

The Ethics of Migration Policy Dilemmas

There Are Better Options Than Exit Bans to Protect Migrant Workers Abroad. A Response to [Patti Lenard](#) (2021)

Upasana Khadka

Upasana Khadka is a migration specialist who has advised the Government of Nepal, consulted for the World Bank, and reported for the Nepali Times on labor mobility issues.

In her paper “Restricting Emigration for Their Protection? Exit controls and the protection of (women) migrant workers”, Patti Lenard raises important, thought-provoking points on common dilemmas faced by migrant origin countries attempting to promote overseas opportunities for their citizens while protecting their rights abroad. This is particularly challenging in sectors, such as domestic work, that are outside the purview of the labour law and enjoy only rudimentary legal protection; and where the isolated nature of the workplace and the absence of informal networks exposes migrant workers to heightened risks.

Owing to cases of extreme abuse and exploitation, the emigration of domestic migrant workers is heavily regulated, and often subject to bans and conditions. As Lenard describes, such emigration bans and conditions are intended to be protective in two ways. First, by denying migrant workers the right to travel to such countries for work and second, by pressuring receiving countries to adopt worker protection policies in exchange for lifting the bans or conditions. While evaluating the moral permissibility of these restrictive policies, she examines two important dilemmas they pose, which is what this response paper centres on.

Dilemma 1: Right to Exit versus Fundamental Rights

The first dilemma is that while bans and conditions on emigration appear to violate the fundamental human right to exit, governments also have the duty to protect the other fundamental rights of their citizens, including of those who are abroad. In this context, the dilemma to resolve is whether selective destination bans can be justified, even though they appear to violate the right to exit.

Mechanisms for protection of citizens abroad are indeed limited. Migrant origin countries put in place a range of policies to safeguard rights of their citizens abroad, both before they leave and while abroad.

From the available policy toolkit, the paper focuses on extreme measures aimed at protecting fundamental human rights i.e., exit bans and emigration conditions. The paper divides the conditions into two clusters. First, those that would render women more empowered to advocate for themselves, such as a minimum age requirement. And second, those that are infused with patriarchal norms about the proper place of women in society, such as requiring written permission from parents or brother.

However, there are also a range of other emigration conditions that migrant origin countries put in place to safeguard the fundamental rights of workers abroad, which do not interfere with a migrant's aspirations for overseas employment nor violate a migrant's right to exit. These include, among others, mandatory pre-departure orientation programmes for outgoing workers, verification of job demand letters by embassies, or deployment only from recognized recruitment agencies that have met a series of criteria such as escrow deposits. The justification for imposing such conditions can also be largely framed under Lenard's reasons from structured vulnerability and gendered structured vulnerability, as orientation programmes for domestic workers, for example, are more rigorous and longer than those for other workers, recognizing the additional vulnerabilities they face. Similarly, the accreditation process for recruitment agencies deploying domestic workers or verification process for domestic workers' job offers are more intense than those for agencies deploying other workers.

The problem with extreme policies like exit bans, however, is that they undermine the effectiveness of a slew of other available policy options aimed at protecting the fundamental rights of citizens abroad. For example, without a ban, outgoing domestic workers from origin countries like Nepal taking up employment in Gulf States are required to undergo mandatory pre-departure training that equips them with skills needed as domestic workers, basic Arabic skills, and information about the resources available to help them navigate unforeseen or treacherous circumstances, such as embassy support. Such training has the potential to not only reduce the likelihood of conflict with employers due to mismatch of skills or language barriers but also to inform them about laws and support resources available to them while abroad. A ban removes such important protective provisions because those who travel irregularly are unable to benefit from this training. Therefore, bans not only interfere with the right to exit but also with origin states' ability, however limited it may be, to protect the fundamental rights of their citizens abroad by relying on a range of interventions. Pre-departure training is just one requirement of the labour approval process designed by many migrant origin countries to safeguard the rights of citizens abroad without frustrating their aspirations or right to exit ([MOLESS 2020](#)). The labour approval process for legal emigration allows origin country governments to maintain records of all involved actors including the worker, their immediate family members, the recruitment agency and the foreign employer. When these actors defy bans, they become invisible in the government's records. Workers are thus rendered more vulnerable and recruitment agencies or employers less accountable. Therefore, it is important to consider how bans are at odds with other policies aimed at safeguarding the rights of citizens abroad.

One also needs to consider how exit bans shape policymakers' incentives and motivations. While mechanisms to protect the rights of citizens abroad are limited, they are also underutilized. Governments of migrant origin countries do not generally make enough

efforts to ensure that embassies are adequately resourced and staffed or fail to engage with receiving country governments more proactively to meet the needs of citizens abroad. The imposition of bans provides further opportunity for complacency. As Lenard documents, bans are sometimes imposed in bad faith, meant merely to demonstrate that governments are doing something to defend their citizens, especially in light of high-profile cases of abuse that spark public outrage. During such crisis events that usually precede a ban, neither of the two seemingly opposite extremes in the spectrum of available tools to protect the fundamental rights of workers overseas, i.e., doing nothing versus imposing a ban, meaningfully address the issue at hand. However, both are convenient options for the authorities, the former because it affords the government a chance to wait until the crisis blows over, and the latter because it allows them to appear decisive ([Shivakoti, Henderson, and Withers 2021](#)).

Dilemma 2: Effectiveness of bans in practice

The second dilemma Lenard discusses pertains to the effectiveness of exit bans in achieving substantial benefits for workplace protection and their impact on spurring irregular migration. Lenard draws attention to how the point of emigration bans is not to restrict access to particular labour markets in perpetuity but to pressure host states to adopt better labour protection laws for migrants. In practice, however, this reasoning doesn't always hold up.

First, while this may sometimes be the case, it is not clear that governments of migrant origin countries always see imposing bans as a strategic tool to spur receiving countries to take action on worker protection. As a concrete example, Nepal has a history of imposing bans on the emigration of domestic workers, especially to the Gulf countries ([Pyakurel 2018](#)). In November 2019, the governments of UAE and Nepal signed a Memorandum of Understanding (MOU) that included robust policies on worker protection meeting international standards. They also jointly drafted a protocol to the MOU on domestic worker protection that included strong provisions targeting the "peculiar risks" of this sector. However, arguing that the protocol is at odds with its ban on emigration for domestic work, the Nepalese government proceeded to sign only the MOU on general workers but not the domestic worker protocol.

Coming to the negotiation table to raise issues of concern and jointly drafting a robust protocol addressing domestic-worker's-specific issues with the UAE thus did not change the Nepalese government's stance on the ban of domestic workers. This indicates that the exit ban for domestic work may be driven by a general stigmatisation of female emigration — which is especially strong for domestic work — more than concerns about structural and gendered vulnerability. While this is an isolated case, it is worth questioning more extensively whether migrant origin countries consider bans as a passive, unilateral policy instead of using them more strategically as a diplomatic tool to create pressure on migrant receiving countries.

Second, it is also not clear that receiving countries necessarily feel pressure to act after a ban is imposed by a migrant origin country. As Lenard acknowledges, ample evidence shows that migrant workers continue to travel through irregular channels, so bans may not be effective in making receiving countries feel the pressure of worker shortages. Furthermore, the low bargaining power of a migrant origin country is not determined solely based on

their bilateral relationship with the receiving country; importantly, there are multiple options for receiving countries to source workers from. Unless the migrant origin country is one with relatively higher bargaining power, such as the Philippines, or unless there is more collective bargaining for stronger protection among migrant origin countries, the impetus for change can be low or even non-existent when just one migrant origin country unilaterally imposes a ban.

Third, it is also unclear whether bans are needed for countries to come together to sign a MOU with strong worker-centric provisions or for the destination country to put in place better worker conditions. Constant dialogue and proactive diplomacy as well as collective bargaining from migrant origin countries can also draw attention to issues faced by workers without infringing on the right to exit. Available pressure points, including regional forums of migrant origin countries such as the Colombo process, however, remain severely underutilized in practice. Migrant origin countries also have in their arsenal international instruments and platforms, such as the Global Compact for Migration, the Global Forum on Migration and Development, or international rights conventions, that could be more effective in pressuring receiving countries to meet their commitments and introduce comprehensive domestic labour law reforms than instituting a ban.

Migrant Voices

Female outmigration, especially for domestic work, is a sensitive topic that provokes paternalism and reactionary, populist policymaking. When assessing the moral permissibility or effectiveness of bans, it is especially useful to include voices of the migrants directly impacted by such bans. Bans often fail to respond to migrants' aspirations and personal experiences that make foreign employment a necessity or a strongly desired preference. Bans overlook how a large number of women and their families back home have reaped tremendous financial benefits from overseas employment opportunities, including domestic work; or how women often escape abusive home environments or patriarchal norms by working overseas. Bans disproportionately impact those in the lower-skilled group who are more vulnerable to recruitment-related corruption and have fewer foreign employment opportunities ([Weeraratne 2021](#)). Many women, therefore, defy bans and take risky decisions such as traveling illegally via third countries, not always because of a lack of appreciation of the risks involved, but sometimes despite full awareness of such risks ([Khadka 2021](#)).

In addition to aspiring migrants, the implementation of bans also impacts current foreign domestic workers in receiving states, whether they emigrated regularly before a ban was imposed or irregularly to bypass a ban. Such workers are then suddenly faced with an inability to return home freely, even in cases of extreme duress (a death in the family, an ill parent or child, accidents, etc.) ([Khadka 2018](#)). Exit bans thus make it impossible to re-enter one's own country if one is firmly committed to remigrating and continuing one's overseas employment after a visit. Thousands of women across the Middle East find themselves in a serious ban-induced quandary—to visit family and return via irregular channels or to unwillingly remain abroad until the ban is lifted ([Khadka 2020](#)). Under such circumstances, for both aspiring and current migrants, the agents or brokers who help circumvent exit bans become extremely important. Because bans illegalize such agents' work, their activities become less accountable while migrant workers in difficult situations become more

dependent on their services. The result is heightened risk for migrants. Much of this risk-taking finds its roots in policies that simply don't address ground realities.

References

- Khadka, Upasana. 2018. "Homes Away from Home." *The Nepali Times*, April 27, 2018.
- Khadka, Upasana. 2020. "Lift the Ban on Domestic Workers." *The Nepali Times*, February 25, 2020.
- Khadka, Upasana. 2021. "History of Female (Im)Mobility in Nepal." *The Nepali Times*, February 11, 2021.
- Lenard, Patti Tamara. 2021. "Restricting emigration for their protection? Exit controls and the protection of women (migrant) workers." *Migration Studies*, mnab045, pp. 1–18.
- MOLESS (Ministry of Labour, Employment and Social Security). 2020. *Nepal Labour Migration Report, 2020*. Singhadurbar. Ministry of Labour, Employment and Social Security.
- Pyakurel, Uddhab Pd. 2018. "Restrictive Labour Migration Policy on Nepalese Women and Consequences." *Sociology and Anthropology*, Vol. 6, No. 8, pp. 650–56.
- Shivakoti, Richa, Sophie Henderson, and Matt Withers. 2021. "The Migration Ban Policy Cycle: A Comparative Analysis of Restrictions on the Emigration of Women Domestic Workers." *Comparative Migration Studies*, Vol. 9, No. 36, pp. 1-18.
- Weeraratne, Bilesha. 2021. "Ban on female migrant workers: Skills-differentiated evidence from Sri Lanka." *WIDER Working Paper 2021/44*.

About the “Dilemmas” project

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

Suggested citation

Khadka, U., (2022) ‘There Are Better Options Than Exit Bans to Protect Migrant Workers Abroad. A Response for Patti Lenard (2021)’, Commentary for ‘The Ethics of Migration Policy Dilemmas’ project, Migration Policy Centre (MPC), European University Institute (EUI).

Migration Policy Centre

The Migration Policy Centre (MPC) at the European University Institute (EUI) conducts advanced research on the transnational governance of international migration, asylum and mobility. It provides new ideas, rigorous evidence and critical thinking to inform major European and global policy debates.

Contacts

Website: <https://www.migrationpolicycentre.eu/>

Twitter: @MPC_EUI

Facebook: Migration Policy Centre

E-mail: migration@eui.eu

Address: Convento di San Domenico
Via delle Fontanelle 19

I-50014 San Domenico di Fiesole (FI)