



International
Labour
Office

Executive Summary

A comprehensive analysis of policies and frameworks governing foreign employment for Nepali women migrant workers and migrant domestic workers





Executive Summary

I. Overview

Nepal has implemented, repealed and re-implemented various bans and restrictions on the migration of women migrant workers and / or migrant domestic workers since 1998, the year in which all women migrant workers were first banned from migrating to Gulf countries following the highly publicized death of a domestic worker, Kani Sherpa, in Kuwait. Over subsequent years, total bans or restrictions on certain countries, occupations and / or ages have been implemented and repealed under the auspices of protecting migrant domestic workers / women migrant workers from exploitation and abuse abroad.

One of the principal causes and risk factors for forced labour and trafficking, identified by past research led by the International Labour Organization (ILO)'s *Work in Freedom* (WiF) Programme, is restrictive and gender-insensitive migration policies. These include restrictions on movement in the form of bans and restrictions on the departure of women migrant workers and migrant domestic workers from origin countries to seek foreign employment.

Issues in the recruitment and foreign employment industry in Nepal are multi-faceted and extend far beyond migration bans and restrictions. While bans and restrictions have led to increased migration through informal channels, migration through formal channels in Nepal and throughout South Asia does not guarantee safety for migrant workers nor prevent them from facing exploitation (Zimmerman et al., 2015). The foreign employment registration process in Nepal is often gender-blind and does not account for the intensive stigma surrounding female labour migration. Consequently, those women who are legally able to access the labour permit application process still risk criticism or reproach from families, communities and administrative officials.

Nevertheless, restrictive emigration regimes have been shown to exacerbate legal and protection shortcomings in the foreign employment industry for women migrant workers and migrant domestic workers and contribute to their further marginalization and vulnerability. Combined with structural social stigma and discrimination which has driven female labour migration into hidden corners of the foreign employment process, migration restrictions have prevented women from availing of mechanisms such as pre-departure trainings, insurance and welfare fund schemes, while increasing their dependency on informal recruitment intermediaries in spaces where information on safe migration is not typically readily available (ILO, 2015a; Paoletti et al., 2014; GAATW, 2017; Mak et al., 2019; Pyakurel, 2018). Bans have inhibited women's access to redress and retribution mechanisms in the event of abuse, and most importantly, have accomplished little in improving their living and working situations once abroad (Ibids). Migrant and human rights organizations both within Nepal and abroad have also repeatedly decried bans and restrictions as violating key national and international human rights frameworks, including commitments to freedom of movement, gender equality, employment and non-discrimination made in the country's 2015 Constitution (ILO, 2015a; FWLD, 2018; UN OHCHR, 2018).

Notably, while past bans have focused specifically on migrant women, the most recent ban on foreign employment for migrant domestic workers (in place from 2017 to 2020) ostensibly applied to both males and females. However, migration for domestic work from Nepal continues to be a phenomenon undertaken almost entirely by women, and many experts asserted that this discursive shift did little to change how bans were implemented on-the-ground.

In September 2019, Nepal's Ministry of Labour, Employment and Social Security (MoLESS), in consultation with Nepal's foreign missions and upon instruction from the Nepal Parliamentary Committee of Industry, Commerce, Labour and Consumer Interest (CICLCI) lifted the ban on re-entry of migrant domestic workers. This action granted certain migrant domestic workers a re-entry permit which allowed them to legally return to Nepal to visit and then return to the same destination country / job after their visit – albeit only if they had originally migrated with approval from the Nepali government.

Members of the aforementioned Parliamentary Committee, accompanied by representatives of MoLESS and its Department of Foreign Employment (DoFE), as well as the Nepal's National Human Rights Commission (NHRC), then sent a delegation to three Gulf countries – Oman, UAE and Saudi Arabia – to reassess the situation for migrant domestic workers in early March 2020. Following consultations regarding bans and restrictions, as well as other frameworks related to women migrant workers and migrant domestic workers, the Committee requested that the Government repeal the 2017 ban in September 2020, subject to seven conditions including the signing of BLAs with all destination countries, the existence of separate labour laws, and mandatory training of migrants before starting work.

In the ILO's efforts to support the construction of regular migration pathways for women migrant workers and migrant domestic workers which respect their safety, dignity, wellbeing and human and labour rights and which allow them to enrich their own lives, the lives of their families and communities back home, the ILO Country Office for Nepal commissioned this present review between February and June 2020 as a comprehensive analysis of legal and policy frameworks governing foreign employment for women migrant workers and migrant domestic workers. This review builds off of ILO's previous study of migration bans, *No Easy Exit: Migration Bans Affecting Women from Nepal* published in 2015, but fills an important research gap by focusing on the policy formulation phase itself. The findings will identify and characterize the ways in which stakeholders (governmental and otherwise) formulate policy narratives, negotiate policies and regulations and invoke knowledge claims in order to justify regulatory and policy interventions related to women migrant workers, migrant domestic workers and associated thematic areas – including anti-trafficking frameworks, frameworks combatting forced labour, domestic work and more.

The following research explores: (1) what the prevailing norms, ideas and beliefs in policy spheres about work, women, migration and domestic work are and how these norms and beliefs influence the continued use of migration bans; (2) characterizes the parties that maintain support for or wish to repeal bans; (3) determines ongoing concerns of policymakers that maintain support of bans and what their plans are to address these concerns; (4) analyzes the role and use of empirical evidence in the policymaking process; (5) measures Nepal's progress on the negotiation of bilateral labour agreements (BLAs) and memoranda of understanding (MoUs) with specific reference to migrant domestic workers, and what impact this has on bans and restrictions; and (6) the transnational dynamics which impact this process.

II. Methodology

Findings for this review are based on two principle tools for data collection – extensive documentary research / media analyses and qualitative semi-structured Key Informant (KI) interviews with expert stakeholders.

- The documentary research portion of this review entailed a literature review of existing studies on Nepali women migrant workers, migrant domestic workers, as well as migration bans and restrictions implemented by Nepal. This portion of the research also entailed reviews of legal and policy documents, government publications and circulars and administrative data records. Finally, the reconstruction of policy timelines also involved a media analysis of over 200 news articles published between 1998 and mid-2020 in three of Nepal's premier media outlets. This information was corroborated by information provided by KIs wherever necessary.
- Qualitative semi-structured interviews were realized with 26 KIs, including independent gender and labour migration experts, staff of international organizations, research institutes, civil society organizations (CSOs) (including those dedicated to migrants' rights and counter-trafficking), recruitment industry professionals, Members of Parliament, trade unions and government ministries. Interviewees were selected through non-probability / purposive sampling methods based on perceived knowledge and expertise of the foreign employment and migration process for Nepali women migrant workers and migrant domestic workers.

Aside from direct data collection tools, the research portion of this study was complemented with the realization of an advocacy-based documentary project, which entailed in-depth conversations with 11 returnee Nepali women migrant domestic workers who had previously worked in West Asia. Participants were selected in order to access a diverse cross-section of socio-economic, demographic and migratory characteristics. Free and informed consent was obtained from participants before interviews or photos were conducted / taken. To read the stories of these migrant women, see Annex E.¹

III. Overview of Nepali female labour migration and migration for domestic work

A. Historical background and trends

Nepal has a long history of out-migration for employment, beginning with the recruitment of Nepali *gorkhas* to serve in the British Indian army in the 1800s (ILO, 2017a). Since the signing of Nepal's first Foreign Employment Act (FEA) in 1985 in particular, and with the country's subsequent democratization in the years following, Nepal began to actively promote foreign employment for its citizens (Pyakurel, 2018). During the 1980s and 90s, the State pursued open market policies, facilitated access to passports, opened up the foreign employment industry to private sector actors and liberalized travel regimes (Sijapati and Limbu, 2017; ILO, 2015a; Pyakurel, 2018; Kharel, 2016). These changes occurred simultaneously with a decrease in investments in domestic agriculture, which led to structural changes in Nepal's predominantly agrarian economy, increased costs of production and significant declines in agricultural productivity and employment. Exacerbated by shifts in climate and rainfall patterns in recent years, these changes have been a significant factor stemming labour out-migration in Nepal for decades. Further out-migration for employment was generated as a result of conflict and instability arising from the country's 10-year Civil War (1996 – 2006).

Beginning in the 1990s, the principle destination countries of Nepali migrant workers abroad – both male and female – began to rapidly diversify away from India to include Gulf countries, other countries in the Middle East as well as countries in East and Southeast Asia (mainly Malaysia, as well as Hong Kong and South Korea). The majority of Nepali migrant workers are employed on temporary work contracts (2 – 3 years) in Gulf countries in construction work, services (such as retail and wholesale), care, and domestic work (GiZ and ILO, 2015a; Kharel, 2016). In the last decade, the Nepal Department of Foreign Employment (DoFE) has issued over four million labour permits, with the number of workers registering for departure on an annual basis peaking in 2013/14 at roughly 500,000, albeit steadily declining since (MoLESS, 2020). Of these four million labour permits, approximately 200,000 were issued to women, constituting roughly five per cent. Current data and information on the quantities, locations, occupations and other details of Nepali migrants based in India remain limited, however, due to the open border between the two countries.

B. Feminization of labour migration from Nepal

Prior to the 1990s, few Nepali women engaged in out-migration for employment, reinforced by government restrictions which prohibited recruitment agencies from recruiting women without consent of their male guardian, as well as gendered barriers to accessing passports and conferring citizenship rights (ILO, 2015a; Bhattarai, 2007; Sijapati and Limbu, 2017). However, since the late 1990s, more women have begun migrating independently in search of work, facilitated by changing gender and cultural perceptions and practices, increased resources to migrate and macro-structural shifts taking place in Nepal and elsewhere in South Asia at the time – including the informalization of labour, poverty

¹ This review benefitted from previous unpublished research by the author: McCarthy, M. (2019). *Reconstructing and analysing dominant policy narratives and processes preceding the implementation of outright or partial bans and restrictions on the departure of women migrant workers (WMMs) from Nepal and Sri Lanka* [Master's thesis, London School of Economics and Political Science (LSE) (unpublished)].

and inequality, low wages, shortcomings in national welfare systems, urbanization, privatization, rapid industrialization and globalization (GAATW, 2017; CARITAS, n.d.).

Whilst Nepali women migrant workers still represent a very small proportion of all workers registering for foreign employment through formal channels (that is, with approval from the GoN), data do not portray an accurate picture of women's labour migration from Nepal, given that most women migrate through informal channels in order to circumvent bans and restrictions imposed by the State on and off for more than two decades. Most women migrate by way of India, departing from airports in Delhi, Mumbai or Chennai; from Dhaka, Bangladesh; or from locations farther afield (ILO, 2015a; Pyakurel, 2018; IOM, 2019a; Kharel, 2016). Some women have also been found to depart irregularly from Nepal's Tribhuvan International Airport in Kathmandu (Paoletti et al., 2014). Unverified / anecdotal figures have suggested that women migrant workers constitute as much as 30 per cent of total outflows of migrant workers from Nepal, and that as many as 80 to 90 per cent of migrant workers leaving Nepal through informal migration channels are women (Mak et al., 2019; ILO, 2015a; Paoletti et al., 2014). Nepali women are mainly migrating to Gulf destination countries, as well as Lebanon, Jordan, Israel, Hong Kong and Malaysia (Gioli et al., 2018; MoLESS, 2020).

C. Sociodemographic characteristics of Nepali migrant women

Most women migrant workers / migrant domestic workers are from lower social and economic strata and possess very minimal levels of education, and many are illiterate (GAATW, 2017). The majority of migrant women are from lower castes and predominantly originate from rural areas in Nepal's Hill and Tarai districts (MoLESS, 2020). Most migrant women are under the age of 30 when they first migrate, and the majority are married (IOM, 2019a; Mak et al., 2019). These socio-demographic characteristics are important to understand when analysing the policy formulation process and the positions of governmental stakeholders, as the mobility of poor women from marginalized socio-economic backgrounds then becomes a site of state regulation (Piper, 2008). Nepali women migrate in order to earn a better income and provide for themselves and for their families, gain economic and social remittances, build individual autonomy, and increase their relative decision-making power, both in household social dynamics but also in the management of household resources and finances (Sijapati and Limbu, 2017). Many originate from households where one member (usually male) has already migrated (Abramsky et al., 2018).

The majority of Nepali women migrate for domestic work. This is due to sex segmentation in labour markets in Nepal and abroad, gender inequalities in access to skills training and education in Nepal, and unequal distribution of reproductive labour. Domestic work is usually the most affordable option available to migrant women, given that recruitment costs are often borne by the employer and many migrant women receive incentive payments upfront (ILO, 2015a). Domestic work is considered highly precarious, unregulated and informal and is often excluded from domestic labour laws in origin and destination countries (Parreñas, 2015; Zimmerman et al., 2015). It is often difficult to detect exploitation and abuse of domestic workers due to the nature of their working situation (that is, in private family homes) (Ibid).

The lack of legal frameworks governing domestic workers in both origin and destination countries reifies notions that domestic work is not legitimate work, and thus not deserving of the same rights and labour entitlements as other workers (GAATW, 2017). However, domestic work is a form of care work, either paid or unpaid, and forms the foundation of societies. Particularly in light of ageing and growing populations, changes in family and labour market structures and shortcomings in national welfare and social policies, care work in paid and unpaid forms will be even more critical to the successful reproduction of societies and in ensuring decent work in the future (ILO, 2018d).

D. Socioeconomic conditions for women in Nepal

Understanding the socio-economic conditions for Nepali women helps to contextualize and explain the multiple and complex drivers that fuel women's out-migration for employment from Nepal. There

are persistent discrepancies in development outcomes based on gender. Average female literacy rates in Nepal are significantly lower than for males, and females on average possess fewer years of schooling (UNDP, 2019; UNFPA, 2017; FAO, 2019). Females hold few key leadership positions in all levels of government and in the private sector (Bhattraï, 2017). Nepali women face a number of barriers to health, safety and wellbeing, with a high prevalence of intimate partner violence, domestic abuse, sexual and gender-based violence (SGBV), verbal, psychological and socio-economic violence, child marriage, and lack of access to sexual and reproductive health services (UNDP, 2019; FWLD, 2018; IDPG Nepal, 2017; FIGO, 2019).

The Gross National Income (GNI) (in 2011 USD at PPP) for Nepali women is significantly less than for Nepali men – at USD 2,113, compared with USD 3,510, respectively (UNDP, 2019). Women's labour force participation rate (LFPR) is roughly half the rate for men according to the 2017/18 national Labour Force Survey (LFS) (CBS, 2019). There persist significant gendered divisions of labour and sex segmentation in Nepal's domestic labour markets, and most of women's work remains non-remunerated and completed within the sphere of household maintenance (Kaspar, 2005; Kharel, 2016). Of women engaged in productive labour, roughly seven in 10 work in agriculture, forestry and fishing industries (CBS, 2019). However, many women are working as unpaid family labourers in subsistence agriculture and must negotiate triple-work burdens of reproductive and community work in addition to productive farm labour (ILO, 2017a; FAO, 2019). Women in agriculture face barriers in setting up micro-enterprises and businesses, lack of access to farm labour and farming inputs, limited knowledge and training and weaker overall bargaining power (IOM, 2019a; FAO, 2019). There are also vast discrepancies in socioeconomic outcomes for women based on ethnicity / caste group, with women from Tarai castes, Muslims and Hill Dalits facing poorer outcomes in education, livelihoods, social indicators and overall development (Pandeya and Oyama, 2019; FWLD, 2018; IOM, 2019a).

E. Reasons for migration

The migration process does not occur in a vacuum and does not begin when a woman leaves her home. Instead, it is influenced, as with male migrants, primarily by lack of access to jobs and decent employment, inadequate incomes and poverty at home. While some of the reasons that women migrate are similar to those for men, these stresses are exacerbated by gendered deprivations in key well-being related indicators in health, education, employment and protection (including SGBV and violence against women and girls), as well as discrimination, illustrated above.

The strength of these socioeconomic factors often results in women choosing to migrate, often despite being aware of the many risks involved (Zimmerman et al., 2015). Female labour out-migration has further stemmed from slumps in agricultural production and productivity in recent years (Kharel, 2016; IOM, 2019). The majority of migrant women are motivated to seek foreign employment due to lack of decent work opportunities available in Nepal, as well as motivations to increase income levels, improve educational opportunities for their children and improve their family's overall economic status (IOM and IASCI, 2017; ILO, 2015a; UN Women, 2017).

While financial considerations are certainly an integral reason for migration, the migration decision-making process is too complex to limit to conversations on economic determinism or wage differentials (Mezzadra, 2004). Nepali female labour migration is also fuelled by patriarchal social norms, gender inequality, and stigma surrounding women's work and mobility within Nepal (Thieme et al., 2005; ILO, 2017a). Nepali women who seek occupations outside of the home are often scrutinized and face discrimination (Coyle et al., 2014). Migration gives women the opportunity to work and earn higher incomes while distancing themselves from this judgement. In addition, the decision to migrate is often taken collectively as a household-level coping strategy, or is influenced by immediate and extended relatives, friends and community members as well as wider social networks (Gamburd, 2000; Kiss and Bosc, 2017).

For some Nepali women, migration also constitutes an escape from systems of violence, including SGBV and violence against women and girls in public and private spheres, and abusive husbands (Piper, 2008;

UN Women, 2017; ILO, 2015a). Migration is often seen as a *de facto* method of marriage separation for Nepali women, given that divorce or disruption of marriages at the female spouse's behest is still highly stigmatized in Nepal (The Women's Foundation Nepal, 2020; Kharel, 2016). In the past, migration has also been fuelled by conflict – in particular, the country's 10-year Maoist insurgency from 1996 to 2006 (IOM, 2019a; K.C. et al., 2017) – as well as natural disaster – in particular, following Nepal's devastating 7.8-magnitude earthquake in April 2015 (IOM, 2019a).

F. Migration and recruitment process for Nepali migrant domestic workers and women migrant workers

Owing in large part to migration bans, the vast majority of women migrant workers and migrant domestic workers rely on a burgeoning number of unregistered recruitment intermediaries in order to obtain jobs overseas (Kharel, 2016). These intermediaries are often directly or indirectly involved in assisting the movement of migrant women through India and other transit areas onward to destination countries.

Informal recruitment intermediaries, or "agents", assist in simplifying a complicated bureaucratic and frequently changing recruitment process that is often inaccessible to potential migrant workers, particularly those in rural areas who lack the education or financial means to negotiate the process individually. For migrant women, agents can provide crucial and up-to-date information on job vacancies, background on destination countries, information on terms and conditions of employment, arrange necessary travel itineraries and documentation, and liaise with agencies and employers in Nepal and in destination countries (Paoletti et al., 2014; Kern and Müller-Böker, 2015). Agents are often former migrants themselves and possess an array of first-hand knowledge and experience (Müller-Böker, 2015). Many are individuals personally known by the migrant woman, originating from the same village or surrounding area (Ibids).

While using subagents to migrate can bring a number of conveniences, there are also a number of risks. Migrant women migrating informally with the assistance of recruitment intermediaries may: (1) pay intermediaries up front and lose their initial deposit with no job materializing; (2) have their documents retained without having them returned; (3) be promised false salaries or working conditions; (4) feel "sold" or at risk of being trafficked as they are often "passed off" between multiple intermediaries during the informal migration process; (5) may have to pay additional fees, both because there are often multiple agents involved in the process but also in order to cover costs of falsification of documents or bribery of officials, which is often required in order to migrate through informal channels; (6) have to delegate increased trust and decision-making power to sub-agents, which can reduce the amount of agency they have over the process; (7) lack freedom of movement whilst in transit or be stranded in transit countries for extended periods in sub-standard housing and living conditions; (8) lack awareness and information on pre-departure orientation trainings, working conditions and benefits; (9) lack written employment contracts; (10) face difficulties in reporting fraudulent recruitment practices or instances of abuse to authorities; and (11) in less common occasions, be subject to exploitation or human trafficking while in transit to destination countries (Paoletti et al., 2014; ILO, 2015a; GAATW, 2017; IOM, 2019a; Kharel, 2016; Mak et al., 2019).

However, many of these aforementioned recruitment violations and concerns are not necessarily unique to recruitment through informal channels. Falsification of job conditions, document retention, lack of knowledge of predeparture trainings, lack of access to insurance, inability to access redress mechanisms, trafficking and other violations are known to occur both in formal and informal recruitment channels. There is no clear delineation between safe and unsafe migration when it comes to informal versus formal migration channels for women, and as Zimmerman et al. (2015) points out, migrating through regular channels in Nepal and elsewhere in South Asia does not guarantee that a migrant is protected from exploitation. The challenge then is to design policies and frameworks which not only formalize recruitment channels but also make formal recruitment channels accountable for women migrants.

G. Conditions for Nepali women migrant domestic workers abroad

Migration is not static; it may produce both positive and negative outcomes, often simultaneously. ILO's initial 2015 study of migration bans in Nepal found that a multitude of women reported having positive experiences abroad and good relationships with their employers, as did the women who participated in a recent evaluation conducted by UN Women (UN Women, 2017; ILO, 2015a). Various studies have shown that women migrant workers can have empowering and valuable experiences abroad, saving money, paying off debts and developing new skills and higher levels of autonomy.

However, many migrant women may face difficult and exploitative conditions abroad. This is particularly the case for women migrant domestic workers – and particularly for live-in domestic workers – due to the nature of their work. Women migrant workers and migrant domestic workers have been known to face issues such as: (1) non-payment of wages; (2) excess working hours and inadequate rest hours; (3) inadequate housing and food provisions; (4) lack of leave days; (5) confiscation of passports and identity documents; (6) barriers to accessing health services; (7) inability to participate in collective action; (8) wage levels that do not permit the annual reproduction needs of the migrant worker and her family; (9) workplace injuries and illnesses; (10) contract substitution and lack of formal contracts; (11) unpaid or underpaid wages; (12) lack of freedom of movement and isolation; (13) mental health issues and suicide; (14) disappearance; (15) verbal abuse; (16) sexual harassment, violence and rape; and (17) other conditions that may amount to forced labour, labour trafficking and / or debt bondage.²

For many women migrant workers and migrant domestic workers, there are very few avenues for redress that exist in destination countries. Labour violations for women migrant domestic workers in particular are rarely identified and prosecuted, and most dispute resolution is handled through voluntary conciliation between the worker and the employer, often with the support of a recruitment agency, CSO or embassy (ILO, 2017c). Resolution through Ministries or through judicial action in civil courts also occurs but is extremely rare. For both formal and informal resolution mechanisms, women migrants face numerous access issues, including language barriers, the inability to negotiate complex and foreign legal and court procedures, movement restrictions, and prohibitive costs and legal fees (ITUC, 2017; GAATW, 2017; ILO, 2017c). This is exacerbated by discriminations in legal structures in destination countries which have historically excluded domestic workers from labour laws.

Unionization is prohibited for migrant workers in most destination countries. While certain groups tend to offer informal, ad hoc assistance to workers in principle destination countries – including trade unions such as the General Federation of Nepalese Trade Unions (GEFONT), NGOs such as the Pravasi Nepali Coordination Committee (PNCC) and Non-Resident Nepali Associations (NRNAs), (PNCC, n.d.; Baniya, 2019) – these activities have tended to target / be accessible to male migrant workers only.

Women migrant workers and migrant domestic workers sometimes seek assistance through Nepal's diplomatic mission located in their respective destination countries, but retribution through consular services is also limited. Embassies may get involved *ad hoc* in settling labour disputes, connecting workers with legal services, facilitating negotiation between workers and employers and coordinating repatriation of distressed women migrant workers / migrant domestic workers (Paoletti et al., 2014). However, there is almost universal recognition in existing studies and amongst stakeholders interviewed for this review that Nepal's foreign missions do not have the sufficient human, training or financial resources to handle the volume of work required to assist all of its workers abroad. This is exacerbated by the limited legal powers that missions often have in destination countries. Nepal's embassies and consulates are often actively discouraged by destination governments from getting involved in labour disputes (Paoletti et al., 2014). Some women migrant workers who have sought assistance from embassies have been denied assistance outright due to their irregular migration status, urged to turn themselves in to the police to get deported, or even encouraged to return to abusive employers (McQue, 2020).

² Sijapati and Limbu, 2017; ILO, 2015a; Joshi et al., 2011; Philippines OFW Guide, 2014; Paoletti et al., 2014; ILO, 2017a; Mak et al., 2019; UN Women, 2017; GAATW, 2017; Kharel, 2017; O. Rai, 2017; ILO, 2015c; ILO, 2015d; ILO, 2016c; ILO, 2016d; ILO, 2017c.

IV. Domestic and international frameworks governing female labour migration and migrant domestic work in Nepal, and their alignment with bans and restrictions

A. Domestic frameworks

- **The Constitution of Nepal (2015)** - provides specific commitments to reaffirm and advocate for the rights of marginalized groups and eliminate “discriminations relating to class, caste, region, language, religion and gender discrimination including all forms of racial untouchability” (Constituent Assembly Secretariat, 2015). The document also includes various protections and guarantees related to equal employment, non-discrimination, gender equality and foreign employment, prohibits forced labour and exploitation and prohibits discrimination in salaries and access to social security between men and women (Sijapati and Limbu, 2017; ILO, 2017a).
- **Human Trafficking and Transportation (Control) Act (HTTCA) (2007)** - defines human trafficking and “human transportation”, outlines rules and procedures for reporting suspected offences, the certification of statements by victims, arrests and investigations, rescue, rehabilitation and reconciliation, and more (Law Commission of Nepal, 2007). The law has been criticized for focusing too narrowly on sex trafficking of women and girls, with no mention of forced labour in any of its provisions and minimum acknowledgement of trafficking of men. The law also conflates prostitution with human trafficking, even if it is voluntary (ILO, 2017a; GAATW, 2017; FWLD, 2018). The HTTCA (2007) does not outline standard operating procedures (SOPs) for the identification of victims and the provision of rehabilitation services (NHRC, 2018).
- **Foreign Employment Act (2007)** - prohibits gender discrimination and advocates for the GoN and institutions that send workers to provide special facility to women, Dalit and indigenous groups (ILO, 2007). As a rights instrument the FEA is very limited, and does not provide specific protection, rights or tailored mechanisms for women or irregular migrants (Sijapati and Limbu, 2017). Provisions of the law also do not do enough to counter the wealth and power of recruitment agents, nor of employers (Ibid). Many human trafficking cases are incorrectly filed and tried under the FEA (2007), because it is quicker, less arduous, more accessible and does not carry the stigma of being identified as “trafficked” (GAATW, 2017; NHRC, 2018). However, this greatly inhibits access to true justice and compensation for trafficking victims.
- **Foreign Employment Policy (2012)** - makes a number of commitments to address the needs of women migrant workers and migrant domestic workers, including skills-based training and orientation for women, information dissemination, elimination of violence and discrimination against women, support mechanisms for returnee women migrant workers, and preferential loans for women migrants, as well as the appointment of female labour attachés in principle diplomatic missions abroad (DoL, 2012).
- **The 2015 Directive on the Management of Sending Domestic Workers for Foreign Employment (hereinafter, the 2015 MDWGs)** – are a set of guidelines related to the recruitment, employment, and migration of Nepali migrant domestic workers. The guidelines establish a minimum age of 24 years for Nepali citizens who wish to take up jobs in domestic work sectors in Gulf countries, Lebanon and Malaysia (ILO, 2015a). The same Directive only allows for migrant domestic workers and women migrant workers to migrate to countries with which Nepal has signed a bilateral labour agreement (BLA) or memorandum of understanding (MoU). The MDWGs (2015) require mandatory pre-departure orientation trainings, prohibit recruitment costs, require monitoring and inspection of working conditions for domestic workers, and require a separate registration system and application structure for recruitment agencies that wish to send domestic workers (MoLESS, 2020; ILO, 2017a).
- There are a range of other relevant national laws and frameworks, including the **Labour Act of 2017**, which finally recognized domestic workers and their labour rights on par with the labour rights afforded to other Nepali workers (IDWFED, 2017).

There is a clear discursive gap between bans and restrictions, and commitments made to non-discrimination, gender equality, equal access to employment / the right to choose employment, and freedom of mobility enshrined in the 2015 Constitution and the FEA (2007). Bans and restrictions also appear to operate against the objectives of the HTTCA (2007) to combat and reduce the vulnerability of Nepali women and girls to trafficking. While progressive and comprehensive, the objectives of the FEP (2012) remain largely unimplemented. The stipulations of the MDWGs (2015) remain unimplemented due to bans and restrictions. At the same time, the MDWGs (2015) perpetuate age discriminations on migrant domestic workers and introduce complex administrative procedures in the foreign employment process for domestic workers.

B. International frameworks

- Nepal has ratified seven out of eight of ILO's fundamental conventions. It has also ratified the Global Compact for Safe, Orderly and Regular Migration (2018), the Universal Declaration of Human Rights (UDHR) (1948), the South Asian Association for Regional Cooperation (SAARC)'s Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979), amongst others.
 - Bans and restrictions operate against CEDAW's General Recommendation No. 26, which advocates for gender-sensitive, rights-based policies based on equality and non-discrimination, facilitating women's access to work opportunities abroad and repealing sex-specific bans and discriminatory restrictions on women's migration (UN Women, 1979).
- Nepal has not yet ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the ILO Convention C189 on Domestic Workers (2011), nor the ILO Convention C190 on Violence and Harassment, amongst other instruments.
- Nepal also participates in a number of regional multilateral fora, including SAARC, the Colombo Process, the Bali Process and the Abu Dhabi Dialogue. However, these multilateral fora remain underutilized in pursuing initiatives specifically related to the rights of women migrant workers and migrant domestic workers.
- Nepal also has obligations under its fulfilment of the 2030 Sustainable Development Goals (SDGs) – particularly target 8.7 (eradicating forced labour, modern slavery and human trafficking), target 8.8 (safe and secure work environments for all workers, including migrant workers and women migrants in particular), target 10.7 (safe, orderly, regular and responsible migration) and Goal 5 (gender equality and empowerment of women and girls), amongst others (UN, n.d.a.; UN, n.d.b.).

C. Progress on the negotiation of BLAs and MoUs

BLAs and MoUs are the most widely used tools for bilateral cooperation on labour migration governance pursued by Nepal. A BLA is a formal, legally binding agreement, whereas MoUs are non-binding agreements and are more flexible (ILO, n.d.d.). Nepal has signed nine agreements with destination countries between 2005 and mid-2020 at the time of writing (MoLESS, 2020). MoUs and BLAs are an important instrument that may be used to negotiate better rights and protections for certain types of workers or occupations which are not usually covered under destination countries' domestic labour laws – for example, domestic workers.

The MDWGs (2015) made the signing of BLAs and MoUs with destination countries a fundamental pre-condition for sending migrant domestic workers, and the repeal of migration bans has on numerous occasions been conditioned on the signing of these agreements, including the latest repeal in September 2020. However, of the existing BLAs and MoUs that Nepal has signed, only one – the BLA signed with Jordan in 2017 - includes specific stipulations on the rights of migrant domestic workers. Lack of progress

in the negotiation of these instruments with specific coverage of migrant domestic workers is likely influenced in part by unequal power dynamics and negotiating power between Nepal and destination countries. However, interviews conducted for this review, as well as information published on past negotiations, suggest that policymakers have deprioritized negotiations of BLAs and MoUs regarding migrant domestic workers once at the negotiating table. On the other hand, the GoN has continually demonstrated the preference to pursue negotiations on general workers instead, who given their larger numbers are considered a greater economic priority by the State. According to various key informants, this is despite sustained interest from principle destination countries to sign specific agreements on migrant domestic workers, as well as continued willingness to make concessions on the rights afforded to migrant domestic workers due to high demand in key destination labour markets (Sedhai, 2014b; Sedhai, 2014c).

V. An intersectional analysis of migration policymaking in Nepal

Migration policy spheres are populated by a number of different stakeholder groups that hold rival ideas, values and interests regarding appropriate policy interventions, influenced by “different traditions of thought, paradigms or frames” (Boswell et al., 2011: 1). These different stakeholder groups weave together assertions regarding the characteristics, causes and consequences of migration phenomena into causal stories known as “policy narratives”, which set out “beliefs about policy problems” and their appropriate interventions (Boswell et al., 2011: 1). However, the policy narratives which prevail are not always informed or aligned with empirical realities, particularly if empirical findings do not reinforce existing perceived interests, are not dramatic or morally compelling, or not cognitively plausible. Despite increased calls for evidence-based policymaking in Nepal and around the globe in recent years, policy narratives are often not informed by research and data but are rather determined by a web of informal behaviours, deep-seated norms and values, and networks of political alliances and obligations (Bennett, 2005) surrounding gender, class, caste, race and ethnicity, as well as cultural views and assumptions regarding women’s work and mobility.

Women’s labour migration in Nepal is often conflated with prostitution, “looseness” or promiscuity (Mak et al., 2019; Kharel, 2016). Many assume that women will be sexually abused by predatory male members of their employers’ households or directly trafficked into sex work (GAATW, 2017; Kharel, 2016). While sexual abuse and sexually exploitative relationships are a concerning issue that Nepali migrant women have reported facing in destination countries, popular reference to sexual abuse of migrant women in Nepal and other origin countries tends to be drastically sensationalized and rarely informed by evidence (Kharel, 2016). The discourse that migrant women are destined to a fate of sexual exploitation abroad, without nuance or a broader understanding of the scale, the reasons or the conditions under which sexually-exploitative conditions may arise abroad, can have drastic implications on their reputations and can negatively affect their personal relationships and employment prospects upon return to Nepal (GAATW, 2016).

This stigmatization of returnee women often arises out of assumptions that migrant women are no longer *choko* (“pure”) because they are believed to have either consensually engaged in sexual activity abroad or to have been sexually abused (alarmingly, little distinction is made between the two) (Kharel, 2016). Many women who are not victims of sexual abuse struggle to convince families and communities that they were not raped while abroad (Kharel, 2016). On the other hand, those returnee migrant women who are victims of sexual assault or exploitation in destination countries often face victim blaming upon return to Nepal – for example, they may be accused of “provoking” their exposure to sexual violence by choosing to migrate in the first place. Many returnee victims may be excommunicated and / or completely cut-off from their families and communities (GAATW, 2017).

Kharel (2016) discusses how Nepali migrant women are often described and viewed as *cheli* – that is, “daughters”, “sisters” or “female pupils” - who are kin of the patriarchal Nepali state. This enables the perpetuation of policy narratives which view migrant women as helpless victims in need of protection rather than as individual citizens whose rights must be upheld. Discussions around migrant women in policy circles center around debates over whether young Nepali women are “mature” enough to

handle the stresses and challenges of overseas labour migration. At the same time, young Nepali men depart to Gulf and other destination countries to seek employment, often in dangerous and precarious occupations, yet do not face discursive limitations regarding their mobility, sexuality or maturity. The perpetual depiction of migrant women as *cheli* disregards the agency and control women exercise over their own bodies, their work and their mobility (Kharel, 2016; GAATW, 2017; Mak et al, 2019; ILO, 2015a; Piper, 2008).

These dynamics of power and patriarchy that surround female labour migration and migrant domestic workers embed themselves in state structures and directly influence governmental institutions and policy narratives and interventions. This is enabled by the fact that women's voices are rarely given adequate political representation, and their opinions and perspectives are rarely heard in policymaking spheres (Hennebry et al., 2017). Consequently, the diversity of women's experiences and women's agency in their migration process is often bypassed or ignored. Women are categorized as "victims" in need of saving rather than as equal citizens under the law whose rights must be ensured (Hennebry et al., 2017; Anderson, 2012). The products of this process are "protectionist" migration policies that restrict women's mobility and autonomy over their work, instead of equipping them with the knowledge and resources to exercise and assert their rights (Paoletti et al., 2014; GAATW, 2017; Piper, 2008).

Bans and restrictions, as well as other frameworks currently governing foreign employment for women migrant workers and migrant domestic workers in Nepal, operate on the assumption that women are safer remaining in Nepal. However, this assumption is untested and likely untrue, given high instances of sexual and domestic violence, unsafe working conditions, lack of access to society security, and continuation of practices of forced / bonded labour in Nepal (Sijapati, Limbu and Khadka, 2019). Policy interventions (including bans and otherwise) on women migrant workers and migrant domestic workers in Nepal tend to focus disproportionately on the plight of migrant women abroad without addressing the structural issues and prevailing power structures back home that are pushing women to migrate in the first place (Bosc, 2018). Migration bans subsequently shift blame to migrant women themselves, who are termed as "illegal" or "criminal" for departing without government approval, regardless of whether or not they have legal documentation and work permits for their respective countries of destination. In addition, less attention is given to the actors who are actually perpetuating abuses (labour and otherwise) against women migrant workers and migrant domestic workers – in particular, employers – nor to the asymmetrical labour relationships in origin, transit and destination countries which enable these abuses to continue in the first place.

Migrant bans in Nepal have often been justified by policymakers using an anti-trafficking discourse (GAATW, 2017; Kharel, 2016). However, conflating labour migration with human trafficking rarely generates positive outcomes in reducing instances of trafficking during transit, and instead often pushes migration toward more circuitous and complex routes, where the need to use intermediaries, including smugglers, is heightened. While not all migrant-intermediary (and / or migrant-smuggler) relationships are abusive, some are, and some of these abuses may amount to human trafficking (GAATW, 2009). There is also little attention given to the trafficking and forced labour of Nepali male migrants in policy spheres, despite the fact that they are often equally at risk of being trafficked or exploited as migrant women (Zimmerman et al., 2015). Human trafficking in Nepal continues to be seen as primarily a "women's issue" and primarily a "sexual issue".

Media also play an important role in influencing the above processes and dynamics. Media reporting on women migrant workers and migrant domestic workers in Nepal focuses disproportionately on harrowing stories of exploitation, smuggling, trafficking and sexual abuse (often with inaccuracies) while presenting little information on the positive outcomes of women's migration experiences (IOM and IASCI, 2017; Kharel, 2016; ILO, 2015a). This can create and perpetuate powerful, negative fields of "truth" around female labour migration in Nepal which can influence the ways in which policymakers view women migrants and female mobility (Hennebry et al., 2017).

Transnational dynamics also influence this process. Destination countries rely on the circular exchange of lower cost, temporary labour through guest worker programs in order to fill critical labour market gaps, while at the same time not granting access to permanent residency, naturalization or a full set of rights to

foreign workers. This forces migrants to occupy a liminal and precarious “third space” whereby they are accepted as workers but not as human beings (Hennebry, 2014; Castles and Davidson, 2000). Migration experts expect the most meaningful improvements in the rights enjoyed by migrant workers to come as a result of reforms in destination countries. However meaningful policy reform in prominent migrant destination countries in Asia has been a slow-going and often unsuccessful process. International donors often focus disproportionately on pre-migration interventions (which are not necessarily effective once migrants are in their respective destination countries), given that results are more quickly seen, and given that origin countries are often more willing to cooperate (Mak et al., 2019; Hennebry, 2014).

VI. Positions on bans and restrictions amongst expert stakeholders interviewed for the review

Below represents a summary of opinions of key stakeholders interviewed for this review regarding bans and restrictions.

- **Parliamentarians** – according to Parliamentarians interviewed for this review as well as expert stakeholders who work closely with the National Assembly and House of Representatives, the majority of Parliament, as well as members of the Parliamentary Committee currently responsible for making decisions on the matter, currently support migration bans. A smaller number of Parliamentarians are in support of immediately lifting bans. Another portion is interested in eventually repealing bans but would prefer to do so over time through a phased approach, with additional protection mechanisms in place. One Parliamentarian interviewed for this review was adamant that bans and restrictions were not discriminatory. There appears to be cross-party support for bans amongst elected officials, as well as cross-demographic support, including amongst female Parliamentarians and Parliamentarians from lower castes and indigenous and other minority groups.
- **Government ministries** – representatives from the Ministry of Foreign Affairs (MoFA) and the Ministry of Labour, Employment and Social Security (MoLESS) appeared largely in favour of lifting bans and posited that this was the official stance of their respective ministries as a whole. The National Planning Commission (NPC) did not convey an official stance. The perspectives of security-oriented government bodies, such as the army and police or the Ministry of Home Affairs (MoHA) were not consulted but may differ from the perspectives of these aforementioned social and economic sector ministries. Although not interviewed for this study, the National Human Rights Commission (NHRC) has repeatedly made public statements against migration bans and restrictions.
- **Independent gender and labour migration policy experts** – prominent independent experts interviewed for this review were overwhelmingly in favour of lifting bans and stated that gender and occupationally-restrictive migration policies were discriminatory.
- **Research institutions** – academics and heads of research institutes dealing with themes related to migration and labour interviewed for this review were in support of lifting migration bans.
- **CSOs** – CSO representatives interviewed for this study – which included CSOs dedicated to migrants rights and counter-trafficking – were overwhelmingly in support of lifting bans, which they saw as discriminatory and felt had done little to improve the rights and safety of women migrant workers and migrant domestic workers abroad (these opinions cannot be generalized to all CSOs, however).
- **UN organizations** – the staff of UN organizations interviewed for this study were in support of lifting bans. Interviewees of one UN organization were hesitant to call bans and restrictions discriminatory given that recent restrictions applied to both male and female migrant workers. Representatives at this same organization opined that while bans should be repealed, it should be done gradually over time, and with additional mechanisms put in place in order to ensure the safety of migrant women.
- **Recruitment industry professionals** – those recruitment industry professionals interviewed for this study – including heads of agencies with current authorization to send domestic workers and those not

engaged in sending domestic workers for foreign employment, as well as current and former senior officials of NAFEA – were in support of lifting bans.

- **Trade union representatives** – trade union senior officials interviewed for this study were largely in favour of lifting bans, although an informant from one trade union opined that controls should not be lifted until additional mechanisms were put in place to ensure the safety of women migrant workers and migrant domestic workers abroad.

VII. Key findings from the analysis of the policymaking process and interviews with Key Informants

- Whereas most migrants are labelled as “undocumented” by the countries they are seeking to enter or have already entered, Nepali women migrant workers and migrant domestic workers are being afforded this status by their own country of origin / citizenship.
- The status of irregularity for women migrant workers and migrant domestic workers extends itself extra-regionally to apply to all women who left Nepal through informal channels, regardless of whether or not they are living and working legally in their respective destination countries.
- Bans and restrictions do not appear to align with democratic commitments to equal access to employment, gender equality, occupational equality, freedom of mobility and non-discrimination outlined in Nepal’s 2015 Constitution and in other national and international legal instruments.
- Bans have largely been a quick-fix solution rather than a comprehensive response to issues of exploitation, trafficking and forced labour. The State’s responses have largely been *ad hoc* and incident-based, responding to strong external shocks rather than long-term institutional needs.
- While acknowledging that destination countries have a greater responsibility in addressing abusive labour relationships between employers and women migrant workers and migrant domestic workers, many commitments that Nepal has made to improving the rights and resources available to women migrant workers and migrant domestic workers outlined in the FEP (2012), FEA (2007), MDWGs (2015) and the National Employment Policy (2016) remain unimplemented.
- Bans and restrictions have not prevented women from migrating – in fact, female labour migration has increased while bans have been in place.
- Bans and restrictions demonstrate that a women’s right to migrate and seek employment has not yet been accepted as an inalienable right in Nepal.
- Many ministerial officials and elected politicians are now aware that migration bans are ineffective and increase vulnerability and exploitation of women migrant workers and migrant domestic workers, but do not want to repeal bans out of fear of political implications for themselves / their political parties.
- There is cross-sectoral support for lifting bans amongst different stakeholder groups interviewed for this review.
- Bans and restrictions have been implemented without public consultation and with minimum transparency and information disseminated.
- Frequent changes in policy approaches (including bans) demonstrate that decision-makers lack a long-term, institutionalized plan for women migrant workers and migrant domestic workers (Pyakurel, 2018).
- Migration bans have allowed for formal and informal actors to reap additional profits off of the illicit recruitment and transport of migrant women for jobs in domestic work abroad. This has extended to

officials at the Tribhuvan International Airport in Kathmandu and employees of certain government bodies.

- ▶ Efforts to stop women from migrating along the Indo-Nepal border and at airports in India have not been successful and have instead pushed the migration process / informal routes further underground.
- ▶ The State has made repeal of bans dependent on the negotiation of BLAs and MoUs – but has thus far deprioritized the negotiation of these agreements with specific regard to women migrant workers / migrant domestic workers, demonstrating preferences for BLAs and MoUs on general workers instead.
- ▶ Bans have often been justified due to a lack of resources in Nepal’s diplomatic missions abroad to handle the volume of complaints filed by women migrant workers and migrant domestic workers. However, despite these statements, Nepal has made little progress made in improving financial, training or human resources at its foreign diplomatic missions.
- ▶ There is not always a clear understanding amongst policymakers about why / how migration bans are discriminatory.
- ▶ There is a general tendency in migration policymaking spheres to make decisions without consulting empirical evidence, without adequate study and appropriate rationale.
- ▶ As a result of women seeking migration through informal channels, there is a lack of knowledge on the whereabouts, job conditions, living conditions and general wellbeing of women migrant domestic workers. This makes it more difficult to respond to and understand the needs of migrant women abroad (including in times of crises such as the global pandemic caused by COVID-19).
- ▶ The abuse of women also occurs in Nepal. However, narratives in migration policymaking spheres in Nepal continue to attach to stories of abuse and exploitation in destination countries while neglecting to address or pursue origin-side interventions that would address the exploitation and vulnerabilities that Nepali migrant women face back home.
- ▶ The voices of migrant women themselves have systematically been left out of policy discussions, and very few efforts have been made to reconcile this gap.
- ▶ Mid-level and senior-level government officials and Parliamentarians act as “moral guardians” of migrant women and their families and assume the paternalistic role of “protecting” the female kin, or *cheli*, of the Nepali state.
- ▶ Migrant women who do choose to migrate in circumvention of migration bans are characterized as untrustworthy, as criminals or as “illegal”, and undeserving of the rights and protections of the State.
- ▶ Age bans and other age restrictions – e.g. the age bans of 2012, or the persistent age minimum of 24 – sexualize and infantilize migrant women and call the maturity of women into question, whereas young migrant men depart the country in the hundreds of thousands, uninhibited by the same discourses.
- ▶ Meaningful policy reform has been hindered by frequent changes in government and frequent turnover of Government Ministers and Secretaries. Officials with limited experience working in migration and foreign employment matters are often appointed to key decision-making positions where they subsequently implement policies and frameworks in absence of strong regulatory expertise.
- ▶ Unnuanced media reporting has contributed to the perpetuation of predominantly negative (and skewed) notions and beliefs on women’s work and mobility and has informed protectionist approaches in migration policy spheres.

VIII. Key recommendations

- ▶ Repeal and depoliticize bans and restrictions on migration – recognizing that the safety and wellbeing of women migrant workers and migrant domestic workers should be prioritized above concerns over political risks or over how the repeal of bans will affect the images of individual politicians and of political parties;
- ▶ Focus on the promotion and advancement of decent working conditions for women in Nepal in order to reduce pressures to migrate;
- ▶ Conduct a conference on female labour migration and migrant domestic work with a diverse array of stakeholders present;
- ▶ Design and implement a new Plan of Action on female labour migration and migrant domestic work with one-year, five-year and ten-year goals;
- ▶ Incorporate the voices and opinions of migrant women in the policymaking process;
- ▶ Pursue further bilateral and multilateral cooperation on women migrant workers and migrant domestic workers with other origin countries in the region;
- ▶ Pursue further negotiation of BLAs and MoUs on women migrant workers / migrant domestic workers and ensure that adequate monitoring and implementation mechanisms are in place;
- ▶ Improve information dissemination and awareness-raising campaigns on labour migration and the foreign employment process, including campaigns that specifically target women;
- ▶ Improve the safety of women migrant workers and migrant domestic workers once abroad;
- ▶ Enhance access to justice and compensation at home;
- ▶ Reform procedures and approaches to managing and implementing counter-trafficking and counter-smuggling laws and initiatives, including establishing a set of SOPs on trafficking and smuggling, and training judicial and law enforcement in identifying and assisting victims;
- ▶ Change the language used to describe migrant women and shift away from pejorative terms such as “illegal”, “undocumented”, “pathetic” or “irregular”;
- ▶ Design and implement a new Foreign Employment Policy (FEP) which adequately accounts for the desires and necessities of migrant women;
- ▶ Sign and ratify key international instruments which ensure for the rights of women migrants and migrant domestic workers, reform domestic laws on trafficking and foreign employment in line with international standards and with adequate consideration of gender, and introduce new legal frameworks on anti-discrimination, women’s work and care work;

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