



Centre for the Study of
Labour and Mobility



UNSW
AUSTRALIA

Law

POLICY BRIEF

June 2014 | No 5

Labor Migration Agents: Regulation, Accountability and Alternatives

Eleanor Taylor-Nicholson, Sarah Paoletti,
Bandita Sijapati and Bassina Farbenblum*

SUMMARY

The extensive use of unregulated labor migration agents is a common policy challenge in migrant labor origin countries. While agents provide migrant workers with much-needed information, connections to recruitment agencies, and positions abroad, they are also associated with a host of problems including fraud and misinformation. Agents are also frequently family or friends of migrant workers and are able to exploit these relationships of trust to defraud workers and avoid accountability. Nepal's laws and foreign employment claims mechanisms do not ensure that migrant workers receive the compensation they are owed from agents, or that bad actors are punished. This brief discusses existing options for holding foreign employment agents accountable in Nepal, why these mechanisms are largely ineffective, and recommendations for reform.**

I. Introduction

Nepal's foreign employment industry is one of the largest sectors in the country – more than 400,000 people travel abroad each year to countries other than India, and it is estimated that every second household has sent a person abroad for work at some point.

As in many origin countries, brokers or middlemen, called “agents” in Nepal, are entrenched players in the foreign employment sector. Often they are friends, family members or village-members of the prospective migrant worker's community, and are therefore trusted to find the worker a suitable and safe position abroad. Prospective migrant workers hand

over large sums of money, often borrowed from local moneylenders at high interest rates, to their agents who handle all pre-departure arrangements. This money covers the agent's “fees”, as well as manpower agency fees and costs. Likewise, manpower agencies rely on agents to identify new recruits and handle in-person arrangements with recruits, and may use 20 to 50 different agents at a time. In 2011, it was estimated that 80,000 people were operating as individual agents in Nepal.¹

1 Bandita Sijapati and Amrita Limbu. 2012. *Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms*. (Centre for the Study of Labour and Mobility: Kathmandu).

* Eleanor Taylor-Nicholson is Research Director, Migrant Worker Access to Justice Project; Sarah Paoletti is Practice Professor of Law and Director, Transnational Legal Clinic, University of Pennsylvania Law School; Bandita Sijapati is Research Director, Centre for the Study of Labour and Mobility; and Bassina Farbenblum is Senior Lecturer and Director, Human Rights Clinic and Director, Migrant & Refugee Rights Project, Australian Human Rights Centre, UNSW Law School.

** This brief is taken from the 2014 report, *Migrant Workers' Access to Justice at Home: Nepal* by Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum (Centre for the Study of Labour and Mobility and Open Society Foundations: Kathmandu, 2014).



Paras' Experience of Fraud and Failed Departure

"My wife had a very close family friend, Deepak, who we had known for many years. One day he called me and told me about a job as a security guard on a British ship based in the Bahamas, with a starting salary of US\$1,300 per month. I trusted my friend blindly so I agreed and let him and his brother-in-law, who owned a manpower company, arrange everything. When I saw the papers, the visa said I would be a laborer and I became suspicious but Deepak assured me the job was genuine. On the day I was to leave we had a big party, and Deepak came to send me off. But later he called me and told me the job did not exist, the documents were false and that I shouldn't go to the airport. I had taken a loan to pay the NPR 400,000 [approximately, \$4,200] fees for this opportunity. To repay the loan, I had to sell my wife's jewelry and her beauty parlor.

It took me seven months to find Deepak again, I searched everywhere, and then I took him to the DoFE with the help of the police. He and his brother-in-law promised to return the money, but after two years I have not received anything and they have not been prosecuted." – Male prospective migrant worker, Kathmandu

Agents can undeniably perform a valuable service for both migrant workers and manpower agencies. However, as in other countries, individual agents in Nepal are associated with widespread misconduct both pre- and post-departure – many overcharge workers recruitment fees and keep the difference, fail to provide key information (such as the name of the recruitment agency involved, for example) and/or mislead workers about the terms and conditions of work abroad. In some cases individuals pretending to be agents simply take money from the migrant worker, and then disappear leaving the migrants with large debts.

Some agents work without a manpower agency behind them but rather illegally recruit

and send (or pretend to send) migrant workers abroad on their own. Where manpower agencies are involved, their use of agents can in effect shield the manpower agencies from liability, as the agencies simply blame the agent for any harms that occur and claim they were unaware of the agent's activities.²

This policy brief outlines Nepal's efforts to hold agents accountable for harms committed directly by agents, and assesses the effectiveness of those efforts.

II. Approach and Findings of the Access to Justice Study

The study on migrant workers' access to justice was carried out through desk research and field research across Nepal between 2012 and 2014. It included interviews and focus groups with 54 migrant workers regarding awareness of and experiences with dispute resolution mechanisms. In addition, researchers reviewed Nepal's foreign employment policy framework, and interviewed more than 20 representatives of government, civil society, unions and the recruitment industry. The research team was also given access to a random sample of 202 case files from the Department of Foreign Employment (DoFE), and 12 case files from the Foreign Employment Tribunal (the Tribunal). Together, these sources provided information about awareness and perceptions of various justice mechanisms, as well as data on performance and outcomes.

In relation to individual agents, the study found that:

- 1. Nepal has taken a two-pronged approach to regulate agents, but neither has been effective and unregistered agents continue to operate throughout the country with impunity.**

The government of Nepal has taken steps to

- 2 For more information about the difficulties in holding recruitment agencies accountable for harms in the foreign employment industry, see the related policy brief "A Risky Business".**

regulate the agent industry by creating a system of registration, and by penalizing recruitment by individuals (that is, agents).

The registration system relies on manpower agencies to register agents under their control (agents cannot register themselves independently). However, barriers to registration are high, including payment of a deposit of NPR 200,000 (approximately USD 2,000) per agent, a requirement the agent speaks Nepali, and a prohibition on agents registering with more than one agency.³ Manpower agencies are not penalized for using unregistered agents. Perhaps unsurprisingly, the system has been ineffective, and in 2013 DoFE closed registration until further notice due to low registrations and fraud in the system. As of June 2013, DoFE had registered only 290 individual agents.⁴

Individuals who act as unregistered agents can theoretically be severely punished, even if manpower agencies are not penalized for using them. A conviction for sending a migrant worker abroad as an unregistered agent attracts a mandatory punishment of a NPR 300,000 - 500,000 (US\$3000 - \$5000) fine, imprisonment for three to seven years, and reimbursement to the worker of any expenses incurred in traveling abroad plus fifty percent as compensation. If the worker has not yet been sent abroad, the penalty is halved. Criminalizing agents who operate without a license appears to have had very limited effect on the industry, however, as the use of agents continues to be commonplace.

2. Migrant workers file few complaints with DoFE against their agents

Despite the available penalties and compensation, and despite that most migrant workers in the access to justice study blamed their agents for harms they experienced, few cases against

individual agents are reported to DoFE compared to the large number of migrant workers who depart each year. Reasons given by migrant workers for not submitting complaints through the official DoFE mechanism included:

- **Lack of awareness of rights and redress options:** Migrant workers were largely unaware of the DoFE complaints mechanism and procedures for filing cases. Pre-departure orientation training contains only a brief mention of DoFE, if any, and many migrant workers do not attend pre-departure training. Embassies abroad do not appear to be informing workers about the DoFE claims mechanism available to them. Awareness was particularly low among female migrant workers.
- **Lack of documentation:** Migrant workers are not receiving key documentation before departure that would facilitate them making a claim. For example, frequently neither agents nor manpower agencies provided receipts for fees paid, or workers were asked to sign receipts for less than the amount they actually paid. The worker then cannot prove the payment of the money, the name of the agent, or the purpose of the payment.
- **Centralization of justice mechanisms:** The mechanisms charged with adjudicating cases of individuals acting as unregistered agents - DoFE and the Tribunal - are both located only in Kathmandu. However, as migrant workers and agents are often from the same community outside Kathmandu, it is more practical for migrant workers to seek local solutions - directly confronting the agent, use of traditional justice mechanisms, reports to the police or informal mediation.
- **Strong community bonds and pressures not to seek full redress:** Local pressures also prevent migrant workers from filing a claim or seeking full redress from their

³ Foreign Employment Rules (2008), Rule 48(3).

⁴ DoFE's *Monthly Progress Report*, Jan-Feb 2014. http://www.dofe.gov.np/uploads/document/Untitled_20140223042931.pdf [accessed April 3, 2014].



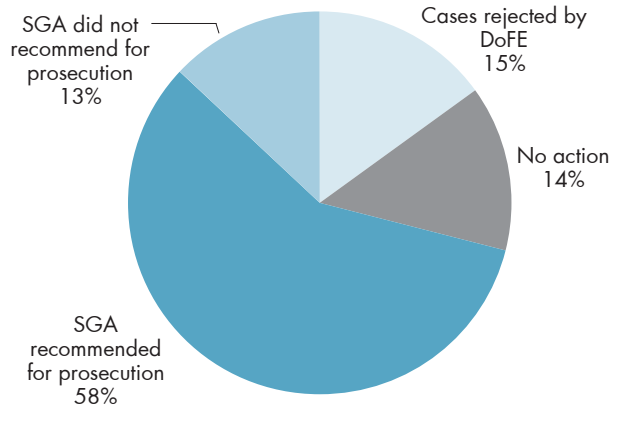
agents. Migrant workers can be pressured by the agent, family or community members to drop cases against agents, many of whom do not have significant resources of their own. In several cases in the study, migrant workers accepted less than what they were due in order not to strain community bonds.

3. Official procedures for prosecuting and seeking remedies from agents are inefficient, unwieldy and do not meet the needs of migrant workers

Even where complaints are filed against agents at DoFE, it is unclear whether migrant workers are receiving the compensation they are due, or whether agents are in fact being punished on a regular basis. The following challenges were identified:

- **Superficial investigations:** DoFE is severely understaffed to handle the volume of complaints it receives each year. It does not have capacity to fully investigate cases beyond the evidence that migrant workers themselves provide. For this reason, where agents abscond (a common problem) the worker is left to find the person. Further, the involvement of manpower agencies is rarely investigated and, if the agency is named, DoFE rarely joins the agency to the complaint.
- **Delay:** Only the Tribunal can adjudicate cases against agents, so theoretically every case in which there is sufficient evidence should be registered at the Tribunal. However all cases must pass through DoFE investigation first. The law does not create a timeline for this process, with the exception of requiring case review by a special government attorney (SGA) before charges are filed. This study found that most cases are approved for prosecution by the SGA: in a sample of 187 cases, 81% of those sent to the SGA

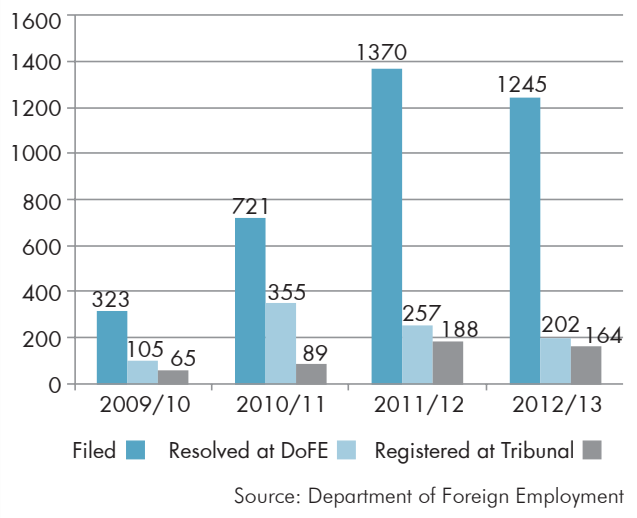
Figure 1: Outcomes of 187 Random DoFE Case Files



were approved for prosecution, or 58% of total claims filed against agents (Figure 1).

Despite the large number of cases approved and awaiting registration, DoFE records revealed that very few cases were filed at the Tribunal due to backlogs and bureaucratic inefficiencies at DoFE. As a result, very few agents named in complaints are ever prosecuted, and migrant workers are instead incentivized to accept a compensation settlement and not pursue the case further. The low rate of registration is confirmed in the government's data (Figure 2).

Figure 2: Cases received versus sent to the Tribunal 2009/10 – 2012/13



- **Compensation is difficult to obtain:** An agent's promise to pay compensation is difficult for migrant workers to enforce as unregistered agents have not paid a deposit to the government and usually do not have significant assets. Many agents appear to abscond to avoid paying. Even where the Tribunal orders compensation, the migrant worker can only enforce the order by filing a further action at a district court. This results in further burdens and delays and it is believed few workers ever receive what they are owed.

III. Conclusion and Recommendations

Until migrant workers can find the assistance they both need and trust to navigate the complex process of identifying a job abroad and fulfilling pre-departure requirements, the services of individual agents will continue to be in demand. Efforts should be made to develop an alternate more protective and accountable model through which migrant workers can obtain this assistance, possibly in collaboration with local governments. But it is the view of the authors of this study that until such a model is developed and implemented, an outright ban on individual agents is not a feasible approach to improving migrant worker protection. In the short term, the Government of Nepal can take the following steps to encourage accountability and professionalism in this sector and to eliminate fraud:

1. **To encourage manpower agencies to register agents, the legislature should immediately impose sanctions on those agencies that use unregistered agents, and should hold agencies responsible for representations made by agents regardless of registration.**

Amend the Foreign Employment Act 2007 to include sanctions against manpower agencies that use unregistered agents to supply workers and to establish liability on the part

of manpower agencies for representations made to workers by those agents -- regardless of whether there is an official relationship between the agent and recruitment agency. Also, consider allowing agents to register with more than one agency.

2. **Prioritize decentralization of labor migration services and complaints registration.**

Decentralization would reduce the need for workers to use agents. Experts should consider whether DoFE should be decentralized to regional levels, or whether the roles and responsibilities of local government agencies should be expanded. Any decentralized system should be able to receive and respond to complaints, as well as handle pre-departure steps.

3. **DoFE should recommence registration of individual agents as soon as possible.**

Conduct widespread public information campaigns to encourage registration. Consider allowing agents to register on their own, with the payment of a deposit.

4. **DoFE should reform handling of cases against agents to achieve more timely payment of compensation, by:**

- a. Considering ways to streamline the filing and adjudication of cases against foreign employment agents before the Tribunal to eliminate delays associated with investigation and government attorney review before a case can be filed. In particular, consider ways that migrant workers can recover compensation from their agents before a prosecution takes place.
- b. Prioritizing particularly serious cases (for example a large number of victims, large amounts of money taken and not returned, or serial offending) for registration at the Tribunal. Consider seconding police into DoFE's complaints registration and investigation section to



- strengthen the criminal investigation function.
- c. Remove the distinction between “individual” and “institutional” cases, and instead encourage joint liability between individual agents and recruitment agencies. For example, expand investigations against agencies named by individual agents, document past relationships between agents and recruitment agencies, and refer to stored contract information.
 - d. Develop effective, transparent and accessible electronic systems, such as case management systems for claims investigation and adjudication, and inter-agency data-sharing platforms. These should link with DoFE’s pre-departure electronic information systems that should identify and link the identities of any agents and manpower agencies involved in sending a particular migrant worker abroad.
5. **The international donor community should prioritize facilitation and improvement of access to justice for intending, current and former migrant workers for harms caused by agents.**
 - a. Maintain support for infrastructure development described in Recommendation 4.d above.
 - b. Mainstream information about rights and redress options in pre-departure materials and programs funded by donors, including rights and options against foreign employment agents.
 - c. Support further study on the operation of agents in Nepal, and on alternate models through which migrant workers can be supported to navigate the complex process of identifying a job abroad and fulfilling pre-departure requirements. Consider supporting such studies in a sub-regional or regional context, and potentially supporting related pilot programs.

Centre for the Study of Labour and Mobility

The Centre for the Study of Labour and Mobility (CESLAM) is a research centre under the aegis of Social Science Baha, Kathmandu, which has the primary objective of contributing to broader theories and understandings on labour and mobility. It conducts interdisciplinary, policy-relevant research on critical issues affecting working people; serves as a forum to foster academic, policy and public debates; and provides new insights on the impact of labour and migration.

Migrant Worker Access to Justice Project (MWA2JP)

The MWA2JP is an international research collaboration between academics and experts in Australia, the United States, Indonesia and Nepal. It explores ways to strengthen legal frameworks and redress mechanisms to better protect the rights of low-wage labor migrants, in origin and destination countries.

Centre for the Study of Labour and Mobility
Social Science Baha, 345 Ramchandra Marg, Battisputali, Kathmandu - 9, Nepal
Tel: +977-1-4472807 • info@ceslam.org • www.ceslam.org
Postal address: GPO Box 25334, Kathmandu, Nepal

This publication was supported by a grant from the Open Society Foundations, New York.