

First Submitted: 4 May 2018 Accepted: 5 February 2019

DOI: <https://doi.org/10.33182/ml.v16i4.594>

Nepali Women's Labour Migration: Between Protection and Proscription

Bandita Sijapati¹, Joelle Mak², Cathy Zimmerman³, Ligia Kiss³

Abstract

With the increase in female migration, especially in the domestic sector, and accompanying reports of worker exploitation and abuse, labour-sending countries are grappling with the question of how to protect these workers. Drawing on a critical feminist policy analysis framework, this article analyses the policy and regulatory frameworks of Nepal related to female labour migration and examines their implications. Our analysis indicates that Nepal's policy regime consist of a set of measures which are simultaneously liberal, protective and restrictive, and as such, they have not altered the structural conditions and economic reasons for women's migration. Instead, women appear to be largely uninformed about government regulations, and most importantly, working conditions abroad are not affected by sending country policies, including the various migration bans put in place to protect women.

Keywords: migration; gender; policy analysis.

Introduction

The global rise of female migration, especially for domestic work, has received increasing attention (Brochmann, 1993; Parreñas, 2001; Ehrenreich and Hochschild, 2003; Shah, 2004; Lan, 2006; Mahdavi and Sargent, 2011; Fernandez, 2013; Ogawa et al, 2018). Recognition of migration for domestic work has been driven primarily by reports of the poor working conditions and violation of workers' rights (Jureidini and Moukarbel, 2004; ITUC, 2017; Anti-Slavery International, 2006). However, at the same time, there have been relatively few inquiries into the nexus between the migration of domestic workers and the policies of sending countries (one exception includes, ILO 2015). In this paper, we examine the barriers and restrictions that the Government of Nepal (GoN) has placed on female migration and locate these within the larger discourses of policy regimes that are simultaneously liberal, protective and restrictive. We also examine how such policies have influenced the migration decisions, experiences and pathways of female migrant workers from Nepal.

This paper is based on research conducted as part of the South Asia Work in Freedom Transnational Evaluation (SWiFT), to examine the International Labour Organization's (ILO) Work in Freedom (WIF) intervention to prevent trafficking of women and girls from South Asia. We conducted semi-structured interviews with prospective female migrants (n=55) between March

¹ Bandita Sijapati, Social Science Baha, Centre for the Study of Labour and Mobility, Nepal. E-mail: bsijapati@gmail.com.

² Joelle Mak, Faculty of Public Health & Policy, Department of Global Health & Development, London School of Hygiene & Tropical Medicine, London, United Kingdom. E-mail: joelle.mak@lshtm.ac.uk.

³ Cathy Zimmerman and Ligia Kiss, Faculty of Public Health & Policy, Department of Global Health & Development, London School of Hygiene & Tropical Medicine, London, United Kingdom. E-mail 1: Cathy.Zimmerman@lshtm.ac.uk. E-mail 2: Ligia.Kiss@lshtm.ac.uk.



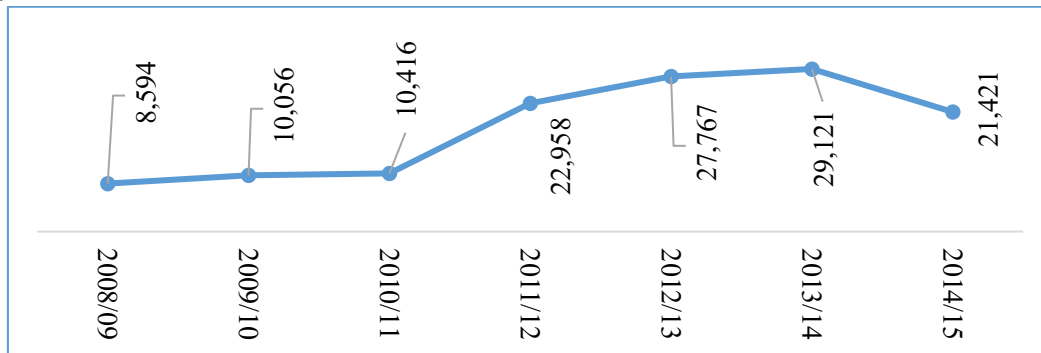
and April 2015 in three districts: Rupandehi, Chitwan and Morang. Prospective migrants were identified by ILO-Nepal's partners as potential targets for the intervention and included women who were going to be first-time migrants as well as those planning to re-migrate. The study received ethical approvals from the London School of Hygiene and Tropical Medicine (LSHTM) and the Nepal Health Research Council, and consent was obtained from participants before the interview.

We draw on literature from gender and migration (Parreñas, 2001; Ehrenreich and Hochschild, 2003; Shah, 2004; Lan, 2006; Mahdavi and Sargent, 2011; Fernandez, 2013; Ogawa et al, 2018, Gammage & Stevanovic, 2018) as well as feminist policy analysis frameworks that focus on reconceptualising the role of power, the state and patriarchy in the arena of policy processes (MacKinnon, 1989; Troyna, 1994; Parker, 1998). Central to this body of literature is the recognition that rather than being a technical-rational decision-making process, policies are often developed with a top-down approach, are politicised, and can even be irrational (McLaughlin, 1991; Pillow, 2003; Yeatman, 1990). Further, most policies are considered gender-neutral, and even where gender issues are considered, policies rarely reflect the ways in which the policy interventions can influence social, economic and power relations (McPhail, 2008; Htun and Weldon, 2010; Mazur, 2003; Gelb and Lief Palley, 1996; Pearson and Jackson, 2000; Fraser, 2007). As argued by Pearson and Jackson (2000:5), it is not 'women *per se* who are to be problematized, but gender relations in which women are subordinated which must be problematized...' Bearing in mind these conceptual limitations to the existing approaches to policy interventions, this paper analyses migration-related policies in Nepal from a gender perspective, using themes from feminist policy analysis to guide the coding and analysis of the participant interviews.

Female Migration Trends

Women's migration from Nepal, which historically took the form of family migration, has now shifted with a significant rise in women's participation in foreign employment. Available data from then-Department of Labour and Employment Promotion⁴ showed that only 161 women had migrated for foreign employment between 1985 and 2001 (Gurung, 2004: 28). However, this began increasing in absolute terms from the mid-2000s, with an exception in 2014/15, possibly due to the 2015 earthquakes (MoLE, 2016: 57; see Figure 1).

Figure 1: Labour Permits Issued to Women



Source: DoFE, *Labour Migration for Employment, A Status Report for Nepal: 2014/2015*.

⁴ Following the enactment of the Foreign Employment Act 2007, a separate entity, the Department of Foreign Employment was established from the Department of Labour and Employment Promotion in 2008.



Several factors can be attributed for this trend. Increasing numbers of women have been entering the labour market (Acharya, 2014; NPC, 2013), and women's migration abroad is but an extension of their search for jobs (MoLE, 2016). In key destination countries, the entry of women into the labour force, particularly in East and Southeast Asia, and the changing family structures and lifestyle in the Gulf countries have also created demands for migrant domestic workers (Irianto and Truong, 2014; Ehrenreich and Hochschild, 2003; Parreñas, 2001; Lan, 2006).

Although historically India was a common destination for Nepali migrant workers (Seddon, 2005), East Asian countries, including Hong Kong and Japan, became popular in the 1980s and 1990s, with jobs expanding to both domestic and service sectors. More recently, the Gulf countries have emerged as key destinations and by 2015 close to 60% of women migrants had migrated to the Gulf Cooperation Council (GCC) countries⁵ (MoLE, 2016: 11).⁶

Despite this growth, the number of women migrants from Nepal is relatively small compared to men, accounting for only 4-6% of the total migrant population in the past decade (MoLE, 2016: 58). But, several studies indicate significantly higher numbers of women migrating irregularly, a fact that would not be captured in official data. For instance, Amnesty International estimated that Nepali women migrants make up 30% of total Nepali migrants (Amnesty International, 2011: 9), and of all the irregular migrant workers from Nepal, 90% were women (Ghimire, 2013, cited in ILO, 2015). The reasons for such large numbers of women migrating irregularly are manifold but chief among them are the restrictions on the legal migration of women (Amnesty International, 2011; ILO, 2015, Bhadra, 2007).

Migration Regulations in Nepal: Between Protection and Restriction

From a highly regulated and restrictive regime, the laws and policies on migration in Nepal have changed over the past two decades to consider women's migration on more equal terms with that of men, and to provide additional protection to women migrants (see Table 1). Key aspects that have been revised are those meant to respond to the increasing trend of Nepali women migrants seeking job opportunities abroad, especially as domestic workers, and provide them with protection both prior to departure and in destination countries. However, in the name of protecting women, the government has time and again also introduced bans to guard against women's migration to what considered 'unsafe' destinations. Following criticisms regarding the bans, the government in 2015 introduced a new set of guidelines for domestic workers to provide better protections for women. Ironically, for women who migrate for domestic work, this has meant that the procedures have become more cumbersome with restrictions on age, more scrutiny on recruitment agencies, and the need to undertake more training.

Ultimately, in Nepal, as in many other countries, policies as presented above, have often been used as a 'quick-fix solution' rather than problem-solving processes (Yeatman, 1990). Thus, it is not uncommon to find policies that are partial, fragmented and contradictory in their objectives, scope and mandates. Accordingly, to draw out the implications that Nepal's policies have had on women's mobility, we situate Nepal's migration policies within the multiple discourses ranging from the liberal paradigm of 'access' and 'equality' to those that are simultaneously protective and restrictive.

⁵ The GCC countries consist of Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman.

⁶ An estimated 80 per cent of women migrant workers in the Gulf are engaged in domestic work within private homes or caring for children or elderly family members while others were employed in hotels, restaurants, beauty parlours, catering and manufacturing, as well as health and medical facilities within Asia and beyond (ILO, 2015: 2-3)



Table 1: Laws and Policies Guiding Women's Migration from Nepal

Laws and Policies	Key aspects for women	Year
Foreign Employment Act	Women prohibited from leaving the country without guardian's consent	1985
Foreign Employment Act	Government's permission made mandatory for women seeking to migrate for employment	1998
Government directive	Complete ban on women's migration to Gulf countries	September 1998
Government directive	Ban placed in 1998 partially lifted allowing women to migrate for work in the formal sector	2003
Foreign Employment Act	Prohibition of any form of gender discrimination while sending workers for foreign employment; and quotas to be reserved for women and other targeted groups to encourage women's migration	2007
Foreign Employment Regulations	Appointment of women labour attachés in destination countries with more than 1,000 migrant workers	2008
Government directive	Ban on women's migration to Gulf countries and Malaysia for low-skilled work	September 2008
Government directive	Ban on women's migration to Lebanon for domestic work	November 2009
Government directive	Ban on women's migration to Gulf countries and Malaysia lifted for all women	December 2010
Government directive	Ban on women below 30 years of age from migrating to Gulf countries for domestic work	August 2012
Foreign Employment Policy	Policy provisions to improve access to foreign employment-related trainings to women and other disadvantaged groups, introduce programmes to enhance safety and security of female migrants, institutional and legal mechanisms, including bilateral agreements with destination countries to ensure rights of female workers, involvement of women in decision-making bodies relating to migration	2012
Government directive	Age ban expanded to include women of all ages from migrating to the Gulf countries for domestic work	July 2014
Government directive	Total ban on women migrating as domestic workers	September 2014
Guidelines Regarding Sending of Domestic Workers on Foreign Employment	Regular migration channels opened for women migrant domestic workers to the Gulf and Southeast Asia; ban on women below 24 years of age from migrating	2015

Source: Adapted from ILO 2015 and Sijapati and Limbu 2012.

a. Paradigm of Equality and Non-Discrimination

The Constitution of Nepal 2015 has provided for the State to take measures for the protection, empowerment and advancement of the interests of women. Further, the Government of Nepal (GoN) has enacted a multitude of laws to promote gender equality while also abiding by



international norms and commitments such as upholding basic human rights for all citizens and eliminating all forms of gender-based discrimination (World Bank and DFID, 2006; ADB 2010). Central among these is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which not only has specific provisions related to non-discrimination and equal employment opportunities, but also contains a requirement for origin countries to lift ‘discriminatory bans or restrictions on migration’ (General Recommendation 26, Article 2 (f)). Additionally, Nepal’s Foreign Employment Act (FEA) 2007, explicitly prohibits any form of gender discrimination while sending workers for foreign employment (Article 8), a significant improvement considering Nepal’s earlier restrictions on women’s migration for foreign employment.

b. Paradigm of Protection

Juxtaposed against the liberal policy regime of the Nepali state is the ‘protective’ role the State has assumed on the issue of female migration. The objective of the FEA 2007 is, among others, ‘to make [the] foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment’ (FEA 2007). To encourage women’s participation in foreign employment, the Act also requires the government to reserve quotas for women and other targeted groups (Article 9), a provision that did not exist in the earlier Act or its amendments. Likewise, the Foreign Employment Regulation 2008 requires the appointment of labour attachés in countries where more than 5,000 Nepali migrants have been sent, and the placement of women labour attachés in countries with more than 1,000 women migrant workers (Article 43, Foreign Employment Regulations, 2008). Following reports about abuse and exploitation of migrant workers that point to strong linkages between high recruitment fees and vulnerability to exploitation, including trafficking (Verité, 2012; Gordon, 2015; Jones, 2015), in July 2015, the government issued a notice that the process of labour migration from Nepal would be free, or at minimum cost (MoLE, 2015). However, its implementation has been dismal because of weak enforcement (Sijapati et al., 2017).

While existing laws emphasize protection for all workers, the government’s paternalistic attitude towards women is clear. For instance, even as the FEA 2007, with its focus on non-discrimination, remained the principal law guiding labour migration, in 2012, the government imposed a ban restricting women below the age of 30 from migrating for domestic work to the Gulf countries, and later, in 2014, extended it to cover all women. As Kapur (2012: 82) has pointed out, bans driven by concerns about the sexual exploitation of domestic workers only ‘serve to reinforce assumptions about women as weak and vulnerable, and in need of state (or male) protection.’ Such assertions rang true when the Government spokesperson said that the age bar for woman migrant workers to the Gulf was set at 30 to address the reported sexual and psychological exploitation since women over 30 are better able to manage such situations (Shrestha and Basu, 2012).

c. The Restrictive Regime

Despite the liberal tenets of the overall policy regime, since the inception of foreign employment legislation in Nepal in 1985, women’s migration has also been highly regulated, with additional conditions repeatedly introduced over the years (Table 1). The 1985 FEA, for instance, prohibited women from leaving Nepal without the consent of their guardian, while the 1998 Act added a clause requiring permission from the government as well (Sijapati and Limbu, 2012: 34).

These restrictions became more forceful after the death of a Nepali domestic worker in Kuwait in 1998, following which the GoN imposed a ban on women’s migration to the Gulf. The ban was



partially lifted in 2003, allowing women to migrate for work in the formal sector, and completely in 2010 with new 'protective mechanisms' added such as attending a mandatory training course for domestic workers, and written assurances by employers on worker safety and provision of regular contact with the family and embassy, etc (Sijapati and Limbu, 2012). In 2012, came the ban on women below the age of 30 migrating for domestic work in the Gulf countries (Shrestha and Basu, 2012).

Despite criticisms from rights groups and women migrants themselves, in April 2014, the government imposed a total ban on all women to migrate for domestic work, with the exception of those who already had work visas. The reasons for the ban were not made clear but media reports pointed to concerns over the rise in the number of women being exploited 'physically, psychologically and economically' (Kantipur, 2014). In September 2014, the ban was extended to include even those with work visas as well.

In April 2015, the government introduced 'Guidelines for domestic workers seeking foreign employment,' which lowered the age bar to 24 for the six GCC countries, Lebanon and Malaysia (Article 3[3]) while stating that workers would be sent only to countries with which Nepal had established bilateral agreements (Article 4). In the interim, recruitment agencies would still be allowed to send domestic workers to countries without such agreements so long as they had an agency-to-agency agreement in the destination country.⁷

Migration Experiences: The Effects of Policy Changes

As described above, the policy framework guiding women's migration is complex and consists of laws, discourses and principles that are not only partial and fragmented but also contradictory and riddled with discontinuities. In this section, we describe how the policy changes, especially the restrictions on women's migration, have influenced Nepali women's experiences and migration pathways.

a. Migration: an extension of women's labour force participation

Women's engagement in foreign employment needs to be contextualized within the broader pattern of female labour force participation in the country. According to a 2013 report, the share of Nepali women in wage employment in the non-agriculture sector more than doubled between 1990-2010 and 2013 (NPC, 2013: 31). This mirrors the increase in the total number of women obtaining labour permits during the same period in Nepal (MoLE, 2016). However, there are limited job opportunities for women in Nepal due to their lower levels of education and job experience, lesser control of and access to resources, and discrimination in the labour market (ADB, 2010; Acharya, 2014). For women who choose to join the labour force, the possibility of travelling abroad for employment affords them with opportunities often unavailable at home.

A 22-year-old social worker from Rupandehi explained how important it has become for women in her community to work outside their home to sustain their families. Citing herself as an example, despite actively seeking work in Nepal, she was unable to secure stable employment, which led her to consider migration. As argued by the ILO (2015: 44), restricting the mobility of women through bans to protect a few women from exploitation, is a 'disproportionate response' to

⁷ This option, however, was to be exercised only for a maximum one year (Article 4). On the issue of recruitment agencies, the Guidelines has capped the number of agencies allowed to send domestic workers to 100 and recruitment agencies were required to monitor the working conditions of Nepali domestic workers every four months (Article 21(4)). As pointed out in the ILO report, it is not clear how this article will be implemented since Nepali law is not binding in countries of destination (ILO, 2015).



the challenges women face and a failure to recognize the necessity for many women to migrate, and an individual's freedom of movement.

b. Socio-cultural factors

Socio-cultural norms and women's roles also play a part in women's migration (Murphy, 2008). In Nepal's deeply-rooted patriarchal systems, women who find themselves in abusive relationships may see migration as the only option to leave and do so regardless of the regulations in place.

He [husband] used to beat me and not let me eat. He was always showing his power to everyone. Even when I went abroad to work... he would say, 'You must have slept with all kinds of races and groups.' And, even if I stay in the house, he does the same thing...When he doesn't drink, he is a good person. But after he drinks... he says whatever he wants to.

—Aged 24 from Morang, previously migrated once against the ban

Another woman reported her husband taking a second wife as the reason to seek work to support herself.

He brought in another wife. I came here [maternal home] because I didn't want to live there. Why should I live there if he has brought in another one? I can stand on my own feet, I can earn my living.

—Aged 36 from Morang, previously migrated to Oman as a domestic worker

c. Minimal impact on numbers

The structural factors pushing women to migrate are also strong. While there has been a steady increase in the numbers of women migrating from Nepal through regular channels, these have fluctuated considerably, perhaps a reflection of the government's on-again-off-again restrictive measures. After the ban was lifted in 2010, there was a 120% rise in the number of labour permits issued to women in 2011/12 compared to the previous year. When the ban was re-imposed in 2012, both the rate of increase in absolute terms and the total share of female migrant workers dropped (MoLE, 2015: 58).

Research suggests that the restrictions have only impacted how women migrate and not curtailed their outflows as such. For example, a survey of 86 migrant women following the first ban in 1992 found that the women simply sought unofficial channels to leave the country instead of staying put (UNIFEM & NIDS, 2006). Additionally, even as Nepal banned Lebanon as a destination for female migrant domestic workers, the Lebanese government still issued 3,895 new labour permits to Nepali domestic workers in 2010 (Hamill, 2011). It was pointed out that the ban was announced by Nepal unilaterally and not negotiated with Lebanon, and hence, not enforceable there. Notably, recent analysis of SWIFT data also indicates that Nepali women migrating during the 2014 bans (on migration of under 30 women and of women migrating for domestic work) were less likely to experience forced labour, according to the ILO definition of forced labour (Kiss et al., forthcoming). While the correlation between bans and experiences of exploitation might be weak, it is also important to note that women who migrate illegally, in this case, women who circumvent



the ban and migrate, the formal protections would not be available to them if faced with any adversity as described below.

d. Limited information

Even though the issue of bans has received much attention in the media and human rights circles, women affected by such interventions had limited migration-related knowledge. When prospective migrant women in the SWIFT study were asked about migration preparations or the processes involved, most mentioned the need for skills training, recruitment fees, language skills, etc, but none spoke directly about the restrictions on female migration (although they were not specifically queried on this aspect). In general, women came to know about labour permits and government regulations only after the WIF intervention.

The information she [peer educator] gave was very useful. I didn't know that we need to do labour [obtain labour permits] and other things like that before. When she told me about those things, I thought to myself, 'Oh, that is how it is. People have been going abroad by doing all these things.' I didn't know about that till now.

—Aged 22 from Rupandehi, no prior migration experience

Even among the better-informed, awareness was still limited:

I think I'm prepared in all aspects. I will fly from Kathmandu. I will not fly from India. I will go to Dubai directly from Kathmandu. Even if I don't understand the papers, I'll show it to people who understand, and ask them what is written on the papers, and then only I will go.

—Aged 27 from Chitwan, no prior migration experience

This is unsurprising since although the cabinet decision about the 2012 ban was reported in the media, there appeared to be no official record of the decision that was made public. The main source of information was a press release from the Foreign Employment Promotion Board (FEPB), which stated that the GoN would allow only women over 30 to migrate for domestic work in the Gulf countries (FEPB, 2012; Shrestha and Basu, 2012), and they would have to do so on their own as recruitment agencies were not permitted to send female workers (ILO, 2015; The Kathmandu Post, 2012). In addition, there appears to have been no formal consultation before the policy was introduced although government sources indicated recommendations had been received from various stakeholders, including civil society, government agencies and Nepali embassies, while also pointing out that countries like India, Bangladesh and Sri Lanka have similar age limits (The Kathmandu Post, 2012). However, the frequent changes in government regulations relating to women's migration as mentioned in the ILO report (2015: 9) has created an 'environment of confusion' and the government has not taken adequate measures to communicate or clarify the changes frequently introduced.

e. Risks of exploitation

The ILO study indicated that in addition to being arbitrary and discriminatory, these bans provide women with less control over their migration (ILO, 2015). Following the 2014 ban, women preparing to go to Kuwait as domestic workers explicitly warned that if the government did not reverse its decision, they would travel via India, a widely used informal channel for migrating



(Republica, 2014; Setopati, 2014). While the women who organized the protests were aware of the government regulations, the migration planning adopted by a 32-year-old woman interviewed is emblematic of women circumventing government regulations, knowingly or unknowingly, and in the process being exploited by recruitment agents as well as employers.

At first, I was planning to go to Dubai. And, my uncle [also, the recruitment agent] and I went to Bombay to then go to Dubai. We stayed there for nine days and the owner who was supposed to take me to Dubai had already left without me. Then I said, 'I am a poor person. I am trying to go abroad by investing even the 2-4 pennies I could borrow. If I were to return, how will I pay back that money...I have to go somewhere anyhow.' ...After getting my visa on the fourth day, I went there [Kuwait] after a week's time. For two months, things were good...after three months, I had to go through a lot of misery...they didn't give me food, they beat me, and they wouldn't pay me...He [owner] used to touch me while I was sleeping.

–Aged 32 from Chitwan, migrated twice

Migrating via irregular channels precludes women from benefitting from health insurance or compensation and support from the Welfare Fund when needed (Amnesty International, 2011; ILO 2015). Further, such bans have also led to the proliferation of unlicensed brokers/agents, like the one mentioned above, who generally promote unofficial routes that are deceptive and often expose migrants to higher risk of abuse, including trafficking (Amnesty International, 2011; Gurung, 2013; ILO, 2015). For example, Amnesty International (2011) has documented cases of women who felt they had no option but to use an irregular route and ended up trafficked into the sex industry in India.

At the same time, however, findings from SWIFT research among returnee women suggest that the incidence of forced labour has declined since 2008, which coincided with more targeted Nepali actions against human trafficking, including successive bans on migration (Kiss et al, forthcoming). Nonetheless, even if migration bans might have some protective effects against women's entry into situations of forced labour, these types of restrictions limit livelihoods options, individual agency and reinforce gender inequalities (Davidson, 2015). Decreased overall migration to destinations such as Saudi Arabia and Kuwait, where migration sponsorship programmes have been noted to increase the vulnerability of domestic workers (Malit Jr, 2016), also seem to have affected the probability of women experiencing labour exploitation and abuses in migration (Kiss et al., forthcoming).

f. Working conditions

The objective of the regulations and bans has been to protect women from exploitation and abuse (DoFE, 2012 cited in MoLE, 2016: 58). However, women have continued to migrate through irregular channels, outside the protection accorded by the formal system (UNIFEM & NIDS, 2006; Hamill, 2011; ILO 2015; Amnesty International, 2011). Moreover, even if the incidence of forced labour may have been negatively affected by the migration bans, this type of actions can harm women by further limiting their livelihood options, and deepening gender asymmetries (Davidson, 2015). Conversely, effective protection mechanisms in destination countries that guarantee migrant women's rights as workers may have an empowering effect on women, and at the same time that it can help to hold recruiters and employers accountable for abuse and exploitation.



The Nepali agent she was a woman... I was told I would be paid 130 but I am only getting paid 600 in 6 months and I couldn't even say I want to go home? She said we bought you and... I said I paid money to get here... I said don't try to intimidate me like others I am not your daughter, your daughter-in-law, I am here to work. Why are you threatening me?

—Aged 23 from Chitwan, migrated twice

Given that a large number of women continue to migrate informally, women with prior migration experience suggest that their conditions of stay abroad is determined primarily by factors such as their own nature, work skills, and the temperament of their employer, and while government policies may influence women's vulnerability to abuses and exploitation, they have not been effective at protecting them from these harms when they migrate.

Conclusion

Shifting policy regulations in Nepal have structured women's migration pathways and experiences in complex ways. This analysis highlights how the policy measures introduced to 'protect' women have paradoxically denied women of important employment opportunities and forced women who wish to migrate to select irregular pathways, which can lead to additional health and safety risks. The restrictive regulations also contravene basic human rights and constitutional guarantees of equality and non-discrimination. From a theoretical perspective, a critical analysis of these policies suggests that by introducing various legal measures governing women's migration, Nepali migrant women have become a site of state regulation and control, and are being instrumentalised to reassert societal norms, morals and values relating to women's roles, their sexuality, independence and maturity.

From a policy perspective, the government's failure to gain protections and equal rights for women migrant workers, despite the many interventions, is generally couched as a problem of implementation. However, in reality, the government needs to shift the focus to reconsider the basic inequitable and restrictive premises of the policies themselves. Instead of viewing women as needing 'protection,' the focus should be on empowering women to exercise agency through making informed choices, upholding women's rights at home and especially abroad. Policies need to start by improving the overall position of and safe livelihood opportunities for Nepali women by: making women well aware of their rights and responsibilities; addressing abusive recruitment practices; ensuring women have proper documents; strengthening the capacity of embassies to provide assistance to workers in need; working with other labour-sending governments to collectively demand stronger protections for workers; and most importantly, insisting that destination countries ensure fair and decent treatment of their workers. Failure to address these fundamental issues and choosing instead to curtail women's mobility will unjustifiably circumscribe women's mobility and diminish their social and economic power as women and workers.

References

- Acharya, S. (2014). *Gender, Jobs and Education: Prospects and Realities in Nepal*. Kathmandu: UNESCO.
- Amnesty International. (2011). *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International Ltd.
- Anti-Slavery International. (2006). *Trafficking in Women, Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*. In Working Paper Anti-Slavery International. Retrieved from



- http://www.antislavery.org/wpcontent/uploads/2017/01/traffic_women_forced_labour_domestic_2006.pdf
- Asian Development Bank (ADB). (2010). *Overview of Gender and Social Inclusion in Nepal*. Mandaluyong City, Philippines: Asian Development Bank.
- Bhadra, C. (2007). *International Labour Migration of Nepalese Women: Impact of their remittances on poverty reduction*. In Asia Pacific Research and Training Network on Trade, Working Paper Series, No. 44, (Rev. Jan 08).
- Brochmann, G. (1993). *Middle East Ave: Female Migration from Sri Lanka to the Gulf*. Boulder: Westview Press.
- Central Bureau of Statistics (CBS), National Planning Commission Secretariat (NPC), & United Nations Development Programme (UNDP). (2014). *Annual Household Survey 2012/2013*. Kathmandu: Central Bureau of Statistics.
- Davidson, J.O. (2015). *The margins of freedom: modern-slavery*. Palgrave MacMillan. <https://doi.org/10.1057/9781137297297>
- Department of Foreign Employment (DoFE). (2012, August 9). *Department of Foreign Employment after the decision by the cabinet on 9 August 2012* [Press release].
- Ehrenreich, B., & Hochschild, A. (Eds.). (2003). *Global Woman: Nannies, Maids, and Sex Workers in the New Economy*. New York: Metropolitan Books.
- Fernandez, B. (2013). *Traffickers, Brokers, Employment Agents, and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East*. *International Migration Review*, 47(4): 814-843. <https://doi.org/10.1111/imre.12049>
- Foreign Employment Promotion Board (FEPB). (2012, September 3). *Information for those wishing to migrate for domestic work (translated)* [Press Release]. Retrieved from <http://fepb.gov.np/newsdetail.php?id=27>
- Fraser, N. (2007). *Feminist politics in the age of recognition: A two-dimensional approach to gender justice*. *Studies in Social Justice*, 1(1): 23-35. <https://doi.org/10.26522/ssj.v1i1.979>
- Gammage, S., and Stevanovic, N. (2018). *Gender, migration and care deficits: what role for the sustainable development goals?* *Journal of Ethnic and Migration Studies*, DOI: 10.1080/1369183X.2018.1456751.
- Gelb, J., and LiefPalley, M. (1996). *Women and Public Policies: Reassessing Gender Politics*. Charlottesville: University Press of Virginia.
- Ghimire, P. (2013). *Review of migration and development policies and programmes and their impact on economic and social development, and identification of relevant priorities in view of the preparation of the post-2015 development framework, Nepal Country Statement on Agenda Item 5, Asia Pacific Regional preparatory meeting for UN General Assembly High-level Dialogue on International Migration and Development, Bangkok 29-31May 2013*
- Gordon, J. (2015). *Global Labour Recruitment in a Supply Chain Context*. Geneva: ILO.
- Government of Nepal (GoN). (2007). *Foreign Employment Act, 2064 (2007)*. Available at www.lawcommission.gov.np/index.php/en/acts-english
- Government of Nepal (GoN). (2008). *Foreign Employment Regulations, 2064 (2008)*. Available at http://www.dofe.gov.np/new/uploads/article/foreign-e-r-english_20120420110303.pdf
- Gurung, G. (2004). *An Overview Paper on Overseas Employment in Nepal*. Kathmandu: International Labour Organization (ILO).
- Gurung, G. (2013). *Living the Golden Dreams: The Gulf and Nepalese women*. Kathmandu: Maiti Nepal.
- Hamill, K. (2011). *Trafficking of Migrant Domestic Workers in Lebanon, A Legal Analysis*. Beirut: KAFA (enough) Violence and Exploitation, COSV (Coordination Committee of the Organizations for Voluntary Service), Lebanese Center for Human Rights (CLDH) and the Permanent Peace Movement (PPM).



622 *Nepali Women's Labour Migration: Between Protection and Proscription*

- Htun, M., & Weldon, S. (2010). When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy. *Perspectives on Politics*, 8(1), 207-216. <https://doi.org/10.1017/S1537592709992787>
- International Labour Organization (ILO). (2015). No easy exit - Migration bans affecting women from Nepal. International Labour Office, Fundamental Principles and Rights at Work (FUNDAMENTALS), Labour Migration Branch (MIGRANT). Geneva: ILO.
- International Trade Union Confederation (ITUC). (2017). Facilitating Exploitation: A review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries. Brussels: ITUC. Retrieved from https://www.ituc-csi.org/IMG/pdf/migrant_domestic_workers_in_gulf_final-2.pdf
- Irianto, S., & Truong, T.D. (2014). From Breaking the Silence to Breaking the Chain of Social Injustice: Indonesian Women Migrant Domestic Workers in the United Arab Emirates. In T. D. Truong, D. Gasper, J. Handmaker, & S.I. Bergh (Eds.). *Migration, Gender and Social Justice, Perspectives on Human Security* (pp 24-45). Heidelberg: Springer. https://doi.org/10.1007/978-3-642-28012-2_2
- Jones, K. (2015). Recruitment Monitoring and Migrant Welfare Assistance. Dhaka: International Organization for Migration.
- Jureidini, R., & Moukarbel, N. (2004). Female Sri Lankan Domestic Workers in Lebanon: A Case of 'Contract Slavery'?. *Journal of Ethnic and Migration Studies*, 30(4): 27. <https://doi.org/10.1080/13691830410001699478>
- Kantipur (2014, May 29). Khadima gharelu kamdar kholne tayari (Preparations for opening up Gulf for domestic workers. Kantipur.
- Kapur, R. (2012). *Makeshift Migrants and Law: Gender, Belonging and Post-Colonial Anxieties*. New York: Routledge. <https://doi.org/10.4324/9780203814000>
- Kiss L, Fotheringham D, McAlpine A, Mak J, Zimmerman C. Labour exploitation of Nepalese migrant women: pathways to prevention. Manuscript submitted for publication.
- Lan, P. C. (2006). *Global Cinderellas: Migrant Domestic Workers and Newly Rich Employers in Taiwan*. Durham: Duke University Press. <https://doi.org/10.1215/9780822387787>
- MacKinnon, C.A. (1989). *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.
- Mahdavi, P., & Sargent, C. (2011). Questioning the Discursive Construction of Trafficking and Forced Labor in the United Arab Emirates. *Journal of Middle East Women's Studies*, 7(3): 6-35. <https://doi.org/10.2979/jmiddeastwomstud.7.3.6>
- Malit Jr, F.T., Naufal, G. (2016). Asymmetric information under the Kafala sponsorship system: Impacts on foreign domestic workers' income and employment status in the GCC countries. *International Migration*, 54(5), 76-90. <https://doi.org/10.1111/imig.12269>
- Mazur, A. G. (2003). *Theorizing Feminist Policy*. Oxford: Oxford University Press. <https://doi.org/10.1093/0199246726.001.0001>
- McLaughlin, M. W. (1991) *Learning from Experience: Lessons from Policy Implementation*. In A. R. Odden (Ed.), *Education Policy Implementation* (pp185 -196). Albany, NY: State University of New York Press.
- McPhail, B.A. (2008). A Feminist Policy Analysis Framework, *The Social Policy Journal*, 2 (2-3): 39-61, DOI: 10.1300/J185v02n02_04
https://doi.org/10.1300/J185v02n02_04
- Ministry of Labour and Employment. (2015). Notice on sending Nepalese workers for Foreign Employment at a minimum cost. Retrieved from <http://www.mole.gov.np/ckfinder/userfiles/files/minimumcost.pdf/>
- Ministry of Labour and Employment. (2016). *Labour Migration for Employment, A Status Report for Nepal: 2014/2015*. Kathmandu: Ministry of Labour and Employment, Government of Nepal.
- Murphy, R. (2008). The impact of socio-cultural norms on women's experience of migration and implication for development. In *Migration and Development: Future Directions for Research and Policy*, SSRC



- Migration and Development Conference Papers (pp 256 - 276). Brooklyn, NY: Social Science Research Council.
- National Planning Commission. (2013). Nepal Millennium Development Goals Progress Report 2013. Kathmandu: National Planning Commission, Government of Nepal and United Nations Country Team of Nepal.
- Ogawa, R., Oishi A.S., Chan R.K.H., and Wang LR. (2018). Introduction: Situating Gender, Care, and Migration in East Asia. In Ogawa R., Chan R., Oishi A., Wang LR. (eds) *Gender, Care and Migration in East Asia*. Series in Asian Labor and Welfare Policies. Palgrave Macmillan, Singapore. https://doi.org/10.1007/978-981-10-7025-9_1
- Parker, L. C. (1998). From Brown to Ayers-Fordice: The Changing Shape of Racial Desegregation in Higher Education. *Journal of Education Policy*, 13: 699 -715. <https://doi.org/10.1080/0268093980130603>
- Parreñas, R.S. (2001). *Servants of Globalization: Women, Migration and Domestic Work*. Stanford: Stanford University Press.
- Pearson, R and Jackson, C. (2000). Introduction: Interrogating Development: Feminism, Gender and Policy. In R. Pearson and C. Jackson (Eds.), *Feminist Visions of Development: Gender, Analysis and Policy* (1-16). New York, NY: Routledge.
- Pillow, W. (2003). Bodies are dangerous: using feminist genealogy as policy studies methodology, *Journal of Education Policy*, 18(2): 145-159. <https://doi.org/10.1080/0268093022000043083>
- Republica (2014, May 15). Aspiring migrant domestic workers warn of protests. *Republica*.
- Seddon, D. (2005). Nepal's Dependence on Exporting Labour. *Migration Information Source*. The Online Journal of Migration Policy Institute. Retrieved from <http://www.migrationpolicy.org/article/nepals-dependence-exporting-labor/>
- Setopati (2014, May 9). Mahilale khadi jana bharatko bato roje pacchi... (When women chose to travel from India for the Gulf...). *Setopati*. Retrieved from <http://setopati.com/chapa-bata/11156/>
- Shah, N. M. (2004). Gender and Labour Migration to the Gulf Countries. *Feminist Review*, 77(1): 183-185. <https://doi.org/10.1057/palgrave.fr.9400167>
- Shrestha, M., & Basu, M. (2012, August 10). Nepal bans women under 30 from working in Gulf states, *CNN News*. Retrieved from <https://edition.cnn.com/2012/08/09/world/meast/nepal-migrant-workers/index.html>
- Sijapati, B., & Limbu, A. (2012). *Governing Labour migration in Nepal: An analysis of existing policies and institutional mechanisms*. Kathmandu: Centre for the Study of Labour and Mobility.
- Sijapati, B., Ayub, M., & Kharel, H. (2017). Making migration free: an analysis of Nepal's 'free-visa, free ticket' scheme. In S. Irudaya Rajan (Ed.), *South Asia Migration Report 2017: Recruitment, Remittances and Reintegration* (pp 164 - 189). London: Routledge.
- Sunderland, J. & Varia, N. (2006). *Swept Under the Rug: Abuses against Domestic Workers Around the World*. New York: Human Rights Watch.
- The Kathmandu Post (2012, August 10). Age limit only for domestic workers. *The Kathmandu Post*.
- The United Nations Development Fund for Women & the Nepal Institute of Development Studies. (2006). *Nepali Women and Foreign Labour Migration*. Kathmandu: UNIFEM & NIDS.
- Troyna, B. (1994) Critical social research and educational policy. *British Journal of Educational Studies*, 42(2): 70-84. <https://doi.org/10.1080/00071005.1994.9973984>
- Verité (2012). *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Retrieved from: https://www.verite.org/wp-content/uploads/2016/11/Humanity-United-Nepal-Trafficking-Report-Final_1.pdf
- World Bank and Department for International Development of the United Kingdom (DFID). (2006). *Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal*. Kathmandu: World Bank and DFID.



624 *Nepali Women's Labour Migration: Between Protection and Proscription*

Yeatman, A. (1990). *Bureaucrats, Technocrats, Femocrats*. Sydney: Allen & Unwin.

www.tplondon.com

