

*Analysis of Legal Gaps in the*  
**Human Trafficking and  
Transportation (Control) Act, 2007**  
*and the* **Foreign Employment Act, 2007**

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— Hamro Samman —





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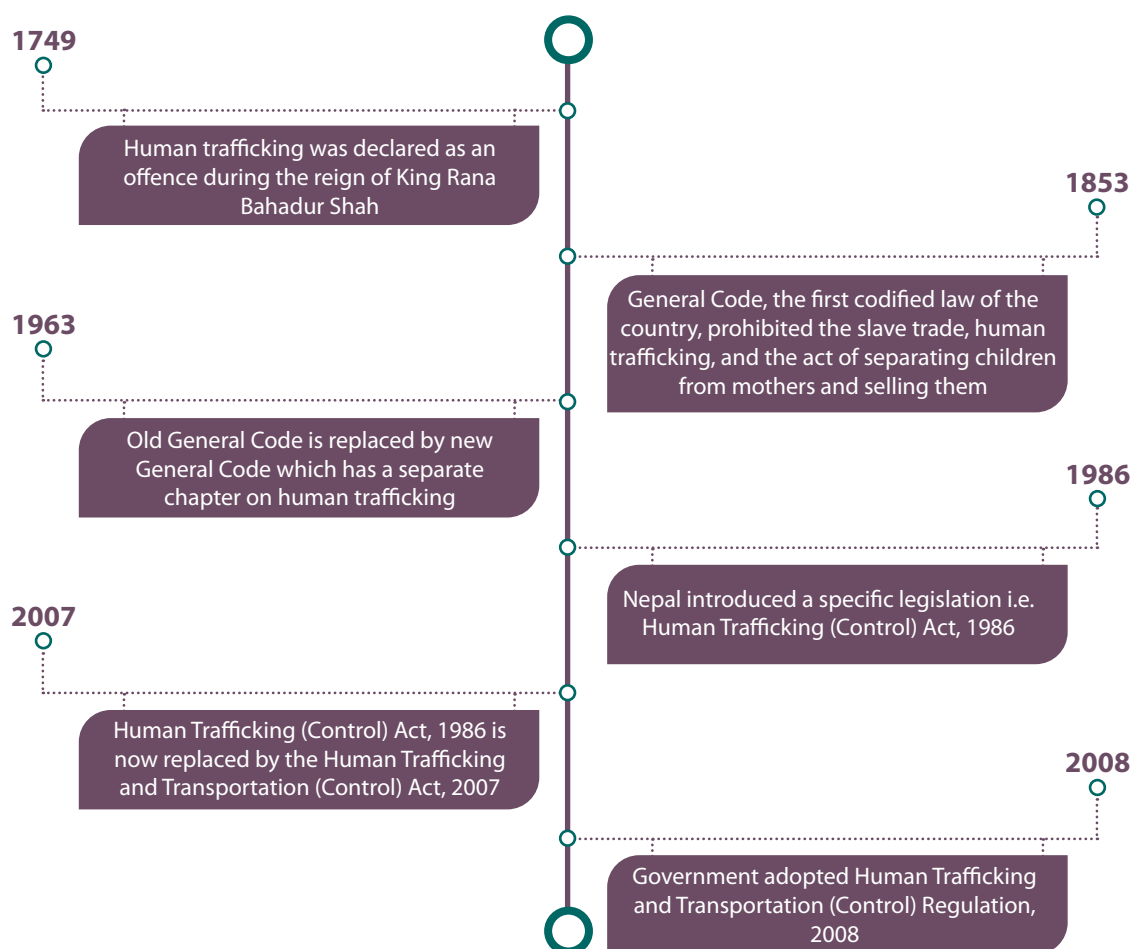
# HISTORICAL DEVELOPMENT OF ANTI-TRAFFICKING LAWS

Anti-trafficking legislation in Nepal has a long history. Human trafficking was declared as an offence during the reign of King Rana Bahadur Shah, way back in 1749. Thereafter, the General Code of 1853, the first codified law of the country, prohibited the slave trade, human trafficking, and the act of separating children from their mothers and selling them. The old General Code was replaced by the new General Code in 1963. The new General Code has a separate chapter on human trafficking, and prohibits trafficking or taking a human being beyond the frontiers of Nepal for the purpose of trafficking.<sup>1</sup>

As the general law was inadequate to deal with the rise in trafficking offences, Nepal introduced a specific legislation i.e. the Human Trafficking (Control) Act in 1986 which introduced new concepts including the application of extra territorial jurisdiction, burden of proof on the accused, no time limitation to file cases,

reconfirmation of victim's statement in the court. Following the enactment of the specific Act, many provisions of the General Code relating to human trafficking became inoperative. Only provisions not specifically dealt within the Act remain enforceable to date.

However, the Human Trafficking (Control) Act, 1986 lacks a human rights perspective. The preamble of the Act stated that an Act has been enacted to control the offences of trafficking in order to maintain morality in the society. The Act constituted the offence of human trafficking, however by limiting it to commercial sex work only, it missed many other aspects of human trafficking. Because of this narrow definition, survivors of trafficking other than the sex workers were deprived of legal and other remedies, resulting in the violation of their basic rights. The Human Trafficking (Control) Act of 1986 is now replaced by the Human



1. No. 1 of the Chapter on Human Trafficking of General Code, 1963.

Trafficking and Transportation (Control) Act of 2007. In contrary to the earlier Act, which focused on a crime control approach, the new Act focuses on the victim's perspective. The preamble of the new Act states that the Act is enacted as it is expedient to control human trafficking and to protect and rehabilitate victims of trafficking. In 2008, the Nepal government adopted

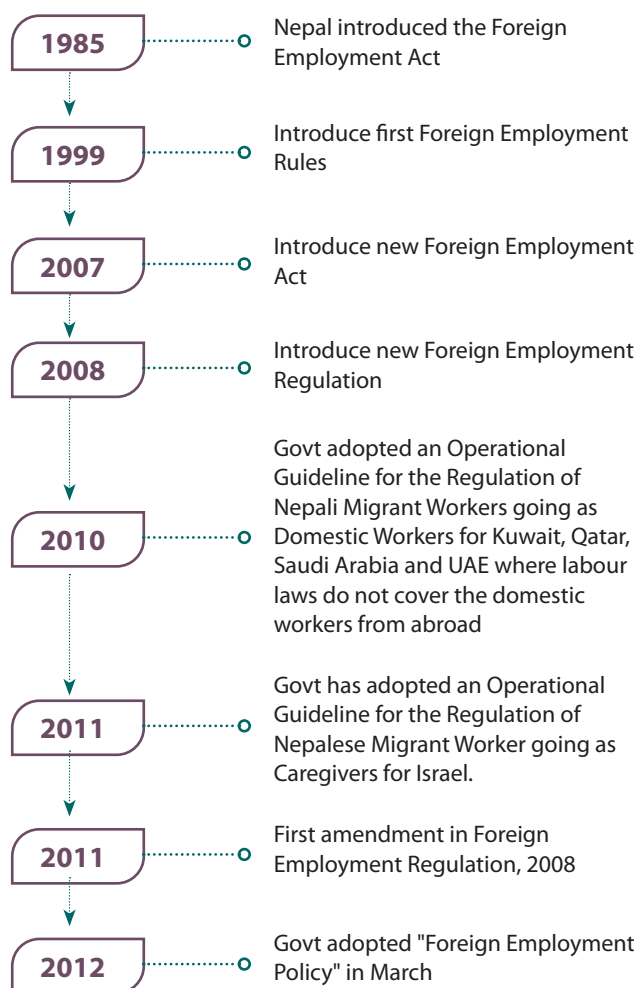
the Human Trafficking and Transportation (Control) Regulation for enforcing the procedural aspects of the Act. The government has also adopted the "National Plan of Action on Combating Human Trafficking" and the Standard Operational Procedures to address different aspects of anti-trafficking.

## HISTORICAL DEVELOPMENT OF FOREIGN EMPLOYMENT LAW

Nepal introduced the Foreign Employment Act in 1985 as a specific legislation to deal with the procedural aspect and management of foreign employment. The Preamble of the Act stated that the Act was enacted to control foreign employment. The entire Act was more focused on controlling the foreign employment rather than facilitating it. Section 12 of the Foreign Employment Act of 1985 restricts migration, especially for women. It states that notwithstanding anything mentioned elsewhere in this Act, the license holder shall not provide foreign employment to children and to women without the consent of their guardians and government. For employment in foreign countries, Nepali women were required to take approval from their guardians and the government. A writ petition was filed in the Supreme Court against Section 12 of the Act arguing that it was infringing on the fundamental right to equality and mobility. However, the Court quashed the writ and upheld the controversial provision.<sup>2</sup>

The first Foreign Employment Act was enacted in 1985 but it took nearly a decade and a half to introduce the first Foreign Employment Rules in 1999. Advocacy efforts for the reformation of the Act to facilitate foreign employment, protect rights of migrant workers and ensure equality between men and women migrant workers were also undertaken. In 2007, a new Foreign Employment Act replaced the old Act covering many aspects of foreign employment previously not addressed by the Act of 1985.<sup>3</sup> The Government adopted the Foreign Employment Regulations in 2008 and made the first amendment to the Regulation in 2011. The Government has also adopted the "Foreign Employment Policy" in March 2012.

In 2010, the Government has adopted an Operational Guideline for the Regulation of Nepali Migrant Workers employed as Domestic Workers in countries such as



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2. Sabin Shrestha et. al. vs. Government of Nepal, Nepal Kanoon Patrika, 2059 B.S., Volume 5, Supreme Court, page 443.  
 3. Preamble of Foreign Employment Act, 2007.

Kuwait, Qatar, Saudi Arabia and UAE where labor laws do not cover domestic workers from abroad. Likewise, the government in 2011, has adopted an Operational Guideline for the Regulation of Nepalese Migrant Worker working as caregivers in Israel.

In order to make foreign employers more accountable and reduce exploitation of Nepali migrant workers especially domestic workers, the Guideline has made provisions for basic monthly salary, insurance, safe accommodation, safety assurance, regular contact (with family and Nepali Embassy) and other appropriate measures as stated by the Embassy. Employers are required to provide details of their finances and 'social standing' to the Embassy, and an approval or agreement letter from the concerned authority allowing them to employ a domestic worker.

The Guideline demands prospective employers to provide documentary evidence of insurance coverage, medical facility and any other necessary coverage to the Embassy before a domestic worker reaches the destination country. In addition to insurance coverage, in Qatar, Saudi Arabia and UAE, the employer must deposit the amount as stipulated by the Embassy. Although the Guideline for Kuwait does not mention any such deposits to be made, the prospective employer must provide documentary evidence to the Embassy that s/he has insured the

worker, and covered their health insurance and insurance for legal support. The prospective employer must submit a written declaration stating that s/he will provide facilities to the domestic worker to stay in regular touch with the Embassy and his/her family back home. Only after being satisfied with the evidence provided, the Embassy endorses the employment contract. Moreover, after a domestic worker reaches the destination country, the Embassy may also acquire the domestic worker's passport from the employer if it is required for official government purposes.

To ensure the safety of female domestic workers, the Guideline also specifically mentions that an employer should provide a separate room and a bathroom for a female domestic worker. Moreover, the directive for the UAE and Qatar governments has additional provisions for female domestic workers: UAE prohibits an unmarried man from hiring a female domestic worker and requires an employer to provide a certified police report to the Embassy, while for Qatar, a female domestic worker must be above 24 years of age. The Nepal Cabinet in its decision has made it mandatory for all female domestic workers to be above 24 years of age for countries such as Kuwait, Saudi Arabia and UAE.

## OBJECTIVE OF THE STUDY

Human trafficking is a grave form of organized crime, extending beyond one country's jurisdiction. Trafficking occurs for various forms of exploitation. However, there are widely varying perceptions, and an absence of consensus on the concept and definition of trafficking. In Nepal, there is very little understanding of trafficking beyond prostitution and sexual exploitation. The law, policy and enforcement mainly emphasize on only one purpose of trafficking i.e., sexual exploitation. Despite its large contribution, foreign labor and migration has become one of the major areas for exploitation and trafficking, posing

challenges for the protection of human rights of migrant workers. The major challenge has been the trafficking of Nepali workers, mostly females, due to the close nexus between trafficking and migration. Among women migrant workers, those who use informal channel and work in the domestic sector are more vulnerable to trafficking as there are very little protection measures. Thus, this report is an attempt to analyze the legal gaps in the existing legal framework for countering human trafficking and ensuring safe foreign employment.

## METHODOLOGY OF THE STUDY

The study is primarily founded on the desk-based review of the anti-trafficking law and foreign employment law of Nepal i.e., the Human Trafficking and Transportation (Control) Act, 2007 and the Foreign Employment Act, 2007. A virtual consultation meeting

with key stakeholders was conducted on July 24, 2020 to discuss the findings.<sup>4</sup> The feedback received from the meeting has also been incorporated in this document and finalized.

4. Representative of NNSM, CELrRD, SAN, PPR, USAID, Winrock International and ILO participated in the meeting.

# LEGAL FRAMEWORK FOR ANTI-TRAFFICKING AND FOREIGN EMPLOYMENT LAWS

Nepal has ratified twenty-two UN human rights instruments, including the Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Nepal has recently ratified the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children. Besides this, Nepal also ratified eleven ILO Conventions<sup>5</sup> including the ILO Convention Number 29 on Forced Labor, the ILO Convention Number 105 on Abolition of Forced Labor and the ILO Convention Number 182 on Worst Forms of Child Labor. By ratifying these Conventions, Nepal has shown its commitment to extend the rights mentioned in these treaties to its citizens. As provided in the Nepal Treaty Act, once an international instrument is ratified by Nepal, such treaty automatically becomes the law of the land.<sup>6</sup>

Despite being a signatory to several Conventions, Nepal is yet to ratify the International Convention on the Protection of Rights of All Migrant Workers and Their Families, and the ILO Convention Number 189 concerning Decent Work for Domestic Workers. However, CEDAW<sup>7</sup> Committee, in its Concluding Comments, has recommended the Government of Nepal to ratify all these above-mentioned Conventions.<sup>8</sup>

The Constitution of Nepal guarantees several fundamental rights including the right to equality, the freedom to engage in any occupation, the right relating to employment and social security, the right against exploitation, and the right relating to labor. The right against exploitation states that no one shall be trafficked in, nor shall one be held in slavery, or in servitude, and no one shall be required to perform forced labor. Where constitutional rights are being violated or remedies are inadequate, ineffective, or unavailable, the Supreme Court has the extraordinary

5. <https://www.ilo.org/kathmandu/aboutus/lang--en/index.htm#:~:text=Nepal%20has%20ratified%2011%20ILO,and%20social%20justice%20in%20Nepal,Last%20accessed%20on%20May%2018,%202021.>

6. Section 9 of the Nepal Treaty Act, 1991.

7. Convention on the Elimination of All Forms of Discrimination Against Women.

8. Concluding Observations on Sixth Periodic Reports (Combined) of Nepal on CEDAW Convention (CEDAW/C/NPL/CO/4-5).

## UN HUMAN RIGHTS INSTRUMENTS RATIFIED BY NEPAL

- Slavery, Servitude, Forced Labour and Similar Institutions and Practices, 1926
- Protocol Amending the Slavery Convention, 1953
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
- Convention on the Political Rights of Women, 1952
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Civil and Political Rights, 1966
- Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- International Convention Against Apartheid in Sports, 1985
- Convention on Rights of Child, 1989
- Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Convention on the Rights of Persons with Disabilities, 2006
- Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

## ILO CONVENTIONS RATIFIED BY NEPAL

- C029 - Forced Labour Convention, 1930
- C098 - Right to Organise and Collective Bargaining Convention, 1949
- C100 - Equal Remuneration Convention, 1951
- C105 - Abolition of Forced Labour Convention, 1957
- C111 - Discrimination (Employment and Occupation) Convention, 1958
- C138 - Minimum Age Convention, 1973
- C182 - Worst Forms of Child Labour Convention, 1999
- C144 - Tripartite Consultation (International Labour Standards) Convention, 197
- C014 - Weekly Rest (Industry) Convention, 1921
- C131 - Minimum Wage Fixing Convention, 1970
- C169 - Indigenous and Tribal Peoples Convention, 1989



power to issue necessary and appropriate orders to enforce such rights. For these purposes, the Supreme Court may issue orders and writs. The Supreme Court also possesses power to declare any laws inconsistent with the Constitution, and shall, to the extent of such inconsistency, be void.

After the People's Movement in 2006, Nepal has adopted several progressive laws in various sectors, among those the Human Trafficking and Transportation (Control) Act, 2007 and the Foreign Employment Act, 2007 which are new laws for protection from trafficking and foreign labor exploitation.

The Human Trafficking and Transportation (Control) Act attempts to define the term "trafficking", "transportation" and "exploitation" and prohibits and criminalizes trafficking, transportation, and exploitation. The Act provides severe punishments for the offence of trafficking. One of the significant provisions of the Act is its extra-territorial application. Even if a person has committed an offence punishable under the Act outside of Nepal, she/he can be prosecuted and punished under the Act as if she/he had committed the crime within Nepal. The other major aspect of the Act is that it dilutes, though only to a limited extent, the well-established principle of the presumption of innocence until proved guilty. The Act shifts the burden of proof to the accused. The Act accords importance to the protection of the victims of trafficking by prohibiting the media from publishing information related to the victim without his or her consent. To protect the privacy of victims, the Act provides that in-camera hearings should be allowed if the victim request for it. The right to self-defense is yet another new concept introduced by the Act. Under this provision, a woman or child who is going to be trafficked, is under the belief that she or he would be trafficked if something is not done, and further believes that there is no possibility of getting help, and such person commits an act in self-defense and the trafficker is injured or killed as a result, then such an act of self-defense would not constitute as an offence punishable under law. The Act provides for a rehabilitation fund and the creation of rehabilitation centers. The government is made accountable to ensure establishment of rehabilitation centers, which is another notable feature of the Act.

The Foreign Employment Act of 1985 has been replaced by the new Foreign Employment Act of 2007. The Government of Nepal has also issued the Foreign Employment Rules, 2008 to facilitate foreign employment and protect the rights of migrant workers. These laws are very much in line with gender and human rights perspectives and include positive efforts to encourage women to undergo

### **SOME FEATURES OF HUMAN TRAFFICKING AND TRANSPORTATION (CONTROL) ACT**

- Provides severe punishments for the offence of trafficking. One of the significant provisions of the Act is its extra-territorial application. Even if a person has committed an offence punishable under the Act outside of Nepal, s/he can be prosecuted and punished under the Act as if s/he had committed the crime within Nepal
- It dilutes, though only to a limited extent, the well-established principle of the presumption of innocence until proved guilty
- It shifts the burden of proof to the accused.
- It accords importance to the protection of the victims of trafficking by prohibiting the media from publishing information related to the victim without his or her consent
- To protect the privacy of victims, the Act provides that in-camera hearings should be allowed if the victim request for it.
- Right to self-defense is yet another new concept introduced by the Act.
- The Act provides for a rehabilitation fund and the creation of rehabilitation centers.

formal mechanisms such as: reimbursement of pre-departure orientation fee (NRs 700) for WMWs<sup>9</sup> under the Foreign Employment Rules. A welfare fund has been established and has been used to compensate the families of the deceased, disabled migrant workers and those who have been sent home due to economic crisis. The welfare fund has been mobilized for education, health of the families of migrant workers and returnee migrants. The provisions embodied in the Act and Regulations can be broadly categorized into (i) provisions relating to the establishment of the structure for management of foreign employment (ii) provisions relating to the regulation of recruitment agencies (iii) provisions relating to the non-discrimination and equality (iv) provisions relating to the interests and rights of migrant workers (v) provisions relating to the offences and punishments (vi) provisions relating to the monitoring, investigation and prosecution.

The Government's efforts are not merely to regulate the process of foreign employment but also to protect the rights of migrants. The Department of Foreign Employment and the Foreign Employment Promotion Board are important institutions for the management of foreign employment. The Department of Foreign Employment is the main institution for providing labor permits and monitoring of foreign employment transactions. The Foreign Employment Promotion Board has been formed for the purpose of carrying out responsibilities required to promote foreign employment businesses and to make these business safe, systematic and decent, and protect the rights and interests of workers going for foreign employment as

9. WMWs stands for Women Migrant Workers.

well as the foreign employment entrepreneurs. The Government of Nepal has established safe homes in four countries through fast-track systems in Saudi Arabia, Qatar, Kuwait and UAE. The safe homes have been established following the directive order from the Supreme Court to implement the legal provision for establishing safe homes under the Foreign Employment Act, 2008. The safe homes provide space to Nepali women who are suffering from exploitation and in need of shelter. The Government of Nepal has sent labor attaches in six countries namely Saudi Arabia, Malaysia, Qatar, UAE, Kuwait and South Korea. Nepal is preparing to appoint four additional labor attaches in the following countries and territories namely Hong Kong, Israel, Japan, and Oman. The government has also entered into bilateral agreements with five countries namely Bahrain, Qatar, UAE, South Korea and Japan.

The Operational Guideline on Domestic Workers going to Kuwait, Qatar, Saudi Arabia and UAE adopts a coordinated approach with specific responsibilities for the Embassy, the Department of Foreign Employment and the Nepal Police while sending or re-sending Nepali workers for domestic work to these countries. The Embassy has to send an approval (or, disapproval) letter to the Department of Foreign Employment confirming the demand of the labor by a recruiting agency; the Nepal Police has to issue a Police Report of the person going abroad; and the Foreign Ministry has to send the Police report to its relevant Mission abroad. Similarly, the government has adopted separate Operational Guidelines for the Regulation of Nepali Migrant Workers going as care givers to Israel. The Foreign Employment Promotion Board has adopted a twenty-one day training curriculum specifically for domestic workers in addition to two-day pre-departure orientation. The government is also planning to appoint few recruiting agencies exclusively for the recruitment of domestic workers.

#### **COUNTRIES WHERE NEPAL ESTABLISHED SAFE HOMES**

- Saudi Arabia
- Qatar
- Kuwait
- United Arab Emirates (UAE)

#### **COUNTRIES WHERE NEPAL SENT LABOUR ATTACHES**

- Saudi Arabia
- Malaysia
- Qatar
- United Arab Emirates (UAE)
- Kuwait
- South Korea

#### **COUNTRIES WHERE NEPAL SENT ADDITIONAL LABOUR ATTACHES**

- Hong Kong
- Israel
- Japan
- Oman

#### **COUNTRIES WHERE NEPAL ENTERED BILATERAL AGREEMENTS**

- Bahrain
- Qatar
- UAE
- South Korea
- Japan

## **GAPS AND WEAKNESSES OF EXISTING LEGAL FRAMEWORKS**

The Human Trafficking and Transportation (Control) Act, 2007 and the Foreign Employment Act, 2007 do not interlink the concept of trafficking with labor exploitation. The Human Trafficking and Transportation (Control) Act does not include labor exploitation as a purpose for trafficking. Similarly, the Foreign Employment Act considers deception, labor exploitation or non-payment of wages as a

breach of agreement and provides compensation to the victim. Upon the review of the Human Trafficking and Transportation (Control) Act and Regulations, the Foreign Employment Act and Regulations, the Labor Act and the Child Labor (Prohibition and Regulation) Act, it was observed that the following provisions need to be strengthened from the perspectives of protection, prevention and prosecution.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
1.	Human Trafficking and Transportation (Control) Act, 2007	2(e)	"Exploitation" means an act of keeping human being as a slave and bonded. and this word also includes to remove human organ except otherwise provided by prevailing law.	The definition of "exploitation" does not include labor exploitation and is not in line with the Palermo Protocol. The definition is not broad enough to include various forms of sexual exploitation such as commercial sexual exploitation of children and sexual exploitation in the entertainment sector.
		4(1)(2)	<b>4. AActs considered as Human Trafficking and Transportation:</b> (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking. (2) If anyone commits any of the following acts, that shall be deemed to have committed human transportation.	Act has defined "human trafficking" and "human transportation" separately, which creates confusion and is not in line with the Palermo Protocol.  Also, the Act does not explicitly mention that consent is irrelevant in case of trafficking of a child.
		4(1) (b) (d)	<b>4 (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:</b> (b) To use someone into prostitution, with or without any benefit (d) To go for in prostitution	Acts such as voluntary prostitution and visiting of prostitutes have been defined as trafficking despite clear differences between them in terms of their intent and harm. By linking trafficking with prostitution, it creates conceptual confusion, and this is not in line with the Palermo Protocol.
		4(1)(c)	<b>4 (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:</b> (b) To extract human organ except otherwise determined by law.	Both the definitions of exploitation and trafficking included the act of removing human organ.
		4(2)(a)	<b>4(2) If anyone commits any of the following acts,that shall be deemed to have committed human transportation.</b> (a) To take a person out of the country for the purpose of buying and selling.	This provision does not cover internal trafficking within Nepal and trafficking from other countries to Nepal.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		5(2)	(2) If the person who reports under Sub-section (1) puts written request to remain unnamed, the police office which registers the report should maintain his/her confidentiality.	<p>This provision does not explicitly mention that all the details of the complainant i.e., name, surname, address or any other identity detail must be kept confidential. Due to this provision, only name of the complainant is kept confidential while revealing other information of such person.</p> <p>The provision provides that only the name of the complainant will be kept confidential whereas sometimes the complainant and victim are different people and hence it is important to keep both their information confidential.</p> <p>In many cases the perpetrators are related to victims and hence releasing information of the perpetrator might also breach the confidentiality of the victim which has not been addressed by the law.</p> <p>Also, the provision for confidentiality is contingent upon the request of the person who reports.</p>
		6 (3)	<p><b>Certifying the statement :</b></p> <p>(3) If the statement of the victim is certified under Subsection (2), the court can take the certified statement as evidence even if the victim does not appear in the court in the course of further court proceedings.</p>	The phrase 'can take certified statement as evidence' makes it optional for the court to take the certified statement as evidence rather than compulsion.
		10	<p><b>Right to keep separate Law Practitioner:</b> If a victim wishes to keep an additional law practitioner to represent his/her case during court hearings, he/she has the right to be represented by a separate law practitioner for an offence under this Act.</p>	Trafficking being an offence against the state, the prosecution is led by government attorneys. Though this provision has given limited rights to victims to appoint his/her separate lawyer, victims are not entitled to file a case or appeal a decision in the higher court. Even if a victim is not satisfied, it is still the decision of the government attorney whether or not to file or appeal

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
				the case. Even though the victim is critical to the prosecution, the victim or the informer is merely a witness on behalf of the government attorney and not a party to the case.
		11	<b>Provision of Translator and Interpreter:</b> If the working language used by the concerned court and office in dealing with an offence under this Act is not understandable by the victim, he/she may manage for the translator or interpreter with the permission of the court.	Translator is of great importance to the victims. This service should be provided by the government/court instead of having the victim to arrange for his/her own.
		12	<b>Act related to Rescue:</b> Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land.	Rescue is limited to any Nepali citizen sold in foreign land. However, the Act is silent regarding the rescue of Nepali citizens in forced labor and exploitation.  The provision has not specified the responsible government agency for rescue in case of external and internal trafficking which has created confusion among the concerned government agencies.
		13	1) <b>Rehabilitation Center:</b> Nepal government shall establish necessary rehabilitation centers for physical and mental treatment, social rehabilitation and family reconciliation of the victim. 2) Provincial Government and Local level can establish rehabilitation centers as per necessity in coordination with Government of Nepal.	There is no provision that explicitly mentions about educational support and life skill training for victims under social rehabilitation and hence this is not in line with the Palermo Protocol.
		14	(1) (1) Nepal government shall establish a rehabilitation fund for operation of the rehabilitation center established under Sub-section (1) of Section 13 and to provide compensation to the victim from the offender as per sub section (1) of Section 17.	

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
			(2) Provincial government and local level from their resources can establish rehabilitation fund as per their provincial and local law respectively for operating and managing the rehabilitation centers that are established and handed over as per sub section 1(a) and 1(b) of Section 13.	
		15	<p><b>Punishment:</b> (1) Any person who commits an offence as prescribed under Section 3 shall be punished as follows:</p> <p>(a) Twenty years imprisonment and a fine of Two Hundred Thousand Rupees for selling or buying a human being,</p> <p>(b) Ten years to Five years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for forcing into prostitution, with or without financial benefit,</p> <p>(c) 10 years imprisonment and a fine of Rs Two Hundred Thousand to Five Hundred Thousand Rupees for extracting human organ except otherwise determined by law,</p> <p>(d) One month to three months imprisonment and a fine of Two Thousand Rupees to Five Thousand Rupees for a person engaged in prostitution.</p> <p>(e) For a person who is involved in transportation of human beings for the purpose of buying, selling and engaging someone in prostitution-</p> <p>(1) Ten years to Fifteen years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person out of the country.</p> <p>Fifteen years to Twenty years imprisonment and a fine of One Hundred Thousand Rupees to Two Hundred Thousand Rupees for taking a child out of the country.</p>	<p>The Act does not propose any punishment for labor exploitation and trafficking for the purpose of labor exploitation.</p> <p>The Act also does not cover punishment for bringing a person into the country or who has used the country as a transit point for taking a person elsewhere.</p>

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
			<p>(2) Ten years of prison and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person from one place to another place within the country. Ten years to Twelve years imprisonment and a fine of One Hundred Thousand Rupees for taking a child from one place to another place within the country.</p> <p>(f) One years to two years of imprisonment for taking a person from one place to another place within the country, and two years to five years of prison for taking out of the country for the purpose of exploitation under Clause (b) of Sub-section (2) of Section 4.</p> <p>(g) Except otherwise written in clause (e) and (f), seven years to ten years of prison for a person committing an offence under clause (b) of Subsection (2) of Section 4.</p> <p>(h) The person engaged in provocation, conspiracy and attempt of an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence.</p>	
		15(6)	<p>(6) If, in the course of proceeding of the case, a person involved in reporting the offence under Section 5 of this Act gives contrary statement to that of the statement giver earlier or if he/she does not appear before the court on its notice or does not assist to the court, shall be liable for three months to one year of imprisonment.</p>	<p>This provision proposes punishment to the person involved in the reporting of the offence. As trafficking is an organized crime and no effective victim/witness protection system is established, this provision discourages complaint for reporting.</p>
		17	<p><b>Compensation:</b> (1) A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender.</p>	<p>The compensation depends upon the fine collected from convicted. However, if the culprit is unable to provide money as fine, there no compensation will be levied.</p>

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
			1(a) Notwithstanding anything mentioned in subsection 1, the court can order to pay reasonable compensation from the rehabilitation fund as per section 14 to the victim, if the perpetrator is of weak economic status or if there is a situation where victim cannot be compensated by the perpetrator due to any reason.	Also, there is no explicit provision that guarantees compensation to the victim if the perpetrator is not found even when the crime of human trafficking and transportation is confirmed.
		22	<b>22. Claim of offence against moral turpitude:</b> While framing a charge sheet before the court for an offence under this Act, the concerned public prosecutor may claim that accused have committed an offence against moral turpitude.	This provision has made it optional for the public prosecutor to claim the offence against moral turpitude while filing of charge sheet.
		23	<b>Committee:</b> <b>Formation of a Committee:</b> (1) Nepal government may form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under this Act.	As Nepal now has a federal form of government, the Act must make provisions for establishing provincial and local level committees. Also, since the district level committees are not functional anymore, it is most necessary.
		25	<b>Prohibition against disseminating confidential information:</b> (1) Without the consent of the victim, no one shall publish or broadcast the real name, photograph or any information which is detrimental to his/her character. (2) Any person who publishes or broadcasts the name, photograph, or other information pursuant to Sub-Section (1) shall be subjected to a fine of Rs Ten Thousand to Twenty Five Thousand Rupees.	For the breach of confidentiality of victims, punishment is limited only to the imposition of payable fine. There is no imprisonment sentence to the violator and the Act does not provide compensation to the victim.
		26	<b>Security:</b> If a person provides a reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under Section 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:	In some of the cases security is needed before the registration of the case even for return to the country of origin.



S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
			(a) To provide security during traveling in course of attending case proceedings in the court, (b) To keep or cause to keep under police protection for a certain period (c) To keep at rehabilitation center	
		27	<b>27. In camera court proceedings:</b> (1) Court proceeding and hearing of an offence under this Act shall be conducted in In-Camera.	The Act only talks about in camera hearing and does not include provision on continuous hearing.
3.	<b>Foreign Employment Act, 2007</b>	<b>Preamble</b>	Whereas, it is expedient to amend and consolidate laws relating to foreign employment in order to make foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business; Now, therefore, be it enacted by the Legislature-Parliament.	The Preamble has focused on regularizing the foreign employment as it does not cover the protection of the rights and interest of all migrant workers including undocumented workers.
		2(b)	"Worker" means a citizen of Nepal who gets in foreign employment.	Though the definition does not explicitly exclude the undocumented worker, it has not included undocumented worker specifically as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
				The Act does not include rights of Migrant Workers such as: a. The right to Information b. The right to Legal Aid c. The right to file civil suit d. The right to return home
		6(2)	There shall be a steering committee as follows for formulating policies and making other arrangements required to make systematic, competitive and transparent the procedures to be followed while sending workers by the Government of Nepal pursuant to Sub-section (1): (a) Minister or Minister of State for Labor, Employment and Social Security - Chairperson	Though the Ministry of Women, Children and Senior Citizens is a focal ministry for anti-trafficking, the Ministry is not included in the Steering Committee. Likewise, trade unions are formed to represent workers within country; the committee does not have representation of any organization which represents migrant workers or returnees.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
			(b) Secretary, Ministry of Labor, Employment and Social Security -Member (c) Representative (Joint Secretary level), Ministry of Finance -Member (d) Representative (Joint Secretary level), Ministry of Industries, Commerce and Supplies - Member (e) Representative (Joint Secretary level), Ministry of Home Affairs - Member (f) Representative (Joint Secretary level), Ministry of Foreign Affairs - Member (g) Executive Director -Member (h) Woman representative, National Women Commission - Member (i) One representative from each recognized trade union federation - Member (j) One representative of Foreign Entrepreneurs' Associations - Member (k) Director General, Department - Member Secretary	
		18	<b>Approval required to take passports to the abroad:</b> If a licensee has to take passports of those persons who have been selected for foreign employment pursuant to Section 17 outside Nepal for visas, approval of the Department has to be obtained.	The Act does not have any provision to return the passports within any allocated time to the prospective migrant workers.
		21(2)(1)	(2) If, in making necessary inquiry, on receipt of the application referred to in Sub-section (1), the request of the applicant appears to be appropriate, the Department shall give permission to the applicant to go abroad for employment, and in so giving permission, the Department shall require the applicant to submit an insurance certificate.	The Department while re-issuing the labor permit, does not include the type of visa in the permit.
		24(1)	<b>24. Service charge and promotional costs:</b> (1) The Government of Nepal may, in relation to any specific country or company, specify the upper limit of amount, including the service fee and promotional costs that the institution can collect from each worker.	It is against the international minimum labor standard and labor practice to make the workers' pay for any service fee or promotional cost.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		25(1)	<b>Foreign employment contract to be made:</b> (1) Prior to the departure of a worker for foreign employment, a contract shall be made between the employer institution or its agent and the worker and the licensee and the worker on the terms and conditions of employment, terms and conditions to be observed by both parties and remuneration to be received by the worker, after getting the worker to clearly understand such terms and conditions and provisions of remuneration.	There is no provision to conclude the contract under the overseeing of the concerned authority i.e. the department which might lead to fraud or misinformation during signing of the contract.
		25(2)	(2) The licensee shall translate the contract referred to in Sub-section (1) into the Nepali language and submit two copies thereof to the Department and the Department shall certify copies of such contract, retain one copy thereof in the Department and provide the other copy to the worker.	This provision does not talk about the translation of visa if it is in language other than Nepali and English as many migrant workers are taken to different destination countries than agreed upon.
		26	<b>Insurance to be procured:</b> (1) The licensee shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment, pursuant to this Act dies from any cause at any time or gets mutilated. (2) Even a person who goes for foreign employment personally pursuant to Section 21 shall, prior to going for foreign employment, shall make insurance equivalent to the amount set forth in Sub-section (1). (3) Other provisions relating to insurance shall be as prescribed.	The Act has made insurance binding for documented workers However, there is no alternative insurance policy for undocumented workers.
		32	<b>Establishment of Foreign Employment Welfare Fund:</b> (1) A Foreign Employment Welfare Fund shall be established under the Board for the social security and welfare of the workers who have gone for foreign employment and returned from foreign employment and their families.	The Foreign Employment Welfare Fund is basically targeted at migrant workers with labor approval. For undocumented workers it is very hard to establish the fact that they are working as foreign workers. The fund does not receive any amount from the government.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		33(1)	<p><b>Use and operation of foreign employment welfare fund:</b> (1) The foreign employment welfare fund shall be used for the following purposes:-</p> <ul style="list-style-type: none"> <li>(a) Providing skill-oriented training to the workers going for foreign employment,</li> <li>(b) Repatriating workers to Nepal due to mutilation or reason referred to in Sub-section (1) of Section 75, providing compensation to workers and providing financial assistance to the workers who have so come back or their families,</li> <li>(c) Launching employment-oriented programs for the workers who have come back from foreign employment,</li> <li>(d) Where a worker who has gone abroad for foreign employment dies there and his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family,</li> <li>(e) Carrying out acts relating to foreign employment promotion,</li> <li>(f) Carrying out other acts as prescribed..</li> </ul>	No specific provision for support in case of forced labor or labor exploitation and for rescue of stranded undocumented migrant workers.
		34(1)	<p><b>Monitoring:</b> (1) The Department shall monitor and inspect, from time to time, the office of the licensee in relation to whether this Act or the rules framed under this Act or direction given under this Act have been observed or not and for this purpose, it may inspect the records and other relevant documents maintained by the licensee.</p>	The department is obligated to monitor the formal sector. However, there is no provision of monitoring and preventing the illegal channel.
		35(1)	<p><b>Inquiry:</b> (1) In cases where a complaint is made by a worker that the employer institution has not fulfilled the contractual obligation or the licensee has not taken necessary and appropriate action to get fulfilled the terms and conditions set forth in the contract, the Department may make, or cause to be made, necessary inquiry there into.</p>	Though this provision allows the Department to make inquiry in case of complaint received from workers, however the Department has no suo-moto right to initiate the inquiry on its own.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		36	<p><b>Complaint for compensation:</b></p> <p>(1) If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.</p> <p>(2) If, in making necessary inquiry into the complaint made pursuant to Sub-section (1), the contents seem to be reasonable, the Department may give an order to the licensee to provide compensation for all expenses incurred in going for foreign employment.</p>	The Department can give an order to compensate if employment is not provided according to the agreement for documented workers, but this provision is not applicable for undocumented workers.
		37	<p><b>Power to give direction:</b></p> <p>(1) The Government of Nepal may, from time to time, give necessary direction to any licensee in relation to foreign employment.</p> <p>(2) It shall be the duty of the concerned licensee to observe the direction given pursuant to Sub-section (1).</p>	There are several mechanisms including direction to licensee in relation to foreign employment. However, the Act fails to create effective mechanism to address illegal transaction.
		45	<p><b>Punishment to be imposed in the event of sending minors for foreign employment:</b> If any licensee sends any minor for foreign employment in contravention of Section 7, the licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years.</p>	The provision does not provide for canceling the license of the recruitment companies and barring them from operating another company in addition to the monetary and imprisonment punishment measures. Also, sending minor for foreign employment is a crime of human trafficking and should be prosecuted under the anti-human trafficking law.
		47(1)	<p><b>Punishment to be imposed in the event of concealing or altering document or report:</b> (1) If any licensee knowingly conceals any document or report required to be maintained under this Act or the Rules framed under this Act or alters any matter therein or makes any false contents or causes anyone to prepare false details, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees and with imprisonment for a term of six months to one year.</p>	The fine is very less and since tampering and altering with the document is forgery and should be prosecuted under another concerned law.

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		55	<p><b>Punishment to be imposed in the event of doing or causing to be done act contrary to contract:</b> If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work, or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.</p>	<p>There is only fine and no punishment of imprisonment since making a worker work for less remuneration than concluded in the contract and making them work in a different company than concluded in the contract is also a form of labor exploitation and human trafficking. They should be prosecuted under anti-human trafficking law.</p>
		60	<p><b>Limitation for complaint:</b> Except in cases of the offenses punishable under Sections 43, 44, 45, 46 and 47, no complaint shall be entertained if it is not made within one year from the date of commission of any other offense punishable under this Act. Provided that this Section shall not be deemed to bar the making of a complaint by a worker, who has gone for foreign employment, within one year after the date of his or her arrival in Nepal.</p>	<p>The time limitation for complaint needs to be liberalized in case of forced labor and labor exploitation since such condition may not permit victim to file complain within the stipulated time limitation.</p>
		64(1)	<p><b>Provisions relating to Foreign Employment Tribunal:</b></p> <p>(1) For originally trying and settling cases other than those punishable by the Department as mentioned in this Act, the Government of Nepal shall, by a notification in the Nepal Gazette, constitute a three-member Foreign Employment Tribunal, under the chairpersonship of the Judge of Appellate Court, comprising the case trying authority of the Labor Court and the First Class Officer of Judicial Service recommended by the Judicial Service Commission.</p>	<p>The Act has conceptualized only one tribunal for the entire country.</p>

S.N.	Name of Legislation	Section	Provision	Gaps and Weaknesses Relating to Protection, Prevention and Prosecution
		66(1)	<p><b>Appeal:</b></p> <p>(1) A party who is not satisfied with a decision made by the Department pursuant to this Act may make an appeal to the Government of Nepal within thirty-five days from the date of such decision.</p>	As the Department is under the government, it is more suited that the appeal to decision made by the Department should be heard by any independent body besides government.
		68(1)	<p><b>Appointment of Labor Attaché:</b></p> <p>(1) The Government of Nepal shall appoint at least Gazetted officer as the Labor Attaché for a country where five thousand or more workers have been sent for foreign employment.</p>	Depending on the number of migrant workers in a foreign employment country, more than one Labor Attaché may be required, which is not mentioned in the Act.
		76	<p><b>Returning to Nepal after expiry of term of visa:</b></p> <p>(1) A worker who has gone for foreign employment pursuant to this Act shall return to Nepal after the expiry of the term of visa issued by the concerned country.</p> <p>(2) It shall be the obligation of the licensee to get a worker, who does not return to Nepal pursuant to Sub-section (1), to return to Nepal, with the assistance of the Department.</p> <p>(3) The Government of Nepal may restrict the worker who has been so got returned to go abroad for three years after the worker has been got returned to Nepal pursuant to Sub-section (2).</p>	This section only ensures the assistance of the Department to the licensee for returning the workers whose visa has expired but there is no provision for workers who have gone in personal capacity or are either undocumented and those who become victim to human trafficking.

# CONCLUSION AND RECOMMENDATIONS

There has been a significant increase in the number of Nepali workers entering the foreign labor market. The main reason behind labor migration is lack of visible employment opportunities in the country. Until and unless there are better employment opportunities for the unemployed population, Nepali citizens will continue to seek opportunities elsewhere. The fastest growing trend of human trafficking in Nepal is associated with foreign labor migration. Lack of employment opportunities provides a fertile ground for traffickers who lure migrant population with promises of better employment opportunities outside Nepal. Despite the commitments by the state to end exploitation in foreign labor migration, there are ambiguous and restrictive policies for migrant workers particularly for female domestic workers, which make migrant workers vulnerable to smuggling and trafficking. The nexus between foreign labor migration and trafficking in persons has not been fully recognized in Nepal, either in law or in practice. There is a lack of conceptual clarity about human trafficking among the general population as well as the enforcement agencies. To address human trafficking, following steps need to be taken:

## *A. Legal Framework Restructuring for Conceptual Clarity*

- The definition of "exploitation" in the Human Trafficking and Transportation (Control) Act does not include labor exploitation and this is not in line with the Palermo Protocol. The definition of "exploitation" needs to be expanded to cover labor exploitation, child labor, debt bondage and other illegal forms of labor, sexual exploitation of child and sexual exploitation in the entertainment sector.
- Voluntary sex work and visiting of sex workers have been defined as "human trafficking" in the Human Trafficking and Transportation (Control) Act. This creates confusion on the concept and discourages victims to file cases of human trafficking as society can perceive them and stigmatize them as sex workers. The term "human trafficking" needs to be redefined and should distinguish between human trafficking and sexual exploitation.
- There should be a provision stating that consent is irrelevant in case of trafficking of a child.
- The Act should cover internal trafficking within Nepal and trafficking from other countries to Nepal.
- The confidentiality provision should include all the details such as surname, address or any other information that leads to the disclosure of the identity of the complainant, and all the personal details of the victim should be kept confidential rather than just their name. The victim's information should not be kept confidential only upon their request. Also, if it is found that the identity details of the perpetrator can breach the confidentiality of the victim then in such cases there should be a provision to keep the perpetrator's identity information confidential.
- The Act should explicitly specify a government agency that is responsible for rescuing the victims of trafficking.
- The Act should also clearly mention about provision of educational support and life skills training for survivors of human trafficking.
- The compensation provision should be revised to add a provision for victims to receive compensation even if the perpetrator is not found but the crime has been confirmed.
- The Act should revise the provision on the committees to include the formation of provincial and local committees.
- Both the Human Trafficking and Transportation (Control) Act and the Foreign Employment Act should clearly mention that there is no barrier to file cases under any other law if necessary.
- The Foreign Employment Act defines a "worker" as a citizen of Nepal who opts for foreign employment. Though the definition does not exclude undocumented migrant workers, the Ministry of Labor, Employment and Social Security generally takes responsibility for migrant workers with labor permits and considers undocumented workers as the responsibility of the Ministry of Foreign Affairs. The Act should define documented and undocumented workers in accordance with Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and needs to clearly



specify the rights of undocumented workers in the Act.

- The government should allocate budget to contribute to the Foreign Employment Welfare Fund which can be used to rescue stranded, undocumented workers abroad.
- The Act should provide for punishment of imprisonment in cases of engaging minors in foreign employment and state that the case can also be prosecuted under the Human Trafficking and Transportation (Control) Act.
- In case of any licensee who enters into a contract with any worker, and engages the worker in a different type of work, or offers less remuneration and facilities than that specified in the contract, the Department can punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities. Along with fine and compensation, the punishment of imprisonment should be proposed for committing such exploitation.
- The government-imposed provision of 24 years of age as the minimum age limit for women migrant workers (WMWs) engaging in domestic work, is contradictory to the Foreign Employment Act as the Act has specified 18 years of age as the minimum age limit for migrant workers. This provision curtails the rights of WMWs to go abroad for foreign employment and violates the fundamental right of equality and non-discrimination. The age limit for WMWs in domestic work also compels WMWs to use illegal channels and makes them vulnerable to various forms of exploitation including human trafficking. The government should adopt an enabling policy instead of a restrictive policy. This decision needs to be withdrawn immediately.
- Nepal also needs to ratify the International Convention on the Protection of Rights of All Migrant Workers and Their Families, the ILO Convention Number 189 concerning Decent Work for Domestic Workers and the ILO Convention Number 190 on Violence and Harassment.

### ***B. Strengthening Enforcement Mechanisms***

- Though the "Complain Investigation Committee" has been formed in the Department to facilitate the cases of undocumented workers, it lacks a legal mandate and not yet effectively functional. The complaints of undocumented migrant workers should also be adjudicated by the Foreign

Employment Tribunal rather than the informal committee under the Department.

- Due to a centralized institution for labor approval i.e., the Department of Foreign Employment, is overburdened with work. Thus, many migrant workers migrate without labor approvals to save money and time. The Department needs to decentralize through establishment of Foreign Employment Offices under the Department at the provincial and district levels. Last year, the Department established a provincial branch in Biratnagar and Butwal to provide renewal of labor approvals.

By decentralizing it, the institutional mechanisms for foreign employment will become more accessible to all the people across the country, whether in terms of access to information, recruitment agencies, pre-departure orientation, skills training, obtaining passports and labor permits and even accessing justice.

- Generally, the police refused the registration of trafficking cases involving labor exploitation and instead referred it to the Department of Foreign Employment. On the other hand, the Department, even in cases of serious exploitation during foreign employment, prioritizes and focuses more on settlement of cases through mediation rather than prosecution and punishment of perpetrators. In fact, the emphasis has been more on resolving cases through mutual understanding and providing compensation to the victims. Only such cases that cannot be resolved through mediation by the Department are forwarded to the Tribunal for further legal action. Hence, the practice of impunity in cases of trafficking for labor exploitation should be discouraged through building of conceptual clarity on human trafficking, migration, and human smuggling among law enforcers.
- Owing to the heavy burden of cases and lengthy legal procedures to settle it, concerned agencies and parties both prefer resolving cases through mediation. However, through this process, disputes are simply resolved by paying compensation and completely bypassing the judicial process. Due to centralized judicial mechanisms, migrant workers must bear the economic burden of travelling to and living in Kathmandu to get justice or compensation, which could affect their decision to accept a compromise that is not in their favor. Thus, the current structure that provides justice to migrant workers need to be decentralized for reducing the burden of work and easily accessing justice at the local levels.

- The foreign employment business is dominated by local, unlicensed brokers who fuel irregular migration through India and augment the trafficking phenomenon. The data shows that majority of women migrant workers travel abroad for foreign employment as undocumented domestic workers which increases their vulnerability to exploitation. Many prospective migrants choose these informal channels because they are unaware of the legal requirements and/or the risks associated with foreign employment. They are unable to afford the cost of the formal documentation process prescribed by the law, and since brokers are often members of their community, they are more accessible than licensed recruiting agencies. However, the governmental mechanisms are only focused on regularizing foreign employment; it is not taking any serious legal action against the agents and persons involved in sending undocumented migrant workers. The government should proactively enforce legal provisions pertaining to the registration and operation of labor brokers and penalize those brokers who do not comply it.

### C. Adequate Support System for Victims

- The court has the power to issue orders to provide compensation to the victim which should not be less than half of the fine (according to the nature of offences, fine ranges from two thousand to two hundred thousand) under the Human Trafficking and Transportation (Control) Act. However, the compensation depends upon the fine collected from the convict and if the culprit is unable to provide money to pay for the fine, the victim will be provided compensation from the rehabilitation fund. However, there is no effective implementation of the provision and no monitoring. Under the Foreign Employment Act, the Department has the power to seek compensation from the licensee and provide such compensation to the victim for all the expenses incurred while going for foreign employment. In the event of refusal to provide compensation, the Department can provide compensation to the concerned worker from the cash deposit made by the licensee. Because of this monetary benefit, victims prefer to file cases under the Foreign Employment Act even when the cases are that of trafficking for labor exploitation. Adequate compensation and interim relief should be arranged to encourage victims to file cases of human trafficking along with monitoring of the same.
- Recruiting agencies and agents are very powerful with their networking, money, use of mafia and political protection. They have political connections which can influence the Department. The provision relating to victim protection under the anti-trafficking law is not effective and there is no provision for victim protection under the Foreign Employment Act. Without establishing an effective protection mechanism, the Human Trafficking and Transportation (Control) Act, proposes three months to one year of imprisonment in cases where complaints give contrary statement in the court to that of the statement given earlier, or if the complainant does not appear before the court. Hence it is very essential to establish effective victim protection policy for accessing justice.
- Anti-Trafficking Law obliges the Government to rescue any Nepali citizen sold in foreign land. Under this law, the cost of repatriation can be covered by the trafficking rehabilitation fund. In addition, the Ministry of Labor, Employment and Social Security has established shelter homes in six countries. However, most trafficking victims are identified and rescued by non-governmental organizations in an informal manner. Hence, the Government needs to take responsibility by adopting a comprehensive rescue policy with clear provision on rescue of Nepali citizens who are trafficked for labor exploitation. Shelter homes also need to be established in other countries where there is high density of Nepali migrant workers.





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