



CESIF
Centre for Social Inclusion
and Federalism

NEPAL-INDIA CROSS BORDER RELATIONS

IN THE CONTEMPORARY CONTEXT

CESIF RESEARCH SERIES

Editors

**Vijay Kant Karna
Arpan Gelal**

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Nepal-India Cross Border Relations in the Contemporary Context

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Centre for Social Inclusion and Federalism (CESIF)

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Vijay Kant Karna

Arpan Gelal

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PREFACE

This publication is a part of the larger research series entitled ‘Accessing Geopolitics, Cross Border Relations and Nepal’s Development’, undertaken by the Center for Social Inclusion and Federalism (CESIF). This issue of publication primarily engages in analyzing the various dynamics of Nepal’s cross-border relations with India in the changed geopolitical scenario and bilateral relations with Nepal’s Southern neighbor.

The research studies included in this series were carried out in Nepal’s 20 southern bordering districts during January 2021-July 2022 by a group of researchers from CESIF in collaboration with the local consultants in bordering districts with India. The CESIF researchers extensively engaged and interviewed a large number of experts at Nepal’s federal capital, Kathmandu and in various provinces and districts including the federal and provincial ministers, politicians, members of parliament, bureaucrats, thematic experts and opinion leaders, border experts, security forces, local governments, businessmen, academicians, civil society, customs and immigration officers, border side communities and representatives of other government agencies engaged in border management among others. Household surveys in the bordering districts with India and personal observation of researchers in the study districts remained a crucial part of the researches to understand the changing perception and dynamics of the Nepal-India border, the trends and patterns of Nepal-India migration and issues surrounding cross-border people to people ties. Moreover, a number of province level consultation meetings were held to discuss changing trends in Nepal-India relations in Province 1, Madhes Province and Sudurpaschim province throughout the study period.

The first article of this series ‘Strengthening Nepal-India Cross-Border Relations in Changing Border Dynamics’ analyzes the changing perceptions and functions of the Nepal-India border and identifies ways to strengthen people-to-people cross border relations at the state and people’s level. It incorporates a detailed analysis of what the Nepal-India border practically signifies as more than a mere political demarcation line. It further explores current prominent factors and trends that shape Nepal-India cross-border relations at the people’s level as well as security threats perceived by both Nepal and India regarding the border. Finally, it recommends the policy and people level solutions to enhance the cross-border people to people relationship and border security without hampering the flow of goods and people (especially the poor and marginalized).

The second article of this series ‘People’s perceptions, experiences and GESI dynamics of Nepal-India border’ documents knowledge and experiences about the Nepal-India border, identifies key issues related to the open border and its management, and recommends policies that can address the issues identified. This report tries to document how the Nepali people, including women, minorities and disadvantaged groups, interact with the border in their daily life. Furthermore, it also looks at the perception, experiences and issues regarding border and its management from gender, ethnicity and social inclusion perspective.

The third article of this series ‘Understanding Nepal-India Migration Dynamics, Migration Governance and Associated Migration-Related Threats’ analyzes various dimensions of Nepal-India migration, which remain one of the unique and prominent indicators of Nepal-India cross-border relations. This study analyzes the current trend of Nepal-India migration and the status of migration governance. It further analyzes the perceived threat to Nepal’s national interest induced by the Nepal-India migration phenomenon. It also explores the formal and informal policies and practices that have emerged to control vulnerable mobilities linked to migration and its impact on migration trajectory, state-society relationship and cross-border relations with India. Finally, it suggests ways to strengthen Nepal-India migration governance and curb the associated anomalies without hampering the livelihood of border side citizens, especially the poor and marginalized ones.

The last article of this series ‘Geopolitically Sensitive Activities along Nepal’s Southern Border Districts’ explores different foreign involvements in Nepal’s southern districts that can be termed as sensitive to Nepal’s national and security interests. It also explores activities that might be of concern for other countries i.e., India, China and the USA. Against the backdrop of increasing geopolitical concerns in Nepal’s bordering districts with India, this study explores the strategic intentions of identified sensitive activities in these districts, responses and counter responses of geopolitical actors regarding these activities and the various roles federal and provincial governments can play to manage sensitive activities.

We believe the findings of these studies will be instrumental to understand the changing dynamics of Nepal India cross border relations and aid the formulation of relevant policies to strengthen the state and people to people cross border ties.

Vijay Kant Karna
Arpan Gelal

ABBREVIATIONS

ADB	Asian Development Bank
AMIS	Aid Management Information System
APF	Armed Police Force
BBC	British Broadcasting Corporation
BBIN	Bangladesh, Bhutan, India and Nepal
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BOP	Border Out Post
BRI	Belt and Road Initiative
BRO	Border Roads Organization
BTA	Bilateral Trade Agreement
BWG	Border Working Group
CCTV	Closed Circuit Television
CDO	Chief District Office
CESIF	Centre for Social Inclusion and Federalism
CITES	Convention on International Trade in Endangered Species
CSO	Civil Society Organization
CTCR	Counter Terrorism and Counter Radicalization
DP	Development Partner
EPG-NIR	Eminent Persons Group on Nepal-India Relations
FDI	Foreign Direct Investment
FG	Federal Government
FIG	International Federation of Surveyors
FY	Fiscal Year
GDP	Gross Domestic Product
GESI	Gender Equality and Social Inclusion
HIMALI	High Mountain Agribusiness and Livelihood Improvement
HIV	Human immunodeficiency virus
I/NGO	International/ Non-Governmental Organization
ICP	Integrated Check Post
ID	Identification
IEX	Energy Exchange Limited
IGC	Inter-Government Committee
IMLG	Indian Military Liaison Group
IPS	Indo-Pacific Strategy

ISI	Inter-Services Intelligence
ISIS	Islamic State of Iraq and Syria
JCIFM	Joint Committee on Inundation and Flood Management
JCWR	Joint Committee on Water Resources
JMCWR	Joint Ministerial Commission for Water Resources
JSTC	Joint Standing Technical Committee
JTBC	Joint Technical level Boundary Committee
JTC	Joint Technical Committee
KII	Key Informant Interviews
MCC	Millennium Challenge Corporation
MoFA	Ministry of Foreign Affairs
MoU	Memorandum of Understanding
MW	Mega Watt
NEA	Nepal Electricity Authority
NIBCGSI	Nepal-India Bilateral Consultative Group on Security Issues
NRB	Nepal Rastra Bank
NRs	Nepalese Rupees
OBC	Other Backward Class
ODA	Official Development Assistance
PG	Provincial Government
PM	Prime Minister
PTCN	Power Transmission Company Nepal Limited
PWD	Public Works Department
RAW	Research and Analysis Wing
RLDC	Regional Load Dispatch Center
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Agreement
SDMP	Saptakoshi High Dam Multipurpose Project
SSB	Sastra Seema Bal
UAE	United Arab Emirates
UK	United Kingdom
UKHP	Upper Karnali Hydropower Project
UNDOC	United Nations Office on Drugs and Crime
USA	United States of America
USD	United States Dollar
WASH	Water Sanitation and Hygiene
WTO	World Trade Organization

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Chapter 1

Strengthening Nepal-India Cross-Border Relation in Changing Border Dynamics

Arpan Gelal, Yunish Ghimire

A. BACKGROUND AND CONTEXT OF THE STUDY

To understand the cross-border people-to-people relations, it is important to first understand how borders are perceived at different levels. Although borders can be perceived in various aspects, they are political construct. Similarly, border bureaucracy is mainly associated with the management of borders. Likewise, borders at people level are mostly associated with livelihood. There are different components that drive the understanding of borders at each level. Hence, understanding the perception regarding borders becomes the base for cross-border people-to-people relationships.

A1. The concept of borders

The concept of borders cannot be solely understood in terms of their role as a conventional physical demarcation. They have complex underlying social constructions with different functions and meanings (Haselsberger, 2014). In this globalized world, the role of borders has become even more significant because of their implications for trade, mobility, security, and transitional politics (Jabeen, 2020). Limiting the understanding of borders to juridical frameworks vastly undermines other multifaceted aspects associated with them and disrupts the flow of ideas. So, the study of borders requires a multi-perspective approach.

Borders serve two main functions which are a shelter for security and as a springboard for opportunities (Nicol & Minghi, 2005). The Nepal-India border has historically served these functions while shaping the relationship between the two countries. The interaction and relationship between the people of Nepal and India have been shaped by the history, geography, culture, and customs which have been further deepened by the open nature of border.

The political ideas of borders are mainly shaped by sovereignty, territoriality, national security, and diplomacy. Territoriality enforces spatial markers through which states claim sovereignty and prevent outside interference within their border systems. The notion of border establishes categories of citizens and aliens which is also integral to the concept of sovereignty (Mills, 1996). Thus, borders and sovereignty are intertwined. Similarly, states use borders as a tool for diplomacy to gain strategic advantages and resolve territorial disputes. According to Anderson & O'Dowd (2010), the characteristics of borders are often a product of state system which is reflected in the government's attempt to control the movement of resources and people. Any sovereign state has the right and ability to maintain and defend its borders.

The political perspectives entail borders have three main underlying properties: it is a primary political institution, it is a functional notion, and it is a process (Zapata-Barrero, 2013). The existence of political institutions is a result of borders. Similarly, border as a process entails that political communities based on the identities are created. Finally, border as a functional notion highlight that the functions served by the borders which include border security and border protection are an integral part of the border definitions. Another aspect that the political perspective encompasses is that of borders and identity. Despite shared cultural and social values between the bordering communities, border creates separate identities based on nationality (Prokkola, 2009).

Borders have underlying implications for the social, economic, and cultural processes. However, borders are not as impermeable as suggested by the traditional concept of sovereignty because they are permeable to ideas of democratic participation, human rights, money, and people (Mills, 1996). Although borders primarily serve the purpose of dividing, the social, cultural, and economic interaction between the communities in the border areas create a homogeneity. These interactions have transformed the idea of borders to cross-border areas giving birth to the concept of intermediary spaces. In some instances, the houses situated along the Nepal-India have one door open towards Nepal and the other towards India which is attestation to the closed knit community present in the area. The recent politicization of borders has created categories of citizens and aliens which has played a role in disrupting the shared sense of community. The socio-economic perspective of borders is further explained by the notion of 'stateless nations' which are defined by culture, language, religion, and race and that the communities are confined by the boundaries of the state is a recent phenomenon (Keating, 2001).

A2. Nepal-India Border: A Historical Perspective

The history of border delimitation between Nepal and India dates back to the early 1800s. In that period, the territory of Nepal extended from Tista to Kangra. The British East India Company had been looking to expand the trade routes to Tibet. Since Nepal's territory was extended, all the trade points were within Nepal. So, the East India Company waged a war on Nepal, and the aftermath of the war was the "Treaty of Sugauli" as a result of which Nepal lost its territories beyond Mahakali in the west and Mechi in the east. Similarly, Nepal also lost significant land in the South, beyond the Siwalik Range. However, through a Supplementary Treaty of 1816, lowlands from Koshi to Rapti river were restored along with Banke, Bardiya, Kailali, and Kanchanpur. This became the basis for the present-day border between India and Nepal. Then began the process for boundary demarcation which was carried out between 1816 and 1941. During the demarcation process, Nepal government and East India Company stumbled upon various disputes mainly on the process to demarcate through natural elements like hills and rivers. Over the period, Nepal government became aware of the Indian encroachment in Nepali land. So, an inspection team was created to supervise the border demarcation conditions from 1965 to 1967. The report submitted by the team highlighted the instances of missing demarcation and border pillars in many areas. Similarly, they also found that no-man's land between the two countries had been encroached for cultivation. So, both India and Nepal agreed to form a Joint Technical Level Boundary Committee (JTBC) to work on resolving the issues. JTBC worked 26 years and resolved most of the minor border disputes. However, the committee could not resolve the two major disputed areas of Kalapani-Limpiyadhura and Narsahi-Susta.

A3. Nepal-India Border Relations

Nepal-India shares an 1880 km long border of which 1240 km constitute land boundary and the remaining 640 km is river boundary. There are 57 rivers and rivulets that act as the river boundary which include Mahakali, Narayani, Mechi, Rapti, among others. Although borders exist between the two countries, there is free movement of people between the two countries and the people are tied culturally, linguistically, and socially. There are 20 southern districts which share border with India. This region shares a roti-beti relationship with the communities in the Indian states. So, there exists a permissible border with nominal boundaries between these districts and India (Tripathi, 2019). Similarly, there is an important economic dimension to the Nepal-India relationship as millions of Nepali people are working across the border in India. Likewise,

Nepal's access to seaports through Indian territory is also an important aspect to the bilateral ties between the two countries.

Borders are an integral part of the national identity (Baral, n.d) which also have implications for bilateral ties (Tripathi, 2019). The present complication in the relation between the two countries has been fueled by border related issues. The unofficial border blockade imposed by India in 2015 has negatively impacted bilateral ties. According to Houtum (2000) there are mental borders which implies how people perceive borders. The aftermath of 2015 border blockade has caused people to develop mental borders which has hurt bilateral relations. Another important aspect is territorial disputes surrounding the border demarcation. The major disputes are in the Limpiyadhura, Kalapani and Lipulekh areas. Nepal has claimed India has encroached 372 kilometers of land in these areas. Furthermore, since 2018 there has been a dispute over the road construction by India in the disputed territory of Susta.

A4. Nepal-India Trade Dynamics

In the present context, international trade has been used as a tool for economic diplomacy. Countries have been increasingly deploying economic diplomacy by using cross-border trades to implement their national interests. Due to this, the cross-border trade dynamics has been playing a significant role in shaping international relations (Kukharyk & Nubling, 2021).

Historically, cross-border trade has been an important determinant of the Nepal-India relations. Trade relations are built in mutual co-operation with the intention of benefitting all the parties involved. At the macro level, India remains the largest trading partner of Nepal. In the fiscal year 2020/2021, the total export to India represents 63% of the total export volume of Nepal whereas the import from India represents 75% of Nepal's total import volume (Customs Department, 2021). In the micro level, bordering cities in India remain the prime market for southern districts in Nepal. The people depend on the bordering market for daily consumption goods, electronics and other items.

B. DESCRIPTION OF THE RESEARCH PROJECT

This research aims to contribute to the achievement of the overall objective of helping the civil society and the government to shape better policies and practices to promote cross border people to people ties, understand changing perceptions of the border, promote Nepal's national interest and enhance border security without hampering people to people relations and flow of goods. This study is focused on cross-border relations with India, border management, security issues linked with borders and enhancing cross-border ties.

The study is divided into five sections. The Section A of the study provides the background and context of the study. Section B incorporates research questions, objectives, study methodology, and analysis methods. Section C presents the findings of the study. Section D analyzes the issues and policy gaps gathered from the findings. Lastly, Section E provides recommendations required for policy-level reforms to enhance cross-border ties. Further, it is also important to note that this study forms a basis for forthcoming research studies.

B1. Objectives of the study

The overall objective of the study is to identify the ways to enhance the border security, strengthen border management practices, and enhance cross-border ties without hampering the flow of goods, and people to people relations. The study aims to analyze the varying and changing perception of Nepal-India border at different levels, i.e., political, bureaucracy, socio-economic levels. The study also aims to identify the factor shaping cross border relation and current trends in cross-border relationship. Furthermore, the study also analyzes the security issues perceived by Nepal and India regarding the border. Finally, the study explores the ways to enhance people to people relationship without hampering cross-border ties.

B2. Key research questions

The study adopted following key research questions-

- a. How Nepal-India border is perceived in Nepal's political, bureaucratic, socio-cultural landscape?
- b. What factors shape the Nepal-India cross border relationship at people's level and current trends in cross-border relationship?
- c. What are the security issues perceived by Nepal and India regarding the border?
- d. What are the ways to enhance cross-border people to people relationship and border security without hampering the flow of goods and people (especially the poor and marginalized people)?

B3. Study Methodology

The research has adopted a qualitative mode of enquiry. The study used a multi-dimensional approach to gather primary and secondary information. The primary data were collected through Stakeholder consultation meetings, Key Informant Interviews (KII), Household survey and Observation. Likewise, the secondary data were collected through the literature review.

Study methods and tools were thoroughly designed to reach out to women, along with marginalized and disadvantaged groups, i.e., Dalits, minority ethnic groups to gain first-hand knowledge of their experience using an intersectional

approach while selecting respondents for the KII and household surveys. Moreover, the study team was composed of an inter-generational representative with both senior researcher and emerging researcher.

Desk Review

In the desk review, the constitutions of Nepal 2072, national security policy, various enactments, Regulations, bilateral treaties and bilateral agreements, mandates and minutes of joint bilateral mechanisms, cross-border engagement reports, joint statement from high-officials' visits, scholarly articles, journals and media reports, interviews of officials published in media, and policies related to border management were reviewed. Similarly, various International Conventions and international border management practices were reviewed to understand the perception of border and border management practices. This review helped in identifying international and national border management practices, differing perception of border, security issues linked with border and impact of border regulations on the cross-border communities, especially poor and marginalized population inhabiting alongside the border line. Further, the desk review became essential in providing recommendations by identifying the laps in policy and informing reforms for effective and regulated cross-border mobilities.

Stakeholder meetings

Province level stakeholder meetings were organized in Biratnagar (Province 1), Janakpur (Madhes Province) and Dhangadi (Sudurpaschim province) to discuss the issues on cross-border mobility, changing perceptions of border, changing dynamics of cross-border ties, security issues linked with border and ways to enhance border management without hampering people to people relations. The participants of the stakeholder consultation meeting included chief minister, ministers, bureaucrats, business community, academicians, civil society, journalists, customs and immigration officials, security personnel (Nepal Police and Armed Police Force), representatives of border side community among others.

KII and expert interviews

IIIs were conducted in province 1, Madhes and Sudurpaschim province. Expert interviews were conducted with the migration, security, foreign affairs and border experts, politicians, bureaucrats, and journalists in Kathmandu and in other places as per their availability. There was a total of 27 respondents comprising of chief ministers, province parliament members, CDOs, security officials, businessmen, journalists, civil society member, Mayors, leaders from

Muslim, marginalized and oppressed groups, and custom officers among others. The sample units were purposefully identified. Out of the total number of respondents 19 were male and 8 were female. None of the participants identified themselves as non-binary gender.

Household survey

Household surveys were conducted on the bordering villages along the Nepal-India border at Province 1, Madhes province and Sudurpaschim province. The household survey sites were purposively selected regarding the proximity of the village from the border points i.e., custom points. The respondents for the survey were selected purposely through the judgment of researchers to include respondents of various age groups, profession, gender and ethnic composition. Efforts were made to include the respondents from poor and marginalized groups, who are mostly impacted by the border management policies and practices.

Guiding Checklist and Questionnaire

A guiding checklist and questionnaire were prepared for conducting the KIIs among the relevant stakeholders. The guiding checklist and questionnaire were semi-structured, employing open-ended and close-ended questionnaires to gather the qualitative data.

Field Observation

The information was gathered through field observation as well, by gaining insights of cross-border mobilities, migration behavior, cross-border activities, and processes and practices in various border points. Direct observation helped in gathering contextual insights on people, circumstances, interactions, and surroundings.

Data analysis

The data collected through various qualitative measures (desk research, stakeholder consultation meetings, key information and expert interviews, household surveys) were thoroughly reviewed and analyzed to write the report. The data analysis considered all factors such as political, bureaucratic, social, economic, familial factors to shape cross-border relations and people to people ties (at the local level) followed by state-level transactions and engagements and bilateral relations between Nepal and India. Moreover, interactive discourses and dialogues with relevant stakeholders also formed a part of the analysis to extrapolate the report.

Ethical consideration

The researchers ensured that all key informants and household respondents were aware of the study's aim. Throughout the study, the research team was committed to the values of inclusivity, feminist principles, and human rights. To maintain these standards, the study team informed and obtained verbal consent from all respondents during the KIIs and household surveys, assuring their anonymity, privacy, and confidentiality. While selecting respondents, the research team sought a more diverse and intersectional approach.

C. FINDINGS AND DISCUSSION

C1. Understanding Nepal-India border

In a simplistic view, borders are demarcation lines that divide a particular spatial area. In recent times, the study of borders has shifted to the understanding of 'how' rather than the 'what', to the process of bordering rather than the physical line itself (Lechebalier, 2013). The conventional notion of the border as a static line has been challenged with the increasing trends of globalization. The Nepal-India border historically holds much more significance than the demarcation boundary. It has embedded social, cultural and economic ties, where in many stances, the local understanding of borders dilutes the political and sovereign notion of border.

Political Perception

Border plays an important role in establishing the categories of citizens and aliens. Through this arises the notion of territorial integrity and sovereignty. The constitution of Nepal 2015, highlights the protection of rights and interests of Nepali people and protection of boundaries as the fundamental subjects of Nepal's national interest. The boundaries mentioned help categorize Nepali people and alien citizens. This distinction is important in protecting the rights and interests as well as defending the borders. The National Security Policy 2019 highlights that geographical location and open border as the elements influencing national security and territorial integrity.

The concept of borders and sovereignty during the Rana regime was mainly driven by jurisdiction which had the components of military, spirituality, and commerce. Nepal officially got its borders when it signed the Sugauli Treaty of 1816 with British India. Similarly, the treaty of 1923 was significant for Nepal for international recognition of Nepal as an independent state, and later became an important document to gain United Nations membership. While the Sugauli Treaty of 1816 allowed the East India Company to appoint a representative in Kathmandu which was redesignated as ambassador in the 1923 Treaty. This treaty which had seven main points helped guarantee Nepal's sovereignty.

The Nepal-India border relations have showcased how historically borders have been used as a geopolitical tool. After the expiration of the 1960 Trade and Transit Treaty in 1970, Nepal demanded separate treaties, one focusing on bilateral trade and another on transit rights. India did not accept this and instead resorted to pressure tactics by imposing economic blockade in the border (Subedi, 1997). The second embargo of 1988/89 which lasted for 15 months was fueled by India's discontent on Nepal's decision to declare itself as a 'Zone of Peace', demand separate treaties for trade and transit, and purchase arms from China. This border blockade is seen as a tool used by India as a response to Nepal's political decision-making (Chand, 2018). Likewise, the unofficial border blockade of 2015 is widely viewed as a coercive tool to influence internal domestic affairs of Nepal. Thus, these blockades demonstrate how the border has been used as a political tool by India to defend its interests in Nepal.

Political parties within the country have also used border as a tool to garner votes and win general elections. Time and again it is evident that political leaders have used border issues as an agenda for electoral politics. The impact of various regulatory border policies, border infrastructure on the livelihood of border-side marginalized communities, cross-border conflicts on sharing of common resources among others remain the political agendas during the election campaigns. However, these issues tend to get undermined once the party comes into power. Experts have argued that using the border as a tool to advance internal positions prolongs the border friction and contributes less in actually resolving the issues.

Bureaucratic Perception

Nepal's top-level bureaucrats have historically perceived the border as an inherent threat to national sovereignty and national integrity that have shaped the border policies and management practices. Prior to 1990, Nepal Army was solely responsible for the protection of borders. After the formation of the Armed Police Force, they were given the role of border protection. According to the Armed Police Act of 2058, one of the major duties of APF is border protection. Similarly, National Security Policy 2019 stipulates that Nepal Army is tasked with defending "Nepal's independence, sovereignty and territorial integrity from external infiltration and aggressions."

Nepal's bureaucracy aligns towards the regulatory mechanisms to control the border rather than people friendly border management practices accounting the transnational livelihood of border side citizens. The common perceived threats are the border encroachment, uncontrolled migration and refugee inflow,

demographic shift and rise of ethnonationalism, longer term political impact of demographic shift, border crimes, terrorism, trafficking and smuggling among others. Border has been perceived as a national problem rather than absolute realization of opportunities it entails. The key respondents in the bordering districts blame the failure to prioritize the cross-border intimacy of people living alongside the border and cross border mobility as the major source of livelihood of border side communities while introducing the border management practices and policies.

Local respondents reveal a number of bureaucratic instances in border management practices that fail to account the realities of Nepal-India border communities' livelihood and historic cross border ties. The abrupt border closure during Covid-19 has surfaced this reality. The perception of the border as a national security threat from the eyes of Kathmandu has left unnecessary hassles in cross-border mobility time and again. The manifestation of racial discrimination towards the Terai origin borderland communities by the border agency officials has been a decades long reality.

Socio-Economic Perception

The understanding of borders on people-to-people level is different as compared to the political and bureaucratic perceptions. Although the notion of sovereignty and territorial integrity is prevalent among the local people, the characterization of borders is mainly driven by shared culture, traditions, language, and history. As highlighted by (Houtum, 2000), the socio-economic aspects of borders can be studied through the flow approach, the cross-border cooperation approach, and the people approach. The nature of Nepal-India border has historically served as a facilitator for the flow of goods, services, and people between the two countries. The communities in the border areas are heavily dependent on the Indian markets, even for the daily commodities. Similarly, open border facilitates cross-border migration, which is mainly driven by better employment opportunities, better educational facilities, better health facilities, and familial relations across the border. According to the household survey conducted in Madhes Province, around 67% of the total respondents crossed the border due to familial ties with Indian communities. Thus, the function of the border is extended beyond the limited scope of political and bureaucratic notions. A key informant emphasized that, *'In the context of socio-economic perception of the border, it is not only a demarcation of a line.'*

The border acts as a lifeline, especially for a landlocked country like Nepal (Tripathi 2019; Kumar 2013). The importance of open borders was reflected when the borders were closed due to Covid-19 pandemic. This disrupted the daily livelihood of people depended on Indian markets for health facilities, education, labor, and employment.

Covid-19 and Borders

The government of Nepal closed its borders from March 2020, which lasted nearly 19 months. During this period only essential items were allowed to enter the country. This decision was made to ensure the safety of people and control the spread of the virus. The border communities along with the migrant workers from throughout the country were impacted the most as a result of border closure. Several cases of death were also reported during this time when people tried to cross the border through unconventional routes¹.

The narrative of border closing to safeguard citizens can be argued. The government's move to abruptly close the border ignored the rights and safety of migrant workers. Nonetheless, the government has time and again argued that 'border closure' was a tool to protect Nepali citizens. The restricted mobility impacted the family visits to the other side, especially in severe cases like death. It also resulted in reduced cross-border marriages after the Covid restriction. One of the key respondents stated – *"During Covid -19 border restrictions, regarding cross-border mobility, it significantly impacted the cross-border marriages. In many cases, the wedding team coming across the border had to quarantine for 14 days at the border point; in another case, only a handful of people were allowed to cross the border. This also created a conflict situation. Since then, cross- border marriages have drastically reduced."*

C2. Changing perception of border

The concept and functions of borders is always changing. It is also evident while analyzing the border relations between Nepal and India. During the early 1800s, the kings of Nepal did not withhold the concept of fixed demarcated borders. Their idea of sovereignty and territoriality were based on jurisdiction which had three main components: military, spirituality, and commerce . Whereas, for the East India Company, fixed borders were an integral part in demarcating the territory. When the British started the demarcation process, there was friction because borders were perceived differently by both parties.

1 Jha. H.B. (2021). Re-opening Nepal India Borders. ORF, <https://bit.ly/3IU2E3T>

2 Krishnan. S. (2020). How Nepal Got its Borders. The Diplomat. <https://bit.ly/3iTD2cR>

The Sugauli Treaty of 1816 institutionalized the political borders between Nepal and India. During this demarcation process, the borders divided the same village, such that the homes of people fell on one side of the border, whereas agricultural land on the other. Despite the establishment of political borders, the concept of citizens and aliens (a product of creating boundaries) took a longer time to get instilled in the local bordering communities.

The political disputes between the countries have played a major role in changing the perception of borders in public. Houtum (2000) talks about mental borders, and Tripathi (2019) further highlights that the economic blockades imposed by India have instilled a sense of mistrust with the neighboring country, forcing Nepali people to create mental borders. In 1969, the then Nepali Prime Minister emphasized that *“Nepal could not compromise its sovereignty for India’s so-called security”* (referring to the 1969 blockade imposed by India)³.

Similarly, a shift in the trade relations has also resulted in the changing perception of the borders. The cross-border relationships have historically shaped the trade between India and Nepal. Currently, trade has been dictated by treaties, regulations, and formal procedures. Thus, according to Thakur & Thapa (2020), *‘Border that had never separated cross-border family members on doing business has become a boundary that separates.’*

These events highlight how the concept of demarcated Nepal-India border is a newer concept and gradually instilled among the people. Despite the changing political perception on borders, they have remained just a physical line to the bordering communities. However, the closure of borders during the Covid-19 pandemic has changed the perception among local communities that borders are much more than a physical line and have political implications. A local person from Madhes Province mentioned- *“Free movement which has been the major feature of Nepal-India border was impacted during the pandemic. I believe this has demonstrated that despite being so interconnected, we are divided.”*

From the idea of borders as jurisdiction to the borders as physical lines, and now to the rebordering process by setting up different institutions to protect the borders and the functions associated with it, a shifting dynamics in the perception of borders is apparent. This shift in the perception is mainly driven by the emerging security concerns and the view of asymmetric benefits (Indians benefiting more from the border than Nepali).

3 Cowan. S (2015). The Indian checkposts, Lipu Lekh, and Kalapani. The Record, <https://bit.ly/3DqzuIs>

C3. Factors shaping cross-border relation

1950 treaty of Peace and Friendship

Although Nepal-India relations date back to ancient times, the Treaty of Peace and Friendship of 1950 is regarded as a cornerstone in the relationship between the countries as the treaty gives ‘the nationals of the other country, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.’ There was free movement of people between the two countries prior to this treaty. However, this treaty institutionalized the concept of open borders. According to Kumar (2013), the relationship between the people of Nepal and India is much more than the treaties and agreement. However, bilateral treaties such as that of 1950, along with other trade and transit treaties, and cross-border electricity trade treaties have institutionalized the deep-rooted Nepal-India relations.

Shared history and culture

Nepal-India shares a long history with similar culture and traditions. These similarities in culture and traditions have connected the people in Nepal and India on a micro level. According to a key informant, *“Historically, Nepal and India have faced similar economic and political problems, which has also helped shape the relations between the two countries.”* Nepal for a long period of time was fighting to overthrow the Rana regime while India was fighting to gain independence from the British. Likewise, Nepal’s southern border districts and India’s bordering states like Bihar were struggling economically. Due to these commonalities, the cross-border relationship flourished.

Cross-border marriages

The relationship with India is mostly described as ‘roti-beti’, which is used to explain cross-border family ties or cross-border marriage relationships. Similar culture, traditions, and language among the community members opened the doors for cross-border marriages, which has further helped deepen the relationship between the two countries.

Cross-border mobility and migration

Nepal-India border acts as a lifeline for people living in the bordering communities. The regular cross-border mobility of people is induced by market access for daily household needs, education opportunities, health facilities, labor and employment opportunities, petty business, familial visits, religious pilgrimage among others.

Although the cross-border migration relations date back to prehistoric times, a significant increase in the migration can be observed after the unification of Nepal when Indians were encouraged to settle in terai region. Similarly, the recruitment of Nepali Gurkhas in the British India army also spurred cross-border migration and intermingling of culture between the two nations. Currently, there are around 28,000 active Gurkha members in the Indian army. Similarly, Indian army recruits around 2000 Nepalis every year⁴. Another driving factor of the cross-border migration is labor employment. The unregulated nature of the border has facilitated the migration to India. Furthermore, the growing economies of the Indian states have presented different employment opportunities for Nepali citizens.

Economic dependence

Nepal is a landlocked country, but it is also commonly referred to as India-locked as it is surrounded by India in the East, West, and South. So, Nepal has been historically dependent on India for its economic activities and market access. Nepal relies heavily on India for import of essential items.

India is the largest trading partner of Nepal. According to the data from the Government of Nepal, in the last three fiscal years, the trade volume with India has been 64.7%, 62.2%, and 64.9%. Similarly, Nepal's currency is pegged with the Indian rupee. In 1993, the exchange rate was fixed at 1.6. The pegging of currency is usually done by a weaker economy (like Nepal) against a more stable economy (like India). This has helped Nepal to import goods at a much cheaper price. If the currencies were to be de-pegged, Nepali currency would have been valued at 4.10 to that of India (based on the current exchange rate with the U.S Dollar)⁵. This would drastically increase the price of goods causing hyperinflation and destabilizing the economy. So, the pegged currency also reflects Nepal's dependence on India which has shaped bilateral relations.

Development Cooperation

India has been one of the major bilateral development partners of Nepal. According to the Development Cooperation Reports, ODA disbursement from India gradually increased from \$ 57 million in FY 17/18 to \$ 94 million in FY 19/20. The ODA contribution from India saw a significant increase of 37.23% in FY 19/20. However, India has significantly cut down its aid to Nepal in FY 20/21⁶ and in FY 21/22⁷.

5 Maharjan. U. (2021). De-Pegging the Rupee. *The Rising Nepal*. <https://bit.ly/3iWODrn>

6 My Republica. (2020). India drastically cuts aid to Nepal, <https://bit.ly/3x7CF6X>

7 Nepali Times. (2022). Indian aid declines, <https://www.nepalitimes.com/business/indian-aid-declines/>

Access to seaports

Nepal, being a landlocked country, is dependent on India for the access to sea ports. The Treaty of Trade and Transit in 1960 first gave access to the Port of Calcutta. Currently, Nepal has access to Calcutta Port, Haldia Port, Vishakapatnam Port. Similarly, Mundra Port in Gujarat and Dhamra Port in Odisha are in the pipeline.

High-Level Visits

High-Level visits are an important aspect of Nepal-India relations. According to the Ministry of Foreign Affairs, “... *high level visits by the leaders of the two countries at different points of time and the interactions constitute the hallmark of the ties...*”⁸ These visits and diplomatic exchanges give an opportunity for both the countries to discuss bi-lateral issues and resolve them diplomatically. This helps to de-escalate the problems and constitute confidence among the local people which helps strengthen the people-to-people relationship. For instance, the visit of PM Modi in 2018 was a significant moment in the Nepal-India relations. PM Modi had emphasized that his government will prioritize the ‘neighborhood first’ policy. These high-level visits have facilitated in developing goodwill, understanding, trust and cooperation and further development of the multi-faceted relations between Nepal and India⁹. The table below outlines the high-level visits between Presidents and Prime Ministers of Nepal and India since 2010.

Table 1: List of High-Level Bi-lateral Visits Since 2010

POSITION	NAME	DATE
Nepal		
President	Dr. Ram Baran Yadav	2010
President	Dr. Ram Baran Yadav	2012
Prime Minister	K.P Sharma Oli	2016
Prime Minister	K.P Sharma Oli	2016
Prime Minister	Pushpa Kamal Dahal	2016
President	Bidya Devi Bhandari	2017
Prime Minister	K.P Sharma Oli	2019
Prime Minister	Sher Bahadur Deuba	2022
India		
Prime Minister	Narendra Modi	2014
President	Pranab Mukherjee	2016
Prime Minister	Narendra Modi	2018

⁸ Ministry of Foreign Affairs, Nepal, <https://mofa.gov.np/nepal-india-relations/>

⁹ The Indian Express. (2018). Nepal-India ties move upward with high-level visits in 2018, <https://bit.ly/3Ducw35>

Shared water resources

The communities in the border areas are dependent on the water flowing from the Himalayas. Some of the biggest rivers such as Sapta Koshi, Mahakali, and Mechi flow from Nepal towards the bordering states of India. Different treaties such as the Koshi Agreement, Mahakali Agreement, and Sarada Treaty have been signed for joint utilization of these water resources. Some of these treaties are argued to be highly favoring the Indian needs. Thus, historically, water resources have been both the issue of cooperation and disputes through which cross-border relations have been shaped. Furthermore, disputes between the bordering communities regarding the ways to prevent inundation and flooding, and managing resources during scarcity is a recurring theme. Different joint mechanisms have been set up to address these issues arising on sharing of water resources. However, the border communities have to go through similar problems every year. Water cooperation has been a significant topic in the Nepal-India relations. Even during the visit of the Prime Minister in 2018, both parties agreed for cooperation on water resources. However, no conclusive output has come out of the bi-lateral cooperation.

Border Disputes

The ongoing border disputes with India regarding the disputed land in Kalapani and Susta is reflective of the growing structural problems between the two countries. The border issues in Lipulekh flared up when the Indian defense minister inaugurated the Lipulekh pass road connecting to the border of China. Many experts have argued that the border disputes that flare up time and again are merely a symptom of deteriorating cross-border relations¹⁰.

Although the Joint Technical level Boundary Committee (JTBC) resolved major border issues after working for 26 years, the issues in Kalapani and Susta still remain unresolved, due to the problems in locating the source of Mahakali river and the channel of Gandaki river (Baral, 2018). The inability of the government to resolve these issues has trickled down to the local level, as indicated in the protests organized by youths in Kathmandu¹¹. Furthermore, these issues have also acted as a catalyst in developing anti-Indian sentiments among the public in Nepal. Hence, as long as these issues remain unsolved, it will continue to dampen the bi-lateral relationship.

10 Xavier. C. (2020). Interpreting the India-Nepal border dispute. Brookings, <https://brook.gs/3NxMoJj>

11 Basnet. M. B. (2020). Even as Kathmandu protests Indian encroachment, Darchula depends on India, <https://tkpo.st/3dZl6sI>

C4. Trends in Cross-border relationship

Nepal-India cross-border relationship is not static and is affected by several factors. The concept and perception of borders is always changing which is also indicated by the changes in cross-border relationships. According to multiple interviewees, the cross-border relations between Nepal and India are at a low point. A key informant stated that,

“The government of both India and Nepal in an unstated manner does not want the people-to-people relations between the citizens in the bordering communities. So, the relationship has changed and the brotherhood between the two countries has also decreased.”

The concept of border arises from political ambition which is a top-down phenomenon (from central governing body to local level) (Smith, 1991). So, any political or economic friction between Kathmandu and Delhi tends to trickle down to the local communities. The political, bureaucratic, and people-to-people relationships are the three important aspects that have shaped the cross-border relationship between the two countries.

Trends in Cross-border Marriages and Migration

The recent trend on cross-border marriages, which is an important indicator of the people-to-people relationship has been decreasing over the last few years. According to a key informant, cross-border marriages started declining after the Maoist insurgency. He stated that *“Cross-Border marriages declined significantly during that period because Indians did not want to marry their daughters to Nepal due to the fear of getting killed.”* Likewise, border closure during the Covid-19 pandemic has also negatively impacted the trend. Similarly, several key informants have indicated that the controversies surrounding the process of naturalized citizenship in Nepal has also resulted in decline of cross-border marriages. Apart from these reasons, dowry system (which is stricter in the Indian side), prevailing nationalistic sentiments, economic disparity between the families in India and Nepal have impacted cross-border marriages. Currently, the cross-border marriages are mostly confined among the elites, rich, and businessmen¹².

¹² Findings from previous research conducted by CESIF on cross-border migration.

Like the trends of cross-border marriages, cross-border migration from both the countries have been on the decline. One of the main reasons for declining Nepal to India migration is the opening up of better paid employment opportunities in Gulf countries. Regarding migration of Indian labor workers to Nepal, the achievement of economic growth in India and better employment aspects in Indian markets have decreased the migration trend. The Covid-19 pandemic signified the asymmetric treatment among the Nepali migrant workers to India. The government launched a comprehensive reintegration plan to help returnee migrant workers re-integrate in the society. This plan, however, does not include the undocumented workers, which make up a majority of the migrant workers in India. Even though India is the top destination country for labor migrants, the government's labor policies generally exclude India-bound workers.

Economic Blockades

The borders act as lifeline for a landlocked country like Nepal and obstructing the daily supplies through the border paralyzes the daily lives of people (Tripathi, 2019). The economic blockades imposed by India in 1969, 1989, and 2015 crippled the Nepali economy and severely impacted the daily livelihood of Nepali people. After the economic blockade of 2015, Nepal realized its over dependence on India and signed a Trade and Transit Agreement with China in 2017. This also enhanced the anti-Indian sentiment in the grassroot level in Nepal.

Border Management and Cross-border Policies

Border policies are a strong determinant of cross-border relations. Throughout the years, the Nepal-India relations have seen several ups and downs as indicated by the border policies.

Through the treaty of 1950, both Nepal and India agreed to deal with foreign threats by devising effective security measures. The Indian Military Liaison Group (IMLG) was deployed in the northern borders of Nepal. Nepal acted as a buffer zone to India on the northern frontiers. After King Mahendra took the throne, he focused on the principle of 'equal friendship with both neighbors' rather than the 'special friendship with India'. Furthermore, he made attempts to seek aid from third countries, including China. Despite the efforts, Nepal was highly dependent on India. Nepal's decision to purchase arms from China was also viewed as a decision that went against the 1965 Arms agreement between Nepal and India. Furthermore, Nepal also introduced a work permit system for Indian workers in Nepal. All these incidents created a stalemate in the Nepal-India cross border relations which resulted in the border

blockade of 1989. Hence, this chain of events indicated a declining pattern in the 'interdependence and reciprocity in the field of mutual security' between the two countries (Murthy, 2009).

The period between 1990-2001 was a turbulent period for Nepali politics. It was during this period that the Armed Police Force (APF) was formed. The APF Act of 2058 highlighted that its main duties were 'To control an armed struggle occurred or likely to occur'. Similarly, they were also given the responsibility to maintain the security in border areas of Nepal¹³.

One of the important aspects of effective border management is establishing good coordination between the agencies responsible for border management. Currently, different governmental agencies such as customs office, Nepal Police, BOPs, Intelligence Departments, Immigration Office, Food and Plant Quarantine Offices, Water Division, and non-governmental agencies such as Maiti Nepal and Kin Nepal are working along the Nepal-India border. There is a need for establishing a chain of links among these actors through information sharing and unified coordination mechanisms.

One of the major problems highlighted during the household survey was the rude behavior of security officials stationed along the border areas. Around 76% of the respondents highlighted the behavior of security personnel as 'not good'. The misbehavior of security personnel towards the local people crossing the border is well documented by the news reports. There are also various instances of SSB harassing Nepali citizens, and APF harassing Indian citizens. The Ministry of Home Affairs has published a Home Administration Reform Action Plan -2078 with the objective of improving the departments under the ministry¹⁴. Under the policy and legal reform section, one of the actions outlined is drafting Border Security Act which is planned to be completed in a year. Nepal Armed Police Force along with the Home Ministry will be responsible for drafting the act. Looking at the recent trends of border management policies, it can certainly be argued that it is slowly moving towards that direction of high securitization and regulation.

13 APF Act of 2058, <https://bit.ly/3w3F7e1>

14 Dahal. M. (2022), e-Kantipur, <https://bit.ly/3qOKlqH>

Prevailing Anti-Indian Sentiments

The notion of Nepali nationalism has been primarily used to maintain a distinct boundary with outsiders (Bhandari, 2016). In the second half of the 20th century, cultural identity was used while expressing nationalism. Historically speaking, the annexation of Sikkim by India in 1970 largely impacted peoples' perception of India. This incident induced a sense of fear among the people and influenced them to perceive India as a threat to the national existence. Furthermore, Nepali Kings tried to exploit anti-India sentiments to consolidate power (Bhandari, 2016). For Instance, King Gyanendra's speeches echoed strong sentiments on the necessity of monarchy to preserve the existence of Nepal.

In recent years, engagements with India have started garnering more anti-Indian sentiments in the public¹⁵. The ongoing border disputes is one of the factors fueling such sentiments among the people¹⁶. Due to these factors, the Nepal-India relation which was built on shared history, culture, politics, and economy and trade has been changing.

Similarly, the media has also played a huge role in fomenting such sentiments among people. Misleading and inaccurate news reports can damage the cross-border people ties. For instance, in 2020, a video of a youth whose shaved head had 'Jai Shri Ram' and 'Death to Nepal PM' written, made rounds in social media. The video which was recorded in Varansi was also covered by the mainstream media. Upon further investigation, it was found that the youth was paid to spread hate by the religious fundamentalist groups. These kinds of false news create friction among the people¹⁷. Similarly, it is a well-documented fact that Nepal-India has resolved 98% of the border demarcation issues. Most of the current issues (apart from Kalapani and Susta) arise due to border pillars being swept away by the floods and encroachment from both sides into the no-man's land. These issues are often covered as political issues by the media of both countries. This sets a negative narrative and creates friction among the citizens of the both countries.

15 Rajan. A.K.V. (2020). Recurrent anti-Indianism in Nepal: Need to restructure bilateral ties. South Asia Monitor. <https://cutt.ly/EDPz5qV>

16 Anupam. B. (2020). 5 Factors Driving Anti-India Sentiment in Nepal. The Diplomat. <https://cutt.ly/JDPxEKf>

17 Paudyal. M. (2020). Fake news can destroy Nepal's relations with India, China and the US. My Republic, <https://bit.ly/3NySNE0>

C5. Cross-border trade and its impact on cross-border relations

Historically, the trade between Nepal and India happened through informal channels. These informal channels were based on cross-border familial ties. Cash flow was easier through these channels because line of credit was given through familial preferences¹⁸. Since both Nepal and India are transitioning economies, bi-lateral trade treaties, documentation process, and trade contracts have slowly replaced those informal channels based on cross-border familial ties. Hence, the trade relations based to cross-border relationships have transitioned into government dealings with geopolitical implications¹⁹.

C5.1. Overview of Bi-lateral Trade Dynamics

According to Bhandari (2010), the trade dynamics between Nepal and India can be studied in four distinct time phases: Prior to the 1816 Sugauli Treaty, From 1816 to 1923, From 1923 to 2002, and finally Post-SAFTA, BIMSTEC, WTO and other BTAs. So, for the purpose of this research we will be using the same approach to study the Nepal-India trade dynamics.

Nepal-India Trade Dynamics Prior to 1816

The Nepal-India trade dynamics prior to 1816 was mainly based on personal relationships and brotherhood. There were no specific treaties to dictate the trade between the two countries. India and Tibet were the two main trading partners for Nepal at that period. During this period British India was looking to expand the trade with Tibet, and most of the trading routes went through Nepal. It is noted that Nepali people acted as middlemen between British India and Tibet which benefited the people. According to some older documents, from 1807-1814, the total imports from India amounted to Rs 71000, whereas the total exports was Rs 364000²⁰.

Nepal-India Trade Dynamics Between 1816 and 1923

During the 1830s British India was adamant on signing a trade treaty with Nepal. However, due to various reasons no treaty was signed. After the rise of Jung Bahadur Rana in 1846, the trade relations with British India improved. Some of the major trading routes included Darjeeling, Purniya, Muzaffarpur. During this period, Nepal mostly focused on increasing its exports, which is also reflected in the trade data.

18 ORF. (2020). The Challenges Facing Nepal-India ties, <https://bit.ly/3qOLGxD>

19 Ibid

20 These are not the official data.

Nepal-India Trade Dynamics Between 1923 and 2002

The trade relations between Nepal and India during this period was dictated by several trade treaties to promote trade and commerce. The Treaty of 1923 between the Government of Nepal and British India was significant in the history of Nepal which helped remove customs duty in imports and exports²¹, provided the goods were the property of the Nepal Government and were required for the public services of the Nepal Government and were not for the purpose of any State monopoly or State trade (Chand, 2018). Likewise, the treaty also stipulated that *“No customs duty shall be levied at British Indian ports on goods imported on behalf of the Nepal Government for immediate transport to that country.”* According to Bhandari (2010), this treaty opened Nepalese market to India and third countries which impacted domestic production and also started increasing trade deficit with India.

The 1950 Treaty of Trade and Commerce laid the foundation for bilateral trade between Nepal and India. Through this treaty Nepal gained full and unrestricted right of commercial transit of all goods and manufactures through the territory and ports of India²². However, this treaty imposed certain trade barriers for Nepal. The Article V in the treaty states *“The Government of Nepal agree to levy at rates not lower than those leviable, for the time being, in India customs duties on imports from and exports to countries outside India”*²³ which restricted the trade to third countries through India. Similarly, the same article also highlights that *“export duty at rates sufficient to prevent their sale in India at prices more favorable than those of goods produced or manufactured in India which are subject to central excise duty”* which was aimed at protecting domestic industries in India, while undermining the Nepali interests.

The 1960 Trade and Transit Treaty helped incorporate Nepal's trade with third countries by providing transit facilities. Similarly, it also added provisions to control *“unauthorized trade, mainly smuggling of third country goods from Nepal into India and vice-versa.”* After the treaty expired in 1970, Nepal demanded a separate treaty focusing on transit. India did not accept this and instead resorted to the pressure tactics by imposing economic blockade on the border (Subedi, 1997). The Trade and Transit Treaty of 1971 replaced the earlier treaty. It allowed duty free market

21 Magar. S.G. (2021). Looking Back at the 1923 Nepal-Britain Treaty. Nepali Times. <https://bit.ly/3JYO-j7q>

22 Ministry of External Affairs, Government of India. Treaty of Trade and Commerce, <https://bit.ly/3NEDFFs>

23 Ibid

access to Nepalese goods in the Indian market but with a requirement of 90 percent Nepali or Indian material content. However, no separate treaty for transit was signed. Similarly, the ‘freedom of transit’ mentioned in the treaty had very limited implication and India controlled the amount of export and import.

In 1978, three treaties comprising Trade, Transit, and Control of Unauthorized Trade were signed. After the expiration of these treaties in 1988, the same scenario of 1969 repeated. India wanted a single bilateral treaty for trade while Nepal wanted separate treaties for trade and transit. This was one of the main reasons that fueled border blockade in 1988/89. After that, two treaties were signed in 1991 (trade and transit), which was replaced by the 1996 treaty, which was subsequently replaced by the treaty of 2002. Through the 1991 treaty, 15 trade transits were instated. All three treaties had some sort of provision of duty-free access to items manufactured in Nepal.

The treaty was last amended in 2009 and provides a list of key products for duty concessions. According to the Article V of the treaty, *‘special favorable treatment to imports into India of the industrial products manufactured in Nepal’*, and the Article VI highlights that *‘Nepal shall endeavor to exempt, wholly or partially, imports from India’*. Similarly, Nepal-India signed the Treaty on Transit through which India facilitates the trade in Nepal through third parties from the specified trade routes. To address the issue of illegal trade, Nepal-India signed an Agreement of Co-operation to control unauthorized trade. The agreement entails that *‘either of them would take all such measures [pursue independent foreign trade policies] to ensure that the economic interests of the other party are not adversely affected through unauthorized trade between the two countries.’* According to Gautam (2018), the trade treaties have been limited to tariffs and duty concessions which have limited the economic growth and sustainable trade between Nepal and India. Although a Nepal-India Inter-Governmental Committee meeting had agreed to review the bilateral Trade Treaty in 2018, no significant progress has been made regarding it.

The data indicates that trade flourished during these years. While analyzing the data from 1991/92 to 2001/02, the total trade (import and export) increased from \$107 million to \$507 million.

Post World Trade Organization (WTO)- Multilateral Trade Agreements

After Nepal and India became the members of WTO and other trade organizations like SAFTA, the trade between Nepal and India is mostly dictated by multilateral agreements. It is further argued that this will lead to a decrease in the importance of Nepal-India bilateral treaties and creation of more trading opportunities. Under the SAFTA (South Asian Free Trade Area) agreement the SAARC members offer zero duty to the products except those specified in the sensitive list²⁴. Although trade officials have claimed that SAFTA has helped Nepal to diversify exports, Nepal's export items have been fairly limited. The two top export products of Nepal are refined soybean oil and crude palm oil. The export of refined oils has very little significance to the overall economic development of the country as compared to other agricultural products such as cardamom and tea. However, the trend of Nepali traders importing crude oil from other countries and exporting the refined oil has been increasing. Similarly, BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation) has also opened an avenue to improve trade relations with India. If these platforms are utilized properly, Nepal can promote cross-border electricity trade and cross-border river transportation with India²⁵.

C5.2. Cross-Border Electricity Trade

The Government of Nepal and the Government of India signed an agreement in 2014 to enhance the cross-border power trade through transmission interconnectedness. According to the Article I of the agreement, *'it will enable cooperation in the power sector, including developing transmission interconnections, grid connectivity, power exchange and trading through the governmental, public and private enterprises of the two countries on mutually acceptable terms'*²⁶.

Finally, after 6 years of signing the agreement, India has opened its doors for buying the electricity from Nepal in 2021. The Ministry of Energy, Water Resources and Irrigation highlighted that India has approved Nepal to trade in Indian Energy Exchange Limited (IEX) for 39 MW electricity (24 MW from Trishuli Hydropower project and 15 MW Devighat Hydropower Project)²⁷. Nepal will trade through the Dhalkebar and Muzaffarpur transmission line

24 Retrieved from the Ministry of Foreign Affairs, Nepal at <https://mofa.gov.np/nepal-and-saarc/>

25 Nayak. S. (2022). A new year for India and Nepal: Can BIMSTEC be the key. ORF, <https://bit.ly/3qQRq9Z>

26 Agreement between Nepal and India retrieved from: <https://bit.ly/3tTfOd1>

27 Press Release by the Ministry of Water Resources and Irrigation retrieved from: <https://bit.ly/3NvX-Vch>

which was constructed by the Power Transmission Company Nepal Limited (PTCN), which is a subsidiary company under the NEA that is responsible for building the transmission systems between India and Nepal²⁸.

C5.3. Barriers to cross-border trade

Nepal has 27 major custom points and 132 smaller custom points along the Nepal-India border. The lack of proper infrastructure and logistic bottlenecks have created barriers for cross-border trade (Taneja et al., 2020). For instance, a study carried out by CUTS (2016) in the Panitanki-kakarbhitta border observed the low security of goods, lengthy time for processing and issuing certificates due to the lack of capacity, adequate personnel, and proper coordination between different agencies. Lengthy exporting process and custom procedures, lack of storage/quarantine facilities, hassles regarding certificate of origins have been reported as the major barriers of export (NRB, 2014). The major portion of Nepal's export items are perishable goods. Thus, lack of storage facilities at custom points along with strict quarantine policies by India have made it difficult for traders to export goods to India.

Similarly, lack of adequate market in India for Nepali goods is another major challenge for cross-border trade. Nepali goods do not have the ability in terms of price and quality to compete with the Indian goods. Similarly, frequent changes in duty concessions and tariffs as demonstrated by bi-lateral trade treaties have created a sense of confusion among the traders²⁹. The problem has also been significant due to the lack of knowledge among the traders and businessmen regarding the cross-border trade rules and regulations.

In regard to cross-border energy trading, although Nepal has promoted policies to develop hydropower, there is still a lack of concrete legal framework for trading the excess electricity to neighboring countries like India and Bangladesh. This can be attributed to the nationalistic approach of the politicians that value national sufficiency more than the potential to export (Malla, 2008).

C5.4. Impact of Trade on Nepal-India Relations

Historically, trade has played an important role in shaping the cross-border relations. In the past there was free trade which was dictated solely by good faith and close relations. In the contemporary world, trade treaties have a direct

28 Annual report published by NEA, retrieved from: <https://bit.ly/3iRHYPq>

29 Shrestha.G.R. (2003). Nepal-India Bilateral Trade Relations: Problems and Prospects, Ministry of Finance, <https://bit.ly/3qEwT8H>.

influence on the trade relations. The historical analysis of trade treaties between Nepal and India has made it evident that the primary objective of such treaties is to protect the citizens/traders of the respective country. Despite constant hurdles and disagreements, India continues to be the largest trading partner to Nepal. Nepal is highly dependent on the Indian markets even for the daily supplies.

One of the common factors in the economic blockades imposed by India was disagreement in trade treaties. This has promulgated anti-Indian sentiments among the Nepali population which has negatively impacted the bilateral relations. Similarly, experts argue that the trade treaties have tilted in favor of India. The growing trade deficit with India, which poses a serious threat to the economic security of Nepal has never been openly discussed.

One of the current major export products of Nepal has been soybean and palm oil. Nepal imports crude soybean and palm oil from different countries and exports the finished/refined product to India. India has frequently imposed bans on the import of edible oils as a geostrategic decision³⁰, and to protect its domestic industries³¹. The frequent ban imposed by India on the import of oils have negatively impacted Nepali traders³², and subsequently Nepal's economy.

C6. Shared resources and their impact on cross-border relations

Overview of Treaties and Joint Mechanisms

Sarada Treaty was signed by the British Indian Government and the Nepal government in 1920, to build a barrage in Mahakali river. The Nepal government agreed to give around 4100 acres of land for the construction of the barrage. Similarly, the Koshi Agreement of 1954 was focused on regulating the flow of water and ensuring flood management. India had to provide compensation for the Nepali land used in the construction and cover for the damages during the construction. India took the sole responsibility for controlling and managing the barrage and the time period for the Indian control was not specified. The lease period was later specified in 1966 for a period of 199 years. The Mahakali Treaty was signed in 1996. This treaty integrated the Sarada Barrage, Tanakpur Barrage, Pancheshwor Multipurpose Project. India had built the Tanakpur

30 Prasain. S. (2020). India's ban on imports of refined palm oil could kill Nepal's biggest export. The Kathmandu Post. <https://tkpo.st/2FzN3rY>

31 Business Line. (2021). COOIT urges Govt to ban import of refined edible oils from Nepal, Bangladesh, <https://bit.ly/3iaUdGI>

32 myRepublica. (2020). India expresses concerns over growing export of soybean oil from Nepal to India, <https://bit.ly/3INHKmY>

Barrage on a stretch of Mahakali river unilaterally without the consent from Nepal. This treaty legitimized the Tanakpur Barrage through the Mahakali Treaty (Lama, 2019).

Similarly, to address the issues of shared resources and to maximize the benefits for the bordering communities, Nepal-India has set-up joint committees. JMCWR (Joint Ministerial Commission for Water Resources), JCWR (Joint Committee on Water Resources), and JSTC (Joint Standing Technical Committee) are working to effectively implement the water treaties and agreements whilst also addressing problems such as flood. Likewise, another mechanism, JCIFM (Joint Committee on Inundation and Flood Management) works in forecasting and making communities resilient to inundation.

Hydro politics between Nepal and India

India has had a long hydro-hegemony over Nepal. While examining river communities from a geographical point of view, upstream states have the upper hand because they have influence and control over the water flow. However, the scenario can be reversed when the downstream states have more regional power. Although Nepal is an upstream state, India has more power and exploitation potential, creating an imbalance in the hydropolitical interaction. This hegemony of India is evident in the SDMP (Saptakoshi High Dam Multipurpose Project) and UKHP (Upper Karnali Hydropower Project) projects. In the MOU of these projects, it is highlighted that any withdrawal by upstream states requires prior approval from the developer (India), giving control of these projects to India (Tandan, 2021).

Disputes over shared resources

The water disputes are even more evident in the bordering communities along the Nepal-India border region. The upstream and downstream disputes flare up during pre-monsoon when the water is scarce in the bordering rivers and in the monsoon when the risk of inundation is high. The downstream communities in Bihar's West Champaran district have been alleging upstream communities of Budhnagar in Nepal for diverting the channels of rivulets separating these communities³³. People on the Nepali side claims that it is Nepal's water and they have the sovereign right over it and have total control over the water resources located within their borders. Similarly, people on the Indian side claim that they have natural right to water, meaning that any activities upstream that would

33 Siddiqui. S. (2017). India-Nepal border plagued by water troubles. The Third Pole, <https://bit.ly/373lc4f>

negatively impact downstream communities should be barred. The Mahalisagar barrage built by India along the Kaphlavanu district has resulted in the inundation of communities and farmlands in Nepal. The reluctance of Indian authorities to open the barrage gates during peak monsoon periods have been frequently inundating the Bhagwanpur, Rangpur, Bhainsaiya villages in Nepal³⁴. There are around 6000 small rivers and rivulets along the Nepal-India border. Although these are small rivers, the bordering communities are highly dependent on them for their livelihood.

C7. Border and security issues

The notion of border security is interlinked with national security. The cross-border movement of people, goods, and capital has brought along different security challenges for the states to deal with. The porous border between Nepal and India has further exacerbated border security issues. The border security concerns between India and Nepal have been shaped by two aspects: India's desire for mutual security which derives from the geo-political significance of securing northern borders, and Nepal's desire for mutual coexistence with both India and China. As the world becomes more globalized, additional border related challenges have emerged.

C7.1. India's Security Concerns

Growing Chinese Presence in Nepal

During the monarchy, China's involvement was limited to state-to-state level. The scenario has changed, and their presence can be seen in most institutions including the Nepal Army³⁵. Chinese presence has increased significantly since 2006, in the form of post-war recovery support. Furthermore, growing pro-Tibetan demonstrations in Nepal during 2006 was also a driving factor for the Chinese engagements in Nepal. After President Xi came into power, Chinese diplomacy in Nepal was driven by three main objectives: strengthen economic and political ties to decrease Nepal's dependence on India, develop Nepal as a transit station in South Asia, and make South Asia China-centric³⁶.

The increased high-level visits along with the increased aid and investments are the indicators of growing Chinese presence in Nepal (Ghimire, 2019). Between

34 Ghimire, B., & Giri, A. (2021). Nepal must pursue inundation issues with India year-round, observers say. *The Kathmandu Post*. <https://bit.ly/3uKpA0r>

35 Nayak, N. R. (2017). China's growing military ties with Nepal. *Sikkim Express*, <https://bit.ly/36bJt8w>

36 Gokhale, V. (2021). India's Fog of Misunderstanding Surrounding Nepal-China Relations. *Carnegie India*, <https://bit.ly/3JJZAbX>

2001 and 2011 there was only one high-level delegation visit to Nepal by the national defense minister, Chi Haotian. The number significantly increased after 2011. Similarly, according to the 2019 FDI data, China was the top investor in Nepal (Rs 1260.64 billion) as compared to India's Rs 941.11 billion (Neupane, 2020). In the last three fiscal year data, China has surpassed India in the aid disbursement category as well³⁷. Nepal signed TTA (Trade Transit Agreement) and BRI (Belt and Road Initiative) which are also significant landmarks in the Nepal-China relations.

Historically, Nepal has served as a buffer zone between India and China. So, India has become suspicious of the growing Chinese presence in Nepal and is afraid that China is getting control of the countries in India's backyard. This presents a significant security threat to India. Different connectivity projects along with increased Chinese investments in Nepal means that people along the southern border districts will be more exposed to Chinese goods and Chinese markets. According to an interview with a local person, *"In the last few years, the availability of Chinese goods has significantly increased in terai region. Hence, the trend of procuring Chinese goods has also increased."*

Rise of Anti-Indian Sentiments

India believes that the growing anti-Indian sentiment is another issue that is linked with Chinese presence in Nepal. Various Indian media have argued that China has been funding organizations in Nepal to spread and foment anti-Indian protests along the Nepal-India borders³⁸. Likewise, Indian army chief (referring to the Kalapani border disputes) has openly suggested that *"Nepal might have acted on behest of someone else"*³⁹.

The difference in the perception of Nepali people and Indians is also one of the factors in the rise of anti-Indianism. People of India perceive Nepal as being unappreciative of support provided by India, whereas Nepalis perceive India as insincere and dismissive of Nepal's demands⁴⁰. India has been fearful that growing anti-Indian sentiments would push Nepal from its sphere which would lead to strengthening Nepal's ties with China.

37 Findings from previous research conducted by CESIF

38 The Tribune. (2020). China funds anti-India stir along Nepal border, <https://bit.ly/3JtrlFf>

39 India Today. (2020). Countering China in Nepal and the Neighborhood, <https://bit.ly/3ipxh6l>

40 Rajan. A. K. (2020). Recurrent anti-Indianism in Nepal: Need to restructure bilateral ties, <https://bit.ly/3L2rIaf>

Terrorism

The US State Department's 'Country Report on Terrorism 2018' highlighted Nepal as a hub for Mujahideen operatives to carry out terrorist activities against India⁴¹. The open border along with weak security protocols in Tribhuvan International airport has made Nepal a potential transit state for the terrorists. There have been multiple instances of terrorists arrested along the Nepal-India border region^{42,43,44}. According to previous reports, Birgunj has emerged as a hub to distribute counterfeit currency, explosives, and narcotics to India through Bihar⁴⁵. India has been working to strengthen bilateral cooperation through joint-operations and intelligence sharing to address these issues. Similarly, both Nepal and India have jointly established Nepal-India Bilateral Consultative Group on Security Issues (NIBCGSI). The 14th meeting of NIBCGSI held in 2021 mainly focused on the capability building requirements of security forces in Nepal. The Indian Home Ministry has established 11 additional Border Out Posts (BOPs) to the already existing 500 BOPs along the Nepal-India border⁴⁶. Similarly, SSB has also been given responsibility to check passports under the Passport Act to filter out terrorists from third country nationals using fake passports⁴⁷.

Madrasas

There are around 907 registered madrasas in Nepal⁴⁸. The unofficial number is believed to be around 4000-5000, of which a majority are operating along the Nepal-India border⁴⁹. Indian government often perceives madrasas within the sphere of growing Islamic fundamentalism and terrorist activities. Indian security officials believe that madrasas are funded by Pakistan's Inter-Services Intelligence (ISI) and other organizations working abroad which aims to decimate anti-Indian sentiments in the communities. So, the CTCR (Counter Terrorism and Counter Radicalization) Division overseen by the Home Ministry

41 Country Reports on Terrorism 2018 published by United States Bureau of Counterterrorism, <https://bit.ly/3IuIpJK>

42 Times of India. (2020), Delhi: Special cell nabs 3 with links to IS, <https://bit.ly/37QziGO>

43 Deccan Herald. (2017), SSB arrests Hizbul Mujahideen terrorist from Indo-Nepal border, <https://bit.ly/3D4onF6>

44 The Economic Times. (2018), Delhi Police arrests batla Terrorist near Indo-Nepal border, <https://bit.ly/3Jv0pVN>

45 Singh. A.K. (2022). Subversion Sans Borders. Outlook, <https://bit.ly/3IN78t0>

46 Data Obtained from Sashastra Seema Bal (SSB) website, <https://bit.ly/3ws0Xba>

47 ORF. (2013). Nepal: Terrorist arrests and cooperation with India, <https://bit.ly/3qrHkw3>

48 Figure from a report titled Education in Figures published by the Ministry of Education, Science, and Technology, <https://bit.ly/3qrjGQs>

49 Taylor. M. (2021). Neglected by the State Broken by the Pandemic. The Record, <https://bit.ly/3JsivaS>

has been tasked with monitoring the madrasas along the Nepal-India border region. According to a high-level Nepal Police official, *“India always raises the issue of Madrasas during the joint meetings, and requests Nepal to closely monitor their activities during joint security meetings.”* However, there are no concrete evidence pointing to terrorist activities linked with madrasas⁵⁰.

C7.2. Nepal’s Security Concerns

Outstanding Border Issues

The unresolved border disputes in Kalapani and Susta region have had political implications which has further impaired the bilateral relations. Despite having an open border, Nepal and India have addressed all the major border issues apart from Kalapani and Susta⁵¹. According to the FIG Report (2013), most of the current border related disputes between Nepal and India have resulted due to the *“selection of insufficiently defined or unstable geographic features for describing the boundary lines”*⁵². The Kalapani dispute is a result of the disputed source of Mahakali river, whereas the Susta dispute is due to Gandaki river changing channels.

Vulnerable mobilities⁵³

The major concern for Nepal is the inflow of drugs from India due to the high demand of illegal drugs among the youths in the southern border districts. Similarly, human trafficking, trafficking of small arms and explosives, crimes related to CITES, fake currency, and kidnapping are also prevalent in the border areas. According to a high-level police official, *“Recently, instances of cybercrimes are also increasing in the border areas, which mainly includes online threats and blackmailing”*.

Furthermore, according to a report by UNODC (United Nations Office on Drugs and Crime), border areas with UP, Bihar, and West Bengal are vulnerable to human trafficking⁵⁴.

Smuggling of consumer goods into Nepal by evading customs has been a cause of concern for Nepal. The high dependency of Nepali people on the Indian markets along with the insufficient number of custom points along the border have facilitated the smuggling. Although there is no official data on the total

50 Findings from previous research conducted by CESIF.

51 Findings from previous research conducted by CESIF

52 FIG. (2013). International Boundary Making, <https://bit.ly/3tUgi2C>

53 Vulnerable Mobilities include illegal migration, refugee inflow, smuggling of goods, metals, arms, drugs, and counterfeit notes, human trafficking, animal trafficking among other sensitive cross-border movements

54 Ibid

amount of trade happening through informal channels, it is estimated that informal trade by volume is higher than the trade happening through formal custom points⁵⁵. One of the reasons as highlighted by a key informant is that of insufficient custom points. He said that *“Due to insufficient custom points, people wanting to trade through formal channels face issues of transportation to the nearest custom points.”*

Water Resources

To protect its citizens, India built around 2400 miles of embankments in Bihar. Similarly, they have also built dams to utilize the water for irrigation purposes. However, the embankments built by India block the water, inundating the communities in Nepal. Nepal has complained that these embankments were built unilaterally and goes against the international guidelines on water sharing⁵⁶.

C8. Ways to enhance people to people relationship

People-to-People relationship is the building block of the Nepal-India bi-lateral relationships. Political (state to state) and bureaucratic relationships play an important role in shaping the people-to-people relationship. The decisions made at the central level and how these decisions are enforced can have significant implications at the local level. For instance, after Nepal Communist Party introduced a revised Citizenship Bill which highlights that Indian marrying a Nepali citizen can only get the citizenship after 7 years⁵⁷ which resulted in the decrease of cross-border marriages. Like state-to-state relations directly impacting people-to-people relations, vice-versa is also true.

A key informant highlighted that to enhance people-to-people relationship, *“Nepal must have a strategic engagement with Bihar in cultural, social level”*. Hence, to improve the cross-border relations, it is important to enhance the cross-border people ties.

Border management rather than absolute control

Nepal's border management policies and practices need to account the transnational ties of local communities on either side of the border. The cross movement of people and goods has shaped the cross-border relations and has strengthened the diffusion of ideas, culture, belief system and settlements of people in each other's territory strengthening the social and cultural relations

55 Jha. H.B. (n.d), Nepal's Border Relations with India and China, <https://bit.ly/37WB4WM>

56 The New York Times. (2021). As Deadly Floods Engulf Nepal Border, Anger Turns to India, <https://nyti.ms/3L4xCrn>

57 Pradhan. A. (2020). Nepal's unequal citizenship law. Nepali Times, <https://bit.ly/3IRtWYu>

of people. Any restrictive provisions on the cross-border movement of people and goods directly impact the livelihood and familial ties of people. Nepal being a landlocked country, the eased cross-border movement of goods hold benefits from economic dimensions. This entails that absolute border control or restrictive provision may have direct impact on socio, cultural, economic and familial ties of people and impact the intact cross border relations. However, better management provisions to curb the border anomalies including the human trafficking, goods smuggling, cross-border crimes among others should be strengthened without hampering the flow of goods and people.

Border disputes

The issues surrounding the border demarcation and border encroachment has been widely discussed, connecting it to national sovereignty, territorial integrity and as a threat to national security. The clear territorial disputes have surfaced in multiple border points. In 2019, the then Home Minister stated in a parliamentary committee that India has encroached 372 kilometers in Limpiyadhura, Kalapani and Lipulekh areas. Similar disputes have surfaced in disputed territory of Susta over the construction of roads by India in 2018. In May 2020, Nepal released a new political map including Kalapani, Lipulekh and Limpiyadhura inside Nepali borders. These long-standing border disputes and unofficial economic blockade by India in 2015 fueled the anti-Indian sentiment in Nepal. This has rampant implication in the cross-border ties of people with increased suspicion on the communities of either side. In addition to these border disputes, field studies to various bordering districts signify encroachment of no man's land either for unregistered settlement of people or construction of temporary or permanent infrastructure. This needs a state level initiative and bilateral conversation to come to consensus and solve the existing issues.

Collaboration through joint mechanisms on cross-border issues

Nepal-India has various state level collaborative mechanisms in different thematic working areas to ensure the cooperation and settlement of any related disputes. Regarding border demarcation, The Joint Technical Committee (JTC) has resolved boundary demarcation and disputes between the two countries and endorsed a strip map consisting 98 percent of Nepal-India boundary. A joint Border Working Group (BWG) was formed in 2014 to resolve the issues of border demarcation, repair and replacement of boundary pillars, and clearing of no man's land. In 2018, BWG again agreed to resolve the border issues and possibility of using satellite images in boundary survey. However, the proceeding of this mechanism has been halted and a meaningful involvement in bilateral conversation and interest from the state level is required to resolve these matters.

Currently, Nepal-India Joint Commission remains the prime bilateral collaborative mechanism for discussion on bilateral issues whose last meeting was held in January, 2021. Likewise, there are other sectoral bilateral collaborative mechanisms like JMCWR (Joint Ministerial Commission for Water Resources), JCWR (Joint Committee on Water Resources), and JSTC (Joint Standing Technical Committee) entrusted to implement the water treaties and agreements whilst also addressing problems such as flood. Another mechanism, JCIFM (Joint Committee on Inundation and Flood Management) works in forecasting and making communities resilient to inundation. These channels should be effectively utilized by both the parties to resolve any disputes and incidents to enhance the cross-border ties.

Strengthening development cooperation

India has remained a crucial development partner at both macro and micro level in Nepal. This development assistance from India has remained an important aspect in cross border people to people ties. Indian assistance has helped to establish Emergency and Trauma Center in Bir Hospital, Manmohan Memorial Polytechnique at Biratnagar, and B.P. Koirala Institute of Health Science in Dharan. Furthermore, India has been assisting in the construction of border infrastructure. India has proposed Integrated Check Posts at four points on Nepal-India border at Birgunj-Raxual, Jogbani-Biratnagar, Nepalganj-Rupaidiha and Sunauli-Bhairahawa. Out of which Birgunj-Raxual and Jogbani-Biratnagar are already in operation which Nepalganj-Rupaidiha is under construction.

MoU has been signed to construct railway infrastructure at five points along Nepal-India border. Substantial progress has been made on Janakpur-Jainagar and Jogbani-Biratnagar sectors while preliminary works have been started on other sectors from both sides. India have also been assisting in construction of Terai roads. These assistance in advanced cross border infrastructure and logistics help to enhance the shared pursuit of trade enhancement, economic ties and people to people relation. Further cooperation on border infrastructure is an important prerequisite to enhance cross-border ties.

Discriminatory Citizenship provisions

The citizenship provision has been an important aspect of cross-border relations and familial ties of people. The restrictive citizenship policy of Nepal to the immigrants of India and discrimination on the same has deprived a segment of people, especially marginalized people in the terai region from access to citizenship. The dilemma and uncertainties surrounding the naturalized citizenship provisions has significantly reduced the cross-border marriages in

terai region. Cross-border marriages have historically been a glue to hold cross border familial relationships. As high as 72% of the respondents mentioned uncertainties surrounding naturalized citizenships, and the unclear prospect of citizenship for children of naturalized parents and parents who obtained citizenship by birth has significantly reduced cross border marriages. A revised citizenship bill introduced in 2020 provisioned citizenship to foreign female married to Nepali men after residing minimum seven years in Nepal⁵⁸. Key respondents report that rather than proposed provision of seven years, the uncertainties in the provision now and then, and discrimination in citizenship provisions is a major factor to reduce cross-border marriages.

Proper Communication of Information regarding joint mechanisms

Nepal and India have signed multiple bi-lateral treaties, formed joint-mechanisms, and conducted joint-meetings regarding various bilateral issues. Furthermore, the officials from both sides of the border sit for regular joint meetings at a local level and agree on new provisions or strengthen existing provisions and mechanisms on border management. However, details and outcomes of such mechanisms rarely reach the local communities. There are difficulties among local borderland people to access information and it leads them to unnecessary hassles in cross-border mobility. According to a key respondent, *“Nepal and India have signed different treaties regarding the cross-border mobility, and each time they have different clauses. Local people are unaware about the details regarding these regulations. New provisions are introduced in the border, they sit for joint meetings and decide, we do not know about the new provisions and face problems.”*

Border side communities are the people who are primarily impacted by border management practices and policies. However, local people are seldom consulted in formulating such policies or protocols. Sometimes this leads to unfriendly border management provisions. The formulation of policies and practices that override the ground realities directly impact the livelihood of borderland people. Formulation of border practices or policies and alternation of existing one, should consider the representation of local communities who in turn are the prime sufferers of such provisions. Border communities should be effectively communicated about the outcomes of the joint meetings and any new provisions on cross-border mobility in a timely manner.

58 However, this bill has not been passed by the parliament.

Soft skills of border officials and racial discrimination

68% of the respondents reported that they have been misbehaved or harassed by the border officials while crossing the border. They also reported the family members from the Indian side of the border are unnecessarily misbehaved while they cross the border to meet the family and kins on the other side. Some even reported the use of discriminatory slangs and words from the border officials based on their identity and geographic location. Since the people of either side of the border share similar physical appearance, culture and dress habits, these factors remain an unnoticed aspect of cross-border ties. There is a need for effective training on soft skills to the border officials and change their inferior attitude towards the border side people.

Public to public platforms

Most of the key respondents and participants in the stakeholders meeting indicated the lack of common institutional platforms to engage cross-border residents of either side. Although the economic, social and familial ties are linking factors at one level, the cross-border engagement in various clubs or committees at people level could enhance the cooperation among people residing on either side of the border. It can also solve some conflicts surrounding shared resources. Sport events among the cross-border villages, cultural programs among others could be bridging platforms.

Conflicts surrounding shared resources and inundation

56% of the household respondents report they have either experienced or are aware of some sort of cross-border conflicts at the micro level. The major factor for cross border conflict is inundation. The changing course of rivers and rivulets create disputes among the local citizens over the land ownerships. Furthermore, the construction of infrastructures, especially small dams and roads results in flooding in the Nepalese side of the border, leading to conflicts with the Indian counterparts. In addition, issues of water sharing for agricultural use is another conflicting factor among the cross-border communities along the border line during the agricultural seasons. Further, the changing course of the river not only raises disputes over the land, but in some instances degrades or floods away the border pillars. The installation of border pillars afterwards becomes a critical issue, in many instances leading to the encroachment of Nepali land. In addition, encroachment of no man's land and infrastructure construction in no man's land have also been reported. In such instances, the clear demarcation of border lines while reinstalling the pillars and joint mechanisms involving the local residents to deal with issues of shared resources and inundation is required to facilitate smooth cross-border ties.

Vulnerable mobilities

The pressing problem surrounding the cross-border ties are the vulnerable mobilities. The issues of cross border crimes, human trafficking and the drugs mobility have become pressing challenge from the border security domain as well as cross border ties. The illegal mobility of weapons, currency and uncontrolled migration and threat of third country refugee inflow has severe security complications. This has also generated a perceived suspicion of communities on the other side of the border. Misuse of alcohol and drugs also generates disputes among the cross-border communities.

Threats of human trafficking, smuggling of weapons and currency, refugee inflow and cross border terrorism are macro level problems and requires the effecting border monitoring, border management, real time information exchange, technological advancement and border surveillance mechanisms.

Fake news and media manipulation

In the later period, the widespread circulation of fake and fabricated news on the media and social networking sites has threatened the Nepal-India bilateral ties. The increased access to information technology and social sites has enhanced the circulation of fake information in a geometric manner. Fake news incidents were rampant, especially in the Indian media after Nepal released a new map including the disputed territories of Limpiyadhura, Lipulekh and Kalapani. Circulation of fake news not only creates a manipulated narrative on the general public hampering the bilateral ties but triggers acrimonious reaction from the other side. Media from both the countries should be sensitive to circulate speculative news and contents further enhancing the trust deficits among the citizens of two countries.

Increase customs and transit points

Nepal shares 1800 km long borders with India. There are currently 27 major customs point along the border and 132 smaller transit points. Given the size of the border line, key stakeholders recognize the need to expand the custom points in order to facilitate the local movement of people and goods and to incorporate them under custom taxes. In some stances, during cross-border mobility, local people have to travel a long distance to reach the custom point which has encouraged them to evade customs duty. This is the reality for residents of both sides of the border. One of the key respondents mentioned – *“There are no customs offices everywhere in the border. We don’t get fertilizers in Nepali market. While transporting from India we have to transport it a long route to the customs office which is costly. We simply bring it from across the border. Theoretically we become*

unintended smugglers.” Increasing the number of customs points on one hand may increase the government revenue and on the other hand help to curb the intended or unintended custom evasion.

Role of provincial and local bodies

Although the Constitution of Nepal does not envision border management and cross-border relations within the jurisdiction of provincial and local bodies, these bodies have a role to play in enhancing the cross-border relations as they are close to the people and ground realities. These bodies can perform facilitating roles and perform communication functions for effective border management. They can help mediate as representatives in local conflicts over shared resources and act as a watchdog of any sort of cross border discrepancies. They can extend their role in information exchange and promotion of civic engagement culturally. The role of provincial governments and local bodies in Para diplomacy has been increasingly recognized to facilitate cross border people to people ties.

D. ANALYSIS AND CONCLUSION

Understanding Nepal-India border

The understanding of Nepal-India border has different multifaceted aspects comprising political, bureaucratic, and socio-economic dimensions. Hence, to understand the border dynamic and cross-border people ties, it is important to analyze the relations through a multi-perspective lens.

The political perception of borders is closely linked with the notion of sovereignty and territorial integrity. Borders are often used as a tool to protect its citizens and defend the state territories. The border closure which was enforced during the Covid-19 pandemic is an example of how borders acts as a tool for national security. Similarly, the political borders have also been used as a geo-political tool. The border blockade imposed by India subsequently in 1969, 1989, and 2015 is an attestation of the phenomenon. The border blockades, which are often referred to as ‘economic blockade’ or ‘trade embargo’ reflects the interconnectedness between Nepal and India. Since Nepal is highly dependent on India for trade and commerce, the impact of these incidents were severe on the people. These events disrupted the daily livelihood of the people. So, the border blockade demonstrates two major aspects: it being used as a geopolitical tool for bi-lateral diplomacy, and the high dependence of Nepal on India.

While the political perception mainly focuses on bi-lateral relations of Kathmandu and Delhi, the socio-economic perception highlights how borders

are perceived at the local level. One of the important aspects of socio-economic perception is that it encompasses the long-standing interconnectedness between the two communities. People, especially residing in the bordering communities, view borders not just as a physical demarcation. For the landlocked countries like Nepal, border acts as a lifeline. Furthermore, the open nature of the border has facilitated the cross-border movement, trade, and commerce which has historically shaped the cross-border people ties.

Through the Bureaucratic perspective, the border is largely viewed as a security concern. Bureaucrats perceive borders as a threat to national security and sovereignty. Different threats that arise from the border are border encroachment, uncontrolled migration and refugee inflow, cross-border crimes, and demographic shift among others. Hence, to address these concerns different state institutions have been formed.

The political, bureaucratic, and socio-economic components are all interlinked with each other. The perception of borders at any one domain has direct implications on the others. For instance, the border blockade as a tool for geopolitical diplomacy disregarded the socio-economic implications, hence impacting the daily livelihood of people. Likewise, viewing borders solely as a security concern for the country and introducing strict border management policies accordingly, disrupts the cross-border ties. Thus, the understanding of borders should not just focus on studying each component individually, rather it should focus on how each component is co-related and focus should be on managing the border based on ground realities.

Changing perception of Nepal-India border

The understanding of borders has been an evolving phenomenon. The concept of borders as a physical demarcation was imported from British India. Prior to 1816, borders were signified by spiritual, military, and economic components. There were no concrete physical lines separating the boundaries. Since the signing of the Sugauli Treaty, borders as a physical line have been instilled in the Nepali society. Due to various political developments over the period of time, the notion of borders as a physical demarcation has intensified. One of such development is border blockades, which has forced people to develop mental borders. Similarly, border closure during the pandemic has further institutionalized the concept of borders at the local level. The implications of such changing perception on borders translates directly on to the people-to-people interactions.

Factors shaping cross-border relationship

Factors such as shared history and culture, cross-border marriages, cross-border migration, economic dependence, bi-lateral treaties, high level visits, shared resources, border management practices, and border disputes have shaped the people-to-people relationship. These factors can be broken down into political (bi-lateral treaties, border disputes), socio-economic (shared history and culture, cross-border marriages and migration, economic dependence, shared resources), and bureaucratic (border management policies). The cornerstone of cross-border relations can be considered as the shared history and culture, which facilitated cross-border migration and cross-border marriages. Currently, political and bureaucratic aspects have an increasing influence on the cross-border relations.

Trends in cross-border relationship

There has been a significant shift in the political landscape of both India and Nepal. The changes in political level have a ripple effect on the people-to-people relationship. Cross-border migration and cross-border marriages are important indicators of Nepal-India relations. The recent trend shows that both phenomena have been declining. The decline in the cross-border marriages can be attributed to the strained Nepal-India relations, border blockades, dowry system, and inconsistent naturalization citizenship provisions. Likewise, a significant shift in migration pattern can be observed after the 1990s, when Gulf countries emerged as a prime destination for labor migration.

Cross border trade and its impact on cross-border relations

Cross-border trade has been an important aspect of bi-lateral ties between India and Nepal. Historically, trade was conducted through informal channels, mainly on the basis of familial ties. The scenario has changed as trade is mostly dictated by bi-lateral trade treaties. However, the growing trade deficit has been a major concern to Nepal. One of the shortcomings of trade treaties is that their focus has been limited to concessions and tariffs, while the gloomy problem of trade deficit has been largely ignored. Although local businesses can benefit from the concessions provided through bi-lateral treaties, they lack resources and capacity to directly compete in the Indian markets.

Furthermore, occasional policies put forth by India such as banning the import of refined soybean and palm oil, to protect its domestic industries have negatively impacted the businesses in Nepal. This asymmetry in trade policies has pushed Nepal to look for better market options. To address the bi-lateral trade relations, there is a need to recognize the changing dynamics in trade (from informal

channels to formal channels), and set up effective mechanisms to enhance the trade through formal channels which will ultimately be beneficial to both India and Nepal. Similarly, Nepal has started producing excess electricity. Hence, establishing proper frameworks and guidelines to export excess electricity to India will further enhance the cross-border relationships.

Security threats related to the border and conflict over shared resources

The growing Chinese presence in Nepal is perceived as a major threat by India. Hence, China's role has become increasingly important in shaping Nepal-India relations. Similarly, growing anti-Indian sentiments is another concern. India believes that these sentiments could push Nepal away from its sphere and build a closer alignment with China.

The outstanding border issues with India is one of the major security issues for Nepal. These issues are perceived as a direct threat to its sovereignty and independence. The border issues have long remained unresolved because unstable geographical markers as border points. Although it is strictly a political issue, it creates a chain reaction impacting the cross-border people ties. As long as it remains unresolved, it creates a sense of unease and mistrust among Nepali people towards India which slowly builds into anti-Indian sentiments, ultimately impacting people-to-people relationship.

Cross-border crimes and disputes over water resources are perceived as security issues by both Nepal and India. The unregulated border has facilitated cross-border crimes such as smuggling, human trafficking, kidnapping, among others. However, highlighting open borders as the sole reason for cross-border crimes does not give a complete picture. Lack of surveillance mechanisms along with the lack of proper coordination among agencies responsible for border management are the two major reasons for cross-border crimes.

Water resources are an important aspect that has historically built relationships among upstream and downstream communities living along the border areas. However, water has become increasingly politicized. India's hegemony to reap maximum benefit from these resources has undermined Nepali people's water interests. Provisions such as building dams along the border areas to protect its citizens while neglecting its impact on Nepali communities has created disputes among the cross-border communities. Despite having different joint mechanisms to address these issues, water disputes continue to flare up especially during monsoon season. Water which is an important source for the livelihood for the people in both India and Nepal has now become a dividing factor among these communities.

Ways to enhance cross-border people to people relationship

Nepal-India cross border people to people relations is a unique aspect of Nepal-India bilateral relationship. However, in the later years Nepal-India cross-border relations is undergoing a significant upheaval. The shift in border policy from unregulated 'open' border to regulatory mechanisms through various border management practices have a direct impact on the poor and marginalized communities living alongside the border and cross-boundary people to people ties. The cross-border mobility for livelihood and historic economic, social, cultural and familial ties among the cross-border residents is a reality. In this stance, strengthening the cross-border people to people ties is significant to effective border management and strengthening bilateral relationship with India in a macro level. However, timely and strengthened regulatory mechanisms is mandatory to control the vulnerable mobilities – cross border crimes, goods smuggling, human trafficking, threats of terrorism, smuggling of arms, foreign currencies, third country refugee inflow, uncontrolled migration and associated demographic shift among others.

The introduction of new border management practices or modification of the existing ones should account the ground realities and cross-border people to people ties. As an important aspect of livelihood of border side communities is cross-border mobility, it should be ensured the border management practices do not impact the livelihood of borderland people, especially the poor and marginalized groups.

Although the Joint Technical Committee (JTC) has demarcated 98 percent of Nepal-India border line and prepared a strip map, there are border disputes in some places like Kalapani, Limpiyashura, Lipulekh and Susta. There is another pronounced issue of encroachment of no man's land. The politicization of border disputes, fueled by the unofficial economic blockade by India in 2015 has enhanced the anti-Indian sentiment in Nepal. Borders are often symbolized within the domain of national sovereignty and territorial integrity. There are issues of inundation and conflict over shared resources. This has ample implication on the cross-border people ties and suspicion on cross border communities among their counterparts. These state level issues should be resolved through the joint bilateral mechanism. Nepal should make efforts for bilateral talks to find a solution through the existing joint mechanisms or formation of other state level joint mechanisms.

Top level bureaucrats and policy makers in Nepal have historically perceived immigration from India as a threat to national sovereignty, national integrity, demographic shift and ethnonationalism. This has resulted in restrictive citizenship provisions and for a long period of time and uncertainties on the naturalization process has impacted cross-boundary familial ties, especially cross border marriages.

India remains one of the largest development partners for Nepal. Strengthened development cooperation in the border infrastructure is crucial to reduce the vulnerable mobilities and other border anomalies. This also entails joint mechanisms on border management and border surveillance.

In the later period, wide circulation of fake news and media manipulation through formal news channels and social sites, mostly from the Indian side has played a role to dilute cross-border people to people ties, especially after the release of a new political map of Nepal by the government of Nepal. The sensitivity of these activities should be duly considered and circulation of fake news and media manipulation should be curbed.

There lacks a mechanism to disseminate the information regarding the outcomes of joint bilateral mechanisms to the borderland communities who remain the prime stakeholder. It is also reported that there is no effective communication channel to communicate with the borderland communities about the outcomes of timely joint meetings of the officials at the local level and they are not consulted on the issues to be discussed on such occasions.

Borderland communities report the inhuman and discriminatory behavior of border management officials during cross-border mobilities. The soft skills training to the border officials should be enhanced. Further, female security personnel at the border should be increased.

The cross-border people to people ties could be strengthened through the joint engagement platform for the both sides of borderland communities. The cross-border clubs, joint sports events, joint social service entities could enhance the special cross-border ties. The cross-border engagement in various clubs or committees at people level could enhance the cooperation among people residing on either side of the border. It can also solve some conflicts surrounding shared resources.

The Para diplomatic function of provincial and local bodies is increasingly recognized although they are not delegated authorities on border management or bilateral relations. They can play a role in information exchange and mediate among the federal government and citizens on border issues. Further, they can aware the citizens on vulnerable mobilities and collaborate with security forces on curbing smuggling, drug abuse, human trafficking within their jurisdiction.

This research has indicated that the perceptions regarding the border and cross-border relationships have drastically changed in the last few decades and the border is being redefined in terms of its changing functions. The political, bureaucratic, and socio-economic landscape of both India and Nepal has changed. Furthermore, the recent Covid-19 pandemic has indicated the vulnerabilities regarding the border. Nepal and India should focus on redefining the ties to address these changing dynamics at political, bureaucratic, and people-to-people level.

E. RECOMMENDATIONS

1. Bureaucrats and top-level policymakers should account for the grassroot realities and historic cross border ties of borderland communities while introducing border management policies and practices. The transnational livelihood of borderland communities should be prioritized. In such cases, special attention should be paid to Dalits, Muslims, Minorities, and people from marginalized and oppressed groups.
2. The border disputes at certain strategic points including Kalapani, Limpiyadhura, Lipulekh and Susta should be resolved through bilateral mechanisms. For this, Nepal government should initiate talks through joint Border Working Group (BWG).
3. Other local issues in border related problems including missing pillars, dislocation of border pillars, renovation of degraded pillars, encroachment and infrastructure construction on man's land should be resolved through bilateral mechanisms. This issue negatively impacts the cross-border ties.
4. The engagement in sectoral joint mechanisms including water resources, trade, power supply, border management, cross-border crimes among others should enhance effective communication, border management and nourishment of bilateral relations.

5. Bilateral development cooperation on border infrastructure and local development should be strengthened for effective border management, control vulnerable mobilities and strengthen cross-border relations.
6. Develop consistency in the citizenship provisions for the immigrants of Indian origin, especially on the naturalized citizenship process. It has a direct impact on cross border marriages.
7. Sufficient attention should be paid to control the fake news and media manipulation that impacts the bilateral ties.
8. There should be effective information dissemination mechanisms regarding the outcomes of engagement in bilateral joint mechanisms and cross border joint meetings at the local level. It should be ensured local people have access to information and updates on bilateral joint meetings of border officials at local level.
9. Customs and transit points along the border lines should be increased to ease the flow of goods and people.
10. There should be a focus on strengthening the capacity and resources of local businesses, to take full advantage of duty concessions and tariffs provided through bi-lateral and multilateral treaties.
11. Developing mechanisms to streamline the documentation process to cut down lengthy exporting process and establishing well-equipped storage facilities for perishable goods would ultimately facilitate the export.
12. Special attention should be paid to the soft skill development of officials deployed in border management. Discrimination and inhuman behavior towards the borderland community at the border points should be discouraged.
13. Civic spaces for the engagement of cross-border residents should be promoted. This would further strengthen the cultural and social ties of people.
14. Threats of vulnerable mobilities including human trafficking, smuggling of weapons and currency, refugee inflow and cross border terrorism require

the effecting border monitoring, management, real time information exchange and technological advancement and border surveillance mechanisms.

15. Provincial governments and local bodies should play a role in information exchange and mediate among the federal government and citizens on border issues. They should aware the citizens about vulnerable mobilities and collaborate with security forces on curbing smuggling, drug abuse, human trafficking within their jurisdiction.

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Chapter 2

People's Perceptions, Experiences and GESI Dynamics of Nepal-India Border

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A. BACKGROUND AND CONTEXT

In recent years, regional cooperation and connectivity have become priorities for unleashing economic growth and improving people's quality of lives. Open border between Nepal and India is the foundation of bilateral relations between the two countries. Improving border relations is a precondition for bilateral cooperation and increased regional connectivity. However, differences between Nepal and India, both at the political and social levels, are creating bottlenecks for the two countries to enhance connectivity for mutual benefit.

Some of the major challenges to the border are facilitating cross-border relations, threats to national security, conflict, differences over the border and its management, and public perceptions about the political aspects of the border. The recent Covid-19 pandemic has further strained border management mechanisms as well as cross-border relations, creating significant impact on people's livelihoods as well as the economy. Of special significance is the differential impact of border management practices on women, minorities and disadvantaged groups.

Nepal-India border is a lived reality that transcends rigid political boundaries. This research report documents knowledge and experiences about the Nepal-India border, identifies key issues related to the open border and its management, and recommends policies that can address the issues identified. This report tries to document how the Nepali people, including women, minorities and disadvantaged groups, interact with the border in their daily life. The report also documents the current border dynamics and perceptions of key stakeholders and draws lessons for future border relations and border management.

B. APPROACH AND METHODOLOGY

This report is based on a study conducted during January-March 2021 by CESIF Nepal. The study was based on review of literature, interview of key informants in Kathmandu and the districts, household survey, and field observation. Some 102 individuals living near the border were interviewed as part of a household survey to document their experience and perceptions about the border. The interviews were conducted in 10 districts covering more than 20 border points. The participants for the interviews were purposively selected—based on the judgement of experienced researchers living in the field sites—to ensure representation of diverse local communities and experiences near the border. About 100 key informants in Kathmandu and in other districts were interviewed for information about current border dynamics and their perspectives.

The locations were be selected on the basis of five key criteria to represent different types of borders and settlements. Field research included direct observation of border points by the researchers or by journalists or citizens living along the border recruited for the study. GESI was a cross-cutting theme during the selection of these sites. The research was designed so as to gather testimonies, views, and lived experiences of women, dalits, different ethnic groups, marginalized communities, and migrant labourers. The respondents selected covered intersectionality within the marginalized populations.

The report is intended for policy-makers in Nepal and India looking after border management, foreign affairs and regional connectivity as well as for development practitioners and local actors seeking to understand the impact of border management practices on women, minorities and disadvantaged groups.

C. KEY FINDINGS

C1. Understanding Nepal-India border

Open, unregulated, or asymmetric?

Nepal and India share an 1880-kilometer border¹ that cuts across plains, hills and high mountains. Rivers and rivulets mark some 640 kilometers of the boundary.² Most of the border with India lies in the plains of Terai, a space with diverse geographical, historic, cultural, demographic, and economic

1 This figure is disputed. The figure here is drawn from Toya Nath Baral 2018. Baral is a former Director General of The Survey Department, Government of Nepal.

2 Baral, T.N. (2018). Border Disputes and Its Impact on Bilateral Relation: A Case of Nepal-India International Border Management. *Journal of APF Command and Staff College*, 1(1), pp.28-36.

features. There are mainly three groups of people living along the border in the southern plains: the adivasi janajati with their own religion, culture and language; the Madhesis with social, cultural, and linguistic ties across the border and the pahadi groups many of whom migrated after 1950s.³

There are differences in opinion regarding when Nepal's border with India became open or whether it is open or just unregulated border. Whatever the case, key informants interviewed for this study feel that the open or "unregulated" border has led to complex cross-border social, economic, and political relations that can withstand ups and downs in political relations between Nepal and India although critical security and policy challenges need to be addressed.

The open border allows free movement of people, goods, and vehicles. There is a practice of allowing both Nepali and Indian vehicles to ply within five kilometers of the border without special permits. However, in some instances, vehicles from India without permits can reach as far as Janakpur.

A former senior government official said there was a general belief within the Nepali administration⁴ that the open border is "heavily asymmetric" in the sense that its openness is primarily determined by India. "*The border is 100 percent open for India, but only 10 percent open for us,*" he quoted a former chief secretary. He explained, "India can stop even the most essential commodities that it needs. When it does not want, it can even stop people."

Fixed Border

In Nepal's history, fixed border⁵ is a relatively recent phenomenon. The Nepali state was forced to accept a fixed border only after encountering the British in South Asia, which resulted in the 1815 "Treaty of Sugauli." Free movement of goods and people existed before the 1815 Sugauli treaty. However, trade and transit along the main trading and transportation routes were regulated for security and taxation purposes. After the 1815 treaty, Nepali rulers invited settlers,

3 Jha, K. (2017). *The Madhesi Upsurge and the Contested Idea of Nepal*. Singapore: Springer, pp 24-28.

4 Represented by a group of former chief secretaries who met several years ago to discuss the border.

5 Fixed borders can have significant political implications. In a weak state with fixed border, there is a greater incentive for excluding whole groups of citizens. Neighbors, meanwhile, view the state's weakness as an opportunity to seek economic gains or political influence, including regime change.

See Atzili, B. (2007). When good fences make bad neighbors: Fixed borders, state weakness, and international conflict. *International Security*, 31(3), pp.139-173. <https://www.mitpressjournals.org/doi/pdfplus/10.1162/isec.2007.31.3.139>

including traders, in the Terai to increase tax revenues. In the 20th century, a series of Rana Prime Ministers made it a point to develop and industrialise the Terai plains, leading to migration of labourers from India, as human resource from the hills was in short supply because of the two World Wars.⁶

On the Indian side, the British kept the border open after 1860, motivated primarily by the desire to enlist Gurkha soldiers, supply goods to Nepal and Tibet, and import raw materials from Nepal. They even encouraged migration of the Gurkhas to settlements in India as they were seen as valuable resources for newly established industries as well as for national security.⁷

Nepal's transition from the traditional political organisation along a centre-periphery model to a nation-state with fixed borders resulted in significant changes in social organisation of power and the efficiency of the centre.⁸ Fixed borders and cordial relations with the British brought two important benefits to Nepal. One was the accretion of territory in the far-west Terai. Another benefit was peace in the southern border areas.

By 1857, the internal boundary issues of India had also been resolved, and the Nepali rulers felt they had been able to insulate the regime from external threats. It enabled the government of Nepal to pursue its policies of reorganizing the district administration in the Tarai without any fear of external aggression.⁹ Prime Minister Janga Bahadur Rana, who worried that border disputes could harm cordial relations with India, spent the latter part of his life trying to fix and demarcate Nepal's southern boundaries.¹⁰

1950 Treaty of Peace and Friendship

Another notable moment in the Nepal-India border relations was the 1950 Treaty and the "special relations" framework established by the agreement. At the time, it was seen as a natural evolution of earlier security arrangements. Some experts claim that Nepal was happy to accept the British' Himalayan

6 Kansakar, V. B. S. (n.d.). Nepal-India Open Border: Prospects, Problems, and Challenges. FES-Nepal, accessed May 5, 2014

7 Temple, R. (1887). *Journals Kept in Hyderabad, Kashmir, Sikkim and Nepal*. London: W.H. Allen & co, Vol. II, pp. 249-262.

8 Burghart, R. (1984). Formation of the Concept of Nation-State in Nepal. *Journal of Asian Studies*, 44 (1), pp. 101-125.

9 Regmi, M.C. (1995). *Kings and political leaders of the Gorkhali Empire, 1768-1814*. Orient BlackSwan.

10 Husain, A. (1970). *British India's relations with the Kingdom of Nepal, 1857-1947: a diplomatic history of Nepal* (pp. 1-408). London: Allen and Unwin.

Frontier Policy, formalized by the 1923 treaty, as it ended China's assertion of Nepal as a vassal state. The 1950 special relations was a continuation of this perspective.¹¹

The 1950 Treaty is based on the premise of "the ancient ties" between the two countries, and the desire to "strengthen and develop these ties." Article VII of the treaty, in particular, ensures reciprocal "*privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.*"¹²

The idea of special relations may have cast a shadow in Nepal-India relations and led to persistent efforts by Nepali regimes to move away from this framework.¹³ Some experts see the treaty "*conditioned more by short-term strategies of regime survival than by genuine national interest,*"¹⁴ therefore requiring a revisit based on Nepal's changed political scenario.

Shifting functions of border

An important consideration for border research is to understand the shifting functions of borders in view of the contradiction between territorial sovereignty marked by a boundary and transnational relations and interdependencies that transcend territorial boundaries.¹⁵ Nepal's border relations with India hinges on the strategic functions of the border symbolized, in part, by what is generally termed an "open" border. Many experts in Nepal disagree with the term and prefer to call it "unregulated" and insist that the idea of "open border" provides asymmetric strategic benefits to India.¹⁶

11 Subedi, S. P. (2003). The Himalayan Frontier Policy of British-India and the Significance of the 1923 Treaty of Friendship between Great Britain and Nepal. *The Britain-Nepal Society Journal*, no. 207 (2003): 37. According to Prof Subedi, the 1923 treaty was "a watershed in terms of Nepal's alliance with her southern neighbour and a deliberate attempt to detach herself from her neighbour in the north."

12 In the draft prepared by the then Rana regime, Nepal wanted India to "recognize and respect the frontier between their respective territories as demarcated by existing frontier pillars." The phrase was missing from the revised agreement. The draft also mentioned respect and maintenance of "the existing usages and customs in respect of the nationals of the other Party residing in their respective territories." See Bhasin, 2005 Vol I, p. 94

13 For detailed discussion of this concept, see Rose, L.E. (1971). *Nepal: Strategy for Survival*. Univ of California Press.

14 Baral, L. R. (1992). *India-Nepal Relations: Continuity and Change*. *Asian Survey* 32(9), pp. 816.

15 Boundaries mediate three types of relationships: with the environment, with other bounded units, and between a unit's center and its periphery. Two techniques are adopted to determine relationships: by relocating boundaries, and by using boundaries to allow or exclude different types of exchanges. For detailed discussion on this concept, see Kratochwil, F. (1986). *Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System*, *World Politics*, Vol. 39, No. 1 (October), pp. 27–52.

16 Based on interviews of Key Informants.

According to a key informant, a group of former chief secretaries felt that both the future of Nepal's economy and independence are tied to the open border and proposed two solutions: (a) require passports and on-arrival-visas for travel for the general public, and allow ID cards for local inhabitants as in the northern border, (b) limit the number of transit points. Such a solution, according to the group, would be at par with the system already in place regarding the movement of goods between the two countries.

Blockades

Political relations between Nepal and India frequently affects the status of the border and border-related conflicts. Given the geographical advantage, India has used the open border as threat power. Nepal's transit points with India have been closed three times since 1969 as a means of negative sanction. The blockades have helped develop what Tripathi (2019) calls a mental border with India.¹⁷ Perceived territorial threats from India allowed Nepali regime to develop a strong in-group identity, nationalism, and loyalty to the state.¹⁸

The border functions as an interface for complex relations between the people, institutions and the governments of the two countries. When a border is closed, as during the 2015 blockade, the first impact is on the people living along the border who have multi-faceted cross border relations (social, cultural, and economic) and on the livelihood that depend on the border. Such impact is further exacerbated by black-marketeering, trade in currency, and other criminal activities.¹⁹

In August 2019, a meeting of Nepal-India Joint Commission held its fifth meeting where it discussed revision of the 1950 Treaty and the submission of the report of the Eminent Persons Group on Nepal-India Relations (EPG-NIR).²⁰

Disputes

In the early 90s, two major issues shaped Nepal's relations with India. The first was the controversy around Tanakpur barrage and sharing of water resources. The second was the Bhutanese refugees' issues. Both of these were linked to

17 Tripathi, D. (2019). Influence of Borders on Bilateral Ties in South Asia: A Study of Contemporary India-Nepal Relations. *International Studies*, 56(2-3), pp.186-200.

18 Rose, L. E. (1971). *Nepal: Strategy for Survival*. University of California Press.

19 Nepal Economic Forum. (2016). Post Disaster Assessment: Blockade 2015/16. Kathmandu: Nepal Economic Forum, <http://asd.org.np/wp-content/uploads/2016/06/Post-Disaster-Assessment-Blockade-2015-16-1.pdf>

20 MoFA, (2019). "Press Release on Fifth Meeting of the Nepal-India Joint Commission." <https://mofa.gov.np/press-release-on-fifth-meeting-of-the-nepal-india-joint-commission/>

Nepal's open border with India. Nepal's desire to become free from the shadow of special relations was reversed after the restoration of multiparty democracy in 1990. Some of the issues linked to Nepal's relations with India are free flow of Nepalese goods to India, the problem of migration, Nepal's inhibition to regulate (record) flow of goods and people, ethno-demography as a mutual problem, controversies regarding negotiations in sharing and development of water resources, and the problem of flood control.²¹

Before independence, Nepal and India regularly supervised and monitored the border to resolve differences. The practice stopped after India's independence in 1947, leading to a resurgence of disputes.²² After the 1950 Treaty, the first disputes were linked to forested areas in Champaran district in Bihar, about which Nepal had been raising issues since before India's independence. In December 1968, four Nepalis were arrested in Susta, over which protests erupted in Nepal.²³

There were multiple incidences of border disputes between Nepal and India in the last three years. The most prominent dispute was related to the Kalapani area and the source of Kali River.

Kalapani: In February 2018, Nepal objected to the construction of four wooden bridges by India over Mahakali River without Nepal's consent. The District Administration Officer of Darchula said the bridges were being used to transport labourers, equipment, and vehicles to construct the access road to Kalapani.²⁴ In December 2019, Home Minister Ram Bahadur Thapa Badal informed a parliamentary committee that India had encroached Nepali land on a stretch of about 372 kilometers in Limpiyadhura, Kalapani, and Lipulekh areas. He also informed the parliament that the government was adding about 70 border observation posts along the border.²⁵

21 D. Kumar, 1994. "Reconsidering Nepal-India bilateral Relations." *Contributions to Nepalese Studies*, 21(1), pp.73-89. http://himalaya.socanth.cam.ac.uk/collections/journals/contributions/pdf/CNAS_21_01_03.pdf

22 Das, P. (2009). *Demarcate the India Nepal Border*. IDSA, https://idsa.in/strategiccomments/DemarcateIndiaNepalBorder_PushpitaDas_310809 (accessed February 27, 2021).

23 Singh, B. A. (2005). *Nepal-India Nepal-China Relations: Documents 1947–June 2005: Volume V*. Geetika Publishers.

24 Setopati, (2018). India unilaterally constructs four bridges over Mahakali River. Setopati, <https://en.setopati.com/social/118194>

25 Khabarhub, (2019). Nepal's Home Minister says India has encroached 372 kms border. Khabarhub, <https://english.khabarhub.com/2019/13/61696/>

In March 2018, Nepal deployed a team of APF to monitor and stop the construction of makeshift bridges by India near Darchula on the Mahakali River.²⁶

Susta and Lal Bakaiya River: In August 2018, there was a dispute over construction of a road by India in the disputed territory of Susta, where the two sides had agreed not to construct any infrastructure.²⁷ In June 2020, Nepal objected to India's repair of a dam in Lal Bakaiya River. Nepal claimed that the dam was being constructed on Nepali land.²⁸

Border Demarcation and encroachment

The first meeting of the JTC, held in New Delhi on November 17, 1981, agreed that *"the entire Indo-Nepal boundary was already well-defined and demarcated, there was no need for any further demarcation of this Boundary."*²⁹ The major issues were design of the boundary pillars and organization of field work and composition of field teams to replace and change damaged pillars, relocation of missing pillars, and management of encroachment in no-man's land. The JTC worked from 1981 to 2007 and resolved boundary issues between Nepal and India except for disputes linked to territorial claims in Narasahi-Susta, and disputes over Kalapani and source of Kali River.³⁰ Although the JTC has approved strip maps, they require further implementation and monitoring.³¹

Replacement of missing border pillars is one of the main issues regarding border demarcation. In 2019, there were about 8,500 border pillars in Nepal's border with India and China, of which more than 3700 were in need of immediate repair. More than 2000 of them are estimated to be missing.³²

26 THT, (2018). Armed Police Forced mobilized for border security in Darchula. The Himalayan Times, <https://thehimalayantimes.com/nepal/armed-police-forced-mobilised-for-border-security-in-darchula>

27 Online Khabar, (2018). Nepal-India Border dispute resurfaces in Susta. Online Khabar, <https://english.onlinekhabar.com/nepal-india-border-dispute-resurfaces-in-susta.html>

28 Alok, A. (2020). Nepal-India Tension. Jagran. <https://www.jagran.com/bihar/patna-city-india-nepal-tension-nepal-claims-five-hundred-meters-of-land-in-bihar-stops-dam-repair-on-boarder-20421907.html>

29 Singh, B. A. (2005). Nepal-India Nepal-China Relations: Documents 1947–June 2005: Volume V. Geetika Publishers, pp. 2827.

30 Baral, T.N. (2018). Border Disputes and Its Impact on Bilateral Relation: A Case of Nepal-India International Border Management. Journal of APF Command and Staff College, 1(1), pp.28-36.

31 Das, P. (2008). Towards a Regulated Indo-Nepal Border. Strategic Analysis, 32:5, pp. 879-900.

32 BBC, (2019). सीमा सुरक्षा: मर्मत गरिनुपर्ने छठ सयमध्ये दूध सय सीमास्तम्भ गायब. . BBC Nepal,

Nepal and India constituted a Border Working Group in 2014³³ to address issues linked to border demarcation, including repair and replacement of boundary pillars, clearances of no-man's land, and other related tasks. In January 2018, Nepal and India again agreed to repair and replace border pillars and clear the no-man's land.³⁴ Later in the year, Nepal-India Boundary Working Group (BWG) discussed the possibility of using satellite images in boundary survey work. The BWG was then engaged in mapping encroachments and cross-border occupation.³⁵

Cross-boundary occupation

In Kailali district, there are about 282 pillars, of which about 113 were missing. A Nepal-India Border Survey Team was engaged in repair and replacement of the border pillars in 2018, after which some land being used by Nepalis fell on the Indian side.³⁶ Similarly, about 11 Tharu households settled in an area in Bhanchha Khola of Mechinagar, Jhapa, discovered that they were actually living in India. *"According to the border pillar we appear to be in India. But we are Nepali. We would not have had to face so many problems if our land was in Nepal,"* Indrawati Chaudhari was quoted as saying by BBC.³⁷

Encroachment of no-man's land

The boundary work led to several instances of clearing encroachments and identifying cross-border occupation. In December 2019, Nepali and Indian security forces jointly cleared encroachment in the no-man's land in Rautahat. The security personnel removed huts, cowsheds, and other structures.³⁸ In July 2020, there was a dispute between Nepal and India when some Nepali nationals constructed barbed-wire fence on a land close to the no-man's land in Kanchanpur district claiming the land belonged to Nepal.³⁹

33 The Economic Times, (2018). India, Nepal to explore using satellite images in boundary survey work. The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/india-nepal-to-explore-using-satellite-images-in-boundary-survey-work/articleshow/65914017.cms>

34 The Economic Times, (2018). India, Nepal agree to resolve border issues, rebuild pillars. The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/india-nepal-agree-to-resolve-border-issues-rebuild-pillars/articleshow/62417167.cms>

35 The Economic Times, (2018). India, Nepal to explore using satellite images in boundary survey work. The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/india-nepal-to-explore-using-satellite-images-in-boundary-survey-work/articleshow/65914017.cms>

36 THT, (2019). Missing border pillars being constructed. The Himalayan Times, <https://thehimalayan-times.com/nepal/missing-border-pillars-being-constructed>

37 Khanal, U. (2019). भान्छा खोलाबासी सोच्छन्, 'हाम्रो जमिन कहिले नेपालको हुन्छ ?'. BBC Nepali.

38 THT, (2019). APF removing illegal structures along Nepal-India border. The Himalayan Times, <https://thehimalayantimes.com/nepal/armed-police-force-removing-illegal-structures-along-nepal-india-border>

39 Tyagi, A. (2020). भारत-नेपाल सीमा पर तारवाड़ का मामला: पिलरों को हटवाने का नेपाल ने दिया आश्वासन. Amar Ujala. <https://www.amarujala.com/dehradun/india-nepal-dispute-nepal-assured-to-remove-pillars>

Vulnerable mobilities

Non-state actors, including criminals and terrorist organizations, pose the greatest threat to border security. It is impossible to stop the streams of ideas, information, weapons, money, and people moving through trans-state networks that have become even more sophisticated as a result of developments in communication and transportation. In this context, geographically contiguous and open border has serious security implications.⁴⁰ The open border has been misused by actors working against the interests of the two countries, for crime, and trafficking in persons, which need to be addressed through effective border management, monitoring, and information exchange.⁴¹

Discourses about “vulnerable mobilities” (e.g., organized crime, terrorism, migration) have legitimated and organized a shift from border control to border policing. This shift has required generation of “comparable data” that can be addressed through governance.⁴² However, increased border policing by state’s officials and experts has been paralleled by actors facilitating or engaged in vulnerable mobilities.⁴³

Wildlife and Nature

Movement of wildlife across the border is also an issue in both the positive and negative senses. From Nepali perspective, movement of one-horned rhino across the Indian border poses a conservation challenge because most of the rhinos currently prefer to live in the western areas of the national park.⁴⁴ Nepal, India, and Bhutan are working on a cross-boundary conservation area with funding from international agencies and SAARC.⁴⁵ The movement of wild elephants in Nepal’s western border is also a conservation challenge, as local inhabitants find them a menace.⁴⁶

40 Pattanaik, S.S. (1998). Indo-Nepal open border: Implications for bilateral relations and security. *Strategic Analysis*, 22(3), pp. 461-478.

41 Thapliya, S. (1999). Movement of population between India and Nepal: Emerging challenges. *Strategic Analysis*, 23:5, pp. 777-789.

42 Walters, W. (2006). Border/control. *European journal of social theory*, 9(2), pp.187-203.

43 See: Mezzadra, S. (2013). Border as a method, or, the Multiplication of Labor. *Researchgate*. https://www.researchgate.net/publication/311614568_Border_as_Method_or_the_Multiplication_of_Labor

44 Mandal, C.K. (2021). Fears of Nepal’s Rhinos migrating to India add to challenges in their conservation. *The Kathmandu Post*. <https://kathmandupost.com/climate-environment/2021/03/14/fears-of-nepal-s-rhinos-migrating-to-india-add-to-challenges-in-their-conservation>

45 Outlook Traveller, (2019). India, Bhutan, and Nepal are Planning a Trans-border Conservation Park. *Outlook Traveller*, <https://www.outlookindia.com/outlooktraveller/travelnews/story/69931/india-bhutan-and-nepal-are-planning-a-trans-border-conservation-zone-across-the-himalaya>

46 Gray, D.D. (2018). Man versus elephant on India’ border with Nepal. <https://asia.nikkei.com/Life-Arts/Life/Man-versus-elephant-on-India-s-border-with-Nepal2>

Health and Disease Outbreak

The flow of diseases across the Indo-Nepal border (eg, HIV) is one major issue linked to the border, whether through cross-border behavioral networks (eg, drug use and sex), trafficking in women, or migrant groups.⁴⁷ Even prior to the Covid-19 pandemic, Nepal was seen as being vulnerable to outbreaks of contagious diseases, as many Nepali migrant workers are exposed to different types of viruses including Zika, Ebola, and influenza.

Rebordering

Because of these trends, the open border is seen by many in Nepal and India as a threat. As a result, the Nepal-India border appears to be going through a process of what Andreas and Biersteker (2003) call “rebordering.” The process is marked by increased budgets for law enforcement, new legislations against unwanted mobilities, deployment of cutting-edge technology, visa controls, and increased role of the military.⁴⁸

Some government officials believe that Nepali politicians, citing “sensitive” nature of the subject, are unwilling to look at the Nepal-India border from a long term perspective or make policies accordingly. There is no proper practice of developing border management perspectives or holding consultations. They claim that most of the agenda during bilateral border dialogue is determined by India.

Border management

There are altogether 35 government agencies engaged in border management. For example, Armed Police Force maintains BOPs, maintains security in the border and reports to the Ministry of Home Affairs. The Ministry of Agriculture and Livestock Development has its own role in quarantine and movement of agricultural produce across the border. Revenue offices collect taxes. The Ministry of Health is particularly engaged in managing health issues like Covid-19 and HIV-AIDS. All of these agencies have different reporting mechanisms and do not have proper coordination with each other.

Nepal government is beginning to think about information sharing and coordination among the different government agencies. Currently, discussions are taking place about whether border management can be integrated into a

47 Nepal, B. (2007). Population mobility and spread of HIV across the Indo-Nepal border. *Journal of health, population, and nutrition*, 25(3), pp. 267–277.

48 Andreas, P. and Biersteker, T. (2003). *The Rebordering of North America*. New York: Routledge, p 79.

single framework or whether a joint mechanism can be created to oversee data collection, reporting, processing, dissemination, and analysis.

Government's approach to border management is also taking into consideration the role of people living close to the border. Government agencies are beginning to recognize them not just as beneficiaries but also stakeholders who can and have been protecting the border since ages. This could lead to additional efforts to promote these people's well-being and livelihoods, particularly through better infrastructures and socio-economic programs.

Another major area of concern for federal government agencies is coordination across the three levels of government. Although border security falls under the scope of the federal government, stakeholders feel that local and state governments are equally responsible, as they are closer to the ground.

Another major issue government agencies are facing is whether to prioritize security or socio-economic dynamics, or connectivity and development. Respondents in government security agencies gave a sense that they are looking for strategies to find evidence-based and scientific solutions to policy conundrums.

Nepal's security measures

At present, government agencies enforce border security by checking identifications (eg, citizenship, passport) and conducting foot patrols. These mechanisms are no longer seen as being effective. As a result, the government is planning to make use of technology-based surveillance like cameras, biometric data, drones, and other feasible technologies and to integrate data across all government agencies.

As border disputes in the Kalapani area led to an increased friction between the two countries, In December 2019, the cabinet decided to increase the number of Border Observation Posts (BOPs) under the Armed Police Force (APF) from 107 to 221 in the fiscal year 2020-21 and had plans to increase the number to 500 in the near future.⁴⁹

49 Sen, S. (2019). Cabinet decides to add 114 border outposts under Armed Police Force. The Himalayan Times. <https://thehimalayantimes.com/kathmandu/cabinet-decides-to-add-114-border-outposts-under-armed-police-force>

Nepal decided to enhance the role of Nepali Army in border security. The Nepali Army created a separate directorate to perform several functions related to border demarcation and border security and created three departments for border monitoring and coordination, carrying out study and research on treaties and agreements, and conducting surveys.⁵⁰

In view of the several types of security challenges, some well-known experts in Nepal have recommended⁵¹ introduction of an ID card system, monitoring with CCTV camera, and fencing the border with about 360 transit points. The government also operates health desks at different transit points,⁵² although their effectiveness has been questioned.

Nepali Army's role

Before the 1990 democratic transition, all border commissions and border monitoring patrols were either participated in or led by Nepali Army. After 1990, Nepali Army's role and participation in border protection was deemed irrelevant. As a result, Nepali Army was gradually retracted from its role of border protection, monitoring, surveillance, and patrolling; it was not made part of any border management team sent by the Department of Survey or other government agencies.

In September 2020, the government introduced a policy making it mandatory to include Nepali Army on all mechanisms related to border management, security, and archiving of sensitive documents related to the border. Following this decision, and approval by the cabinet, Nepali Army established a separate directorate for border monitoring and management.

Indian Security Measures

India has adopted three strategies to manage the open border: working through bilateral mechanisms, enhancing security,⁵³ and developing infrastructures along the border.⁵⁴

50 BBC, (2019). सीमा सुरक्षा लागि नेपाली सेनामा अलग्गै संरचना. BBC, <https://www.bbc.com/nepali/news-50429214>

51 Shrestha, B.N. (2014). Case study: Nepal-India Border Management and Its Challenges and Opportunities. Presentation at the FIG XXV Congress 2014 Engaging the Challenges – Enhancing the Relevance. Kuala Lumpur, Malaysia, 16-21 June 2014.

52 THT, (2018). Nepal at high risk of imported diseases outbreak. The Himalayan Times, <https://thehimalayantimes.com/kathmandu/nepal-at-high-risk-of-imported-diseases-outbreak>

53 Nepal-India border is often closed for security reasons during elections in India and Nepal. For example, see: India TV, (2019). Uttarakhand: Indo-Nepal border along Dharchula to Khatima to remain closed for 68 hours from April 9. <https://www.indiatvnews.com/news/india-uttarakhand-indo-nepal-border-along-dharchula-to-khatima-to-remain-closed-for-68-hours-from-april-9-511864>

54 Das, P. (2008). Towards a Regulated Indo-Nepal Border. Strategic Analysis, 32:5, pp. 890.

In 2018, the UP Home Guards were proposing deployment of 1200 personnel along the border for flood relief as well as to assist the Indian SSB.⁵⁵ By April 2018, India had deployed 34 battalions of SSB along its border with Nepal and constructed 512 operational Border Observation Posts. Each SSB battalion consists of over 1000 personnel.⁵⁶ The Indian government is prioritising proper infrastructure and road connections to all these BoPs.⁵⁷

In December 2019, Indian media reported that the SSB of India had started laser fencing of Nepal-India border to prevent entry of third country nationals, as the incidences of such entries had increased, particularly by nationals of China, Pakistan, and Bangladesh. The most sensitive areas, according to the assessment of Indian security officials, were areas close to Bahraich (next to Banke district) and Pilibhit (next to Kanchanpur).⁵⁸ In February 2020, India's Central Board of Indirect Tax and Customs introduced Electronic Cargo Tracking System for transit cargoes being transported to Nepal through Calcutta.⁵⁹

Integrated Check Posts (ICPs)

India has been actively engaged in construction of Integrated Check Posts (ICPs) at transit points along the Nepal-India border. On an average, about 22,000 containers enter Nepal from India, while Nepal exports goods in about 2100 containers per year. India is projecting the rise of daily container trips to about 7500 by the year 2025. In order to facilitate the movement, India has been constructing several ICPs including one in Nepalganj,⁶⁰ while those in Birganj and Biratnagar became operational from 2018 and 2020, respectively.⁶¹

55 NDTV, (2018). UP Home Guards Likely To Be Posted Along Indo-Nepal Border. <https://www.ndtv.com/india-news/up-home-guards-likely-to-be-posted-along-indo-nepal-border-1811392>

56 TOI, (2018). SSB completes border deployment along Nepal, Bhutan with over 54,000 troops. <https://timesofindia.indiatimes.com/india/ssb-completes-border-deployment-along-nepal-bhutan-with-over-54000-troops/articleshow/63869874.cms>

57 The Economic Times, (2018). SSB creates 72 new border posts to enhance security along Nepal, Bhutan borders. <https://economictimes.indiatimes.com/news/defence/ssb-creates-72-new-border-posts-to-enhance-security-along-nepal-bhutan-borders/articleshow/67148468.cms>

58 All India Radio, (2019). SSB starts laser fencing along Indo-Nepal border. News Services Division. <http://www.newsonair.com/News?title=SSB-starts-laser-fencing-along-Indo-Nepal-border&id=376247>

59 The Hindustan Times, (2019). India introduces electronic tracking system to facilitate Nepal-bound cargoes. <https://www.hindustantimes.com/business-news/india-introduces-electronic-tracking-system-to-facilitate-nepal-bound-cargoes/story-qD0dUTtri7Uv9QyK52i0GJ.html>

60 Dua, R. (2020). India starts ICP construction with social distancing on Nepal border. The Times of India. <https://timesofindia.indiatimes.com/india/india-starts-icp-construction-with-social-distancing-on-nepal-border/articleshow/75726428.cms>

61 Business World, (2020). India-Nepal Border: Integrated Check Post Construction Begins At Nepalgunj. <http://www.businessworld.in/article/India-Nepal-border-Integrated-Check-Post-construction-begins-at-Nepalgunj/12-11-2020-342140/>

The ICPs have customs, immigration, quarantine, and other facilities under one roof. Indian media reported that the Indian government had sanctioned a total of 548 posts to the SSB for deployment at the four ICPs.⁶²

Border Roads

The state of Bihar is planning to upgrade the 552 km border road—the road connecting the BOPs constructed along the Nepal-India border—to four lanes. The construction is funded by the union government as well as the state.⁶³

In January 2019, the Border Roads Organization (BRO) completed a high-altitude 2.5 km stretch of road in the Kalapani area,⁶⁴ stirring an intense border dispute between Nepal and India.

The construction of border roads in Uttar Pradesh has generated concern among conservationists who are worried that the infrastructure, which runs across tiger reserves, could harm the tiger habitat.⁶⁵

Security Cooperation

Nepali and Indian security agencies hold frequent security meetings⁶⁶, and when needed, also conduct joint-border patrols.⁶⁷ They have also pledged to share intelligence.⁶⁸ One of the issues during such meetings is closer monitoring and surveillance of individuals and agencies from third countries, some of whom

62 The Print, (2021). Govt sanctions 12 new SSB battalions to fortify Nepal, Bhutan borders, tri-junction area. <https://theprint.in/defence/govt-sanctions-12-new-ssb-battalions-to-fortify-nepal-bhutan-borders-tri-junction-area/615268/>

63 Kumar, M. (2019). CM Nitish Kumar for four-laning of Indo-Nepal border road. The Times of India. <https://timesofindia.indiatimes.com/city/patna/nitish-for-four-laning-of-indo-nepal-border-road/articleshow/67493371.cms>

64 Yogesh Kumar, (2019). BRO constructs 2.5-kilometre-long Lakhanpur-Najang high altitude road on Indo-Nepal border. The Times of India. <https://timesofindia.indiatimes.com/city/dehradun/bro-constructs-2-5-kilometre-long-lakhanpur-najang-high-altitude-road-on-indo-nepal-border/articleshow/67563333.cms>

65 Srivastava, K. (2019). Indo-Nepal Border Road rides roughshod on Uttar Pradesh wildlife habitat. Mongabay. <https://india.mongabay.com/2019/05/indo-nepal-border-road-rides-roughshod-on-uttar-pradesh-wildlife-habitat/>

66 THT, (2019). First phase Nepal-India security meeting ends. The Himalayan Times, <https://thehimalayantimes.com/nepal/first-phase-nepal-india-security-meeting-ends>

67 Border security forces of Nepal and India have begun a joint patrol in the southern region of Kanchanpur in order to check criminal activities in the Indo-Nepal border area.

68 The Economic Times, (2018). India and Nepal pledge to enhance border security with intelligence sharing. <https://economictimes.indiatimes.com/news/defence/india-and-nepal-pledge-to-enhance-border-security-with-intelligence-sharing/articleshow/65353527.cms>

may be engaged in terrorism.⁶⁹ Indian media reported that it was the first time that Nepal and India had agreed to cooperate in checking “doubtful third-country operatives.”

Issues of concern to India during such meetings are “smuggling of arms, fake currency, narcotics, other criminal activities and those related to anti-national elements and terrorists.” Of special concern to India are the possible operations of Pakistan-based terrorists and Chinese Study Centers.⁷⁰

The security priorities of Nepal and India differ. During joint meetings, the Indian side frequently raise issues of terrorism and fake currency along with border crime, while the Nepali side prioritizes infrastructure and drugs.⁷¹

Nepali and Indian local governments are keen on using the Mahakali River for rafting and other recreational purposes, but the security agencies see it as a potential threat.⁷²

Negative impacts of regulation

Madhesi people feel that the federal government often tends to overlook the problems of border areas or the voices of people living near the border. *“The higher authorities in the government make excuses like they have not received any complaint letters,”* says Mahanta Thakur, President of Janata Samajwadi Party. While composing the Eminent Persons Group to hold policy dialogue on Nepal-India border, the government did not pick any person from the Madhesi community. Respondents from the Madhesi community felt that the government was unwilling and unable to recognize the issues faced by people living near the border.

Nepal has resorted to internal measures of political control like making citizenship a pre-requisite for formal transactions or acquisition of government services. One effect of Nepal’s efforts to control migration was on the

69 BBC, (2019). नेपाल-भारत सीमामा तेस्रो देशका नागरिकलाई थप निगरानी गरिने. BBC, <https://www.bbc.com/nepali/news-50520582>

70 The Economic Times, (2019). First Time: Nepal to help India in checking ‘third country’ suspects, terror operatives. <https://economictimes.indiatimes.com/news/defence/first-time-nepal-to-help-india-in-checking-third-country-suspects-terror-operatives/articleshow/72757255.cms>

71 Deuba, T. (2018). Indo-Nepal border security forces meeting held in India. The Himalayan Times. <https://thehimalayantimes.com/nepal/indo-nepal-border-security-forces-meeting-held-india>

72 Madhwal. A. & Kasniyal, B.D. (2018). SSB halts rafting on Kali-river due to ‘security reasons’. The Hindustan Times. <https://www.hindustantimes.com/dehradun/ssb-halts-rafting-on-kali-river-due-to-security-reasons/story-1bwGH7CYSBH7V7qcEajWFL.html>

marginalized people. Nepal's land reform efforts during the Panchayat period had a significant impact on the poor and marginalized people, including Dalits, as they were unable to claim tenancy rights and had to work as agricultural labourers. Because they had no land or assets, they were also deprived of citizenship.⁷³

Kathmandu polity sees cross-border marriages as a demographic threat, and government policies seeking to address this "threat" (eg, citizenship) have deprived Madhesi of opportunities and, in some instances, rendered them stateless.⁷⁴

Efforts to regulate vulnerable mobilities can have adverse impact. For example, the open border allows trafficking in persons, but ad-hoc efforts at preventing this phenomenon, without evidence-based and carefully monitored policies, have led to interventions that have had negative effect on women and girls, such as violation of human rights, stigmatization, and reinforcement of patriarchal control over women.⁷⁵

While unrestricted borders can increase crime rates and put border communities at risk, restricted borders can harm economy and international relations. Therefore, some experts suggest that it is a better policy to try to control non-state actors rather than to harden the Nepal-India border through restrictions or security.⁷⁶

Border infrastructure, connectivity and trade

Nepal and India held the meeting of Inter Government Committee led by the secretaries of commerce on December 7, 2020. The IGC indicated that Nepal and India are working on a range of important issues including issues of connectivity (eg, BBIN, Motor Vehicle Agreement, railway links, dry ports, integrated check posts, trade and access to sea ports).⁷⁷ During private conversation, senior government officials said Nepal and India have begun talks on border differences as well.

73 Kansakar, V.B.S. (n.d.). Nepal-India Open Border: Prospects, Problems, and Challenges, FES-Nepal.

74 Jha, K. (2017). *The Madhesi Upsurge and the Contested Idea of Nepal*. Singapore: Springer, pp. 50.

75 Kaufman M.R. and Crawford, M. (2011). Research and activism review: Sex trafficking in Nepal: A review of intervention and prevention programs. *Violence against women*, 17(5), pp.651-665.

76 Forester, A.B. (2014). Nonstate actors and the open border policy: The border security case study of Nepal and India. NAVAL POSTGRADUATE SCHOOL MONTEREY CA, <https://apps.dtic.mil/sti/pdfs/ADA620919.pdf>

77 Ministry of Industry Commerce and Supply, (2020). Press Release.

While pursuing projects of connectivity in Nepal, India has experienced several bottlenecks like delays, cost escalations, flawed priorities, and political tensions, which have undermined its strategic objectives. One of the reasons for these inefficiencies is “detached approach and lack of knowledge about the host country’s property rights framework.”⁷⁸

Transit points

Nepal currently has 27 major customs offices in transit points along the Nepal-India border. One of these, in Sirsiya, is dedicated to a railhead. These major customs offices cover an additional 119 smaller transit points,⁷⁹ indicating the multiple routes through which people travel between Nepal and India. According to the Sixth Nepal-India Joint Commission meeting, there are two Integrated Check Posts (ICPs) operational at Birgunj and Biratnagar; a third ICP is being constructed at Nepalgunj, while the construction of another at Bhairahawa is set to begin shortly.

Energy

In September 2019, Nepal and India jointly inaugurated the Motihari-Amlekhganj Petroleum Products Pipeline. Recently, India published a “Procedure for Approval and Facilitating Import/Export (Cross Border) of Electricity by Designed Authority,” which will facilitate export of electricity from Nepal but with some restrictions on electricity produced with third party involvement.⁸⁰ According to CRI, India’s intention is to allow only electricity produced by its companies to India.⁸¹ Two Chinese companies, Sutlej and GMR, are constructing hydropower projects with a total capacity of 1800 MW.

India has announced plans to promote a sub-regional energy hub comprising Bhutan, Bangladesh, Nepal, Myanmar, and India, which would require cross-border connectivity.⁸²

78 Xavier C. & Sinha, R. (2020). When Land Comes in the Way: India’s Connectivity Infrastructure in Nepal. Brookings India Impact Series 082020-01, New Delhi: Brookings Institution India Centre.

79 Ministry of Finance (n.d.). Major Customs Offices. https://customs.gov.np/main_offices#

80 Ministry of Power, (2018). Procedure for Approval and Facilitating Import/Export (Cross Border) of Electricity by the Designated Authority. Government of India, https://cea.nic.in/wp-content/uploads/2021/02/Final_DA_Procedure_26022021.pdf

81 CRI, (2021). बिजुली निर्यातका लागि भारतको बाटो खुल्यो. <http://nepal.cri.cn/20210301/d203940d-cf06-4b14-dd66-4ea896cccb66.html>

82 Nepal Energy Forum, (2021). India working to promote sub-regional energy hub comprising Bhutan, Bangladesh, Myanmar and India. <http://www.nepalenergyforum.com/india-working-to-promote-sub-regional-energy-hub-comprising-bhutan-bangladesh-nepal-myanmar-and-india/>

There are currently several major cross-border energy trade connections between India and Nepal: Lamki-Bareilly, Attariya/Beldangi-Bareilly, Nepalganj/Kohalpur-Lucknow, Butwal-Gorakhpur, Dhalkebar-Muzaffarpur, and Duhabi/Biratnagar-Purnea. According to a recent study, connectivity with India's Northern Regional Load Dispatch Center (RLDC) region appears to be the most favourable, given market trends. This requires upgradation of the Butwal-Gorkhapur path. Grid connectivity through border in western Terai can be beneficial for both countries, but it requires system upgrades in western Nepal. Hurlbut adds that "greater operational coordination" is needed to ensure value of cross-border energy trade.⁸³

Development Cooperation

The fifth meeting of the Joint Commission reviewed the status of bilateral projects linked to the border, such as the Motihari- Amlekhgunj Petroleum Products Pipeline, four segments of Hulaki Roads, Jayanagar-Janakpur and Jogbani-Biratnagar sections of cross-border railway, and Integrated Check Post in Biratnagar. Nepal and India are also currently working on Raxaul-Kathmandu Electrified Rail Line and Inland Waterways.⁸⁴ Nepal and India are also working on another dry port (ICP) at Dodhara-Chandani region of Kanchanpur district.⁸⁵

Regional Connectivity

A report⁸⁶ released by the World Bank says seamless transportation facilitated by BBIN Motor Vehicle Agreement has the potential to make the sub-region an economic growth hub. Bangladesh has agreed to allow Nepal access to its ports through rail, road, and waterways.⁸⁷ Similarly, meetings have recommended signing of various legal instruments including the BIMSTEC

83 Hurlbut, D. J. (2019). Cross-Border Energy Trade between Nepal and India: Trends in Supply and Demand. National Renewable Energy Laboratory, <https://www.nrel.gov/docs/fy19osti/72345.pdf>

84 MoFA, (2019). Press Release on Fifth Meeting of the Nepal-India Joint Commission. <https://mofa.gov.np/press-release-on-fifth-meeting-of-the-nepal-india-joint-commission/>

85 THT, (2018). Construction of Dodhara Chandani dry port soon. The Himalayan Times <https://thehimalayantimes.com/business/construction-of-dodhara-chadani-dry-port-soon>

86 Dappe M.H. & Kunaka, C. (2021). Connecting to Thrive: Challenges and Opportunities of Transport Integration in Eastern South Asia. World Bank Group, <https://openknowledge.worldbank.org/handle/10986/34916>

87 The Financial Express, (2021). Bangladesh, Nepal agree to expand connectivity, Momen says. <https://www.thefinancialexpress.com.bd/national/bangladesh-nepal-agree-to-expand-connectivity-momen-says-1616504750>

Convention on Mutual Legal Assistance in Criminal Matters and an agreement on connectivity.⁸⁸ The ambitious master plan, that includes Kolkata-Birganj and Kolkata-Kathmandu links, will cover air, sea, and land connectivity.⁸⁹

Covid-19 Restrictions

In response to the Covid-19 pandemic, Nepal closed its border with India and China from March 23, 2020. What was supposed to be a one-week measure was extended for almost a year until March 2021, when Nepal decided to resume transportation through 12 routes,⁹⁰ out of about 37 motorable land entry points with India. The border restrictions caused different types of hardships (health, services, livelihoods and social relationships) and dampened economic activities.

The closure generated new types of challenges including humanitarian crisis (eg, access to food and medicine). The border closure required new mechanisms to regulate and monitor the border and generated challenges to existing relations between different institutions and communities. Communities and individuals along the border launched spontaneous efforts to address the new challenges and to counter the negative impacts of the closure.

After Covid-19 pandemic, the government tried to make the movement of people more systematic compared to the past. According to a Bhimdutta Municipality officer, the security at the border has improved compared to the past due to more personnel, electronic surveillance, and equipment. A security official added, *"People cannot move without checks. Illicit goods cannot cross the border. The government is trying to discourage unnecessary movements."* According to the Rupandehi CDO, about 1000 APF personnel were assigned to border security in the district after the Covid-19 lockdown.

In the early days, the government of Nepal faced criticism for abandoning migrant workers, while Indian security officials expressed worries that Covid-19 carriers from Nepal were trying to sneak into India. The government then opened 20 crossing points along the border where people could cross the

88 MoFA, (2021). Press Release on the 17th BIMSTEC Ministerial Meeting. <https://mofa.gov.np/press-release-on-the-17th-bimstec-ministerial-meeting/>

89 Laskar, R. H. (2021). BIMSTEC finalizes major connectivity master plan for Bay of Bengal region. <https://www.hindustantimes.com/india-news/bimstec-finalises-major-connectivity-master-plan-for-bay-of-bengal-region-101617291898647.html>

90 The Hindustan Times, (2021). Covid-19: Nepal to resume cross border transportation with India. <https://www.hindustantimes.com/world-news/Covid19-nepal-to-resume-cross-border-transportation-with-india-101616112567894.html>

border after proper scrutiny and documentation. The pandemic caused chaotic scenes along the border, including police firings that led to at least 2 deaths and multiple injuries. For example, on June 12, 2020, an Indian citizen was killed and two others injured during a dispute with the APF, when a group of people wanted to cross over to Nepali side during the lockdown—they were relatives of Nepali citizens.

C2. People's relationship with the border

Almost all of the people interviewed as part of the Household Survey said they had very good relations with and across the border before the Covid-19 closure. Some of them either stayed in India for work or went to India for work on a daily basis, while a respondent belonging to an indigenous community said, “as a Sauka, our relation with India is really good because we live in both sides of the border.”

About 22 percent of those interviewed said they visited India on a daily basis, while another 74 percent said they frequently visited India (multiple times a week or month). Six of them said they do not go often, and another respondent did not specify.

The number of women who cross the border is almost equal to that of men. Out of the 45 female respondents, 5 said they crossed the border every day to buy household goods, and 32 said they frequently cross the border (multiple times a week or month).

The primary purpose for visiting India were to buy groceries or household items, to visit relatives or friends, for business purpose, and for work. In places like Darchula, people need to travel through India in order to access the district headquarter Khalanga. Said a female respondent, *“We had a very good relation (with the border) because we have to take Indian roads to reach Khalanga, the district headquarter. We are now facing a lot of problems due to the closed border.”*

All the people interviewed in Thori said they visited India once a week, every Thursday, to attend the weekly market.

Cross-border kinship relations

A majority of people living along the border have close social ties across the border. Of the 100 individuals who responded to a question about cross-border social relations, some 74 percent said they had close relatives (marriage relations or parents/children of a member of the household) across the border, while

the remaining 26 percent said they did not. Even among those who did not have close relations across the border, many said they knew of neighbours or members of the community who did.

All types of ethnic and identity groups had close kinship relations across the border. For example, of the total respondents in the Household Survey, 23 belonged to the Khas-Arya category. Some 12 said they did not have relations across the border, but another 11 respondents belonging to the Khas-Arya category said they did. Of the 10 individuals respondents belonging to the Muslim category, only two said their family did not have marital relations across the border. Of the 10 Hill Dalits interviewed, four said they did not have relations across the border. Of the 30 Madhesi castes and Madhesi Dalits, only four said they did not have relatives across the border.

Economic relations

Both Indians and Nepalis cross the border for jobs or business. While a general trend is for Nepalis to cross the border to work in big cities, or in hotels and restaurants across the border, there is demand in Nepal for skilled Indian labourers to work as masons, carpenters, and mechanics in factories. There may be better job opportunities across the border, especially across the border in western parts of Nepal. Some people interviewed in Kanchanpur said that they had businesses in Indian cities like Tanakpur, Banbasa and even Dehradun.

Nepalis do manage to sell agricultural products (including cattle and goats), raw materials, and reclaimed waste across the border, while Nepalis access the Indian market to buy groceries, medicine, electronics, and other household goods. Along the eastern border with India, Nepalis travel across the border to sell goods like brooms, betelnuts, and ginger (Jhapa) or betelnuts, cloves and peas (Saptari).

However, in places where there are job opportunities in Nepal, villagers do not have to go to India for work. One example is Materba village in Morang. Mohammad Nissamuddin, 32, who stayed in India for a while to work as a tailor says, *“People from this village don’t usually have to go to India for work because of the Shree Raghupati Jute Mill.”*

Indians also come to Nepal for tourism through many border points.

Impact of border closure

After Covid-19, Nepal and India imposed restrictions on cross-border movement. The border was closed from March 23, 2020, in response to the Covid-19 pandemic. The closure highlighted the importance of the border on people's lives, especially those living close to the border.

While the flow of goods was relatively smooth, people's movement was curtailed. This had both negative and positive impact including increase in government revenue. Multiple government officials and knowledgeable civil society members said the border closure resulted in increased government revenues in some revenue offices. Because of enhanced security presence, most of the goods had to be channeled through formal customs points.

Border closure, combined with lack of transportation and other facilities, affected people's mobility and their access to jobs, essential goods and services, including healthcare and medicine. Border closure also caused price inflation, further affecting the poor and the marginalized.

People were unable to access the Indian market to buy goods, including fertilizers, which affected the poor and the marginalized people more than it did others. People were also unable to maintain direct social relations with their relatives across the border.

In some places (eg, Tilathi-Koiladi, Mechi, Darchula), the primary market lay across the border, and the border closure affected their access to those markets. As a result they were forced to turn to Nepali markets that lay further away or were inaccessible. Says Keshav Mishra, a labor worker, from Darchula, *"We are totally dependent on Indian market, so it was pretty difficult to not be able to buy daily supplies or go to hospitals."*

Several respondents said they needed to access health centers in India for medical emergencies, but were unable to do so. These problems were especially challenging for people with disability. Manju Devi Mukhiya of Bishunpur said her father-in-law died because they were not allowed to take him to hospital for treatment. Hira Singh Dhami, from Darchula, needed to go to Pithauragarh for his health checkup, but he was unable to go from Darchula. *"I had to make a pass and go through Gaddachauki, Kanchanpur, which was a very difficult process,"* he said.

There were no jobs and people were unable to work, especially people who depended on daily wage labor. Some respondents, especially the poor and marginalized, said they were forced to take loans and credits. Job loss, combined with inflation, led to severe financial difficulties, says Suku Maya Gurung of Thori.

Some people from marginalized communities were able to access relief materials provided by local and international organizations (eg, Bishunpur, Saptari). Community members also helped provide food to those in difficulty. For example, Tajmun Nesa of Rajbiraj, Saptari, is a single woman. She said she did not receive much support. *“I did not get any work, so it was difficult to even eat; some people from my community offered some help,”* she says.

Disputes and Difficulties

A majority of the respondents (63) in the household interviews said they had not experienced any dispute in their area although they had heard of disputes outside their community, like in Kalapani. About 34 respondents said they had experienced disputes, some due to Covid-19 border closure.

People’s opinion about whether the border relations had improved or not was mixed. Those who said they had experienced disputes and conflicts pointed out the following issues:

- Encroachment and/or land use for agriculture, grazing, construction
- Covid-19 related disputes and differences
- Difficulty in crossing the border
- Implicit bias and racial discrimination (on both sides)
- Conflictual relationship between security personnel and citizens (on both sides)
- Attitude or mentality of security personnel and citizens (on both sides)
- Inundation
- Irrigation/water use
- Relations between local government and local communities

Interestingly, none of the respondents in the household surveys reported dispute over border demarcation, which indicates that border disputes were either limited to certain areas (eg, Kalapani and Susta) or were linked to encroachment and use of the no-man’s land.

Areas where disputes were prevalent included Mechipari, Bhadrapur-3 (use of Indian land by a Nepali), Saptari (fraud, inundation), Rupandehi (encroachment, construction, harassment, inundation), and Kanchanpur (use of no-man’s land).

Almost all respondents from Thori complained about the attitude of the Indian side as well as disputes linked to irrigation. Says a respondent from Thori, *“We often have irrigation-related disputes; there’s fear of getting beaten and harassed by Indians when that happens.”* As a result, during water-related disputes, people are afraid of crossing the border to the Indian side.

A respondent from Rupandehi said, *“Our farms flood during rainy season because of Indian embankments; poor people like us face a lot of difficulty.”*

Political disputes frequently trickle down to the ground and reflects in the attitudes and behavior of security personnel and border management agencies, who try to make things difficult for people crossing the border.

Awareness of the border

Tightening security and restrictions in response to Covid-19 led to an awareness about the existence and importance of the border. A respondent in Biratnagar remarked, *“before, when the border was open and things were normal, people could not even differentiate between Nepal and India; it felt as if both countries were the same. But after this pandemic, when Nepali security check posts were formed, and people could see Nepali police everywhere, then they felt yes, there is a boundary and we live on the north part.”*

Worsening relations and its impact

Worsening relationship between Nepal and India had affected cross-border relations in many border areas including Mahendranagar, Thori, and Darchula. Respondents in other areas, however, generally felt, the cross-border relations remained cordial.

Perceptions about Border Management

Covid-19 related border closure led to an increased security presence and scrutiny at the border. Respondents reported it had become much difficult to cross the border after the closure and ID cards were required. The closure was perceived to have affected marriages (cross-border marriage events were greatly reduced during the pandemic or faced difficulty), while increased security presence was perceived to have reduced vulnerable mobilities like trafficking-in-persons.

A majority of people said the border should be better regulated, especially for security reasons, but they also insisted that open border should be maintained to facilitate flow of goods, people, and vehicles. People were generally happy about the increased security presence and perceived the use of technology (eg, CCTV cameras) and documentation.

There were also negative perceptions about the border. Some respondents felt that irregularities had continued during the pandemic despite a semblance of enhanced border regulation. A number of respondents reported concerns about police harassment and the involvement of security personnel in extraction (bribes) and smuggling. Some of them recounted experience of racial discrimination while crossing the border. Some respondents pointed out the issue of language barrier (between security personnel and local residents) and the absence of female police personnel. Many people expressed concerns about the absence of roads, poor quality of roads, and flooding near the border areas.

Perceptions about Security Threats

Most of the people interviewed reported issues with smuggling (46), trafficking (27), drugs and persons (17). An equally significant number (31) said they perceived no security challenge and their only issue was the inability to cross the border. A significant number of people, however, complained about the failure of the government to address security challenges.

Similarly, the most common border security challenges cited by the key informants in the field sites were: smuggling and drugs, trafficking, illicit border crossings by criminals to escape crime or by third nationals, customs evasion, robbery, smuggling of small arms, illegal trading, and encroachment.

Perceptions of asymmetric advantages

Many of the key informants interviewed⁹¹ pointed out the idea of asymmetric benefits. The idea of asymmetric benefit proposes that India and Indian citizens benefit more from the open border than Nepal or Nepali citizens.

In Darchula, disputes affecting people's access to India through bridges over the Mahakali River. Indian side controls access to the bridges. *"Indian officials...only allow access when they want, they don't even listen to our CDO or when we have difficulties."*, stated one of the respondents.

Those who perceive asymmetric benefits in cross-border relations espouse tighter border controls (eg, documentation, ID cards, even fencing) and trade restrictions. Such perceptions were more widespread in Morang and Jhapa. Key informants in other areas generally emphasized the need to maintain easy and accessible border.

91 Key informants were drawn from the government, security agencies, business sector and civil society.

Drug use among youths

An important finding of the field study, consistent with all the border points, includes a serious problem of illegal drugs import and its addiction among the youths. During border observation, researchers saw drug users lounging along roads and in fields close to the border. Youths from the border region conveniently cross to adjacent Indian towns and consume narcotic drugs such as G Norphine, Diazepam (Tranquilizer) and Phenergan. Due to the restrictions in Nepal and easy access across the border, youths usually go to India. They consume the drugs there—either separately or by making a mixed cocktail of different drugs—and return to Nepal. With a dose worth NRs. 150–200, the effect lasts for more than 10–12 hours.

Besides the drug users' self-involvement in cross-border movement for use, there are other two types of actors involved in the cross-border drugs business: a) smugglers/carriers, and b) business mafias/cartels/local leaders and dons. While the latter run the network of drugs business, usually with some sort of 'setting' or involvement with security officials and local leaders, the former often find themselves involved in the process due to their poverty and greed. Key informants noted that narcotic drugs, including opium, cocaine, heroin, and marijuana, are usually smuggled in by women and other non-drugs smugglers; while women can easily hide small amounts of such drugs around and under their sarees, other smugglers import illegal drugs under the guise of other legal goods such as textiles and food.

C3. Border, Gender and Social Inclusion

The Covid-19 pandemic and the subsequent lockdown affected the entire population. However, the most affected were daily wage workers, marginalized Dalit people, women, girls, and poor people living along the border. The sub categories within these populations were hit hard. Men and women lost their work and hence could not get enough money for household expenses. Marginalized daily wage workers living on the border side shared that food and other goods are 2-3 times cheaper in India. Before the lockdown, they would commute 2-3 times across the border to get such goods. After the lockdown was enforced, they had to buy basic goods such as rice, sugar, tea leaf etc on the Nepal side. In many cases these were unaffordable and made the situation of poor people worse. Health services cost lower in India than in Nepal. One of the respondents stated firmly, *"If people are asked to live whether in India or Nepal, I am sure that 80% Nepalese people who live in the border area want to shift as Indian citizens because of these services."*

Few of the responses included fresh perspectives about issues and opportunities that came with the pandemic. Many people were left unemployed during the lockdown and started moving towards their own local businesses, which helped them become independent and promote the local market.

The Sauka Community of Darchula, who live half a year in India and half a year in Nepal, were badly affected, as their livestock and agricultural activities were hampered.

One respondent mentioned that it was difficult for the women who worked as sex workers. During the Covid-19 pandemic, because of the fear of getting infected, the number of both clients and workers decreased. Some women also started working as sex workers because of unemployment. Single female household heads faced trouble during lockdown and received lesser support from the community.

The small businesses that run in the border depend highly on the Indian market for buying goods at wholesale prices. Their income was almost negligible, and they could not make a profit, which made it difficult for them to survive.

The issues related to citizenship are also serious. Some middle-class people were beaten, and their citizenship certificates were torn at border posts.

Marriage and Kinship across borders

Kinship relations through marriage serve as the foundation of cross-border people relations. There are strong relationships between families of married people across the India-Nepal border, especially between daughters and in-laws. These are called Roti-Beti relationships.

The social context and shared culture make it convenient for people to accept the Roti-Beti relationships. Almost all the respondents stated that the border must be open and free, so that they can have Roti-Beti and economic relations. *Another respondent said, "The border line must be accessible to everyone in order to create an easy environment for citizens."*

However, since the lockdown, regular meetings, interactions, and the social visits have been disrupted. Although the border closure affected weddings, many fought through the difficulties. A respondent from Saptari noted, *"our relatives are married in India; during this lockdown too, there was a wedding where the groom had to swim to cross the border at night; the wedding was very minimal."* Another female respondent in Kanchanpur had a similar experience. She said her family invited

many relatives from across the border for a wedding, but only five of them were allowed to enter because of the Covid-19 restrictions. *“Those who were forced to return became angry and do not talk to us anymore,”* she said. As marriage and kinship are considered serious life affairs, the new border restrictions create disturbances in social and marital relations. Similarly, some interviews reveal that, along with social relations, respondents were also focused on the border closure’s effect on the practice of dowry. A respondent noted, *“due to the lockdown, it is hard to transport dowry from the bride.”*

Restricted mobility in most border points gave rise to different family issues. For instance, in some cases, daughter in laws were stuck in their houses for longer periods due to the lockdown, which created situations of conflict in the family.

In addition, the state, which sees cross-border marriage relations as a national security threat, has proposed legal instruments such as the Citizenship Bill which, if passed, can have significant impact on identity and agency of women in an already deeply patriarchal society. The proposed bill would have a long-term impact on legal status of women, cross border marriages, people to people relations, and ultimately other aspects of the border. The interviewees’ responses reflect this issue and highlight the double marginalization of women for not having citizenship.

Gender and Social Based Discrimination and Relations

Distinction, exclusion, or restriction based on gender norms, roles, and relations have prevented women and men of different groups and ages from enjoying their human rights. The interview data demonstrate these discriminations in different forms. While the social relations are keenly observed, unequal power relations create hierarchies between and among groups of men and women, causing disadvantages to one group over another

As observed, people along the border, both Indian and Nepali, have mutual cross-border relationships. During conflicts and disputes between the two countries, people generally tend to develop nationalistic feelings. One of the respondents stated, *“nowadays people are raising voices more strongly than before in cases of any such injustice. Border People are an army without guns.”* Despite such patriotic realizations, though, people-to-people relations along the border are still cordial.

As stated in the responses, the citizenship issues have clearly discriminated against women married to Nepali citizens. Indian women who marry Nepali men face difficulty not only in obtaining Nepali citizenship for themselves but

also in making birth certificates for their new born children. Such instances are more common among people living along the border, for they are more likely to have cross-border marital/social relations. As a respondent noted, only poor and marginalized are vulnerable to such restrictions, while the rich Indian businessmen continue to work and make money here.

Respondents, especially women working as porter at the border, stated that they faced greater challenges during this period than men did; unequal pay was one such issue.

Some interviews and observation reports noted that male household heads crossed the border to buy things, not women. However, this is mostly applicable to the women from the Muslim community. In other communities, the number of women who crossed the border was almost equal to that of men. Out of the 40 female respondents, 4 said they crossed the border every day to buy household goods, and 30 said they frequently crossed the border (multiple times a week or month). A further probe into the designated roles and expectations of males and females in the household, community, and workplace, in the border areas, reveals a certain structure: men are expected to earn, while women are expected to run the household chores and manage the house. However, in families with the female household heads, it is the women who are responsible and designated to earn because they are not left with any other alternatives. Among others, this factor also determines women's mobility across the border.

The interviews also showed a rise in religious discrimination during the pandemic. In particular, the Muslim community faced discrimination because they were blamed for spreading Corona.

The class hierarchy has been clear in the cross-border mobility. While rich people have easier access for cross-border movement and business due to their networks and political connections, poor people suffer due to the restrictions. While this frustration caused by the border closure was widely observed, some respondents also expressed a relief due to a decline in crimes and illegal activities such as drugs and human trafficking. However, due to the sealed border, the drug abusers, criminals, and people operating illegal businesses have fled across, and are yet to be investigated. A respondent noted, *"because of the restriction in cross-border movement, child and women trafficking cases have declined; crimes and illegal trade of goods and drugs are lower these days."* The responses reflect that human trafficking and other illegal activities have decreased significantly due to the strong border outposts and the other social organizations working on

these issues. Consequently, border people have a greater sense of protection and security against these social evils.

Gender Based Division of Labor

Gender-Based Division of Labor refers to where, how, and under what conditions women and men work (for or without pay) based on gender norms and roles. In the border areas, mostly men go to India for labor work. It is also observed that women from both countries go for labor work. Many Indians come to the Nepal side for more technical works like construction, plumbing, and tailoring.

Nepali migrant workers face different forms of discrimination in Indian cities. One of the female respondents stated that although her husband does not torture her, he repetitively asserts that she does not need to go out to work, as he has been earning well enough already. In families where men do the earning, women are expected to do the household chores. However, low-income houses or those with female household heads leave women with a mandatory role of earning money and providing for the family.

Likewise, small businesses, home-based workers, and mobile vendors in large numbers are women and marginalized groups, who depend on jobs and markets across borders to support their livelihood. They usually have social and business relations with the people across the border. Therefore, border management has a significant impact on women, migrant laborers, and marginalized groups that depend on cross-border jobs, services, and markets to support their livelihoods.

Due to the open border, cross-border labor mobility, for short as well as medium and long term, is quite high. However, men were clearly the primary laborers, compared to women, who crossed border for work. While some travelled alone, others enjoyed residency status with their family members accompanying them.

Gender based violence

A series of gender-based violence and incidences of abuse occurred in the area—both before and during the lockdown. The respondents agreed that the cases of sexual assault and gender violence have not decreased during the lockdown; rather, they might have increased. There are different sexual assault cases perpetrated by family and close relatives, most of which are not reported well. Many of these cases are associated with stigma, which has forced women to commit suicide. The respondents did not openly share about the cases of violence against sexual and gender minorities. Only one out of all respondents

mentioned that there might be issues faced by these people. The level of knowledge and understanding about sexual orientation and gender identity is negligible, let alone an acknowledgement of their dignified existence.

It is also evidenced that due to the economic crisis, many families lost their jobs. Husbands who lost their job and stayed at home would express their frustration on their wives; they hit them and perpetrated violence against them. Many respondents stated that people residing close to the border are face different issues and threats, such as theft, rape, and threats of harassment. The respondents also admitted that there were fewer opportunities to report such cases during the lockdown, as most places were shut.

Social Inclusion and the intersectionality

A number of factors such as gender, disability, age, location, religion, and sexual orientation affect the livelihood of the people living in the border area. An intersectionality of these factors, coupled with their combined and overlapping experiences, creates multiple layers of problems for the people, particularly from marginalized groups.

Despite the caste diversity, people in the border areas live in harmony. However, there was still prejudice and structural barriers, which limited the participation and the engagement of people from marginalized communities.

Hinduism and Islam are two major religions of the people living in the border region. Due to the pre-existing notions and stereotypes about Islam and a news about the spread of Covid-19 in a Muslim gathering, Nepali Muslims had to face discrimination. People accused them of spreading the virus on purpose, which made their mobility in the society difficult. Due to societal and religious values, Muslim women already faced cross-border mobility restrictions, even before the lockdown. One reason is that police and security personnel frisk people crossing the border with goods, which is unacceptable for Muslim women.

The interviews also show the prevalence of caste discrimination. The Dalit community faces a bias in every aspect due to the stereotypes of being from lower caste (so called) and lower economic status. One of the interviewees mentioned, *"If any violent incident happens in a Brahmin family, it never comes out publicly but in our lower caste, everything is disclosed."* It reflects that the people do not care about confidentiality over incidents or victims. But according to her, this disclosure is a characteristic of a 'lower' caste.

The study has had multiple responses from people living with disability. Almost all of them stated that the border is not disability friendly. For example, people living with disability were not allowed to cross the border because they had to take their wheelchair with them. They needed to use tri-cycle for movement but at the border, only two wheelers were allowed.

As the frequency of people travelling across India is higher for receiving health services, things were difficult, during the lockdown, for pregnant women. The emergency support required for pregnant women was not available easily.

Many of the respondents shared that the officials at the border are not multilingual, which made communication difficult. The respondents also noted the need to make BOPs and other administrative units more sensitive and gender friendly. Two respondents mentioned the importance of having female police in the border check point stating, *“female police must present at the border line area, otherwise we as women, face many restrictions and verbal insults. For the body searches also, it would be easier.”*

People who are poor and do not have any closer connection with police officials and administrative officers face much difficulties. Many rich businessmen do their transactions and import and export their products across borders without much restriction. Poor people who depend on agriculture and Indian markets for agricultural manure and fertilizers faced a lot of problem due to the sealed border because they could no longer import fertilizers from across the border.

Because the lockdown was announced abruptly, without enough preparation, migrants were stranded in each side of the border. The unprecedented lockdown, declared without any prior announcement and information to the public, put poor people dependent on the border for their livelihood and medical treatment in a very difficult situation.

From the interviews, it is clearly known that people are considerate only about men and women while discussing gender identity. When asked about sexual and gender minorities, all of the respondents except for one responded about the hard-hit impact of lockdown to sexual and gender minorities. The only response received stated, *“they are affected much during lockdown.”* The diversity within women has not been explored much. Single women who are also female household heads faced much trouble during the lockdown and received lesser support from the community. A respondent from Darchula mentioned that she worked as sex worker for living during lockdown because of sealed border,

as she had no work. Meanwhile, female sex workers who were already in this profession before lockdown also faced loss in work.

Role of local, provincial and central government and level of people's inclusive participation

In federal structure, the local government also has a lot of power and authority. The border people and stakeholders expressed their concern about the delegation of power from central to local as still questionable. He stated that, *"due to the dependence on central level decisions, people cannot take any action at the right time without central level permission."* Every respondent agreed that local government is best suited to reach the people in need. The government should think about participation of locals to address border issues effectively. Several respondents suggested, *"we need table talk and more discussion considering both nation's betterment,"* and *"as a member of the UN, we can speak about border issues freely and openly."*

People from the border must be involved and there must be separate provision for them targeting "जसको सवाल उसैको आवाज". They are the ones who experience border issues first hand as well as fight to protect the border. However, they complained that even local authorities are not spending time with them to understand the real situation on the ground. One of the respondents said that he knows of a time, when the King would come in a rickshaw, visit them, and also understand their situation on the ground. This shows that people in the decision-making authority still need to be motivated to reach the ground level to understand people's real needs.

When asked about the inclusion of people in meetings for decision making, one of the female respondents mentioned, *"there is some participation from us but not in the decision-making process. We are sometimes informed, and we then participate but don't understand the process and results. I believe, if we become aware then our family and community can move forward."* From the interviews, it seems there is no access to reach those consultation and interaction meetings by local community people regarding the border issues facing citizens every time. In all the interviews, respondents mentioned that "Thulo bada" always goes to attend those meetings. People don't have opportunities for this. A respondent with disability said, *"I would tell my problems better if I could attend those meetings and platforms to share. The Government does nothing for us, maybe because I could not go myself and tell everything in front of the government."*

There must be a very good coordination among the local, provincial and federal government. Sometimes the problem is that different political parties are in

the government at three levels, which creates issues in the coordination and implementation of development activities. The border issue is sensitive, and the government should know that whenever there is conflict, the border people are the ones who suffer the most. Thus, any conflicts and disagreements should be sorted out peacefully through dialogues and negotiations, instead of provoking the issues and giving rise to riots and conflicts at the border side. In most cases, community people are defending and protecting themselves.

D. ANALYSIS AND CONCLUSION

Internal and external migration have led to settlement of diverse ethnic and identity groups along the border. Nepal government's political relations with India as well as its policies to control and regulate mobilities across the border have had varied impact on these diverse populations, including women, Dalits, and marginalized communities.

Top level policy makers and bureaucrats in Nepal perceive the open unregulated border as being asymmetric and a challenge to Nepal's independence and sovereignty. They see at least five major issues with the border: asymmetry in the control and flow of goods and people, impact on Nepal's demography, negative effects of infrastructure built by India near or along the border, crime, and border disputes (including encroachment).

These perceptions have guided Nepal's border management and immigration policies. However, given the "sensitivity" of the subject and the nature of Nepal-India joint mechanisms, addressing major concerns depends on bilateral relations and political leadership. Many issues have lingered from the past because of the unwillingness of the political leadership to address them.

The shadow of "special" relations, the practice of using the open border as a leverage, and India's tacit security concerns have generated a significant level of anti-Indian nationalism as well as a security dilemma. There is a perception in Nepal's bureaucracy that India's concern for security is often exaggerated to influence Nepal's domestic policies. A series of blockades by India (1969, 1989, and 2015) has enhanced this feeling.

Except for Narasahi-Susta and Kalapani area, Nepal and India have managed to address border demarcation issues. Given the availability of modern technology, border demarcation issues are likely to cause less friction in the future. However, the two territorial disputes, combined with issues of water resource sharing and border infrastructure (which cause inundation), are likely to cause significant differences in the future.

Increased border policing and use of modern technology are likely to be paralleled by actors engaged in vulnerable mobilities. This will be especially true for trafficking-in-persons and terrorism. The misuse of the open border by terrorists can only be addressed through increased security cooperation and modernization of Nepal's security institutions.

Closure of the border in response to the Covid-19 pandemic provided a lesson that a hard border can have disproportionate impact on the poor and marginalized communities living along the border and can severely disrupt cross-border social relations.

Nepal Government's efforts to realign and coordinate border management institutions are likely to have a long term impact, as they will create pressure on political decision-makers and push through new policies. This in turn makes it even more urgent for the border management agencies to have a policy-making mechanism that takes into account cross-border dynamics and recognizes the needs of the people living close to the border.

Nepal's preeminent emphasis on demographic control and "sovereignty" in the face of vulnerable mobilities across the border has come into conflict with the benefits of connectivity and flow of safe goods.

Making border policies means prioritizing and balancing multiple interests that may be contradictory to each other (eg, security versus economic development, or connectivity versus regulation). Such prioritizing and balancing must take into account public opinion and public interests.

In order to benefit from the open border, Nepal and India need to develop connectivity in multiple areas. While doing so, Nepal needs to address questions about security dilemma posed by India and China.⁹²

Projects of connectivity and infrastructure development in the border areas conducted through bilateral cooperation require embedded security mechanisms. For example, India is posting SSB personnel to provide security for the ICPs in Nepal. Such arrangements can generate security dilemma for Nepal or even controversy in the future.

Similarly, development of infrastructure in Indian territory close to the border

92 Jha, H. (2012). Nepal's Border Relations with India and China. *Eurasia Border Review* 4(1).

can have a significant impact on the Nepali side as well. Such impacts can range from inundation to environmental damage and wildlife conservation.

Security priorities and interests of Nepal and India differ. However, both sides must be able to take into account each other's concerns and priorities. These practices depend a lot on the status of bilateral political relations.

Increasing incidences of border misuse by terrorists, smugglers, criminals, and socio-political actors, who pose a threat to national security, led to concerns about border security and a demand for border closure in the Indian side as well. However, some experts think that closing the border would have significant social and political costs and the only viable solution is better regulation (Das, 2008).

Nepal's attempts to address issues of informal trade (including smuggling) and trade deficit depend on Nepal's broader economic development and trade policies. At present, people living along the border (especially the poor and the marginalized) have benefitted from job opportunities and lower prices of essential goods across the border. Any change in border or trade policy must address potential vulnerabilities these groups can face.

Nepal's attempts at economic development are likely to depend on the development and growth of a sub-regional hub connecting Bangladesh, Bhutan, India and Nepal. Projects of connectivity with a bilateral or regional dimension can have a significant impact on the nature of Nepal-India border as well as the people living alongside.

The movement of people cannot be controlled through fencing or monitoring alone. The only solution is to address the root causes that drive migration; and one of the means of reducing migration and bringing "a qualitative difference in the character of migrants" is to address the issues of economic integration and development cooperation.⁹³

Almost all of the people living alongside the border cross the border multiple times a week or month. Border policies must, therefore, take into account the people's need to cross the border (ie, for employment and supply of low-priced goods) and make the process smoother.

93 Thapliyal, S. (1999). Movement of population between India and Nepal: Emerging challenges. Strategic Analysis.

Government policies like citizenship, provision of government services, and tighter border regulation have the potential to disrupt the practice of cross-border marriage relations. While people of all ethnic origins have cross-border relations, there is a risk that government policies may be discriminatory toward Madhesi castes or Madhesi Dalits.

While people have a habit of crossing the border to avail of goods, services, and jobs, they are also aware about the need to be self-reliant. People think that Nepal, as a country, is too reliant on India. Such reliance can only be minimized through economic development policies. Another issue is the people's perceptions about differences in the relationship between the state and the citizens. In order to address such grievances, the governments must take greater care of people living along the border and ensure that changes in political relations do not impact people's every-day relations with the border.

As Baral and Pyakurel (2013) have noted, one of the major factors that has led to misunderstanding and fear about the Nepal-India open border is a lack of knowledge among scholars, media, government officials, and politicians. Baral and Pyakurel argue that the open border has problems, but these challenges can be resolved with evidence-based knowledge and open mind.

Perceptions about the border are primarily shaped by one's direct experience as well as by media reports. While personal experiences are limited to specific domains, media reports provide a much broader coverage of issues and are more influential in shaping perceptions, especially of the civil society. However, media reports may be subject to selective and other biases; they could provide a more condensed and intensified versions of reality.

Role of provincial and local governments

The provincial and local governments have no mandate to conduct bilateral relations or border management, but they can still use delegated authority to address some issues. In Western Nepal, local governments along River Mahakali are allowing rafting or operating lift pumps for water. Local governments can also try to develop and propose programs and projects specifically linked to the border and border relations.

Provinces and local governments could engage in following activities linked to the border in coordination with a central monitoring mechanism:

Border security and management

- Identification of issues and updating the federal government on status

of cross-border relations

- Citizen identification, crime reporting, and security awareness programs
- Information exchange and security cooperation
- Reducing crime and illegal activities in border areas

Economic activities

- Economic development
- Processing and export of Nepali raw materials and resources
- Cross-border trade
- Infrastructure and connectivity development

Social activities

- Social development
- Dispute resolution (in consort with the federal government) and trust building between cross-border communities and institutions
- Promote cross border cultural activities and dialogue at the level of the civil society (defined by federal policies)
- Policies related to migration

Border, Ethnicity, Gender and Social Inclusion

The Covid-19 pandemic affected everyone, but it affected specific groups even more. Some groups such as daily wage workers, small business vendors, and job holders, who depended on India and the border markets, were mostly affected. In the social setting, the pandemic-induced border closure significantly affected people from the Dalit community, Muslim community, women, single women, sex workers, and marginalised due to their additional vulnerabilities. The border economy highly depended on the goods produced across the border, and a lack of convenient availability and cost effectiveness affected the livelihood, health services as well as the social relationships of the people.

The strong ties between cross border marriage and social relationships are much more beyond nationality. The level of acceptance is higher on both sides. However, the complications related to citizenship issues have made the situation difficult for Indian men marrying Nepali women residing in Nepal as well as Nepali men marrying Indian women. The new provisions and conditions to obtain citizenship have created a difficult situation to be tackled in the everyday scenario— from a lack of access to government services to domestic violence. The deprivation of rights is evidenced not just in the first generation of the cross-border marriage but also in their younger generation. The younger ones face difficulties in obtaining their birth certificates, something that deprives

them of their right to nationality. Despite these complications, though, cross-border marriages still prevail, and the economic relations are still strong. The practices of dowry and lavish feasting at the bride's place still dominate marriages and kinship. Although the roti-beti situation is a very common understanding among the people, the social issues such as human trafficking, drug supplies, and other crimes like theft and rapes are also frequent along the border. During the lockdown, most crimes were likely in a decline, but gender-based violence still existed—despite a seeming decline due to weaker reporting mechanisms. Public are highly appreciative of the police administration for stronger BOP establishment and management in the entrance checking points. However, the longer queue at the border points during entry and the new regulations to produce ID and citizenship cards also proved challenging for working-class groups, as they are both more vulnerable to adverse situations and are also likely to lack proper documentation.

The social settings are harmonious, and the people in the community are living together in harmony supporting each other. However, the pandemic and job losses created conflicts in the family, which was quite common. Mostly, men were seen expressing their frustrations towards their wives and other family members. The situation of single women household heads, sex workers, and the sexual and gender minorities were lesser discussed and known. In the community, the fear of Covid-19 made people vulnerable to fake news and misinformation. For instance, Muslim people were discriminated, as there was rampant news from India and different parts of Nepal reporting 'higher' infection rates among those participating in crowded religious gatherings. The quarantine and the other relief support were not adequate. WASH facilities, female police security at border checkpoint, support and help desk for PWD, and multilingual officers were lacking, and this required improvement at different levels.

Border issues are considered very sensitive and confidential, which discouraged most people to want to talk or mention about the cross-border politics. The lifestyle and the harmony of the people in the community showed a good adaptive environment. Research shows that the community people are willing to engage in and share their real-life experiences in planning and decision making, which are often done by the higher-level class and political officials.

E. RECOMMENDATIONS

1. Develop a policy-making mechanism within the new proposed border coordination agency that takes into account cross-border dynamics and recognizes the needs of the people living close to the border.

2. Ensure mechanisms to address the concerns of disadvantaged groups and minorities who depend on cross-border relations for livelihood or quality of life. Develop policies at the federal, provincial and local levels to develop infrastructure, and promote welfare of people living along the border.
3. Ensure public discussion and public hearings on issues that involve prioritizing and balancing multiple policy interests linked to the border (eg, security, economic development, connectivity, border regulation).
4. Explore and analyse the issue of security dilemma while pursuing projects of connectivity with China and India. Develop policies and strategies to address such security dilemma.
5. Hold bilateral dialogues to prevent or redress negative impacts of the infrastructures built near the border.
6. Develop strategies and border regulation mechanisms to address the issues of vulnerable mobilities without affecting a smooth flow of people and goods. Ensure that such policies are discussed in the public.
7. Study the potential discriminatory impacts of policies like citizenship, provision of government services, and border policies on cross-border relations, especially of the Madhesi, disadvantaged groups, and minority groups.
8. Study the impact of media coverage on cross-border relations and generate greater awareness among media workers about the border and related issues.
9. Develop a federal policy to engage provincial and local governments on activities related to border security/management, economic activities, and social activities that can address border-related issues. (see Role of Provincial and Local Governments)
10. Conduct a fact-based detailed study of cross-border migration and social/marital relations to establish truth about these phenomena and address any misperception about the border and the people living along the border.

11. Provide safety and security measures to PWD, sex workers, single women, Muslims, who were hit hard economically by the pandemic.
12. Promote Nepali market and quality health services in Nepal to discourage people from using ‘chorbaato’ just to have access to basic goods and services.
13. Create a platform and support mechanisms, where the people residing in the border area can participate in sharing, planning, and making decisions for better and effective plans.
14. Strengthen gender-friendly provisions and services, such as well-equipped quarantine services, quick relief support, and other immediate needs and services, particularly during Covid-19 like pandemic and emergencies.
15. Hold awareness programs to highlight gender-based violence and other issues related to abuse and violence—a shadow pandemic both in the family and in the community.
16. Deploy multilingual and local police forces, including female police personnel, for border management. Equip the check points to control the social evils of human trafficking, drug supplies, and theft.
17. Ensure equal treatment and access to everyone at the border check posts in terms of daily usage goods and quick health responses in severe cases, considering the disability and other identities.
18. Sensitize and conduct awareness programs regarding the importance of citizenship, foreign labor, social inclusion, and harmony to educate people of the existing policies and provisions.

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ANNEX 1

Timeline of Border Events

December 2, 1815

The Government of Nepal and the East India Company sign the "Treaty of Segowlie" after termination of hostilities, permanently fixing Nepal's boundaries with India. The treaty was ratified on March 4, 1816.

November 1, 1860 and December 8, 1861

Government of India makes territorial cessions to Nepal "in recognition of the services rendered by the Nepalese Government during the disturbances of 1857." The agreements are made after completion of a survey and border demarcation, which also allows India to finally fix its internal boundaries as well.

1926-27

Survey of India carries out topographical survey of the whole of Nepal, the first scientific demarcation.

July 31, 1950

Nepal and India sign and exchange the Treaty of Peace and Friendship, which defines the nature of bilateral relations.⁹⁴

December 1968

Protests over arrest of four Nepalis in Susta; dispute in Susta-Narasahi border is debated in public.

1969-1970

India imposes short blockades on Nepal as a negative sanction for the construction of Araniko Highway linking Kathmandu to China through the Tatopani border.

November 17, 1981

The first meeting of the Joint Technical Level India-Nepal Boundary Committee takes place.

94 In June 1948, the Rana regime proposed a new treaty in order to improve the 1923 treaty (ie, to gain India's recognition of Nepal's independence and sovereignty) and to control the growing domestic political unrest. See Avtar Singh Bhasin. 2005. *Nepal-India, Nepal-China Relations. Documents 1947-June 2005. Volume I.* Geetika Publishers, New Delhi.

April 1989-1990

India closes border with Nepal for about 15 months after Nepal imports arms from China coinciding with the lapse of the trade and transit treaties. Even flow of essential goods to Nepal is blocked. The primary disputes leading to the impasse were the 1950 treaty and the 1965 arms accord. The blockade was resolved after reinstatement of multi-party democracy and formation of a new government led by PM Krishna Prasad Bhattarai.

June 1997

Governments of Nepal and India decide to refer the matter of Kalapani to the India Nepal Joint Working Group (JWG) constituted by the JTC.

1998

The issue of Kalapani, and the presence of Indian troops in the area, becomes a matter of public debate and controversy.

2007

Tenure of the Joint Technical Level India-Nepal Boundary Committee ends with 98 percent of the strip maps signed by technical experts from two sides. The JTC, however, is unable to resolve disputes linked to territorial claims in Narasahi-Susta, and disputes over Kalapani as well as the source of Kali River (Baral 2018, Das 2009).

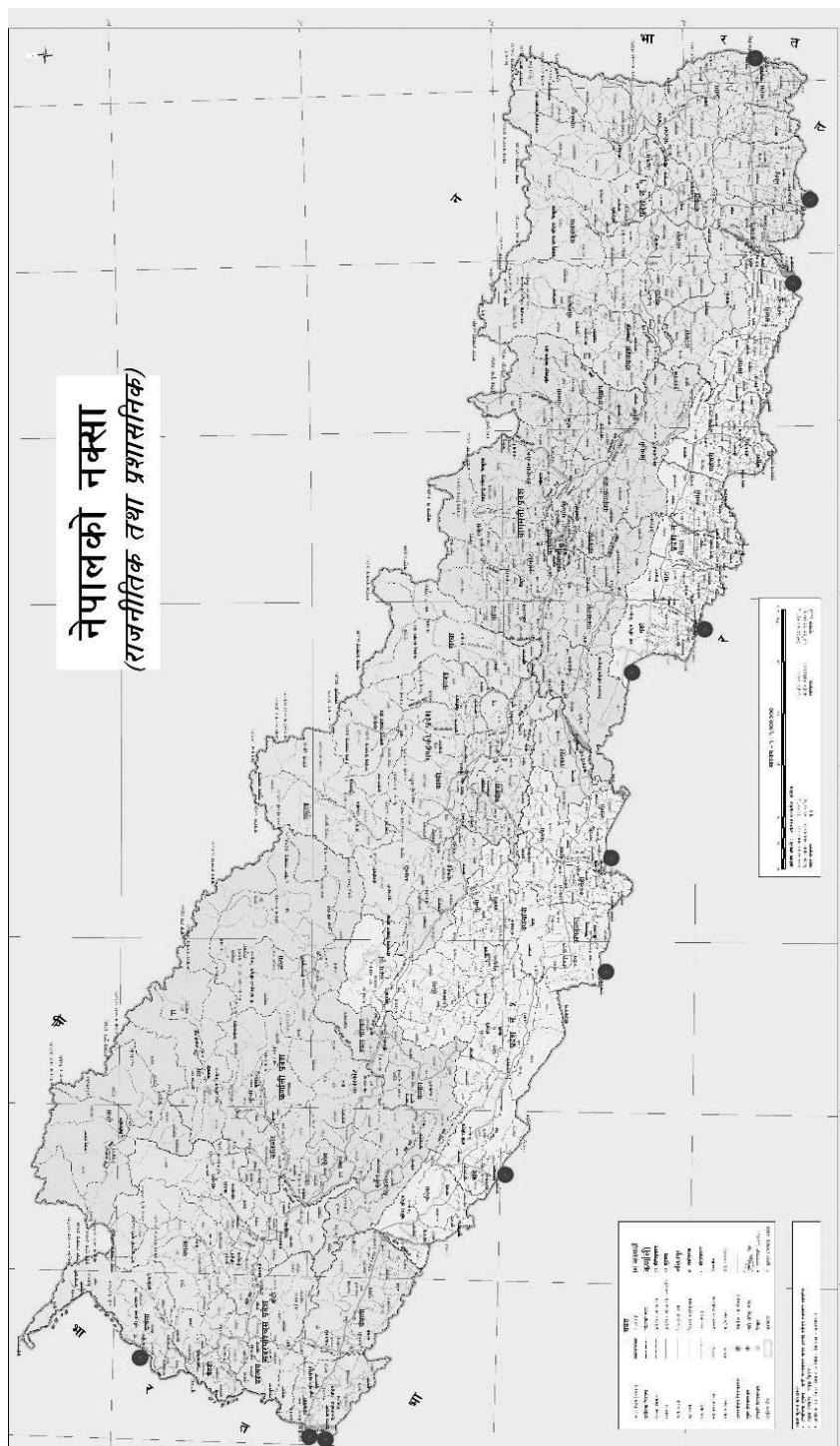
2015-2016

Madhesh andolan launched after promulgation of constitution leads to the blockade of Nepal's southern border with India for a period of about five months. Anti-Indian nationalism gains strength in Nepal.

2020

Nepal introduces a new map and revises the constitution, placing the Kalapani area under Nepal's territories.

Annex 2 Description of Field Sites



1. Nepalgunj-Banke:

With a total area of 2,337 sq. km., Banke district in Lumbini Province shares an open border in the south with India's Uttar Pradesh province. The research was conducted around the Nepalgunj–Rupaidiha transit point.

While the Covid-19 induced lockdown and border regulations made people's livelihood difficult in different ways, the increased security and surveillance reduced theft, robbery, and petty crime and gave people some sense of security. Despite relaxed border, people faced difficulties crossing the border due to the restrictions in cross-border vehicular movement. Lack of easy access to medical services was among the most prominent challenges. People complained about lack of government's role in disseminating information and providing awareness.

Security personnel deployed at the border faced barriers in communicating, as they were not multi-lingual; there was also a lack of female personnel at the border, which made checking women difficult. Muslim women are not comfortable being around the male security forces.

2. Kanchanpur:

Kanchanpur district of Sudur Paschim Province has a total area of 1610 sq. km. and shares open border with India from Brahamdev (Tanakpur) in the north to Kailali's Gauriphanta in the south. This research was conducted around the Gadda Chauki–Banbasa and Dodhara Chandani border points. Gaddachauki, located six kilometers from Kanchanpur district's headquarter, is the busiest border point for cross-border movement of people. Gaddachauki has Customs office, Nepal Police, and Armed Police Force (APF); on the Indian side of the border, there is India's Sima Suraksha Bal (SSB) about 500 meters from the no man's land. Further in, there are Indian Customs office and the British-built Sharada Barrage.

Tanakpur, Banbasa, Khatima, Pilibhit, Bareilly, Sampurnanagar, Gauriphanta, and Palia are the major shopping points across the border, frequented by Nepali citizens to buy essential supplies. Nepali workers take bus or train from these cities to go to Delhi, Mumbai, Gujrat, Rajsthan, and Chennai, and other bigger cities.

- Nepali APF and Indian SSB are present at the border, who have continued to check, interrogate, and record people crossing the border.
- While the APF has a camp for people entering Nepal, the SSB collects ID cards such as citizenship and birth certificate as well as IRs. for health checkup.

- People don't bring goods from India like they used to before; they use transport system.
- About 1000-1200 people from Nepal cross border every day.

People expressed willingness to participate in the interviews, and their responses reflected a sense of patriotism. Land encroachment, India's bully mentality, SSB's intimidation and harassment, criminal activities, and dependence on Indian markets for survival are some factors that seemed to disappoint people.

3. Darchula:

Darchula is a mountainous district with Bajhang district in the East, India's Pithauragadh district in the west, Tibet autonomous region in the north, and Baitadi district in the south. The Mahakali river, which separates India and Nepal has six major bridges, which are also the border points, used by people for cross-border movement. Khalanga–Dharchula, the busiest of these border points, was used for our research. Closed for about 11 months, these points have slowly opened, resuming the normal cross-border flow of people.

Khalanga, the district headquarter, has the Customs office, Nepal Police, and Armed Police force at the border; on the Indian side, there's an SSB camp about 50 meters from the border. Further in, there is the Indian Customs office. While Byas rural municipality's Sitapul and Tigram border points are situated to the north of Khalanga, Dattu, Jauljiwi, and Lali are situated to the south of it. Although all of the rural municipalities are connected with roads, none except the Gokuleswor-Khalanga road is concrete/black-topped. People from rural municipalities bordering India, such as Byas, Malikarjun, and Lekam, have to travel through India to reach the district headquarter of Khalanga.

- While Khalanga has both Nepal Police and APF present at the border, other points have only Nepal Police.
- Khalanga also has health workers, who conduct general health checkups at the border.
- About 1500-2000 people cross the border from all points every day.

People shared that national politics has direct effect on people's lives in Darchula because they have to depend on Indian infrastructures, markets, and health services for their survival.

4. Kakarvitta, Jhapa:

Jhapa has about 144 kilometers of open border with India. To the east lies India's Darjeeling district, and to the south is Bihar's Thakurgunj-Kisanjung district. For this research, the Kakarvitta–Panitanki and its neighboring smaller transit points were used.

During the first phases of Covid-19, the government established over 100 small and large temporary camps of Nepal Police and APF; while most of those temporary security posts have now been removed, some have been upgraded as Border Out Posts (BOPs).

The rural village of Bahundangi in Mechinagar has been experiencing a mayhem by wild elephants for years; some have even lost their lives, while others have been incapacitated.

Bahundangi, Nakalbanda, Kakarvitta, and other points around these places are infamous for smuggling, even during Covid-19. Nuts, dates, black pepper, apples, and oxen are among the most common goods that are smuggled from these places. None of these exports are produced in Nepal but are rather imported from third countries. People living along the no man's land, particularly from poor and impoverished communities, are involved in smuggling activities. They receive some IRs. 20-25 for transporting each sack of goods across the Mechi River. Security officials are usually directly or indirectly involved too. Satighatta near Kakarvitta and Mechipari are infamous for ox smuggling, with local communities' involvement.

There are some instances of general land disputes due to the practice of Indians farming on Nepali land and Nepalis on Indian land.

5. Rupandehi/Kapilbastu:

Rupandehi district shares 59 kilometers of open border with India, while Kapilbastu has 93 kilometers of open border. For this research, transit points around Siddharthanagar–Sunauli and Kapilbastu were used.

During the Covid-19 pandemic, 2,250 Armed Police Forces were deployed along the Kapilbastu-Rupandehi's 152-kilometer-long open border. At different border points, the Nepal government also deployed Nepal Army to manage quarantine facilities. About 1000 police personnel were deployed along the border in Rupandehi district, while 1250 was deployed in Kapilbastu district.

There have been instances of Indian Police roaming on motorbikes in Nepal—about 2 kilometers from the border—clad in full uniform and carrying weapons. Indian SSB was also seen on Nepali side of the border, also in their uniform and with their weapons.

6. Parsa and Bara:

Parsa district lies in Province 2, with a total area of 1,353 sq. km. and a population density of 440 per sq. km. It shares open border in the south with India's Bihar. For this research, the Birgunj–Raxual and Thori–Bhikhana Thori border points were used, while Bara district's small transit point of Matiarwa–Adapur was also included in data collection.

Thori is about 55 kilometers west from Birgunj, Parsa's headquarter. Birgunj–Thori road connectivity was in a very poor state before, and making a round trip to Birgunj on a normal day was a challenging task for the residents there. At present, though, a black-topped road leads all the way to Birgunj, shortening the one-way trip to Birgunj to less than two hours. This road is the Hulaki highway, constructed with India's support.

There are two canals originating from the Thuthe khola in Thori. One flows towards Nepal's Nirmala Basti and is the major source of irrigation for people there, while the other is an important source of irrigation and drinking water for people in Bhikhana–Thori, India. There are occasional disputes between Nepali and Indian communities regarding the use of water. Due to Thori people's dependence on India, they admit to have to deal with Indian security's domineering attitude and treatment.

Indians come to Thori to drink alcohol, as it is banned in Bihar, or for picnic/tourism. There are several liquor shops and small restaurants catered to Indian visitors. Thori was used as a human trafficking route, through which young girls from Chitwan and other hilly areas were transported. However, APF checkpoints and Maiti Nepal booths near the border has significantly discouraged trafficking.

7. Saptari

Saptari lies in Province 2 of Nepal and shares an open border with Bihar, India. The Tilathi–Kunaolee border point and its neighboring villages were used for data collection for this research. People living here have close social, cultural, and economic ties with people across the border. The Indian town of Kunaolee serves as an important shopping centre for people of Tilathi (Koiladi rural municipality), Gorgama, Boriya (Bishanupur rural municipality), Rajbiraj

municipality, and several villages around the Nepal-India border. People faced difficulties due to the border closure.

With the tightened security after Covid-19, women complain of being unnecessarily intimidated and harassed by police at the border check points, even when they bring daily household supplies. This was not the case before the pandemic. There have also been issues of Pahadi-Madhese distinction and a discrimination against the Madhese community.

8. Morang

Morang district with a total area of 1,855 sq. km. and a population density of 520 per sq. km., lies in Province 1 of Nepal. For this research, the Biratnagar (Rani)–Jogbani border and its surrounding villages were used.

The main roads leading to Jogbani, Bihar were closed, but people used Chor Baato to cross the border. Of the more popular ones was Darhaiya's no man's land. APFs standing at different points stopped and checked everyone crossing the border. The Indian village of Tikuliya, adjacent to Darhaiya, apparently sells drugs that are illegal in Nepal; Nepali youths cross the border to use those drugs and come back to Nepal.

During the Covid-19 induced lockdown, businesspeople also used the Chor Baatos to illegally import goods for their businesses and sold them at higher prices with greater profit margins. Most people, who depend on Jogbani for their household supplies, had to face inflation and shortage of goods. Poor, marginalized, and Dalits were particularly affected.

Chapter 3

Understanding Nepal-India Migration Dynamics, Migration Governance and Associated Migration-Related Threats

Arpan Gelal, Lumana Upreti

A. BACKGROUND AND CONTEXT OF THE STUDY

A1. Understanding Nepal-India migration in historical context

The history of cross-border migration between India and Nepal draws back to 900 BC (Gage, 1975). The cultural linkages were established between Nepal and India during the Ramayana times when the Prince from Ayodhya married the princess of Mithila. Its religious and cultural significance is pertinent even today.

The first documented evidence of migration is from the era following the Gorkha's rule in Kumaon and Garhwal in modern-day India in 1804 (Bhattarai, 2007). This was the beginning of the first formal movement of Nepali to India when they moved to Kumaon, Garhwal, and Sutej. At the same time, Gorkha stretched beyond Sikkim to the east as well. In 1816, Nepal and India signed the Sugauli treaty, which officially demarked the Nepal-India border. Moreover, the British Gurkha regiment recruited 4656 Nepali, the first acknowledged Nepali employment in India (Bhattarai, 2007).

In the 1920s, the forests of terai were cleared for agriculture. The availability of large barren land attracted Indian immigrants. Wood from Sal trees provided timber for expanding Indian railways. During the British rule railway developments such as Amlekhgunj to Raxaul, Janakpur to Jayanagar, and Chandra canal attracted immigrants from India (Kansakar, 2003). In 1950 Nepal and India signed Peace and Friendship Treaty. Article VII of the treaty enabled Indian immigration into Nepal substantially. According to the article:

"The Governments of India and Nepal agree to grant, on a reciprocal basis, to nationals of one country in the territory of the other the same privilege in the nature of residence, ownership of property, participation in trade and commerce, movement, and other similar privileges" (Treaty of Peace and Friendship, 1950, Art. VII).

A2. Nepal-India migration trajectory in the contemporary context

Nepal-India migration pattern has changed over the years. Especially after the 1990s, Nepal has become one of the major labor supplying countries to the Gulf including Malaysia, reducing the cross-border migration to India. On the other hand, owing to the feeble economy of Nepal and flourishing economy of India, Indian immigrants to Nepal have considerably decreased. However, irregular, and temporary migration is still prevalent around the borders. Everyday hundreds of people travel to and fro the border for religious, social, cultural, educational, health, economic, trade, and commercial reasons.

A3. Migration and vulnerable mobilities

Migration and migrants have long been seen as being inextricably related to a nation's security issues. Historically, countries shape their national immigration policy as per their security and economic interest. The Indo-Nepal Treaty of 1950 made it simpler for people to travel across the border. The two nations' friendly economic, cultural, familial, and religious relations have flourished from the open border. Nevertheless, the semi regulated, and porous border raises security dilemmas. It has made arms and drug smuggling easier. It has also raised the issues of cross-border terrorism, human trafficking, robbery, customs evasion, loss of national income and mounting security threats in both countries.

A4. Cross-border migration as a catalyst for people-to-people diplomacy

In recent days, diplomacy is not limited to government-to-government interactions. It is also associated with a multitude of cultural, economic, and sociological interactions among the people of those nations. Moreover, migration is increasingly becoming an essential aspect of state diplomatic relations. It has resulted in a large diaspora of Nepali in India and vice versa for jobs, education, kinship, and political affairs.¹ People-to-people ties influence Nepal-India relations to a considerable extent. This has also led to the interdependence between Nepal and India along the border area. The interdependency along the border fundamentally shapes the border policies and practices between the two countries.

A5. Emerging roles of province government and para diplomacy

Nepal adopted the federal structure of governance in 2015. As per the federal setup, the governing structure has been divided into three levels: federal, provincial, and local. The Constitution stipulates the exclusive and concurrent powers of the three tiers. The role of the province is limited. The province

1 Jha, H. B. (2021, January 29). A reset of India–Nepal relations. Observer Research Foundation.
<https://www.orfonline.org/expert-speak/reset-india-nepal-relations/>

government is discontented with the federal legislations impinging their right to exercise exclusive power. Most of these issues are the outcome of the unitary approach taken by the politicians and bureaucrats.

Foreign relations and diplomacy are entirely under the federal government's legislative and executive jurisdiction as per the Constitution. However, federalism can influence how the federal government pursues foreign policy objectives including migration in the broader national interest. Nepal's foreign policy may be better executed if the provinces' involvement in foreign policy including migration and border management is seen as legitimate, not only as a relevant party but as an effective facilitator of Nepal's migration governance and associated threats.

B. DESCRIPTION OF THE RESEARCH PROJECT

B1. Description

This research study is a part of a larger project assessing geopolitics, cross-border relations, and Nepal's development. This research aims to contribute to the achievement of the overall objective of helping the civil society and the government to shape better policies and practices to promote Nepal's national interest. This study is focused on cross-border relations with India, migration patterns, and migration-induced issues. The study has delved into cross-border engagements at the local level (people to people), cross-border mobilities, and the security threats associated with migration.

The study includes four key research questions. The first question seeks to understand the migratory nature, its status and analyze the change in cross-border migration pattern over time. The second question deliberates upon what aspects of Nepal-India migration is considered a threat Nepal's national interest and the reason behind considering migration as a security threat. The third question helps identify Nepal's current policies and practices to regulate migration and address issues arising from it. It also seeks to understand the impact of these policies and practices on cross-border relations and migration. Finally, the fourth question covers para-diplomacy and the role of the province and federal government to regulate migration and border monitoring. It also focuses on the finding policy level recommendation.

The study is divided into five sections. The Section A of the study provides the background and context of the study. Section B provides definitions of various terms used in the study, research questions, objectives, and study methodologies. Section C presents the findings of the study.

Section D analyzes the issues and policy gaps gathered from the findings. Lastly, Section E provides recommendations required for policy-level reforms on migration issues. Further, it is also important to note that this study forms a basis for forthcoming research studies.

B2. Definitions

Migration- It is the movement of an individual or a group of individuals across an international boundary or inside a state. Human mobility comprises any type of people, regardless of its duration, composition, or causes; it encompasses the migration of refugees, economic migrants, displaced persons, and individuals traveling for other reasons, such as family reunions.

Cross-border mobility – It is an act of crossing the national border in a temporary manner for various reasons including kinship visits, trade, market access or others.

Forced migration- Migration characterized by compulsion, involving threats to life and livelihood, whether natural or man-induced, is forced migration.

Immigration- A process by which non-nationals move into a country for settlement.

Emigration – A process by which nationals move out of the country for settlement.

Vulnerable mobilities- These include illegal immigration, smuggling of goods, metals, arms, drugs, and counterfeit notes. It also includes human trafficking and animal trafficking.

Security challenges- The National Security Policy 2019 has categorized unregulated immigration, the issues arising from the illegal distribution of citizenship, organized crime, human trafficking, smuggling of goods and drugs, and violence against women, use of illicit arms, arms trafficking, illegally owning and using property and smuggling and use of counterfeit and foreign currency as national security challenges. Further, it also includes refugee issues, illegal immigration, international terrorism, criminal activities along the border, and impacts of unwanted activities on national security. It has also recognized the occurrence of criminal activities due to open borders as security challenges.

B3. Objectives of the Study

The study aims to explore the migration trajectory, migration patterns, their implication, and how they affect border dynamics. The study also focuses on formal and informal migration policies and practices. The study will form a basis for policy-level intervention to smoothen cross-border relationships and provide recommendations to address migration issues.

The overall objective of this study is to analyze how migration trends and patterns have changed over time, how migration policies affect the daily lives of people along the border and how it is curbing the uncontrolled migration of people through porous borders.

B4. Key Research Questions

The study addresses the following key research questions –

1. What is the nature and status of migration (across the Nepal-India border) at present?
2. Why is migration considered a threat to Nepal's national interest?
3. What Kinds of Policies and practices (formal and informal) have emerged to control “vulnerable mobilities” linked to migration or demographic shift?
- 3.1 What has been the impact of these formal and informal policies and practices on migration, state-society relationships, and cross-border relationships with India?
- 3.2 What has been their impact on women, minorities, and the vulnerable population?
4. What are the policy solutions at the federal and provincial level?

B5. Methodology

The research has adopted a qualitative mode of enquiry. The study used a multi-dimensional approach to gather primary and secondary information. The primary data were collected through Key Informant Interviews (KIIs), Field Research, Observation. Likewise, the secondary data were collected through literature review.

Study methods and tools were thoroughly designed to reach out to women, along with marginalized and disadvantaged groups, i.e., Dalits, minority ethnic groups, and women to gain first-hand knowledge of their experience using an intersectional approach while selecting respondents for the KIIs. Moreover, the study team was composed of an inter-generational representative with both senior researcher and emerging researcher. Among the researchers, both male and female researchers were involved.

Desk Review

In the desk review, the Constitution of Nepal 2072, various enactments, regulations, and policies related to migration and vulnerable mobilities were reviewed. Similarly, various International Conventions were reviewed to understand the international standard vis-à-vis migration. Along with this, various research reports, articles, and relevant documents relating to cross-border migration were critically reviewed. This review helped in identifying the historical cross-border migration trajectory, the push and pull factors of migration, its impact on vulnerable groups and the policies and practices related to migration. Further, the desk review became essential in providing recommendations by identifying the laps in policy and informing reforms for effective and regulated cross-border mobilities.

KII and Expert Interviews

KIIs were conducted in province 1, Madhes and Lumbini province. Expert interviews were conducted with the migration, security, and border experts in Kathmandu and in other places as per their availability. There was a total of 90 respondents comprising of chief ministers, province parliament members, CDOs, security officials, businessmen, journalists, civil society member, Mayors, leaders from Muslim, marginalized and oppressed groups, and custom officers among other. The sample units were purposefully identified. Out of the total number of respondents 80 were male and 10 were female.

Guiding Checklist and Questionnaire

A guiding checklist and questionnaire were prepared for conducting the KIIs among the relevant stakeholders. The guiding checklist and questionnaire were semi-structured, employing open-ended and close-ended questionnaires to gather the qualitative data.

Field Observation

The information was gathered through field observation as well, gaining insights of cross-border mobilities, migration behavior, cross-border activities, and processes in various border points. Direct observation helped in gathering contextual insights on people, circumstances, interactions, and surroundings.

Data Analysis

The data collected through various qualitative measures (desk research, stakeholder consultation meetings, key information and expert interviews, household surveys) were thoroughly reviewed and analyzed to write the report. The data analysis considered all factors such as political, bureaucratic, social, economic, familial factors to shape cross-border migration dynamics and migration related threats (at the local level) followed by state-level policy and practices to shape the patterns of migration between the two countries.

Moreover, interactive discourses and dialogues with relevant stakeholders also formed a part of the analysis to extrapolate the report.

B6. Ethical Consideration

The researchers ensured that all KII respondents were aware of the study's aim. Throughout the study, the research team was committed to the values of inclusivity, feminist principles, and human rights. To maintain these standards, the study team informed and obtained verbal consent from all respondents during the KII, assuring their anonymity, privacy, and confidentiality.

C. KEY FINDINGS

C1. Nature and status of cross-border migration

The cross-border migration between Nepal and India has been a historical norm. The first documented evidence of migration dates back to 1804 in Kumaon and Garhwal, modern-day India, following the Gorkha reign (Bhattarai, 2007). The movement to Kumaon, Garhwal, and Sulej marked the commencement of the first systematic movement of Nepali to India.

Treaty of Peace and Friendship signed by both states in 1950 ensured the foundation for modern border mechanism and free movement of people across the Nepal-India border. Article 7 of the treaty mentions –

*“The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement, and other privileges of a similar nature.”*²

The treaty recognizes the ancient ties between the two states. Further, it enhanced such relationships by providing common benefits for citizens of both countries regarding residency, property ownership, trade and commencement, and mobility in both countries. The treaty has fueled migration from Nepal to India for numerous reasons. However, migration is not exclusively one way, as many Indians have traveled to Nepal for a long time. Though the push and pull factors and migration process might differ for both countries, the phenomenon is reciprocal.

C1.1 Trends and patterns in migration to India

The cross-border movement of people from Nepal to India is largely undocumented. The porous border has eased the temporary as well as the permanent cross-border movement of people. One of the persistent issues regarding Nepal – Indian migration phenomenon is that it remains unrecorded. This makes it difficult to estimate the total number of migrants, the nature of migration, and factors inducing the migration decisions.

2 Treaty of Peace and Friendship, 1950

Lack of employment opportunities at home, family relationships across the border, better educational opportunities, better health and medical treatment facilities, and religious pilgrimages are the major reasons for the cross-border movement of people from Nepal to India.

The lack of a record-keeping mechanism and open movement of people across the Nepal-India border makes it difficult to estimate the total number of seasonal migrants and emigrants to India and vice versa. The 2011 census of Nepal reported 1,921,492 absentee population in Nepal. The emigration rate of the Nepali population stood at 10.77 emigrants per 1000 population. India is a destination for almost a third of the total emigrants of the country, standing 37.5% of total emigrants (CBS, 2014). Lumbini, Sudurpaschim, and Gandaki provinces record the highest number of emigrants to India while province 2 has the lowest number of emigrants to India (IOM, 2019).

Although the absentee population in Nepal has drastically increased over the last two decades, the share of emigrants to India has been gradually decreasing. In the 2001 census, the number of absentee populations was 762,181 with the share of emigrants to India at 77.3%. However, the volume of emigrants increased by 133,205 between 2001 and 2011. In 1991 the total share of emigrants to India represented 89.2% of the migrant population. The figure was 93.1% in the 1981 census.³

Over the last four decades, Nepal has seen a gradual shift in its emigration pattern. India became the desired destination for approximately only a quarter of the migrant population, from being the sole emigrant destination till 1980s. In 1981, 9 out of 10 out migrants chose India as their destination, while the figure currently stands at approximately 4 out of 10.

India was a prime destination for Nepali emigrants during the nineteenth and most of the twentieth century. However, the latter half of the twentieth and dawn of the twenty-first century signaled a paradigm shift in Nepali migratory trajectories. After restoration of multi-party democracy in 1990, the Gulf countries, Malaysia, Hongkong, and Taiwan, became the primary choice for Nepali labor migrants. The better income prospects and eased migration process for the semiskilled and unskilled workforce made these destinations more luring than India. Maoist insurgency further fueled this phenomenon. Many youths fled to the Gulf countries as the conflict intensified, accelerating

3 In 1991 the volume of absentee population was 658,290 and in 1981 the volume was 402,977

the political and economic chaos. This continued even during the transitional political phase after the peace process.

C1.2 Trends and patterns of migration from India

The family ties and age-old custom of cross-border marriage have facilitated the cross-border movement of Indian citizens to Nepal. In the bordering cities of Nepal with India, there has been a long tradition of Indian investment in various businesses, particularly by the community of Indian origin people, known as Marwaris.⁴

The socio-cultural base of India-Nepal migration dates back to the *treta yuga* when Lord Ram of Ayodhya in India was married to Goddess Sita of present-day Janakpur at Madhes province of Nepal. After Nepal's unification in 1768, Indian people were encouraged to settle in the lowland plains known as terai (Dahal, 1983). During the Muslim invasion of Indian lands, many Indians took shelter in Nepal to escape being forcefully converted to Islam (Kansakar, 1984). At the beginning of the twentieth century, migration from India was encouraged to open up Terai.⁵ This is also depicted by the drastic rise of the Terai population from 34.7% to 48.7% during 1952/54-81. Also, from 1961-1981, the population of terai increased by 2.5 times with 6.4 times increment in net migration rate (Whelpton, 2008).

The Indo-Nepal migration is often overlooked compared to the Nepal-India migration. From the immigration perspective, although India remains the prime source of immigrant population in Nepal, the volume is overshadowed by emigrants from Nepal to India.

There is no implicit record of cross-border movement of Indians to Nepal as the border is porous, and the movement is undocumented. The 2011 census of Nepal records 93.6% of the total foreign-born population⁶ residing in Nepal to be of Indian origin. This accounts for 449,149 such population out of a total of 479,625 foreign-born population. Out of this figure, females tend to stay longer (more than ten years) than men. Marriage (2.5% among males and 63.8% among females) is recorded as the main reason for the stay, terai being the most favored immigrant destination. Other reasons follow dependents, business, agriculture, and services (CBS, 2014).

4 Times of India, (2007, April 17). Living in dread, Marwaris start fleeing Nepal. <https://timesofindia.indiatimes.com/world/rest-of-world/living-in-dread-marwaris-start-fleeing-nepal/articleshow/1916984.cms>

5 Treta Yug is one of the four world ages as mentioned in the Hindu Vedic scripture

6 This is the most proximate available data for the total immigrant population in Nepal

The main reason for immigration of the Indian born population is marriage relationship among the female immigrants whereas such proportion of males remain negligible. However, the volume of the India born population has decreased compared to the 2001 census. In 2001, a total of 583,399 India born population was recorded in Nepal, with an overwhelming share of 96% among all the foreign-born population documented (CBS, 2014).

Furthermore, Indian citizens occupied 87% of the total 138,910 foreign citizens in Nepal in 2011, with the majority (56.5%) staying in the terai region. Among these foreign citizens in terai, 39.7% are males, and the majority (60.3%) are females (CBS, 2014). The number of Indian citizens has increased in the last few decades; however, the pattern remains similar. The 2001 census recorded 102,468 Indian citizens, with an 88% share of total foreign citizens in Nepal. The figure was 68,457 in 1991. The distribution of Indian citizens is typical in all the censuses, with most Indian citizens staying at terai and central hill (Subedi, 2007).⁷

C1.3 Trends and patterns in cross-border economic/labor migration

One of the significant reasons for cross-border mobility from both sides is the prospect of employment opportunities and business motive. Historically the major cities of India, e.g., Delhi, Kolkata, or Mumbai, has been the migration destination for the unskilled and semiskilled laborers from the mid-hills and Terai plains, with a dominant seasonal migration from the mid and far west region of Nepal. These unrecorded migrants tend to get employment as household helpers, security guards, factory workers, rickshaw pullers, and hotel and restaurant workers.

Although India is a significant employment destination for many Nepali migrants, the shift in the pattern can be observed since the 1990s. The opening up of employment prospects in Gulf countries through the Nepal government's policy of fostering foreign employment as a source of remittance and reduced migration costs, attracted many youths to migrate to Gulf countries, including Malaysia for unskilled and semiskilled employment.⁸

7 However, experts claim that these figures are highly unrepresentative and real figures might be many times higher. The exact documentation of Indo-Nepal movement of citizens of both countries is not possible due to open border and undocumented migration practice.

8 Jha, S. (2018). भारतको रोजगारी र वैदेशिक मान्यता. Centre for the Study of Labor and Mobility. <https://www.ceslam.org/op-eds/bharatko-rojgari-ra-baideshik-manyata>

In 1991, India was the destination for 89.2% of the total emigrants from Nepal, while the share of India as a migrant destination reduced to 37.5% in 2011. This is further expected to decrease in the 2021 census. The Indian embassy in Nepal estimates some 8 million Nepali citizens living and working in India.⁹

The Indians migrate to the bordering cities and other major cities of Nepal as skilled migrants. Although the volume is negligible compared to Nepali migrants to India, these Indian migrants work as carpenters, masons, chefs, and mechanics. Later, Indians are also involved as professionals like doctors, construction engineers, and IT personnel in Nepal. Given the occasional unrest in Indo-Nepal relations, Nepal's weak economy, and considerably lower income prospects, Nepal is not a lucrative employment destination for Indian nationals. The Embassy of India in Nepal estimates some 600,000 Indians living in Nepal.¹⁰

Nepali people cross the border to sell agricultural products (paddy, wheat, corn, broom, betelnuts, and other seasonal cash crops) and livestock (cattle, goat) in the bordering Indian markets. The key informants report that few Nepali citizens in India who have been staying for a prolonged time have their own businesses, particularly hotels and small garments. Reciprocally, Indian citizens hold big businesses in the bordering Nepali cities, including cloth stores, grocery shops, hotels, and factories.

C1.4 Trends and patterns in cross-border marriages

Cross-border marriage relationships have historically been a glue to strengthen the people-to-people relationship among the Nepali and Indian communities. All the ethnic and identity groups in the bordering districts of Nepal traditionally have marriage ties with their Indian counterpart, which has become the basis of the phrase - Roti-beti relationship to define the Nepal-India relationship. Especially in the southern plains, the marriage relationships are confined to the Indian states of Bihar, Uttar Pradesh, and Uttarakhand. Among the Khas-Arya community in the eastern hills and comparatively lower on eastern plains, marriage relationships are extended to the West Bengal and Sikkim states of India.

Media reports suggest that though there is no compiled data on migration due to marriage relationships on either side, among ten marriages in bordering

9 Embassy of India, Kathmandu, Nepal: (n.d.). Embassy of India. <https://www.indembkathmandu.gov.in/page/about-india-nepal-%20relations/>

10 Ibid.

Bihar villages, in 6/7 marriages, bride or groom used to be from Nepal's side.¹¹ However, key informants and experts state that cross-border marriages have been drastically reduced in the recent past. One of the key informants mentions – *“Earlier the living standard of both communities was almost similar, but now due to the economic growth in India, people's living standard has risen, they do not want to marry among the poor families in Nepal.”*

Other key informants cite the strained Indo-Nepal relation, border blockade, dowry system, the heightened anti-Indian sentiment in Nepal, debates around the naturalized citizenship provisions, occasional difficulties in crossing the border, availability of educated and employed bride/groom within Nepal as the prominent factors in decreasing trend of cross border marriages in Nepali communities. Another key informant mentions – *“Now the cross-border marriages are especially confined within the elites, rich and businessmen as they look for the family with same wealth standard to establish marriage relationship.”*

C1.5 Cross-border marriage trends among Dalits, Muslims, minorities, and OBCs

A similar decreasing trend can be observed among the Dalits, Muslims, Minorities, and OBC communities. Earlier, these communities were at the forefront regarding cross-border marriages. One of the key informants stated- *“As the grooms from these communities started attaining a certain level of education and started earning a good income from foreign employment in the Gulf countries, the trend for looking for grooms for daughters in the Indian side has decreased”*. It was also reported that the start of marriage tradition among the Terai and Hill Muslims has also reduced the cross-border marriages among the Muslim community.

However, in certain ethnic groups, due to the minimal number of populations on Nepal's side and unavailability of bride/grooms, these communities are compelled to look for the counterpart on the Indian side. These communities primarily include Dom, Chamar, Chidimar, among others.

C1.6 Status of safe migration

The primary safety concern for the Nepali migrants in India is that they largely remain undocumented, and it is impossible to track them in many emergency

11 Singh, S. (2020, June 17). 'Roti-beti' ties in Bihar border villages feel strain of changing ties. The Indian Express. <https://indianexpress.com/article/india/roti-beti-ties-in-bihar-border-villages-feel-strain-of-changing-ties-6462579/>

instances. This deprives them of any assistance from the government in hard times. One of the vice-chairmen of a rural municipality bordering India mentioned – “*Recently I saw a widespread post on Facebook. The post was about a person who died a month ago in an Indian hospital. The post appealed to contact if anyone knew him. He turned out to be from my gaunpalika. It took one month to locate person’s family in Nepal*”. There are similar instances of people lost or deceased in India, and no one has information about it.

Nepal-India labor migration is excluded from Nepal’s foreign employment policies.¹² This restricts Nepali migrants in India to seek any help designated for the foreign employees by Nepal government and dilutes the state’s liability against the Nepali migrant workers in India.

There are also cases of sexual harassment and rape among the female migrant workers in India, especially among the household migrant workers. The lack of reporting mechanisms at home or the Nepali Embassy in India makes it difficult to deal with such issues legally and administratively. Moreover, many Nepalis are working in unsafe working conditions with minimum basic safety standards and poor housing conditions, including the slums.

The safety concern of Nepali migrants was heightened during the recent Covid-19. Thousands of Nepali migrant workers head back home amidst the Covid lockdown. They were stopped by Nepali border security without any plans to accommodate them or local travel in Nepal (Gupta, 2020). They were stranded in no man’s land without any quarantine facilities and health safety measures.

C2. Migration as a threat to Nepal’s national interest

C2.1 Understanding Nepal’s national interest within migration domain

The constitution of Nepal 2015, Article 5.1 defines Nepal’s national interest –

“Safeguarding of the freedom, sovereignty, territorial integrity, nationality, independence and dignity of Nepal, the rights of the Nepalese people, border security, economic wellbeing, and prosperity shall be the basic elements of the national interest of Nepal.” (Constitution of Nepal, 2015).

The geo-strategic location of Nepal makes it alarmingly vulnerable to realize what interest as a nation-state Nepal needs to pursue and the trajectories for

12 IOM, (2016, September 30). IOM Presents Findings on Nepal - India Migration Corridor Study.

International Organization for Migration. <https://www.iom.int/news/iom-presents-findings-nepal-india-migration-corridor-study>

safeguarding the interests. As a land-locked small country between the giant populous countries of the world, India, and China, and a completely porous border with the southern neighbor, migration often remains a genuine concern for national security.

The provisions on the citizenship and immigration laws may have non-linear, long-term, and unintended impacts on Nepal's socio-cultural, economic, and political demographics.¹³ Any unintended and detrimental alternation in demographics as a result of prolonged immigration and porous citizenship and immigration policy may threaten sovereignty, territorial integrity, nationality, and even independence of the country.

This threat is further intensified as Nepal is a multi-ethnic country with a varied understanding of nationalism and nationality. It is occasionally pronounced around the escalating voice on self- autonomy and special citizenship rights. It is inevitable to doubt the weakened self-determination of the state because of demographic alteration induced by unchecked migration and loosened citizenship provisions as a threat to Nepal's national interest.

C2.2 National security policy and migration

The draft of National Security Policy 2019 states the issues of refugee and immigration, border encroachment, trafficking of arms and explosives, drugs trafficking, human trafficking, use of foreign land for terrorist activities and cross-border crimes as prime issues within the security environment of South Asia.

The policy recognizes irregular and uncontrolled immigration and issues related to the illegal distribution of citizenship as a threat to Nepal's sovereignty and independence. It also recognizes border encroachment and unwanted activities at the international borders as a threat to national integrity. The issues of refugees, illegal immigration, international terrorism, cross-border crimes due to the open border are identified as threats to the rule of law and internal security.

C2.3 Migration/ cross-border mobility related threats

C2.3.1 Demographic shift

The terai plains of Nepal have gone through a drastic demographic shift, and the phenomenon is underway. The Terai plain receives almost all the immigrants from India. The 2011 census of Nepal records 93.6% of the foreign-born

13 For similar discussion see, Dahal, S. (2021). Impact of citizenship and Immigration on national security of Nepal. *Unity Journal*, Volume II

population¹⁴ residing in Nepal to be of Indian origin. This accounts for 449,149 such population out of a total of 479,625 foreign-born population.

Historically, terai plains have received immigrants from India in various time periods. After Nepal's unification in 1768, Indian people were encouraged to settle in the lowland plains (Dahal, 1983, pp. 1-20). During the Muslim invasion of Indian lands, many Indians took shelter in Nepal to escape being forcefully converted to Islam (Kansakar, 1984, pp. 49-69). At the beginning of the twentieth century, migration from India was encouraged to open up Terai (Dahal, 1983). This is also depicted by the drastic rise of the Terai population from 34.7% to 48.7% during 1952/54-81.¹⁵ Also, from 1961-1981, the population of terai increased by 2.5 times with 6.4 times increment in net migration rate (Whelpton, 2008). However, this migration pattern to the Terai plains marginalized the then inhabitants of western plains, Tharus. This has also accelerated the rise of ethnonationalism and the nexus of citizenship-identity politics. This rise of ethnonationalism and conflict surrounding the identity, if not addressed promptly, is challenging for the internal security and stability of Nepal.¹⁶

C2.3.2 Haphazard citizenship distribution and dual citizenships

The citizenship Act of Nepal 2006 provided eligibility to obtain citizenship to all the non-citizens born within the Nepali territory until April 1990 (Upadhyay, 2021). Soon after enacting this Act, the government distributed citizenships establishing temporary camps in towns and villages. Many key respondents believe this initiative was a hasty move to integrate Indian immigrants without proper research and evidence. Many key respondents reported massive irregularities in this campaign, and many Indian citizens acquired Nepali citizenship through fake documentations and bribing. One of the key respondents' states – *"there are several hundred thousand Indian people who obtained citizenship after 2006. This is a threat to national sovereignty and integrity."*

There is also the issue of dual citizenship. Many Indian citizens hold Nepali citizenship too. The prime impact of this phenomenon is the takeover of businesses in the bordering cities of Nepal. The issue of dual citizenship is

14 This is the most proximate available data for the total immigrant population in Nepal.

15 This is also to be noted that hill to terai migration was facilitated by the government and it also increased significantly in this period.

16 For similar discussion see, Sachin Dahal, 2021, Impact of citizenship and Immigration on national security of Nepal, Unity Journal, Volume II

also prevalent in the eastern hills and plains among the people with familial ties in Sikkim and West Bengal within the Khas-Arya community. In many stances, these people hold citizenship by descent compared to the naturalized and citizenship by birth related dual citizenship among the terai immigrants.

There are concerns about the political implications as these added citizens now have the right to vote, posing a threat to Nepal's sovereignty. Furthermore, the demands for the right of naturalized citizens to be elected in the state's prominent political positions¹⁷ have already surfaced, indicating the intensification of the issue in the future.

C2.3.3 Vulnerable mobilities

Cross-border terrorism, organized crime, refugee inflow The porous border with India poses a security threat for both countries related to cross-border terrorism and organized crimes. Various terrorist operatives belonging to ISIS and Mujahideen have been allegedly reported hiding in Nepal and setting up their base for international terrorism.¹⁸ These group operatives have been found using Nepal as a transit to travel either to India or third countries using the forged documents.¹⁹

In 'Country Report on Terrorism 2018', US State Department reported Indian Mujahideen using Nepal as a hub to carry out terrorist activities against India.²⁰

The prospect of refugee inflow using the porous border has been a heightened security threat to Nepal. A group of Afghan refugees has been reported to enter Nepal from the Jamunaha border using the fake Indian ration card.²¹

17 Currently a person shall have acquired a citizenship by descent to be elected, nominated and appointed as the President, Vice-President, Prime Minister, Chief Justice, Speaker of the parliament, Chairperson of National Assembly, Head of the province, chief minister, speaker of Provincial Assembly and chief of security bodies.

18 Dhungana, S., & Pant, S. (2020, January 30). Terror suspects arrested in India say they were using Nepal as a base but security agencies are clueless. The Kathmandu Post. <https://kathmandupost.com/national/2020/01/30/terror-suspects-arrested-in-india-say-they-were-using-nepal-as-a-base-but-security-agencies-are-clueless>

19 Ibid.

20 Staff, F. P. (2019, November 7). Nepal emerges biggest hub for Indian Mujahideen, says US report; porous border makes India vulnerable to terror attacks-India News,. Firstpost. <https://www.firstpost.com/india/nepal-emerges-biggest-hub-for-indian-mujahideen-says-us-report-porous-border-makes-india-vulnerable-to-terror-attacks-7616161.html>

21 Republica. (2021, November 1). Security at Jamunaha border tightened to prevent Afghan refugees from entering Nepal. My Republica. <https://myrepublica.nagariknetwork.com/news/security-at-jamunaha-border-tightened-to-prevent-afghan-refugees-from-entering-nepal/>

Earlier to this, many Rohingya refugees had been found to enter Nepal through the Kakarvitta border.²²

C2.3.4 Drugs trafficking, goods smuggling, and human trafficking

One of the key security concerns identified in this study is the rampant drug trafficking and in-person trafficking, especially girls for sexual exploitation and children for labor exploitation. The security personnel in various study districts identified the growing use of drugs among the youth due to organized drug rackets involving citizens from both sides of the border, at times within the protection of local leaders and dons. In 2020/2021, a total of 131 Indian nationals were arrested for carrying prohibited drugs in Nepal.²³

Key respondents highlighted concerns with goods smuggling from multiple border points, evading the customs. These activities are challenging to track in many situations owing to the long porous border. Although the incidences of human trafficking have reduced in later period, the traffickers found alternative methods for girls trafficking even during the Covid-19 times. In 2020/2021, Nepal police received 134 cases of human trafficking, where 187 girls and children were victims.²⁴

C3. Nepal's policies and practices related to migration to and from India

Most of the policy frameworks within the migration governance of Nepal exclude migration to India within their scope. The labor migration to India is not defined within the domain of foreign employment, and no provisions of work permit or any approval are required for the same.

C3.1 Policies regarding the migration governance Constitution of Nepal

The constitution of Nepal 2015 states the state's responsibility to ensure foreign migration free from exploitation and guarantee the rights of migrant workers. Furthermore, it also seeks to mobilize the capital and skills of returnee migrant workers.

22 People's Review, (2021, October 24). Seven Afghan refugees arrives in Kathmandu. People's Review. <https://www.peoplesreview.com.np/2021/10/25/seven-afghan-refugees-arrives-in-kathmandu/>

23 This data is derived from Nepal Police's records.

24 This data is cited from Nepal police's database. However, the actual incidence of girls trafficking is very high compared to this data. For instance, Maiti Nepal received reports of 508 women missing from Nepalganj over a period of six months from January to July 2019.

1950 treaty of Peace and Friendship

The 1950 treaty of peace and friendship acts as the base for Nepal-India's unique relations. This treaty ensures same privileges on movement for nationals of both countries along Nepal-India border. It also provides the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement, and other privileges of similar nature to the nationals of one country in the territories of the other.

Immigration Act 1992 and Rules 1994

The immigration Act 1992 and the Immigration Rules 1994 are the main regulatory framework governing the immigrants' entry, exit, and stay, including the Nepali citizens to and from Nepal. These legal provisions govern the visa requirement for foreign nationals. However, as Indian citizenships are exempt from visa requirements or entry permits, the act and rules are silent on migration to and from India.

Citizenship Act 2006 and Rules 2006

The citizenship Act 2006 states that any person born before April 13, 1990, within the territory of Nepal and domiciled permanently in Nepal shall be the citizenship of Nepal by birth. This facilitated citizenship access to numerous people of Indian origin in Nepal. Further, the Act states that foreign women married to Nepali citizenship can acquire naturalized citizenship by producing a marriage registration document and proof of initiation of the procedure for renunciation of their own's foreign citizenship. This has eased citizenship access to Indian women marrying Nepali citizens and facilitated cross-border immigration through the marriage relationship.

Foreign Employment Act 2007 and Rules 2008

The foreign employment Act 2007 regulates the process of foreign employment, ensures maximum protection of safety and rights of migrant workers, and ensures special provisions for women, dalits, indigenous, oppressed, and remote groups. It also provides for the establishment of a welfare fund and foreign employment tribunal. However, in Nepali legal landscape, migration to India for labor is seldom classified within the domain of foreign employment. Provisions of the Act, welfare fund and the foreign employment tribunal are not applicable in case of migration to India for employment.

National Population Policy 2014

National Population Policy recognizes that migration has changed the demography of rural areas and has left behind only women, children, and the

aged population. Its key objective is to manage internal and external migration safeguarding Nepali migrant workers, documentation of external migration, and utilization of returnees' skills and capital in national development. However, the migrants to India are widely overlooked in practice regarding such provisions.

Local government Operation Act 2017

This Act entrusts local bodies to collect data, statistics, and records regarding foreign employment. Further, they are also required to manage employee information centers, skills training, reunify returnee migrant workers, and utilize their skills. This study conducted in 20 terai districts did not report any data regarding migrants to India, information on returnees, or any facilitation process initiated by the local governmental bodies.

C3.2 Border management practices and migration dynamics

Open entry and exit

The treaty of peace and friendship 1950 ensures the unrestricted mobility for the citizens of both countries within and across their territories. The key respondents in various bordering areas reported that there are no security checks or even inquiries to cross the border in most of the cases. However, in specific border points, sometimes SSB²⁵ restricts the entry quoting the orders from above.

Occasionally Nepali authorities have provisioned for Identity card checks. For instance, during Covid-19 restrictions, ID card was mandatory for both Nepali and Indian citizens in some border points to cross the border.²⁶ In another instance, an Indian voter card had been made mandatory for the entry of Indian citizens in Nepal, given the threat of the inflow of Rohingya and Afghani refugees.²⁷

Personal inquiry and security checks

To ensure border security and reduce vulnerable mobilities, the Armed Police Force enquires the suspected person crossing the border and performs the security checks. Due to the lack of high-tech security equipment and biometric security check provisions, the efficiency of such mechanisms to reduce vulnerable mobilities is highly questionable.

25 Sima Surakshya Bal (SSB) is the Indian border security force

26 Bhattacharjee, K. (2020, August 13). Nepal to seek ID cards from Indian visitors. *The Hindu*. <https://www.thehindu.com/news/international/nepal-to-seek-id-cards-from-indian-visitors/article32337134>.

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27 *ibid*

Border Outposts (BOPs)

Border outposts are on either side of the border regulated by the Armed Police Force, a paramilitary force entrusted in border security in Nepal, and Sasatra Surakshya Bal (SSB) on the Indian side. Currently, there are 190 BOPs within 15kms along the 1770km long Indian border, manned by at least 35 APF personnel.²⁸ BOPs are entrusted with securing the national border, checking infiltration of criminal elements curbing cross-border crimes and counterfeit human trafficking. The key respondents representing higher officials in various districts reported the pathetic infrastructure of BOPs and lack of proper technology and surveillance mechanisms. They also mentioned large coverage area within the BOPs as a constraint on the proper functioning of BOPs.

Customs Points

The customs at the borders serve the dual purpose – collecting revenue through import and export of goods and regulating illegal goods' movement. The customs points at the Indian borders need to be upgraded regarding the infrastructure and use of technology to reduce hassle at the customs points and ease the cross-border movement of goods.

Registration for entry of Indian vehicles

Indian vehicles are required to register at the customs upon entry to Nepal, pay the applicable customs duty, and can stay for a maximum of 30 days in a calendar year. Although the single day visit to the nearest border municipality is exempted from customs duty, they need to obtain a Pass/Challan from the border check post.²⁹ However, this provision is highly unimplemented. Many vehicles with Indian number plates are rampant in the bordering areas all the year-round.

Joint security mechanisms

In the later period, India has been focusing on joint security mechanisms for border security control. The key security personnel from APF revealed a smooth collaborative relationship with Indian border security forces including occasional joint meetings. The primary concerns from the Indian side are the cross-border crimes, vulnerable mobilities, anti-Indian Islamic activities on Nepal's side, and alcohol abuse in bordering cities by the Indian nationals. The

28 Nepal, T. R. (2021, January 15). 197 border outposts ready, 24 more in offing. GorakhaPatra. <https://old.risingnepaldaily.com/detour/197-border-outposts-ready-24-more-in-offing>

29 The Indian Embassy in Nepal, n.d., India-Nepal relations. <https://www.indembkathmandu.gov.in/page/entry-of-indian-registered-vehicles-in-nepal/>

often-manifested Nepali concerns are drugs and arms trafficking as well as in-human trafficking. In some cases, the security forces of both countries conduct joint patrolling.

Integrated Check Posts (ICPs)

India has been focusing on constructing Integrated Check Posts (ICPs) to facilitate cross-border trade and mobility. ICPs bring customs and immigration under one roof, care handling facilities, warehousing, medical, plant, and animal quarantine facilities, and amenities for drivers and passengers. ICPs are already under operationalization in Birgunj and Biratnagar while the construction is underway in Nepalgunj and has been announced in Bhairahawa.³⁰

Trafficking control posts

One of the significant security concerns regarding Nepal-India cross-border mobility is the trafficking of girls and children in India. Although the APF on Nepal's side and SSB in India are entrusted with curbing this phenomenon, it remains an alarming threat. The trafficking escalated even during the Covid-19 border restrictions and tight border security measures.³¹ Many NGOs like Maiti India and KI Nepal have border outposts to control the trafficking, but the problem exists. There is a need for a collective security outpost of security forces of both sides to minimize this cross-border mobility threat.³²

Covid border closure and surfaced concerns on cross-border mobility

When Nepal closed its border in response to the Covid regulation mechanisms on March 23, 2020,³³ a chaotic scene surfaced along the Nepal-India border. Thousands of Nepali migrant workers returning home due to Covid lockdown in India were stranded at the border. It was irresponsible of the Nepal government to abandon its citizens who are the source of remittance and drivers of the rural economy.

30 H. T. Correspondent, (2020, November 12). India-Nepal launch construction of 3rd integrated check post to boost trade. *Hindustan Times*. <https://www.hindustantimes.com/india-news/india-nepal-launch-construction-of-3rd-integrated-check-post-to-boost-trade/story-cpbd3yvuvHqA8fgBo8wRVM.html>

31 Human trafficking persists during Covid at Indo-Nepal border. (2020, November 26). SOAS Blog. <https://study.soas.ac.uk/indo-nepal-border-human-trafficking-persists-amid-pandemic/>

32 Banerjee, S., & Ashraf, A. (2021, March 23). Just The need for integrated SOPs to combat human trafficking along India-Nepal. Observer Research Foundation. <https://www.orfonline.org/expert-speak/need-integrated-sops-combat-human-trafficking-along-india-nepal-border/>

33 P.T.I. (2021, March 19). Covid-19: Nepal to resume cross border transportation with India. *Hindustan Times*. <https://www.hindustantimes.com/world-news/Covid19-nepal-to-resume-cross-border-transportation-with-india-101616112567894.html>

It also signaled the lack of proper infrastructure to quarantine and the lack of preparedness for emergency response in such situations. At the same time, Indian authorities were worried about carriers of Covid-19 entering India.

Covid border closure also induced unexpected changes in cross-border community ties. The restricted mobility impacted the family visits to the other side, especially in severe cases like death. It also resulted in reduced cross-border marriages after the Covid restriction. One of the key respondents stated – *“During Covid -19 border restrictions, regarding cross-border mobility, it significantly impacted the cross-border marriages. In many cases, the wedding team coming across the border had to quarantine for 14 days at the border point; in another case, only a handful of people were allowed to cross the border. This also created a conflict situation. Since then, cross- border marriages have drastically reduced.”*

Furthermore, it was estimated that some 900,000 Nepali returned back after Covid-19 restrictions. Immediately after loosening border control, some 420,000 returned to India until September 2020.³⁴ There were strict security measures requiring ID cards to cross from major border points. Some 22,000 Nepali migrant workers with India-issued ration cards were estimated to return through Nepalganj. In contrast, others returned through less controlled border points. This was a matter of concern for the Indian authority as some others had Adhar cards too.³⁵

C3.3. Impact of formal and informal policies and practices

C3.3.1 Impact on migration

The access to citizenship issue around the immigrants of Indian origin was addressed mainly by the Citizenship Act, 2006, which granted citizenship to people born in Nepal by birth until April 1990. However, for those who obtained citizenship by birth, it does not entitle their children³⁶ to citizenship certificates. This has posed a threat to a growing young generation in terai districts to remain deprived of citizenship. There also remains a problem regarding the access to citizenship if foreign men marry a citizen of Nepal (i.e., Nepali women) and decide to immigrate to Nepal. Some of the key respondents point out that

34 Dahal, M., & Sapkota, J. (2020, September 22). भारत फर्किए सबै ४ लाख नेपाली। समाचार - कान्तिपुर समाचार.
<https://ekantipur.com/news/2020/09/22/160076329417667267.html>

35 Himalayan News Service. (2021, September 28). 22,000 Nepali migrant workers leave for India. The Himalayan Times. Retrieved September 28, 2020, from <https://thehimalayantimes.com/nepal/22000-nepali-migrant-workers-leave-for-india/>

36 There are no provisions for citizens by birth to transfer their citizenship to their children

though this is not a widespread concern, such people have been staying in Nepal and are denied access to employment and property ownership opportunities.

Regarding the labor migration from Nepal to India, the related acts of Nepal do not include migration to India within the domain of foreign employment and exclude Indian migrants from provisions of safety and welfare mechanisms set up for foreign employment migrants. Furthermore, there is no data, records, or statistics regarding the Nepal-India migration for labor, making it hard to track who, where, and how they migrate and their conditions at the workplace.

Due to the semi-regulated porous border, poor screening, lack of proper surveillance mechanism, and security measures, in-person trafficking, especially among aspirant migrant girls and children, is prevalent through the Nepal-India border.

According to the Human Rights Commission, around 1.5 million Nepali are at risk of human trafficking.³⁷ However, there lacks an integrated record-keeping mechanism regarding trafficking victims and rescues. Nepal Police's figure shows 2,104 Nepali citizens potentially human trafficking victims rescued from the border in 2018. In contrast, the figure for the same is around 10,000 as per the records of various I/NGOs (UN RC/HC, 2011).

C3.3.2 Impact on state society relationship

Impact of border closure

The Covid 19 border closure surfaced the Nepal government's attitude and responsibilities towards the Nepali migrant workers in India. The irresponsible act of the Nepal government to abruptly close the border, leaving several hundred thousand returnee migrants in the border check posts stranded,³⁸ demonstrated the height of irresponsibility.

In another circumstance, the border closure impacted the daily livelihood of people. The people in the bordering areas depend on the Indian market for

37 Mandal, C. K. (2019, August 6). Nearly 1.5 million Nepali at risk of human trafficking while 35,000 trafficked last year: NHRC report. The Kathmandu Post. <https://kathmandupost.com/national/2019/08/06/nearly-1-5-million-nepali-at-risk-of-human-trafficking-while-35-000-trafficked-last-year-nhrc-report#:~:text=Aspiring%20migrant%20workers%2C%20Nepali%20working,are%20more%20vulnerable%20human%20trafficking>.

38 Ganguly, M. (2021, October 19). Nepal Abandons Migrant Workers in Fight Against Covid-19. Human Rights Watch. <https://www.hrw.org/news/2020/03/31/nepal-abandons-migrant-workers-fight-against-covid-19>

essential goods, including health care and medicines. The farmers were deprived of market access to buy seeds and fertilizers or sell their products on the Indian side. Nepali citizens facing these problems take the abrupt border closure without alternative measures for emergencies as the violation of their fundamental rights. One of the local government officials in Banke district stated – *“We received a request for access to the Indian side for various emergencies, but the federal government has not authorized us to grant access. We could not do anything but feel helpless”*.

Madhes and the state

Since a historical past, the Madhes have been discontent with the government quoting discriminatory citizenship and immigration laws, enraging the Madhesi people. Since the start of citizenship governance with formal citizenship acts in the 1950s, the people of Indian origin were deprived of citizenship until the enactment of the Citizenship Act, 2006. While this Act addressed most of the citizenship issues, it left Hill-descent Pahadi people unhappy who see Indian-origin Madhesi immigrants settling in the terai plans for decades through an Indian lens. However, a segment of the descent-based Madhesi population was also unhappy with the citizenship distribution campaign claiming it to be haphazard.

Discriminatory border practice towards the poor and vulnerable

Although the border is open for all, the respondents of this study reported discrimination on the border mobility among the poor and elite class. The small vendors who cross the border for small cart-business and daily wage labor are reported to be misbehaved and tortured in the name of security checks. However, the elites do not even have to go through security checks and are never questioned. Furthermore, the small-scale traders who import goods for trading from the Indian markets are often harassed on the border in the name of security checks and have to bribe the border officials on several occasions.

C3.3.3. Cross-border relationship with the Indian community

This study suggests that the policy frameworks and legal provisions enacted at the federal level regarding migration have little or no impact on the cross-border ties at the people-to-people level. One of the key respondents reported, *“the fundamental aspect of cross border relationship is an open border and unrestricted mobility ensured by the 1950 treaty, which Nepal cannot easily reverse. Other migration-related policies like citizenship do not have much impact at the grassroots level relationship. It is the familial and business ties that have shaped cross-border relationships.”*

However, Covid 19 border closure for almost a year and strict border mechanisms on cross mobility hampered the people's relationship. It diluted the social and economic ties among the cross-border communities. One of the prime issues highlighted by most respondents is the reduced cross-border marriages due to Covid restrictions, which has become a norm. The hardships induced by border restriction to conduct cross-border marriages and difficulty visiting the familial relationship on either side have impacted peoples' social ties.

Sometimes the vulnerable mobilities, including organized loot and robbery, create tension among the communities across the border. However, this has significantly reduced in the later period. This also included other activities like kidnapping and in-person thefts. One of the civil society activists stated – *'Earlier there were organized loot and robbery rampant, and it created suspicion against the Indian community. There were also cases of kidnappings. However, these days these activities are not heard frequently anymore.'*

C3.3.4. Impact on Dalits, Muslims, minorities and the OBCs

There is compulsion of cross border mobility on daily wage workers, Dalit people, women and indigenous people living along the border. The closure of borders especially during the Covid-19 pandemic has made it difficult for them to earn their livelihood. Many people travel across the border on either side every day for work. The border closure halted this practice. All other border entry points except the major ones such as Birgunj- Raxual, Birantnagar- Jogbani, Karkarvitta-silliguri were closed during Covid-19 without alternative provisions.

Further, there is widespread human trafficking across the border. Particularly hundreds of young women, girls, and children are trafficked to India each year. Large number of them are in Indian brothels or are working as domestic helpers, generally against their will. It is again the improvised, marginalized vulnerable women who fall victim to such incidents. The Human Trafficking and Transportation (Control) Act of 2007 has failed to curb this issue. Moreover, the mechanisms and practices along the border to curb human trafficking such as the check-post and human screening have failed to contain the cases of human trafficking.

Since the government has failed to provide employment opportunities in the home country, people from poor, marginalized communities are compelled to travel across the border to earn livelihoods. The pressing issue emerging out of migration is the prevalence of HIV/AIDs and other transmissible diseases

among the migrant workers. This has a direct impact on the women and children back home. The government has failed to rehabilitate such migrant workers and their family. No policies have been formulated to cater this issue.

C4. Roles and policy solutions to the provincial and federal governments

C4.1. Potential roles of provincial governments

Documentation and record-keeping of migrants

One of the loopholes regarding the Nepal-India migration governance is the lack of a record on the number of migrants, migration patterns and their destination in India. The Schedule-6 of the Constitution of Nepal 2015 mentions the state statistics within the jurisdiction of the states. There is a need for a provincial mechanism to keep records of migrants to India and vice versa to have a fair idea of who they are, where they are from, where they are going and how they migrate to facilitate the migration governance mechanisms.

Control of vulnerable mobilities and migration governance

Key respondents representing the province officials state the need for the states' role to increase awareness of the dangers of Indian labor migration. The Schedule-7 of the Constitution of Nepal incorporates the issue of drugs and family affairs, including marriage as a concurrent power of federation and state. Provinces can play a role in reducing drug trafficking, goods smuggling, and identification of migrants with criminal motives in Nepal's land with due coordination with the security agencies. It could be one of the prime responsibilities of the State police as envisioned in the constitution of Nepal. Provinces can also play a catalytic role to facilitate coordination among agencies at the border to ensure human trafficking control.

Para diplomacy and communication with Indian states

Although the constitution of Nepal and legal frameworks do not envision the diplomatic role of provinces; the ground realities, and practicalities of the terai districts and complicated migration landscape require the communication and lobbying of states with the Indian counterparts to safeguard the migrants' safety. One of the key informants at the provincial administration states – *"We are close to the people. We receive complaints of migrants about their problem in India. Nevertheless, we do not have any jurisdiction to communicate to the Indian states; because of this, we cannot do many things as issues are cross-border and administrative things are complicated."*

Training and skills

Most of the migrants to India from Nepal's southern districts are primarily unskilled. They are compelled to work with very meager income and harsh working conditions in India. States should launch programs on skill development and technical training to reduce migration on the one hand and ensure the migrants have skills before migrating, so they can enhance income prospects and better working conditions.

Use of skills and entrepreneurial potential of returnee migrants

One of the unexplored factors regarding the returnee migrants is the inability of the state to use their skills set. While it is evident that most of the migrants to India are unskilled, respondents reported that a fraction of people come back with skill sets acquired. The provincial government should polish their skills and grab the opportunity to use their entrepreneurial stigma for the provincial development. For this, a separate entity within the provincial set up to deal with migration to India and management of returnees can accelerate the process.

C4.2 Potential roles of the federal government

Citizenship and issue of Madhes identity

The Madhes has historic discontent toward Nepal's citizenship policy and the state's discriminatory policy towards the immigrants of Indian origin. Although the Citizenship Act 2006 addressed some issues regarding the citizenship concerns of the immigrant population from India, many people failed to acquire it. Among the diverse reasons, the most cited reasons are low socio-economic status and inconsistency in implementation of the law. Issues are also arising regarding the entitlement to citizenship for the children of people granted citizenship by birth through campaign after 2006 Act. There is an ever-growing need for the consistent approach of the government to address the citizenship issues related to Madhes, and acceptance of Madhes identity, which is often perceived through the lens of Indian immigrants.

Permit requirement and national record of labor migrants

Many key respondents recommended provision of permits for the labor migrants to India and those immigrating to Nepal. On one hand, this would maintain the record of the labor movement and their distribution at the destination and, on the other hand, may help identify the nature and trend of the labor migration within Nepal and India.

Incorporation of labor migration to India within the framework of foreign employment

The Foreign Employment Act 1992 and Rules 1994, and Immigration Act 1992 do not incorporate labor migration to India within foreign employment. This has hindered the labor migrants to India from entitlement to the benefits and governmental provisions ensured for foreign migrant workers regarding safety and preservation of labor rights at the destination. Most of the key respondents reported that migration to India should be brought under foreign employment framework to ensure the safety of migrants' labor rights in India.

The employment agreement, safety arrangements, and welfare fund

The federal government needs to ensure the safety of migrants to India regarding the living conditions and address the cases of violation of human rights and sexual harassment. Many key respondents stated the need of an initiative of the federal government to lobby with India for the compulsory provision of employment agreement for the migrants on both sides to ensure their safety and trace their location in India. There is also a need to establish a separate welfare fund for the migrants to India to ensure they get needed help during emergencies and stranded conditions.

Security cooperation and joint mechanisms against vulnerable mobilities

The strategic location of Nepal poses a security threat regarding cross-border terrorism and organized crime. India's concern is the use of Nepali soil as a hub for international terrorist and crime groups targeted against India and the rise of Islamic fundamentalism, as reported by the key security personnel interviewed. Nepal's concern remains the inflow of foreign refugees, drugs smuggling, and human trafficking. Recently, 3 APF personnel were injured in a smuggler's attack near the border in Kanchanpur district before they ran away to India³⁹. To counter these challenges, a joint security mechanism, and strengthened inter-country communication channel entrusted with countering these security concerns is a need.

Border management practices

Nepal does not have specific laws to regulate and manage the border. The Armed Police Force is deployed for border security and management. However, the concerning issue is the lack of infrastructure and technology for effective

39 Onlinekhabar, (2021). 3 APF personnel hurt in alleged Indian smugglers' attack near Nepal-India border. <https://english.onlinekhabar.com/apf-personnel-hurt-nepal-india-border.html>

border surveillance.

A high-level APF officer stated – “We APF do not have much infrastructure including the residence for our APF force. We do not have proper surveillance equipment like biometrics, sensors, and laser. It is not simply possible to check everyone manually when thousands of people cross the border every day. We do not have any additional budget for high-tech technology. APF is simply laid at the border while being said to control the border.”

There is a need for technological surveillance mechanisms at the border points, and APF should be equipped with proper training. Furthermore, better connecting roads across the borderlines and modernization of checkpoints is a prime need.

Border Outposts (BOPs)

Currently, Nepal's main border securing mechanisms are the BOPs headed by 35-Armed Police Force personnel. The Nepal government is on a mission to increase the number of BOPs along the Nepal-India border. At present, there are 197 BOPs.⁴⁰

Modernization and expansion of custom points

The customs points play an essential role in controlling the smuggling of drugs, prohibited wildlife, and other goods. There is a need to systematize the customs points and equip them with modern technology and surveillance mechanisms. Currently, there are 27 major custom points and 132 sub-custom points along the Nepal-India border⁴¹. Given the almost 1800 km long Nepal-India border, the customs points should be expanded to control the illegal mobilities.

The officials interviewed at customs point out the need to increase the workforce, proper surveillance mechanisms, use of technology to shorten the customs pass, and proper inspection mechanisms to control illegal movement of goods and people.

D. ANALYSIS AND CONCLUSION

Nature and status of cross-border migration

The Nepal-India migratory dynamics have deep historical roots, given the age-old socio, economic and cultural ties. The treaty of peace of friendship 1950 further institutionalized the informal ties through the formally accepted mechanism of unrestricted mobility of citizens of either country, and equal

⁴⁰ This figure includes 9 BOPs in the northern border with India

⁴¹ Department of customs, 2021, https://customs.gov.np/main_offices#

privileges in trade, commerce, and residency.

The Nepal-India migration trajectory and cross-border mobility landscape have been going through a paradigm shift in the current time. While the cross-border migration has been decreasing, cross-border social relationships are still prominent. This is further intensified by the everyday mobility of people living alongside the border for a daily wage, small business, job opportunities, and market access.

The primary issue within Nepal-India migratory aspect is the lack of documentation and record-keeping mechanism of migrants from both countries. There is no official estimate of the yearly volume of migrants or stock of migrants to and from either country. Nepal's census records the stock of foreign-born citizens, foreign citizens, and absentee population. However, the figures available are largely unrepresentative. This information gap on statistics, on the one hand, overshadows migrants to India within policy discussions. On the other hand, it has hindered the government's outreach to the migrants in emergencies and rescue.

Several factors have accelerated the decreasing trend of labor migration from Nepal to India. At least three reasons can be associated with this diverging pattern- the opening of Gulf countries and reduced migration costs, especially after the 1990s; the Maoist insurgency and associated security threat induced migration and lastly, rise in literacy level and exposure to the outer world⁴² of the rural Nepali population. However, India remains the top destination for unskilled labor migrants from terai districts and western mid-hills.

The volume of Indians migrating to Nepal for labor is negligible compared to Nepali migrating to India. This study suggests this trend has also been decreasing over time. India's economic rise, Nepal's weak economy, and considerably lower income prospects in Nepal makes it unattractive employment destination for Indian citizens. Indian migrants work as carpenters, masons, chefs, mechanics in factories. Later, Indians are also involved as professionals like doctors, construction engineers, and IT personnel in Nepal.

Another noticeable trend observed in the migration domain is the significant reduction in cross-border marriages. At least three factors are associated with these dynamics from the perception of Indian people. First, the increased

42 This could be impact of globalization too and increased access of information and communication technology

economic growth and its spill-over effect on the increased living standard of the Indian population demotivated them to look for relationships in Nepal. Second, Nepal's citizenship policy and surrounding debates about naturalized citizenship and the government's discriminatory attitude towards recognizing Madhes identity. Third, the impacts of accelerated anti-Indian sentiments and timely border hindrances ruining the cross-border social ties are also associated with reduced cross-border marriages.

From the Nepali peoples' perspective, another four factors are associated with reduced cross-border marriages. First, the most pressing is the restrictions on mobility brought by Covid-19 border closure, significantly reducing cross-border marriages. Second, cross-border marriages are being perceived as an unnecessary administrative hassle in case of failed marriages and divorce cross-border. Third, occasional and recurring dowry-related and sexual harassment cases for the Nepali girls married in India have left the Nepali community susceptible for cross-border marriages. Fourth, it was reported that the availability of educated and employed bride/grooms in Nepal had reduced cross-border marriages.

In certain ethnic groups, due to the insignificant number of population on Nepal's side and unavailability of bride/grooms, these communities are compelled to look for counterparts on the Indian side. These communities mainly include Dom, Chamar, Chidimar, among others.

The safety concern of Nepali migrants to India has never been a concern for Nepali politicians, bureaucrats, and policymakers. Nepali migrants remain undocumented and untraceable. There is little prospect of any help from the Nepal government in case of emergencies. Clear discrimination can be observed against migrants to India compared to foreign employment migrants in other countries. The safety concern of Nepali migrants was depicted mainly during the recent Covid-19 where they were restricted to enter Nepal and were stranded in no man's land without any quarantine facilities and health safety measures.

Migration as a threat to Nepal's national interest

Higher-level policymakers and bureaucrats in Nepal often perceive immigration from India, cross-border mobility, and porous border as a threat to national sovereignty and integrity. They consider at least four sorts of threats to the national interest – immigration induced demographic shift and rise of ethnonationalism;

random citizenship distribution and the issue of dual citizenship; threats linked to vulnerable mobilities- cross border terrorism, organized crime and refugee inflow; and issues related to drugs trafficking, goods smuggling, and human trafficking.

Nepal's policies and practices related to migration to and from India

Nepal's policy response and practices for migration governance and cross-border mobility can be broadly categorized into three themes- policies related to labor migration, policies governing immigration and citizenship, and border management practice.

Nepal's policy landscape does not directly address the labor migration to and from India. In the legal arena and practice, labor migration to India, which remains the top destination for unskilled and semiskilled Nepali migrant workers, is not recognized within the domain of 'foreign employment.' This overshadows the concerns within the labor migration to India in Nepal's migration policy landscape.

The free flow of labor migrants to and from India has remained a crucial aspect of Nepal-India's special ties. But the lack of record-keeping and permit mechanisms for labor migration to India has impacted the government's ability to track how many people migrate, where they are, and in what conditions they are in Nepal. Labor migrants to India are deprived of the fundamental right of safety and rescue in times of emergencies and difficult situations. This also indicates the government's 'look down' attitude towards labor migrants to India.

Added, denial of entitlement of labor migration to India within the scope of foreign employment in legal setup has deprived such migrants from the states' benefits and entitlements reserved to foreign employees – maximum protection of safety and rights of migrant workers abroad; foreign employment welfare fund; and foreign employment tribunal. This attitude towards labor migrants to India surfaced during the Covid-19 response when foreign labor migrants to other countries were a priority for rescue, while leaving Indian migrants stranded for several days in the Nepal-India borders without any basic health amenities. Stakeholders point out the systemization of this migration phenomenon to India and end to the discrimination against labor migrants to India.

The perception of Nepal's leaders and higher-level bureaucrats, who happen to be predominantly non-Madhesi and Hill Brahmin, historically perceive immigrants of Indian origin as a threat to national security and nationalism.

This has guided Nepal's citizenship policy to be restrictive for Indian-origin immigrants for decades. While the Citizenship Act of 2006 addressed this issue to a certain level, the non-Madhesi people and a certain fraction of descent-based Madhesi remain unhappy with this initiative. However, a certain fragment of people in terai districts are still deprived of citizenship, and issues with access to citizenship to the children of 'by birth citizens' remain a crucial issue. Non-Madhesi policymakers and bureaucrats have historically perceived the issue of demographic shift and the rise of ethnonationalism as a threat concerning citizenship provisions.

Nepal's border management practices are based on ad-hoc mechanisms rather than gradual scientific systemization. The open entry and exit, lack of security checking, and lack of modern surveillance mechanisms have hindered tracking of cross-border movements and led to the issues regarding cross-border crimes, use of border areas as a hub for terrorism, and issues related to in-human trafficking and goods smuggling.

Stakeholders indicate a need for record-keeping and document verification at the border to track the cross-mobility. However, the practicality of registration and document verification at the border point remains an issue when thousands of people cross the border points daily, and in some cases, multiple times in a single day.

There is a need for tightened border security mechanism, deployment of more security personnel in the border, cross-border collective security mechanisms, increased BOPs, and increased road connectivity along the borderlines to counter the vulnerable mobilities – mainly organized crime, cross border terrorism, the threat of refugee inflow and issues related to trafficking and smuggling.

Given the close cross-border socio-economic and socio-political ties of communities living on either side, the border management practices directly impact state-society relationships. This was visible during the abrupt border closure and strict regulations in cross-border mobility during Covid-19. This impacted the kinship relationship, hindered cross-border marriages, and highly impacted the livelihood of people living in the border areas.

The livelihood of people dependent on wage labor, small businesses, and small vendors on the Indian market was impacted. The abrupt border closure largely jolted the access to the Indian market for necessities- medicine, healthcare, and essential goods. This enraged the communities in the bordering areas on the

government's authoritarian move without considering the ground realities and alternative livelihood provisions. This signals that border management remains the sensitive issue directly impacting livelihood and cross-border community relationships and should be dealt carefully.

There are crucial rooms for improvement in Nepal's migration governance and policy landscape to change the perceptions and legal mechanisms regarding immigration from India, Nepali labor migration to India, and cross-border mobilities. There is a need for a consistent federal government's approach towards citizenship provisions by birth and naturalization regarding Indian immigrants. This needs the phase-out of anti-national rhetoric and discriminatory attitudes towards the Madhesi people. Dealing with this issue needs a systemic administrative approach based on ground realities of Nepal's southern bordering districts rather than making it political propaganda time and again.

Labor migration to India should be incorporated within the confines of 'foreign employment' within Nepal's policy and legal landscape. The permit system for labor migration to India, on the one hand, will help to keep a national record of such migrants and, on the other hand, helps to track and approach them in case of emergencies and difficulties. These migrants, a significant source of remittances for the rural economy, should also be entitled for similar benefits reserved for foreign employment migrants to other countries. The benefits must include the welfare fund, safety, rescue, and preservation of labor rights in Indian land, as well as an employment tribunal.

Stakeholders recognize the need for border legislation in Nepal. Concerns regarding vulnerable mobilities need enhanced security coordination and collaborative measures with the Indian counterpart. This comprises continuous bilateral communication, integrated checkpoints, and modern cross-border connectivity. The modernization of border infrastructure, increased BOPs, and modernization of custom points, along with high-tech modern surveillance mechanisms is needed to counter cross-border crimes and reduce in-human trafficking and goods smuggling issues.

The provision of ID cards for cross-border mobility is often pronounced among policymakers for the systemization of cross-border mobility and reduction of vulnerable mobilities. However, this study suggests such provisions should be

carefully analyzed from the point of ground realities, and the management potential of our border personnel should be considered.

Roles and policy solutions to the Provincial and Federal governments

Currently, the provincial governments in Nepal do not have any jurisdiction regarding migratory governance and border management practices. The provincial government and local bodies remain close to the citizens. There is a growing voice for their involvement in the coordination and management of issues related to migration and mobility.

As per this study, the potential role of provincial governments can be classified into the framework of 3 Cs- Collaboration/Coordination, Communication, and Control.

The provincial governments, along with local governments, can coordinate with federal governments in keeping records of labor migrants to India and vice versa. The constitution of Nepal includes state statistics within the jurisdiction of the state. Further, the Local Government Operation Act 2017 entrusts local bodies in collecting data regarding foreign employment. Other roles include collaborating with the prospective labor migrants to equip them with skills and vocational training, and the use of skills and entrepreneurial potential of returnee migrants.

Although the constitution of Nepal and legal frameworks do not envision the diplomatic role of provinces, the ground realities, and practicalities of the terai districts and complicated migration landscape require the communication and lobbying of states with the Indian counterparts to safeguard the migrants' safety. This also eases the lengthy administrative hassles to rescue the migrants in case of emergencies and need.

To control the vulnerable mobilities—especially human trafficking and prohibited goods trafficking, provinces should play a catalytic role to ensure coordination among the border agencies. As drugs control remains the concurrent power of the federal government and the state, separate joint drug control unit might facilitate the control. There needs to be tightened security mechanisms in the provinces and surveillance mechanisms for cross-border criminals and smuggling groups. The role of state police, as envisioned in the constitution of Nepal, will play a significant role.

E. RECOMMENDATIONS

1. Policymakers and bureaucrats' view towards immigrants of Indian origin who have fully domiciled in Nepal as 'anti-national' need to be changed to strengthen a better state- society relationship. Develop consistency in the citizenship provisions for the immigrants of Indian origin.
2. Establish a record-keeping mechanism regarding the total immigrants and emigrants to and from India through a permit system. This could visualize the clear picture of the migration dynamics and adopt the policies so wise.
3. Recognize the cross-border 'special relation' of people living in the bordering districts before introducing any border management practice relating to cross-border mobility that directly impacts peoples' livelihood. In such cases, special attention should be paid to Dalits, Muslims, Minorities, and people from marginalized and oppressed groups.
4. Adopt record-keeping mechanisms through a permit system regarding labor migration to and from India. This helps to identify the trend and nature of labor migration and track the migrants in need.
5. Include labor migration to India within the definition of 'foreign employment' in the employment act. Provide them access to foreign employment welfare funds and foreign employment tribunals.
6. Ensure safety and protection of labor rights to the labor migrants to India. Establish a separate structure to address this issue and communicate with Indian counterparts to enhance the living condition of labor migrants to India.
7. Strengthen the border security mechanisms and enhance cooperation with Indian security agencies to control the vulnerable mobilities. Deepen the communication channels and joint mechanisms, including integrated check posts, joint patrolling, and increased connectivity along the borderlines.
8. Enhance the surveillance mechanisms and ensure the use of high-tech technological equipment to track in-human trafficking, prohibited goods smuggling, and organized crimes—increase BOPs and security personnel in border security.
9. Establish holding centers in the key border points, ensuring the basic amenities and health safety protocols. This could be crucial in future

pandemics or in other emergencies to hold the high cross-border flow of people. Such centers could also be helpful to rescue people during natural disasters.

10. Involve provincial governments in the management of issues related to migration and border management. Recognize their coordinating and communication roles.
11. Introduce some form of record-keeping in cross-border mobility either through ID card checks or registration mechanisms. However, this should be carefully analyzed before implementation regarding ground realities and management capacity of border personnel.
12. Ensure the modernization and increment of custom points along the borderlines to stop the trafficking of goods and easy movement of goods via the border.

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Chapter 4

Geopolitically Sensitive Activities Along Nepal's Southern Border Districts

Shuvangi Poudyal

A. BACKGROUND AND CONTEXT

A1. Intensification of geo-strategic competition and Nepal's open border with India

Nepal's strategic location between two emerging global powers—India and China—combined with intensification of geo-strategic competition between US and China makes it a geopolitically sensitive area. The open border along Nepal and India generates specific types of security challenges for both India and Nepal creating the need for effective border management without hampering the traditional ties and flow of goods and people. The open border that Nepal shares with India has ramifications in Nepal's geopolitical scenario. Since the border is relatively porous, there is a risk that Nepal's territory can be used by terrorist groups, international intelligence units, religious extremist groups, Afghan and Tibetan refugees and others. Dalai Lama, claimed by China as an antagonistic figure, resides in India and Tibetan refugees can travel to Nepal through the open border, creating friction in Nepal's relations with China.

A2. Regional Connectivity and economic development

The United States, India, China, and Russia appear to be vying for political influence in South Asia, including Nepal. This competition appears to be taking place in political influence, public diplomacy, and projects of infrastructure and regional connectivity. While China is pursuing Trans-Himalayan Multi-Dimensional Connectivity Network under Belt and Road Initiative (BRI), the US is pursuing Indo-Pacific Strategy (IPS) and Millennium Challenge Corporation (MCC) as part of its broader foreign and defense policy initiatives. Within the region, India is pursuing greater political and infrastructure connectivity through BIMSTEC and BBIN.

A3. Nepal's attempt to maintain an independent and non-aligned foreign policy

Nepal is committed to the core Nepali foreign policy objective of not allowing its territory to be used against its neighbors (MoFA, 2020). In the midst of global geo-strategic rivalry, Nepal has adopted an independent and non-aligned foreign policy to reflect its status as a peaceful and neutral country sandwiched between India and China. Nepal's Foreign Policy 2077 recognizes the need to create a balance between Nepal's national priorities set by domestic politics and international, regional, and geopolitical changes taking place in recent years (MoFA, 2020). The primary challenge faced by Nepal is to manage changes in the external environment and to make sure that strategic competition between regional and international actors does not negatively affect Nepal's national interests.

A4. Security dilemma

The aim of Nepal's foreign policy is to prevent its territory from being used against the interests of external actors. However, pursuit of interests by one country can be construed as a threat by another country. For example, Nepal's policy to pursue BRI is perceived as a security threat by India. Therefore, there is a need to identify and assess activities that may generate security concerns among Nepal's neighbors. These activities may include education and capacity development programs funded by third countries or activities related to transnational terrorism among others.

A5. Federalism and para-diplomacy

Para-diplomacy includes multiple aspects. First is the way in which provincial actors are pursuing international relations to promote their own interests, whether it is in the areas of economic development or environment and climate change. Second is the way in which foreign actors, including states and private sector actors, are engaging with the provinces to promote or pursue their own interests. Third is the relationship between the federal government and the provinces vis-a-vis foreign policy. There is a need to harmonize relations between the two levels of government regarding foreign policy and the role of foreign actors, which requires greater synergy in the articulation of national interests along the interests of provincial governments.

A6. Foreign Aid and Assistance

Foreign aid is generally geared towards assisting a nation to overcome developmental barriers. However, it is also used as a tool for foreign policy by donor countries. According to Woods (2005), foreign aid can be influenced by a

donor country's geostrategic interests. Similarly, allocation and disbursement of foreign aid can be used as a mechanism to pursue their security agendas (Woods, 2005). Like foreign aid, Foreign Direct Investments (FDI) also have serious national security implications. Some of the threats that can arise from the FDIs are denial or manipulation of access, leakage of sensitive technology or know-how, infiltration, espionage, and disruption (Moran & Oldenski, 2013). Since foreign aids and foreign investments can have national security implications, they are classified as sensitive activities (Moran & Oldenski, 2013).

B. DESCRIPTION OF THE RESEARCH PROJECT

B1. Description

The study focuses on geopolitically induced security concerns in Nepal's Southern districts that may also be perceived sensitive by India, China, and the United States. The study includes four key research questions. The first question seeks to understand foreign engagements in the Southern districts that may be considered as sensitive as per Nepal's policy documents and according to Nepal's various bilateral partners such as India, China, and the United States. The second question deliberates upon how Nepal's neighbours India and China have responded to the security concerns through aid and assistance, bilateral meetings between authorities and at the political level. The third question enquires on the policies and practices Nepal has adopted to mitigate security dilemmas. It also seeks to understand the impact of these policies and practices. Finally, the fourth question covers para-diplomacy and the role of the provincial government in engaging foreign actors active in provinces 1, Madhes and Sudurpashchim Province. It also focuses on identifying policy level recommendation.

B2. Definition

For the purpose of this research, "geopolitically sensitive activities" are activities or processes that are considered sensitive from Nepal's national interest perspectives (particularly as outlined in Nepal's National Security Policy 2075, Foreign Policy 2077 and International Development Cooperation Policy 2019). Activities and processes that India, China, and the US view as being sensitive are also included under the definition.

B3. Objectives

1. Identify and assess activities taking place in Nepal's 20 southern districts that can be seen as being sensitive from Nepal's national interests' perspective or that can generate security dilemmas for Nepal. Generate knowledge about activities/engagements by India, China, the US as well as other non-state

actors, the strategic intentions behind these activities, and their potential implications for Nepal's national interests.

2. Assess and analyze Nepal, India, China and USA's response and counter-response to the perceived concerns/threats regarding activities in Nepal's southern districts.
3. Assess the relationship between the Federal Government (FG) and Provincial Governments (PGs) regarding para-diplomacy or relationship with foreign actors. Assess the role that FGs and PGs can play in managing geopolitically sensitive activities.

B4. Key Research Questions

This research report tries to answer four key research questions-

1. What kind of activities in Nepal's 20 southern districts (by India, China and other countries or actors) can be perceived as being geopolitically sensitive and what are the implications for Nepal's national and security interests?
2. What has been India, China and the USA's response to the geopolitically sensitive activities? What has been Nepal's response to such security concerns? What should be Nepal's strategy to manage the security dilemma?
3. How has Nepal responded to India's and China's security concerns? How should it respond?
4. What is the role that Provincial Governments (PGs) can play in managing geopolitically sensitive activities?

B5. Rationale and significance

Nepal's southern districts are becoming a hub for developmental and cultural activities of regional significance. In order to take advantage of infrastructures of regional connectivity and foreign investments, Nepal needs to develop trusted and transparent relations with its development partners including India and China. There is a need to generate information about the activities taking place in Nepal's southern districts that can be seen as a threat or concern for Nepal and its neighbors so as to address the security sensitivities of all. In recent years, external actors have diversified their activities, which range from NGO funding to service delivery, foreign direct investments, and infrastructure development projects. There are also activities linked to religious conversions or support based on religious identities. Some of these activities are seen as posing a threat to Nepal's national security.

If we generate a better understanding about the strategic intentions behind geopolitically sensitive activities, then Nepal may be in a better place to respond to these activities in order to protect its national interests and to prevent security

dilemmas. In order to take advantage of infrastructures of regional connectivity and foreign investments, Nepal needs to develop trusted and transparent relations with its development partners including India and China. In the absence of such trusted and transparent relations, Nepali political decision-making will continue to suffer from interference and instability. Given the context of Nepal's federalization, Provincial Governments have a bigger role to play in ensuring trusted and transparent relations among Nepal's neighbors and development partners. It is necessary to study and identify the ground realities of ongoing activities in the southern border that is geopolitically sensitive and how it impacts Nepal's national interest and security dilemma.

B6. Approach and Methodology

The research is based on qualitative methods and uses a multidimensional approach to gather primary and secondary information. The Primary data was collected through key informant interviews (KII) and expert interviews. Likewise, the secondary data was collected through literature review. The study method and tools were designed to include women, along with marginalized and disadvantaged groups such as Dalits, minorities, to gain firsthand knowledge of their experiences using an intersectional approach while selecting respondents for the KII.

Literature Review

Relevant sources such as books, academic articles, government and media reports, studies, documents, treaties, interviews of officials, and relevant websites were reviewed for the purpose of this research. Documents such as the National Security Policy (2019), National Foreign Policy (2018), International development cooperation policy (2020), and Foreign investment and technology transfer act (2019) facilitated a better understanding of the national framework for international investment and aid and what trends may be interpreted as geopolitically sensitive. Whereas documents from the Central bank of Nepal on FDI and development cooperation reports were reviewed to identify trends and possible security implications of foreign aids and investments.

KII and Expert Interviews

Key informant interviews (KII) were conducted in province 1, Madhes and Sudurpaschim province. Expert interviews were conducted with the trade, security and border experts in Kathmandu and in other places as per their availability. There was a total of 60 respondents comprising of chief ministers, province parliament members, CDOs, security officials, businessmen, journalists, civil society member, Mayors, leaders from Muslim, marginalized

and oppressed groups, and custom officers among other. The sample units were purposefully identified. Out of the total number of respondents 49 were male and 11 were female.

Guiding Checklist and Questionnaire

A guiding checklist and questionnaire were prepared for conducting the KIIs among the relevant stakeholders. The guiding checklist and questionnaire were semi-structured, employing open-ended and close-ended questions to gather the qualitative data.

B7. Ethical Consideration

The researchers ensured that all KII respondents were aware of the study aim. Throughout the study, the research team was committed to the values of inclusivity, feminist principles, and human rights. To maintain these standards, the study team informed and obtained verbal consent from all respondents during the KII, assuring their anonymity, privacy, and confidentiality. While selecting respondents for all study processes, the research team sought a more diverse and intersectional approach.

C. FINDINGS

C1. Emerging Role of Provincial Governments

The federal system has given new roles for the provincial governments, however there are persistent issues around articulation and conflict of interests between the provincial governments and the federal government. As provinces seek to find their role, they are also interested in pursuing development cooperation with foreign countries and investors.

Schedule 7 of the Constitution of Nepal provides a list of concurrent powers shared with the federation, which includes matters related to state boundary, river, waterways, environment protection and biodiversity; industries and mines and physical infrastructure; tourism; and utilization of forests, mountains, forest conservation areas and waters stretching in inter-state form.

The role of the provincial governments is integral to the exercise of federalism in Nepal. However, constant federal interference has created a conflict of jurisdiction while mistrust has bred non- performance. For instance, provincial governments have been seeking a greater role in engaging with foreign actors to ensure effectiveness and evaluation of donor funded projects. Former Minister of Social development of Province 1 gives the example of the 'HIMALI

Project'. He argues that these projects are overseen by the central government. This is one of the main reasons why foreign investments in Nepal have yielded minimal output.

The role of the Provincial government in dealing with the matters of international affairs is limited since the Federal government is tasked with handling such issues. The former chief minister of Province 1 stated - *"while the provincial government works closely with the federal government, it has not given the provincial government any authority to manage foreign investors and contractors"*. Similar is the case of dealing with the foreign donor agencies. Government officials believe provincial governments should be involved in dealing with foreign donor agencies in a certain capacity to make plans that are better suited for the respective provinces.

Few experts blame the centralized governance and political instability at the federal level for hindering provincial progress, while other experts believe provincial governments are themselves responsible for their non-performance¹. While provinces continue to seek a more diverse role in governance, reports say that they are performing no better than federal governments². There is evidence of poor coordination and information sharing mechanisms between the federal and provincial governments without which proper evaluation of the situation cannot be ensured. Government authorities say that since activities in borderland districts can have an effect on the political relationship between countries (i.e., India and Nepal), it is important to outline responsibilities and have certain data sharing mechanisms between the federal and provincial governments to have a better understanding of the ground realities.

Provinces should play a supporting role regarding the trade, connectivity, and dealing with security threats. Furthermore, provinces can also have an important role to facilitate the growth of businesses which would generate employment opportunities for the local people and ultimately reduce the labor migration to India. A member of Provincial Assembly at Madhes Province highlights that *"Provincial government should get full autonomy on the issues of development like irrigation, natural resources management, trade, and import-export"*.

1 Pradhan, T. R. (2021, October 18). Experts blame centralised governance for instability in the provinces. The Kathmandu Post. <https://kathmandupost.com/politics/2021/10/18/experts-blame-centralised-governance-for-instability-in-the-provinces>

2 *ibid*

Former Minister of Social Development of Province 1 highlighted that under his initiative ‘Provincial Economic Work Procedure Regulation, 2075 BS of Province 1’ has been prepared. Through this regulation, *‘The provincial government manages and monitors the fund/budget received from the Government of Nepal and donor agencies (fund/loan/grant), and other organizations’*³. However, the regulation has not been implemented properly and the provincial government still lacks a proper jurisdiction regarding the matters of foreign aid.

The federal system has given new roles for the province governments, however there are persistent issues around articulation and conflict of interests between the provincial governments and the federal government. As provinces seek to find their role, they are also interested in pursuing development cooperation with foreign countries and investors.

C2. Foreign Direct Investments

The flow of FDI in Nepal shows that a significant amount of investment is coming from tax havens like St Kitts and Nevis and British Virgin Islands, indicating potential susceptibility to illicit financial flows and money laundering.

C2.1. National Security Implications of Foreign Aids and Investments International Development Cooperation Policy of 2019

The International Development Cooperation Policy of 2019, put forth by the Ministry of Finance has developed a policy framework to mobilize the development aid as instructed by the Paris Declaration for aid effectiveness. Under this policy, it is highlighted that *“International development cooperation will be mobilized in the areas which do not have any adverse impact - explicitly or implicitly - on sovereignty; national integrity; national interest; religious, ethnic and social harmony; and national security.”*⁴ Furthermore, section 3 of the document also highlights that *“International development cooperation will not be sought in the sensitive areas of the nation. The cooperation extended to different organs of the government will be mobilized only through the executive and the entities thereunder.”*

The main modality through which the International Development Cooperation will be utilized is through Budget Support which will be used at the Federal, provincial, and Local levels as per the requirements and priorities. The development projects and programs implemented by the Provincial Government

3 <http://moitfe.p1.gov.np/sites/moitfe/files/2019-05/प्रदेश%20आतयिक%20कार्यालय%20तनमाली%20%2C२०७५.pdf>

4 https://www.mof.gov.np/uploads/document/file/print_copy_IDCMP-2019_Eng- full-page_20191107071739.pdf

will be overseen by the Provincial Ministry of Economic Affairs and Planning. The Provincial Government is also required to prepare an integrated project bank for the feasible projects in their respective provinces that require the development cooperation.

Foreign Investment and Technology Transfer Act of 2019 (2075)

Nepal has been pushing a liberal foreign investment policy to attract foreign investments which is also indicated by the lower tax slabs and the country's good position in ease of doing business⁵. According to the Foreign Investment and Technology Transfer Act of 2019 (2075), any foreign investments can be made individually or jointly with an industry in Nepal (NLC, 2019). Furthermore, the Government of Nepal has established an Investment Board chaired by the Prime Minister of Nepal to facilitate the investors. However, any foreign investor looking to invest in Nepal must seek approval from the Department of Industries (if the foreign investment is below six billion Rupees) or the Investment Board (if the investment exceeds six billion rupees).

Foreign Investments in Nepal is mainly overseen by the Investment Board through the Foreign Investment and Technology Transfer Act of 2019. The act aims to facilitate the creation of an investment friendly environment to attract foreign investments. However, the act does not define the role of provincial governments in assessing and monitoring any foreign investments pertaining to their respective provinces. Furthermore, the act also does not address the issues of foreign investments and national security.

Overview of Official Development Assistance (ODA) in Nepal

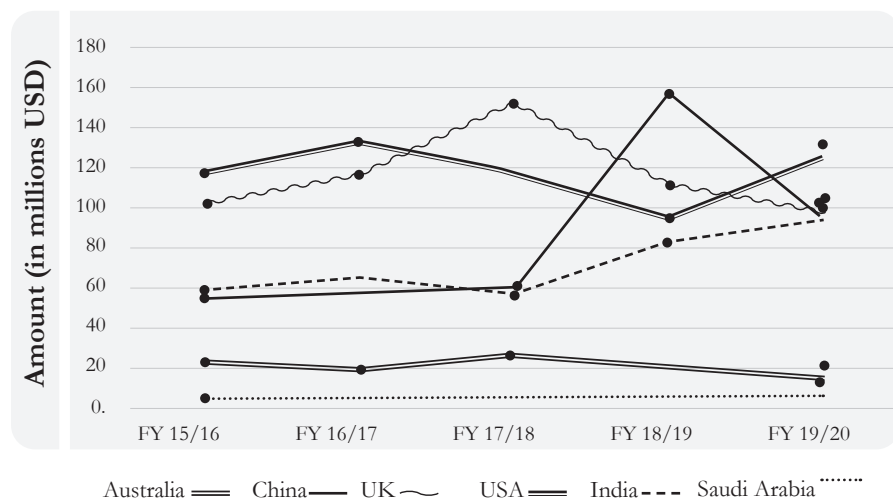
The top 5 bilateral partners from FY 2017/2018 to 2019/2020 have been Japan, USA, UK, India, and China (in no particular order). The total ODA from FY 17/18 to FY 18/19 decreased from \$1622.8 million to \$1578 million which is 2.84% decline. However, FY 19/20 saw a total ODA of \$2003 million which is a 21.22% increase. One of the main reasons for this increase was for the Covid-19 response, which amounted to \$512.9 million of the total ODA (Ministry of Finance, 2021).

The USA was the top Bilateral Development Partner (DP) for Nepal in FY 2015/16 with a contribution of \$116.5 million. The contribution from the USA decreased significantly from \$132.94 million in 16/17 to \$ 94.92 million in

5 MoFA. (n.d.). Investment In Nepal – Ministry of Foreign Affairs Nepal MOFA. Ministry of Foreign Affairs. <https://mofa.gov.np/about-nepal/investment-in-nepal/>

18/19 which was a 40.05% decrease. Similarly, the ODA contribution from Australia has shown a fluctuating trend from FY 15/16 to FY 17/18. In the same time period, the total ODA disbursed by the UK saw an increase from \$102.03 million to \$151.52 million. On the other hand, the ODA from China saw a significant increase from \$58 million in 17/18 to \$157 million in 18/19.

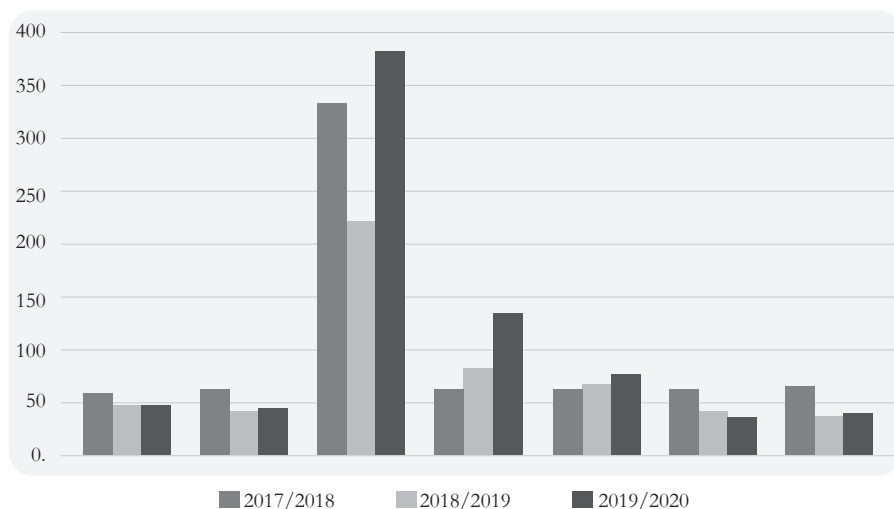
Figure 1: *Official Development Assistance (ODA) disbursement to Nepal in last 5 fiscal years*



Source: Ministry of Finance, GoN

Nepal signed the BRI agreement in 2017. According to a report from AIDDATA, after a country officially joins the BRI, official financial commitments from China saw an increase of 63% on average on financial commitments (Malik et.al., 2021). This can explain the significant increase of 61.47% on ODA from China in FY 18/19. The ODA trend for India saw a gradual increase from \$57 million in FY 17/18 to \$59 million in FY 18/19. The ODA contribution from India saw a significant increase of 37.23% in FY 19/20. Likewise, Saudi Arabia's ODA contribution has been relatively small over the last five fiscal years as compared to the top bilateral partners.

According to the Development Cooperation Report, Bagmati Province saw the highest amount of the ODA disbursement from FY 2017/2018 to FY 2019/2020 followed by Gandaki. One of the important findings from the report highlights that the total ODA disbursement for Siraha (Province 2) in FY

Figure 2: ODA Breakdown by Provinces (in millions USD)

Source: Ministry of Finance, GoN

2019/2020 was \$62.93 million whereas, the total ODA for the whole Province 2 in the same fiscal year was under \$50 million. The difference in the amount arises because under the Aid Management Information System (AMIS), projects are classified as ‘national level’ and ‘district level’. Some of the projects which benefit the entire country come under national level projects.

The data indicates that in FY 2019/2020, 63.5% of the ODA was disbursed at national level, whereas the remaining was disbursed at district level. Furthermore, the report also points out that the high disbursement in Bagmati Province is partly due to the inclusion of Kathmandu in Bagmati and post-earthquake projects that were centered in Kathmandu (Ministry of Finance, 2021).

C3. Transformative Projects

All of the provinces have identified infrastructure projects with potential to transform the province’s economy. These infrastructure projects may generate potential competition and conflict.

Province 1

Province 1 contributes to about 15.6% of the total GDP (FY 2077/78). According to the NRB, It has several infrastructure projects that can have a

significant impact on the economy. The projects are:

- Pushpalal Mid Hill Highway
- Madan Bhandari Highway (inner Terai),
- Hulaki Highway
- North- South Koshi Corridor,
- Arun III hydropower project,
- Koshi Corridor Transmission line,
- Solu corridor transmission line,
- Rani-Biratnagar-Itahari road project,
- Koshi-Tamor corridor road,
- 17 km of waterways from Chatara to Bhojpur, and
- Biratnagar airport (Ministry of Finance, 2021a).

The major issue with infrastructure development at present is ad hoc planning of projects without fulfilling due process or meeting due criteria. Other issues are related to land acquisition, ensuring continuity of resources to accomplish projects on time, among others. However, given the interest of bilateral and multilateral partners in Nepal's quest for infrastructural development, NRB assessed that resources would not be lacking in the coming days.

Madhes Province

The contribution of Madhes province is highest in the agriculture sector of the national GDP. Some of the major infrastructure projects with transformative potential in the province are:

- Jayanagar-Bardibas Railway. The total length of this railway line is 69 kms, of which 35 km-section is ready for operation.
- Sunkoshi-Marine Diversion Multipurpose Project. This project links Sunkoshi River to Marin through a dam and tunnel in Sindhuli and Ramechhhap districts. The project with a total cost of NPR 67.5 billion is expected to be completed in FY 2080/81.
- Hulaki Highway. This project started about 11 years ago and is expected to be completed in FY 2079/80 with a total revised estimated cost of NPR65.2 billion.
- Kathmandu-Terai Madhesh Fast Track. This four-lane 76 km road is expected to be completed in FY 2080/81 at a total cost of NPR 219 billion.

Sudurpaschim Province

Sudurpaschim Province contributes about 6.9 percent of the total national GDP, the second lowest among Provinces. About 700,000 people are estimated

to be employed in India. Until the end of FY 2076/77, there were about 62 projects in Sudurpaschim involving FDI, of which about NPR 2,496 million constituted foreign investment. A majority of these projects (42) were in Kailali and Kanchanpur districts. According to a NRB report⁶, the major issue with infrastructure development in this province is lack of coordination and inability to gather financial and technical resources.

Projects with transformative potential in Sudurpaschim Province, as identified by the NRB report, are:

- West Seti, Karnali, Budhiganga, Chamelia and Mahakali River development projects.
- Mahakali Highway, Seti Highway, Khutiya-Dipayal-Chainpur-Urai Highway.
- Geta Airport, Rani-Jamara-Kulariya Project, Geta Medical College, Dry Port and Mahakali River bridge in Bhujela.

C4. Regional Connectivity

The perception of civil society and policy makers is that Bangladesh may have a greater role in the future in shaping Nepal's negotiations with India regarding regional trade and connectivity, especially regarding transmission lines and electricity trade.

C5. Bilateral Relations

Nepal's relation with India, China and the US, among others, need to consider strategic and security interests of these countries while also prioritizing development cooperation. China, India, and the US, among others appear to be trying to gain a foothold to engage with provinces, but so far, they have had little direct access. Nepal's bilateral partners so far have found it difficult to create space for engagement at the provincial government level in order to pursue their strategic interests. They find more space through private sector and non-state actors. According to knowledgeable experts in the civil society and the government, bilateral partners do not have clarity regarding their role in the provinces.

Political parties have remained the primary and the easiest leeway for engagement of foreign actors. However, there is little transparency and information about the linkages between domestic political actors and foreign actors. Furthermore, there is little information about the role of foreign actors and how they are

6 NRB. (2021). Provincial Economic Activity Study Report - Sudurpaschim Province. Nepal Rastra Bank. Dhangadhi Office.

articulating financial and vested interests via political parties in the provinces.

C6. India's Concerns

India's main interest lie in ensuring that Nepal's southern belt is not used for activities that undermine India's security and strategic interests. Terai also acts as a strategic buffer belt to limit China's growing influence in South Asia including Nepal. India is also interested in promoting connectivity with South Asia, particularly through BIMSTEC and BBIN.

India, through its embassy directly invests in education, health, and infrastructure such as buildings, roads, etc. India's development cooperation in the southern districts appears to prioritize infrastructure, education and health.

India perceives activities of Muslim communities along the borderline as sensitive. The threat of Islamic fundamentalism is often discussed during bilateral meetings between government and security agency officials of both the countries. Interviews with various officials demonstrated that India emphasizes on surveillance of Muslim communities living in the southern districts of Nepal.

The smuggling of drugs and alcohol across border has also been identified as a concern during bilateral talks between Indian and Nepali authorities. According to officials present in such meetings, while brown sugar is smuggled into Nepal, alcohol is smuggled into Indian states of Bihar and Uttar Pradesh. It was reported that smuggling of alcohol has increased since Chief Minister of Bihar, Nitish Kumar announced a total ban on alcohol in the state in 2016.

The southern districts of Nepal are also important in terms of Indian strategic concerns. One of the major interests of India in Nepal which recur in the bilateral meetings is water resources of Nepal. This is mainly for three reasons: flood control, irrigation/agriculture for downstream communities in India, and hydropower development. Indian authorities show concern when it comes to any project in the upstream that could affect activities on the Indian side.

C7. China's Concerns

China has multiple strategic interests in Nepal's southern belt. The most prominent are security interests regarding Tibetan refugees and Buddhist pilgrims, especially in Lumbini. Chinese interests also lie in controlling anti-Chinese activities as well as promoting China's image.

China also aims to connect Western China to South Asia. China's strategic interests in Nepal's southern district appear to emphasize infrastructure connectivity and

trade with South Asia as well as the movement of Buddhist monks and religious practitioners in Lumbini, Pokhara, Sikkim and Dharamshala.

Chinese support in the Southern districts of Nepal is mostly symbolic. Most of the Chinese assistance and aid are directed to the maintenance of infrastructure along with various Chinese study centers that run along the southern districts. However, Chinese investments can be observed in Lumbini Province on sectors like the road construction (Narayanghat to Butwal), Brick Industry (Parasi), Kapilvastu Multiple Campus, Transmission lines, transmission line grids, schools, and monasteries.

Overseas Development Assistance report of FY 2018-2019 has demonstrated that foreign aid from China has increased by 61 percent since the signing of BRI in 2017. China has surpassed India and the US in terms of FDI commitments.

The field study in various Southern bordering districts suggest that province governments lack capacity to monitor Chinese engagements. A key respondent at Kapilvastu highlighted- *‘several Chinese activities are in place at Lumbini. Sometimes anti-China activities are initiated by the Tibetan Refugees in Lumbini area or Nepal-India border. However, the provincial government has not monitored such criminal activities and the province seems to be under suspicion.’* Similar observation was also made by few other community activists in Kapilvastu regarding the Chinese concerns over Tibetan refugees in the area.

Another key respondent working as a journalist from West Parasi pointed out that after the news of potential Chinese investments in the religious and development activities in the area, CBI (Central Bureau of Investigation) investigated with the local people about the potential investment from China. According to a local community activist in Kapilvastu, China is not investing directly into the districts, but it is investing in social activities through community/religious leaders. He also argued that these investments are China’s attempt to monitor the activities of Tibetan refugees present in the area.

According to a member of civil society in Kapilvastu, there are a few instances of anti-China activities in Province 2. According to interviewees, it is common knowledge that Tibetan refugees reside in Lumbini and are harbored in monasteries and places of Buddhist worship. Thus, making Lumbini sensitive to China in comparison to the other Southern districts.

China has tried to build political relationships with parties and engage in public diplomacy through development cooperation and CSOs. Indian media also

cite Indian intelligence officials to claim that Chinese intelligence officials spy on India through Chinese private companies operating in Nepal. Also, the expansion of China Study Centers in southern part of Nepal is considered sensitive to India's strategic and security interests.

China has been supporting and assisting "culture preservation and economic development of Lumbini." Nepal China Friendship Society (Lumbini) has been an active interlocutor on behalf of the Chinese government holding frequent events to promote Nepal-China relationship. China has been providing assistance to the Lumbini Buddhist University with the support of Confucius Institute Headquarters.

C8. USA

The USA appears to emphasize greater regional connectivity in South Asia, of which the MCC project is a part. It also aims to promote Nepal's connectivity to India and the South Asian region via BIMSTEC along with the promotion of values supportive of US foreign policy goals as embedded in the Indo-Pacific Strategy (democracy, openness etc.) One of its main interests also lies in countering and limiting China's growing influence in Nepal and the region.

The USA is the foremost in trying to make inroads by engaging in decision making, policy and research areas at the PG level in addition to promoting regional projects of connectivity (e.g., MCC).

C9. Madrasas

The growth of Madrasas in the southern districts of Nepal is viewed in different ways by the local communities, Government of Nepal, and India. It is frequently linked with incidents of Islamic Fundamentalism and threats of terrorism.

Nepali authorities do not identify them as a security threat. However, Muslim communities in general are identified to be sensitive because of the possibility of Islamic fundamentalism. According to authorities, Indian sentiments regarding Muslims have permeated the discourse and created such apprehensions. *"Indian security concern over Madrasas is an unwarranted target to a religious community. There is no evidence of sensitive activities within the Madrasas. Unlike India, Nepal does not even have historical reasons to doubt Muslim communities,"* says former Minister of Nepal. Respondent also alleged that Islamophobia has perpetrated the idea that Muslims are a geopolitical force and source of terrorism. However, no such suspicious activities have been traced in Nepal.

Former Minister of Social Development of Province 1, Jeevan Ghimire had undertaken a month-long journey from Kanchanpur to Jhapa studying madrasas. In this capacity, he explained that madrasas are established with the sole objective of providing education to the children of poor communities. However, he further mentioned that some of the schools he visited have good infrastructure, which is not possible only through local funding, giving reason to believe that schools also receive international funding (potentially from gulf countries).

Madrasas are linked to government systems and are supported and monitored by the local municipality. While Government officials have confirmed that Madrasas receive funds from countries such as Qatar and Saudi Arabia, those funds are approved and channeled through the local municipalities, for purposes of infrastructure building and maintenance. Madrasas' relationship and interactions with broader society is limited which raises suspicion among authorities. While local governments have been making efforts to mainstream Madrasas and encourage registration, a large number remain unregistered.

C10. Religious Fundamentalism

Religious fundamentalism is becoming more salient in the southern districts. Hindu fundamentalist groups are gaining more support. Incidences of deaths of Muslims in custody or violence against Muslims also appear to be of concern⁷. Based on key informant interviews, ever since the BJP government came into power in India, Hindu nationalist sentiments have been strengthened along the southern districts of the country such as Sunsari and Janakpur. It has caused disturbance to communal harmony and increased incidents of religious violence.

C11. NGO activities

Nepal's security agencies believe that there is a need to monitor activities of NGOs in Nepal funded by donors. Many NGOs work in areas like religion, human rights, inclusion, and empowerment, which may be seen as promoting politics of identity. One of the purposes of the new Development Cooperation Policy was to control such activities.

C12. Security cooperation and foreign operatives

While Nepal's security cooperation with bilateral partners is improving, Nepal continues to rely on foreign countries for intelligence. There is also a general perception among respondents that foreign operatives are operating relatively freely in Nepali soil.

7 Republica. (2021, October 10). Sunsari tense after youth 'commits suicide' in police custody. My Republica. <https://myrepublica.nagariknetwork.com/news/sunsari-tense-after-youth-commits-suicide-in-police-custody/>

The easy operation of foreign intelligence organizations (RAW, ISI) from Nepali soil is a major security concern for Nepal. Nepali authorities and journalists have speculated that while the open border has facilitated possible transnational networks, it has also prompted activities of foreign intelligence agencies. Reports confirmed that Faizan Ahmed, general secretary of the Islami Sangh Nepal was killed by two unknown men on a motorcycle in a shootout in Kathmandu in 2011⁸. The gunmen were never identified.

Increased foreign activity in districts such as Kapilvastu has alerted Nepali authorities. Nepali security forces have recorded increased visits of foreign nationals in the district and highlighted that countries like Qatar, UAE, China, and India have been assisting the construction of places of worship and schools in Kapilvastu. They argue that since Kapilvastu hosts various religious communities including Muslim, Christians, and Buddhists, scaling up of such competitive activities may harm the multireligious fabric of the area.

C13. Public sentiments

The rise of BJP in India has led to growing anti-India sentiment among Muslims living in Nepal's southern border. Similarly, there is a prevalence of anti-China sentiments among many Madhesi people.

D. ANALYSIS AND CONCLUSION

Over the past few decades, Asia has become a center of gravity for economic, political, and strategic activities. This has fostered geopolitical competition wherein activities carried out by participating states have affected the entire region. The same effect can also be observed in Nepal, demonstrated by the increase in foreign activities along Nepal's Southern border districts.

Provincial governments' efforts to pursue their strategic interests are an emerging phenomenon. There is a possibility for geo-politics to affect the relationship between provinces and the federal governments, especially if they are represented by different political parties or interests. However, there is a lack of coordination and data sharing mechanisms between the provincial government and federal government. Moving forward, the involvement of provincial government will be important in the management of geo-politically sensitive issues in the southern border districts of Nepal, since they have a better understanding of their needs and ground realities. Similarly, foreign countries

8 Zee News. (2011, September 26). Nepal Muslim leader shot dead. Zee News. https://zeenews.india.com/news/south-asia/nepal-muslim-leader-shot-dead_733617.html

have an interest in engaging with provincial governments. So far, they have had little foothold, but this may change in the future with the shifting nature of political relationships, development cooperation and FDIs.

Foreign Direct Investments may also draw strategic interests of foreign countries or inter-governmental mechanisms. Social movements and political dynamics around religion and identity and their interconnectedness with foreign actors have a potential to generate conflict and social tension. Provinces may be in a position to track and understand these dynamics more efficiently. Provincial Governments and the FG need to work together to understand and address issues generated by social movements and politics of identity.

Despite the lack of proof that Madrasas are involved in sensitive activities, they are not considered to be a direct threat according to Nepali authorities. However, due to a widespread perception that Muslim communities are prone to fundamentalism, Madrasas are viewed suspiciously, especially by India.

There is a growing voice for border regulation among government officials and security agency officials from both Nepal and India. Interviews with government officials of the local government, security personnel, and other key informants demonstrated that most of Nepal's security dilemmas originate from the open border with India. Some have advocated for strict regulations identical to those in place during the peak periods of the Covid-19 pandemic, while others agreed not to close the border and have instead suggested the measures such as issuing of identity cards that would help regulate mobility and control illegal and criminal activities without inducing mobility difficulties for the public⁹.

Furthermore, Nepal has made various efforts to address security concerns originating from the open border. Along with joint border patrol practices, border outposts (BOP) have been set up to safeguard border areas. The government is planning to establish 500 BoPs in the future to reduce the present 15-kilometre distance of Nepal's BoPs to 3.5 km¹⁰. Security forces stationed along the border mentions that while the establishment of BOPs have been expedited in recent years, it lacks quality.

9 Giri, A. (2017, October 9). India-Nepal panel recommends regulation of open border. Hindustan Times. <https://www.hindustantimes.com/world-news/india-nepal-panel-recommends-regulation-of-open-%20border/story-l8G2nQl358QmLcIyOYNiuK.html>

10 The Rising Nepal. (2021, January 15). 197 border outposts ready, 24 more in offing. <https://old.rising-nepaldaily.com/nation/197-border-outposts-ready-24-more-in-offing>

The history of regional security complexities in South Asia has escalated the operation and activities carried out by foreign intelligence agencies. The open border contributes to the easy operation of such agencies. Although the operation of foreign intelligence agencies from Nepali soil is a security threat, Nepal is reliant on such agencies to address its own security concerns.

India is most active in Southern districts due to a natural attachment through language and culture. Furthermore, any socio-political phenomenon occurring in India is likely to have an impact on Nepal as it is facilitated by the open border practices such as flow of ideas and individuals. It is reflected in the emboldening of Hindu nationalist organizations in Nepal. Similarly, the state of politics on the Indian side of the border affects the population in the southern border districts of Nepal which is demonstrated in the political activities observed in Nepal during elections. For instance, Nepali Hindu Nationalism has gained ground in the Southern districts of the country since BJP formed a government in India in 2014.

All agencies employed at the border have pointed out that the lack of technology at the border has reinforced existing security concerns. Use of technology would strengthen surveillance and monitoring mechanisms, also increasing efficiency of record keeping and data collection.

E. RECOMMENDATIONS

1. The Federal Government needs to engage PGs more holistically in articulation and harmonization of national and provincial interests in Nepal's foreign policy.
2. Federal Government agencies need to be prepared to resolve potential security dilemmas generated by Foreign Direct Investments. There is also a need for greater coordination with provincial agencies.
3. Develop a more robust mechanism to track political relationships, development cooperation, and FDIs linked with foreign countries. Generate a better understanding between the government agencies and policy makers (including potential public office holders and parliamentary committees).
4. In order to aid the efficiency of security agencies and mitigate the security dilemmas, Nepal needs to incorporate more advanced technologies for surveillance, monitoring, and record- keeping purposes for the Nepal-India border management.

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This issue of research series primarily engages in analyzing the various dynamics of Nepal's cross-border relations with India in the changed geopolitical scenario and bilateral relations with Nepal's Southern neighbor. This series analyzes Nepal India migration governance and threats associated with migration dynamics along with the perceptions and GESI dynamics of border. It also includes analysis of the changing perceptions and functions of the Nepal-India border and identifies ways to strengthen people-to-people cross border relations at the state and people's level. We believe the findings of these studies will be instrumental to understand the changing dynamics of Nepal India cross border relations and aid the formulation of relevant policies to strengthen the state and people to people cross border ties.

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