

NEPAL<sup>1</sup>



## LEGAL FRAMEWORK

The Foreign Employment Act 2007 created the structure for complaint mechanism management to address problems encountered by Nepalese migrant workers. The Department of Foreign Employment (DOFE), under the supervision of Ministry of Labour and Employment (MOLE), is responsible for the complaint mechanism management.

The Foreign Employment Act 2007 and accompanying rules (2008) specify a mechanism to receive, investigate and adjudicate complaints as well as a tribunal to settle cases and penalize perpetrators (MOLE, 2016). The act has a mandatory provision that migrants must fulfil to receive labour permits in the form of stickers placed in passports.

## LEGAL AND INSTITUTIONAL FRAMEWORK

- [\*Foreign Employment Act, 2064 \(2007\)\*](#)
- [\*The Foreign Employment Regulation, 2064 \(2008\) Amendment \(2017\)\*](#)
- [\*Foreign Employment Policy 2068\*](#)
- [\*Ministry of Labour and Employment \(MOLE\)\*](#)
- [\*Department of Foreign Employment \(DOFE\)\*](#)
- [\*Foreign Employment Tribunal \(FET\)\*](#)
- [\*Foreign Employment Promotion Board \(FEPB\)\*](#)

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<sup>1</sup> This section received extensive inputs from IOM Nepal.

**Table 1: Foreign Employment Act 2007**

Section	Provision	Reference
17:	<i>(2) If a complaint is made by any person or the DOFE receives information in any manner that any irregularity has occurred in the preparation of a selected workers list pursuant to sub-section (1), the DOFE may immediately make a necessary inquiry thereinto and if in making such inquiry, it appears that any irregularity has occurred as mentioned in the complaint or petition, the DOFE shall give order to immediately stop all acts relating to the selection of workers.</i>	<p><i>(3) Notwithstanding anything contained in sub-section (2), the DOFE shall not give prior approval to select workers under any of the following conditions:</i></p> <ul style="list-style-type: none"> <li><i>(a) Terms and conditions of service and facilities are not satisfactory in proportion to the qualification of the worker demanded by the employer institution</i></li> <li><i>(b) Proposed foreign employment could have an adverse effect on the dignity, prestige or health of workers</i></li> <li><i>(c) Inappropriate from a security perspective</i></li> <li><i>(d) Other conditions as prescribed</i></li> </ul>
<b>Foreign Employment Rules</b>		
<i>3: Criteria for selection of institution</i>	<i>In case a request is made to the Government of Nepal to select and send workers pursuant to Section 5 of the act, the Government of Nepal may select an institution based on the grounds set forth in 'schedule 1' and send workers through such institution.</i>	<i>Schedule 1 (b) Status of implementation of direction given by the DOFE on complaints made in relation to selection of workers</i>
<i>17: Provisions relating to labour stickers</i>	<i>(e) Status of implementation of direction given by DOFE on complaints made in relation to selection of workers</i>	

Source: [Foreign Employment Act, 2007 \(2064\)](#)

Furthermore, the Foreign Employment Policy 2012 (2068<sup>2</sup>) sets out policy guidance with regards to legal remedies.

<sup>2</sup> The official calendar in Nepal called the Bikram Sambat or Vikram Samvat calendar.

**Table 2: Legal provisions specified in Foreign Employment Policy 2012 (2068), Foreign Employment Regulation Amendment (2017)**

Section	Contents
9.2.3: Security on the job	Foreign Employment Welfare Fund <sup>3</sup> shall be mobilized to arrange legal assistance, emergency health services and rescue activities through diplomatic missions
9.3: Ensure a simple, transparent, reliable, organized and safe foreign employment-related process	Non-residential Nepalese, particularly where there is no Nepali mission present, shall be mobilized to support legal remedies, emergency support and rescue of Nepali workers
9.4: Address female worker labour market concerns and ensure their rights in the migration cycle	Effective legal and institutional mechanism shall ensure rights of female workers by eliminating discrimination and violence against women at the time of labour migration
9.5: Ensure good governance in foreign employment management	Foreign employment-related issues shall be incorporated on the legal and policy-wise training of local authorities
	Free legal aid counselling and prevailing legal aid service for foreign employment-related complainants shall be strengthened and foreign employment-related complaint procedures decentralized
	Small-scale foreign employment-related issues and compensation shall be settled through alternative dispute resolution (ADR) procedures. For this, foreign employment-related prevailing laws shall be reformed

Source: [Foreign Employment Policy 2012](#)

## COMPLAINT CHANNEL

Migrants can lodge grievances, with the Complaint Registration and Investigation Section of DOFE (MOLE, 2016) against recruitment agencies or employers. Migrant workers can also lodge complaints at Nepal's main international airport in Kathmandu to document concerns that arise during transit.

Migrant workers and their families can reach out to MRCs of Nepal when problems are encountered in destination countries. MRCs coordinate with the Foreign Employment Promotion Board,<sup>4</sup> which refers cases to labour attachés in destination countries. Furthermore, MRC counsellors provide coordination and referral services to assist in repatriating the remains of deceased workers upon a request from family members. MRCs also provide information and assist returnees with work-related disabilities and families of deceased workers in collection of relevant documents required by the Foreign Employment Promotion Board for compensation of claims.

<sup>3</sup> This fund includes services such as bearing medical treatment costs of workers or their immediate family members and providing skill training to more individuals wishing to work in foreign job destinations.

<sup>4</sup> Foreign Employment Promotion Board is headed by the Minister of Labour and Employment and is represented by high-level officials, foreign employment practitioners, trade unions, foreign employment experts and entrepreneurs in international labour migration. The board promotes foreign employment and makes efforts to promote the rights of Nepalese migrant workers.

## DESTINATION SIDE

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Labour attachés are deputed at Nepali Diplomatic Missions in key migrant labour destination countries to facilitate redress of labour migrants' grievances (MOLE, 2016). **IN THE CASE OF COMPLAINTS RELATED TO COMPANIES IN DESTINATION COUNTRIES OR RECRUITMENT, THE EMBASSY PROVIDES LEGAL SUPPORT OR REFERS COMPLAINANTS TO DOFE, RESPECTIVELY.**

Nepal's MOUs and BLAs with destination countries have provisions to form technical committees. For instance, in an agreement with Qatar, there is a provision for a technical committee to be formed by both governments and meet annually to identify problems, summarize and present to respective governments for consideration and appropriate action.

## DATA MANAGEMENT

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DOFE installed a computerized system in 2014 for data management. DOFE maintains a database of foreign employment complaints and resolved cases (MOLE, 2016).

## INITIAL RESOLUTION

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Nepal has a special investigative unit reporting to DOFE, the 'Complaints Registration and Investigation Section', authorized to make orders and impose penalties against public recruitment agencies, make referrals to the police to address illegal practices or to the 'Foreign Employment Tribunal' (IOM and ADB, 2015). This unit investigates workers' complaints against agencies or agents and initiates prosecutions if warranted. The investigation officer first sends a letter to the company outlining the alleged offence and requests a representative to attend an interview. For cases deemed genuine, the officer will calculate the level of compensation a recruitment agency is liable to pay the worker. The unit has a lawyer who is granted with the power to investigate alleged crimes under the Foreign Employment Act, including instructing the police to make arrests (IOM and ADB, 2015).

The findings and recommendation are sent to the District Attorney General's Office, where the merits of a case are reviewed and a final recommendation is made on whether it could be resolved through mediation, low-level sanctions or be referred to the Foreign Employment Tribunal for criminal disposals. The tribunal is an independent court established in February 2010 through the MOL-Nepal (MOLE, 2016)

Most BLA, MOUs and employment contracts prescribe a specific dispute settlement mechanism. Domestic workers' contracts contain a paragraph stating any dispute between employers and workers should be settled amicably.

## SECONDARY RESOLUTION

In Nepal, complaint resolution is under the purview of the Foreign Employment Tribunal for complaints filed by aggrieved migrant workers under the Foreign Employment Act 2007 (MOLE, 2016). DOFE forwards complaints from workers to the tribunal for investigation. It attempts to settle cases other than those punishable by the DOFE as per the Foreign Employment Act 2007. The department cannot make decisions on individual cases and must refer to the tribunal. The tribunal should hand down verdicts within 90 days (MOLE, 2016).

The Foreign Employment Promotion Board was created through the Foreign Employment Act 2007 and advises on foreign employment policies, manages the Foreign Employment Welfare Fund, conducts skills training and pre-departure orientation with provision of information and services to migrants.

In case of complaints received are against the Foreign Employment Act 2007, DOFE designates investigations. Table 13 describes Section 61 of the act, on the scope of investigations into alleged offences relating to foreign employment.

**Table 3: Investigation and Inquiry of Offences relating to Foreign Employment**

<i>Section</i>	<i>Provision</i>
<i>61: Investigation and inquiry of offence relating to foreign employment:</i>	<i>(1) If the DOFE receives information directly or indirectly upon a complaint made by any person or in any other manner that any offense has been or is to be committed in contravention of this act, the DOFE may designate any officer of at least Gazetted Third Class as the investigation officer for an inquiry into such offence.</i>
	<i>(2) In making an investigation of an inquiry into any offense pursuant to Sub-section (1), the investigation officer shall have the same powers as the police in prevailing laws, which include powers to arrest the person involved in the offense, search any place in relation to the offense, take custody of documents or other things related to the offense, record depositions and execute recognizance deeds.</i>
	<i>(3) In conducting investigations into any offense pursuant to sub-section (2), the investigation officer may get the accused to make deposition and in the event that the immediately available evidence constitutes sufficient grounds to show the accused as offender, get the accused to appear on the appointed dates, assigning the reasons for the same or release the accused.</i>

Source: [Foreign Employment Act, 2064 \(2007\)](#)