

MIGRANT WORKERS' ACCESS TO JUSTICE SERIES

# Migrant Workers' Access to Justice at Home: **Nepal**

EXECUTIVE SUMMARY



Sarah Paoletti | Eleanor Taylor-Nicholson | Bandita Sijapati | Bassina Farbenblum



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For more about the Open Society International Migration Initiative, contact Elizabeth Frantz at: [elizabeth.frantz@opensocietyfoundations.org](mailto:elizabeth.frantz@opensocietyfoundations.org)

For more about the Migrant Worker Access to Justice Project, contact Sarah Paoletti at: [paoletti@law.upenn.edu](mailto:paoletti@law.upenn.edu)

Cover photo: Om Kumar Chaudhary, aged 23, fixes a goods lift on a construction site in Kathmandu, Nepal on 16 December 2013. He moved to Kathmandu to learn construction work in preparation for a job in Qatar. He currently earns \$180 dollars a month but expects to earn more than double that amount in Qatar. Photo credit: © Narendra Shrestha/EPA.

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# Migrant Workers' Access to Justice at Home: Nepal

**Sarah Paoletti**

University of Pennsylvania

**Eleanor Taylor-Nicholson**

University of New South Wales

**Bandita Sijapati**

Centre for the Study of Labour and Mobility

**Bassina Farbenblum**

University of New South Wales



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# Executive Summary

## I. Overview

Every month, nearly 16,000 Nepalis travel to the Gulf States for temporary work, and thousands more go to other countries in the Middle East. Much attention has been directed to the exploitation of low-wage migrant workers in the Middle East, where harms are commonplace and severe, and access to justice is limited. But the story of labor migration also begins and ends at home. Migrant workers commonly encounter a range of abuses during their recruitment in Nepal which makes them more vulnerable to exploitation abroad.

Based on a two-year empirical study, this report provides the first comprehensive analysis of the Nepali mechanisms that regulate labor migration, and provide redress to migrant workers who experience harms during recruitment and throughout the migration process. The study finds that despite Nepal's efforts to protect migrant workers, it is generally failing to hold private recruitment companies and agents accountable, and the vast majority of migrant workers are unable to access justice in Nepal or abroad.

The report reveals that, with some notable exceptions, the law that governs recruitment and placement of Nepali migrant workers is relatively robust, but its implementation and enforcement are weak. The report examines in detail each of the mechanisms that Nepal has established to enable workers to access compensation and other forms of justice when their rights are violated, and makes findings on the governance, operation, and effectiveness of each mechanism. The report also provides detailed recommendations for improvement, many of which could be implemented in the short to medium term.

This report is the second in the Open Society Foundations' Migrant Workers' Access to Justice Series. The first report, *Migrant Workers' Access to Justice at Home: Indonesia*, was published in 2013.<sup>1</sup>

## II. Nepali Workers to the Middle East and the Importance of Access to Justice at Home

The past decade has seen an exponential increase in the number of Nepali migrant workers abroad and Nepal now sends the most workers abroad per capita in Asia. Labor migration is central to the economy of Nepal; remittances account for over 25 percent of Nepal's GDP,<sup>2</sup> and almost half of all households have at least one family member who is currently working or has previously worked abroad. In 2011, there were an estimated 722,000 Nepali migrant workers in the Middle East. The majority of Nepalis traveling to the Middle East for work are male, due in part to restrictions on migration of young women to the region. However, women continue to travel to the Middle East in significant numbers, primarily for domestic work, and often through irregular channels.

Nepali migrants, as with other migrant workers in the region, suffer particularly high levels of abuse and exploitation. Routine harms include contract substitution and fundamental changes in the nature or conditions of work, non-payment of wages, unsafe work conditions, inadequate rest, inhumane housing conditions, and confiscation of identity documents. In more serious cases, migrant workers suffer verbal, physical and sexual abuse. Hundreds of workers die while working abroad each year, often from work-related causes. Women are particularly vulnerable to serious abuse for reasons of gender discrimination, the isolated nature of their work in private homes, and irregular status. In some cases, abuses amount to labor trafficking, forced labor, and debt bondage. Few low-wage migrant workers can access compensation or other remedies for these violations while working in the Middle East.

Vulnerability to exploitation abroad is often heightened by routine violations committed in Nepal during the pre-departure phase by individual agents, recruitment agencies, and other private actors. These include misrepresenting the nature and terms of work available, overcharging on recruitment fees, delaying or cancelling departures,

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1. *Migrant Workers' Access to Justice at Home: Indonesia*, Bassina Farbenblum, Eleanor Taylor-Nicholson, Sarah Paoletti (2013), available at: <http://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf>.

2. The World Bank. Data: Personal Remittances, Received (% of GDP). <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>.

and failing to provide workers with correct pre-departure documents, including receipts and contracts of employment and recruitment. These abuses persist due to a lack of transparency, government oversight, and accountability in the private recruitment and placement of migrant workers—which also undermine workers’ ability to access justice for these harms.

### III. Improving Migrant Workers’ Access to Justice in Nepal

Nepal has significantly strengthened its governance of labor migration with the introduction of a new Foreign Employment Act in 2007 and Rules in 2008, and recently, the Foreign Employment Policy 2012. The act also established two mechanisms through which migrant workers can file criminal complaints against recruitment agencies and individual agents: a complaints investigation unit within the Department of Foreign Employment (DoFE), and a Foreign Employment Tribunal. These mechanisms operate alongside compensation schemes for death and permanent disability (under private insurance and the state-administered Foreign Employment Welfare Fund), the Nepali courts, support from civil society groups, and informal local justice mechanisms. Nepal’s embassies also assist workers abroad.

DoFE and the tribunal have the potential to enable significant numbers of migrant workers to obtain compensation from recruitment companies and agents, but are failing to do so. Of the 54 migrant workers interviewed for this study, none had obtained full redress through these mechanisms. This is partly due to structural and operational challenges discussed in detail in the report, and partly to barriers to access common to many justice mechanisms in Nepal: centralization of institutions in Kathmandu; inadequate resourcing and training of officials; failure to accommodate the socio-economic realities of Nepali migrant workers, particularly of women, irregular migrant workers and minorities; lack of awareness and understanding of legal rights and redress processes among workers and their families; lack of documentation to support claims; threats to workers and fear of retaliation by recruitment agencies and other defendants for filing cases; and weak governance and accountability.

The Nepali government and legislature can improve governance and oversight of labor migration and migrant workers’ access to justice by:

- Recognizing prospective, current and former migrant workers as rights holders, with defined enforceable rights and associated remedies (a ‘rights-based approach’).

- Improving oversight of the pre-departure phase of labor migration, particularly provision of appropriate contracts to workers.
- Improving monitoring, transparency and accountability in the regulation of recruitment agencies and individual agents.
- Providing stronger protections and remedies for migrant workers who suffer severe abuse, exploitation, debt bondage or trafficking.
- Ensuring enforceable rights and remedies for workers in an irregular status.
- Improving protections and rights enforceability for female migrant workers.

The Nepali government can improve the operation and effectiveness of redress mechanisms through:

- Decentralizing redress mechanisms and other essential labor migration services.
- Increasing resources, expertise, transparency, accountability, and efficiency within DoFE and the tribunal.
- Streamlining the handling of cases against individual agents to achieve more timely adjudication and payment of compensation.
- Improving inter-agency and civil society coordination and data-sharing.
- Improving embassy support for migrant worker rights enforcement in destination countries.
- Expanding access to the Foreign Employment Welfare Fund for all migrant workers, including those in an irregular status, and for harms beyond death and permanent disability.
- Improving the reach of pre-departure orientation programs and the scope of information provided to include coverage of legal rights and processes for seeking redress.

Nongovernmental actors can play a significant role in the development of programs, services, and strategies to improve migrant workers' access to justice. The donor community can also support reform and access to justice for migrant workers by funding and providing technical expertise in the development and implementation of data-collection, record keeping, case management systems, and related IT infrastructure, for example, as well as further targeted studies.



## IV. Conclusion

Nepal has taken significant steps toward improving governance of labor migration and migrant workers' access to justice, but justice still remains elusive for the vast majority of Nepali migrant workers who encounter harms pre-departure and while abroad. Concrete reforms can be made to the content, implementation, and enforcement of Nepali laws and procedures that will improve both migrant worker protection and access to justice in the short and long term. Reform initiatives should be developed in close consultation with civil society representatives and migrant workers, and implemented with the goals of furthering transparency and accountability and ameliorating barriers to accessing justice.

Countries of origin, and the various stakeholders within them, have much to learn from each other's efforts (and failures) to address these challenges. It is hoped that this report on Nepal, as with the earlier report on Indonesia, provides an empirical basis for those discussions, as well as an evidence-based foundation for advocacy, changes to policies and procedures, and legal reform within Nepal. It should also prove useful as a manual to enable Nepali civil society to better understand, use, and test existing justice mechanisms.

The complete *Migrant Workers' Access to Justice at Home: Nepal* report is available as a pdf on the websites of

the Open Society Foundations  
([www.opensocietyfoundations.org](http://www.opensocietyfoundations.org)),

the Migrant Worker Access to Justice Project  
([www.migrantworkerjustice.org](http://www.migrantworkerjustice.org)),

and the Centre for the Study of Labour and Mobility  
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# Open Society Foundations

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

[www.opensocietyfoundations.org](http://www.opensocietyfoundations.org)

## Migrant Worker Access to Justice Project

This report was produced by the Migrant Worker Access to Justice Project. The Project examines and seeks to strengthen the legal frameworks that underpin low-wage labor migration, so as to better protect the rights of migrant workers and ensure redress for workers whose rights are violated. It is currently focused on the under-examined role of countries of origin in ensuring justice for labor migrants and private sector accountability, with a focus on the Asia-Middle East corridor.

The Migrant Worker Access to Justice Project is an applied research collaboration between law professors at the University of New South Wales Law School and the University of Pennsylvania Law School, who work closely with local partners in South and South East Asia. It is led by Bassina Farbenblum (Director of the Australian Human Rights Centre's Migrant and Refugee Rights Project, and the Human Rights Clinic at UNSW Law), Eleanor Taylor-Nicholson (Fellow of the Australian Human Rights Centre at UNSW), and Sarah Paoletti (Director of the Transnational Legal Clinic, Penn Law School).

[www.migrantworkerjustice.org](http://www.migrantworkerjustice.org)

## International Migration Initiative

The International Migration Initiative (IMI) designs and supports initiatives to reform the most abusive aspects of the migration process. The program organizes its work around migration corridors, pursuing coordinated action in countries of origin, transit, and destination. IMI seeks to achieve two specific goals: (1) that labor migration is a safe, just, and non-exploitative process, and (2) that laws, policies, and practices do not discriminate against migrants or violate their rights. To achieve these, IMI targets employment practices and recruitment systems to improve labor protections, migration enforcement policies to reduce rights violations by ensuring that immigration and border controls comply with human rights norms, and governance structures to establish systems that more effectively protect the rights of migrants. IMI draws on the experience and activism of grassroots organizations while simultaneously and vigorously engaging with policymakers and political leaders.

[www.opensocietyfoundations.org/about/programs/international-migration-initiative](http://www.opensocietyfoundations.org/about/programs/international-migration-initiative)

## Centre for the Study of Labour and Mobility (CESLAM)

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.

[www.ceslam.org](http://www.ceslam.org)

Much attention has been directed to the exploitation of low-wage migrant workers in the Middle East, where harms are commonplace and severe, and access to justice is limited. But the story of labor migration begins and ends at home. The vulnerability of Nepali migrant workers to exploitation abroad is heightened by routine misconduct committed in Nepal during the pre-departure phase by individual agents, recruitment agencies, and other private actors.

*Migrant Workers' Access to Justice at Home: Nepal* is the first comprehensive analysis of the Nepali mechanisms through which migrant workers may seek remedies for harms suffered during recruitment or while working in the Middle East. The study finds that despite Nepal's efforts to protect migrant workers, it is generally failing to hold private recruitment companies and individual agents accountable, and the vast majority of workers remain unable to access compensation or other forms of justice in Nepal or abroad. The study reveals that the laws that govern recruitment and placement of Nepali migrant workers are relatively robust, but their implementation and enforcement are weak.

*Migrant Workers' Access to Justice at Home: Nepal* aims to improve this situation by identifying clear pathways to improving the governance, operation, access and effectiveness of each of Nepal's redress mechanisms, and to more effective regulation of migrant worker recruitment. The report presents detailed and empirically based recommendations for government and other stakeholders that can be implemented in the short- and medium-term, emphasizing the need for a rights-based approach that treats workers as holders of defined, enforceable rights.

*Migrant Workers' Access to Justice at Home: Nepal* will be relevant for other countries of origin in Asia and globally who have much to learn from each other's efforts to address these common challenges. It also provides much-needed guidance for Nepali civil society to better understand, use, and test migrant worker justice mechanisms at home.

