

How Nepal's Migrants Struggle to Access Justice



- Most households in Nepal have at least one family member working abroad. Although Nepal's government is working to help prospective migrants avoid the worst risks and scams, many migrants remain unaware of critical protection measures.
- Under-informed migrants are often easy prey for migration scams and traffickers. Despite government efforts, deception remains common. While avenues for justice exist under the law, in practice they are not available in most cases at the local level.

Migration and the Law in Nepal

Nepal's economy depends on the remittance income of its migrant workers. Yet, as a society, Nepal suffers from the exploitation and abuse that remain inherent in recruitment and migration for foreign employment.

Most migrant workers from Nepal are employed in difficult, dirty and dangerous jobs abroad. Low-skilled migrant workers are more vulnerable to human trafficking and forced labor in the countries that employ most Nepalis, such as the Gulf countries and Malaysia. Thousands of people leave home every week to venture abroad with no assurances of adequate income generation or a safe return.

In Nepal, human trafficking is a criminal offense, punishable under the Human Trafficking and Transportation Control Act of 2007 (HTTCA). The initial perception of and response to human trafficking in Nepal continues to focus largely on the sexual exploitation of women and girls – which has been primarily to Indian brothels. While this trend - along with the oppression and exploitation of women and girls - still persists, there is now growing knowledge of and concern about the exploitation of men and women during the labor migration process and foreign employment.

The Government of Nepal and civil society organizations are working to better regulate labor migration and counter human trafficking. Despite improve-

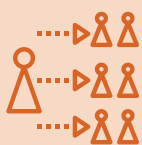
ments, serious deficits remain. These include limited police involvement in investigating cases of deceptive recruitment and forced labor, severely limiting migrant workers' access to justice.

Victims' complaints related to the trafficking of women and girls for the purpose of sexual exploitation are still the majority of cases investigated and tried in the criminal justice system. When formally filed, complaints from victims of labor exploitation, debt bondage or forced labor are often referred to the Department of Labor and adjudicated as lesser infractions of law.



Key Findings

1



Recent efforts by the Nepali government to systematize migration have yet to show conclusive effects.

Vulnerable populations, law enforcement officials, and elected leaders all have a limited understanding about human trafficking and labor exploitation. Migrating workers remain generally unaware of new government policies, such as “Free Visa, Free Ticket.” This is especially notable at the village level.

Employment agencies frequently charge migrant workers fees in excess of legal limits. The Nepali government’s 2015 labor migration guidelines require foreign employers to pay for visa and transportation costs for Nepali migrant workers bound for Malaysia and the Gulf states. The policies also restrict agency-charged recruitment fees to 10,000 NPR (\$98). Both CSOs representatives and officials say that enforcement of the low-cost migration policy is difficult, and agencies continue to charge migrant workers for visa and transportation costs, and to demand recruitment fees above the 10,000 NPR (\$98) limit.

Women migrant worker travel bans do not protect women from exploitation in foreign employment. Many women still travel abroad, but these travel bans often force them to rely on irregular channels with no legal protection and weak links to the justice system. Other women may leave through official channels under a different job description, but they still find themselves employed as domestic workers in the destination country.

2



The legal system is ill-equipped to deal with most migration cases.

Many Nepalis, especially the rural poor, do not have adequate access to justice. The centralized justice mechanism for labor disputes (at the Department of Foreign Employment in Kathmandu) is not accessible for many aggrieved migrant workers. There may also be social and economic costs associated with filing a human trafficking complaint. The social cost relates to the stigma that revolves around identifying as a victim of trafficking; and the economic costs result from corrupt officials, or the time taken away from generating income in order to pursue one’s case.

The justice system fails to provide the support to victims necessary to overcome common barriers to access. Many migrants are not willing to file complaints in the first place. Nepal does not offer witness protection, police hesitate to launch investigations, and holistic services do not exist to support victims as they pursue justice. Local civil society organizations are struggling to maintain the resources necessary to fill this gap.

Outside of Kathmandu, migrant workers commonly rely on informal mechanisms to resolve labor migration/exploitation cases. Although the Department of Foreign Employment (DoFE) and its tribunal provide formal redress mechanisms, migrant workers prefer to use informal mechanisms. These include traditional structures like local panchayats, as well as local government mediators and civil society organizations. In rare cases, local police may play a mediating role between workers and individual agents. Some of these cases may in fact be human trafficking or forced labor cases, but they are not investigated or pursued as such.

There is no formal referral process or practice between labor migration/exploitation cases and human trafficking cases. There is a lack of harmonization or coherence between the Human Trafficking and Transportation Control Act and the Foreign Employment Act. Neither makes a specific reference to the other, including when foreign employment cases should be referred to the police for a trafficking investigation, or when trafficking cases should be referred to DoFE. While there have been individual test cases that have successfully used the HTTCA to prosecute labor exploitation, this is not yet common.

A persistent belief in Nepal is that “women are trafficked, men are cheated.” The human trafficking law in Nepal reflects this sentiment with its focus on sex trafficking cases. Allegations of labor exploitation are usually steered toward labor dispute mechanisms governed by the Foreign Employment Act of 2007. As a result, labor migration and exploitation cases that rise to the level of human trafficking may be overlooked and perpetrators may go unpunished.

Victims of transnational labor trafficking often prefer to submit claims for restitution through the Foreign Employment Act (FEA) rather than pursue lengthy criminal prosecutions under the HTTCA. Reasons for this include avoiding stigma associated with being labeled a trafficking victim (which can be assumed to insinuate sex trafficking) and a greater likelihood of receiving restitution under the FEA.

Under the newly decentralized system of governance, Judicial Committees are empowered to resolve most civil cases, but this does not include cases related to migration or trafficking. Foreign employment-related cases must be referred to the Department of Foreign Employment in Kathmandu. The lack of local offices of the DoFE makes filing a complaint all but inaccessible. As a criminal case, trafficking complaints must be filed with the police.



Despite the prevalence of crimes related to migration, local government is generally under-equipped to properly support victims or manage complaints. Local access points for justice - such as ward-level mediators or justice committee members - are not trained in victim identification or the legal process for victims of migration fraud or trafficking. Though these cases are beyond their jurisdiction, as local-level justice providers, they must be able to properly identify and refer such cases to the police if justice is to be served according to the law.

3



Migrants' experiences are compounded by a lack of information, agency and access to formal channels or assistance.

Because they use informal channels, unregistered migrant workers are particularly vulnerable to human trafficking and labor exploitation. Many Nepali migrants travel through the open border to India or rely on unregistered recruiting agents. Low caste or poor migrants lack citizenship documents, making them more reliant on exploitative brokers and risky migration routes and, in turn, putting them at risk of trafficking. Unlicensed sub-agents are frequently involved in recruiting migrant workers for job placements and then obtaining visas, necessary administrative approvals, medical clearances and insurance. This process often involves fraud.

Corruption is prevalent throughout the migration for foreign employment process - from recruitment at home, to job placement, to employment abroad. This includes allegations of government officials accepting bribes from recruitment agency officials to falsify immigration documents or to dismiss complaints. Unscrupulous labor recruiters demand exorbitant recruitment fees, while providing receipts for the much lower legally allowable cost so that migrants lack the evidence they need to pursue justice.



The Migrant Worker's Experience

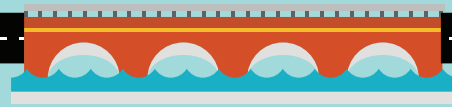
From Nepal to Malaysia



IN HIS VILLAGE A Nepali man needs to earn more money to support himself and his family. He decides to find work abroad. In his home village, the sub-agent of a recruitment agency has contacted him. He pays the sub-agent for the promise of a well-paying job. He has sold a parcel of land or taken a loan at a high interest rate to afford the fee.

IN KATHMANDU

He has already invested so much that it does not matter that he feels uncomfortable with the recruiter or the terms of the employment contract, or if the recruiter substitutes the contract before he gets on the plane.



IN MALAYSIA The costs continue to accrue. He finds out that he has accumulated a fee for a work permit (a cost which now the law has shifted to the employer, at least in theory), as well as fees for housing and his visa. It is against the law, but his employer confiscates his passport to restrict his movement and to keep him from switching to another employer. After he pays for the recruitment fee, the visa, the work permit and the shelter deduction, his take home pay is quite low. The contract did not mention these other charges. He is often left with just enough pay to get by. If he complains, the agent simply encourages him to stay and do his job.



Many of his co-workers become ill because the living conditions are so bad. According to the Nepali embassy, 386 Nepali workers died in Malaysia in 2016. The cause of death is not always determined. Workers' families are responsible for their relatives' debt to the recruiters, but will receive no earnings.



Ultimately, he endures the harsh working conditions and low income in order to save some money for his family. He does not know how to navigate the legal system to file a criminal complaint.