Understanding Nexus between Human Trafficking and Labour Migration: Challenges and Ways Forward

A Summary Report
31 January 2019

Pravasi Nepali Coordination Committee (PNCC)
Anamnagar, Kathmandu, Nepal
### Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>CESLAM</td>
<td>Centre for the Study of Labour and Mobility</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
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<td>DoFE</td>
<td>Department of Foreign Employment</td>
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<tr>
<td>FEA</td>
<td>Foreign Employment Act</td>
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<td>GAATW</td>
<td>Global Alliance Against Traffic in Women</td>
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<td>GCC</td>
<td>Gulf Cooperation Council</td>
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<td>HTTCA</td>
<td>Human Trafficking and Transportation Control Act</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>NHRC</td>
<td>National Human Rights Commission</td>
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<td>NNSM</td>
<td>National Network for Safe Migration</td>
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<td>NRB</td>
<td>Nepal Rastra Bank</td>
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<td>PNCC</td>
<td>Pravasi Nepali Coordination Committee</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
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<td>TIP</td>
<td>Trafficking in Person</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WMRW</td>
<td>Women Migrant Returnee Worker</td>
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1. Introduction
Human trafficking and labour migration are not new topics in Nepal. Human trafficking is a serious crime whereas labour migration is a process, and they both have been widely debated issues in Nepal since last one decade. The increasing scenario of cases of fraud, deception, exploitation and other grievances in foreign employment paints the picture of human trafficking hidden under the cover of labour migration. It is believed that migration and human trafficking have been interconnected in many aspects, however, in practice, the cases of human trafficking is reported as the cases of deception, fraud and irregularities in the process of labour migration. In the state of confusion in the jurisdiction of the existing laws governing trafficking and migration, culprits have always been found a safe ground. In the pretext of increasing vulnerability of victims of human trafficking and labour migration, need of creating common understanding about the nexus between human trafficking and labour migration is seen to be brought on a common discussion forum. Therefore, a National Consultation Meeting (residential programme) on Understanding Nexus between Human Trafficking and Labour Migration: Challenges and Ways Forward was held on 25-26 January 2019 in Dhulikhel aiming to bring uniformity at understanding these issues and prepare policy recommendations in order to help minimize the grievances associated with human trafficking and labour migration. The Consultation Meeting was jointly organized by Pravasi Nepali Coordination Committee (PNCC), National Network of Safe Migration (NNSM) and Solidarity Centre.

Programme Objectives
The consultation meeting was aimed to the following objectives:

- To sensitize stakeholders about understanding of nexus between human trafficking and labour migration with ground experience.
- To find gaps in existing policies.
- To prepare policy recommendations to be submitted to the Minister of Labour and Employment and Social Security during delegation visit.

Expected Output
Following were the expected output of the programme:
• The awareness among the participants on the nexus between human trafficking and labour migration and challenges associated with this process.
• A position paper, policy recommendations for countering human trafficking and grievances associated with labour migration issues.

**Programme Modality**
The programme was held mainly through the following modality:
• Sharing of experience by CSOs working in trafficking and migration sector
• Discussion on Understanding of nexus between human trafficking and migration based on ground experience (analytical observation of human trafficking cases)
• Presentation on Existing legal provision to counter human trafficking from broader perspectives
• Gap/loopholes findings through group discussion
• Policy recommendations

2. Factors of human trafficking
Both internal (within the country) and external trafficking that is cross-border trafficking (to India), oversea trafficking (beyond India) have been found in Nepal. Cross-border trafficking of women and children to India today takes place for prostitution, dance in orchestra, circus performance whereas trafficking of persons to overseas mainly is for the labor exploitation but it has also turned to be sexual exploitation in night clubs, dance bars and hotels and other entertainment sectors.¹

Number of factors and reasons increase vulnerability or be the root cause of trafficking. It is essential to identify the causes of trafficking or the factors that make people vulnerable. These factors are poverty, unemployment, lack of means of livelihoods and landlessness, illiteracy, lack of awareness, globalization, and migration. The majority of trafficking victims are women and girls; and those who have limited economic opportunities, who are illiterate or have low education attainment, and low socio economic status are especially in more vulnerable situation. In other way trafficking is also associated with migration.

¹ NHRC 2018
3. Ban on Women's Migration and Increased Risk of Trafficking

The Government of Nepal has been taking several safety measures to protect the women migrant workers. One of such measures taken is the ban on women's migration. In 2015 government issued a guideline regarding domestic jobs in the Gulf countries and Malaysia. The guideline prohibits Nepali women who have not completed 24 years of age from taking up domestic jobs in the Gulf and Malaysia. In March 2017, the Parliament's International and Labor Relations Committee instructed the Government to implement a ban on Nepali women to migrate for Gulf countries for foreign employment as housemaids. However, such measure taken by government has not discouraged women from migrating. In 2015 ILO conducted a study which indicates that the bans have had the adverse consequences on women migrants.\(^2\)

The study further shows that the age ban:

- has not discouraged younger women from migrating,
- has no effect on treatment of women workers by their employers,
- may have increased irregular migration and a risk of trafficking,
- also has discouraged the economic opportunities for women and social opportunities.

Women in our societal context are perceived to be vulnerable, powerless and needing protection. That is why government bans and restrictive prevention campaigns focus mainly on women. But, often the bans and campaigns end up being overly protective – restricting, rather than increasing, women’s choices. Though they aim to protect women, they do not always protect women’s rights or increase her choices.\(^3\)

4. Problems Experienced by Nepali Migrant Workers

Majority of the Nepali migrant workers experience the harms and labour violations during the course of migration. These start from pre-departure process at home to even after reaching the destination countries.

4.1 Problem Experienced Pre-departure

Most of the migrant workers experience a problem during the recruitment and placement process. Various studies conducted by both Nepali and international human rights organizations reflects that pre-departure problem, including fraud, misrepresentation and

\(^2\) ILO 2015  
\(^3\) GAATW 2010
outright theft, are systematic and widespread in Nepal. Some other common pre-departure problems include: excessive fees; delayed or cancelled departure; contracts and required documentation not provided in time or at all.

4.2 Excessive Recruitment Fees
One of the most common harmful practices reported by migrant workers is overcharging of recruitment fees. In several cases, the migrant workers are forced to sign a receipt that states the worker has paid only the amount provisioned under law. It does not reflect the actual fees charged by recruitment agencies and makes it difficult to prove that the worker has been overcharged. To pay these fees, many migrant workers take out loans, often from unapproved moneylenders at exorbitant interest rates.

To get rid of overcharging, Government of Nepal issued "Free Visa, Free Ticket" policy in June 2015. With the introduction of this policy the maximum fee to be paid by Nepali migrant workers going to GCC countries was reduced to NPR 10,000, and employers are required to bear the costs of the visa and air ticket, which was previously borne by the migrant worker themselves. However, in practice, migrants have generally always paid a much larger amount even after the "Free visa, Free ticket" policy.4

The illegal overcharging of fees, non-transparency of fees, and associated high interest debt places migrant workers in a particularly vulnerable position. The magnitude of these debts leaves workers feeling trapped and unable to refuse a position pre-departure or demand a higher salary, ultimately contributing to situations of coerced employment. It also makes workers less likely to challenge exploitative or harmful working conditions or wages less than the agreed salary once abroad because of a fear of being terminated, creating conditions for debt bondage.5

4.3 Contracts and Other Required Documentation not Provided or Provided Late
Written contracts let the prospective workers know of the terms and conditions of employment to enable them to make an informed decision about whether to accept the position or not. Those contracts also subsequently serve as a significant evidence of the

5 CESLAM 2014
parties to the agreement, and the agreed terms of the employment, that enables workers to seek redress for work conditions or wages different from those agreed pre-departure. The several studies has revealed that contracts and other documentation provided to prospective workers were incomplete, provided late, or not provided to workers at all. The FEA 2007 and the 2008 Rules are ambiguous regarding the contracts to be provided to the worker.

4.4 Problems Occurring in Transit
Some workers encounter problems while in transit from Nepal to their employment destination. Primarily, these problems include lack of freedom of movement during transit, being stranded in a transit location, or being abandoned in the destination country before employment commences. These problems are severe for migrant workers sent to their employment destination through irregular channels by individual agents or recruitment agencies. The workers who are sent through irregular channels are at risk of trafficking. Particularly women are exposed to significant risks in transit as well as in the country of destination. Their irregular status limits them to seek redress.

4.5 Problems Occurring in the Destination Country
The harms experienced by Nepali migrant workers in the destination countries, particularly GCC, range from labor violations such as non-payment or delayed payment of wages and long working hours, to more serious physical and psychological harm. A UN Women report on Returnee Women Migrant Workers (RWMWs) 2018 reflects that many RWMWs encountered problems with their employment while abroad. 25 percent of them changed jobs during migration. 62 percent of women were forced to work without days-off and 58 percent of women were denied leave that had been promised whereas 32 percent of women experienced physical and verbal abuse from their employers.6

The vulnerability of migrant workers to that harm is often attributed to the kafala system - or sponsorship system. By this system a migrant worker is bonded to a sponsor (kafeel) and thus has limited avenues to challenge poor conditions without threat of unemployment and automatic deportation.

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6 UN Women 2018
5. Policies Governing Human Trafficking and Labour Migration

5.1 Constitution of Nepal, 2015

Article 29 of the Constitution of Nepal "Right against exploitation" include:

- Every person shall have the right against exploitation (1),
- No person shall be exploited in any manner on the grounds of religion, custom, tradition, usage, practice or on any other grounds (2),
- No one shall be subjected to trafficking nor shall one be held in slavery or servitude (3),
- No one shall be forced to work against his or her will (4).

Similarly, Article 51 (i) "Policies relating to labour and employment" include:

- to guarantee social security, while ensuring the basic rights of all labours, in consonance with the concept of decent labour (2),
- to abolish all forms of labour exploitation including child labour (3),
- to regulate and manage the sector in order to make foreign employment free from exploitation, safe and systematic and to guarantee employment and rights of the labours (5).

5.2 Foreign Employment Act, 2007

The principle law which regulates foreign labour migration from Nepal is Foreign Employment Act (FEA) 2007. As per the preamble mentioned in the act, it keeps intention to "make foreign employment safe, managed and decent, and to protect the rights and interests of both the workers who go for foreign employment and the foreign employment entrepreneurs."

Section 5 1 (a) provisions that while selecting licensee institution, there should be consideration on if any complaints have been filed or not against the institution, regarding torture experienced by the women migrant worker gone through that institution....

5.3 Human Trafficking and Transportation (Control) Act, 2007

Human Trafficking and Transportation (Control) Act prohibits the two activities of "trafficking" and "transportation."

Section 4 (1) of the act provisions the following activities under human trafficking:
- To sell or purchase a person for any purpose,
- To use someone into prostitution, with or without any benefit,
- To extract human organ except otherwise determined by law,
- To go for in prostitution.

Section 4 (2) of the act provisions the following activities under human transportation:

- To take a person out of the country for the purpose of buying and selling,
- To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

5.4 Sustainable Development Goals (SDGs)
The eighth goal (Decent Work and Economic Growth) of SDGs gives the focus on job creation encouraging with equal participation of men and women in all the avenues through the fifth goal (Gender Equality). Decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.7

5.5 The Palermo Protocol
Forced labor and human trafficking are crimes under international law, related to transnational organized crime. The Protocol to prevent, suppress and punish trafficking in persons, especially women and children; supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol) is the internationally accepted definition of human trafficking. Nepal has not ratified the TIP Protocol. It has, however, ratified most of the core UN international human rights treaties, as well as 11 International Labor Organization (ILO) conventions.

Article 3 of the Protocol defines trafficking as:

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(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Trafficking breaks down into three elements:

<table>
<thead>
<tr>
<th>The act (what is done)</th>
<th>The means (how it is done)</th>
<th>The purpose (why it is done)</th>
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<tr>
<td>• recruitment,</td>
<td>• threat or use of force or other forms of coercion,</td>
<td>• for the purpose of exploitation......</td>
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<tr>
<td>• transportation,</td>
<td>• of abduction,</td>
<td>• exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation,</td>
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<tr>
<td>• transfer,</td>
<td>• of fraud,</td>
<td>• forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs' (Note there is no requirement for the purpose to have been achieved, so a person who is rescued before exploitation occurs is still a victim of trafficking).</td>
</tr>
<tr>
<td>• harbouring, or receipt of persons</td>
<td>• of deception,</td>
<td></td>
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<td></td>
<td>• of the abuse of power or of a position of vulnerability or</td>
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<td></td>
<td>• of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person</td>
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6. Anti-Trafficking Policies, Programs and Activities
Nepal has been practicing to prevent human trafficking through different policies programmes and activities.

6.1 Nepal in US TIP Report
The US TIP Report has placed Nepal in Tier 2 over the last 7 years (2011-2017). Nepal's situation seems to be satisfactory compared to other South Asian countries. According to the US TIP Report 2018, the Government of Nepal increased the trafficking investigations and identification of the victims during the reference period. It cancelled the licenses of more than 400 foreign employment agents in 2017. Despite these efforts, the Government of Nepal did not meet the minimum standards in several areas:

- The laws do not prohibit all forms of forced labor and sex trafficking and it continued to lack standard operating procedures (SOPs) on victim identification and referral to rehabilitation services.
- The Government does not have any serious protection efforts for the male MWs despite a large number of male migrant workers experienced abuse overseas. The Government protection measures are disproportionally centralized on women migrant workers.
- Official involvement in trafficking offenses is frequently reported and is a serious problem due to their direct involvement in trafficking crimes and their negligence on the part of monitoring.
- Still a large number of cases related to trafficking in the course of foreign employment are registered under the Foreign Employment Act (FEA) rather than under the trafficking law.
- The government adopted several measures to prevent female migration, but such measures led women to use illegal methods to migrate, which subsequently increased their vulnerability to trafficking.

6.2 Fourteenth Periodic Plan (2016/17-2018/19)
The anti-trafficking programs are surfaced in Development Periodic Plans of Nepal especially from the 8th Periodic Plan (1992-1997). The subsequent Periodic Plans have explicitly addressed the need of prevention and combating the trafficking in persons, especially women and children. The current 14th Plan (2016/17-2018/19) provides a separate
Chapter for the prevention of human trafficking and transportation. The Plan has adopted four strategies to combat TIP. They include:

- introducing the targeted programs for the vulnerable groups/communities,
- strengthening the capacity of mechanisms and structure established to combat TIP,
- providing the integrated services to the trafficked victims ensuring their human rights, and
- increasing access to justice to the trafficked victims by elimination of impunity.

6.3 Foreign Employment Policy 2012
Foreign Employment Policy has adopted specific strategy to prevent human trafficking and transportation in the course of labour migration. The strategy includes:

- prevention of illegal human trafficking and transportation, and smuggling of persons occurring due to open border in the process of foreign employment (9.3.2),
- information dissemination regarding foreign employment and its benefits, illegal migration and risk of human trafficking (9.3.1),
- coordination programme between government and non government stakeholders working on management of migration to prevent human trafficking and transportation, and smuggling of persons (9.4).

7. Gaps/loopholes in policies

- The relationship between the HTTCA and the FEA 2007 is unclear. There is no such a specific reference to both of the Acts regarding when foreign employment cases should be referred to the police for a trafficking investigation, or when trafficking cases should be referred to DoFE.
- Foreign Employment Act 2007 does not mention of serious labour exploitation. It does not provide for redress or accountability when workers are seriously exploited either in transit or in the country of destination. If the terms and conditions of employment are different from those promised in Nepal, or if the recruitment agencies or individual agents committed fraud, workers are allowed to claim compensation under Section 55.
- The HTTCA confines “Trafficking” to sexual exploitation and/or prostitution, so it would not cover migrant workers unless they were also forced into prostitution or were sexually exploited. Also, the HTTCA treats the crime of “human transportation”
as a lesser offense than “human trafficking” as well as the act provisions with weaker penalties in the crime of "human transportation." When victims will claim for compensation or other remedies or support under the HTTCA, victims of forced labor or other forms of labor exploitation may be excluded because “victims” is defined only as those who are “sold, transported or put into prostitution.”

8. Challenges

- It seems that government officials related to foreign employment do not appear to recognize trafficking in the labor migration context unless sexual exploitation is involved.
- The fear of stigmatization or viewing the trafficking victims through the lens of prostitution, women migrant workers hesitate to register a case to police as well as to seek claims under HTTCA.
- Victims are further victimized.
- The government maintained its policies preventing female migration in several ways but it led women to use illegal methods to migrate, which subsequently increased their vulnerability to human trafficking.
- Government and non-government organizations are working to aware people and to prevent them from human trafficking and unsafe labour migration, however, it is being a challenge to achieve expected outcome fully.
- The new tricks of trafficking- luring persons with high income, use of social media to convince them etc are making person vulnerable of trafficking.

9. Important Observations/Lessons Learned

- It was observed from the consultation meeting, that there is nexus between human trafficking and labour migration. But because of loopholes in our government policy related to labour migration and human trafficking victims are unable to access justice under HTTCA.
- Female migrants are in more vulnerable condition and at risk of human trafficking compared to male migrants. In the present scenario, migration restricted policies issued by Nepal government in different time period for female migrant workers also leading them to migrate illegally/undocumented via India, which subsequently increased their vulnerability to human trafficking.
Group discussion session during the meeting was the very important session which enabled participants understanding the link between human trafficking and labour migration through analytical observation of different case studies related to trafficking and migration.

While viewing migration through the lens of human rights perspective, there can be seen exploitation, force labour and human trafficking. Trafficking does not imply only to women and for sexual work.

10. Recommendations/Suggestions

- There should be amendment in Foreign Employment Act 2007 and Human Trafficking and Transport Control Act 2007.
- The amendment in HTTCA to clearly prohibit and provide redress for all forms of labour trafficking, consistent with the definition in Palermo Protocol.
- There should be harmonization between Foreign Employment Act (FEA) and Human Trafficking and Transport Control Act (HTTCA) with clear definition of terminology.
- Nepal government should ratify and implement key UN and ILO conventions such as Palermo Protocol, ILO Domestic Workers Convention 2011 (C 189)
- The government should strictly implement the policies issued (Free Visa Free Ticket Policy, other Acts)
- There should be public awareness programme on human trafficking and labour migration
- The culprits of human trafficking and labour migration should be made accountable
- Undocumented migrant workers should also be brought under the responsibility of government
- Providing job opportunities and livelihood sustainability in countries of origin is a long-term solution to preventing human trafficking

11. Follow up activities in coming months

- National level programme for intensive review on existing laws (FEA and HTTCA) and the outcome of the review will be further shared to in a meeting
- Meeting of CSOs and Parliamentary members to hold a discussion as well as to submit policy amendment draft came out from intensive review programme.
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(Note: The credit for the preparation of this report goes to Mr. Swarna Kumar Jha who is currently working as Researcher in development field)