

# ENTRAPMENT PROCESSES IN THE EMIGRATION REGIME: THE PRESENCE OF MIGRATION BANS AND THE ABSENCE OF BILATERAL LABOR AGREEMENTS IN DOMESTIC WORK IN NEPAL

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*This Article offers an integrated analysis of the combined effect of the presence of migration bans and the absence of BLAs in domestic work in the emigration regime of Nepal. It identifies, acknowledges, critiques, and contributes to the critical literature highlighting entrapment processes in labor relations and immigration regimes by demonstrating the presence of such in the emigration regime. Drawing on the empirical findings of a participatory action research (PAR) project conducted in Nepal, the Article demonstrates how restrictive emigration policies and practices entail entrapment processes constitutive of the existing historical, cultural, gendered, racialized, and classed constraints impacting the lives of Nepalese citizens. The Article contributes to the critical literature that seeks to advance migrants' rights, arguing that experiencing, encountering and escaping entrapment processes in the emigration regime impacts their agency when navigating immigration regimes and labor relations. This contribution advances the existing efforts to establish oft-ignored emigration regimes as important epistemological sites of research, theorization, and intervention.*

## INTRODUCTION

Since 2017, the government of Nepal has imposed migration bans, in the domestic work sector, on migrant receiving countries until they enter into an exclusive Bilateral Labor Agreement (BLA) in domestic work with Nepal.<sup>1</sup> Whilst these BLAs promise interstate coordination and cooperation to guarantee fair recruitment of and decent working conditions for workers in international labor markets, critical legal scholars question the capacity of BLAs to deliver on their promise.<sup>2</sup> However,

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1 Richa Shivakoti et al., *The Migration Ban Policy Cycle: A Comparative Analysis of Restrictions on the Emigration of Women Domestic Workers*, 9 COMPAR. MIGRATION STUD. 1 (2021).

2 Genevieve van Panhuys et al., *Migrant Access to Social Protection Under Bilateral Labour Agreements: A Review of 120 Countries and Nine Bilateral Arrangements* 35-39 (Int'l Lab. Off., ESS Working Paper, 2017); Piyasiri Wickramasekara, *Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding* (Apr. 2, 2012), <https://>

for the government of Nepal, the mandatory requirement of BLA offers a solution to address two-decade-long attempt to protect its female citizens working in Middle Eastern countries. Only Jordan has signed an exclusive BLA in domestic work with Nepal, in 2017. While the effect of the presence of BLA with Jordan on Nepalese migrant domestic workers remains unresearched, the absence of BLA in domestic work produces intervention spaces for Nepalese actors concerned with international labor migration—government agencies, anti-trafficking/migration NGOs, trade unions, licensed recruitment agencies, unlicensed agents, and even some scholars.<sup>3</sup> These actors valorize BLAs as the most effective solution to address exploitation of Nepalese domestic workers abroad thereby justifying the migration ban. The absence of BLAs in domestic work legitimizes their restrictive policies and practices<sup>4</sup>, often looked upon as anti-migration initiatives by some Nepalese citizens who suffer from its deleterious consequences.<sup>5</sup> While scholars have questioned the presence of migration bans in Nepal,<sup>6</sup> and the counter-productive effects of anti-trafficking measures in Nepal,<sup>7</sup> in this Article I examine how assumptions regarding BLAs ability to address labor exploitation of migrant domestic workers in the international labor markets legitimize restrictive emigration policies in Nepal, thereby manifesting entrapment processes that purport to ‘save’ the country’s marginalized female citizens from exploitation in the international labor market.

The term ‘entrapment’ is often used in migration literature to demonstrate the paralyzing effects of the confluence of immigration policies and multiple social and political processes on migrants’ mobility and labor.<sup>8</sup> Critical literature demonstrates

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ssrn.com/abstract=2032136; Adam Chilton & Bartosz Woda, *The Effects of Bilateral Labor Agreements: Evidence from the Philippines* (June 25, 2021), <http://www.ssrn.com/abstract=3867881>; Yuval Livnat, *Israel's Bilateral Agreements with Source Countries of Migrant Workers: What is Covered, What is Ignored and Why?* (Feb. 7, 2020) <http://www.ssrn.com/abstract=3523087>.

- 3 Jenna Hennebray & Hari KC, *On the Gendered Structures and Outcomes of Interstate Bilateral Labour Agreements as Migration Governance Instruments*, in *THE PALGRAVE HANDBOOK OF GENDER AND MIGRATION* 287 (Mora Claudia & Nicola Piper eds., 2021).
- 4 ILO, *NO EASY EXIT: MIGRATION BANS AFFECTING WOMEN FROM NEPAL* (2015); Barbara H. Grossman-Thompson, *Disposability and Gendered Control in Labor Migration: Limiting Women's Mobility Through Cultural and Institutional Norms*, 26 *ORG. 337* (2019); Bandita Sijapati et al., *Nepali Women's Labour Migration: Between Protection and Proscription*, 16 *MIGRATION LETTERS* 611 (2019).
- 5 Ayushman Bhagat, *Trafficking Borders*, 95 *POL. GEOGRAPHY* 1 (May 2022).
- 6 ILO, *supra* note 4; Shivakoti et al., *supra* note 1; Danièle Bélanger & Mahmuda Rahman, *Migrating Against all the Odds: International Labour Migration of Bangladeshi Women*, 61 *CURRENT SOCIO.* 356 (2013).
- 7 Nina Laurie et al., *Co-producing a Post-trafficking Agenda: Collaborating on Transforming Citizenship in Nepal*, 25 *DEV. PRAC.* 465 (2015); Nina Laurie & Diane Richardson, *Geographies of Stigma: Post-trafficking Experiences*, 46 *TRANSACTIONS—INST. BRITISH GEOGRAPHERS* 120 (2021); Ayushman Bhagat, *Labour Migrants' Struggle to Subvert Anti-trafficking Interventions in Nepal*, *OPENDEMOCRACY.NET* (Jan. 20, 2021), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/labour-migrants-struggle-to-subvert-anti-trafficking-interventions-in-nepal>.
- 8 Ronen Shamir, *Without Borders? Notes on Globalization as a Mobility Regime*, 23 *SOCIO. THEORY* 197 (2005); Apostolos Kapsalis et al., *Migrants' Entrapment in a 'State of Expectancy': Patterns of Im/mobility for Agricultural Workers in Manolada, Greece*, in *COERCIVE GEOGRAPHIES: HISTORICIZING MOBILITY, LABOR AND CONFINEMENT* 20 (Johan Heinsen et al. eds., 2021); Bryan S. Turner, *Enclosures, Enclaves, and Entrapment*, 80 *SOCIO. INQUIRY* 241 (2010); Kathleen Sexsmith, *Exit, Voice, Constrained Loyalty, and Entrapment: Migrant Farmworkers and the Expression of Discontent on New York Dairy Farms*, 20

overlapping processes that constrain the mobility, labor and life choices of elderly immigrants,<sup>9</sup> asylum seekers,<sup>10</sup> migrant workers,<sup>11</sup> and undocumented immigrants.<sup>12</sup> These critical bodies of literature detail entrapment processes in exclusionary immigration regimes which cast migrants as burdensome, dangerous, yet disposable, others.<sup>13</sup> Whilst the existing immigration centric conceptualization of entrapment processes problematizes the othering and disposability of non-citizens in the international labor markets, this Article reveals how similar processes paralyze Nepalese citizens' mobility in their own nation-states, and position them as internal others. This Article unpacks how the presence of migration bans and the absence of BLAs in domestic work in Nepal, in combination, enable and strengthen anti-migration interventions and compound the effect of structural impediments, thereby revealing entrapment processes in Nepal's emigration regime. This internal othering in the emigration regime demands attention to the historically embedded cultural, classed, gendered, racialized, and legal impediments, which not only paralyze the lives of the citizens attempting to escape them but also influence their capability to navigate immigration spaces. Drawing on and moving beyond immigration centric conceptualizations, this article conceptualizes entrapment processes as the constitutive relationship between mobility control and the agency required to navigate them.

This Article draws on the empirical findings of a participatory action research (PAR) conducted in Nepal. I demonstrate how structurally disadvantaged prospective domestic workers experience, encounter, and escape restrictive emigration policies and practices in Nepal. These female citizens of Nepal who escape such policy and practices by using irregular channels do not exist in the government records. Hence, in combination, the presence of migration bans and the absence of BLAs in domestic work in Nepal justify the suspension of the citizenship rights of those, often forced by socioeconomic constraints, who escape the entrapment processes in the emigration regime. This rescindment of citizenship rights leaves female citizens of Nepal, working as domestic workers in the international labor markets, abandoned. Building on this empirical insight, the Article critically extends the literature by establishing that processes in the emigration regime influence migrants' capability to navigate the immigration regime, thereby offering a holistic understanding of entrapment processes. What follows is a brief review of the existing critical literature on entrapment processes. After highlighting gaps in the literature, it offers an integrated

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CITIZENSHIP STUD. 311 (2016); Guillermina Gina Núñez & Josiah McC Heyman, *Entrapment Processes and Immigrant Communities in a Time of Heightened Border Vigilance*, 66 HUM. ORG. 354 (2007).

- 9 David Ip et al., *Veiled Entrapment: A Study of Social Isolation of Older Chinese Migrants in Brisbane, Queensland*, 27 AGEING & SOC'Y 719 (2007).
- 10 Adam Kersch & Joanna Mishtal, *Asylum in Crisis: Migrant Policy, Entrapment, and the Role of Non-Governmental Organisations in Siracusa, Italy*, 35 REFUGEE SURV. Q. 97 (2016).
- 11 Kapsalis et al., *supra* note 8; Sexsmith, *supra* note 8.
- 12 Gabriella E. Sanchez, 'This Time I Am Going to Cross!': Fighting Entrapment Processes Through the Provision of Human Smuggling Services on the US-Mexico Border, in *ENTRAPPING ASYLUM SEEKERS: SOCIAL, LEGAL AND ECONOMIC PRECARIOUSNESS* 135 (Francesco Vecchio & Alison Gerard eds., 2017); Núñez & Heyman, *supra* note 8.
- 13 Kapsalis et al., *supra* note 8; BRIDGET ANDERSON, *US AND THEM?: THE DANGEROUS POLITICS OF IMMIGRATION CONTROL* (2013).

analysis of the presence of migration bans and the absence of BLAs in domestic work in Nepal and takes the debate on entrapment processes to the emigration regime. It then details the research methodology. Afterwards, I demonstrate how female citizens of Nepal, already disadvantaged by the existing socio-structural impediments, encounter, experience and escape the entrapment processes manifested by the presence of migration bans in their emigration régime. In the conclusion, the Article makes a case for the importance of oft-ignored emigration regimes as critical epistemic sites of research, theorization, and intervention.

## I. CONCEPTUALIZING ENTRAPMENT PROCESSES FROM THE EMIGRATION REGIME

The term ‘entrapment’ offers a specific legal understanding of covert practices employed by law enforcement officials to induce their target to commit a criminal offense.<sup>14</sup> This specific understanding of the term has been loosely borrowed by theorists who understand entrapment in terms of mobility and labor restrictions.<sup>15</sup> Shamir suggests that while globalization has increased the speed of travel, it has brought with it several dangers of increased mobility, which demands ‘integrated risk management’ in ‘low-trust societies’ to contain the mobility of bodies classed as dangerous and disruptive.<sup>16</sup> Advancing the arguments of Shamir, Turner insists that the increased demand for risk management has led to the establishment of a range of institutions to procure, process, and deliver migrants to their respective labor markets.<sup>17</sup> She suggests that entrapment is an outcome of the paradox of labor migration, as ‘advanced’ economies require cheap migrant workers for their labor markets, but their racist media campaigns and hostile electoral pressures cast migrants as dangerous others seeking citizenship.

This paradox of labor migration has allowed critical scholars to deploy the term entrapment to demonstrate how overlapping processes in immigration regimes—immigration laws, border policies, racist narratives, cultural norms, and economic obligations—manifest various forms and degrees of spatial confinement for immigrants.<sup>18</sup> Multiple conceptual resonances have accrued to the term through the interventions of critical labor and migration scholars. Nunez and McC Heyman examined how the U.S. immigration laws and border enforcement policies create and impose significant risk on the mobility of undocumented Central American migrants along the U.S.-Mexico border.<sup>19</sup> For them, this production of risk permits de-facto patrolling at several sites, which enables a web of interlocked social and political

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14 Priya Kapoor et al., *Entrapment as a Threat to Community Peace in the Global War on Terror: An Analysis of Discourse in Local Press*, 7 J. INT’L GLOB. STUD. 40 (2016).

15 Shamir, *supra* note 8.

16 *Id.*

17 Turner, *supra* note 8.

18 Núñez & Heyman, *supra* note 8; ENTRAPPING ASYLUM SEEKERS: SOCIAL, LEGAL AND ECONOMIC PRECARIOUSNESS (Francesco Vecchio & Alison Gerard eds., 2017); Kapsalis et al., *supra* note 8.

19 Núñez & Heyman, *supra* note 8.

processes that curtail the freedom and accessibility of mobility for racialized and gendered immigrants.<sup>20</sup> Similarly, Willers focuses on the anti-immigration policies that aim to extend the stay of Central American refugee claimants in Mexico to highlight processes of entrapment.<sup>21</sup> Critical labor scholars argue that immigration policies that ascribe temporary legal status to migrant workers regulate their mobility and labor by confining them in their labor relations.<sup>22</sup> For example, Heinsen and colleagues examine the immobility patterns of Bangladeshi agricultural workers in Greek farms to argue that their entrapment is an outcome of legal frameworks, which create barriers to both legal and illegal migrant workers regarding their labor market integration.<sup>23</sup> Similarly, Sexsmith, through the example of undocumented workers in New York dairy farms, illustrates how legal, social, gendered, cultural, and economic obligations trap migrant workers in their exploitative labor relations.<sup>24</sup> Entrapment processes prevent exploited workers from exiting their labor relations.

These critical bodies of literature highlight the fact that entrapment is neither static nor permanent.<sup>25</sup> They conceptualize entrapment as overlapping processes including, but not limited to, exclusionary labor and immigration policies, the racialized threat of illegal migrants who seek citizenship, racist media campaigns, surveillance and patrolling, detention and deportation measures, socio-structural impediments, and cultural and economic obligations. These critical bodies of work show that irrespective of the processes that create language barriers,<sup>26</sup> racial inequalities,<sup>27</sup> and gendered expectations,<sup>28</sup> immigrants are more or less mobile.<sup>29</sup> This processual understanding of entrapment underscores the differential capabilities of immigrants who exercise various degrees of mobility in an immigration regime, irrespective of the presence of multiple trapping forces. Whilst the compounded

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- 20 Guillermina Gina Núñez & Josiah McC. Heyman, *Entrapment and (Im)Mobility On the U.S.-Mexico Border*, 92 VOICES MEX. 40 (2012).
- 21 Susanne Willers, *Changing Mobility Regimes and Care: Central American Women Confronting Processes of Entrapment in Southern Mexico*, 32 J. FAM. RSCH. 455 (2020).
- 22 Hila Shamir, *The Paradox of "Legality": Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 471 (Prabha Kotiswaran ed., 2017); Kendra Strauss & Siobhán McGrath, *Temporary Migration, Precarious Employment and Unfree Labour Relations: Exploring the 'Continuum of Exploitation' in Canada's Temporary Foreign Worker Program*, 78 GEOFORUM 199 (2017); Rhacel Salazar Parreñas et al., *Soft Violence: Migrant Domestic Worker Precarity and the Management of Unfree Labour in Singapore*, 47 J. ETHNIC & MIGRATION STUD. 4671 (2021); Cheryll Alipio, *Lives Lived in "Someone Else's Hands": Precarity and Profit-making of Migrants and Left-behind Children in the Philippines*, 7 TRANS-REG'L & TRANSNAT'L STUD. SE. ASIA 135 (2019).
- 23 Kapsalis et al., *supra* note 8.
- 24 Sexsmith, *supra* note 8.
- 25 ENTRAPPING ASYLUM SEEKERS, *supra* note 18.
- 26 Ip et al., *supra* note 9.
- 27 Emma K. Russell & Maria Rae, *Indefinite Stuckness: Listening in a Time of Hyper-incarceration and Border Entrapment*, 22 PUNISHMENT & SOC'Y 281 (2020).
- 28 Rhacel Salazar Parreñas, *Transnational Fathering: Gendered Conflicts, Distant Disciplining and Emotional Gaps*, 34 J. ETHNIC & MIGRATION STUD. 1057 (2008).
- 29 Kersch & Mishtal, *supra* note 10; Heriberto Vega Villaseñor & Manuela Camus Bergareche, *Trapped in the Entrapment: The Challenge of the Pandemic in El Refugio Casa Del Migrante Shelter*, 25 J. POVERTY 629 (2021).

effect of these overlapping processes has deleterious consequences for migrants, they nonetheless attempt to appropriate the mobility that is denied them. Although the constrained exercise of mobility demonstrates the agency of migrants,<sup>30</sup> this Article argues that this very agency, which migrants use to navigate entrapment processes in the immigration regime, is a product of historically embedded restrictions that they encounter, experience, and escape in the emigration regimes.

While this historicization of entrapment processes opens a larger debate on the subjectivity of bodies classed as ‘migrants’,<sup>31</sup> it requests critical literature to be attentive to the processes unfolding in the emigration regimes, which, I contend, are critical to the advancement of mobility rights in the immigration regimes. Hence, acknowledging, critiquing, and contributing to the critical scholarship that seeks to highlight the entrapment processes in immigration regimes and labor relations,<sup>32</sup> I argue that the focus on restrictive policies and processes in emigration regimes enables a nuanced understanding of the capacity to escape entrapment processes in the immigration regime. I examine how the presence of migration bans and the absence of BLAs in domestic work in Nepal manifests entrapment processes that purport to ‘save’ the country’s marginalized female citizens from exploitation in the international labor market. I show that those female citizens who escape the entrapment processes in the emigration regime are abandoned by the state of Nepal, thereby impacting their agency to navigate the immigration regime.

## II. THE PRESENCE OF MIGRATION BANS AND ABSENCE OF BLAs IN DOMESTIC WORK IN NEPAL

International labor migration is an important livelihood strategy for millions of Nepalese citizens. Since 2000, Nepal has been witnessing an unprecedented increase in circular labor migration across Nepal, India, the Gulf countries and Malaysia.<sup>33</sup> The government of Nepal, which seldom manages the circular labor migration in India and within Nepal, does regulate the circulation of Nepalese citizens in international labor markets through the Foreign Employment Act (FEA) of 2007.<sup>34</sup> The enactment of the FEA in 2007 consolidated all the existing laws on foreign employment and structured the emigration regime of Nepal to ensure ethical recruitment practices, control irregular emigration, manage an uninterrupted remittance flow (one-third of the country’s GDP), and guarantee the protection and welfare of the migrant workers

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30 STEPHAN SCHEEL, *AUTONOMY OF MIGRATION? APPROPRIATING MOBILITY WITHIN BIOMETRIC REGIMES* (2019).

31 Stephan Scheel & Martina Tazzioli, *Who is a Migrant? Abandoning the Nation-State Point of View in the Study of Migration*, 1 *MIGRATION POL.*, May 2022, at 1 (2022).

32 Núñez & Heyman, *supra* note 8; Willers, *supra* note 21; Russell & Rae, *supra* note 27; *ENTRAPPING ASYLUM SEEKERS*, *supra* note 18.

33 SANJAY SHARMA ET AL., *STATE OF MIGRATION IN NEPAL* (2014).

34 Ephraim Poertner et al., *Migration in Far West Nepal: Intergenerational Linkages Between Internal and International Migration of Rural-to-urban Migrants*, 43 *CRITICAL ASIAN STUD.* 23 (2011).

thereby.<sup>35</sup> The nodal authority of Nepal's emigration regime is the Department of Foreign Employment (DoFE), established under the FEA to administer foreign employment,<sup>36</sup> and tasked with ensuring the "safe, secure, and productive" circulation of Nepalese citizens in the international labor markets. Official records suggest that since 2007, the DoFE has issued 3.5 million labor permits (95% male) to the citizens of Nepal.<sup>37</sup> This increase in the circulation of Nepalese citizens in the international labor markets required the DoFE to ensure their welfare and protection. To ensure the social security and welfare of migrants, the DoFE requests a contribution of 1000 NPR (US \$8.5) to the Foreign Employment Welfare Fund as a necessary condition for approving the departure of Nepalese citizens. Further, recruitment agencies are required to deposit a one-time security fee of U.S. \$30,000, and to pay a registration cost of US \$200, as well as US \$2,000 per agent to compensate migrant workers in case of any grievance.<sup>38</sup> In addition to that, the DoFE relies on the provisions of BLAs signed with hosting countries to protect its citizens from exploitation in the international labor markets.

Bilateral labor agreements (BLAs) are labor migration governance instruments, and the assumption is that they ensure the labor market needs of hosting countries without compromising on the welfare needs of the migrant worker. The presence of BLAs, which are signed between labor-rich and labor-poor countries, promises interstate coordination and cooperation guaranteeing the fair recruitment of and decent working conditions for migrant workers.<sup>39</sup> Critical scholars argue that while migrant-hosting countries often overestimate the efficacy of BLAs in meeting labor market needs,<sup>40</sup> sending countries package these agreements as their most effective solution to protect their citizens from exploitation in the international labor markets.<sup>41</sup> The presumptions associated with BLAs include but are not limited to (a) fair recruitment of and decent working conditions for international migrant workers;<sup>42</sup> (b) robust international migration governance in the existing migratory corridors and the establishment of new international migratory corridors;<sup>43</sup> and (c) strong diplomatic ties and facilitation of interstate multiculturalism.<sup>44</sup> In the policy circles of Nepal, these agreements are often interchangeably used with terms like memoranda of understanding (MOUs), government-to-government agreements

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35 HARRY JONES & YURENDRA BASNETT, *FOREIGN EMPLOYMENT AND INCLUSIVE GROWTH IN NEPAL* (2013).

36 SARAH PAOLETTI ET AL., *MIGRANT WORKERS' ACCESS TO JUSTICE AT HOME: NEPAL* (2014).

37 GOVERNMENT OF NEPAL, *LABOUR MIGRATION FOR EMPLOYMENT: A STATUS REPORT FOR NEPAL: 2014/2015* (2018).

38 SARAH PAOLETTI ET AL., *supra* note 36.

39 Wickramasekara, *supra* note 2.

40 Livnat, *supra* note 2.

41 Adam S. Chilton & Eric A. Posner, *Why Countries Sign Bilateral Labor Agreements*, 47 J. LEGAL STUD. S45 (2018).

42 ILO, *THE MIGRANT RECRUITMENT INDUSTRY: PROFITABILITY AND UNETHICAL BUSINESS PRACTICES IN NEPAL, PARAGUAY AND KENYA* (2017).

43 GRAZIANO BATTISTELLA & BINOD KHADRIA, *LABOUR MIGRATION IN ASIA AND THE ROLE OF BILATERAL MIGRATION AGREEMENTS: MARKET ACCESS FACILITATION BY INFORMAL MEANS* 25 (2011).

44 Wickramasekara, *supra* note 2.

(G2GAs), general agreements (GAs), memoranda of corporation (MOCs), and joint programs (JPs). At present, Nepal has entered into BLAs with nine countries—Qatar (2005), Bahrain (2008), Republic of Korea (2007), UAE (2007/2019), Japan (2009/19), Israel (2015/2020), Jordan (2017), Malaysia (2018),

These instruments represent a unique opportunity for the authorities of Nepal to negotiate the terms of labor migration with the authorities of the hosting countries in order to prioritize the protection and welfare of its migrant workers.<sup>45</sup> Some of the terms put forth by Nepal are the employer's pay principle, standard employment contract, roles and responsibilities of the contractual parties, access to justice, skills and orientation, health examination, equality of treatment, employment mobility, special leaves, insurance, possession of personal documentation, end of service benefits, occupational health and safety, special provisions for female workers, return of migrant workers, and the establishment of a joint working group.<sup>46</sup> The government of Nepal negotiates these terms with the governments of the hosting countries before entering into a BLA with them. While the negotiation process makes BLAs a unique international migration governance apparatus, which hopes to ensure decent working conditions for migrant workers, sending countries seldom manage to negotiate every term with the hosting countries. For example, the government of Nepal has failed to sign an exclusive BLA in domestic work with each hosting country. Policymakers, activists, and scholars of Nepal assume that a separate BLA in domestic work with each hosting country (especially the Gulf countries and Malaysia) is the only solution to address the exploitation of its migrant domestic workers in the international labor markets.<sup>47</sup>

The ILO's Convention No. 189 defines domestic work as "work performed in or for a household or households."<sup>48</sup> These workers engage in a variety of duties, including but not limited to cleaning, cooking, washing and ironing, caring for pets, children and the elderly, and gardening. While the demand for Nepalese domestic workers is high in the Arab states,<sup>49</sup> in the absence of a BLA in domestic work with the hosting country, the government of Nepal forbids its citizens to migrate for domestic work in that country.<sup>50</sup> However, this restrictive emigration policy, which aims to address exploitation through migration bans, predates the existence of BLAs in Nepal.

The government of Nepal allowed foreign employment for women in 1997, and until 1998 the emigration policy required Nepalese women to seek the consent of

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45 GOVERNMENT OF NEPAL, NEPAL LABOUR MIGRATION REPORT 2020 (2020).

46 GOVERNMENT OF NEPAL, *supra* note 37; BANDITA SIJAPATI & AMRITA LIMBU, GOVERNING LABOUR MIGRATION IN NEPAL: AN ANALYSIS OF EXISTING POLICIES AND INSTITUTIONAL MECHANISMS (2017); Keshav Bashyal & Binita Subedi, *Labour Diplomacy and Migration Governance in Nepal*, 1 J. FOREIGN AFF. 107 (2021).

47 Sijapati et al., *supra* note 4; Uddhab Pd. Pyakurel, *Restrictive Labour Migration Policy on Nepalese Women and Consequences*, 6 SOCIO. & ANTHROPOLOGY 650 (2018).

48 Convention (No. 189) concerning decent work for domestic workers, June 19, 2011, 2955 U.N.T.S. 407.

49 Sijapati et al., *supra* note 4.

50 Shivakoti et al., *supra* note 1.



a male 'guardian' to migrate for foreign employment.<sup>51</sup> However, in the same year, following the suicide of Kani Shepra, a Nepalese domestic worker, in Kuwait,<sup>52</sup> the media highlighted several cases of exploitation and abuse of female Nepalese domestic workers in the Gulf countries. In response, the government of Nepal imposed a migration ban on the foreign employment of women in the domestic work sector.<sup>53</sup> In 2003, it lifted this ban on two conditions: (a) that a certificate be issued by the Nepali embassy or consulate to ensure full security in the receiving countries; and (b) that returnee women seek approval from the government, even if they migrated without proper approval.<sup>54</sup> In 2007, the government of Nepal lifted all mobility restrictions (and security approvals) on the employment of domestic workers in the Middle East. During those periods, however, several women migrated to the Middle East (especially Kuwait) to work as domestic workers. Nonetheless, due to the excessive reporting of abuse and exploitation in household spaces,<sup>55</sup> and the absence of a Nepalese embassy to handle those cases in Kuwait, the government of Kuwait imposed a counter-immigration ban on Nepali citizens.<sup>56</sup>

The government of Kuwait lifted the immigration ban only after Nepal established its embassy in Kuwait on 21<sup>st</sup> March 2010.<sup>57</sup> At that time, the government of Nepal sought to send more than 150,000 women to the Gulf countries to increase the remittance flow.<sup>58</sup> While Nepal's emigration regime facilitated domestic work migration to the Gulf countries, there was an increase in cases of exploitation and abuse due to the lack of labor laws safeguarding domestic workers' rights in those countries. Hence, in 2012 the government imposed its first "age ban" on the mobility of women, which prohibited all forms of female migration for domestic work below the age of 30.<sup>59</sup> Scholars suggest that this emigration policy was based on the assumption that women over 30 would not be attractive to sexual offenders.<sup>60</sup> In 2014, the government once again imposed a total ban on domestic work migration. However, to control the irregular migration flow in the domestic work sector, in 2015 the government retracted the total ban, but imposed migration ban on female citizens who were less than 24 years old. This time the emigration policy also required women to fulfil their childcare duties toward children below two years of age. There was also a mandatory requirement for an exclusive BLA in domestic work with the hosting countries as a necessary condition for lifting the migration ban on domestic work.<sup>61</sup>

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51 ILO, *supra* note 4.

52 Tom O'Neill, "Selling Girls in Kuwait": *Domestic Labour Migration and Trafficking Discourse in Nepal*, 43 *ANTHROPOLOGICA* 153 (2001).

53 ROOJA BAJRACHARYA & BANDITA SIJAPATI, *THE KAFALA SYSTEM AND ITS IMPLICATIONS FOR NEPALI DOMESTIC WORKERS* (2012).

54 Pyakurel, *supra* note 47.

55 BAJRACHARYA & SIJAPATI, *supra* note 53, at 16.

56 ATTIYA AHMAD, *EVERYDAY CONVERSIONS: ISLAM, DOMESTIC WORK AND SOUTH ASIAN MIGRANT WOMEN IN KUWAIT* (2017).

57 *Id.* at 288.

58 Pyakurel, *supra* note 47.

59 BAJRACHARYA & SIJAPATI, *supra* note 53.

60 Grossman-Thompson, *supra* note 4.

61 Sijapati et al., *supra* note 4.

In 2017, following the recommendations of a parliamentary committee, which found “widespread abuse and exploitation of domestic workers” during a field visit in Gulf Cooperation Council (GCC) countries,<sup>62</sup> the government of Nepal once again imposed a total migration ban in domestic work until the hosting country concludes an exclusive BLA on domestic work with Nepal.

Hence, while the presence of migration bans is predicated on the fear of irregular mobility and exploitation, in juxtaposition with the absence of BLAs, it provides legitimacy for the migration bans. Politicians, policymakers, placement agents, media houses, and NGO personnel, including some scholars,<sup>63</sup> consider the requirement for BLAs in domestic work as the most effective solution to address the exploitation of Nepalese female citizens in the international labor markets.<sup>64</sup> The proponents of BLAs often justify their arguments with the only example of a BLA in domestic work, signed between Nepal and Jordan in 2017.<sup>65</sup> Jordan has signed BLAs on domestic workers not only with Nepal but with other sending countries like Indonesia, the Philippines, Sri Lanka, Bangladesh and Uganda.<sup>66</sup> This move allowed several sending countries to remove their migration bans in domestic work, although activists in Jordan suggest that this diplomatic tool changed nothing for the migrant domestic workers on the ground. Emerging research from Jordan suggests that despite the legal inclusion of migrant domestic workers, and the so-called ‘robust labor provisions’ for them, Jordan has failed to protect them from death, wage theft, confinement, confiscation, injuries, isolation, fabricated charges, and racist attacks.<sup>67</sup> Hence, this uninformed celebration of BLAs in domestic work, their being branded as the ‘gold standard’ for labor export,<sup>68</sup> strengthens the uncritical justification of migration bans as the most effective protective measure against the exploitation of Nepalese domestic workers.

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62 Subuna Basnet, *Is Banning Female Migrants from Working as Domestic Workers the Only Solution?* BIKAS UDHYAMI (May 22, 2017), <http://www.bikasudhyami.com.np/index.php/blogs/all-blogs/bikas-udhyami/banning-migrant-domestic-workers-only-solution>.

63 Hennebray & KC, *supra* note 3.

64 REBECCA NAPIER-MOORE, PROTECTED OR PUT IN HARM’S WAY? BANS AND RESTRICTIONS ON WOMEN’S LABOUR MIGRATION IN ASEAN COUNTRIES (2017); SIJAPATI & LIMBU, *supra* note 46.

65 ILO, RECRUITMENT OF MIGRANT WORKERS FROM NEPAL: COUNTRY PROFILE (2021).

66 Int’l Domestic Workers Fed’n, *Uganda: Ugandan Migrant Domestic Workers—Challenges and Organizing Successes*, IDWFED.ORG (June 7, 2017), <https://idwfed.org/en/updates/uganda-short-report-on-migrant-domestic-work>; *Domestic Plight How Jordanian Law, Officials, Employers, and Recruiters Fail Abused Migrant Domestic Workers*, HUM. RTS. WATCH (May 15, 2011), <https://www.euromedwomen.foundation/pg/en/documents/view/4274/domestic-plight-how-jordanian-law-officials-employers-and-recruiters-fail-abused-migrant-domestic-workers>; Hasan A. Abder-Rahman et al., *Patterns of Death Among Migrant Domestic Workers in Jordan: Retrospective Analysis of 63 Cases in a Tertiary Hospital*, 11 EGYPTIAN J. FORENSIC SCI. 1 (2021).

67 *Id.*; ELIZABETH FRANTZ, BREAKING THE ISOLATION: ACCESS TO INFORMATION AND MEDIA AMONG MIGRANT DOMESTIC WORKERS IN JORDAN AND LEBANON (2014); Ahmad Farras Oran et al., *Socioeconomic Demand Determinants for Domestic Workers: The Case of Jordan*, 8 JORDAN J. ECON. SCI. 167 (2021); Diana Dai, *Working on the Inside, Living on the Outside: Migrant Domestic Workers in Jordan* (2017) (Honors thesis, Duke University), <https://dukespace.lib.duke.edu/dspace/handle/10161/14331>.

68 Stefan Rother, *The “Gold Standard” for Labour Export? The Role of Civil Society in Shaping Multi-level Philippine Migration Policies*, THIRD WORLD Q. (forthcoming 2022).

These optimistic assumptions regarding the presence of BLAs in domestic work not only strengthen arguments in favor of migration bans in domestic work,<sup>69</sup> but also enable a variety of actors—e.g., trade unions, UN agencies, anti-trafficking NGOs, migration NGOs—to legitimize their interventions such as safe migration initiatives, awareness generation sessions, border patrolling and interceptions.<sup>70</sup> Critical scholars highlight that these interventions are often counterproductive,<sup>71</sup> as they not only stigmatize female citizens of Nepal<sup>72</sup> but also produce various forms of everyday borders confining them inside Nepalese territory.<sup>73</sup> While Nepal's restrictive emigration policy compounds the immobilizing effect of existing socio-structural impediments, which are enabled by the overlapping effects of class, caste, gender, race, ethnicity, religion, etc., on its most vulnerable citizens, it simultaneously pushes them to a variety of irregular channels to migrate for domestic work, especially in the Middle Eastern countries.<sup>74</sup>

These overlapping restrictive policies and practices, which are structured, facilitated, and legitimized by the presence of migration bans and the absence of BLAs in domestic work in Nepal, produce overlapping entrapment processes that impact racialized, classed, and gendered citizens the most. Citizens who aspire to engage in domestic work necessarily experience, encounter, and escape these entrapment processes to actualize their migration projects. Migration scholars suggest that these female citizens of Nepal, regardless of their regular or irregular migration, work in abusive and exploitative conditions. These may include, but are not limited to, working in unsafe conditions, living in unhygienic conditions, living without proper food and nutrition, and coping with physical and mental health issues due to isolation.<sup>75</sup> Ironically, despite the positioning of state-imposed migration bans as a labor protection measure to safeguard its most vulnerable citizens, the government of Nepal penalizes those same citizens who escape these restrictive policies by stripping them of their rights in the immigration regime. The government of Nepal does not recognize its citizens migrating via irregular channels in the international labor markets. Those who escape such processes in the emigration regime must

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69 ILO, *supra* note 4; Sijapati et al., *supra* note 4; Richa Shivakoti, *Protection or Discrimination? The Case of Nepal's Policy Banning Female Migrant Workers*, in *URBAN SPACES AND GENDER IN ASIA: SUSTAINABLE DEVELOPMENT GOALS SERIES 17* (Divya Upadhyaya Joshi & Caroline Brassard eds., 2020).

70 Bhagat, *supra* note 7.

71 GLOB. ALL. AGAINST TRAFFIC IN WOMEN, *COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD* (2007); SOHOON LEE & NICOLA PIPER, *UNDERSTANDING MULTIPLE DISCRIMINATION AGAINST LABOUR MIGRANTS IN ASIA AN INTERSECTIONAL ANALYSIS* (2013); Shivakoti et al., *supra* note 1.

72 Laurie & Richardson, *supra* note 7.

73 Ayushman Bhagat, *Departure Avenues: The Politics of (Anti-) Trafficking and Emigration Control in Nepal* (2020) (Ph.D. Thesis, Durham University), <http://etheses.dur.ac.uk/13850>; Nina Laurie et al., *Post-trafficking Bordering Practices: Perverse Co-production, Marking and Stretching Borders*, 48 *POL. GEOGRAPHY* 83 (2015).

74 Bhagat, *supra* note 5; Shivakoti et al., *supra* note 1.

75 Pratik Adhikary et al., *Workplace Accidents Among Nepali Male Workers in the Middle East and Malaysia: A Qualitative Study*, 21 *J. IMMIGR. & MINORITY HEALTH* 1115 (2018).

navigate the entrapment process in the immigration regime without any support of the state of which they are citizens.

### III. METHODOLOGY

I conducted a participatory action research (PAR)<sup>76</sup> in a region of Himalayan Nepal known for its high female migration<sup>77</sup> during 2017-2018. Nepal was selected partly due to the funding expectations, and partly due to my own interest in examining the validity of the extensive media coverage of the incidences of “human trafficking” from the region after the Gorkha earthquake of 2015.<sup>78</sup> The research site, which was devastated in the aftermath of the earthquake, was selected during the scoping study phase of the research (June 2017-July 2017) conducted with various migration actors—government officials, trade unions, UN agencies, NGOs (anti-trafficking, migration, development), and recruitment agencies. Initial discussions with these actors on the context of labor migration in Nepal helped in the development of a research project based on the pressing policy and grassroots challenges faced by these actors and initiated a snowballing process. The process took me to various administrative units of Nepal where I discussed the project with local government officials (local district administration units) and NGO members (migration/anti-trafficking/reproductive health/development protection). These discussions not only assisted in the methodology design but helped to find and access the research site – a post-disaster Himalayan village with high female mobility. I stayed at the site for a week and discussed the potential project with several community members.

I returned in November 2017 to the village. Together with some participants, I organized a general meeting, at which we reinitiated the conversation on participatory research in the community on issues that the members found pressing. During the initial meeting, village members appointed a steering committee comprising a trafficked survivor as the president of the committee, and a women’s group leader as vice president to oversee the project. The role of the steering committee was to backstop the research in the community. Once permission to conduct research was granted by the community members, the committee agreed on the interpreter and suggested some names for research companions—the label that was used by these participants to identify themselves. Five *research companions* were selected, after which we negotiated a safe space for action and reflection in the community. This was followed by a training process where we discussed and prioritized several issues faced by the community, negotiated the demands of the participatory research, finalized the timeline, and agreed to develop a migrant resource center in the community. Every week we met at the safe space to plan the project further, based on the analyzed

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76 PARTICIPATORY ACTION RESEARCH APPROACHES AND METHODS: CONNECTING PEOPLE, PARTICIPATION AND PLACE (Sara Kindon et al. eds., 2007).

77 For reasons of anonymity, I am not disclosing the name of the village.

78 MANUELA BRÜLISAUER, HUMAN TRAFFICKING IN POST-EARTHQUAKE NEPAL IMPACTS OF THE DISASTER ON METHODS FOR VICTIM RECRUITMENT (2015).

data. This process set in motion an action and reflection cycle where we discussed, analyzed, and negotiated various aspects of the research—including a discussion on the interview criteria, names of the interview participants, and interview questions. From November 2017 to February 2018, I along with the research companions conducted participatory exercises such as participant observation, pre- and post-disaster village diagramming, mobility and labor mapping, problem ranking, migration trend analysis, etc. We engaged with more than 150 members of the community in 18 focused group discussions. These interventions were complemented by 36 in-depth interviews in the course of which we managed to capture 48 *stories of mobility*. Stories of mobility comprise of participants detailing their choicest circuit of migration: village—transit—destination—village. It was found that many community members have multiple labor migration experiences—sometimes more than 10. Once the fieldwork was over, I conducted participant observations at several sites along the mobility routes taken by the research participants from February to May 2018.

The methodology of the research was grounded in academic approaches to participatory action research.<sup>79</sup> The methodology, which combines both participatory research<sup>80</sup> and action research,<sup>81</sup> builds on the works of the likes of Paulo Freire,<sup>82</sup> Flávia Borda,<sup>83</sup> Robert Chambers,<sup>84</sup> and Rajesh Tandon<sup>85</sup> to both understand and address social justice issues, priority being awarded to the voices of those directly affected by them. PAR positions itself as feminist research where the researcher and participants identify, reflect, and address the most pressing problem for the participants.<sup>86</sup> Central to PAR is the cyclical process of action and reflection, which underscores a constant negotiation of power<sup>87</sup> and highlights the messiness of knowledge<sup>88</sup> produced at various stages of this research process. While anti-trafficking NGOs Global South adopt similar non-academic PAR approaches to solve the

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- 79 Michael Glassman & Gizem Erdem, *Participatory Action Research and Its Meanings: Vivencia, Praxis, Conscientization*, 64 ADULT EDUC. Q. 206 (2014); Orlando Flávia Borda, *The North-South Convergence: A 30-year first-person Assessment of PAR*, 4 ACTION RSCH. 351 (2006); ALICE MCINTYRE, PARTICIPATORY ACTION RESEARCH (2008); Rachel Pain & Sara Kinson, *Participatory Geographies*, 39 ENV'T & PLAN. A 2807 (2007); Sara Kinson & Sarah Elwood, *Introduction: More than Methods-Reflections on Participatory Action Research in Geographic Teaching, Learning and Research*, 33 J. GEOGRAPHY HIGHER EDUC. 19 (2009).
- 80 Rachel Pain & Peter Francis, *Reflections on Participatory Research*, 35 AREA 46 (2003).
- 81 Mary Brydon-Miller, *Ethics and Action Research: Deepening our Commitment to Principles of Social Justice and Redefining Systems of Democratic Practice*, in THE SAGE HANDBOOK OF ACTION RESEARCH PARTICIPATIVE INQUIRY AND PRACTICE 199 (Peter Resason & Hilary Bradbury eds., 2008).
- 82 PAULO FREIRE, PEDAGOGY OF THE OPPRESSED (1970).
- 83 Borda, *supra* note 79.
- 84 Robert Chambers, *The Origins and Practice of Participatory Rural Appraisal*, 22 WORLD DEV. 953 (1994).
- 85 Rajesh Tandon, *Participatory Research in the Empowerment of People*, 14 CONVERGENCE 20 (1981).
- 86 Yoland Wadsworth, *What is Participatory Action Research?*, ARAL.COM.AU (1998), <http://www.aral.com.au/ari/p-ywadsworth98.html>.
- 87 Mike Kesby, *Rethorizing Empowerment-Through-Participation as a Performance in Space: Beyond Tyranny to Transformation*, 30 SIGNS: J. WOMEN CULTURE & SOC'Y 2037 (2005).
- 88 Tina Cook, *The Purpose of Mess in Action Research: Building Rigour Through a Messy Turn*, 17 EDUC. ACTION RSCH. 227 (2009).

problem of ‘human trafficking’,<sup>89</sup> these forms of development research are panned by critical anti-trafficking scholars as shoddy research.<sup>90</sup>

Due to such uncritical deployment of participatory methods by NGOs, the entire family of approaches has drawn dismissive post-structural criticism within academia, questioning the neoliberal impact agenda of PAR as a generator of ‘new’ tyrannical power structures.<sup>91</sup> While I welcome these criticisms of participatory approaches,<sup>92</sup> I nonetheless understand the power generated by participatory action as empowerment.<sup>93</sup> Hence, rather than discard the process, I attempt to build on the criticisms of the approach as suggested by post-structural scholars.<sup>94</sup> For example, participatory research that highlights best practices and offers recommendations for ‘better migration governance’,<sup>95</sup> but without properly including the targets of such governance measures, merely serve as tools to advance certain political ideologies, without understanding whether and how migration governance is needed or not. Hence, I attempted to engage with and bring forth the voices of migrant workers impacted by such political ideologies, through a cyclic process of action and reflection. The fact that some community members who initially agreed to a migrant resource center later resisted its constitution to avoid drawing the unnecessary attention of the anti-trafficking, anti-migration, and law enforcement agencies to the village, speaks the critical potentialities of the approach.

Once the fieldwork was over in the community, I went on to conduct participant observations at several sites along the mobility routes taken by the research participants between February and May 2018. These include, but are not limited to, government offices, national highways, Nepal-India border locations—Mahendranagar, Nepalgunj, Sunauli, and Kakarvitta—and the international airports in Kathmandu, Delhi, Colombo, and Kuwait. I conducted more than 50 semi-structured/open-ended interviews with various state and non-state actors engaged in the policing and surveillance of migrant workers. One of the major limitations of this research is the lack of primary data collection in labor migrants receiving countries. The empirical findings of this research reveal how people on the move for domestic work experience multiple processes producing spatial confinement at different times and locations. This is based on the analysis of the *stories of mobility* of research participants and the mobility and labor control policies and practices unfolding in the emigration regime of Nepal. While I acknowledge that the conclusions drawn from the study’s

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89 MILAN DHAREL ET AL., UNDERSTANDING VULNERABILITIES AND STRENGTHENING RESPONSE (2016).

90 Guri Tyldum, *Limitations in Research on Human Trafficking*, 48 INT’L MIGRATION 1 (2010).

91 PARTICIPATION: THE NEW TYRANNY? (Bill Cooke & Uma Kothari eds., 2001).

92 Jenny Cameron & Katherine Gibson, *Participatory Action Research in a Poststructuralist Vein*, 36 GEOFORUM 315 (2005); Kesby, *supra* note 87.

93 Pain & Francis, *supra* note 80; Caitlin Cahill et al., *Participatory Ethics: Politics, Practices, Institutions*, 6 ACME INT’L J. CRITICAL GEOGRAPHIES 304 (2007); Sara Kindon et al., *Participatory Action Research: Origins, Approaches and Methods*, in PARTICIPATORY ACTION RESEARCH APPROACHES AND METHODS, *supra* note 76, at 260.

94 Cameron & Gibson, *supra* note 92.

95 DHAREL ET AL., *supra* note 89; JOELLE MAK ET AL., PATHWAYS TO PREVENT LABOUR EXPLOITATION IN NEPAL: DO PRE-MIGRATION INTERVENTIONS WORK (2019).

results may be limited to the specific region, offering specific insights on the history of female labor and mobility, I nonetheless argue that the lack of focus on emigration regimes as epistemological sites of theorization and activism in the critical literature<sup>96</sup> undermines such historically embedded processes helpful in critically interrogating mobility and labor governance practices.

#### IV. ENTRAPMENT PROCESSES IN NEPAL'S EMIGRATION REGIME

Prioritizing emigration regimes over immigration regimes as sites of epistemological importance demands (a) consideration of the historically specific junctures which produce subjectivities of labor and migration, (b) attention to processes that intersect in the lives of people before they are labelled as 'migrants,' and (c) attention to the restrictive policies and processes which replace immigrants with immigration regimes as objects of fear. Migration scholars have recently started to highlight how exclusion and exploitation in immigration regime allows emigration states to justify their restrictive migration policies.<sup>97</sup> Building on these existing works that prioritize emigration regimes, this Article highlights how the image of the Middle Eastern countries as oppressive immigration and labor regimes allows the government of Nepal to justify migration bans in domestic work. The migration ban draws further legitimacy from the absence of exclusive BLAs in domestic work with these countries. The presence of migration bans and the absence of BLAs in domestic work not only transforms citizens migrating via unauthorized channels as illegal people but also renders them citizens devoid of rights working in international labor markets. This compounded effect manifests overlapping entrapment processes in both the emigration and immigration regimes, which people on the move must encounter, experience, and escape to actualize their migration projects. To achieve an understanding of the entrapment processes that manifest in the lives of Nepalese female citizens in the emigration regime, I now demonstrate how historically embedded socio-structural impediments form the research site influences the agency of the research participants.

The research was conducted at a site inhabited by Tamang people—an indigenous community of Nepal. Tamang people follow Buddhism and are considered to be

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96 Sebastian Cobarrubias, *Scale in Motion? Rethinking Scalar Production and Border Externalization*, 80 POL. GEOGRAPHY (June 2020); NICHOLAS DE GENOVA, *THE BORDERS OF "EUROPE": AUTONOMY OF MIGRATION, TACTICS OF BORDERING* (2017); Martina Tazzioli, *The Politics of Migrant Dispersal. Dividing and Policing Migrant Multiplicities*, 8 MIGRATION STUD. 510 (2020); Dominique Moran et al., *Conceptualizing the Carceral in Carceral Geography*, 42 PROGRESS HUM. GEOGRAPHY 666 (2018); Siobhán McGrath & Samantha Watson, *Anti-slavery as Development: A Global Politics of Rescue*, 93 GEOFORUM 22 (2018); JULIA O'CONNELL DAVIDSON, *THE MARGINS OF FREEDOM: MORDEN SLAVERY* (2015).

97 LEE & PIPER, *supra* note 71; Maria Cecilia Hwang, *Gendered Border Regimes and Displacements: The Case of Filipina Sex Workers in Asia*, 43 SIGNS: J. WOMEN CULTURE & SOC'Y 515 (2018); Sophie Henderson, *The Legal Protection of Women Migrant Domestic Workers from the Philippines and Sri Lanka: An Intersectional Rights-based Approach*, 5 INT'L J. CARE & CARING 65 (2021); Shivakoti et al., *supra* note 1.

of “Tibetan-Burmese” origin, in contrast to the majoritarian Hindu Nepalese who identify themselves as being of ‘Indo-Aryan’ origin.<sup>98</sup> Scholars highlight that historically Tamangs were classed as ‘impure,’ placed in the lowest strata of the caste system, and subject to slavery.<sup>99</sup> They also highlight how Tamang women were historically situated as objects of desire and contemporarily identified as objects of sex trafficking.<sup>100</sup> As a result, most of the anti-trafficking NGOs associate the cross-border mobility of Tamang women with sex work mobility.<sup>101</sup> According to some research participants, this association is a result of the infamous Mumbai brothel raid in the late 1990s, when the government of Nepal refused to take back ‘rescued’ Nepalese sex workers from Indian brothels because they were suspected of carrying HIV AIDS,<sup>102</sup> thereby stigmatizing sex work mobility of Tamang women.

At this historical juncture, they encountered several anti sex work interventions within and beyond the community aimed at establishing the dangers of going to India for sex work. They suggest that as a result of the HIV-related deaths in the community, widespread anti-trafficking interventions—including the formation of village youth clubs to restrain the mobility for sex work—forever stigmatized female mobility as vulnerable and dangerous. However, these restrictions not only contradicted their culture of female migration for sex work, but also impacted their households’ economy. This impact is explained by Kevin, an HIV-AIDS survivor who once used to sell handkerchiefs, towels, heels, and cosmetics to sex workers in the brothels of India:

... [I]t was due to the fear of the disease. People in this village never had any issues with women going to Calcutta and Bombay till they started dying. They just stopped going to India, but how they will eat if they don't work?  
[Interview with Kevin]

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- 98 MANDIRA SHARMA & SEIRA TAMANG, *A DIFFICULT TRANSITION: THE NEPAL PAPERS* (2016); Sarah Homan, “You Can’t be a Feminist and be a Daughter-in-law”: Negotiations of Honour and Womanhood in Urban Nepal (2017) (Ph.D. Thesis, University of Adelaide, School of Social Sciences), <https://digital.library.adelaide.edu.au/dspace/handle/2440/105249>; Andrew Rotley Hall, *Religion in Tamang society: A Buddhist Community in Northern Nepal* (1982) (Ph.D. Thesis, University of London, School of Oriental and African Studies), <https://www.library.soas.ac.uk/Record/573071>.
- 99 *Id.*; Sonam Wangdi, *The Tamang: A Scheduled Tribe at the Crossroads*, PURBANCHAL TAMANG BOUDHA SANGHA (Feb. 28, 2011), <https://sites.google.com/site/purbanchaltamangboudhasangha/home/tamang-history-1>; DAVID H. HOLMBERG, *ORDER IN PARADOX: MYTH, RITUAL AND EXCHANGE AMONG NEPAL’S TAMANG* (1989); Mahesh Ghimire, *Socio-cultural and Economic Condition of Tamangs: Case Study of Angsarang, Nepal* (2014) (Bachelor Thesis, Diaconia University of Applied Sciences), <https://www.theseus.fi/handle/10024/73036>.
- 100 SUSANNE ASMAN, *BOMBAY GOING: NEPALI MIGRANT SEX WORKERS IN AN ANTI-TRAFFICKING ERA* (2018); Bhagat, *supra* note 73; Meena Poudel, *Dealing with Hidden Issues: Social Rejection Experienced by Trafficked Women in Nepal* (2009) (Ph.D. Thesis, Newcastle University), <http://theses.ncl.ac.uk/jspui/handle/10443/1030>.
- 101 ASMAN, *supra* note 100; Samantha May Devries, *Mobility Matters: Tamang Women’s Gendered Experiences of Work, Labour Migration and Anti-Trafficking Discourses in Nepal* (2012) (Master Thesis, University of Guelph), <https://atrium.lib.uoguelph.ca/xmlui/handle/10214/3494>; KATHRYN S. MARCH, “IF EACH COMES HALFWAY”: MEETING TAMANG WOMEN IN NEPAL (2002).
- 102 Pratima Poudel & Jenny Carryer, *Girl-Trafficking, HIV/AIDS, and the Position of Women in Nepal*, 8 *GENDER & DEV.* 74 (2000).



Kevin's statement testifies the sex work mobility of the female community members was stigmatized only after the fear of HIV-AIDS. A returnee sex worker, Sukumaya, explains this.

... during those days, people were not even drinking water from the households of those who used to go for sex work. Even though I never contracted the disease, they used to call us *disease carriers*, but what about people like Kevin, he has contracted the disease, even though no female member in his house had one.

[Interview with Sukumaya]

Sukumaya's statement highlights the production of gendered stigma which impacted labor and mobility of women. She suggests that the fear of HIV-AIDS provided a boost to the restrictive activities of the youth club, it subsequently exposed the community to the anti-trafficking and HIV-AIDS based NGOs. Many participants suggested that whilst these restrictive interventions did nothing to solve the problem of employment, they resulted in heavy policing of the mobility of female members of the community. An ex- youth club member highlights that sex work mobility brought money, disease and stigma to the community, but the youth club was primarily concerned with undoing the stigma which brought several forms of spatial and economic immobility. However, he agrees that due to unemployment, the community members were compelled to subvert the restrictive gaze of the youth club. Hence, to achieve their labor migration projects, they devised a variety of exit routes to safeguard themselves from the surveillance and control measures championed by the anti-traffickers of Nepal. Many people in the community believe that the measures, which paralyzed their women's mobility in the early 1990s, still manifest for those attempting to migrate for sex work. As a result, almost all the research participants claim that no one goes for sex work from the community anymore. Even though anecdotal evidence suggests that some community members still engage in sex work, no one talks about it anymore to anyone, demonstrating collective agency to escape such restrictive measures.

They suggest that during the late 1990s when the government of Nepal did allow migration for its female population, many returnee sex workers subsequently migrated to the Middle Eastern countries for domestic work. Some returnee sex workers reveal that the youth club members at the time physically stopped them from migrating to the Middle Eastern countries because of the stigma attached to sex work mobility. Further, the increased female mobility of Nepalese citizens for domestic work in the Middle Eastern countries was halted by the excessive media reporting on the deaths, injuries, exploitation and abuse of Nepalese domestic workers in the Gulf countries. Since then, the predominant policy for the protection of Nepalese domestic workers abroad has been migration bans,<sup>103</sup> which the government of Nepal now justifies through the absence of BLAs in domestic work with the hosting countries.

The community members suggest that since it is difficult to know who migrates for sex work, and the involvement of anti-trafficking NGOs to implement migration

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103 Sijapati et al., *supra* note 4.

bans, the historical assumptions and stigma associated with sex work mobility now apply to domestic work mobility. Maayan, a 21-year-old woman, a recent returnee from Kuwait, suggest that the community is divided on migration to the middle eastern countries for domestic work:

only those who migrate know what exactly happens there, and they will never say that their experience has been bad. Even if the experience was bad, they will say it was good.

[Interview with Maayan]

Whilst this lack of discussion on unauthorised migration for domestic work highlights the community's ways to destigmatise themselves, it produces rumours. Heidi, the president of the steering committee, a trafficking survivor, married to an ex-youth club member, elaborates:

People say there are some issues with domestic workers in Gulf. Women who migrate from here suffer a lot there. Everyone knows it, but no one talks about it. There are some issues, perhaps that's why Maiti people are involved in stopping women at borders, something is going on there.

[Interview with Heidi]

Interviews with some anti-trafficking NGOs, and recruitment agents substantiate Heidi's assumptions by highlighting the possibility of sex work taking place in the Gulf countries. While these assumptions are unfounded, the evidence of extreme forms of exploitation, including sexual exploitation of Nepalese domestic workers in the Middle East<sup>104</sup> boosts the rumour of Nepalese women engaging in sex work which not only justifies the existing restrictive policies but produces practices constraining women's mobility. For community members, these restrictive policies leave them with three choices (a) to stay in the community and work their farmland, (b) to locally migrate for seasonal work within Nepal, and (c) to migrate to India for seasonal jobs—stone quarries, house construction, horticulture etc. Interviews with female participants suggest that while intra-state labor migration within Nepal is not chosen by women in the community, migrating to India is not economically viable for them. Rishang, a 34-year-old woman from the community explains this:

The problem in Nepal is that people with economically stable jobs save money, and people like us who don't have any stable jobs, they have lots of expenses [. . .] You need to take loans from the village if there are some events—deaths, marriage, childbirth. The interest rates are so high that it becomes impossible for us to repay them. Further food, education, and health care are getting expensive, children are growing, and family members are getting old agriculture is expensive, and the productivity depends on the weather. Every year you come from India, and whatever

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104 BAJRACHARYA & SIJAPATI, *supra* note 53; Nilanjana Ray, Vulnerability to Human Trafficking: A Qualitative Study (2008) (Ph.D. Dissertation, Washington University in St. Louis, Brown School of Social Work), [https://openscholarship.wustl.edu/etd\\_restrict/17/](https://openscholarship.wustl.edu/etd_restrict/17/).

you save you spend on the repayment of loans. So, there is no way to become free from it unless you go to the Gulf.

[Interview with Rishang]

Rishang's statement resonates with many participants' stories of mobility. Her statement reflects the financial burden caused by the religious rituals that people in the community follow—for example when someone dies, then the mourners' family must hold a community-wide wake which for most of the community members is a very expensive custom. Most of the community members substantiate Rishang's concern over the rising agricultural costs and the declining agricultural produces. They highlight their over-dependency on underproductive agricultural lands in the Himalayan mountains and the lack of sustainable and dignified employment opportunities in Nepal as the major reasons for migration. Most of the participants, including women who conduct policing and surveillance at various political locations, ask: "*If they don't go abroad, how will they eat?*"

Interviews with returnee domestic workers suggest that they migrate for various economic reasons—to obtain sustainable income to support elderly parents, to access better education and healthcare facilities for family members, to clear their existing family debt, to pay for education fees, to construct houses (especially after the earthquake), and to save money for future migration projects. In their view, the only difference between exploitation in labor relations and the class marginalization they face in Nepal is that the former economically empower them. For most of the community members, domestic work migration projects in the Gulf countries offer an escape from the existing socio-structural impediments. However, their choice to migrate for domestic work is contrary to the migration bans, which set in motion social and political forces of migration control. I once encountered a community member at the bus stop at Kathmandu, who was returning from India after facilitating her wife's unauthorized migration. He asked me "*Why does the government not issue labor permits to us? it just makes village people's lives difficult.*"

Most of the community members describe encounters with anti-trafficking interventions at several sites.<sup>105</sup> For them, anti-trafficking measures are processes aimed at trapping people in Nepal. During several focused group discussion meetings, participants acknowledged that restrictive migration policies in Nepal strengthen such measures, which predominantly target Tamang villages. Cheewang, the interpreter who worked on this research project, once used to work with a local anti-trafficking NGO. He explains: "*Working with the anti-trafficking organization is extremely difficult in the community. Community members do not like it at all.*" Some participants told me that they don't respect anti-trafficking measures like safe migration awareness generation in the community. Despite their collective anger against their role in implementing migration bans, community members do not create any trouble for the anti-trafficking NGO representative. However, they never reveal any information related to prospective migrants and/or unauthorized migration during these training sessions, symbolizing attempts to avert their restrictive gaze.

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105 Bhagat, *supra* note 5.

Apart from the awareness-generating sessions, these NGOs also intervene in the schools where they talk to the schoolchildren about the dangers of sex work in India and domestic work in the Gulf countries and the dangers of migrating illegally as part of their safe migration training. They also monitor the schoolchildren's attendance registers, on the assumption that dropping-out could symbolize 'human trafficking,' and that continuous monitoring and awareness may protect Tamang children and women from being trafficked. These interventions arouse fear in the community, thereby immobilizing prospective migrants within Nepal. Recently, migration scholars have started to critically examine the collateral damage caused by these awareness sessions.<sup>106</sup> Examining the awareness generation programs anchored by a United Nations agency, Zimmerman and colleagues suggest:

Findings from qualitative and quantitative data from Nepal, India, and Bangladesh indicate that the intervention mechanisms (safe migration training) were not well-targeted, not delivered by appropriate trainers, and did not address participants' expectations or concerns.

Here the commentary on 'appropriate trainers' means that these well-intended awareness generation programs, aimed at promoting 'safe migration,' become 'anti-migration' initiatives. Community members suggest that while these trainers often manage to instill a fear of working abroad, which most of them are well aware of, their interventions are not coupled with alternative employment opportunities. Hence, those who migrate must escape restrictive measures that promote their territorial confinement. In contrast, several local and national anti-trafficking NGOs suggest that their interventions are important as they do not think that it is possible to identify whether a woman is migrating for sex work or for domestic work. Consider a snippet from an interview with Anti-Trafficking NGO members at one of the Indo-Nepal borders:

There is no way to know who is crossing the border for what purpose. Sometimes, girls go to Indian brothels, sometimes they go to the Gulf, sometimes they go to India to take drugs, and sometimes they are running to India because of their love marriages. We must save them. Keep an eye on every woman who attempts to cross borders. If they are not able to prove their actual reason for migration, we consult their family members, to see whether they are aware of it or not. If not, we then hold them in our transit centers and send them back to their communities with their family members. [Interview with an anti-trafficking NGO member]

The statement suggests that mobility rights, offered to the citizens of India and Nepal, precede the demands to protect citizens, based on certain assumptions, thereby making a case for human rights violations of anti-trafficking NGOs at the India-Nepal borders. The stigmatization of sex work mobility and migration bans on domestic work allows these anti-trafficking NGOs to illegally intercept, detain, and deport

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106 *Id.*; Kiril Sharapov et al., *Editorial: Knowledge is Power, Ignorance is Bliss: Public Perceptions and Responses to Human Trafficking*, 13 ANTI-TRAFFICKING REV. 1 (2019); Renata A. Konrad, *Designing Awareness Campaigns to Counter Human Trafficking: An Analytic Approach*, 67 SOCIO-ECON. PLAN. SCI. 86 (2019).

women merely based on suspicion. During interviews, some anti-trafficking NGO members patrolling at national highways and the Indo-Nepalese border checkpoints suggested that Tamang women are the most vulnerable to trafficking, due to their impoverished background and limited literacy. They are therefore instructed to pay close attention to the features, age, dress, and place of origin of women during the process of interception. This 'hunch-based surveillance' system legitimizes the existing protective measures, which include profiling, policing and surveillance based on race, class, religion, age, region and the gender of moving bodies.

Every interviewed participant highlighted their encounters with several Nepalese anti-trafficking NGOs restricting their mobility along the highways, government offices, Indo-Nepalese borders, and airports. Dolma, who recently returned from Cyprus narrated her first migration experience to Kuwait.

Crossing borders is the most difficult. You are checked so many times by so many people. They ask so many questions. The problem is that some people are allowed to cross borders while some are not. We can't be sure whether we will be allowed or not, but we have to take the risk. [. . .] I was trained by my agent. He told me what to say in front of the officials. When [anti-trafficking] people on the border asked me, I said, 'I am going to meet my sister in India.' They asked if I was lying, I said 'no, I am not.' [Interview with Dolma]

Dolma told me that she had bought new clothes, changed her get-up, bought tickets for the most expensive AC bus, lied about her age in the citizenship documents, left her passport at home, and taken a relative along with her. The fear of being detained and deported by anti-trafficking NGOs further reproduces the stigma in the community and household spaces,<sup>107</sup> thereby strengthening the existing restrictive practices.

The absence of BLAs in domestic work justifies these restrictive practices. Every migration actor interviewed highlighted the importance of BLA in domestic work and migration bans. For example, during an interview, a registered placement agent in Kathmandu mentions:

[L]ot's of rape and torture cases were coming to us. Since everything happens inside the household, no one can save them except the mentality of the employers. [. . .] As far as Nepalese law is considered if I will supply a domestic worker to an employer named Khalid, and that khalid rapes the worker, then my law says that I have done that rape. So, the migration ban is fair. If you want to supply a domestic worker, go through the bilateral channels. Without bilateral agreements, we should not send women to Middle East countries. [Interview with a placement agent]

This narrative was substantiated by village-based unlicensed placement agents who during his interview suggested that:

The Government is right. Why should they allow women to leave the country if they can't help them? [. . .] I have left the job, but so many people facilitate their mobility

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107 Laurie & Richardson, *supra* note 7.

to the Gulf. So many bad things happen [to domestic workers] en route and in the Gulf. We often hear cases of beating, rapes, pregnancy, overwork, sleeplessness, restriction on food, and hurling of abuses from women. Even the village-based agents who illegally help these women [to migrate] can't protect them. Everything depends on luck.

[Interview with a village-based unlicensed placement agent]

These narratives of placement agents not only highlight the issue of exploitation of migrant domestic workers in the middle eastern countries but also reveals their insensitivity towards the existing socio-structural impediments that several female Nepalese citizens face. Interviews with those who migrated via unauthorized channels suggest that these agents help them during their transit and at their destination. However, many whose mobility is restricted by these policies and practices are deported back to their villages. Empirical findings suggest that those who are deported again try to escape the confluence of such restrictive policies<sup>108</sup>—and those who do escape often face abandonment by Nepal government in the immigration regimes. Kanchi Maya, a returnee domestic worker from Kuwait suggests that after being mentally harassed and sexually assaulted in her employer's home, she decided to escape the labor relations. She left her passport and other documents with her employers and became undocumented in Kuwait. She, with the help of local agents, and some embassy members, went to the deportation center.

I changed jails three times. No one was allowed to leave the place. It was not allowed to even look outside the window. Also, no form of communication was allowed there. For three months I did not talk to anyone.

[Interview with Kanchi Maya]

While Kanchi Maya had the option to stay in Kuwait and navigate her life as an undocumented worker, she decided to go to Nepal. She suggests that several women after leaving their employers work as illegal workers, and wait for the amnesty provided by the immigration state. While some like Kanchi look for immediate amnesty, others wait up to two to three years as undocumented workers. Since these workers have not migrated via authorized channels amnesty is their only way out from these countries, as the government of Nepal do not recognize them. Despite evidenced by several newspaper articles and reports,<sup>109</sup> there is no academic research on the lived experiences of the abandoned Nepalese domestic workers in the Middle Eastern countries. The abandonment of female citizens of Nepal was laid bare due to the covid-19 pandemic. In 2020, the government of Nepal issued a 'repatriation-order' to ensure the 'right to return' of its stranded citizens.<sup>110</sup> The order included

108 Bhagat, *supra* note 5.

109 Katie McQue, *How Nepal's Migration Ban Traps Female 'Modern Day Slaves' in the Gulf*, THE GUARDIAN (Feb. 14, 2020), <https://www.theguardian.com/global-development/2020/feb/14/how-nepals-migration-ban-traps-female-modern-day-slaves-in-the-gulf>; *Unpaid and Abandoned: The Abuse of Mercury MENA Workers*, AMNESTY INT'L (Sept. 26, 2018), <https://www.amnesty.org/en/latest/research/2018/09/mercury-mena-abuses-qatar/>; SIJAPATI & LIMBU, *supra* note 46.

110 JEEVAN BANUYA ET AL., COVID-19 AND NEPALI LABOUR MIGRANTS: IMPACTS AND RESPONSES (2020); Gopal Sharma, *Nepal's Top Court Orders Rescue of Migrant Workers Stranded Abroad*, REUTERS (Apr. 17,

a priority list delineating the order of rescue only for those who had migrated with valid labor permits. This list excluded Nepalese citizens who had migrated via irregular channels, thereby stripping thousands of female migrant domestic workers countries of their rights to rescue. These restrictive policies not only contradict the interest of various households where female labor migration has historically been considered as the most sustainable, sometimes the only viable, livelihood strategy, but render some of Nepal's most vulnerable female citizens devoid of rights, thereby impacting their agency to navigate the immigration regime.

## CONCLUSION

This Article demonstrates the combined effect of the presence of migration bans and the absence of BLAs on the structurally disadvantaged female citizens of Nepal. The government of Nepal demands an exclusive BLA in domestic work with the hosting country as a requirement for lifting its migration bans. While the assumption that BLAs are capable of addressing labor exploitation is unsubstantial yet exaggerated, the absence of such an agreement strengthens the existing restrictive policies and practices in Nepal. As a result, various interventions paralyze the mobility of Nepal's female citizens who aspire to migrate for domestic work. While the restrictive policies and programs aimed at protecting female Nepalese citizens from international labor market exploitation trap socio-structurally disadvantaged citizens of Nepal within its territory, this article shows that they must appropriate mobility not only to escape the existing socio-structural impediments, but actors, institutions, and discourses in several spaces to actualize their migration projects. Those who manage to actualize their labor migration projects are abandoned by the state of Nepal.

This Article offers an understanding of entrapment processes as a constitutive relationship between mobility control and attempts to escape. The relationship between mobility control and attempts to escape gives rise to an understanding of entrapment processes as a constitutive relationship between emigration restrictions, emotional politics of mobility control, several anti-migration measures, and the agency of people on the move challenging such restrictive practices. This conceptualization speaks to the immigration-centric literature on entrapment processes by demonstrating their presence in the emigration regime.

The existing critical literature understands entrapment processes as being the result of the paradox between the demand for labor migration in the advanced economy and racist and xenophobic anti-migration immigration and labor policies. This immigration-centric understanding of entrapment processes makes a case against the exclusion of immigrants from welfare and protection, thereby unintentionally reproducing the imagery that migrants seek to make these immigration regimes their destinations. Further, this epistemological privileging involuntarily ties people on the move to the immigration regimes and revalidates them as the preferred 'destination'

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2020), <https://www.reuters.com/article/us-health-coronavirus-nepal-migrants-trf-idUSKBN21Z2DO>.

sites of migrants. It highlights the presence of entrapment processes aimed at confining citizens inside their territory and demonstrates how navigating such processes influences their agency in the immigration regime. The Article forms a part of the effort to address destination bias in critical literature, which is no longer disposed to the critique of elevation of immigration regimes as important hegemonic sites of research, theorization, and intervention. Conceptualizing entrapment processes from the emigration regime contributes to the critical literature, advances existing efforts to establish the oft-ignored emigration regimes as sites of epistemological importance. The Article further contributes to the destination biased critical literature interested in immigrants' agency by showing that escaping entrapment processes in the emigration regime leads to the abandonment of immigrants by their 'home' countries, which class them as vulnerable to exploitation in the international labor markets. It makes spaces for further research to understand the impact of abandonment of citizens by their home countries in the immigration regime. Overall, this Article attempts to theorize from empirical materials collected in the emigration regimes to make further space for unbiased and holistic research, theorization and intervention needed in the critical literature on migration, borders, security, carcerality, and anti-trafficking.