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# For Their Own Good? Addressing Exploitation of Women Migrant Workers



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# For Their Own Good? Addressing Exploitation of Women Migrant Workers

Jenna Hennebry

## Executive summary

Migrant workers often experience precarity in their migration journeys, and the state structures and programs designed to ‘protect’ migrants have the potential to increase migrant vulnerability to exploitation; financial exploitation, enduring physical harm, rights abuses or various forms of coercion. The increased use of managed migration programs to control migrant flows have introduced a thriving private sector migration industry which facilitates the employment and migration needs of migrants in sending countries, and caters to government and industry (employer) requirements in receiving countries. Migrant workers can be subject to economic exploitation and even violence at the hands of private intermediaries, employers and government authorities. This vulnerability is exacerbated by migrants’ limited access to information and support networks in countries of destination and insufficient levels of social protection and gaps in the governance frameworks in countries of origin.<sup>1</sup> In addition to these common risks, women migrant workers (WMWs) face gendered and specific forms of exploitation and human rights abuses associated with gender norms and stereotypes. Their labour is highly concentrated in devalued, gendered and often invisible labour sectors that are plagued by labour abuse (including excess hours and poor pay), physical and psychological abuse and sexual violence.<sup>2</sup>

## Context

Women constitute roughly half of all people who live and work outside of their countries of birth with growing numbers migrating autonomously for work.<sup>3</sup> In the context of this feminization of migration, WMWs face gendered vulnerabilities and risks that differentially impact all stages of migration (pre-departure, transit, employment, return and integration). Though evidence suggests that many WMWs are highly educated and skilled, most are concentrated in low-skilled and precarious labour including textile manufacturing, agriculture, small-scale entrepreneurial endeavours, service, and domestic and public care work (i.e. nursing, elderly and childcare, cleaning).<sup>4</sup>

Factors contributing to WMWs’ vulnerability to exploitation can be traced to persistent structural issues in countries of origin, transit and destination, yet most efforts at regulation have focused on tweaking migration policy and border security regimes, rather than addressing root causes. While civil society groups and international organizations have taken steps towards recognizing and protecting migrant’s human rights,

1 See: Hennebry, J. (2014). Falling through the cracks? Migrant workers and the Global Social Protection Floor. *Global Social Policy*, 14(3), 369-388; Hennebry, J., Grass, W., & Mclaughlin, J. (2017). Women migrant workers’ journey through the margins: Labour, migration and trafficking. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Retrieved from [www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins](http://www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins)

2 Ibid, 2017.

3 See: Women, U. N. (2015). *Progress of the World’s Women 2015-2016: Transforming Economies, Realizing Rights* (No. id: 7688).

4 Hennebry, et. al, 2017.

many state-led initiatives focus on protecting persons, rather than on applying a gender lens to assess and uncover root causes of exploitation that prevent migrants from exercising their rights. Governance structures and initiatives, often framed as protecting WMWs, have translated into reducing WMWs access to education and healthcare, limited employment opportunities in formal labour markets, financial exclusion (property ownership and access to credit), curtailment of mobility rights, and limited opportunities for empowerment.

Private sector actors (recruiters and brokers) have become *de facto* migration mediators and gateways to migration in the face of increasingly restrictive migration frameworks. WMWs face gender specific barriers to migration and limited legal migration routes, and often become reliant on such actors to facilitate migration. This creates additional vulnerability to labour and rights exploitations, exorbitant fees and trafficking. Restrictive governance intended to 'protect' WMWs by limiting migration pathways therefore has the unintentional effect of pushing WMWs further underground, exposing them to greater risks and vulnerabilities.

### Limiting WMW's mobility rights "for their own good"?

Several efforts by states in countries of *origin*, *transit* and *destination* intended to 'protect' migrants, conversely serve to increase their vulnerability to exploitation<sup>5</sup> and often involve the curtailment of mobility rights, particularly with respect to WMWs. For example, deployment bans have become a practice employed by countries of *origin* in the face of exploitation of WMWs abroad, they are generally imposed on women and are meant to serve as 'protective policies.'<sup>6</sup> Bans are based in trafficking discourses and directly curtail women's mobility rights. For example, several highly documented cases of exploitation and trafficking of Nepali WMWs have emerged over the last decades and the Nepali state has reacted to these cases by periodically deploying travel bans that deny exit permits to WMWs. Between 1997 and 2008, the government of Nepal enacted at least ten different migration policies targeting women, from complete to partial migrant bans.<sup>7</sup> Similarly, the Indonesian government banned migrant domestic workers, a sector dominated by WMWs, from travelling to work in 21 different Middle Eastern countries in May 2015 after the execution of two Indonesian workers found guilty of murder in Saudi Arabia.<sup>8</sup> The Philippines has also experimented with deployment bans on domestic migrant workers to countries that the government deems unsafe, and this has included Saudi Arabia, Lebanon, and other countries in the Middle East and the Gulf.<sup>9</sup>

Rather than protecting the rights of WMWs, travel bans implemented by countries of origin decrease legal routes of migration making it more difficult for women to migrate through official channels. Bans do not address persistent economic need and gender inequality in countries of origin (important migration push factors), and often result in increasing unsafe and undocumented migration through irregular channels, often with the assistance of profiteering smugglers.<sup>10</sup> Indeed, in a report written by the United Nations Special Rapporteur on extreme poverty and human rights, Professor Philip Aston, after his visit to Saudi Arabia in January 2017, estimated that there were roughly 500,000 undocumented Indonesian domestic workers in the Kingdom of Saudi Arabia as a result of Indonesia's deployment ban.<sup>11</sup> Irregular migration and undocumented status increases vulnerability to exploitation and abuse by isolating WMWs from authorities and the protection of laws.

5 For an examination of trafficking enforcement's impact on migrants' rights see: Anderson, B. (2012). Where's the harm in that? Immigration enforcement, trafficking, and the protection of migrants' rights. *American Behavioral Scientist*, 56(9), 1241-1257.

6 See: Carling, J. (2005). Gender dimensions of international migration. *Global migration perspectives*, 35, 1-26.

7 See: Grossman-Thompson, B. (2016). Protection and Paternalism: Narratives of Nepali Women Migrants and the Gender Politics of Discriminatory Labour Migration Policy. *Refuge*, 32(3), 40.

8 See: Walden, M. (2017, September 7). Despite migration ban, Indonesian domestic workers still face forced labour and abuses in the Gulf. Retrieved September 11, 2017, from [www.equaltimes.org/despite-migration-ban-indonesian](http://www.equaltimes.org/despite-migration-ban-indonesian)

9 See: Campbell, K. (2013, September 9). Protection Through Restriction: Controlling Women's Mobility in Asia. Retrieved September 11, 2017, from [www.asiapacific.ca/blog/protection-through-restriction-controlling-womens-mobility](http://www.asiapacific.ca/blog/protection-through-restriction-controlling-womens-mobility)

10 Grossman-Thompson.

11 Alston, P. (2017). End of mission statement Special Rapporteur on extreme poverty and human rights, Professor Philip Alston on his visit to Saudi Arabia. Riyadh: United Nations Office of the High Commissioner of Human Rights. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21094>

In the face of travel bans or limited migration options, many WMWs seek alternative routes to migrate often traveling (and working) through numerous countries to reach their intended destination. Women irregular migrants in *transit* are particularly vulnerable to exploitation, abuse and human trafficking.<sup>12</sup> For example, Mexico, a source and transit country for WMWs, has seen growing numbers of women migrants from Central America crossing borders to the South and the North, and in response, the government has increased the security presence at their Southern border with the USA sponsored 'Programa Frontera Sur'.<sup>13</sup> The securitization approach has increased the use of smugglers by WMWs attempting to navigate perilous transit routes and driven up the price of the clandestine journey. The net effect has led to increasing WMWs debt and exposure to violence and exploitation.<sup>14</sup> Similarly, for Ethiopian WMWs transiting through Djibouti and Yemen to reach the Gulf states, rising fees and unexpected expenses demanded by migration brokers and smugglers mean that WMWs engage in precarious working conditions in transit countries in order to earn enough money to pay for the remainder of their journey.<sup>15</sup>

Measures taken by *destination* countries to 'protect' women migrants from exploitation can also result in heightening exploitation or curtailing rights. Canada, a top destination country for migrant workers with approximately 250,000 entries in 2015,<sup>16</sup> introduced regulatory frameworks in response to international pressures to address and stop trafficking, and exploitation from labour recruiters. However, these policies and regulations have been criticized for providing the state with the authority and discretion to profile, deny entrance and deport WMWs who are viewed as undesirable or "vulnerable" migrants (particularly WMWs who are suspected of being employed in industries related to sex work).<sup>17</sup> These regulatory frameworks have not addressed poorly enforced occupational health and safety standards for WMWs, nor have they addressed the lack of federal regulations for recruiters and recruitment practices in Canada. This regulation, coupled with minimal penalties for exploitative or non-compliant employers, is more likely to lead to the underreporting of crimes against the most vulnerable of WMWs in Canada (those in the sex industry) and to increased clandestine migration rather than reducing exploitation.

Managed bilateral or multilateral labour migration agreements between origin and destination countries can also have negative consequences for migrant rights. Such agreements typically focus on labour market issues, and may address areas like finance, trade and development,<sup>18</sup> but on a whole remain largely gender-blind and neglect human rights concerns. Bilateral agreements (BLAs) or memoranda of understanding (MOUs) that structure guest worker or temporary worker programs tend to specifically limit mobility rights for migrant workers in countries of destination. In some cases such programs can also enable gender discrimination in recruitment. For example, Spain's agricultural guest worker program with Morocco specifically recruits WMWs who are mothers, largely due to perceptions that such workers are compliant, docile workers with delicate hands suited for small fruit, and are likely to return to their countries of origin to care for their children at the end of their contracts; women must also secure their male spouses consent to participate in this

12 See: Düvell, F. and F. Pastore. 2006. Transit, migration and politics: Trends and constructions on the fringes of Europe. COMPAS and IMISCOE, Retrieved from [www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Duvell%20transit%20IMISCOE%20report.pdf](http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Duvell%20transit%20IMISCOE%20report.pdf).

Tayah, M.-J., & Atnafu, A. (2016). Promoting and protecting the rights of migrant domestic workers in transit: The case of Ethiopian women migrants (GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES). International Labour Organization (ILO).

13 See: Casillas, Rodolfo R. (2016). Entre la política deseada, la practicada y los flujos migratorios emergentes: respuestas en construcción y los desafíos duraderos. Mexico D.F.

14 Hennebry et al., 2017; IMUMI (2014). Las Trabajadoras Migrantes Centroamericanas en Chiapas: Recomendaciones de política pública para garantizar el ejercicio de sus derechos. Entidad de las Naciones Unidas para la Igualdad Género y el Empoderamiento de las Mujeres, ONU Mujeres.

15 Tayah & Atnafu, 2016

16 See: Immigration, Refugees and Citizenship Canada (IRCC). (2016). 2016 Annual Report to Parliament on Immigration. Government of Canada. Retrieved from [www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp#s2](http://www.cic.gc.ca/english/resources/publications/annual-report-2016/index.asp#s2)

17 See: Citizenship and Immigration Canada (CIC). (2014, May 28). Temporary Foreign Worker Program and International Mobility Program: Protecting workers from abuse and exploitation. Retrieved from [www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp](http://www.cic.gc.ca/english/resources/tools/temp/work/vulnerable.asp)

18 See: Hennebry, J. L., Grass, W., Williams, G., Williams, K., Chikanda, A., Walton-Roberts, M., & Crush, J. (2015). Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence. Waterloo.

program.<sup>19</sup> Though the Morocco-Spain BLA has remedied some of the most egregious human rights violations that occurred when employers previously employed mostly undocumented migrants,<sup>20</sup> the program restricts mobility rights between employers, upward employment mobility, and offers no path to permanent status or family reunification.<sup>21</sup> Similarly, gender assumptions and discrimination are found in the Mexican-Canadian Seasonal Agricultural Worker Program (SAWP) with WMWs accounting for only three percent of SAWP workers due to recruitment biases, leaving WMWs needs and risks unconsidered.<sup>22</sup> The gender discrimination in both programs has remained unaddressed.

The Philippines, with roughly 0.89 million WMWs outside the country in 2016 (OECD, 2016), has actively sought BLAs with destination countries, most with an eye to ensuring labour market access and remittance flows, though some have addressed human rights concerns.<sup>23</sup> The 2013 Philippines-Kingdom of Saudi Arabia BLA for domestic workers, signed on the heels of a human rights scandal which received media coverage, is an example of tangible gains made towards protecting the rights of women migrant workers (e.g. establishing that employers shall not withhold migrant passports, outlining housing and wage expectations, paid leaves, etc.), but it falls considerably short of international human rights frameworks including CEDAW and Convention 189, and does not address employer-tied permits and pathways, leaving migrant workers bound to a single employer/sponsor.<sup>24</sup>

## Conclusion

Restrictive migration policies and pathways limit women's mobility rights and are often based on assumptions about women's autonomy, agency and self-determination, framing WMWs as helpless victims. It is the lack of access to decent work and regular migration pathways that creates conditions for exploitation, coupled with securitization, rather than some inherent vulnerability, that leads to exploitation. Such policy responses involve the securitization and criminalization of migration, and explicitly symbolize the co-opting of the trafficking discourse by states to enhance sovereignty under the guise of offering 'protection' to WMWs.<sup>25</sup>

Reactionary policies that restrict or ban migration because of concerns over exploitation of WMWs fail to address unscrupulous recruiters and recruitment practices, unenforced bilateral labour agreements, contract switching, a lack of information and education about migrant rights, discriminatory laws and institutions, bilateral labour agreements that tie workers to a single employer and legislated power imbalances, etc. Enhancing access to regular migration and decent work represent the only way forward to address systemic patterns of exploitation and discrimination.

19 See: Mannon, S. E., Petrzalka, P., Glass, C. M., & Radcliff, C. (2012). Keeping them in their place: migrant women workers in Spain's strawberry industry. *International Journal of the Sociology of Agriculture and Food*, 19, 83.; Zeneidi, D. (2017). *Gender, Temporary Work, and Migration Management: Global Food and Utilitarian Migration in Huelva, Spain*. Springer.

20 Zeneidi, 2017.

21 Mannon et al, 2012; Zeneidi 2017.

22 See: Otero, Gerardo, and Kerry Preibisch (2010). *Farmworker Health and Safety: Challenges for British Columbia*. British Columbia, Canada: WorkSafeBC.; Preibisch, K. L., & Grez, E. E. (2010). The other side of el Otro Lado: Mexican migrant women and labor flexibility in Canadian agriculture. *Signs: journal of women in culture and society*, 35(2), 289-316.

23 See: Hennebry et. al, 2016.

24 See: International Labour Office, & Labour Migration Branch. (2016). *Gender sensitivity in labour migration-related agreement and MOUs*. Geneva: ILO.

25 See: Napier-Moore, R. (2010). *Beyond Borders: Exploring Links between Trafficking and Migration*, (GAATW Working Papers Series 2010) (pp. 1–31). Thailand: Global Alliance Against Traffic in Women. Retrieved from [www.gaatw.org/publications/WP\\_on\\_Migration.pdf](http://www.gaatw.org/publications/WP_on_Migration.pdf)

## Recommendations

Restricting women's access to labour markets, and curtailing their mobility rights does not address the causes and sources of exploitation, but rather increases vulnerability to abuse and exploitation by forcing women to navigate increasingly precarious migration journeys and pathways. For the Global Compact to enhance safe, regular and orderly migration pathways for women migrants it must do the following in both documentation and implementation:

1. **Endorse recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration**<sup>26</sup> resulting from the outcome of an experts' meeting hosted by UN Women and the Office of the High Commissioner for Human Rights (OHCHR) on 21 and 22 November 2016 in Geneva.
2. **Reaffirm commitment to ratification and enforcement of international conventions** pertaining to migrant workers;<sup>27</sup> create mechanisms to enhance commensurability across instruments.<sup>28</sup>
3. **Create a new enforceable protocol under CEDAW and ICRMW which specifically addresses rights of women migrant workers** in all stages of migration, across all sectors. This instrument can address the gaps<sup>29</sup> in the patchwork of protections provided in IHRL, and address the shortcomings of anti-trafficking and anti-slavery law.<sup>30</sup> Importantly, this new protocol should speak across these instruments.
4. **Address contemporary forms of slavery and forced labour by strengthening and enhancing existing International Human Rights Law (IHRL) and instruments**<sup>31</sup> to better reflect gendered realities of forced labour.
  - 4.1. Ensure that the immigration status of migrant women workers, particularly domestic workers, is not conditional on the sponsorship of a specific employer or other individual (e.g. recruiter, spouse, parent), since any such arrangement may unduly restrict the freedom of movement of women and increases their vulnerability to exploitation and abuse, including in conditions of forced labour or servitude.
  - 4.2. Implement standardized contracts (which include states as parties) that are consistent with ILO guidelines and IHRL.

26 UN Women. (2016). *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration - Outcome of expert meeting in Geneva*. Geneva. [www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration](http://www.unwomen.org/en/digital-library/publications/2017/3/addressing-womens-rights-in-global-compact-for-migration)

27 Convention on the Elimination of Discrimination Against Women (CEDAW), as elaborated in General Recommendation 26 (GR26) and CEDAW Optional Protocol (2000); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), as further elaborated in General Comments No. 1 (2011) on Migrant Domestic Workers and No. 2 (2013); International Convention on the Elimination of Racial Discrimination (ICERD), as elaborated in General Recommendation No. 25 (2000) on gender-related dimensions of racial discrimination; the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Covenant on Civil and Political Rights (ICCPR); the ILO Conventions 97, 143, and 189 (among others).

28 For example, in 2016 UN Women facilitated a collaborative effort between CEDAW and ICRMW committees, to strengthen gender-responsiveness within the LOIPR of the ICRMW, and similarly to enhance language pertaining to women migrant workers in CEDAW with references to ICRMW. Such efforts will strengthen accountabilities to existing frameworks, using those more widely ratified instruments (such as CEDAW or ICERD) to address issues pertaining to migrant workers.

29 C189 on domestic workers was not designed to explicitly deal with women migrants. The ICRMW promotes the equal treatment of migrant workers, including women and men as well as undocumented migrants, but does not deal with specific gendered vulnerabilities of WMWs and is thus less effective at ensuring protection against gender based discriminations and exclusions. The Palermo Protocol does not adequately protect the human rights of women outside of providing aid to victims of trafficking. CEDAW GR26 does not provide binding articles on the treatment of WMWs.

30 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol), supplementing the United Nations Convention against Transnational Organized Crime (UNTOC); 1926 Slavery Convention and 1956 Supplementary Convention.

31 The Special Rapporteur on contemporary forms of slavery has made recommendations regarding responses to the vulnerability of migrants to contemporary forms of slavery in situations of domestic servitude (A/HRC/15/20), forced labour in supply chains (A/HRC/30/35) and debt bondage (A/HRC/33/46).

5. **Enable access to migration pathways which promote empowerment of women and protect their rights.**
  - 5.1. Remove restrictions or exclusions in law or practice that limit opportunities for women to migrate (e.g. gendered labour migration streams or programs; marital status requirements; etc.), and enhance access to permanent residency.
  - 5.2. Eliminate sex-specific bans and discriminatory restrictions on women's migration which limit the mobility rights of women migrants on the basis of age, marital status, migration status, pregnancy and/or maternity status, among other factors.
  - 5.3. Encourage professional associations to develop bridging programs to enable internationally educated nurses (IENs) decent work opportunities without deskilling, or the use of BLAs.
  - 5.4. Reduce embedded role of private recruitment and employment agencies and immigration consultants.
6. **Regulate, license and monitor recruitment and employment agencies, brokers and intermediaries, to stop exploitative and fraudulent recruitment practices including deception (primarily about working and living conditions), charging unauthorized fees to workers, retention of identity documents, violence, abuse, intimidation or control of workers, wage retention, etc. Ensure that such measures are consistent with International Labour Standards.**
  - 6.1. Develop joint liability schemes, bilateral or multilateral agreements to prevent abuses and institutionalize cooperation across countries aligned with international human rights standards.
  - 6.2. Encourage states to implement national regulatory frameworks of recruitment practices for labour migration and to develop registration processes specific to sectors (e.g. domestic work).
7. **Prevent and combat trafficking and exploitation of women, recognising and identifying its causes, and in particular the increased risk of trafficking that women and girls face during conflicts and post-conflict contexts and natural disasters.**
  - 7.1. Ensure that measures aimed at addressing irregular migration and combating transnational organized crime do not adversely affect the human rights of women, do not criminalise them and do not securitize their movement, including before departure, during transit, at borders, in destination countries and upon safe return; recognising that restrictive and securitised policies foster the vulnerability of women to trafficking and sexual exploitation.
8. **Ensure BLAs include enforcements of human and labour rights and access to social protection for WMWs.** Such agreements must be guided by and specifically reference IHRL and be enforceable, and gender-responsive language.
  - 8.1. Ensure that BLAs and visa schemes do not discriminate against women, such as by restricting their employment to gendered job categories, or by excluding female-dominated occupations from visa schemes.
  - 8.2. Create human rights and gender impact assessments to be carried out in the creation of future BLAs, and to be periodically undertaken for current BLAs. BLAs should be assessed by multi-stakeholder committee (including WMWs and CSOs) to ensure that the language and content complies with IHRL.
9. **Involve WMWs and non-governmental advocates in formulating gender-sensitive and rights-based migration policies** that promote safe migration and facilitate WMWs access to decent work, human and labour rights. Such groups must also participate in monitoring and evaluation of these policies.



10. **Conduct robust gender-responsive research, enhance data collection, acquisition, analysis and accountability measures guided by human rights in order to enhance gender-responsive and evidence-based policies, inform advocacy, challenge perceptions and prevent abuses and exploitation.**
  - 10.1. Collect and share sex-disaggregated data on exploitation and trafficking, migrants in transit and at border-crossings, including interceptions, denial of entry, detentions, deaths, abuse and injury at maritime, land or air borders.
  - 10.2. Data gathering must ensure privacy rights are protected and should not be used for immigration enforcement purposes.



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Dr. Hennebry's research portfolio includes comparative studies of migration policy and foreign worker programs with an emphasis on migrant rights and health, migration industries, non-state migration mediation, transnational families, and the role of remittances in development. Recent work examines the role of bilateral labour mobility agreements in protecting migrant rights and social protections, non-state actors and an expanding migration industry in foreign worker programs, and shifting regimes of labour migration governance worldwide (e.g. [www.mappingmigration.com](http://www.mappingmigration.com) and [www.migrantworkerhealth.ca](http://www.migrantworkerhealth.ca)).

Dr. Hennebry is currently working with UN Women to provide key analytical and methodological support to the UN Women's project on Promoting and Protecting Women Migrant Worker's Labour and Human Rights. She is also working with the World Bank on the KNOMAD project, KNOMAD draws on experts from all parts of the world to synthesize existing knowledge and generate new knowledge for use by policy makers in sending and receiving countries.