

THE DISCRIMINATORY EFFECT OF RESTRICTIVE EMIGRATION POLICIES ON FEMALE MIGRANTS

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This research programme focuses on the feminization of migration as one of the most significant social patterns to have emerged in the course of the last century. Too often, female migrants occupy vulnerable positions in their host societies, engaging in domestic work, sex work and other unregulated sectors. Despite being so vulnerable and despite established patterns of exploitation, the numbers of women who choose to migrate is rising. This research programme focuses on this phenomenon, in order to better understand why and how migration may offer routes to empowerment to women. A specific area of focus will be the extent to which migration allows women from the global south new sociocultural horizons as they cross over and settle in the global north.

The Discriminatory Effect of Restrictive Emigration Policies on Female Migrants

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Summary

Considering the prominence of both migration and gender equality on the international agenda, this policy report examines how restrictive emigration policies discriminate against women. Gender equality has been highlighted as a priority for the Sustainable Development Goals, and given that migration can serve as a route of economic and social empowerment to women it is essential to consider these topics in conjunction. It is particularly important for states to consider how emigration policies impact women, often restricting their possibilities to migrate for employment. The human rights of migrants must be protected, however this is often used as a justification for preventing migrants, particularly women,

from leaving countries of origin for fear that they will be exploited in destination countries.

Drawing on case studies of restrictive policies in selected countries, this report concludes that restrictive policies not only violate women's rights, but also fail to protect them from exploitation, an often-stated justification for such policies. As such, this policy report aims to provide recommendations highlighting measures that will eliminate discriminatory emigration restrictions while better protecting women throughout the migration process.

Introduction

Restrictive migration policies are most often discussed in terms of immigration and who is allowed to enter a country, through they also exist concerning emigration and who is allowed to exit. This policy report will focus on emigration policies concerning people who intend to migrate from their country of origin to work abroad, specifically considering the impact of these policies on women.

The Universal Declaration of Human Rights (UDHR) guarantees the right to leave one's country. Policies that restrict this right are often enacted with the justification of protecting potential migrants who might otherwise end up in abusive or exploitative situations in which their rights are violated. However, these restrictive labor emigration policies can discriminate based on a person's gender, age, marital status, family (children), socioeconomic status, skills (professional qualifications versus manual work), or other factors. Such policies disproportionately discriminate against women. Because women are perceived as more vulnerable to human trafficking and abusive employment situations, policies restricting their mobility are often deemed necessary for their protection. Although such vulnerabilities do exist, a distinction must be made between policies that reduce women's vulnerability through empowerment versus policies that patronizingly limit their agency. Because such policies attempt to protect women in a restrictive way, they fail to actually reduce the underlying factors that make women vulnerable, which means that women are still at risk for exploitation and trafficking even as they are restricted from migrating.

Limits on legal migration can force people who are determined to migrate to go through third parties, such as brokers and

smugglers, increasing their vulnerability to trafficking (GAATW 2010). This perversely has the opposite effect than the policies intend, and it is conceivable that these restrictive policies in fact worsen the situation of migrants who are not able to leave through legal channels. Rather than dedicating resources to prevent individuals from being moved into situations in which they could be exploited, states could be dedicating resources to stop exploitation from occurring at all. Alternative policies to reduce women’s vulnerabilities while empowering them to make safe migration decisions are possible and should be favored over restrictive emigration policies.

Countries implement restrictive policies in different ways, which have various consequences for potential female migrants. Often, restrictive measures correlate with a patriarchal culture in which male authority over women is the norm. This report includes case studies of Bangladesh, Burma and Nepal to examine different restrictive mechanisms and their impact on female migrants. Based on existing restrictive emigration policies, several policy recommendations are made with the intention of better protecting female migrants while ensuring their equal rights.

Rights in Question

Taking a human rights approach to migration means that rather than restricting people’s possibilities to leave, the priority should be making it safe for people to migrate. By examining policies that restrict migration while referring to the relevant human rights provisions adopted at the international level, the way in which these policies violate basic human rights becomes evident.

The primary right concerned by restrictive exit policies is the right to freedom of movement. The aforementioned UDHR guarantees this right in Article 13, which states that “Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.” This right is reaffirmed in similar provisions in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention)¹ as well as in the International Covenant on Civil and Political Rights (ICCPR), which further stipulates in Article 12 “The above-mentioned rights shall not be subject to any restrictions except those which

1. Article 8: Migrant workers and members of their families shall be free to leave any State, including their State of origin.

are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” States may use this article to justify restrictive policies, claiming they are “necessary to protect...morals or the rights and freedoms of others”. In the eyes of the state, if their citizens are leaving into situations in which their rights are violated, in order to protect them the state cannot allow them to leave.

However, in the case that the state does implement such policies, the restrictions must be proportional to their intended outcome. In an explanatory comment on ICCPR Article 12, the Human Rights Committee specifies that

Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected... The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law (HRC, Paragraphs 14 and 15).

2. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

Even when certain restrictive policies can be justified, another problem arises when these policies are clearly discriminatory against women. The UDHR², ICCPR, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other fundamental human rights texts guarantee the right to nondiscrimination. Some emigration policies blatantly prevent certain women from leaving, while others implicitly discriminate against women by favoring certain types of labor that are typically male- dominated, such as professions requiring advanced education, or work such as construction, mining, or information technology.

Additionally, if restrictive measures are based on the type of work for which the person intends to migrate, they may violate rights related to labor. Article 23 of the UDHR states that “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” Potential migrants have the right to freely choose their sector of employment, and it is the responsibility of destination states to guarantee the rights of workers in their territory.

These rights have also been detailed in various regional agreements, which states should also bear in mind when designing policies. Although states may justify restrictive emigration policies as protecting their citizens' rights, notably that of freedom from torture or cruel, inhuman or degrading treatment or punishment, the protection of one right cannot be used as justification for the violation of another.

Benefits of Female Migrants

In addition to the rights-based arguments for making emigration equally accessible and safe for women, another reason that states should prioritize these policies is that female migrants can have many positive benefits for their countries of origin. One clear benefit is that female migrants tend to remit more of their income to their families than their male counterparts (Martin 2004). Morrison, Schiff and Sjoblom (2007, referenced in Docquier et al) show that

the increasing participation of women in international migration affects future amounts of remittances, the size of diaspora externalities (e.g., network-based effects on trade, foreign direct investment, technology diffusion), and the structure of labor and other contributions in source countries. They find that as compared to male migrants, female migrants send remittances over longer time periods; send larger amounts to distant family members; and have different impacts on household expenditures at origin (Doquier et al 2009 299).

When women are unable to migrate for work, or when women migrate irregularly because they do not have the possibility to do so legally, this not only compromises their rights, it also inhibits the country from benefitting socially and economically from women's work abroad.

Case Studies of Restrictive Policies

The following case studies consider policies in Bangladesh, Burma and Nepal as select examples of emigration policies that discriminate against women. These case studies are not intended to be representative of all discriminatory policies, but are rather illustrative examples of the types of restrictions used in the policies concerned. The cases all come from the southeast Asian region, where certain countries have a high percentage of female migrants, mostly going abroad for domestic work, but where elevated concerns about trafficking also exist. Notably, a culture of patriarchy persists in these selected countries, and evidently discriminatory emigration policies reproduce and perpetuate these patriarchal norms.

Bangladesh

Bangladesh has a long history of discriminatory emigration policies, although that has recently changed in law. Over the past thirty years, emigration restrictions have varied from a blanket ban on all non-professional female migrants to restrictions on unskilled or semi-skilled female migrants, who were only allowed to migrate when accompanied by a male partner (Aminuzamman 2007 13). Such policies violated constitutional provisions guaranteeing equality to men and women.

As of 2013, women made up only about six per cent of Bangladeshi migrants (approximately 36,000 women out of a total of 600,000 migrants), whereas globally women make up roughly half the total migrant population (IOM 2013). This can be attributed in part to the impact of discriminatory emigration policies, as well as underlying structural factors that discourage women's mobility, exacerbated by the overarching patriarchal culture. Because of these patriarchal cultural norms, legal changes in and of themselves will not be sufficient to open migration opportunities to women.

These discriminatory policies were changed when a new migration law, the Overseas Employment and Migrants Act, was adopted in 2013. The law's stated intention is to

promote opportunities for overseas employment and to establish a safe and fair system of migration, to ensure rights and welfare of migrant workers and members of their families, to enact a new law...for making provisions in conformity with the

International Convention on the Rights of Migrant Workers and the Members of Their Families 1990 and other international labour and human rights conventions and treaties ratified by the People's Republic of Bangladesh (Overseas Employment and Migrants Act 2013 1).

One specific provision of this act concerns non-discrimination:

The principle of equality is to be applied at all times for overseas employment and return of migrant workers and while providing services or performing any other action under this Act, and no one shall be discriminated on one or more grounds, including, gender, language, birth, colour, age, ethnicity or national origin, political views, religion, ideology, familial, marital or social identity, or regional affiliation, or any other reasons (ibid 4)

Although this legal provision is a first step to providing non-discriminatory opportunities for female migrants, the policy alone does not enable women to migrate, as underlying structural factors still limit women's opportunities.

Burma

In Burma, certain restrictions are imposed on female migrants with the justification of preventing trafficking. Notably, in the Eastern Shan State, women under the age of 25 must be accompanied by a guardian to cross the Thai border (Women of Burma 2008). In other border areas, all women are required to carry special permits to travel between towns or near borders, and reportedly women under 35 are more likely to be stopped or questioned. Even when women possess these permits, they may face harassment and extortion at government checkpoints (Women of Burma 2008).

The measure is intended to prevent women from becoming the victims of traffickers, but in fact has the opposite effect. "Government policies in Burma that restrict women's emigration contribute directly to the likelihood that women will enlist the help of agents or brokers in order to travel or seek paid employment outside the country" (Belak 2002 195). Relying on third parties to cross borders makes women more vulnerable to trafficking and exploitation as they find themselves outside of protective legal structures. Denying women travel documents directly violates their right to mobility and has the opposite effect than intended.

Nepal

Nepal's policies on female migrants have fluctuated in their restrictive measures. A twelve-year ban on female migrants going to the Gulf States was lifted in 2010, but the following year the Nepalese government once again imposed a ban on women under the age of 30 migrating to become domestic workers in these states. A press release by the Foreign Employment Promotion Board indicated that the new ban was intended to protect women from "long working hours, sexual violence, physical abuse and economic exploitation"; however, such a policy can have the opposite effect when women migrate through irregular channels outside of any sort of protective framework (Government of Nepal 2014 21). There has been much discussion about eventually modifying these restrictions, although the changes have not yet been implemented. The consequence is a great limitation of female migrants, as evidenced by the disparity in the percentage of women issued labor permits (5.6 per cent) compared to that of men (Government of Nepal 2014).

Policies that restrict women's migration to specific countries known for abuse of migrant workers, such as Nepal's policy concerning the Gulf States, may intend to encourage those countries to change their labor laws. But, as long as the same workforce can be recruited from another source country, the destination country in question has no incentive to make policy changes.

Patriarchal norms in Nepal seem to influence restrictive policies. In Nepal, "cultural proscriptions against women's mobility, especially without accompaniment, remain strong" (Hausner 2005 8). Because there exists a "deep cultural value that women should look up to and place faith in men" women tend to rely on men to accompany and protect them during the migration process (Hausner 2005 22). Additionally, many Nepalese women have cited domestic violence as a reason for migration, which makes it even more dangerous if they are then forced to migrate with male family members.

Conclusion and Recommendations

The right to freedom of movement is widely recognized in international and regional texts; however, as illustrated by the case studies discussed, many states have restricted this right with emigration policies that discriminate against women. States intending to protect their citizens who migrate abroad can employ a host of alternate policy options without resorting to restrictive

emigration policies that discriminate against women. By eliminating barriers to female migrants, more opportunities can be provided for safe, legal migration. When enabled to migrate legally, women can exercise their agency and simultaneously benefit their country of origin economically and socially.

In order to have maximum efficacy, the following recommendations should be complemented with long term measures to work towards overarching gender equality by addressing structural factors that currently contribute to women's vulnerabilities. Such long term measures include solutions to reduce poverty, increase women's access to education, and promote women's employment. Progressively addressing these underlying causes of women's vulnerability to exploitation will enable them to make safer migration decisions.

Governments should consider policies that incorporate the following recommendations to better empower women throughout the migration process while fully respecting their rights:

- Increase legal migration options for women by adopting nondiscrimination clauses in migration laws and not restricting emigration to typically male-dominated sectors. In order to protect migrants, it is important that these policies be transparent and easy for potential migrants to access and understand. Simultaneously, reducing costs of migration, such as recruitment and visa processing fees, will make migration more accessible and decrease the possibility that migrants will be held in debt bondage by recruiters who pass on such fees as debts.
- Better inform and prepare potential migrants. This can be achieved through the establishment of migration information centers, distribution of education materials about migration, and pre-departure trainings. It is essential to ensure that migrants are well informed of their rights and how to make claims if these rights are violated. Such measures should also include education and awareness-raising measures to combat human trafficking.
- Negotiate bilateral agreements between sending and receiving states. Formal bilateral agreements, whose terms are binding, are preferable to nonbinding Memoranda of Understanding. Such agreements should prioritize welfare and protection of migrants, in addition to recruitment. Agreements should also prioritize access to justice for migrants in the case their rights are violated. In order to be effective, such agreements must be supported with monitoring and enforcement mechanisms.

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