



Proactive System Study on Foreign Workers Recruitment and Administration System

Anti-Corruption Commission: Royal Government of Bhutan

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1. Background

Along with an unprecedented boom in the construction industry, the trend of recruiting foreign workers, both skilled and unskilled, to meet the demand of labour has also increased significantly in the country. According to the Ministry of Labour and Human Resources (MoLHR), Bhutan recruits more than one hundred thousand laborers from across the border every year.

In a bid to manage and administer increasing number of foreign recruits, the MoLHR had introduced the concept of 'Employment Agents' in 2004 and accordingly formulated Rules and Regulations affecting it in 2006. These '*Employment Agents*' were later renamed as '*Foreign Workers Recruitment Agents*' (FWRAs) in 2009. Currently there are 68 FWRA's operating from bordering towns of Phuentsholing, Samtse, Gelephu and Samdrupjongkhar.

While it is compulsory for anyone wanting to employ foreign workers to route through licensed FWRA's as required by the Rules, there are doubts and apprehension in the minds of stakeholders as to whether or not there is any value being added for adopting such recruitment system and whether the system is actually resulting into inconveniences and cost that eventually encourage corruption in the country.

This study, among others, aims to examine the system relating to the recruitment of foreign workers in the country vis-à-vis preventing corruption.

Although there do not seem to have any significant corruption opportunities and risk associated with the system of recruiting foreign workers in the country per se, the study reveals wide contradiction between policy in principle and ground reality. The inconvenience and increase to the cost of doing business are some of the issues that not only concerns employers but also Government as the present way of doing things adds to huge administrative costs.

Although FWRAs were entrusted with various functions and responsibilities with respect to recruiting and managing foreign workers, they do not seem to be carrying out many of these functions as majority of their functions are found to be performed by Thikhadars (Indian contractors hired by employers) for various reasons. The FWRAs, however, were found to have benefitted in the form of fees whether or not justifiable.

2. Methodology

For the purpose of carrying out this systemic study, small samples of clients were selected and accordingly interviewed them through (20 contractors/employers, 20 FWRAs and 20 labourers) pre-set questionnaires (*attached as annexure 1*). Desk research on the rules and procedures of foreign workers recruitment system and field visits to various construction sites were also carried out to corroborate and authenticate information provided by various stakeholders.

As a part of the system study process, the findings from the study along with recommendations were discussed with officials from the Department of Labour (DoL) and the Department of Immigration (DoI) on 28th December 2012 at ACC Conference Hall to seek consensus and further inputs in terms of recommendations.

3. Present way of doing things and the apparent systemic flaw

Step 1: All employers (individuals and firms who require foreign labourers) are required to apply for foreign workers through FWRAs:

The Guidelines for licensing of FWRAs require all employers to recruit foreign workers compulsorily through licensed FWRAs. Therefore, applications for all foreign workers are first required to be submitted to FWRAs and the DoL does not entertain any application that comes directly to them.

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As mandated by the system, all employers were found to be submitting their application for foreign workers through FWRAs. While there is no systemic flaw in routing their request through FWRAs, just routing the application without following other steps in the whole process of recruitment and repatriation does not make any economic and social sense.

Step 2: Preparation and signing of written Agreement between FWRAs and employers:

Rule 27 of FWRA Regulation 2008 and section 61, Chapter V of the Labour and Employment Act 2007, requires FWRAs to enter into an agreement of 'Contract of Employment' with employers concerned after receiving formal application from the later. However, such legal provisions were found to have not adhered to in proper sense. In other words, not all FWRAs enter into such agreement with the employers concerned. Based on the study, only 5 out of the 20 or 25% of FWRAs interviewed responded to have not signed the contract with the employers.

Non-compliance such as this not only defeats the very purpose of instituting such system but also provides avenues for both FWRAs and employers concerned to manipulate terms and condition in the over-all management and operation of labour recruitment system. For example, foreign workers recruited for one site can be sent to another site belonging to another person within the country for a commission or some profit.

Step 3: Online application to DoL by FWRA

As per the procedures of obtaining work permits, FWRA upon receiving the foreign workers application from employers, apply to DOL on behalf of the employers through the online labournet system. The DoL verifies and approves/disapproves the numbers of foreign workers applied within a week's time. While this has been implemented in practice and deserves applause, there seem to have a problem when it comes to processing additional labour. There is no clear system or set procedure for processing additional labour requests. As of now, while additional

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labour requests are applied online by FWRAs, the employers' follow-up with DoL for approval directly.

Lack of clear systems and criteria with respect to additional labour request provides opportunities for corruption across the system.

Step 4: Recruitment of foreign workers

While in principal, it was the primary mandate of FWRAs to recruit and process labour permits for employers, all such functions were found to have carried out by a third person referred to as Thikadhars. Staggering 95% or 19 out of 20 respondents reported to have recruited their labourers through Thikadhars.

Today recruiting foreign workers by way of Thikhadhars has become an accepted practice or norm in the construction industry and it is mainly because of the fact that it is more convenient, cost effective and less time-consuming comparing to the formal way of doing things.

In keeping with the rules, although employers do route their application through FWRAs and also pay them their dues, the recruiting aspect of the function is mostly done through Thikadars thereby incurring double expenditure for the same purpose. Through this, it can be established that although FWRAs exist as required by the Labour and Employment Act 2007, but in reality, they do not provide any valuable service to justify their existence. This has resulted into huge administrative cost to the employers, and such a cost is ultimately shifted to the Government in the case of government funded activities.

On the average, the employers pay about Nu. 300 per foreign worker and if we extrapolate this figure into the number of foreign workers recruited every year which is one hundred thousand, we are talking about Nu. 30 million as administrative cost annually excluding the extra expenditure the employers incur to engage Thikhadars.

Therefore, there is an immediate need to reflect and study whether there is any justification to have agents in the foreign workers recruitment system. This is indeed a problem of rent seeking and it is necessarily condemned economically and socially.

Step 5: Screening of labourers and skills testing

Upon the online approval of applications, the status of application automatically gets updated in the online system which is accessible to FWRA and employers as well as to the DoI or Regional Immigration Offices. After the approval, FWRAs are required to screen the labourers before processing Medical Fitness Certificates. However, in practice the FWRAs do not screen the labourers due to lack of capacity. Such non-compliance will lead to recruitment of inappropriate or unskilled labourers.

Step 6: Processing of Medical Fitness Certificates

The FWRAs are then required to process Medical Fitness Certificates for those labourers who have been screened and tested. Currently medical tests are conducted from 4 PM – 6 PM in the evening. From the study, 95% or 19 out of the 20 respondents expressed their concern with respect to the time allocated for processing medical certificate. With the increasing number of foreign workers required in the country every year, there exists risk of corruption in obtaining Medical Certificates if appropriate measures are not put into place. There are already reports of rackets in processing Medical Certificates as per the media. For example, Mr. Pema Wangda, Secretary of MoLHR, the then Director, DoL was quoted in one of the news article where he mentioned about how some agencies sold sealed and signed medical certificates.

Like many countries around the world, medical fitness of any foreign workers before one enters the country needs to be taken seriously, especially, because of the fact that these labourers mingle so freely with our population.

Step 7: Application – validation – approval

After the approval by the DoL, FWRAs apply for labour permits with DoI and in doing so, they submit three documents namely; Form 'B (II)' issued by DoI, Medical Fitness Certificate, and identification documents such as passports, Voters card, identity card as issued by the Central and the State Governments of respective nationals.

The DoI approves or rejects the application based on the authenticity of the documents and other required formalities. Although there is no problem with application and approval aspect, there do not seem to have proper system to validate the authenticity of the documents or to detect fake/forged documents as these documents can be easily availed across the borders. This provides room for foreign workers to enter Bhutan with fake/forged documents and accordingly pose threat to the security of the nation.

After completing the required formalities, work permit is issued to the employer and fees and security deposit to that extent are collected by the concerned office.

Step 8: Handing over of foreign workers to the employers

As per the system, the FWRA upon receiving the work permits are required to hand over foreign workers to the employers unless the employers take charge from the entry point. There is no problem in relation to fulfilling the requirement of handing over foreign workers to the employers.

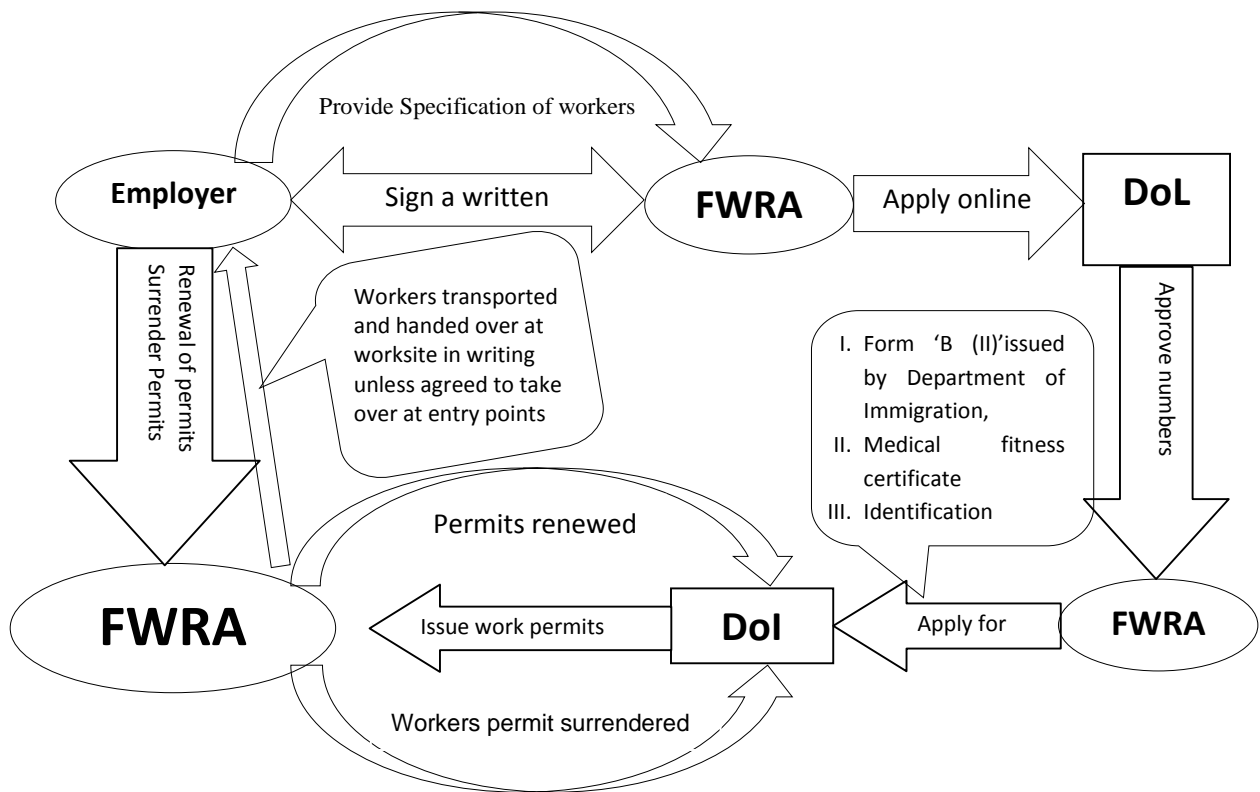
Step 9: Repatriation of labourers

The existing system requires the FWRAs to ensure that the foreign workers recruited by them are repatriated through proper channels upon completion of work and expiry of the work permit. However, it does not happen that way as the FWRAs cease to exist after handing over foreign workers. It was evident from the study that the labourers can easily exit the country on their own without the knowledge of immigration officers at the check points.

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As much as absconding labourers add to the cost of doing business to the employers, there is also risk associated with these labourers not being properly repatriated. There were quite several cases of such labourers being caught without proper permit in the country and such lapses will definitely add to security concern of our country.

The flow chart below illustrates the process of foreign workers recruitment in Bhutan.



4. Systemic Recommendation

In view of the above systemic lapses and the risk associated with it, the Anti-Corruption Commission recommends the following:

- a) MOLHR should either operationalize FWRA Regulation 2008 and implement it in letter and spirit uniformly throughout the country or work towards amending FWRA keeping in mind the economy, efficiency and conveniences of recruiting foreign workers in the country. The sporadic application of rules would not only distort the level playing field in the industry but also promote favoritism and nepotism in the country. 25% of the respondents indicated to have not signed any contract agreements as required by the rules with employers and thus points to a huge non-compliance. Otherwise, the option of having to route through FWRAs and not should be legitimized and accordingly made known to public through public announcement.
- b) MoLHR should re-examine the overall cost associated with having to route recruitment of foreign workers through agents and compare it with the benefit it brings to the economy and society keeping in mind the behavior of rent seeking between the principal and agents.
- c) Institute a clear system for processing additional labourers request. Although they entertain additional labour request, there is no written procedure for the same. Therefore the Department is recommended to establish proper procedure to process additional labour in keeping with the risk of possible manipulation from the agents' side in order to bring in more labourers to be dispatched to different sites.
- d) Although the system of using FWRAs to recruit labourers was instituted with good objectives and reason, there is an immediate need to examine if such objectives are being met. This is because massive 95% of the respondents

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(contractors and other employers) have indicated that they recruit labourers through Thikhadars and that they are only paying FWRA for nothing.

- e) If FWRA are still argued to be economically viable and practically feasible, there is also an immediate need for the DoL to examine the institutional capacity of each and every FWRA in terms of their ability to recruit able and skilled personnel that meet the requirements of our construction industry.
- f) MOLHR and DOI in coordination with Ministry of Health should look into the possibility of either extending the time for the medical fitness checkup. The study revealed that the timing allocated (4pm-6pm) for medical checkup and issuing Medical Certificate is one of the most difficult aspect of foreign workers recruitment system.

As anywhere in the world, due importance must be accorded to examine the medical fitness of incoming foreigners to prevent communicable diseases from spreading in our society. And because labourers mingle so freely with our community, it is recommended to institute a proper and effective medical checkup and screening system and that the timing be made suitable. For want of time and convenience, there were already reports of medical certificates being issued without proper checkups.

- g) As much as to the incoming foreign workers, it is also important to make sure that foreign workers are appropriately repatriated. The DoL in collaboration with the DoI should establish a system to detect illegal foreign workers in the country and accordingly fix accountability mechanism for whoever fails to appropriately repatriate foreign workers after the expiry of the work permit.

Annexure - Questionnaire

Questionnaire for FWRAS

Information of recruitment agent

1. Name of agent (FWRA)

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2. Number of years in recruitment agent business

.....

3. Location

.....

4. No of regular staffs

.....

5. Did all your staffs undergo any kind of training course conducted by MoLHR or other institution?

Yes

No

Information on recruitment (roles and functions)

6. Do you think employers are routing laborer recruitment through your agency?

a) Yes

b) No

7. If No, why do you think they are not routing through your agency?

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8. For how many agencies/firms or for private house construction have you recruited Labourers so far?

a) 5-10 b) 10-15 c) 15-20 d) More than 20

9. How long do you take to recruit Labourers for one employer?

One week 2 weeks 3 weeks More than 3 weeks

10. What difficulties do you face in recruiting Labourers?

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11. Do you do skill testing of Labourers?

Yes No

12. If yes, how do you carry out the skill testing of Labourers?

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13. Do you ensure the exit of Labourers you recruited after the completion of work?

Yes No

14. How do you ensure the exit of Labourers from the country?

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15. Do you sign a contract with employer once you are assigned with the job as per FWRA Regulation 2009?

Yes No

16. Do you submit your report to MOLHR on quarterly basis?

Yes No

17. Does MoLHR conduct periodic inspection?

Yes No

18. Any feedbacks to improve the present recruitment process?

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Questionnaire for Contractors

Information of the Contractor/construction firm/employer

1. Name of the contractor/firm/employer:
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2. Number of houses constructed:

Information on recruitment process

3. How do you recruit your labourers?
Through agent On my own
4. **If on your own**
(a) Why do you recruit labourers on your own?
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- b) Do you involve Thikadar ?
Yes No
- c) If yes, how much did you pay to thikadar?
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5. **If by FWRA**
a) What are the advantages of labourers being recruited by FWRAs?
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b) What are the disadvantages of recruiting labourers through FWRA's?

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6. How long do FWRA take to recruit labourers?

0 – 7 days

8 – 14 days

15 – 21 days

22 – 28 days

7. Do you submit labourers' permit back to FWRA after completion the work?

Yes

No

8. Any feed backs on the recruitment process.

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9. Are there any opportunities for corruption in the existing system?

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Questionnaire for Labourers

Information of Labourer

1. Name.....
2. Age.....
3. Permanent address
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Information on work

4. What is your employer's name / where do you work?
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5. How long have you been working in Bhutan?

1 year 2 years

3 year More than 5 years

6. Is it your first time working in Bhutan?

Yes No

7. Under what job category are you registered? (8 categories).

Concrete Worker Carpenter Mason

Electrician Plumber Unskilled Worker

Mine Worker Rod Binder

8. Are you currently working in the same category?

Yes No

Information on recruitment

9. Who recruited you?

FWRA Contractor Thikadar

10. If FWRA- What is the name of your Agent?

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a) Was Thikadar involved in your recruitment?

Yes No

b) Does FWRA protect you from unfair placement and employment practices

Yes No

11. If Contractor

a) Was Thikadar involved in your recruitment?

Yes No

b) Did you register with FWRA?

Yes No

c) What other formalities were required?

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d) What all documents did you submit?

- Medical fitness certificate
- Identification documents (passport/Voters card/ identity card issued by central and state governments of India in the case of Indians being recruited)
- Any other

e) Do FWRA do any skill testing?

Yes

No

f) How long did it take to register?

a. Less than one week

b. 2 weeks

c. 3 weeks

d. Less than 1 month

Information on Permit

12. Who proceeded for your Permit?

FWRA

Contractor

13. How long did they take to get your permit?

Less than one week	<input type="checkbox"/>	2 weeks	<input type="checkbox"/>
3 weeks	<input type="checkbox"/>	Less than 1 month	<input type="checkbox"/>

14. Are you aware of requirement to submit your permit back to employer at competition of your term in Bhutan?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Information on Pay and Fees

15. How much did you pay to FWRA/Contractor?

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16. What else did you pay to whoever recruited you?

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General Information

17. Is recruitment procedure very long?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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18. Did you face any difficulties during the recruitment?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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19. If yes, state some difficulties that you came across in brief?

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20. Any feedbacks on recruitment process?

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