



# Policy Brief

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## Migrant Workers' Recruitment in Nepal A Schism Between Law and Reality

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## Background

The labour migration process is a complex interaction of state and non-state actors. Among them, recruitment agencies and agents, in particular, help (aspirant) migrant workers navigate the pre- and post-migration process including but not limited to search for and access to employment abroad, job applications, and related paperwork in Nepal and in the destination country. In Nepal, a major labour origin country in South Asia, the role of private recruitment agencies (PRAs) and agents has been crucial in the labour migration recruitment phase.<sup>1</sup> PRAs serve as intermediaries between migrant workers and employers or recruitment/supply agencies abroad. There are also informal labour intermediaries that help to disseminate information on employment opportunities and often act as a bridge between PRAs and migrant workers.<sup>2</sup> These informal intermediaries are not recognised by law and involve a wide range of entities such as ‘sub-agents, sub-contractors, brokers or middlemen, traffickers, community members (teachers, friends, neighbours, and religious figures) and family members (parents, siblings, and relatives)’.<sup>3</sup>

While these formal and informal intermediaries perform crucial job-matching and recruitment functions in Nepal, there is widespread evidence of the prevalence of abusive and unethical recruitment practices in the labour migration recruitment industry.<sup>4</sup> As the supply of migrant workers far exceeds the demand, the resulting market-driven power asymmetry means migrant workers possess a weak bargaining power in the labour market. This lends itself to the possibility of rent-seeking behaviour by local recruitment compa-

nies as well as by employers in destination countries.<sup>5</sup> Specifically, migrant workers face misinformation with regard to the terms and conditions of employment and pay exorbitant recruitment fees, exacerbating their vulnerability to debt burden, human trafficking/smuggling and forced labour.

Government intervention is necessary in the labour recruitment industry due to the inherent power differentials in the business. In recognition of this asymmetry, the Government of Nepal (GoN) has introduced manifold measures to attempt to curb market dynamics that open up possibilities of exploitation. Initiatives taken by the GoN include: licensing of PRAs, ban on the use of agents for facilitation of labour migration,<sup>6</sup> and policies such as ‘free visa, free ticket’ and the ‘employer pays model’ that limit recruitment fees to nominal amounts, among others. The government has also enforced bans on domestic work for foreign employment as a means of intervention. Likewise, the government formed a Rapid Response Team (RRT) in 2021 to investigate and combat cases of fraud and unlawful activity in the foreign employment business.<sup>7</sup> The government has also developed the Foreign Employment Information Management System (FEIMS) to promote transparency by recording all data related to foreign employment services in the country in the platform.<sup>8</sup> Nepal is also a champion country of Objective 6 of the Global Compact for Migration (GCM): ‘facilitate fair and ethical recruitment and safeguard conditions that ensure decent work’.

In this policy environment, this brief looks at the recruitment process undertaken by Nepali migrant workers and analyses the effectiveness of various laws,

rules and restrictions enforced by the government. This brief is based on a larger study ‘Unscrupulous Recruitment and Precarious Employment of Nepali Migrant Workers: Findings from the Analysis of Data on PNCC’s Services’ conducted by the Centre for the Study of Labour and Mobility (CESLAM) in coordination with the Pravasi Nepali Coordination Committee (PNCC). The study is based on data gathered by PNCC during registration of grievances by migrant workers at the organisation, comprising a total of 15,340 cases since 2014.

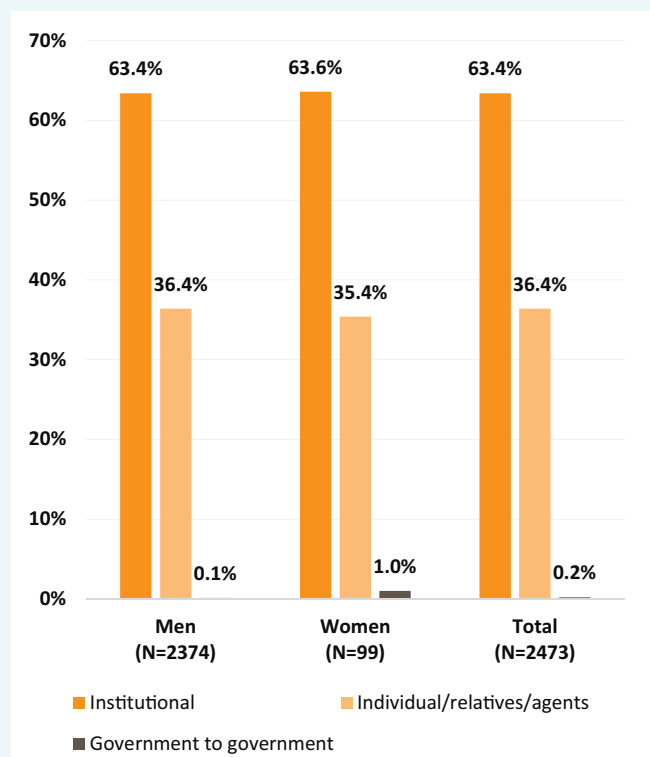
## Role of Intermediaries in the Recruitment Process in Nepal: Findings

### Agents: banned but still rampant

The GoN has banned the use of agents for recruiting workers for foreign employment through the amendment to the Foreign Employment Rules, 2008 in 2018.<sup>9</sup> The ban was intended to stop the involvement of agents in the recruitment of migrant workers and consequently minimise fraudulent activities. Concurrently, to ensure proper market penetration of PRAs, the government also allowed PRAs to open up branch offices outside the Kathmandu valley.<sup>10</sup> However, informal agents continue to be involved in the recruitment process in Nepal despite these initiatives. The data from the cases registered at PNCC shows that 36.4 per cent of migrant workers who registered cases between 2020 and 2022 had processed their migration on an individual basis or through relatives and/or agents (Figure 1).<sup>11</sup> The pervasiveness of agents has made access to justice difficult for migrant workers, as PRAs, when impli-

cated, have been able to deny involvement in cases lodged against agents.<sup>12</sup> This is because, in many cases, migrant workers have contact solely with agents, not PRAs. Additionally, migrant workers also refrain from registering their grievances related to recruitment fraud by agents as the latter are often someone they know.<sup>13</sup>

Figure 1: Entities who facilitated migration of Nepali migrant workers by sex



The ineffectiveness of the ban on agents could be due to multiple factors. One of the major reasons is the lack of market penetration of PRAs.<sup>14</sup> Only 30 out of 860 PRAs in Nepal have branch offices outside the Kathmandu valley. With labour migration from Nepal originating predominantly from the Madhesh and Koshi provinces, primarily from rural areas,<sup>15</sup> this lack of market penetration creates a void in terms of service delivery which is filled

by agents. Although the government has recently undertaken a spate of activities for the decentralisation and digitalisation of labour migration-related services,<sup>16</sup> the recruitment process still centres around Kathmandu. This attenuated presence of PRAs engenders opportunities for agents to stay relevant.

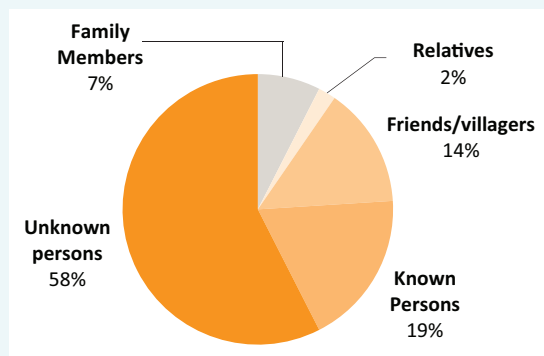
Another possible reason for the perpetuation of the use of agents by migrant workers is the various bans and restrictions introduced by the government on domestic work abroad. The 2015 Directive on the Management of Sending Domestic Workers for Foreign Employment established a minimum age of 24 to partake in domestic work as foreign employment for the Gulf Cooperation Council (GCC) countries, Lebanon, and Malaysia.<sup>17</sup> It also mandated a Bilateral Labour Agreement (BLA) or Memorandum of Understanding (MoU) with the destination country as an eligibility criterion.<sup>18</sup> In 2017, a blanket ban was introduced on undertaking domestic work as foreign employment in the Gulf countries.<sup>19</sup> However, despite such bans, socio-economic problems, particularly the lack of employment opportunities at home, drive Nepalis to migrate anyway – worse yet via irregular and potentially dangerous channels. Migration via irregular channels is largely facilitated by agents, either directly or through PRAs, and places agents as an intractable facet of the labour migration process from Nepal.

### Blurring of the lines between agents and social network

Data shows that 42 per cent of the informal agents were people known to the migrant workers (Figure 2). Theories of migration have posited that pioneering migration from a location can spur further migration

from the same place, facilitated by solidarity ties through social networks.<sup>20</sup> The corollary is that the legal mechanisms of the

Figure 2: Relationship with agents



government can be circumvented through the personal nature of the agency, blurring the lines between social networks and agents.

### Informal intermediaries and irregular migration

It is noteworthy that a large proportion of migrant workers, regardless of their choice of intermediary [or lack of it], did not have valid documentation for Nepal during the time of grievance registration, i.e., a labour permit. The proportion of migrant workers with valid documentation is higher for those who migrated through PRAs than for those who migrated individually or with the help of relatives or agents, although a large proportion of the former, at 22.2 per cent, did not have the necessary documentation as mandated by the GoN. This shows either that, although PRAs are being monitored by the GoN, they are still managing to send migrant workers abroad illegally in large numbers or that migrant workers are being rendered irregular by overstaying their permits, intentionally or unintentionally.

Table 1: Documentation status of migrant workers in Nepal at time of grievance registration

	Status of documentation	Men	Women	Total
Government-to-government	No	0.0	0.0	0.0
	Yes	100	100	100
	<b>Total %</b>	<b>100</b>	<b>100</b>	<b>100</b>
	<b>Total number</b>	<b>3</b>	<b>1</b>	<b>4</b>
Individual/Relatives/Agents	No	41.4	57.1	42.0
	Yes	58.6	42.9	58.0
	<b>Total %</b>	<b>100</b>	<b>100</b>	<b>100</b>
	<b>Total number</b>	<b>865</b>	<b>35</b>	<b>900</b>
Institutional	No	22.3	20.6	22.2
	Yes	77.7	79.4	77.8
	<b>Total %</b>	<b>100</b>	<b>100</b>	<b>100</b>
	<b>Total number</b>	<b>1,506</b>	<b>63</b>	<b>1,569</b>
Total	No	29.2	33.3	29.4
	Yes	70.8	66.7	70.6
	<b>Total %</b>	<b>100</b>	<b>100</b>	<b>100</b>
	<b>Total number</b>	<b>2,374</b>	<b>99</b>	<b>2,473</b>

### The ‘missing’ costs

The GoN has shown firm commitment to limiting the recruitment fees paid by migrant workers. The previously mentioned ‘free visa, free ticket’ policy and the adoption of the ‘employer pays’ model are emblematic attempts to minimise the excessive recruitment fees paid to PRAs and employers, and make migration more beneficial for migrant workers. The ‘free visa, free ticket’ policy requires employers in seven destination countries – Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, and the United Arab Emirates – to bear the costs of the visa and the round-trip air ticket, and allows PRAs to charge no more than NPR 10,000 as service charge. The recent bilateral labour migration agreements (BLMAs) signed by Nepal with four destination countries – Jordan, Malaysia, Mauritius and the United Arab Emirates (UAE) – have adopted the ‘employer pays’

model whereby the employer is mandated to cover the recruitment fees, airfare and other costs accrued by the migrant workers in their migration process.<sup>21</sup>

However, the recruitment fees paid by migrant workers show a different picture. Around 8 per cent of the migrant workers reported paying an exorbitant amount of more than NPR 200,000. Also, the majority of the migrant workers paid between NPR 80,000 and NPR 180,000 (Table 2). Disaggregated data on the average recruitment fees paid by migrant workers, with intermediaries engaged in the migration process, for the GCC countries and Malaysia show that even those migrant workers who used PRAs paid extremely high fees.

The pernicious aspect of the recruitment process is the exploitation of loopholes pre-

Table 2: Recruitment fees

Recruitment fees paid	Total (%)
Zero cost/Free visa free ticket	1.5
10,001–40,000	1.6
40,001–80,000	8.5
80,001–1,35,000	44.6
1,35,001–1,80,000	31.7
1,80,001–2,00,000	4.5
2,00,001–2,50,000	2.8
2,50,001–3,00,000	2.2
3,00,001+	2.7
<b>Total %</b>	<b>100</b>
<b>Total number (N)</b>	<b>2,567</b>

sent in the system. PRAs have been known to either blatantly ask migrant workers to sign false receipts of NPR 10,000—the amount mandated by the government—or take advantage of the information asymmetry and ask migrant workers to sign the receipt without clearly articulating its significance and purpose, and provide migrant workers with copies of the receipts only once the latter are at the airport and about to depart, to avoid any deliberation on the matter. This results in PRAs circumventing legal scrutiny as the receipts, when presented for obtaining labour approvals,

comply with the governmental limit.<sup>22</sup> This abuse of loopholes has resulted in a ‘missing’ costs phenomenon in the recruitment business with a wide divergence between the actual cost borne by migrant workers and what is officially documented. Only 6 migrant workers reported that they had received receipts of payment. This number is less than 0.3 per cent of the 2,567 migrant workers who were able to report the recruitment fees they had paid.

#### Close solidarity ties with agents did not necessarily decrease recruitment costs

Out of the six migrant workers who paid more than NPR 300,000, two had family members as agents, and one each had friends/fellow villagers and known persons. However, two cases with the highest recruitment fees where family members were listed as agents also showed the involvement of PRAs in the recruitment process. This could be indicative of a blurring of the line between agents and social networks as understood by aspiring migrant workers.

Table 3: Average recruitment fees by labour intermediaries engaged

	Individual/relatives/agents	Institutional	Total
<b>Qatar</b>	178,375	180,476	179,568
<b>Saudi Arabia</b>	161,833	175,894	173,785
<b>UAE</b>	536,541	196,359	305,809
<b>Bahrain</b>	N/A	147,500	147,500
<b>Kuwait</b>	N/A	203,333	203,333
<b>Oman</b>	20,000	170,000	151,250
<b>Malaysia</b>	107,500	241,528	212,391
<b>Total</b>	<b>343,747</b>	<b>193,109</b>	<b>227,510</b>

N/A: Not available.

Table 4: Recruitment fees by type of agents

Fees paid in NPR	Family member	Relative	Friend/ Villager	Known person	Unknown person	Total	
	%	%	%	%	%	Number	%
80,001–135,000	0.0	0.0	12.5	37.5	50.0	8	100
135,001–180,000	1.9	0.0	17.0	26.4	54.7	53	100
180,001–200,000	7.7	7.7	15.4	46.2	23.1	13	100
200,001–250,000	28.6	0.0	42.9	0.0	28.6	7	100
250,001–300,000	0.0	0.0	33.3	0.0	66.7	3	100
300,001+	33.3	0.0	16.7	16.7	33.3	6	100

## Recommendations

The findings from this study have, thus, highlighted the importance and need of informed, smooth and voluntary migration without cost incurred to migrants, easy access to foreign employment related opportunities for migrants, and fair and transparent recruitment processes. Based on the above discussion, the following recommendations are suggested.

### Effective monitoring and regulation of intermediaries

- Considering the continued role of agents or brokers in providing important services to migrant workers and the inaccessibility of aspirant migrant workers to opportunities for foreign employment, more deliberation is needed to determine whether they should be brought within the legal framework.
- Civil Society Organisations (CSOs) and trade unions should lobby for the government to extend efforts and devote more resources to ensure effective monitoring and regulation of labour migration intermediaries, including PRAs.

- It is necessary for the government to monitor PRAs more effectively to ensure they remain compliant with laws, rules and mandates on recruitment process and fees.
- It should be made mandatory for the employer to submit audit reports and salary sheets of Nepali workers it currently employs for demand assessment by the diplomatic missions and/or by the relevant agency of the government of the destination country while providing approval to the employer to bring in migrant workers.
- Similarly, the GoN should regularly update the list of blacklisted PRAs in FEIMS with access to the same provided to officials at diplomatic missions. The officials can then filter PRAs in the demand attestation phase.
- The GoN should push for the introduction of clauses in the BLMAs to remove or regulate agents and transform the current practice of the use of agents by employers in destination countries like Malaysia for recruitment of workers.

### Information dissemination and awareness raising

- Drawing on learnings, expand existing activities such as information dis-

semination, counselling and legal aid provided under the Safer Migration (SaMi) programme across the country and improve them. Services provided to migrant workers, aspirant migrant workers as well as their families through the SaMi programme should be further decentralised to the local level, while federal and provincial governments should help strengthen the capacity of local governments.

- The employment service centres (ESCs) should be provided with more resources to service migrant workers and their families. This could, among others, include information dissemination on available support services for complaint registration and employment schemes for returnee migrant workers.
- A public education and information programme should be developed by the GoN for prospective and aspirant migrant workers to guide and empower the latter to make informed decisions on foreign employment and other livelihood opportunities at home. Such programmes should also disseminate information on legal and safe migration routes, and fair and ethical recruitment including the use of agents or brokers.
- Labour migration is an integral part of the livelihood of many Nepali households. Hence, international migration can be included in the curriculum at secondary and higher school levels.

**Amendment, revision, formulation and effective implementation of laws and policies**

- The GoN should introduce a holistic migration policy which can address issues of internal and international migration beyond migration for employment. The Foreign Employment Act, 2007 should be amended and updated in light of changes in recruitment practices,

labour market dynamics and changing international frameworks.

- National and regional guidelines on fair and ethical recruitment should be developed in line with the GCM and within the framework of the ILO general principles and operational guidelines for fair recruitment.
- Equally important is defining and having common understanding of recruitment and other related costs as well as development of standard occupation contracts. CSOs and trade unions should advocate for such guidelines at national, regional and international forums such as the Colombo Process, the Abu Dhabi Dialogue, the International Migration Review Forum (IMRF), etc.
- The GoN should create a legislative environment to encourage and incentivise recruitment agencies practising fair and ethical recruitment and maintain a list of such agencies to be shared with employers and migrant workers.
- The GoN should initiate work with companies that are part of the Responsible Business Alliance (RBA), as they are more responsive to adopting fair and ethical recruitment, safe working conditions and labour rights protection.
- As migrant workers are found taking irregular routes to migrate abroad for employment, it is necessary that CSOs continuously highlight the reason behind this as it could not only be due to the existing bans but also due to other factors such as lack of effective monitoring of recruitment agencies and rampant involvement of agents.
- It is necessary to conduct objective review of existing migration-related services provided by the government such as the Pre-Departure Orientation Training (PDOT). In particular, it is important to make the PDOT country-



specific with regular revisions to reflect the changes in destination countries, and continue updating them on a regular basis.

### Active multi-stakeholder engagement and social dialogue

- Laws and policies should be informed by and formulated based on the whole-of-government and whole-of-society approach. Policy dialogues should be conducted with the involvement of CSOs, trade unions, migration and gender experts, among others. The GoN should engage with and consult a multi-stakeholder working committee periodically to review laws and policies and make recommendations for relevant amendments, improvements and better implementation.
- CSOs and trade unions can also regularly host multi-stakeholder dialogues and discussions on migration policies and programmes to foster an evidence-based, rights-based and gender-responsive approach to labour migration governance. Periodic consultations and dissemination of research and administrative data findings in collaboration with the concerned state and non-state actors in both national and regional platforms are also crucial for the mutual exchange of ideas and understanding of new developments in the sector.

### Research and evidence generation

- There is a need for generating more evidence and knowledge for a better understanding of the situation of migrant workers with regard to fair and ethical recruitment, especially of those in irregular situations. The GoN should invest in periodic migration surveys to provide a comprehensive overview of migration in Nepal. CSOs and trade unions should advocate for such surveys to be conducted periodically.
- Administrative databases of CSOs and trade unions generated while providing support and assistance to migrant workers, such as the one maintained by PNCC, have the potential to support evidence-based policy and complement existing data collected by different government agencies such as the National Statistics Office and the Department of Foreign Employment. The GoN should recognise the unique opportunity such administrative data provide and make use of them for guiding policy. CSOs and trade unions should also increase their administrative data sharing.

## Endnotes

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- 6 Foreign Employment Rules, 2008 (5th Amendment), s. 48.
- 7 DoFE, 'Important Notice on the Formation of a Rapid Response Team (RRT),' June 2, 2022, <https://dofe.gov.np/DetailPage.aspx/id/275/lan/nc-NP#lg=1&slide=0>.
- 8 MoLESS, *Nepal Labour Migration Report 2022* (Kathmandu: MoLESS, 2022).
- 9 Foreign Employment Rules, 2008 (5th Amendment), s. 48.
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- 11 The data does not differentiate between the three but the descriptions which accompany the cases show the use of informal agents is rife.
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- 13 Arjun Kharel, Sadikshya Bhattarai, Dogendra Tumsa, Shalini Gupta and Pawan Sen, *Migration Profile: Province 1 of Nepal* (Kathmandu: Swiss Agency for Development and Cooperation and Centre for the Study of Labour and Mobility, 2022).
- 14 Bandita Sijapati, Ashim Bhattarai and Dinesh Pathak, *Analysis of Labour Market and Migration Trends in Nepal* (Kathmandu: ILO, 2015); Arjun Kharel et al, 'Assessment of Outreach and Engagement with Prospective Migrants'.

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- 16 Ibid.
- 17 Bandita Sijapati and Amrita Limbu, *Governing Labour Migration in Nepal: An Analysis of Existing Policies and Institutional Mechanisms* (Lalitpur: Himal Books and CESLAM, 2017).
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- 20 Douglas S. Massey, 'Social Structure, Household Strategies, and the Cumulative Causation of Migration,' *Population Index* 56, no. 1 (1990): 3-26.
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- 22 Foreign Employment Act, 2007, s. 19.



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