that “To provide better governance in the area of foreign employment, it is an urgent need to provide enough budget to the MOLTM [Ministry of Labour and Transport Management] and related authority.”<sup>290</sup>

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Commission for Investigation of Abuse of Authority, in Kathmandu, Nepal on 9 August 2011. See also: Devendra Bhattarai, “Ansari gets clean-chit after paying Rs 4 m to victims' kin”, *Kantipur Daily News*, 10 August 2011, available at: <http://www.ekantipur.com/2011/08/10/top-story/ansari-gets-clean-chit-after-paying-rs-4-m-to-victims-kin/338888.html>, accessed 9 October 2011.

<sup>286</sup> Correspondence from the Department of Foreign Employment on 18 May 2011.

<sup>287</sup> Amnesty International meeting with Puskar Raj Nepal, Investigation Officer, Department of Foreign Employment in Kathmandu, Nepal on 27 September 2010.

<sup>288</sup> Amnesty International meeting with the Department of Foreign Employment in Kathmandu, Nepal on 23 May 2011.

<sup>289</sup> Amnesty International meeting with Purna Chandra Bhattarai, then Joint Secretary, Ministry of Labour in Kathmandu, Nepal on 3 June 2011.

<sup>290</sup> Correspondence from Purna Chandra Bhattarai, then Joint Secretary, Ministry of Labour, on 15 June 2011.

# 10. CONCLUSION AND RECOMMENDATIONS

Some recruitment agencies and brokers deceive migrant workers and breach provisions of the Foreign Employment Act intended to protect migrant workers from being trafficked for exploitation, including forced labour.

The Government of Nepal has failed to be duly diligent in meeting its international obligations to prevent trafficking and forced labour, as it has not adequately regulated and monitored these agencies, or enforced the law against those who violate the Foreign Employment Act, which came into force in 2007.

The full and effective enforcement of the Act by the Government of Nepal would be an important step towards fulfilling its international obligations. The Government should ensure broad access to complaints and remedial mechanisms for migrant workers who are exploited or subjected to forced labour. It should also address structural problems that increase the risk of exploitation, such as ending discriminatory practices in respect of female migration. Finally, the Government needs to make all the procedures surrounding migration – including the recruitment process; migrants' rights and responsibilities while abroad; and the procedures for filing complaints and pursuing compensation on return – more transparent and accessible.

Amnesty International makes the following recommendations towards better protection of migrant workers against trafficking and forced labour:

## **Regarding the operation of recruitment agencies and brokers:**

1. The Government of Nepal should ensure that the provisions of the Foreign Employment Act are fully implemented and that recruitment agencies failing to comply with their responsibilities face adequate punishments, in accordance with articles 34 to 37 of the Act. In particular, it must ensure that recruitment agencies:
  - a. do not charge migrants more than the government-imposed upper limit on service charges and promotional costs, in accordance with articles 24 and 53 of the Act;
  - b. provide migrant workers with a written copy of their contract in Nepali, as stipulated in article 25 of the Act, in advance of their arrival in Kathmandu;
  - c. do not submit false or substituted contracts or information, provide migrant workers with employment contrary to their contract, or conceal or alter documents, in accordance with articles 13.2, 47 and 55 of the Act;



**Regarding other measure to prevent trafficking and forced labour:**

The Government should:

7. Enforce prohibitions on the charging of exploitative rates of interest that contribute to situations of forced labour;
8. Consider measures aimed at promoting the availability of low-interest loans to migrant workers, that recognise the particular challenges faced by women in obtaining access to such loans;
9. End discriminatory practices against women migrants, such as bans based on gender alone, and requiring women to get written permission from family members before receiving government permission to migrate;
10. Ensure that Nepalese labour attachés, as outlined in article 68 of the Act, and other officials play a more active role in supporting and assisting migrant workers and their families, resolving problems when they arise, and in the event of a death, informing family members and providing all relevant information regarding the death;
11. Establish an independent body to carry out a prompt, thorough and impartial investigation into allegations of bribery and corruption in relation to migration for foreign employment, including by government officials, and implement subsequent recommendations to establish confidence in the process;
12. Ensure that all migrant workers, regardless of whether they migrated via “official” routes, have access to a transparent and effective complaints mechanism through which they or their families can seek redress if they were trafficked and forced to work under exploitative terms or conditions, or if they are deprived of the benefits to which they are entitled as a result of accidents, illness or death while abroad;
13. Consider streamlining the existing complaints procedure so that migrants only have to register the complaint with one government office, which will then take responsibility for resolving the claim without restricting the migrants’ rights to pursue any other remedies available to them;
14. Establish regional governmental branches of the Department of Foreign Employment and Foreign Employment Promotion Board in key migration districts throughout Nepal so that migrant workers residing outside of the capital have equal access to information on migration and can more easily access complaints and compensation mechanisms;
15. Ensure that the prohibition of illegally exacted forced or compulsory labour is clearly defined in law with penalties that are adequate and strictly enforced, in accordance with its obligation under article 25 of the Forced Labour Convention;
16. 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;



17. Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and their Families;

18. Ensure that adequate resources are allocated to the relevant government agencies and departments so that they can perform their functions in a timely and efficient manner.

**Regarding members of the international community:**

19. Members of the international community, including foreign governments and inter-governmental organisations – in particular the ILO and the IOM – should provide the Government of Nepal with assistance and support in order to enable it to implement the above recommendations.

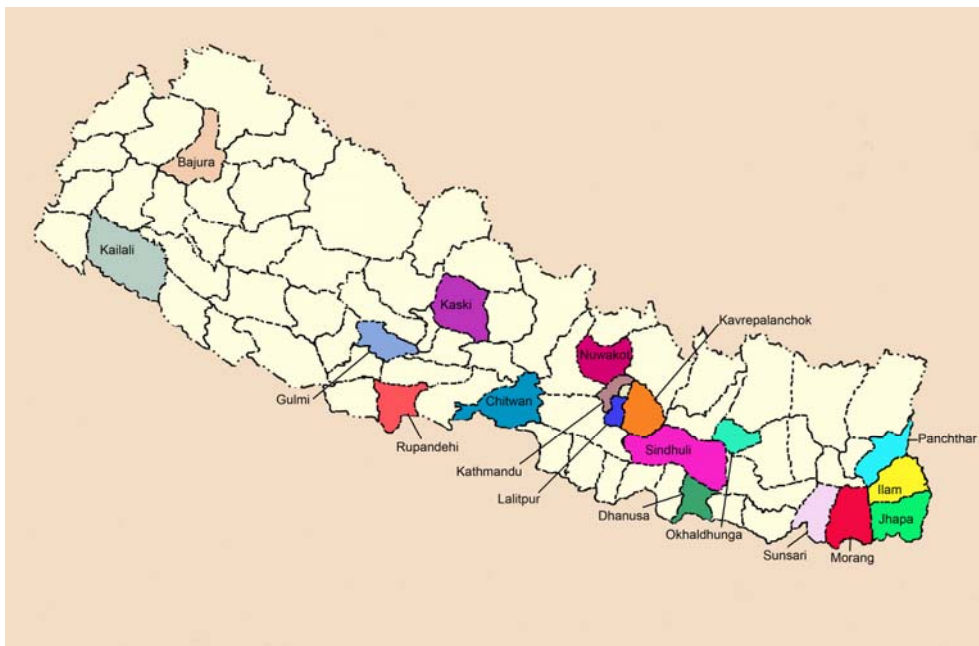
## Appendix 1: Semi-structured interview questions for migrant workers (returnees)

1. What is your name, age, caste and level of formal schooling?
2. Where did you work? Dates?
3. What kind of work did you do?
4. How did you find this job?
5. How much did you pay in recruitment fees?
6. What did these costs include? Welfare fund? Medical exam? Orientation? Airport tax?
7. How did you find the money? Interest rate?
8. How long did it take to pay this back?
9. Did you make your own passport?
10. How many days did you spend in Kathmandu? Where did you stay? How much did it cost?
11. Did you attend pre-departure orientation training before going abroad? What kind?
12. Did you know anything about the destination country before going?
13. Did you receive the employment contract before going? When/where? In which language(s)?
14. How many contracts were you given? What were you instructed to do with them?
15. What did the agreement say? Name/company name/type of job/pay/work hours/rest day/overtime?
16. What were work conditions and salary like in reality? When did you find out?
17. Did you meet the recruitment agency in Kathmandu? When?
18. When did you receive your passport and flight ticket?
19. Describe problems faced in destination country.
20. Did you go to the Nepalese Embassy/Consulate in destination country? Why or why not?
21. Why did you return to Nepal? How? Who paid for your flight ticket?
22. Upon return, did you approach the recruitment agency or broker regarding your problem(s)? What did they say and/or do?
23. Did you go to the Nepalese authorities in Kathmandu? Why or why not?
24. Have you heard of any government office that could help you with problems you faced in foreign employment? Have you heard of the Department of Foreign Employment? If so, did you go see them? Why or why not?
25. Did you find it difficult to find a job in your home district because of your situation, gender, caste or any other factors?
26. How many members of your family are there? How many do you support?
27. Why did you go abroad for work? Did you try to find work in Nepal?
28. Do you want to go abroad again? Why or why not?

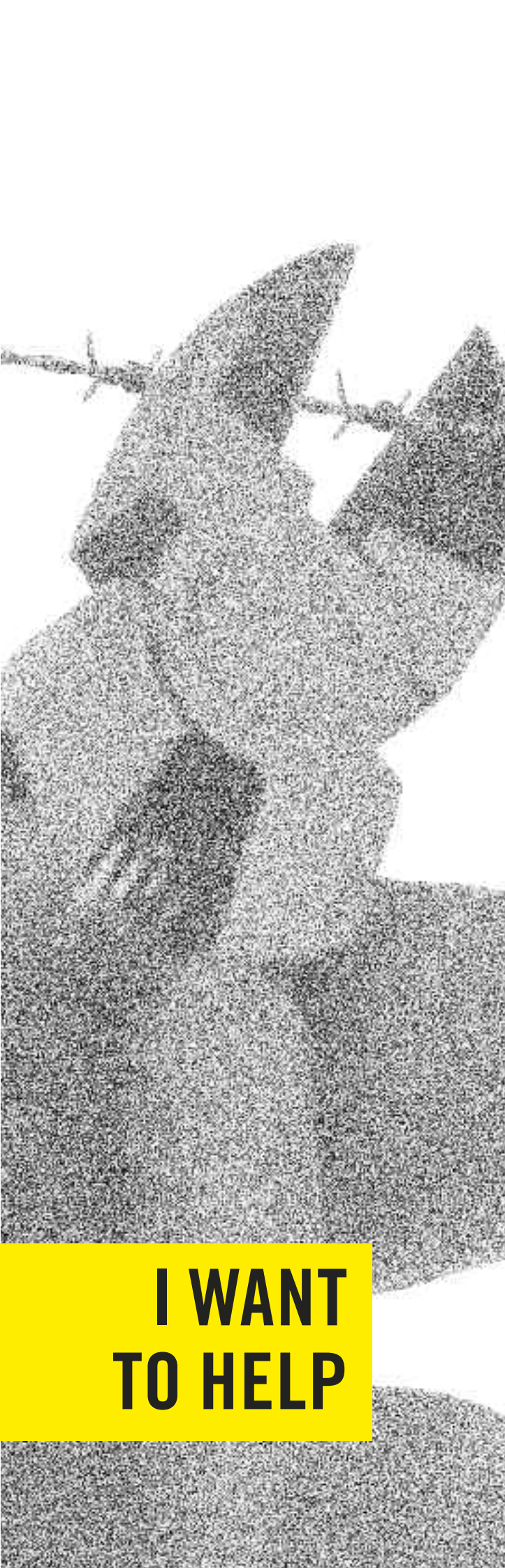
## Appendix 2: Maps of Nepal



Map of Nepal (Source: UN)



Home districts of migrant workers interviewed (Source: Amnesty International)



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## **FALSE PROMISES**

### **EXPLOITATION AND FORCED LABOUR OF NEPALESE MIGRANT WORKERS**

At least 25,000 people leave Nepal every month to look for work abroad and to escape poverty and unemployment back home. Most end up in the Gulf states or Malaysia, toiling on construction sites, in factories or as domestic workers.

The vast majority rely on recruitment agencies and brokers to find them work. These middlemen charge on average around US\$1,400 – three times the average annual salary in Nepal. To pay these fees, migrants often take out private loans at exorbitant interest rates. As a result, many end up in debt, compelling them to work under terms they never agreed to.

Women face discriminatory practices, which make it harder for them to seek work abroad. In some cases, they cannot migrate unless they have written permission from their families. In others, they face restrictions which force them to migrate through irregular channels, increasing their risk of abuse and exploitation.

This report reveals how recruitment agencies and brokers, many of whom earn huge profits, are complicit in trafficking Nepalese migrant workers. Many recruiters deceive migrants on fundamental aspects of their contracts, including salary and type of job. Effective regulation of their practices is just a first step towards ensuring that Nepalese citizens can work abroad free from the risk of forced labour.

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