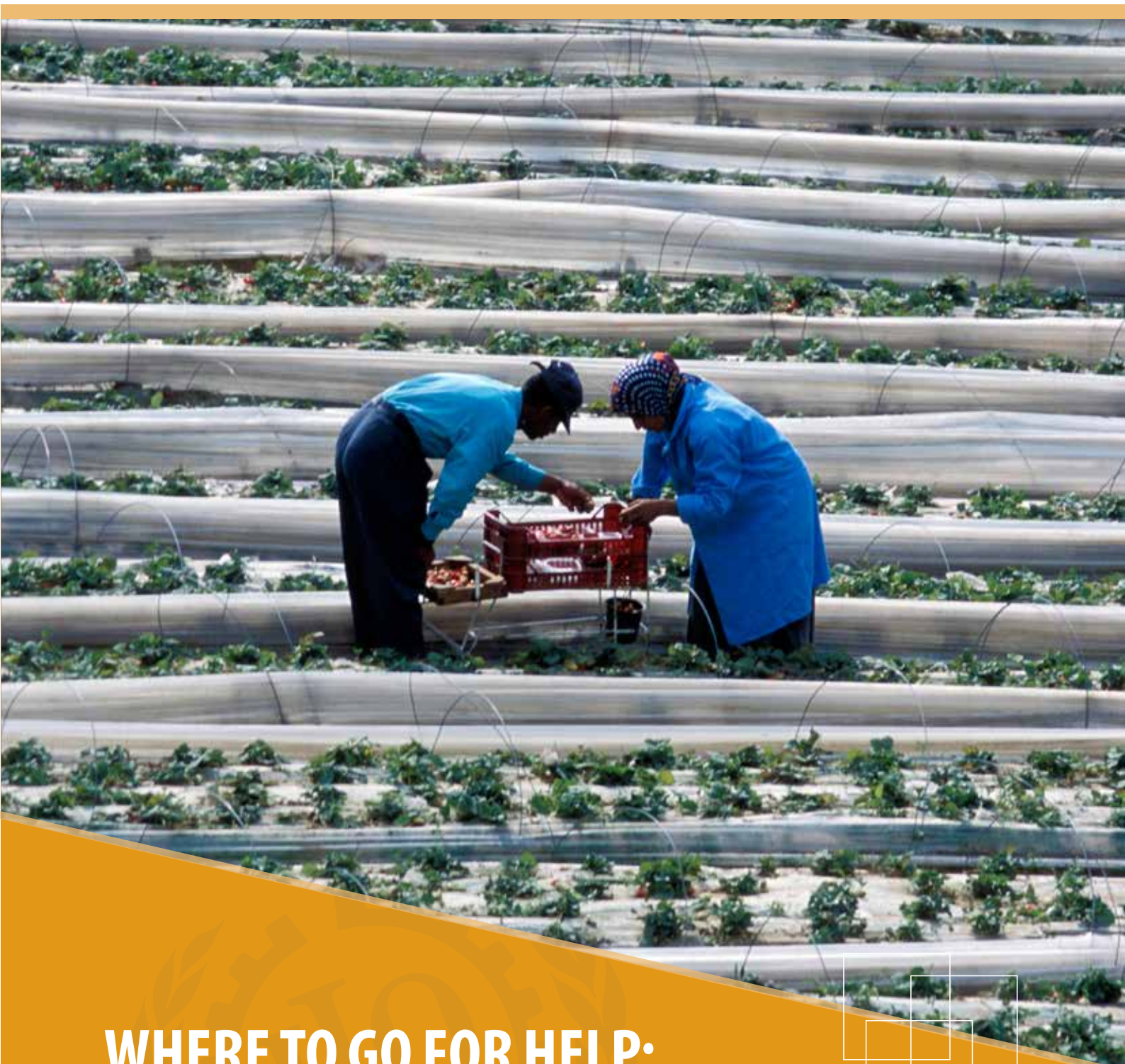




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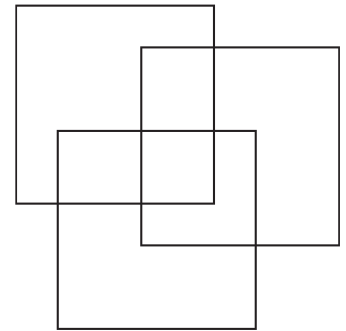
Pakistani migrant workers' access to justice at home and in Gulf Cooperation Council countries





WHERE TO GO FOR HELP:

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Foreword

Every day, around 3,000 workers leave Pakistan in search of employment opportunities abroad, largely because low-skilled options for decent work at home are in short supply. Around 97 per cent of them end up in a Gulf Cooperation Council country, primarily Saudi Arabia and the United Arab Emirates.

Unfortunately, many of them will experience various forms of abuse or exploitation prior to their departure and/or in the destination country, such as extorted migration fees and non-placement (after paying the fees). In the destination country they may not receive their salary, have their documents withheld or their contract substituted for one with unfair terms and conditions. They may experience physical or sexual abuse or have to endure degrading living conditions.

Only a few victims of foreign employment-related abuse or exploitation seek justice. Filing a complaint, either in Pakistan or where the grievance took place, can be formidably challenging. Many migrants are discouraged from pursuing a complaint against their employer and/or recruitment agency or agent. Even when they successfully register a complaint, some are left with an unresolved case or an unfavourable outcome.

This study was initiated to understand the situation of accessing justice in Pakistan and in Saudi Arabia and the United Arab Emirates. The study examined factors preventing migrant workers from registering a complaint and the accessibility and effectiveness of the grievance-handling mechanisms available. The study identified bottlenecks in the grievance-handling process and potential ways to improve it to provide a speedy, accessible, less costly and just remedy to migrant workers.

The survey was conducted under the International Labour Organization's European Union-funded South Asia Labour Migration Governance Project. I am grateful to the authors of this report, the International Research Institute team and Lubna Shahnaz. I also thank Anna Engblom, ILO Country Office for Nepal, and Sadia Hameed, ILO Country Office for Pakistan, who conceptualized and managed the research project.

Ingrid Christensen

Director

ILO Country Office for Pakistan



Executive Summary

According to the Bureau of Emigration and Overseas Employment (BEOE), some 8,598,000 Pakistani workers went abroad for employment between 1971 and 2015, the vast majority of them (96 per cent) going to a Gulf Cooperation Council (GCC) country. The largest outflow of migrant workers was to Saudi Arabia (at 50.3 per cent), followed closely by the United Arab Emirates (at 32.9 per cent). Female migrants constituted only a negligible portion (less than 1 per cent) of the total labour migrant population.

Using the BEOE categorization of skills levels, the majority of the nearly 1.4 million workers who went to GCC countries during this period were in the low-skilled category (41 per cent), followed by skilled workers (39 per cent) and those in the semi-skilled category (16 per cent). A small proportion of workers were in the highly skilled or highly qualified categories.

Labour migration generates substantial benefits for countries of origin and destination. It also involves a range of abuse and exploitation. Before departing Pakistan, many migrant workers are subjected to exploitation in the recruitment process by a subagent or licensed recruitment agency. This can entail non-placement after taking money from prospective migrants, hiding the contract terms and conditions and/or false information on the visa category or about the job. At the country of destination, many Pakistani migrant workers are denied their fundamental rights at work, including freedom of association, and the right to collective bargaining. Many experience non-compliance with the salary or other financial commitments outlined in their employment contract (foreign service agreement); many are forced to sign a new contract that specifies lower wages, different working and living conditions and/or reduced employment benefits than what was in the initial agreement. Many experience non-compliance with the local labour laws. In the worst cases, they fall victim to forced labour. Changing the visa (for a different job) or sponsorship is a challenge due to delays in obtaining the required release letter from their initial employer. The kafala, or sponsorship, system prevalent in Saudi Arabia and the United Arab Emirates as well as in all GCC countries ties migrant workers to their employers and impedes access to justice because migrant workers' legal status lies in the hands of the sponsor.

The research and analysis presented in this report look at the options available to Pakistani migrant workers to access the justice system in either Pakistan or their country of destination to redress an employment-related grievance. The host country focus in the report is primarily Saudi Arabia and the United Arab Emirates because they are the most common destinations for Pakistani migrant workers. The report examines the channels through which migrant workers can seek justice for recruitment- and placement-related violations. It discusses the challenges that migrants usually experience in securing their rights through the judicial system. Recommendations for the Government of Pakistan and institutions involved in the migration process are included as suggested options for minimizing the challenges migrant workers usually encounter.

In Pakistan, the Emigration Ordinance, 1979 provides the legal framework for safeguarding the rights of migrant workers and regulating the activities of public and private overseas employment promoters. The Ordinance is made operational through the Emigration Rules, 1979, which outline the roles and responsibilities of various institutions involved in regulating overseas employment and safeguarding the rights of migrant workers. The process of licensing and regulation of overseas employment promoters, the course of action to be adopted in case of any malpractice and to redress complaints against employment promoters and employers are outlined in the Rules. The Rules define the role of the BEOE Director General and the Protector of Emigrants (POE) as regulators as well as the community welfare attachés in Pakistani embassies who are responsible for the welfare of migrants in host countries. Some migrant workers' grievances are addressed under the Federal Investigation Agency Act, 1974, which mandates the Federal Investigation Agency to investigate the offences that are punishable under the Emigration Ordinance.

There are a number of channels or mechanisms to register an employment-related complaint in Pakistan, regardless of where the grievance occurred. The BEOE, along with the seven POE Offices working under the administrative control of the Ministry of Overseas Pakistanis and Human Resource Development (MOPHRD), form the backbone of the grievance redress system. Their work is complemented by other mechanisms available to migrant workers for registering complaints and seeking justice:

1. Overseas Pakistanis Commissioner within MOPHRD
2. Policy Planning Unit within MOPHRD
3. Director General or Deputy Director in charge of complaints, BEOE
4. Protector of Emigrants in seven regions across Pakistan, BEOE
5. Overseas Complaints Cell within the Federal Investigation Agency
6. Expatriate Pakistani Complaint Wing within the Supreme Court of Pakistan
7. Grievance Commissioner Overseas Pakistanis within the Federal Ombudsman's Office
8. Complaint Cell within the Overseas Pakistanis Foundation
9. Complaint Cell within the Overseas Employment Corporation.

These institutions handle complaints of migrant workers through online and in-person (or mailed-in) complaint registration mechanisms. However, the complaint system does not have a consolidated database, no coordination among the many mechanisms, and there is duplication in the work and role of various institutions.

Within GCC countries, the legal rights and remedies available to migrant workers are outlined in the national labour laws. In practice, the process usually starts with a Pakistani migrant worker filing a complaint with the Pakistan embassy (or mission) in the host country. The community welfare attachés placed with the Pakistani embassies typically receive such complaints. The community welfare attachés (or other staff of the embassy or mission) refer the migrant worker to the relevant office within the host country's labour ministry. This office should typically work to resolve labour problems by direct contact with employers. If an employer fails to address the demands articulated by the government labour officer, the case is referred to the labour court. The ministry of interior (or equivalent) gets involved in cases related to irregular migrants and cases involving change of sponsorship that did not follow the proper procedure.

Such issues can be managed under well-designed memoranda of understanding (MOUs) and bilateral agreements, and joint working groups that support their effective implementation. The Government of Pakistan has entered into a number of MOUs or agreements with destination countries, but because these are treated as confidential, it is not possible to assess to what extent they cover issues on dispute settlement.

The primary service providers for registering migrants' complaints and investigating – the POE and community welfare attachés – are overburdened and lack the necessary support infrastructure to tackle the issues of a large number of Pakistanis migrating to GCC countries. Many institutions handling complaints do not systematically keep the data on those complaints. The lack of consolidated data deters policy makers and advisors from looking into the problems and suggesting solutions.

Lack of information or awareness among migrant workers or prospective migrant workers about the migration process and fees and inadequate pre-departure briefing system adds to their problems. There is urgent need to devise separate and specific standard operating procedures for the departments handling complaints of migrant workers. Regulating and formalizing subagents, who render a necessary service, would help considerably in addressing the problems.

There is also urgent need to re-engineer the complaint process to greater reliance on online and computerized systems and market information systems while strengthening the PEO Offices and the community welfare attachés. Increasing the number of PEO Offices is critical for increasing access. Integration of all online and offline complaint registration and tracking systems, the merging of databases and an awareness campaign through print and electronic media would help ease and resolve many problems that migrant workers experience. Better and in-depth pre-departure briefings likely would help reduce the burden on the complaint registration systems. An additional short pre-departure orientation conducted at all international airports in Pakistan would also help protect migrant workers. Preparing and providing informative migration-related literature and documentation in local languages is also necessary.

The Government should look to update the now-dated Emigration Ordinance and Rules with specific operating procedures for handling complaints and legislating an appropriate role with responsibilities to the currently unregulated intermediaries (subagents, tour operators, education consultants, etc.) in Pakistan are a few other steps that can be taken by the Government. The selection of community welfare attachés needs to follow a transparent and objective process; once hired, adequate training of the attachés is needed. Pakistani embassies and missions also need additional resources to hire translators, interpreters and lawyers to follow up the cases of migrant workers in the labour office and labour courts of the GCC countries.

Abbreviations

BEOE	Bureau of Emigration and Overseas Employment
FIA	Federal Investigation Agency
GCC	Gulf Cooperation Council
ILO	International Labour Organization
MOPHRD	Ministry of Overseas Pakistanis and Human Resource Development
MOU	memorandum of understanding
POE	Protector of Emigrants
SAR	Saudi riyals

Exchange rate: \$1= PKR104.7 as of December 2015.

Note

Although the Government of Pakistan uses the term “emigration” in the name of its departments managing overseas migration as well as the ordinances and laws (and the ensuing text) covering the movement of workers abroad for employment, this report uses the terms “migration” and “migrant” due to the temporary nature of the migration and that the workers intend to ultimately return to Pakistan. Emigration is recognized as the movement out of a resident country with the intent to settle elsewhere.



1. Introduction

Pakistan's practice of sending workers abroad, particularly to the Middle East, dates back to the 1970s. In South Asia, it is the second-largest labour-exporting country, after India. Between 1971 and 2015, more than 8 million Pakistanis went abroad for employment through formal channels.¹ The outflow of migrant workers during the past few years has been at historically high levels, with more than 3 million Pakistanis in overseas employment between 2010 and 2015. Of them, around 96 per cent went to one of the six Gulf Cooperation Council (GCC) member States. Within the GCC region, the overwhelming majority of Pakistani migrant workers go to Saudi Arabia, the United Arab Emirates and Oman.²

While labour migration generates substantial benefits for countries of origin and destination, it also involves a range of risks and problems. Studies of the recruitment processes and working conditions of migrant workers have consistently revealed abuses commonly associated with labour exploitation. Prior to departure and while abroad, many migrants find themselves subjected to exploitation and unfair treatment by recruitment agents, employers or other intermediaries involved in the migration process. Women, young and low-skilled workers, and those in with irregular status are particularly vulnerable to abuse. It is not unusual for migrant workers to have the terms of their foreign service agreement or employment contract violated. They are denied their fundamental rights at work, including freedom of association and the right to collective bargaining, and in the worst cases, they fall victim to forced labour or other human trafficking situations.

Some victims of recruitment- or employment-related exploitation seek legal redress for their grievances in their home country. In some cases, they seek justice in the country of destination where the abuse took place.

¹ Government of Pakistan, 2015.

² Ibid.

Many workers, however, are discouraged from filing complaints against their employer and/or agent (or an intermediary) or are left with an unresolved case or an unfavourable outcome even when cases are pursued. Reasons for this may include lack of judicial support among authorities to help migrants pursue amends or a migrant's fear of deportation or detention while in a host country. Restrictive visa policies, the language barrier and the high cost of legal counsel also make it difficult to pursue a case.

The *kafala*, or sponsorship, system that prevails in all six GCC countries and ties migrant workers to their employers may also impede their access to justice. In this system, a migrant worker can lose their legal status if the sponsor (usually the employer) decides to terminate the contract or if the worker decides to leave the employer, even when the worker has legitimate reasons to do so, such as non-payment of wages or abuse.

1.1 OBJECTIVES OF THE REPORT

The research and analysis presented in this report look at the options available to Pakistani migrant workers to access the justice system in either Pakistan or their country of destination to redress a recruitment- or employment-related grievance. The host country focus in the report is primarily Saudi Arabia and the United Arab Emirates because they are the most common destinations for Pakistani migrant workers.

The term “access to justice” in the context of this study means the ability of migrant workers to seek and obtain a remedy through formal or informal legal institutions. Access to justice has two dimensions: (i) procedural access, which refers to a fair hearing before a tribunal, and (ii) substantive justice, which refers to receiving a fair and just remedy for a violation of rights.

The report examines the channels through which migrant workers can seek justice for recruitment- or placement-related violations. It discusses the judicial system challenges that migrants usually experience when acting on their rights. The discussion includes recommendations for the Government of Pakistan and institutions involved in the migration process to consider for minimizing the challenges that migrant workers usually encounter.

1.2 RESEARCH METHODOLOGY

The research sought to assess the quality and level of legal support and justice available. The researchers collected anecdotal evidence from potential, current, returned and deported Pakistani migrant workers in two cities in Pakistan between July 2015 and March 2016. The findings are not generalized for all migrants but are nonetheless indicative of the situation many experience.

The research began with a review of the laws and rules that relate to accessing justice at home (in Pakistan) as well as in Saudi Arabia and United Arab Emirates. It was followed with a review of documentation on the exploitation of migrant workers during the various stages of the migration process and of the statistical information on the grievances that have been reported.

The primary research is based on a rapid survey of 75 migrants (32 potential and 43 current, returned or deported workers) representing multiple trades. The survey was conducted in Karachi and Lahore, along with focus group discussions with potential, current and deported migrant workers (see Annex II for details of the survey sample). All 75 migrants were male. It was not possible to locate any female migrant workers in the study period because they are so few in number. The survey questions centred on individual's experiences, their understanding of the issues and their awareness of available support and the remedial system available within Pakistan and in destination countries. Separate survey questionnaires were developed for the potential migrant workers, the returned, current or deported migrant workers and for the community welfare attachés (based in the Pakistan embassies or missions). Migrant workers based in Saudi Arabia were interviewed through Skype calls.

Informant interviews were conducted with policy-makers and service providers (listed in Annex I) for their perspectives and to identify gaps in the remedial systems that deny migrant workers access to justice.



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2. Overview of Pakistani migrant workers

2.1 LABOUR MIGRATION FROM PAKISTAN TO THE MIDDLE EAST

According to the Bureau of Emigration and Overseas Employment (BEOE), some 8,598,000 Pakistani workers went abroad for employment between 1971 and 2015, with the vast majority of them (96 per cent) going to a GCC country.³ The largest outflow of migrant workers went to Saudi Arabia (at 50.3 per cent), followed closely by the United Arab Emirates (at 32.9 per cent) (table 1).

Table 1. Distribution (%) of Pakistani workers, by country of destination, 1971–2015

Countries	Number of workers	% share
Saudi Arabia	4 325 183	50.3
United Arab Emirates	2 832 941	32.9
Oman	644 047	7.5
Kuwait	181 441	2.1
Bahrain	142 420	1.7
Qatar	123 639	1.4
Iraq	70 719	0.8
Libyan Arab Jamahiriya	81 145	0.9
Republic of Korea	15 431	0.2
Malaysia	66 417	0.8
Italy	28 033	0.3
United States	4 739	0.1
United Kingdom	12 142	0.1
Rest of the world	70 568	0.8
Total	8 598 865	100.0

Note: Data up to October 2015 only.
Source: MOPHRD and ILO, 2016.

³ MOPHRD and ILO, 2016.

The available sex-disaggregated data show that female migrants constitute only a small portion of the overall outflow of migrants, at less than 1 per cent of the total from 2008 to 2013. During that period, a total of 6,444 female workers migrated abroad, 45 per cent of whom were skilled, followed by 23 per cent highly qualified and 21 per cent highly skilled. The overwhelming majority of female migrant workers (at 87 per cent) went to GCC countries, the majority of whom (at 41 per cent) were semi-skilled. In addition, 2,596 female workers went abroad for employment through the Overseas Employment Corporation during 2004–15. The two main reasons for such a small share of female migrants are the conservative social values on women working outside the household or family-related businesses and the rather strict government regulations for women workers in terms of age limit, occupations and destination countries.

2.2 SKILL LEVELS

Of the nearly 1.4 million workers in the BEOE records who went to GCC countries between 2013 and 2015, 41 per cent were in the low-skilled category, while 39 per cent were skilled workers, like drivers, tailors, fitters, denters and goldsmiths. While 16.6 per cent of the migrant workers were in the semi-skilled category, an even smaller proportion of workers were in the highly skilled and highly qualified categories (table 2).

Table 2. Skill composition of Pakistani workers in GCC countries, 2013–15

Highly qualified	Highly skilled	Skilled	Semi-skilled	Low skilled	Total
31 144 (2.3%)	14 355 (1%)	541 036 (39.3%)	228 380 (16.6%)	562 953 (40.9%)	1 377 868

Note: “Highly qualified” includes doctors, dentists, engineers, teachers, accountants and managers. “Highly skilled” includes nurses, foremen/supervisors, technicians, operators, surveyors, computer programmers/analysts, designers, pharmacists, riggers, draftsmen, photographers and artists. “Skilled” includes welders, secretaries/stenographers, storekeepers, clerks/typists, masons, carpenters, electricians, plumbers, steel fixers, painter mechanics, cable jointers, drivers, tailors, fitters, denters, goldsmiths, blacksmiths and salesmen. “Semi-skilled” includes cooks and waiters. “Low skilled” includes agriculturists, labourers and farmers. Source: MOPHRD and ILO, 2016.

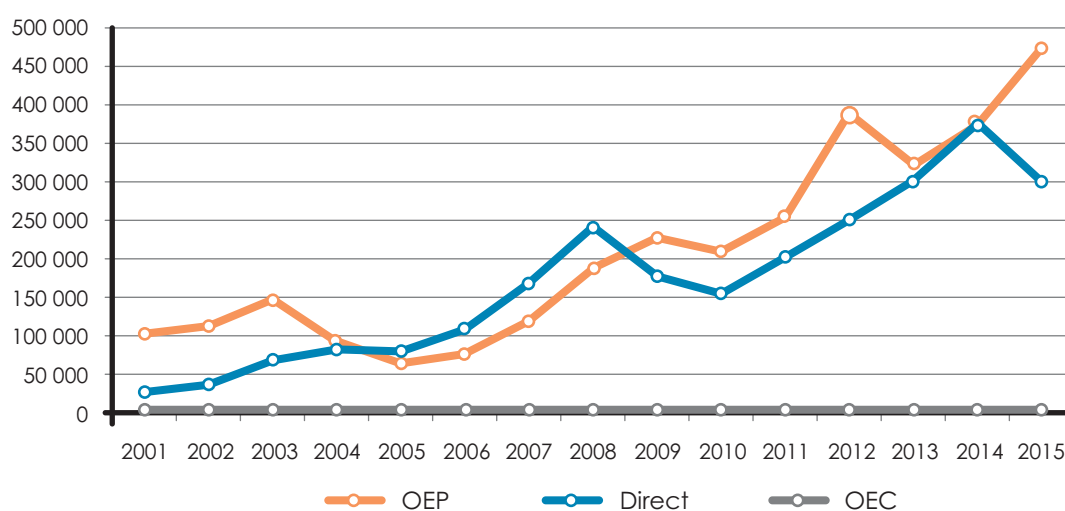
Source: BEOE, various years.

2.3 RECRUITMENT

In addition to the “direct” channel, in which an individual finds foreign employment through their own contacts or through a friend or relative working abroad, a public or private licensed overseas employment promoter (agency) can facilitate the process. Many migrants also find employment with the support of a subagent. Pakistani law, however, does not allow subagents to register, and they are consequently considered illegal. The use of overseas employment promoters was high from 2001 to 2003 and from 2009 to 2012, while direct employment shows an increasing trend over the past 15 years, with the exception of 2008–10 (figure 1). In recent years, approximately 50 per cent of all migrants have gone abroad through direct channels.

The Overseas Employment Corporation is the only agency in the public sector that recruits workers for overseas employers. In the early 1980s, around 9 per cent of all workers formally placed abroad were recruited by the Overseas Employment Corporation, while more recent data show its share in the total placement of workers at less than 1 per cent.

Figure 1. Number of migrant workers, by mode of recruitment, 2001–15



Source: BEOE, MOPHRD and Overseas Employment Corporation, for various years.

In the private sector, recruitment is managed by licensed overseas employment promoters. As of April 2016, there were 1,900 licensed promoters operating in seven regions of Pakistan. Of these, 38 per cent are located in Rawalpindi (717), 20 per cent in Lahore (386), 14 per cent in Karachi (263) and the remaining are in Malakand, Peshawar, Multan or Quetta⁴. Registration of workers going abroad for employment with the BEOE is mandatory, irrespective of the method used to secure such employment. For registration or legal placement of Pakistanis abroad, the BEOE has established separate procedures, or steps, to be followed for overseas employment promoter-recruited workers and for those who secured their work visa through a direct source.

⁴ Government of Pakistan, 2016. See http://beoe.gov.pk/Valid_overseas_employment_promoters/All_overseas_employment_promoters_list.asp (accessed 25 June 2016).

2.4 MIGRANT SMUGGLING AND HUMAN TRAFFICKING

Pakistan is a transit, destination and source country for migrant smuggling and human trafficking. The Ministry of Interior has responsibility to tackle these crimes. It promulgated the Prevention and Control of Human Trafficking Ordinance (also known as PACHTO) in 2002 and established Anti-Human-Trafficking Units under the jurisdiction of the Federal Investigation Agency (FIA). Nonetheless, human smuggling and trafficking remain issues of concern, although tracking the numbers of Pakistanis who are moved out of the country through irregular channels is nearly impossible. The number of Pakistanis who are deported from destination countries provides a slight indication, however, with the actual numbers estimated to be much larger (table 3). According to FIA, European and GCC countries, along with Australia, are the main destination countries for irregular migrants from Pakistan.

Table 3. Number of Pakistani deportees from select GCC countries, 2010–14

Country	2010	2011	2012	2013	2014
Qatar	96	94	95	411	75
Saudi Arabia	14 062	15 790	17 369	33 351	45 456
Oman	5 978	6 506	6 111	5 018	3 603
United Arab Emirates	9 833	8 053	10 235	9 597	8 434
Total	29 969	30 443	33 810	48 377	57 568

Source: FIA.



3. Abuse and exploitation of Pakistani migrants

Migrant workers experience abuse and exploitation in the recruitment process at the hands of unlicensed subagents and licensed recruitment agencies. The most common practices are non-placement after taking money from prospective migrants, hidden contract terms and conditions, and false information on the visa category or about the job.

Unfair recruitment practices and high migration costs erode a large part of the potential gains that Pakistanis can achieve through their migration journey to a GCC country. A recent report published by the International Labour Organization (ILO),⁵ based on a survey of the costs that Pakistanis working in low-skilled occupations in Saudi Arabia and the United Arab Emirates have to pay, notes that the average cost for a Pakistani worker to find a job and start work in either country is US\$3,489. The average cost of migration to Saudi Arabia is higher,⁶ at \$4,290, than going to the United Arab Emirates, at \$2,358. According to the report, the average monthly earnings for a Pakistani migrant worker in Saudi Arabia is \$480, while it is \$387 in the United Arab Emirates. This indicates that the average Pakistani worker will have to work between six and nine months to cover the cost of their migration. The high recruitment costs combined with low wages have led to a heavy financial burden for workers. This burden can also contribute to debt-bondage or forced labour situations where workers are unable to leave exploitative employers due to the costs they have incurred.

In most situations, migrant workers received their documents (such as the employment contract or foreign service agreement) a few hours before their departure from Pakistan. Often they do not study them, or if they do and find inconsistencies between what had been verbally promised to them and the actual terms of the contract, there is too little time to change it. Upon reaching the destination country, migrant workers who have been misled must work in an occupation they are not qualified to do or is different from what they were expecting.

⁵ ILO, 2016.

⁶ While it is difficult to explain this difference, the report concludes that it can be attributed to the preference of Pakistanis for working in Saudi Arabia where long-term prospects of finding employment are greater, given the size of the economy and the amount of oil revenues it generates, at least compared with other GCC countries.

Once migrant workers from Pakistan reach a GCC country, they face a number of problems or issues, with the workers in low- or semi-skilled occupations particularly vulnerable to abuse and ill treatment by their employer. The most common problems or issues experienced by Pakistani migrant workers, as indicated by community welfare attachés posted in the various Pakistan embassies and missions in the GCC countries are:

- The employer does not comply with the salary or other financial commitments as per the foreign service agreement or contract signed in Pakistan; workers are forced to sign a new contract with lower wages specified, different work and living conditions (than what was referenced in the initial agreement or verbal promises) or reduced employment benefits, such as overtime, holiday pay or return airfare payment; salaries are not paid on time, causing financial hardship.
- Employers refuse to provide a “release letter” that would allow a migrant worker to change their visa or sponsorship.
- Workers are unable to seek redress for any violation of the foreign service agreement or contract due to lack of resources, awareness of where to go and/or affordable legal assistance.
- Access to medical facilities, as promised in the foreign service agreement or contract, is not provided; in the event of sickness or injury, migrant workers have to pay for their own health care.
- Employers retain the passport of employees in lieu of the labour card, and the employee faces difficulties, such as in emergency situations; sometimes, employers demand a huge amount of money in exchange for return of the passport.
- Employers do not adhere to the local labour laws and do not appear in court when the workers file a case against them for unpaid financial commitments or to obtain their passports from them.
- Abusive employers prevent their employees from leaving by requiring them to pay high fees for their release and withhold their wages.
- Residence- or visa-related problems are common.
- In the event of a worker’s death, there are delays in transporting the body to Pakistan.
- Living and working conditions on job sites can be substandard.
- Problems arise due to a migrant worker overstaying the visa period, mainly when seeking financial assistance for air tickets and payment of government penalties.
- There are often delays in issuing the national identity card, the Pakistan origin card and/or the machine-readable passport from Pakistan embassies (and missions).
- Absence of freedom of association can increase migrant workers’ vulnerability to abuse and exploitation.

The rapid survey conducted for this study (with a sample of 75 male migrant workers, including 32 potential and 43 current, returned or deported workers) provided workers’ perspectives on different issues encountered during their migration journey. In the rapid survey, current and returned migrants noted that some problems had become obvious before they left Pakistan while others emerged after they arrived in the GCC country (table 4).

Table 4. Type of problems experienced by rapid survey respondents in two GCC countries

Issue	No.	%
Cultural problems	6	7
Economical	27	32
Food	1	1
Health issues	1	1
Job description	1	1
Language problem	8	9
Law	2	2
Law, culture	1	1
No proper rest or accommodation facilities for labourers	4	5
No information about laws	8	9
No medical allowance	1	1
Overtime salary not given	9	11
Problems with agents	1	1
Accommodation is expensive, overcrowded, not clean	10	12
Visa problem	2	2
Work was not given as promised	1	1
No response	2	2
Total	85	100

Note: Multiple reporting allowed, hence the total number exceeds the 75 respondents.
Source: Rapid survey, 2015, see ILO, 2016.

The migrant respondents cited lack of information and orientation prior to their departure for many of the problems they experienced. The level of orientation and guidance typically provided was quite generic and not sufficient or relevant to the trade, country or climate of their destination country. Some of the migrants cited problems related to the laws of the destination country, which could possibly be prevented by providing a thorough and accurate briefing and orientation.

In the rapid survey, 43 workers reported that they had filed a complaint through the labour court against their kafeel (sponsor). Of them, three were fired from their job and seven were deported, while the remaining 33 had not received any response to their complaint. As much as 26 per cent of the surveyed migrant workers were threatened over the filing of a complaint against their employer during their stay in a GCC country.

While no female migrant workers were interviewed for this study, it is well documented that female domestic workers are particularly vulnerable to exploitation and abuse. The isolation of domestic workers in private homes, which are not monitored by labour inspectors or social workers, and their limited opportunities to move outside the household heighten their vulnerability to exploitation. The ILO Committee of Experts on Application of Conventions and Recommendations⁷ has drawn attention to the vulnerability of female domestic workers to multiple forms of discrimination and abuse due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and the undervaluing of domestic work. In most GCC countries (as with most other countries), domestic workers are not covered by labour legislation.

⁷ See www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm [accessed 25 July 2016]



4. International legal framework

4.1 INTERNATIONAL INSTRUMENTS

Human rights violations against overseas migrant workers are often closely linked to discriminatory laws and practices and to deep-seated attitudes of prejudice and xenophobia. The principle of non-discrimination is fundamental in international human rights law and runs across all international human rights instruments, notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Non-discrimination also applies to principles linked to access to justice and implies that migrant workers should have the same access to justice as other workers. All United Nations Member States have ratified at least one of the nine core international human rights treaties, and 80 per cent have ratified four or more Conventions that guarantee these rights.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a United Nations multilateral treaty governing the protection of migrant workers and their families. It provides standards for domestic policies and laws that recognize the specific vulnerabilities of migrants. It promotes humane working and living conditions for migrant workers and sets out the rights of often-neglected family members.

Two ILO Conventions – the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – and their two Recommendations (No. 86 and No. 151) are milestones in the international protection framework for migrant workers. Article 6(1)(d) of Convention No. 97 states that a ratifying country must provide the same treatment in terms of legal proceedings to migrant workers as are available to nationals. Article 9(2.2) of Convention No. 143 provides that in a dispute involving the rights cited within the Convention, a worker can present a case to a competent body, either on their own or through a representative.

In addition to these two Conventions, the ILO adopted the Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation (No. 201), which specifies basic principles regarding decent work for domestic workers, including migrant domestic workers. Article 16 of this Convention provides that each government must ensure that migrant domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute-resolution mechanisms in the same manner as are available to other workers generally.

The Private Employment Agencies Convention, 1997 (No. 181) and its accompanying Recommendation (No. 188) stipulates that private employment agencies must not charge migrant workers for their services and that migrant workers rights are protected, including the right to join trade unions. Article 10 of this Convention stipulates that the competent authorities in the member States must ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

Another important international instrument is the ILO Multilateral Framework on Labour Migration (2006). It spells out the principles and guidelines for a rights-based approach to labour migration, including on complaints mechanisms, to be used by constituents in formulating policies and measures to protect all migrant workers.

All ILO labour standards apply to all workers, including migrant workers, irrespective of their status, unless specifically stated otherwise in an instrument. All eight ILO core Conventions relating to freedom of association, forced labour, child labour and discrimination applies equally to migrant workers.

4.2 BILATERAL AGREEMENTS AND MOUs BETWEEN PAKISTAN AND GCC COUNTRIES

Pakistan has signed memoranda of understanding (MOUs) on labour migration with Bahrain, Kuwait, Qatar and the United Arab Emirates (of the GCC countries). Two MOUs are being negotiated with Saudi Arabia, one for domestic workers and the other for all other types of workers. An MOU is also under development with Oman. Because the MOPHRD does not make the MOUs publicly available, it was not possible to assess if they carry any provisions on how to handle legal disputes.



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5. Access to justice for overseas Pakistani workers at home

5.1 LEGAL FRAMEWORK

Emigration Ordinance, 1979

In Pakistan, the Emigration Ordinance provides the legal framework for protecting the rights of migrant workers and regulating the activities of public and private overseas employment promoters. The Emigration Ordinance outlines the licensing and regulation of overseas employment promoters, the safeguarding of workers against malpractice and the right of workers to redress grievances against employment promoters, employers and intermediaries. Enforcement of the Emigration Ordinance is the shared responsibility of the BEOE, the Protector of Emigrants and the community welfare attachés (formerly called labour attachés).

The Emigration Ordinance broadly defines the role of officials and their responsibilities, including grievance redress for migrant workers. For instance, section 4 states that the BEOE is responsible “to look after the interest and welfare of emigrants”. Section 7 states that the community welfare attachés are appointed for the purpose of safeguarding the interests of migrants “in a place outside Pakistan”. Section 16-2(o) states that the Government may make rules under the Emigration Ordinance for the handling of complaints against overseas employment promoters.

Section 17 of the Ordinance lists the broad offences, penalties and procedures for unlawful migration; sections 18 and 19 deal with fraud to induce someone to migrate or false representation of government authority; section 20 refers to violation of the terms of a foreign service agreement by migrant workers; and section 22 relates to overcharging by an overseas employment promoter or receiving money for overseas employment by a person who is not licensed. Section 24(3) states that anything contained in the Code of Criminal Procedure, 1998 that is also punishable under the Emigration Ordinance will be tried exclusively by a Special Court. To date, however, no special courts have been established under the Emigration Ordinance by the MOPHRD.

Cases designated migrant smuggling or human trafficking are taken to a Special Court established by the Federal Investigation Agency and which has 60 days to recognize receipt of the case. Section 24A outlines the process for appealing a Special Court decision, which must be made to the High Court within 45 days.

Emigration Rules, 1979 (updated 2012)

The Emigration Rules outline the roles and responsibilities of various institutions involved in regulating overseas employment and safeguarding the rights of migrant workers. The Rules detail the regulating of public and private overseas employment promoters, the course of action in the event of malpractice and how to redress complaints against employment promoters and employers. The Emigration Rules are implemented by the BEOE, the Protection of Emigrants (POE) and the community welfare attachés.

The Emigration Rules are framed under section 16 of the Emigration Ordinance. The Rules define the role of the BEOE Director General and the Protector of Emigrants as regulators, while the community welfare attachés are responsible for the welfare of migrants (Rule 5b), for safeguarding migrants' interests in host countries (Rule 5c) and attending to all complaints of migrants for adequate remedy and reporting to the BEOE Director General (Rule 5d). Rule 9(5) empowers the BEOE Director General to revoke the license of an overseas employment promoter if found guilty of misconduct.

Rule 29 lays down the procedure for handling complaints filed with the BEOE. The BEOE Director General is required to send non-serious complaints to the POE.

Rule 12 provides for a mechanism to appeal a decision by the BEOE Director General or the POE. A migrant worker can file an appeal with the MOPHRD or the Federal Investigation Agency (FIA) directly or through the Ministry of Interior) within 30 days from when it was issued. Rule 28 requires that POEs provide a complaints box outside each office and take appropriate action on complaints received. The POE is also required to report all complaint details to the BEOE Director General and recommendations for action.

Rule 30 refers to the disposal of complaints received by community welfare attachés, who are required to help complainants negotiate with an employer or pursue a grievance case in the host country's labour court. The community welfare attaché is required to forward complaints of migrant workers against their overseas employment promoter to the BEOE Director General, with recommendations for action. Rule 31b gives migrant workers only six months from the time they begin working abroad to file a complaint against the overseas employment promoter.

Federal Investigation Agency Act, 1974

The Federal Investigation Agency Act established the Federal Investigation Agency and mandated it with responsibility to investigate all specified offences, which include the punishable offences under the Emigration Ordinance.

Prevention and Control of Human Trafficking Ordinance, 2002

FIA, under the Ministry of Interior, is responsible for implementation of the Prevention and Control of Human Trafficking Ordinance, which defines human trafficking in section 2(h) as: “Obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person’s subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3.”

Section 3 elaborates additional elements of the crime of human trafficking, including exploitation of various kinds, coercion and facilitation. It also stipulates applicable sentences, including crimes related to abuse of documentation, and provides a heavier sentence for the trafficking of women and children.

During the interviews for this study, some law enforcement and judicial officers said they perceive section 2(h) as defining a hybrid crime, one that also covers migrant smuggling. The Emigration Ordinance, however, does not adequately cover either human trafficking or migrant smuggling. The absence of core elements to define migrant smuggling⁸ has resulted in the poor response to migrant victims of smuggling – a situation that results when a migrant thinks that all their documentation is official when it is not.

⁸ For instance, the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime, Article 3(a) defines the “smuggling of migrants” as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

5.2 SHORTCOMINGS IN THE LEGAL FRAMEWORK

In Pakistan, the subagents' role is important and sizable in the overall overseas employment recruiting business. Yet, the Emigration Ordinance and Emigration Rules do not regulate their activities, which are thus considered illegal. There are examples in other countries where this role is recognized, legalized and regulated. Pakistan needs to carefully study such examples and recognize the undisputable and inescapable role performed by subagents.

Neither the Emigration Ordinance nor the Emigration Rules speak of legal aid to Pakistani migrant workers in a destination country. The law does not provide easy ways for migrant workers to register complaints while they still are abroad.

Under section 345(2) of Pakistan's Code of Criminal Procedure, offences under sections 419 and 420 related to cheating are "compound offences" that can be compromised by the person cheated or harmed by the offence. This means that a migrant worker can file a complaint against unmet promises, relative to an employment contract, but the violator can provide money or an in-kind payment as compensation. Most migrants withdraw their complaint after receiving compensation from an agent or smuggler. A 2013 report published by the United Nations Office on Drugs and Crime⁹ highlighted how the compoundable nature of some migration-related offences significantly reduces the ability of law enforcement agencies to prosecute facilitators and agents and other participants.

5.3 INSTITUTIONAL FRAMEWORK AND MECHANISMS FOR HANDLING COMPLAINTS

Within the institutional framework governing the migration of Pakistani workers overseas, there are a number of channels or mechanisms to register an employment-related complaint, regardless of where the grievance occurred, which table 5 describes and further elaborates on the subsequent pages.

⁹ See www.unodc.org/documents/pakistan//2013.12.26_Research_Report_HTMS_COPAK_HTMSS_Designed_for_printing.pdf [accessed 25 June 2016].

Table 5. Institutional mechanisms available to migrant workers for registering a complaint and the arrangements for redress

Complaint mechanism	Governing laws	Official mandate	Does the mandate include employment-related issues?	Is it the final authority for resolving complaints?	Type of facility	Process	Shortcomings
Overseas Pakistanis Commissioner, MOPHRD	Emigration Ordinance and Rules	No information provided.	Yes	No	Manual complaint registration and processing.	Forward complaints for investigation and reporting to BEOE Director General and FIA through Ministry of Interior.	Understaffed and under-resourced
Policy Planning Unit, MOPHRD	Emigration Ordinance and Rules	Handling complaints on issues related to violation or breach of: <ul style="list-style-type: none"> ■ commitment made by a overseas employment promoter after receiving payment for overseas employment; ■ terms and conditions of employment contract by employer; and ■ any other labour or human rights or welfare-related issues. 	Yes	No	Online complaint management system.	Forward complaints for investigation and reporting to BEOE Director General and FIA through Ministry of Interior.	Absence of a consolidated management information system for both online and in-person (or by mail) complaints.
Director General or Deputy Director in charge of complaints, BEOE	Emigration Ordinance and Rules	Complaints against overseas employment promoters, POEs or employers filed by migrant workers or those referred by FIA or the Federal Ombudsman.	Yes	Yes	Manual complaints processing.	Investigates using relevant POE Office. Forwards complaints of a serious nature to FIA .	Lack of a computerized (and online) complaint management system.

Continued: Table 5.

Continued: Table 5.

Complaint mechanism	Governing laws	Official mandate	Does the mandate include employment-related issues?	Is it the final authority for resolving complaints?	Type of facility	Process	Shortcomings
POEs in seven regions across Pakistan, BEOE	Emigration Ordinance and Rules	Complaints against overseas employment promoters within the POE's jurisdiction under the Emigration Ordinance and Rules.	Yes	No	Directly receives complaints – manual, through email or fax. Receives complaints referred by FIA, BEOE Director General or Federal Ombudsman.	Investigates directly to determine the facts and nature of problem. Give recommendations on cases of simple nature. Forwards recommendations to BEOE Director General. Submits reports to FIA and Federal Ombudsman.	Lack field capacity to verify facts for quick disposal. Lack investigation powers. Lack resources for mobility in the field, systems and training. Faced with too much work.
Pakistani embassies and community welfare attachés, MOPHRD	Emigration Ordinance and Rules	Report on malpractices by licensed overseas employment promoters and suggest measures to curb illegal migration. Attestation of documents. Liaise with Pakistani workers to determine their problems and help them resolve difficulties and disputes with employers.	Yes	Yes, cases in destination country.			Understaffed and under-resourced

Continued: Table 5.

Continued: Table 5.

Complaint mechanism	Governing laws	Official mandate	Does the mandate include employment-related issues?	Is it the final authority for resolving complaints?	Type of facility	Process	Shortcomings
Overseas Complaint Cell, FIA	Emigration Ordinance and Rules FIA Act, 1974 Prevention and Control of Human Trafficking Ordinance	Offences punishable under the Emigration Ordinance, among others.	Yes	No	Receives manual complaints, or through email. Government refers cases of serious nature for investigation.	After investigation, FIA places the case before the relevant Special Court for hearing and decision (conviction or acquittal).	Understaffed and under-resourced
Expatriate Pakistani Complaints Wing, Supreme Court of Pakistan	Emigration Ordinance and Rules Decision of the Chief Justice of Pakistan	Protect the rights and interests of overseas Pakistanis (in Pakistan), ranging from their right to vote to protection of property and land to coping with hardships they encounter while visiting Pakistan.	Indirectly, yes	No	Receives complaints manually and online.	Forwards the complaints to relevant government departments for disposal and reports to the Supreme Court.	Understaffed and under-resourced

Continued: Table 5.

Continued: Table 5.

Complaint mechanism	Governing laws	Official mandate	Does the mandate include employment-related issues?	Is it the final authority for resolving complaints?	Type of facility	Process	Shortcomings
Grievance Commissioner Overseas Pakistanis, Federal Ombudsman	Emigration Ordinance and Rules Wafaqi Mohtasib [Ombudsman's] (Investigation and Disposal of Complaints) Regulations, 2013	Complaints made on the actions of any functionary of a ministry, division, department or corporation of the Government.	Indirectly, yes	No	Online complaints about the performance of public offices. In-person (or by mail) complaints.	Conducts hearings with the complainant and the relevant government department. Directs the department to redress, if it is at fault.	Understaffed and under-resourced
Complaint Cell, Overseas Pakistanis Foundation	Emigration Ordinance and Rules Emigration Ordinance and Rules	Assist overseas Pakistanis in redress of a grievance in an efficient and effective manner.	Yes	No	Online and in-person (or by mail) complaint registration and tracking.	A legal unit provides advice to complainants and refers them to lawyers on their panel.	Understaffed and under-resourced
Complaint Cell, Overseas Employment Corporation	Emigration Ordinance and Rules	Promote employment of professionals, highly skilled, skilled, semi-skilled and low-skilled workers in foreign countries.	Yes	No			Understaffed and under-resourced

Overseas Pakistanis Commissioner

MOPHRD representatives negotiate with officials in destination countries on the expected terms and conditions that employers will follow when hiring Pakistani migrant workers. They negotiate MOUs accordingly and prepare policies and strategies for the deployment and better management of Pakistani workers abroad. MOPHRD also liaises closely with the embassies and missions of the countries where Pakistani migrant workers go or intend to go.

The complaints received by MOPHRD are referred to relevant departments (usually the BEOE Director General, FIA through the Ministry of Interior or community welfare attachés through the Ministry of Foreign Affairs) to process, resolve and record. Since its establishment in April 2015 and through February 2016, the Overseas Pakistanis Commissioner has received 422 complaints. Of them, 340 complaints were forwarded to the Overseas Pakistanis Foundation and 82 complaints were dealt with by the MOPHRD, with 32 complaints resolved.

Policy Planning Unit

The Policy Planning Unit within the MOPHRD launched an online complaints portal in February 2016. Between 10 February and 7 April 2016, it received 26 online complaints. The complaints were forwarded to relevant departments for action. Of those 26 complaints, three were clearly work or employment related, 12 were unclear, and 11 were not related to migrant worker recruitment or working abroad.

Bureau of Emigration and Overseas Employment

The BEOE is responsible for ensuring safe migration from Pakistan, including health certification, proper documentation, certificates, contracts and any other relevant documents. This responsibility is carried out by the POE Offices. The BEOE Director General receives complaints directly in the Complaint Cell set up in BEOE head office or referred from the MOPHRD, the Overseas Pakistanis Foundation, FIA, the Federal Ombudsman's Office or through other channels.

A BEOE Deputy Director attends all cases that are heard in a Special Court or in the Federal Ombudsman's Office. The complaints received by the BEOE directly or through the POE Offices are in hard-copy format, and all information is compiled in the BEOE for internal purposes. The BEOE has an internal complaint-handling and follow-up mechanism, which is assigned to a Deputy Director. An applicant can follow up their case only by telephone or by visiting the office.

The BEOE refers complaints to the POE Office for investigation and reporting back; the Director General then decides the case on its merits (based on the report of the POE) or issues a show-cause notice to the overseas employment promoter. On receipt of a reply to the show-cause notice from the promoter, the Director General calls the promoter for a hearing and then decides the case on its merits. Complaints of a serious nature are referred to the MOPHRD with recommendations for investigation by the FIA.

Complaints against a person other than an overseas employment promoter are referred to the MOPHRD and the Ministry of Interior for prosecution.

Decisions made by the BEOE Director General can be challenged for review in a Special Court. A decision of a Special Court can be challenged for review within 45 days in the High Court.

The BEOE Complaint Cell received 773 complaints in 2015. Of them, 322 remain under process (84 were carried forward from previous years), 24 were resolved and 205 were referred to FIA. Complaints relating to non-licensed persons were referred to FIA. Although the data on the nature of complaints is not maintained in one system, the Deputy Director of the Complaint Cell reported during an interview for this study that the overwhelming majority of complaints relate to the “extraction of money on false promises” or overcharging by overseas employment promoters. Such complaints are typically registered by returned migrants or a relative in Pakistan after the departure of the migrant worker.

Protector of Emigrants

There are seven regional POE Offices (in Lahore, Rawalpindi and Multan in Punjab Province; Karachi in Sindh Province; Peshawar and Malakand in Khyber Pakhtunkhwa Province; and Quetta in Balochistan Province).

The POE Offices are responsible for processing all demands for employment received by overseas employment promoters as well as those who seek foreign employment directly through their own efforts or through a relative or friend working abroad. The POEs are mandated to ensure that migrant workers fully understand the terms and conditions of their employment agreement. They also are required to inquire about the treatment of migrants during their stay abroad and upon return.

Each POE Office involves a deputy director who is in charge of handling complaints. On receiving a complaint, the Deputy Director contacts the complainant to determine the facts and understand the problem in detail. In many cases, explanations of laws, procedures and request for evidence closes the case because the complainant has some misunderstanding or lacks knowledge of the law. Once the Deputy Director decides the admissibility of a case, the complainant is asked to come to the POE Office, along with the accused, to discuss the matter. The Deputy Director records the main arguments of both parties and, after consultation of the law, prepares recommendations for approval by the POE.

The POE Office receives complaints for investigation directly (by post, email, fax or phone) as well as referrals from FIA, the Federal Ombudsman’s Office, the BEOE Director General, the Overseas Pakistanis Cell of the High Court and others. After approval by the POE, the report, along with recommendations, is provided to the relevant office, with a copy to the BEOE Director General.

The Director General approves a recommendation on a case against an overseas employment promoter. The POE conveys the decision and gives ample time to the promoter to pay the fine, if applicable.

Data obtained from the POE Office in Karachi, which handles migration applications of workers from Sindh and Balochistan provinces, shows that on average it receives 30–60 complaints in a year. This is just a small fraction, at least compared with the 10,000 migration applications this office processes on a monthly basis. The complaints mostly relate to violations of terms and conditions of the employment agreement, the role of subagents, money fleecing, non-provision of jobs and migrants' non-satisfaction with the overseas job.

Of all complaints received at the POE Office in Karachi, around 30 per cent are from returned migrants about their employer's behaviour.

The POE Office in Rawalpindi receives 20–25 complaints in a month. The complaints typically relate to false promises by overseas employment promoters or subagents. This includes taking money but not sending the worker abroad and job terms and conditions turning out differently from what was agreed. About 80 per cent of complaints are settled by the POE Office. Complaints about fake agents are referred to FIA through the BEOE Director General.

Overseas Pakistanis Complaint Cell, Federal Investigation Agency

When a complaint relating to a case of serious nature (such as the fleecing of a potential migrant by a subagent, denial of services by a licensed overseas employment promoter who has been paid or forged documentation) is referred by the BEOE Director General to FIA through the Ministry of Interior. After determining its admissibility, a FIA Director assigns an officer to investigate the case. The officer has three months (as per the FIA Act) to complete a report and submit a case with recommendations to either file the case with a Special Court or return the case either for a fault of the complainant or due to lack of evidence to convict the accused.

FIA receives 20 complaints per working day on average through its Immigration Helpline, and five to seven complaints are received daily through its website or by email. The complaints cover various issues, with employment-related cases constituting a small proportion. FIA also receives complaints from the Grievance Commissioner for Overseas Pakistanis in the Office of the Federal Ombudsman as well as other channels.

Expatriate Pakistani Complaint Wing, Supreme Court of Pakistan

The Human Rights Cells in all provincial High Courts has an Expatriate Wing, as required by a 2014 directive of the Supreme Court, to handle complaints of overseas Pakistanis. The Expatriate

Wing has the mandate to protect the rights and interests of overseas Pakistanis, which entail the right to vote, the protection of their property or any hardship that they experience while visiting Pakistan. The Expatriate Wing analyses the grievances made by overseas Pakistanis against government departments or agencies (in Pakistan) and approaches the subject of the complaint, then follows with appropriate action. The Expatriate Wing receives complaints by post, fax and email. The Expatriate Wing received 252 complaints from overseas Pakistanis in 2014, resolving 49 of them within the year.

Grievance Commissioner for Overseas Pakistanis, Federal Ombudsman's Office

Complaints can be made by any overseas Pakistani aggrieved by an action (decision, process, recommendation, omission, etc.) of any functionary of any public office (in Pakistan) that is contrary to the country's laws, rules or regulations. The Commissioner receives complaints online and in-person (or by mail) from overseas Pakistanis, examines and refers them to the relevant public office for resolution. On receipt of a response from a department and after hearing both sides and examining the evidence, the Overseas Pakistanis Commissioner makes a decision that is binding on the parties. The Ombudsman's records show few complaints from migrant workers.

The Federal Ombudsman set up facilitation desks in the international airports as part of its complaint-handling system. Usually cases of minor issues are received at these desks.

A total of 1,754 complaints were received during 2015. Of them, only 359 complaints were received in the Federal Ombudsman's Office, while the remaining were referred to it from different offices. The majority of these referred complaints (659) were directed from the complaints website of the Overseas Pakistanis Foundation, followed by complaints referred from the facilitation desks at the international airports (439). The complaints related mainly to issues encountered by overseas Pakistanis with different government departments (such as the National Database and Registration Authority, the Passport Office, Civil Aviation and Immigration).

Most of those complaints – 1,609, or 92 per cent – were resolved through referral to the relevant government department. The available data do not allow any analysis of complaints related exclusively to overseas employment issues.

Complaint Cell, Overseas Pakistanis Foundation

Each migrant worker processed through the POE Office must become a member of the Overseas Pakistanis Foundation (and pay a fee), which provides assistance to migrant workers and their families in Pakistan in need. Assistance includes returning the body of a worker who dies while abroad and following up on any pending claims made by returned migrant workers whose cases are in a host country court. The Foundation has set up an online complaint system at www.opf.org.pk/live/newonline.aspx. Progress on an individual complaint can be tracked online using the

ID allotted at the time the complaint is registered. The Foundation also registers complaints by telephone or by in-person visits.

The Complaint Cell of the Overseas Pakistanis Foundation received 3,235 complaints between 2010 and 2015. Of them, 2,682 complaints (83 per cent) were settled, while 502 are under process, including 51 complaints being pursued in courts. However, only 13 of those complaints directly relate to employment issues, with the majority of them falling into the category of “criminal activities”.

Complaint Cell, Overseas Employment Corporation

Discussions with its managing officers revealed that the Overseas Employment Corporation has received no complaints from workers that it has placed overseas. Most of its placements are highly skilled, like doctors, engineers and other professionals, who were described as having a good understanding of their employment terms and conditions before departure. Another reason for no complaints is that the agency only processes employment demands from overseas governments directly. Thus, there are no reports of employers changing terms and conditions of work upon arrival of migrant workers in the destination countries.

By directive of the Grievance Commissioner, the Overseas Employment Corporation recently created a link on its website to the Federal Ombudsman’s Office website for the filing of complaints.

5.4 SHORTCOMINGS IN THE COMPLAINT-HANDLING MECHANISMS

Despite many institutions handling the complaints of migrant workers (highlighted in the previous section), the rapid survey found low levels of awareness among migrants about the available facilities and ways to register complaints. Most of the surveyed migrant workers did not know where to lodge a complaint in Pakistan or in a destination country. All they could recall were recent advertisements regarding the facilitation desks in the airports. The respondents were also not aware of the BEOE procedures for making complaints, nor were they aware of the available facility within the Overseas Pakistanis Foundation. It is evident that an intensified information campaign is needed, possibly in partnership with POE Offices, to reach out with this information. Lack of awareness among migrant workers about these mechanisms and the level of awareness about the procedures is an important barrier or delay in accessing justice.

But even migrants who were aware of the complaint-handling mechanisms were reluctant to seek action out of fear that their employer in the destination country may not extend their contract or the court may take the employer’s side.

Despite many institutions handling the complaints of migrant workers, there is no coordination among them, although there is a referral system and an understanding among the involved offices.

Nor is there a consolidated database of complaints. The data on in-person or mailed-in complaints are not part of the overall complaints data, even at an institutional level. There is duplication in the work and role of various institutions with regard to complaint handling. There is duplication in data counting – a complaint filed by a migrant worker or family member to various departments is counted as multiple complaints.

Even where access to legal redress is provided under the Emigration Ordinance and Rules, few cases are prosecuted. Convictions for labour exploitation, forced labour or trafficking are even fewer.

Lodging complaints under the current mechanisms are time-consuming and difficult for following up because workers must visit the offices where such complaints can be made in person. The recent efforts to launch online complaints mechanisms should help bridge these challenges.

Although the POE Offices must maintain a locked complaint box outside their premises for anyone to deposit a complaint, no such box was found during the research visits to the POE Offices in Lahore, Karachi, Peshawar and Rawalpindi.

The POE offices are not properly staffed with trained human resources. Both the POE Office staff and community welfare attachés are overworked. These offices have little capacity to investigate or inspect migrant workers' situations, which is crucial for any complaint redress process. Details of their role and responsibilities is outlined in Section 6.3 below.

Because the BEOE does not have specialized lawyers at its disposal, general public prosecutors mishandle their cases in the Special Courts, which tend to favour the overseas employment promoters. This is important because under section 24-A(2-a), the Government can direct any of its legal officers to file an appeal, but it requires a professional lawyer to be appointed for such purpose.

The interviews with potential migrant workers indicated that neither the overseas employment promoters nor the POE Offices properly brief migrant workers prior to their departure for a job abroad. Most problems in the destination countries seem to arise due to lack of awareness of the laws and labour rights as well as the procedures for migrant workers. It is necessary that the BEOE ensures that overseas employment promoters and the POEs properly brief migrant workers and their families as required by the law.

The rapid study respondents' comments indicate that the response to complaints is much better in Pakistan than in destination countries (table 6). Of the 32 potential migrants in the rapid survey who filed a complaint with FIA or the police, 25 had a response they considered encouraging. Almost half of the complaints had been responded to at the time of the survey, while the rest were pending.

Table 6. Status of complaints by potential migrants in the rapid survey, 2015

Status	FIA	Police	Others	Total
Solved	9	3	0	12
In progress	8	4	0	12
No information	0	0	1	1
Total	17	7	1	25

Source: Rapid survey, 2015, see ILO, 2016.

5.5 INFORMAL DISPUTE RESOLUTION MECHANISM IN PAKISTAN

In addition to the formal mechanisms for handling complaints discussed in the previous sections, a few informal mechanisms are also used to address the complaints of migrant workers in Pakistan. For example, migrants reportedly rarely file any complaint in the POE Office in Khyber Pakhtunkhwa Province mainly because of the strong informal dispute resolution mechanism – the *jirga* system prevalent in that region. *Jirga* is an assembly or a sort of council that meets for consultation. The *jirga* comprises two or more persons; they are normally family elders or their representatives with significant social status. Religious elders also attend a *jirga*. Authority and competence of the *jirga* members depend on the nature of the problems the *jirga* has to tackle.

The *jirga* exercises both judicial and executive roles to settle disputes on the basis of tribal conventions, traditions and principles of justice. The *jirga* conducts its proceedings in a simple manner – it interviews both parties and witnesses to determine the facts of the case. It is expected to make every possible endeavour to find an impartial and acceptable solution. The decision is generally based on the *bahar-e-shariat* (written law) and local traditions. The *jirga* announces its decision only when the majority of its members reach an agreement.



6. Access to justice for migrant workers in select GCC countries

6.1 LEGAL FRAMEWORKS IN SAUDI ARABIA AND UNITED ARAB EMIRATES

The legal rights and remedies available to migrant workers are outlined in the national labour laws of Saudi Arabia and the United Arab Emirates.¹⁰ The remedy process for grievances potentially involves several steps, including a written complaint, mediation and arbitration or adjudication. In practice, the process usually starts with a Pakistani worker filing a complaint with the Pakistan embassy (or mission), which then refers the worker to the relevant office within the host country's labour ministry. This office should work to resolve labour problems by direct contact with the employer. If the employer fails to address the demands articulated by the government labour officer, the case is referred to the labour court. The ministry of interior (or equivalent) gets involved in cases related to irregular migrants and those involving change of sponsorship that did not follow the proper procedure.

Migrant workers who have little knowledge of their rights, those who do not understand the language and those without any valid proof of their permission to stay in the country (residence permit, foreign service agreement, etc.) are of course more vulnerable to exploitation and abuse. Under Saudi law, the employment relationship between employer and employee is governed by the Labour and Workmen's Law (the Labour Law). In early 2015, the Ministry of Labour in Saudi Arabia announced an overhaul of that law that would encompass 38 amendments to the statutory provisions. As a whole, the amendments purport to increase workers' rights.¹¹ In the United Arab Emirates, Federal Law No. 8, 1980 is a comprehensive law that regulates all aspects of labour relations between employers and employees including those related to migrants.

¹⁰ Domestic workers in Saudi Arabia and the United Arab Emirates are excluded from national labour laws. The United Arab Emirates in 2013 adopted specific domestic work regulations for domestic workers.

¹¹ See www.mondaq.com/article.asp?article_id=436330 [accessed 25 June 2016].

Part of the mandate of the Overseas Pakistanis Foundation is to provide legal assistance to returned migrants, including pursuing cases in the labour courts for compensation on any unpaid financial commitment. This is necessary because a migrant worker cannot overstay in a destination country after their employment contract expires. Although the Ministry of Foreign Affairs in Pakistan has dedicated funds to help Pakistani migrant workers hire a lawyer in a host country, the resources are available only after approval of the Foreign Secretary. This process takes considerable time. Additionally, the resources tend to be insufficient for all migrant workers in need. The Ministry should consider hiring a law firm in both countries through which Pakistani lawyers can collaborate with lawyers in other countries on workers' grievance cases.

6.2 CHALLENGES FACED BY PAKISTANI WORKERS IN ACCESSING JUSTICE IN GCC COUNTRIES

The admission policy used by Saudi Arabia and United Arab Emirates, as well as the other GCC countries, is the *kafala*, or sponsorship, system. The *kafala* system mandates that all foreign migrants be legally sponsored by a national of the host country. There are differences between the different GCC countries in their application of the *kafala* system. The *kafeel*, or sponsor, is legally empowered with the right to allow a particular migrant worker to enter the country for agreed-upon employment. If a worker leaves their job without the required permission, the employer can cancel the residence permit, which would turn the worker into an irregular resident and thus irregular migrant. In the United Arab Emirates, migrant workers who obtain their work permit through the Ministry of Human Resources and Emiratization can extend their stay, work visa, terminate their employment and transfer their *kafala* without requiring the consent of their original *kafeel*. Saudi Arabia and Qatar are the only countries that apply the exit permit system, which requires foreign workers obtain permission to leave the country. While the *kafala* is a very restrictive system, it does not allow employers to confiscate passports and other travel documents of migrant worker.

In short, the *kafala* system gives the *kafeel* control over its workers and makes migrant workers dependent upon their *kafeel*, even for opening a bank account, obtaining a driver's license, appearing before a court and for issuing or renewing the required residence permit (*iqama* in Saudi Arabia and *bataqa* in the United Arab Emirates). Most of the surveyed migrant workers thought the *kafala* system was the root cause of exploitation that foreign migrants experience abroad.

Each country's system for processing and adjudicating migrants' grievances is difficult for migrants to access, particularly due to language and legal procedures. They cannot access the court unless the relevant labour office has completed its preliminary investigation. Such investigations are based on legal proof, without which they are not entertained in the court or labour office. The few Pakistanis living in Saudi Arabia who were interviewed for this study commented that legal decisions are tilted in favour of Saudis, even if all the evidence points to their wrongdoing. On many occasions, an official or judge goes on unannounced leave, which increases the opportunity cost for migrant workers.

Migrants who are able to bring their grievance to the justice system are often unable to remain in the country for the duration of the court proceedings. Often, they have to abandon their case and return to Pakistan because they acquire irregular status when they are no longer employed by their *kafeel*.

The majority of migrant workers are discouraged from filing or pursuing complaints against their employer for a host of reasons. In most cases, it is due to the lack of information about the grievance registration channels and processes, absence of documentary evidence, the language barrier and/or the fear that the *kafeel* may terminate the contract or the court may side with the *kafeel*. The financial cost involved in hiring a lawyer in Saudi Arabia and United Arab Emirates is very high and deters low-paid Pakistani workers from going to a labour court.

If a Pakistani is willing to invest in a case, they can hire the services of an agent who contacts the employer for release and transfer of the *kafala* to another sponsor or grant a no-objection certificate for an exit visa for a Pakistani migrant. In Saudi Arabia, this expense can range from SAR5,000 to SAR10,000 (\$1,840–\$2,667). Such an informal arrangement costs less than the time and expenses needed for pursuing a court case. And there is no risk of a decision against a migrant worker if they have paid the fee to the agent.

There is no online or computerized complaint system in the Pakistani embassies and missions. The record of complaints is manually maintained for proceeding, follow-up and reporting. Recently, the Federal Ombudsman in Pakistan established an online complaint system that makes filing a complaint while abroad somewhat easier (it does require access to the internet); complaints received that relate to destination countries are directed to the community welfare attachés. However, there is little awareness of this mechanism among migrant workers, especially workers engaged in low-skilled occupations in GCC countries.

To lodge a complaint or follow up requires migrant workers to take leave from their job. Such leave days are deducted from their annual leave time, or their salary is deducted. For these reasons, migrant workers who have been in a host country for a while tend to advise new migrants against contacting the labour office.

Social pressure due to the state of unemployment and competition for jobs among workers in Pakistan and little bargaining power in destination countries leaves migrant workers vulnerable. The level of threat against filing a complaint in Pakistan is far less than in the destination countries, primarily due to the social support and informal options available, such as the *jirgas*,¹² or even with

¹² The local court and justice system in tribal and rural areas of Pakistan.

the police. The general perception among informants who were interviewed is that Arabs consider themselves superior to Pakistani migrants, and thus they find little if any support to seek justice in the event of a grievance. Therefore, migrant workers prefer to complete their time of contract and return home and look for compensation from the local system instead of depending on the costly and unfamiliar system in the countries of destination.

6.3 ROLE OF PAKISTANI EMBASSIES IN GCC COUNTRIES

The role of the Pakistani embassy (and missions) varies from country to country, depending upon the nature of the problems. In GCC countries (specifically in Saudi Arabia and the United Arab Emirates), the problems mostly relate to working there. The MOPHRD has posted 19 community welfare attachés in 14 countries globally (11 of them in a GCC country: four in Saudi Arabia, three in the United Arab Emirates and one each in Qatar, Oman, Kuwait and Bahrain). These offices maintain close relations with the Pakistani community as well as relevant authorities and the business community in the host country to resolve issues and problems of Pakistani expatriates.

In Saudi Arabia and the United Arab Emirates, the community welfare attachés are responsible for supplying information on labour market indicators, living conditions and the cost of living in addition to assisting migrant workers with work-related complaints, relations with their employer and pursuing legal redress. The attachés also help migrant workers negotiate with their *kafeel* or labour officials for due compensation. The attachés keep the BEOE informed of any changes in the labour market situation in destination countries through periodic reports.¹³ Another important duty assigned to the attachés is to monitor the performance of overseas employment promoters (via the workers' conditions) and keep the BEOE informed of any overseas employment promoter who sends migrant workers without fulfilling the due requirements or has many migrant workers dissatisfied with the service.

The attachés also are to help migrant workers renew their national identity card, residence permit and their passport, in addition to supporting those detained in the jails or deportation camps. Most of the time of the attachés is spent on field visits and in arranging resources for migrant workers or meeting with *kafeels*.

¹³ See www.beoe.gov.pk/Contact_Us/Contact_CWAs.htm#eight [accessed 25 June 2016].

The attachés help destitute migrant workers and provide them with air tickets. They also take up matters pertaining to death compensation or other financial commitments with the relevant company or employer for settlement and distribution among the legal heirs. The embassy uses money from the Pakistan Community Welfare Endowment Fund to help prisoners buy telephone credit to contact their family, especially on Eid occasions.

The attachés also handle complaints from an overseas employer against an overseas employment promoter. Such complaints are referred for investigation and then reported to the MOPHRD and the BEOE Director General, with the attaché's recommendations for action (as per Rule 29 of the Emigration Rules). If a complaint from an employer is made against a migrant worker, the community welfare attaché is asked to persuade the migrant to abide by the terms of the foreign service agreement. In the case of gross misconduct by a migrant, the community welfare attaché recommends to the BEOE Director General to cancel the passport and recommend to the relevant department of the host country that the migrant be deported.

In a telephone interview, the community welfare attaché in Dubai reported that in addition to visiting detention camps and residential units, approving workers' application for a visa, responding to workers' complaints, providing legal or translator support in court trials and referring complaints to relevant departments in Pakistan, they conduct orientation sessions for workers upon their arrival in the country. Other attachés have developed country-specific information booklets.

Every month, community welfare attachés report to the MOPHRD, through the Ministry of Foreign Affairs (with a copy to the BEOE), on their activities, including the number of employers contacted, details about the demand secured for Pakistani workers, assistance provided to migrant workers, efforts made to increase the demand of Pakistani professionals through the Overseas Employment Corporation for government-to-government employment, complaints received and resolved, the number of death compensation cases of overseas Pakistanis, including migrant workers, the number of Pakistanis (including irregular migrant workers) in jail or in deportation camps, details of visits made to jails, the number of dead bodies of Pakistanis (including those of migrant workers) transported to Pakistan, the number of irregular migration cases handled and the number of meetings with Pakistani community members to motivate them to send their savings through formal channels.

Table 7 shows data for 2010–15, based on the mandatory monthly report filed by community welfare attachés in GCC countries, which includes the number of complaints received from Pakistanis. The 11 community welfare attachés working in that period received a total of 1,632 complaints, with the bulk of complaints received by the three attachés in the United Arab Emirates and the four community welfare attachés in Saudi Arabia, who received 571 (35 per cent) and 430 (26 per cent) complaints, respectively. The community welfare attaché based in Oman received 329 complaints.

As a follow up on these complaints or previously received complaints, the 11 attachés contacted 1,241 employers in GCC countries for redress, with the majority (714) of employers contacted in the United Arab Emirates. The attachés helped in the recovery of compensation or death compensation for 548 Pakistani migrant workers, with the substantial majority (488) of compensation cases in Saudi Arabia, or 89 per cent of all cases. The total value of owed compensation or other unpaid financial commitments amounted to PKR334.8 million (equivalent to USD3,198,000), with PKR200.8 million (equivalent to USD1,918,000) in owed commitments recovered from Saudi employers. In Oman, PKR94 million (equivalent to USD897,800) was recovered from employers for 31 claims. The attachés made 428 visits to employment sites of migrant workers in those countries from 2010 to 2015, with the largest number of visits being made by the two attachés in the United Arab Emirates, at 253.

Table 7. Performance of community welfare attachés in GCC countries, 2010–15

Station	Employers contacted	Jobs secured	Complaints received and disposed	Recovery of death compensation or other financial commitments owed to workers		Cases of illegal immigration handled	Pakistanis in jails or deportation camps	Visits to jails or deportation camps	Pakistanis stranded without proper documents	Visits made by community welfare attaché or Pakistan mission staff to employment site of workers
				No.	Amount received (PKR)					
United Arab Emirates										
1 Abu Dhabi	363	45 291	93	20	199 220	5 802	7 422	57		
2 Dubai-I	223	13 887	139	8	36 249 911	60	7 591	139		119
3 Dubai-II	128	5 847	339			201	4 628	147		134
Total	714	65 025	571	28	36 449 131	6 063	19 641	343	0	253
Saudi Arabia										
4&5 Jeddah - I & II	34		272	258	49 384 380	50 757		269		9
6 & 7 Riyadh - I & II	237	6 123	158	230	151 379 941	7 710	17 093	194	7 710	38
Total	271	6 123	430	488	200 764 321	58 467	17 093	463	7 710	47
Qatar										
8 Doha	71	5 058	33		207 845	80	562	56		9
Kuwait										
9 Kuwait	100	1 360	113	1	3 349 368	76	247	297	138	69
Oman										
10 Muscat	38	2 310	329	31	94 035 770	3 548		13		38
Bahrain										
11 Manama	47	2 827	156			451	1 385	12	11 265	12
Total	1 241	82 703	1 632	548	334 806 435	68 685	38 928	1 184	19 113	428

Source: MOPHRD

Despite their vital role towards ensuring that Pakistani migrant workers can access justice for employment-related abuses in the destination country, community welfare attachés do not have adequate human, financial or legal resources available to help migrant workers seek grievance redress. In Saudi Arabia, for example, only two attachés are located in the Riyadh and the Jeddah missions; they are responsible for vast geographical areas for which they do not have sufficient resources or assistance. It is also difficult for migrant workers to access community welfare attachés due to their geographical location and the official procedure to enter the embassy (which requires a passport, typically confiscated by an employer or sponsor).

The community welfare attaché based in United Arab Emirates has requested the Government of Pakistan to provide additional resources to hire a team of lawyers that would enable the embassy to facilitate Pakistani migrant workers in that country in seeking legal and rightful remedies. He noted during the study interview that his Bangladeshi counterpart in Dubai has the support of four highly qualified interpreters. This makes the life of Bangladeshi workers much easier because the official language of Dubai is Arabic; it is difficult for anyone who does not speak or read Arabic to pursue a case in a government office.

Not only is the number of community welfare attachés inadequate for the need, according to various interviewed informants, their qualification and level of effort, knowledge of processes and links and level of commitment is inadequate. There is need to resolve this by hiring community welfare attachés through transparent and appropriate criteria and adequately training them before they take up their post.

The Pakistan embassies and missions do not have a formal and systematic complaint management system in any destination country. However, the online complaint registration and tracking systems of various departments are accessible from everywhere.

Despite limited support from the BEOE and the large number of migrant workers in Saudi Arabia and the United Arab Emirates, the community welfare attachés appear to play an effective role in resolving migrant workers' problems. The local employers reportedly are influenced by a letter, phone call or even a visit from the community welfare attaché. Apart from personal efforts, the community welfare attachés also keep close contact with influential Pakistanis in the countries of destination and use their contacts and influence during negotiations for settlement at an informal level of any dispute between employer and a Pakistani migrant worker.

Still, as with the survey respondents' knowledge of the complaint-handling systems in Pakistan, the respondents overall had little knowledge of any such system in their destination country. Among the survey respondents who had some idea of where to go if they experienced any work-related difficulty, most (17 potential migrants) cited FIA. None of them mentioned the Pakistan embassy or mission in a destination country.

6.4 INFORMAL DISPUTE RESOLUTION MECHANISM IN GCC COUNTRIES

The interviews with the few Pakistani migrant workers in Saudi Arabia who have resided and worked there for the past 40 years revealed that a fairly strong and effective informal dispute resolution mechanism exists. The Pakistani community members living for decades in Saudi Arabia have developed links with Saudi officials as well as companies. When new Pakistani migrant workers encounter a grievance situation, they are typically supported by settled migrant Pakistanis belonging to the same village, district or caste or having some other relationship. The Pushtoons from Khyber Pakhtunkhwa, for instance, substantially support each other.

The Pakistani community living in Saudi Arabia and the United Arab Emirates provides financial contributions to Pakistanis in need in times of distress. Such contributions can be given to pay a lawyer's fee. Community relationships are also used to help resolve problems by informally approaching the embassy, a labour office or the police when needed. This community support is considered cost effective and an efficient dispute resolution mechanism. A number of Pakistanis who have lived in the destination countries are inclined to spare considerable time for the welfare of a community member.



7. Conclusions and recommendations

7.1 CONCLUSIONS

The Government of Pakistan has no migration policy, which is important for setting direction for the institutions, organizations and individuals in the governance of labour migration in Pakistan. Consequently, there is no strategy to address the problems of migrant workers. Nor is there any plan of action to resolve many of the issues facing migrant workers in a holistic manner. Clear policy guidelines would enable greater coherence among government agencies and other stakeholders; and allow the Government to negotiate or renegotiate the terms of export of Pakistani human resources when discussing MOUs with countries of destination.

The two most important service providers in the process of migrants' complaint registration, investigation and redressing are the POE and the community welfare attachés, who receive the bulk of the complaints by prospective migrant workers or by those in the countries of destination. Both these mechanisms are overburdened, lack the necessary support infrastructure, including sufficient staff to carry out the duties assigned to them. The number of Pakistanis migrating to GCC countries has increased manifold in recent years, while their total number of cases in these countries has also increased significantly. However, the offices responsible for facilitating migration or providing support in the countries of destination have not been strengthened or upgraded. An increase in the number of community welfare attachés in GCC countries has not resulted in an increase in their staffing, facilities or support system.

There are many institutions handling complaints, but none of them is systematically keeping the data of complaints, which would lead to a better understanding of the causes of complaints or to help remove systemic flaws and help identify structural issues. Lack of systemic and complete data deters policy makers, advisors and researchers from looking into the problems and finding solutions.

Complaints often stem from a lack of information or awareness among migrant workers or intending migrant workers about the process, the payment of fees and the requirements in Pakistan as well as in the country of destination. Only a fraction of intending migrant workers appear to receive the pre-departure briefing, which is also extremely brief and does not cover the culture of destination countries, the language or the terminology of the trade in which a migrant is intending to work.

In most cases, there is an unwritten agreement between the POEs and the overseas employment promoters within their jurisdiction that the promoters will brief the migrant workers (rather than POE staff, as they are mandated to do). In certain cases, according to informants, proper information is not conveyed to the migrants because it might not be in the interest of the promoters to tell everything.

Many complaints relate to the conduct of subagents who render a useful service; because they are not recognized or regulated under the law, a large number of irregularities occur outside the system.

Low-skilled Pakistani migrant workers pay a huge amount of money (for example, SAR15,000–SAR20,000, equivalent to \$3,800–\$5,200) to purchase a work visa. Such charges for highly skilled workers are covered by employers. The Emigration Rules (15A) permit the overseas employment promoters to charge a fee for a visa obtained from an agent in a destination country in addition to the official visa fee charged by the embassy for affixing the visa.

Even though only a small fraction of migrant workers are women, they are particularly vulnerable to exploitation and abuse.

Governance issues in the institutions involved in the migration process make the problems more complex. Systems are not properly designed, standard operating procedures are missing, roles and responsibilities are not clearly defined, staff lack proper training, digital systems are not effectively used, and there is lack of coordination between the different government institutions involved in grievance redress.

Migrant workers have limited access to community welfare attachés because they are located in only a few places in the country of destination. Migrant workers have to bear additional costs for travel, accommodation and loss of wages, which deter them from approaching a community welfare attaché. The perception that the attachés or labour office of the host country may not address their problem further deters them. They are also not aware of what evidence they need to move their complaint into the system. Migrant workers who are able to reach the embassy or mission find a large number of complainants, and it a long time to be seen.

7.2 RECOMMENDATIONS

Based on the analysis of the systems that exist and the responses received through this study, the following recommendations are offered to further improve and streamline the existing access to justice system for Pakistani migrant workers in GCC countries:

1. A coherent, effective and fair labour migration policy should be prepared and announced by the Government, in consultation with social partners, which should have clear guidelines and a strategy for minimizing complaints of Pakistani migrant workers and putting in place an integrated system of complaint management. The relevant international labour standards and international instruments should be considered in the development of such a policy, as well as good practices from around the region. A thorough study of the laws and policies of the GCC countries should be carried out before finalizing such a policy.
2. There is need to re-engineer the procedures for filing a complaint and tracking its progress with modern information and communication technologies and market information systems. Additionally, there is need to substantially strengthen the POE Offices and community welfare attachés by providing their staff proper training, providing them integrated systems managing data, continued training and refresher courses for better customer care and moving from paper work to e-filing and web-based solutions.
3. The number of POE Offices needs to be increased to reduce the burden on the existing offices so that they can properly monitor the overseas employment promoters and Trade and Testing Centres. This would result in better handling and proper scrutiny of cases and lead to more satisfied and properly attended migrants.
4. There is need to integrate all online and offline complaint registration and tracking systems and to merge all databases to better understand the overall situation of Pakistani migrant workers. This integration should be done on the basis of a unique ID system, such as the worker's computerized national identity card or other national identity card.
5. The Government should launch an awareness campaign through print and electronic media as well as other sources to inform the public at large on authentic sources of information regarding migration, especially in the geographic areas that are not close to a POE Office.
6. There is need to improve the quality, content and duration of the pre-departure briefings by the POE Offices. The briefings should include information on relevant laws, culture and processes in GCC countries, problems likely to be encountered and the complaint registration systems and processes for seeking remedy. The content and substance of these briefings can be enhanced through

use of multimedia and audio-visual aids and by playing recorded briefings in videos on the different aspects of the migration process.

- The impact of these briefings can be further enhanced by conducting another short pre-departure orientation using the set-ups recently established in all international airports of Pakistan to facilitate migrant workers. A 30–40 minute orientation session can be prepared for departing migrant workers at the airports, including information about the laws and culture of GCC countries and working conditions in GCC countries; the videos should include interviews with Pakistani workers in those countries discussing their experience with a complaint and the way they handled it.

7. There is a need to ensure that migrant workers are provided Urdu (or local language) translation of their foreign service agreement and that it is well explained to them. Any subsequent change in the agreement in the country of destination should be signed in the office of community welfare attaché in the presence of the migrant worker. This would help reduce the incidents of grievance.

8. The Emigration Ordinance and the Emigration Rules need to be updated, with particular reference to grievance complaint handling, clarifying the jurisdiction of each department and developing standard operating procedures for complaint handling with time-bound outcomes for each department.

9. The unregulated intermediaries (subagents, tour operators, education consultants, etc.) in Pakistan should be brought under regulation, for example, by allowing them to associate with an overseas employment promoter after payment of a reasonable security deposit with the overseas employment promoter. This would help reduce the instances of fleecing of potential migrant workers and other fraudulent practices.

10. Selection of community welfare attachés should be made on merit, and staff and necessary support should be provided according to their responsibilities. Performance indicators need to be defined, and their performance should be continuously monitored through an online reporting system.

11. The Pakistani embassies and missions need additional resources to hire the services of translators, interpreters and lawyers to follow up the cases of migrant workers in the labour office and labour courts of the GCC countries.

12. Ease of access to the place of complaint registration for the family of migrant workers needs to be considered. More Migrant Resource Centres should be established in all major cities of Pakistan. The centres should have current information on labour markets and should have videos for migrant workers' awareness, in regional languages. They should include orientation on labour laws and culture of the GCC countries.

13. The performance of each overseas employment promoter should be maintained using an index or scorecard based on various types of jobs performed, including the number workers sent abroad and the number of complaints filed against the promoter, especially those registered in countries of destination.

14. A scorecard or feedback system for migrant workers to rate the performance of community welfare attachés should be introduced.

15. To enhance the access to community welfare attachés or Pakistani embassies and missions, the Government could consider contracting out the job of preparing cases. A third-party private service provider with offices in all major countries with Pakistani migrant workers should be considered. Such a system would spare migrant workers from needing to travel to meet with the community welfare attaché. It would reduce the time and effort currently required by the community welfare attachés, and reduce the financial and time burden on migrant workers.



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Annex I. Informant interviews

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- 1 | Haroon Waqar Malik Community Welfare Attaché, United Arab Emirates
 - 2 | Imran Rasheed, Section Officer (community welfare attaché-I), MOPHRD
 - 3 | Faiza Mir, Assistant Director HR, Islamabad High Court
 - 4 | Zulfiqar Hussain, Director, Protector of Emigrants, Rawalpindi
 - 6 | Jabbar Chaudhary, Deputy Director Complaints, License Cancellation, BEOE
 - 7 | Adil Nawaz, Assistant Director, Grievances Cell, BEOE
 - 8 | Zulfiqar Naqvi, Advocate Supreme Court of Pakistan, Naqvi Law Associate
 - 9 | Sajjad Ahmed Qazi, Section Officer, MOPHRD, Islamabad
 - 10 | Waseem Barakullah, Deputy Director, Office of the POE, Lahore
 - 11 | Aqeel Khan, Deputy Director, Punjab Overseas Pakistanis Commission, Lahore
 - 12 | Nadeem Hassan Gohar, Admin Officer, Office of the Ombudsman Punjab, Lahore
 - 13 | Liaqat Ali Khan, Provincial Ombudsman Office, Lahore
 - 14 | Muhammad Afzal, Central Chairman, POEPA
 - 15 | Hafiz Ahsan Ahmed Khokhar, Grievance Commissioner for Overseas Pakistanis
 - 16 | Fayyaz Ahmed Malik, Chief PPU, MOPHRD, Islamabad
 - 17 | Shazia, Senior Officer, MOPHRD
 - 18 | Mir Ghulam Hussain Talpur, POE Karachi
 - 19 | H. M. Faisal Paracha, Director, overseas employment promoter
 - 20 | Abdul Shakoor Soomro, Deputy Director Grievance Settlement
 - 21 | Aneesuddin Ahmed, Senior Advisor, Grievance Commissioner in Ombudsman Office, Regional Office Sindh
 - 23 | Malik Nazir Ahmed, Judge, Special Court, Islamabad
 - 24 | Tanvir Hussain, Additional Director Overseas Pakistanis Foundation
 - 25 | Overseas Employment Corporation officers
-

Annex II. Rapid survey

For this study, a rapid survey was conducted in 2015, with a sample of 75 male migrant workers representing multiple trades. The sample included 32 potential migrants, 30 returned migrant workers and 13 migrants based in Saudi Arabia. The survey was carried out to assess the level of their understanding and information regarding the relevant complaint mechanisms in Pakistan. The majority of the migrant worker respondents in the rapid survey (both potential and actual) were labourers.

Occupational categories of potential and migrant workers in the rapid survey

Categories	Potential migrants		Migrant workers	
	No.	%	No.	%
Accountant	2	6	0	0
Civil engineer	2	6	0	0
Data entry operator	1	3	0	0
Diploma mechanical	0	0	1	3
Doctor	1	3	0	0
Driver	3	9	2	6
Electrician	3	9	0	0
Engineer	1	3	1	3
HSE supervisor	0	0	1	3
Labourer	11	34	35	81
Management	1	3	0	0
Plumber	2	6	0	0
Project coordinator	0	0	1	3
Safety officer	1	3	0	0
Security guard	1	3	0	0
Shuttering fixer	1	3	0	0
Steel fixer	1	3	0	0
Welder	1	3	2	6
Total	32	100	43	100

Source: Rapid survey, 2015, see ILO, 2016.

WHERE TO GO FOR HELP:

Pakistani migrant workers' access to justice at home and in Gulf Cooperation Council countries

Every day, around 3,000 workers leave Pakistan in search of employment opportunities abroad, largely because low-skilled options for decent work at home are in short supply. Around 97 per cent of them end up in a Gulf Cooperation Council country, primarily Saudi Arabia and the United Arab Emirates.

Unfortunately, many of them will experience various forms of abuse or exploitation prior to their departure and/or in the destination country, such as extorted migration fees and non-placement (after paying the fees). In the destination country they may not receive their salary, have their documents withheld or their contract substituted for one with unfair terms. They may experience physical or sexual abuse or be supplied with degrading living conditions. Only a few victims of foreign employment-related abuse or exploitation seek justice.

The study featured in this report sheds light on the situation of accessing justice in Pakistan as well as Saudi Arabia and the United Arab Emirates. It examines factors preventing migrant workers from registering a complaint and the accessibility and effectiveness of the grievance-handling mechanisms. It also describes bottlenecks in the grievance-handling process and suggests ways to improve it to provide a speedy, accessible, less costly and just remedy to migrant workers.

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Promoting safe migration and protecting migrant workers

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