



Overseas Assistance for Nepali Migrant Workers Seeking Justice Abroad

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EXECUTIVE SUMMARY

Like many migrant worker-origin countries, Nepal has faced calls both domestically and internationally to protect its citizens while they are working abroad. Migrant workers, particularly those in low-wage industries, are vulnerable to abuse and exploitation, and rarely have resources to seek redress independently. Nepal has begun to respond, but the demands involving large-scale protection of a country's citizens outside of emergency situations are complex, and established precedents are few.

This policy brief reviews actions taken to protect Nepali migrant workers, and specifically to assist them in accessing redress while abroad. It finds that migrant workers with potential legal claims rely heavily on Nepal's embassies, and that many embassies have made efforts to address this need but largely on an ad hoc basis. This brief recommends that embassies' efforts be expanded and strengthened with the commitment of greater human and financial resources, training for embassy staff on migrant worker issues, and the development and implementation of clear guidelines and procedures.

Introduction and Background

Foreign labor migration has become a regular feature of Nepali society with nearly 1,600 Nepalis leaving each day for employment abroad, primarily to Gulf countries, in a range of industries.¹ The economic returns of migration through remittances are significant, accounting for approximately 25 per cent of Nepal's GDP.² Foreign exchange earnings from

migration are now higher than the combined total of export receipts and official aid to the country.³

Yet, the social and personal costs of migration can be substantial. Migrant workers, particularly those in lower-wage industries, commonly encounter exploitative working conditions. In some cases, workers report extreme forms of abuse, including those that

1 Not counting India. *The Himalayan Times*, 'Over 1,600 workers leaving daily', July 24, 2013. <http://www.thehimalayantimes.com/fullTodays.php?headline=Over+1%E2%80%9A600+workers+leaving+daily&NewsID=384954> [accessed May 1, 2014].

2 The World Bank, Data: Personal Remittances,

Received (% of GDP). <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>.

3 The World Bank, *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities* (Washington DC: World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region, 2011, p. i.)

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have resulted in permanent injury and even death. In many such instances, the migrant worker may have a claim for compensation against an employer or agent in the destination country, and in some there may also be grounds for prosecution but rarely are these avenues pursued.

The mistreatment of workers abroad is a matter of considerable public concern in Nepal, to which the Government of Nepal has responded in several ways. First, the Ministry of Labor and Employment (MoLE) and the Ministry of Foreign Affairs (MoFA) have been in dialogue with their counterparts in destination countries, and have succeeded in signing bilateral agreements or memorandums of understanding (MOUs) on the provision of labor with three Gulf countries. The MoFA also has opened embassies in all six Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) as well as in Israel. Nepal also has a consulate in Lebanon. Additionally, since late 2011, some embassies have begun housing labor attachés appointed by the MoLE to provide specific migrant labor-related functions, under the authority of the ambassador.⁴

Besides government support, non-governmental organizations and unions have developed programs to help migrant workers in several Gulf countries with large Nepali populations. Some of these programs have been formalized through cooperative agreements between Nepali NGOs and the MoFA of Nepal, and between trade unions in Nepal and destination countries.

This policy brief addresses one aspect of assistance to workers abroad – support to access justice in foreign jurisdictions. It is based on the first comprehensive study of access to

4 As of April 2014, Nepali embassies in four Gulf countries (Kuwait, Qatar, Saudi Arabia and the United Arab Emirates) had labor attachés, and the government has plans to place labor attachés in Bahrain and Oman as well.

justice for Nepali migrant workers who go to the Middle East.⁵ The full results of the study, and related recommendations, are contained in the report *Migrant Workers' Access to Justice at Home: Nepal*.⁶

Approach and Findings of the Access to Justice Study

The larger study on migrant workers' access to justice was carried out through desk and field research across Nepal from mid-2012 to mid-2014. Researchers reviewed Nepal's foreign employment policy framework, and interviewed more than 20 individuals from the government, civil society, unions and the recruitment industry, including representatives of the MoFA, former ambassadors and civil society organizations working in the Gulf. The study also included interviews and focus groups with 54 migrant workers in three districts of Nepal who reported experiencing a problem at some point. Forty-three of these had traveled abroad to work and returned to Nepal (the remaining number had not succeeded in leaving for various reasons).⁷

Together, these sources provided information about awareness, perceptions and experiences of migrant workers and other stakeholders regarding Nepal's foreign employment institutions as well as mecha-

5 Justice was defined to comprise both remedies to the worker, i.e., compensation for losses, and the holding of perpetrators accountable, through penalties including fines, licensing sanctions, and imprisonment.

6 Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati and Bassina Farbenblum. 2014. *Migrant Workers' Access to Justice at Home: Nepal*. Kathmandu: Centre for the Study of Labour and Mobility and Open Society Foundations. This is the second in a series on access to justice in origin countries, the first looking at Indonesia.

7 In addition, researchers were given access to a random sample of 202 cases from the Department of Foreign Employment (DoFE), and 12 cases from the Foreign Employment Tribunal (the Tribunal).

nisms designed to enable migrant workers to obtain compensation and other remedies, including assistance to access justice overseas.

Key Findings Pertaining to Overseas Assistance

1. Migrant Workers Experience a Range of Problems While Abroad

All of the 43 migrant workers interviewed for this study and who had traveled abroad had experienced a problem of one kind or another. The study was useful in highlighting the most commonly reported problems. For instance, almost three quarters (see Figure 1 below) had found that the nature, terms or conditions of work were different from what was promised and that their employers did not abide by the workers' contracts – in a number of cases, the workers were paid significantly less than promised before departure or nothing at all, and were threatened with deportation if they complained. Two thirds had their documents confiscated when they arrived. Seven also experienced physical or verbal abuse.

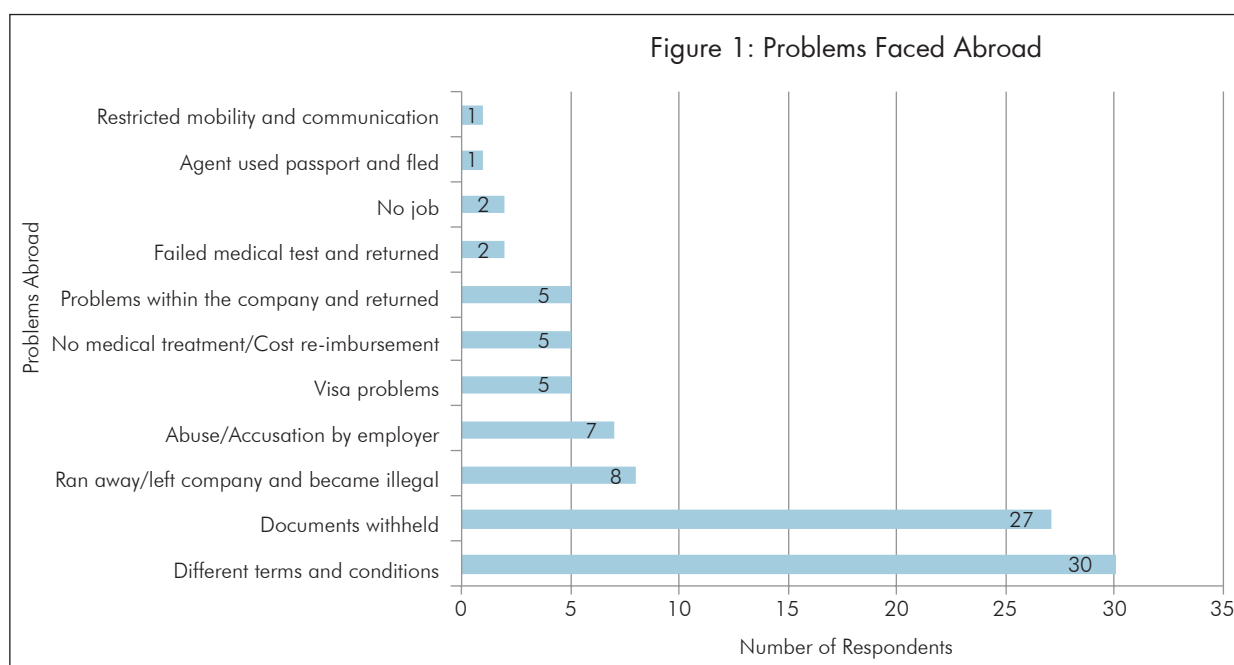
The assistance workers needed in these situations was diverse and ranged from simple provision of new identity and travel docu-

ments, to advice about rights and options in the destination country, to legal representation over a number of years.

2. A significant number of migrant workers are aware of and rely heavily on embassy assistance when they encounter problems abroad, however most do not receive adequate information before departure about specific embassy services that should be available and how to access them, and there appears to be a significant gender gap in awareness of services as well.

Nepal's embassies appear to be well known among migrant workers. In fact, embassies were often the only official support mechanisms that workers were aware of, whether in Nepal or abroad. Migrant workers' expectations of assistance were high – with some believing that embassies could resolve any problem a migrant worker may face. Awareness seemed to differ by gender; however, none of the nine women interviewed for the study were aware of the existence of any embassy or that it could help Nepalis abroad.

Migrant workers learn about the existence of





embassies from a range of sources. The MoLE, Department of Foreign Employment (DoFE), and Foreign Employment Promotion Board (FEPB) have jointly issued a pre-departure orientation-training manual for migrant workers which provides information on organizations that can provide workers with assistance if they experience problems, which include, among others, Nepali embassies. The Migrant Resource Center (housed at the FEPB) also circulates country-specific leaflets that provide the address and contact information of the embassies in specific countries. In this study, many migrants learned about embassy assistance from their agents, friends or family members.

“Before I left, my friends told me that if I had any problem I should contact the Nepali embassy...”
– Former migrant worker to Qatar

Most migrant workers in this study did in fact use embassy services. Of the 43 migrant workers interviewees who had traveled abroad, 32 (approximately 75 percent) reported having sought embassy assistance at some point.

3. Nepali law does not define the role of embassies in facilitating migrant workers’ access to justice, but does place specific obligations on labor attachés to assist migrant workers resolve disputes.

Nepal’s current regulatory and policy framework does not specifically regulate the consular services that overseas missions must provide to Nepali citizens generally, or migrant workers in particular.

The Foreign Employment Act 2007 (FEA 2007) created the new position of labor attachés, and set forth in general terms their responsibilities, including research and advice to Nepal’s government regarding labor market opportunities in the destination country, and support to migrant workers. Importantly, this list include “assist[ing] in the resolution of

disputes” between workers and employers or agents, and also “counsel[ing] workers” (see Box 1), which could facilitate access to justice. It does not define these functions, however, leaving interpretation of services provided to the individual labor attachés and ambassadors. It also leaves open the question of responsibilities of embassies that do not have labor attachés.

As a result, different embassies prioritize different aspects of their work. Some within MoFA describe the primary function of embas-

Box 1: Functions, duties and powers of the Labor Attaché

Labor attachés are technical experts from the Ministry of Labor and Employment who are placed within foreign missions to undertake specific labor-related duties. Under Nepali law, the functions of labor attachés are:

- To give information to the Government of Nepal about the condition of labor and employment in the destination country, and steps taken by that country for the protection of labor and international human rights and interests of workers.
- To assist in the resolution of disputes between a worker and his or her employer institution or placement agency.
- To make necessary arrangements for bringing back to Nepal any worker who has been rendered helpless in the course of foreign employment.
- To facilitate the repatriation of deceased workers with the assistance of the concerned country or employer institution.
- To make efforts to enter into a bilateral agreement at the governmental level (where such an agreement does not already exist) for the supply of workers from Nepal.
- To counsel workers, and discourage them from engaging in work other than that set forth in their-foreign employment agreement.
- To supervise any activity that may affect workers.

Source: Section 68, Foreign Employment Act 2007.

sies as ‘economic diplomacy,’ while others place a higher priority on protection of migrant workers. The services provided by different embassies may vary based on the context of the destination country and the officials heading the embassy at any particular time. Similarly, the law does not explain coordination in case handling between individual embassies and the MoFA in Kathmandu, and between labor attachés, DoFE and the FEPB. Coordination, where it occurs, is done on an ad hoc basis.

4. Bilateral labor agreements do not address access to justice, and have not been effective mechanisms for ensuring redress and accountability on behalf of migrant workers.

Nepal has succeeded in signing one bilateral agreement and two memorandums of understanding for temporary labor migration with countries in the Middle East – Bahrain, Qatar and the United Arab Emirates (UAE). The three documents differ, but all have the broad objective of cooperation between the signatory countries on matters relating to sending and receiving Nepali labor migrants.

These agreements are not explicitly targeted at improving the treatment of migrant workers, however. Of the three, only the agreement with the UAE mentions migrant worker protection. Further, none of the agreements envisage any role specific to Nepali embassies or labor attachés abroad. In relation to access to justice, the agreements do specify recourse to the laws and institutions of the destination countries should a dispute arise between the worker and the employer or between the recruitment agency in Nepal and the employer/employer institution in the destination country. But, they do not include specific rights such as legal advice, translation of proceedings into a language that the worker understands or the ability to stay in the country for the duration of a legal case.

In practice, the experiences of Nepali embassy personnel suggest mixed experiences of using these agreements. One former ambas-

sador noted that the agreement with Qatar was useful in negotiations with officials at the Ministry of Labor. Others, however, noted that knowledge and understanding of the agreements is low – they were negotiated behind closed doors and are not included in trainings. All agreed that the agreements are difficult for Nepal to enforce, both because of Nepal’s weaker bargaining power and because of the number of workers whose status is irregular, and who are assumed to be excluded from these agreements.

5. Embassies are providing ad hoc assistance to migrant workers with legal problems, but are unable to provide widespread assistance to access justice due to financial and human resources, and legal limitations.

Embassies are in fact assisting many migrant workers with legal claims, including referring them to the appropriate agencies in the destination country, negotiating with employers on a migrant worker’s behalf, for example, for the return of documents, and referring workers to affordable professional legal services. It should be noted, though, that no official data was available to confirm anecdotal reports of number and types of services provided to migrant workers.

The extent to which embassies can do this at current levels of resourcing is limited. Embassy staff described feeling overwhelmed by the large number of migrant workers approaching them for help. Most embassies had no more than six staff in total, including the ambassador and administrative staff, and few had legal specialists on their teams. In addition, in some Gulf countries, local authorities discouraged embassies from getting involved in disputes and demanded that all complaints be brought to domestic labor or criminal courts.

Accordingly, embassy staff described spending most time on core consular services, including replacing travel documents, and repatriating workers in distress or the remains



of deceased workers. Facilitating access to justice was not described as a core function.

Former embassy officials and labor attachés also noted inadequate training about assisting migrant workers prior to assuming their posts. They did not learn, for example, about the needs of migrant workers, the legal frameworks in Nepal and the destination countries governing labor and immigration, or the justice mechanisms in respective destination countries. They, therefore, experienced a steep learning curve in the first months in their positions.

Nepali networks and civil society organizations also provide some assistance to workers seeking to file complaints, translating for migrant workers who do not speak Arabic, and accompanying migrant workers to relevant government agencies. Again, however, these individuals do not appear to have legal training and so their assistance to access justice is largely practical in nature.

6. Nepali workers face numerous obstacles to seeking assistance to access justice abroad, and have mixed experiences of embassy assistance.

Although many migrant workers did seek embassy assistance, a number of them could not. The cited reasons included:

- Continuing lack of awareness of the embassy or the specific services that embassies could provide;
- Location of embassies in capital cities, often distant and physically inaccessible to workers spread across the country;
- Absence of labor attachés in two of the Gulf states (Bahrain and Oman), and absence of an embassy in Lebanon even though the latter has a significant number of Nepali female migrant workers.
- A lack of formal coordination in case handling between individual embassies and the MoFA in Kathmandu, and between labor attachés, DoFE and the FEPB.

Those that did reach the embassy had

mixed experiences. Where migrants' problems required traditional functions related to lost travel documents and returning the workers back to Nepal, migrant workers tended to be satisfied with the support they received.

“The embassy in Qatar helped me to file a case with the police when my passport was stolen by my agent. After the case was resolved, they made me a new passport and bought me a ticket to return to Nepal.”

However, migrant workers in need of legal advice and support to obtain remedies within the destination country gave mixed reports. Some noted that the embassy staff helped them negotiate with their employer. Others, however, said they were simply referred to other agencies. Migrants' experiences tended to depend greatly on the particular embassy and staff member with whom they met. Noting

Box 2: A Migrant Worker's Case while Seeking Justice in Qatar

The quarrel [with my sponsor] became very intense. I took legal steps. I stopped working and went to the embassy. I told my problem to the ambassador. He checked my visa and told me that I have a visa used for domestic workers, which I did not know about. I panicked then and cried. He told me to contact the Qatari Crime Investigation Department (CID) and they would send me back. I said that they will put me in jail and press charges. He told me to contact the CID and then he would do the follow-up. I went to the CID and they threatened [the employer] saying that since my contract is already over, the employer cannot stop me and should let me go. CID threatened him by saying that they will blacklist him if he does not come on track. After 10 days, the employer got me a ticket. I was deported and now I cannot go there for the next two years. The Nepal embassy did not provide me any real help. I did not do anything wrong for this. I feel I did not get justice.

Interview with migrant worker, focus group, Sinurjoda VDC, Dhanusha, August 20, 2012.

that most workers who have grievances while abroad come home without receiving any form of redress, some experts and migrant workers placed at least partial blame on ineffective or delayed embassy assistance.

Conclusion and recommendations for improving overseas assistance to support migrant workers' access to justice

Nepali embassies and labor attachés are an essential source of support to migrant workers while they are abroad. Awareness of embassies as a source of support is high, and migrants appear to trust that embassy officials can help them. Further, despite the absence of clear regulations, guidelines, training and resources, some embassy officials and labor attachés have been providing migrant workers with various forms of assistance to pursue legal claims, albeit on an ad hoc basis.

Providing legal support to their citizen migrant workers is a relatively new function for embassies, but given the dependence of migrant workers on Nepal's overseas missions, and the limited options available to migrant workers to seek justice independently, this brief recommends that Nepal's Ministry of Foreign Affairs take a stronger role in this regard, ideally in coordination with civil society groups and unions operating in destination countries. The authors recommend the following:

Amend the Foreign Employment Act 2007 and the Foreign Employment Regulations 2008 to clarify the responsibilities of Nepali embassies in relation to protection and support to migrant workers.

- Give embassies an explicit mandate to provide migrant workers whose rights have been violated with advisory support, legal aid, and assistance to access redress mechanisms of the destination countries.
- Clearly delineate the responsibilities and functions of Nepali embassy staff and labor attachés.

- Set standards for employer institutions permitted to recruit Nepali workers, against which a labor attaché must assess an employer or agency before it is allowed to recruit Nepali workers.

Create or strengthen supplementary mechanisms and guidelines to protect the interests of migrant workers and streamline overseas assistance.

- Develop country-specific guidelines and manuals for embassy staff and labor attachés regarding destination country legal systems and justice mechanisms and the procedures for accessing them.
- Provide detailed guidelines to embassies regarding the scope of assistance to be provided to migrant workers in destination countries in coordination with DoFE and the FEPB, and encourage each embassy to develop specific procedures for accessing the available redress mechanisms relevant to the jurisdiction in cooperation with civil society organizations in the destination country.
- In any new bilateral agreements with destination countries, seek to include key rights for migrant workers, particularly with respect to access to remedies.
- Work with other SAARC countries to develop regional rights-based, protection-oriented standards.

Encourage data collection and analysis at Nepali embassies to be shared across DoFE, embassies, police, other relevant government agencies and civil society organizations.

- Collect and centralize data from Nepal's embassies regarding types of complaints filed against parties in destination countries, services provided, and outcomes for migrant workers.
- Maintain an inter-agency database tracking complaints filed against specific employer institutions and employers, and use it to decide on the attestation of demand letters from employers/employer institutions, and



as a basis for DoFE approval of the labor permit. The database should also contain information from DoFE's complaint investigation process when migrant workers file claims in Nepal for harms suffered abroad.

Improve the capacity of embassy officials and labor attachés.

- Create a complaints-reporting service through existing or new hotlines for migrant workers free of charge in destination countries. Such a service should link workers to services and redress mechanisms in Nepal so that migrant workers are directed to services in a holistic manner while at the same time data on complaints are also collected and monitored.
- Provide comprehensive and country-specific training to all diplomatic staff regarding the rights and redress options for migrant workers before posting.
- Ensure that specific session(s) on the protection of migrant workers and their rights are a regular feature of training and orientations provided to embassy staff and labor attachés going to the Middle East and other labor-receiving countries.
- Ensure that specific gender-sensitive training is provided on the rights of female migrant workers and the barriers they face to accessing justice at home and abroad.

Expand consular resources and partnerships to improve assistance provided to migrant workers to access justice.

- Significantly increase resources for foreign embassies to assist migrant workers in distress, including increasing the number of labor attachés assigned to embassies within the Middle East, and posting of female labor attachés in every country where female migrant workers are present.
- Increase coordination between embassies, the MoFA, DoFE and the FEPB regarding the handling of transnational cases.
- Build on transnational models of assistance provided by civil society groups to increase support services to workers in destination countries.

Improve awareness of redress mechanisms and support services available to migrant workers while abroad.

- Increase outreach to workers and their families about support services and redress mechanisms available to migrant workers abroad.
- Develop materials and provide information to migrant workers in embassies about mechanisms for obtaining compensation and other remedies in Nepal, including documentation they should obtain before leaving the destination country.

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