

BILATERAL LABOR AGREEMENTS AS MIGRATION GOVERNANCE TOOLS: AN ANALYSIS FROM A GENDER LENS

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This Article discusses BLAs as tools of global labor migration governance, with a specific focus on gender. Drawing on our global database of 582 bilateral labor migration agreements (BLAs), we investigate the extent to which these governing instruments connect and align with relevant international normative frameworks, in particular the extent to which they represent gains, gaps or gaffs in terms of gender equality and the human and labor rights protection of women migrants. In the context of the Global Compact for Safe, Orderly and Regular Migration (GCM), which stresses a gender-responsive approach to migration governance as one of its guiding principles, we ask: Do the BLAs which are increasingly being used as instruments to govern labor migration contribute toward sustainable gender equality, decent work and reduced inequalities for women and gender-diverse migrants?

INTRODUCTION

In the context of intensification of multilateral global governance on migration, this Article examines the use of bilateral labor agreements (BLAs) from a gender lens. This is so for two main reasons: first, the emphasis on “regular pathways” for migration in the Global Compact for Safe, Orderly and Regular Migration (GCM),¹ is correlated with a marked growth in the use of BLAs as a mechanism for the governance of labor migration; and, secondly, gender has become a firm item on the agenda of such global processes, due to the recognition of what has been termed the feminization of migration, and the consequent particular situations of migration for women.² We argue that BLAs provide states with flexibility and adaptability, or as critical voices would argue, serve to reduce their commitment to and responsibility for migrants’ rights over the long term. Given the feminization of migration in relation to supply

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1 U.N. Global Compact for Safe, Orderly and Regular Migration (July 11, 2018), www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf.

2 Nicola Piper, *Toward a Gendered Political Economy of Migration: The ‘Feminizations’ of Migration, Work and Poverty*, in *MIGRATION IN THE GLOBAL POLITICAL ECONOMY* 61 (Nicola Philips ed., 2011).

and demand dynamics particular to feminized sectors (e.g., care work), women's migration is directly affected by the expanded use of BLAs.

Another key mantra of global governing efforts has been to ensure that migration represents a "triple win," i.e., it benefits not only countries of origin and destination, but also migrants themselves. Since the key incentive of migration is to secure paid work, labor rights are paramount to achieving the latter: individual migrants as beneficiaries. The feminization of migration demands an investigation into women as "winners." BLAs indeed represent the "migration management" approach that most states have touted as a "triple win" model which critical scholars view as born out of the securitized and economic approaches to international migration governance, hence they have the tendency to be "rules-based" rather than "rights-based."³ Given that women migrants comprise somewhat less than half, roughly 135 million or 48.1%, of the global international migrant stock,³ a rights-based approach to labour migration needs to be anchored in gender equality.

To be sure, rights are not entirely absent from discussions about and approaches to BLAs. In fact, such interstate agreements began to be referenced in key international documents aimed at setting out migrant worker rights, primarily by the International Labour Organization (ILO), which is the custodian of international labor standards and the key organization involved in the promotion of decent work for migrant and non-migrant workers. This is evident from its Multilateral Framework on Labour Migration, the outcome of its annual labour congress held in 2004, which aims at reviving a rights-based approach to migration governance.⁴ Similarly, the UN Convention on the Rights of All Migrant Worker and their Family (1990) references "the importance and usefulness of bilateral and multilateral agreements"⁵ in its preamble. Cooperation forged between states can certainly help facilitate regular cross-border movements of people by ensuring social protection, skills portability and matching to better respond to business and labor market needs. However, among the variety of bilateral agreements signed by states, few contain "rights clauses."

Given the sheer diversity of BLAs, we use the term "bilateral labor agreement" to generically refer to both formal and legally binding bilateral agreements as well as informal and legally nonbinding memoranda of understanding (MOU), which set out broad frameworks of cooperation committing to address common concerns, as well as to other arrangements, including between specific government agencies. Despite their diversity, BLAs contain some common provisions, such as recruitment procedures and criteria, an obligation upon origin countries to screen migrant workers, and the responsibility of the countries of destination to provide legal

3 United Nations Population Division, *International Migrant Stock 2020*. <https://www.un.org/development/desa/pd/content/international-migrant-stock>.

4 Int'l Lab. Org. [ILO], *International Migration Programme, The Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-Based Approach* (2006), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_146243.pdf.

5 G.A. Res. 45/158, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Dec. 18, 1990), <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.

protections to the hired workers and institutional mechanisms for administering the agreement and overseeing recruiters and employers.⁶ All of these provisions, as we argue here, have gender implications.

Since BLAs as migration governance tools aim to facilitate and manage cross-border mobilities of mostly temporary migrant workers, we specifically focus on women migrants who form a large proportion of such temporarily hired workers. They mainly work in low-paid, informal sectors where their labor rights have been notoriously absent.⁷ This is because the principal creators of BLAs are states, and from their vantage point, BLAs represent viable tools to manage “orderly and regular” migration pathways. The latter indeed serve a dual purpose of regulating borders and addressing labor demands in destination countries and unemployment pressures in origin countries, whilst minimizing the states’ responsibility in relation to migrants’ welfare. Such a managerial approach to international migration governance places the states’ interests at the forefront, whilst severely curtailing the rights of migrant workers in both origin and destination countries. Importantly to our discussion, this is more so in the case of women migrants, since such instruments are embedded in the gendered division of labor where women are overrepresented in low-wage, unprotected types of work.⁸

This Article adopts a broader feminist political economy lens⁹ alongside an intersectional *methodological* approach to critically examine BLAs as gendered instruments of the contemporary infrastructure of global labor migration governance. By investigating the extent to which these governing instruments connect and align with relevant international frameworks (specifically relevant ILO conventions and guidelines), we gauge the extent to which BLAs represent gains, gaps or gaffs in terms of gender equality and the human and labor rights protection of women migrants. It is to be noted that although our conception of gender goes beyond binarity and is inclusive of LGBTQI migrant workers, in policy circles—be they global, regional or national—the presence of LGBTQI migrants’ issues and recognition of their gendered challenges in connection with transnational labor migration remains almost nonexistent. While we here point to the critical importance of including LGBTQI migrants in the analysis of BLAs, and indeed most of our claims are applicable, their specific realities and rights protection challenges merit a more fulsome analysis that does not fall within the scope of this article.

The Article begins by outlining the theoretical and methodological approach that informs the data analysis. This is followed by a brief discussion of the major general trends and traits of BLAs in the global context, and then moves on to taking stock of bilateral agreements in relation to gender. The Article then zeroes in on

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

7 Nicola Piper & Schoon Lee, *Migrant Domestic Workers as ‘Agents’ of Development in Asia: An Institutional Analysis of Temporality*, 16 EUR. J.E. ASIAN STUD. 220 (2017).

8 Piper, *supra* note 2.

9 Columba Achilleos-Sarll, *Reconceptualising Foreign Policy As Gendered, Sexualised And Racialised: Towards A Postcolonial Feminist Foreign Policy (Analysis)*, 19 J. INT’L WOMEN’S STUD. 34 (2018).

the analysis of BLAs in the Asian context, providing a case study of a subsample of BLAs pertaining to women migrant domestic workers. The final part of the Article outlines key steps toward the development of gender-responsive BLAs, and provides a brief conclusion.

I. THEORETICAL APPROACH AND METHODOLOGY

A. Feminist Political Economy Perspective

Gender is a significant factor in shaping every stage of the migration experience—from the decision to migrate, through transiting across borders, to working or settling in the country of destination, or choosing to return home.¹⁰ Migration flows are always gendered, and gender relations both shape and are shaped by migration at every scale, from internal movements to intercontinental flows.¹¹ Gender in migration is also a reflection of, and affected by, socioeconomic and legal gender regimes in countries of origin and destination.¹² Reflecting the gendered division of the global economy, female migrants are concentrated in feminized jobs where wages tend to be particularly low; and restrictive migration controls provide women generally fewer options as to the choice of pathways. BLAs are one such mechanism that channels women into specific jobs (predominantly in domestic and service work) typically classified as low-skilled and on a strictly temporary basis.

Our research is rooted in feminist political economy (FPE) approaches to migration.¹³ Such an approach allows the examination of the gendered and systemic nature of labor migration, which is deeply intertwined with economic factors (labor market demand/desires, access to employment, remittance sending, care economy, etc.) as well as political factors such as those relating to the negotiation and execution of BLAs. Moreover, in relation to our specific case of domestic worker migration in Asia, gender, the care economy and women's economic (dis)empowerment intersect at the juncture of labor migration. Further, temporary labor migration is a symptom of larger political economic dynamics that produce demand for low-wage and flexible labour. An FPE perspective therefore provides the umbrella frame

10 Jenna L. Henneby et al., *Gender and Migration Data: A Guide for Evidence-based, Gender-responsive Migration Governance*, U.N. INT'L ORG. MIGRATION [IOM] (2021), <https://publications.iom.int/books/gender-and-migration-data-guide-evidence-based-gender-responsive-migration-governance>.

11 Matthew Walsham, *Gender and Global Migration Governance for South-South Migration* (MIDEQ: Migration Dev. Equal., Working Paper, 2022), https://southsouth.contentfiles.net/media/documents/Gender_and_Global_Migration_Governance_for_South-South_Migration_Working_Paper.pdf.

12 Nicola Piper, *International Migration and Gendered Axes of Stratification: Introduction*, in *NEW PERSPECTIVES ON GENDER AND MIGRATION: LIVELIHOOD, RIGHTS AND ENTITLEMENTS*, U.N. RSCH. INST. SOC. DEV. [UNRISD] 4 (Nicola Piper ed., 2009).

13 See, e.g., *SOCIAL REPRODUCTION: FEMINIST POLITICAL ECONOMY CHALLENGES NEO-LIBERALISM* (Kate Bezanson & Meg Luxton eds., 2006); Daiva Stasiulis & Abigail B. Bakan, *Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada*, 57 *FEMINIST REV.* 112 (1997); Sarah Gammage, *Time Pressed and Time Poor: Unpaid Household Work in Guatemala*, 16 *FEMINIST ECON.* 79, 79-112 (2010); Maliha Safri & Julie Graham, *The Global Household: Toward a Feminist Postcapitalist International Political Economy*, 36 *SIGNS: J. WOMEN CULTURE SOC.* 99 (Autumn 2010).

that connects multidisciplinary scholarship on migration and governance, and critical migration scholarship pertaining to migration management, securitization and governmentality.¹⁴ Engaging with these scholars, we will examine the role of BLAs in classifying people and creating conditions of governmentality to separate, control and protect.

B. Methodology

We employ a gender equity and rights-based analytical framework, which is informed by the broader intersectional feminist methodologies.¹⁵ Such a framework places the human and labor rights of women migrant workers at the center of the analysis. In addition, the intersectional feminist lens places gender at the center with the explicit goal of assessing and analyzing the legal and governance instruments and identifying the gaps that lead to the gendered vulnerabilities and challenges that different groups of women migrants face. To do this, we have developed two sets of indicators that include structural, process and outcome indicators and their interconnectedness. While structural indicators evaluate the commitments undertaken by states, process and outcome indicators assess their implementation. Using the first set of indicators, we will evaluate and examine to what extent BLAs align with the international normative instruments, and to what extent these instruments are implemented on the ground when it comes to protecting the human and labor rights of women migrants. We use a two-step approach to operationalizing our theoretical and methodological frameworks in this Article. First we provide overall descriptive and preliminary analyses of the global BLA database we have created and zoom in on those with gender relevance and implications. We then apply the intersectional feminist lens to provide detailed analyses of the BLAs in the selected Asian countries in relation to women migrant domestic workers, since they are prime examples of agreements that involve temporary low-wage migrant women workers, and have well established bilateral labor migration of women migrant workers. The cases arguably represent the best case scenarios for bilateral agreements, with countries such as the Philippines, playing an active role in utilizing BLAs to facilitate labor migration and address protection gaps for women domestic workers abroad.

C. Analyzing BLAs

One of the challenges in analyzing BLAs is that governments do not consistently publicly disclose BLAs nor is there consistent transparency in their negotiation or specific clauses, etc. Further, BLAs are neither consistent in form nor in content, as there are no globally agreed upon requirements or standards for their development

14 BRIDGET ANDERSON & ISABEL SHUTES, *MIGRATION AND CARE LABOUR: THEORY, POLICY AND POLITICS* (2014); NICHOLAS DE GENOVA, *Spectacles of Migrant 'Illegality': The Scene of Exclusion, the Obscene of Inclusion*, 36 *ETHNIC RACIAL STUD.* 1180 (2013).

15 SOHOON LEE & NICOLA PIPER, *FRIEDRICH-EBERT-STIFTUNG, UNDERSTANDING MULTIPLE DISCRIMINATION AGAINST LABOUR MIGRANTS IN ASIA AN INTERSECTIONAL ANALYSIS* (2013), <https://library.fes.de/pdf-files/iez/10073.pdf>.

or implementation, and there is no official or exhaustive database of such agreement globally. Additionally, BLAs are typically only available in languages of countries named in them, and they do not consistently identify when they pertain to male or female migrants. Given the lack of a central comprehensive database on global BLAs, we employed a four-step process to construct our global BLA database from 1930 to the present. First, in 2014 we built a database of 318 BLAs from 1930 to 2014 as part of a wider analysis on the relationship between BLAs, development-related agreements and development itself for 182 countries.¹⁶ Second, we added the “Bilateral Labor Agreements Dataset” from Chilton & Posner (2018),¹⁷ which covers 582 BLAs on a global scale from 1945 to 2015. Third, we combined these two data sources and updated them to form a larger database consisting of a dataset storing information on BLAs as well as copies of BLA texts themselves. Finally, we generated a subsample of these BLAs by coding them for relevance to gender; BLAs considered to have relevance to gender were included in the subsample. Given the limitation and challenges noted above, all estimates provided in this Article should be taken as conservative. We summarize each step below to detail our methodology.

In the first phase, then, we built a database of 318 BLAs from 1930 to 2014 in 2014. Since, according to the World Bank, there were no known databases for BLAs at the time, we conducted a wider search for data.¹⁸ We used a snowball sampling approach¹⁹ to locate and add identified BLAs to a structured dataset and stored their texts as available. On that basis, we created a BLA database from the OECD, ILO, IOM, OESC, World Bank, OAS and the Government of the Philippines, which we supplemented with searches for secondary scholarly publications on BLAs.²⁰ We limited our additions to agreements specifically for labor migrant flows and titled “bilateral labo(u)r agreement” or “memorandum of understanding.”²¹ By the end of our project, we had assembled 318 BLAs from 1930 to 2014 for 182 countries;

16 Jenna L. Hennebry et al., *Bilateral Labour Migration Agreements, Development and Trade: Complexity, Contradiction and Coherence* (KNOMAD, World Bank, 2015).

17 Chilton & Posner, *supra* note 6.

18 Sherry Stephenson & Gary Hufbauer, *Labour Mobility*, in *PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK* 275 (Jean-Pierre Chauffour & Jean-Christophe Maur eds., 2011).

19 This snowball sampling approach involved working with initial sources for listings of BLAs signed, such as IOM, ILO and OSCE (2008) and OECD/Federal Office of Immigration, Integration and Emigration (2004). Sources such as these provided further sources with additional listings of BLAs, which we followed in constructing our initial database.

20 Org. Econ. Co-operation & Dev. [OECD], *Migration for Employment: Bilateral Agreements at a Crossroads* (2004), <https://doi.org/10.1787/9789264108684-en>; Int'l Lab. Org [ILO], *Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements* (2008), <https://www.unhcr.org/50aa5cfc9.pdf>; Stephenson & Hufbauer, *supra* note 18; Org. Am. States, *Interactive Map of Temporary Employment Programs for Migrant Workers* (2014); Philippine Overseas Employment Administration, *Bilateral Labor Agreements* (2014), <https://www.dole.gov.ph/news/bilateral-labor-agreements-with-switzerland-and-south-korea-highlight-doles-thrust-of-fw-protection-in-2014/>.

21 This, for example, does not include social security or rights treaties made between two-or-more countries. It also does not include regional trade agreements (RTAs), data on which can be found at WTO (2014).

these data became part of the basis of our analysis of the connection between BLAs and development.²²

In the second phase, we added the “Bilateral Labor Agreements Dataset” from Chilton & Posner (2018).²³ While no BLA databases existed during our research in 2014, Adam Chilton, Eric Posner and Bartek Woda independently made a dataset of BLAs using a different methodological approach, eventually identifying 582 BLAs and collecting texts for 254 of them. This dataset specifically attempted to examine every BLA signed on a global scale from 1945 to 2015. To do so, the authors searched the United Nations Treaty Series, the World Treaty Index and the ILO for BLAs.²⁴ Finally, they expanded their data by searching academic articles and foreign ministry databases for additional BLAs. As we have noted in our data, Chilton, Posner and Woda stated that their findings are likely to be conservative because most BLAs are not deposited in international treaty databases. We added these data to our original database in order to expand our coverage, making sure to remove duplicate entries identified in both sources of data.

In the third phase, we integrated Hennebry et al. (2015) and Chilton & Posner (2018) to form a larger database. This included two distinct steps. First, we merged observations between the two sources of data by converting the BLA data in Hennebry et al. (2015) to the structured format of Chilton & Posner (2018) and then conducting a merge. Because Chilton and Posner’s data typically included more variables than those by Hennebry et al. (2015), we filled out values for missing variables in the appended data where possible, storing the rest as missing values. Second, we used source data provided in both datasets to locate and store copies of available BLA texts. Due to the difficulty of locating and accessing BLA texts, we have explicitly sourced 166 BLA texts. While our work continues, we currently have over 650 confirmed BLAs, which we generally describe below. In general, there are three types of variables related to each BLA that were included in the database: geographic information (e.g., sending and receiving countries identified), agreement information (e.g., date signed, in force, MOU or other) and gender information, as outlined below.

In the final phase, we generated a subsample of BLAs we expertly considered related to gender, selecting a smaller subsample of these for our case study in this Article. To do this, we completed a textual analysis of 166 BLAs, looking for gendered keywords, such as but not limited to “gender,” “sex,” “female,” and “women,” as well as typically gendered fields of labor migration, including “domestic workers,” “housemaid,” “domestic help,” and “live-in caregivers.” We identified gender-relevant BLAs using textual analysis in the *R* programming language via the *Quanteda* package. To conduct this analysis, we identified gender-coded language such as “female” and “woman,” as well as agreement occupational classifications typically reflecting

22 Hennebry, *supra* note 16.

23 Chilton & Posner, *supra* note 6.

24 Int’l Lab. Org. [ILO], *Bilateral Labour Arrangements (BLAs) on Labour Migration* (2016), <https://www.ilo.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/lang--en/index.htm>; U.N. TREATY COLLECTION, <https://treaties.un.org> (last visited Mar. 8, 2022); PAUL POAST ET AL., *THE WORLD TREATY INDEX* (2020), <https://www.slaw.ca/2010/09/02/world-treaty-index/>.

gendered divisions of labor, such as in the case of domestic work. Following the identification of BLAs with gender-coded language, a manual inspection of each BLA was conducted to ensure relevance to gender. Using this process, 93 BLAs were identified as potentially relevant to gender, with only 66 being accepted into a final corpus of agreements due to availability and document limitations. Thus, only about 11% of all of the BLAs in our database had reference to gender (i.e., mention of women, gender, or domestic work).

We then selected a total of 14 BLA texts based on the relevance of gender, from this subsample with a specific geographic and industrial focus: these BLAs included source countries in southern or southeast Asia (e.g., the Philippines, Indonesia, India, Nepal, Sri Lanka) with destinations in the Gulf Cooperation Council (GCC) countries and focused on domestic workers. We selected these BLAs based on their representativeness of general labor migration agreements incorporating gender, as well as to apply our findings to specific geographies, thereby enabling a more detailed policy analysis. In particular, we sought BLAs focused on the international migration corridor between southern and southeast Asia and the Middle East since 1980. These agreements, therefore, all conform to a standardized model of gendered labor migrant flows between two regions over an extended period of time; therefore, they provide an apt case study for this Article's purposes.

II. APPLYING A GENDER ANALYTIC TO BLAs

This Part examines and discusses our findings on BLAs. We begin by outlining the dominant approaches to BLAs, and then apply a gender lens at this macro level. We then dive further into our data in relation to international frameworks and mechanisms pertaining to BLAs, in order to flesh out the ways in which gender is both embedded and neglected in these popular instruments. Three dominant approaches—securitized, economic, and rights-based—have emerged on the international labor migration governance scene.²⁵ The securitized approach to migration emphasizes the control of transnational mobilities of people, while the economic approach places the economic benefits of migration and states' interests at the center. As a result of convergence between these two approaches to international migration, the "migration management" approach has emerged, which is acclaimed by most states and the United Nations as a "triple win" model that benefits the countries of origin and destination as well as the migrants themselves. However, it is the states whose interests are predominant, as the origin countries benefit from remittance inflows and skill transfers, while destination countries use temporary migrant labour as "disposable" inputs for jobs shunned by the local workforce.²⁶ Further, BLAs help

25 JEAN GRUGEL & NICOLA PIPER, CRITICAL PERSPECTIVES ON GLOBAL GOVERNANCE: RIGHTS AND REGULATION IN GOVERNING REGIMES (2007); Sandra Lavenex & Gallya Lahav, *International Migration*, in HANDBOOK OF INTERNATIONAL RELATIONS 746 (Walter Carlsnaes et al. eds., 2d ed. 2012).

26 Tanja Bastia & Nicola Piper, *Women Migrants in the Global Economy: A Global Overview (and Regional Perspectives)*, 27 GENDER & DEV. 15 (2019).

destination countries to achieve a flow of labor that meets the needs of employers and industrial sectors, and countries of origin to ensure continued access to overseas labor markets. The poor debt-ridden countries in the Global South are often under tremendous pressure to export millions of workers to save their economies from bankruptcy and to stem the tide of massive unemployment.²⁷

BLAs as tools of labour migration governance reflect the “migration management” model. However, as Shamir and Livnat²⁸ in their Article included in this special issue argue, since states primarily use them as tools to control people’s movements, the securitized and economic approaches are dominantly embedded into such structures. Further, Bhagat²⁹ highlights the unintended consequences of these instruments, citing the case of Nepal where women, particularly those migrating for domestic work to Middle East countries, opt for irregular means and channels of migration since the “orderly” channels add to the costs and hassles for migrants, and choosing regular paths make no substantive differences in their working conditions (particularly in domestic work) in the destination countries.

Furthermore, most BLAs have been conceived, negotiated, and implemented in a gender-blind way. Specifically, they largely ignore gender issues, lack gender-responsive measures and monitoring mechanisms, and only a small number contain gender-specific provisions.³⁰ This is particularly problematic in situations where labor laws in the countries of destination and origin do not guarantee the principles of gender equality and nondiscrimination for national and migrant workers.³¹ Our review of BLAs indicate that *the majority* are gender-blind or gender-biased, and only a few are gender-specific (e.g., naming women migrant domestic workers) as articulated in our gender-responsiveness scale outlined in Figure 1.

27 Raúl Delgado Wise, *Imperialism, Unequal Exchange, and Labour Export*, in *THE OXFORD HANDBOOK OF ECONOMIC IMPERIALISM* 251 (Zak Cope & Immanuel Ness eds., 2021).

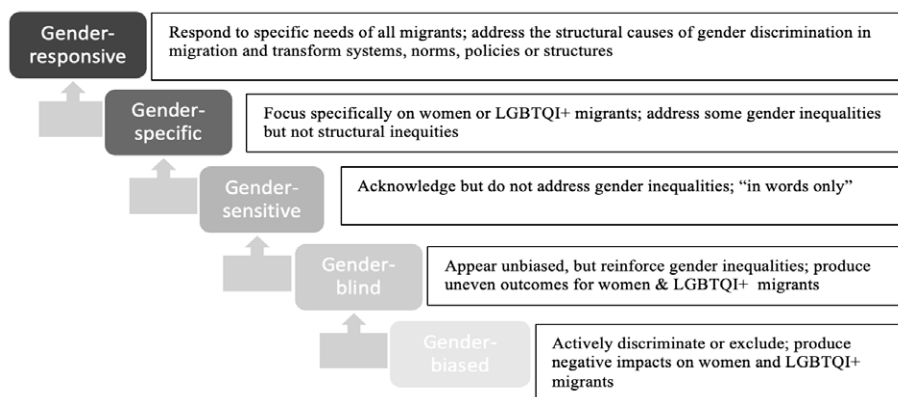
28 Yuval Livnat & Hila Shamir, *Gaining Control? Bilateral Labor Agreements and the Shared Interest of Sending and Receiving Countries to Control Migrant Workers and the Illicit Migration Industry*, 23 *THEORETICAL INQUIRIES L.* 65 (2022).

29 Ayushman Bhagat, *Bilateral Labor Agreements Bans on Domestic Work in Nepal: Spaces of Entrapment and Exclusion and Their Intimate Consequences*, 23 *THEORETICAL INQUIRIES L.* 222 (2022).

30 Int'l Lab. Org. [ILO], *Gender Sensitivity in Labour Migration-Related Agreements and MOUs* (2016), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/briefingnote/wcms_467721.pdf [hereinafter *Gender Sensitivity*]; ILO, *Conditions of Work and Equality Department*, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/workquality/lang--en/index.htm> (Feb. 20, 2022).

31 PIYASIRI WICKRAMASEKARA, *BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW* (2015), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf.

Figure 1: Gender-responsiveness scale



Source: Adapted from 'Gender + migration Hub (<https://gendermigrationhub.org>)

The international consensus is that equality and fair migration for women and men are both a matter of social justice and essential for sustainable economic and social development.³² The 2030 Agenda for Sustainable Development reaffirmed the importance of achieving gender equality and empowering women, emphasizing that effective gender equality is needed if we are to achieve all 17 Sustainable Development Goals (SDGs). Additionally, the COVID-19 pandemic has clearly exposed the flaws in labor migration governance systems across many regions, with migrant workers lacking social protection and rights protection (many being unprotected by states in countries of destination while being abandoned by countries of origin), which left many migrant workers vulnerable to xenophobia, income insecurity and exploitation, with women migrant workers experiencing notably disproportionate deleterious impacts on health and income security.³³ This has further bolstered calls to improve cooperation among states (such as through the use of BLAs), particularly across migration corridors, following the Global Compact for Safe, Orderly and Regular Migration (GCM).

Despite growing interest among states in these agreements, however, BLAs are not clearly calibrated to these global governance goals and commitments, and do not seem to pay heed to the gendered challenges of women migrant workers (i.e., heightened risks to them of exploitation, violence, abuse, and precarity, while also bearing the burden of care responsibilities),³⁴ and therefore consequently reproduce

32 Simon Dalby et al., *Global Governance Challenges in Achieving the Sustainable Development Goals: Introduction*, in *ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS: GLOBAL GOVERNANCE CHALLENGES* (Simon Dalby et al. eds., 2019).

33 Jenna L. Hennebry & Hari KC, *Quarantined! Xenophobia and Migrant Workers During the COVID-19 Pandemic*, INT'L ORG. MIGRATION [IOM] (2020), <https://publications.iom.int/system/files/pdf/quarantined.pdf>.

34 Jenna L. Hennebry et al., *Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking*, U.N. WOMEN (2017), <http://www.unwomen.org/en/digital-library/publications/2017/2/>

gendered outcomes.³⁵ Even when BLAs include gender, as seen in the case study discussed in the following section, they contribute to the further entrenchment of gender inequalities by channelling women into feminized occupations, such as caregivers, cleaners, customer service workers, salesclerks, and entertainers, which are typically considered by states as “low skilled” (often used as a proxy for low waged), with high levels of precarity and low levels of social protection, often in sectors without consistent collective bargaining rights.³⁶ Gender is not “interchangeable with women, rather gender refers to women, men [and diverse gender groups], and the often unequal relations between them In practice, debates on gender often focus on women because they as a group have been most affected by gender inequality.”³⁷ However, even when gender is included in BLAs, it has often been used in its binary sense, which downplays and rejects the presence of migrants from diverse gender categories (i.e., LGBTIQ+). The emphasis on women migrant workers in this Article reflects the fact that they face a greater concentration in sectors that are underregulated, and they face heightened risks of exploitation and violence, as well as trafficking for the purposes of sexual exploitation.³⁸ Most BLAs lack specific provisions for women migrants, or to promote gender equality, and despite considerable efforts made by states such as the Philippines to protect women migrants’ rights through BLAs, most fail to ensure social protection or address rights violations for citizens in the countries of destination.

Despite the limitations of BLAs, they constitute important tools for states to adopt the “managed migration” approach for maximization of their own benefits, as some scholars³⁹ argue that they have the potential to at least minimize the vulnerabilities and precarity of migrant workers abroad, particularly with regard to social protection. Such bilateral agreements can lead to the improvement of working conditions, negotiation of fair contracts, and reduction of the exploitation of migrants.⁴⁰ However, state-centrism, which is deeply embedded into contemporary managerial labor migration governance, should be decentred by bringing in the voices of local and regional civil society networks in order to focus more holistically on addressing

women-migrant-workers-journey-through-the-margins.

- 35 Jenna L. Hennebry & Hari KC, *On the Gendered Structures and Outcomes of Interstate Bilateral Labour Agreements as Migration Governance Instruments*, in THE PALGRAVE HANDBOOK OF GENDER AND MIGRATION 287 (Claudia Mora & Nicola Piper eds., 2021).
- 36 Jenna L. Hennebry, *For Their Own Good?: Addressing Exploitation of Women Migrant Workers*, INT’L ORG. MIGRATION [IOM] (2017), <https://publications.iom.int/books/their-own-good-addressing-exploitation-women-migrant-workers>; LEE & PIPER, *supra* note 15.
- 37 U.N. Women, *Important Concepts Underlying Gender Mainstreaming* (Aug. 2011), <https://www.un.org/womenwatch/osagi/pdf/factsheet2.pdf>.
- 38 Hennebry et al., *supra* note 34.
- 39 Piyasiri Wickramasekara & L.K. Ruhunage, *Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding*, INT’L LAB. ORG. [ILO] (2018), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_683740.pdf; see also Clara van Panhuys et al., *Migrant Access to Social Protection Under Bilateral Labour Agreements a Review of 120 Countries and Nine Bilateral Arrangements* (ILO Extension Soc. Sec. [ESS] Working Paper no. 57, 2017), <https://ideas.repec.org/p/ilo/ilowps/994955792602676.html>.
- 40 Brianna O’Steen, *Bilateral Labor Agreements and the Migration of Filipinos: An Instrumental Variable Approach*, 12 IZA J. DEV. & MIGRATION 47 (2021).

the drivers as well as the consequences of migration (e.g., decent work deficits) in the countries of origin and destination.⁴¹

Yet, despite their promise as tools of managed labour migration, given the vagueness and under-enforcement of BLAs, it is relatively unsurprising that these treaties are not translated into actual promotion of equality for women migrant workers. Anticipating a loss of future gains, states will often comply with international rules that are not in their immediate interests. However, the extent to which states comply with such instruments depends on whether the states' policymakers see a possibility of being excluded from future cooperative agreements.⁴² To state the obvious, BLAs are embedded in the power relations between countries. Further, as regards women migrants, even some rich states, especially in the Global North, which identify themselves as "feminist," shy away from inserting clauses in BLAs that directly relate to women, claiming that women's equal rights are already embedded into their domestic legal systems.⁴³ Further, no BLAs in our analysis appear to directly reference LGBTQI+ rights or address the heightened risks of sexual and gender-based violence (SGBV) experienced by these migrants.⁴⁴

The number of BLAs on migrant domestic workers has increased largely owing to the worldwide situation of women workers in the context of the ILO Domestic Workers Convention, 2011 (No.189) and the establishment of the International Domestic Workers Federation in 2013. Such sector-specific BLAs are most crucial for sectors with high informality (e.g., domestic work) that are not included in national labor laws. To have BLAs comply with ILO Convention No.189 remains a notable challenge, particularly in instances where domestic workers are excluded from national labor laws, such as in some countries in the GCC where states have declined to adopt gender equality clauses in their BLAs that are contrary to their own domestic legal and social systems. Indeed, domestic workers in the Arabian Gulf countries remain particularly unprotected, as they fall outside the domain of the destination countries' domestic legal systems. In the following part of the Article we discuss BLAs in the Asian context pertaining to migrant domestic workers specifically.

III. IN FOCUS: BLAs AND WOMEN MIGRANT DOMESTIC WORKERS IN ASIA

Migration corridors and sectors of employment are highly gendered. The Asia and Pacific region remains the world's largest employer of domestic workers, employing 38.3 million domestic workers, i.e., 50.6% of all domestic workers worldwide.⁴⁵ In

41 *Id.*

42 Rachel Brewster, *Unpacking the State's Reputation*, 50 HARV. INT'L L.J. 231 (2009).

43 Hennebry & KC, *supra* note 35.

44 Hennebry et al., *supra* note 10.

45 See Press Release, Int'l Lab. Org. [ILO] Reg'l Office Asia & Pac., *Informality and Exclusion from Labour Laws Remain Barriers to Decent Domestic Workers* (June 15, 2021), <https://www.ilo.org/asia/media->

2017, Asia and the Pacific hosted 20.4% of all women migrant workers, with the Arabian Gulf countries sharing a huge portion of women most of whom work as domestic workers.⁴⁶ In 2015, the number of women migrating to the Middle East from South Asian countries alone was over 3 million and most of them were employed in the domestic work sector.⁴⁷ However, given the nature of their work, which is performed in the private domestic spheres not regulated by state laws, women migrant domestic workers in particular are among the most vulnerable groups of workers. Typically, they work for private households behind closed doors, often without clear terms of employment and excluded from the protection of labor legislation. In Asia and the Pacific, 61.5% of domestic workers remain fully excluded from labor law.⁴⁸ The women domestic workers whose work remains excluded from national labor laws in destination countries are most likely to find themselves in precarious situations and face challenges that include, among others, low wages, excessively long working hours, deprivation from rest and weekly days off, restrictions on freedom of movement and isolation, and even physical, mental and sexual abuse.⁴⁹ In such circumstances, it is crucial for BLAs to address the gendered challenges faced by women migrant domestic workers—but few do so.

Asia has seen an increasing number of BLAs signed, beginning with the signing of the Employment Permit System with Korea, followed by agreements between the countries of West Asia and countries of origin in South and Southeast Asia. The 2013 Saudi Arabia-Philippines agreement marked the first time that a country of destination and a country of origin signed a specific agreement on domestic work, with many other countries in the region following suit and most migrant corridors identified below having bilateral agreements in force.⁵⁰

centre/news/WCMS_802026/lang--en/index.htm (on the issues of informality and exclusion of migrant domestic workers from national labor laws in the destination countries).

46 Int'l Lab. Org. [ILO], *ILO Global Estimates on International Migrant Workers—Results and Methodology* (2d ed. 2018), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf.

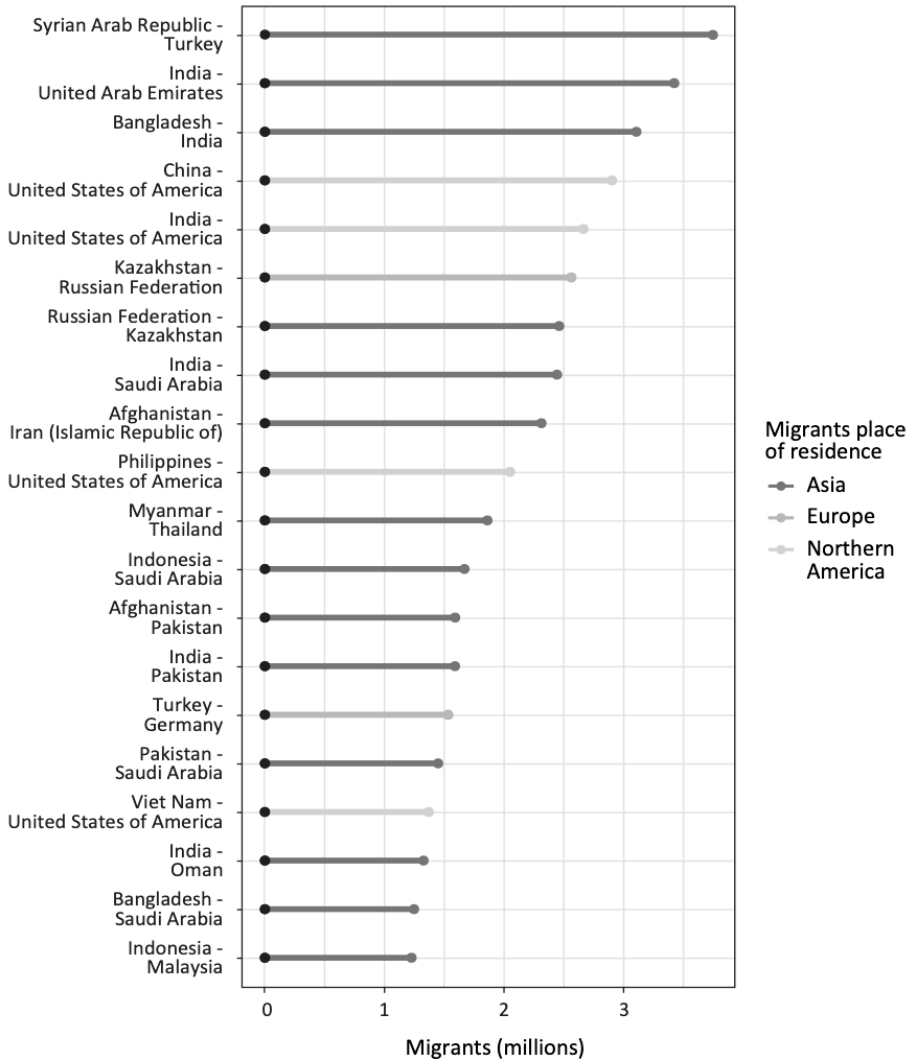
47 U.N. Women, *Empowering Women Migrant Workers from South Asia: Toolkit for Gender-responsive Employment and Recruitment* (2019), <https://knowledge.unasiapacific.org/our-work/knowledge-resources/empowering-women-migrant-workers-south-asia-toolkit-gender-responsive>.

48 ILO Reg'l Office Asia & Pac., *supra* note 48.

49 WICKRAMASEKARA, *supra* note 31.

50 ILO, *Gender Sensitivity*, *supra* note 30.

Figure 2: Top 19 migratory corridors in Asia⁵¹



Source: U.N., Economic and Social Commission for Asia and the Pacific (2020)

Most such bilateral agreements are signed in the forms of MOUs that fall short of meeting the migrant rights standards as set by the ILO, especially in terms of providing effective monitoring or enforcement mechanisms.⁵² The countries of

51 U.N. Econ. & Soc. Comm'n Asia Pac [ESCAP], *Asia-Pacific Migration Report 2020: Assessing Implementation of the Global Compact for Migration*, ST/ESCAP/2801 (Dec. 18, 2020).

52 Int'l Trade Union Confederation [ITUC], *Update 2017: Facilitating Exploitation: A Review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries*, GCC Legal and Policy Brief

destination prefer MOUs for a number of reasons, e.g., they are easier to negotiate and implement and offer flexibility as regards amending them to address the changing economic and labor market demands.⁵³

However, the inter-state bilateral instruments between the sending and receiving states fail to respond to the gendered challenges of women migrant domestic workers in two ways. These governing instruments are either oblivious even to the presence of women migrant domestic workers or fall short of addressing their unique gendered challenges. For example, Nepal has signed BLAs with ten migrant receiving countries, including six from the Arabian Gulf region—Qatar, Bahrain, Jordan, Bahrain, and the UAE—but they maintain an odd silence relating to women migrant domestic workers and remain not only gender-blind but gender-absent in significant ways (i.e., no mention of women or the specific context of their employment that may heighten risks; no specific strategies for addressing these risks or protecting the human rights of migrant women; no specific strategies or practices to enhance acquisition or recognition of skills, or to foster gender equality). Similarly, while the 2017 Nepal-Jordan General Agreement recognizes “the international commitments of both parties on human rights and labour rights, in particular the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International instruments on the rights and welfare of labour”, it only refers to the international legal frameworks in vague terms—which does little to respond directly to women migrant domestic workers’ lived precarities.

Particularly in the context of the Gulf states where migrant domestic workers from Asia are employed under the kafala system⁵⁴ (which involves tied work visas through employer sponsorship, and do not fall within the scope of national labor laws, BLAs are often the only governance instruments that—despite all the challenges of implementation—exist to govern their migration. The persistence of the kafala system is not addressed through the implementation of BLAs in the Gulf region. Further, these agreements neglect to recognize the gendered experiences and risks of women migrant workers (e.g., care burden, deskilling, exposure to sexual and gender-based violence). As such, they contribute to perpetuating gendered patterns of employment by limiting women’s deployment to jobs such as caregivers, cleaners, service/salesclerks, and entertainers, which are typically low-skilled, low-waged, with high levels of precarity and low levels of social protection, often in sectors without consistent collective bargaining rights.⁵⁵ Rights-based BLAs are nonexistent in terms of the state parties committing to protection of women migrants’ rights, let alone

(June 9, 2017), <http://www.ituc-csi.org/gcc-legal-and-policy-brief?lang=en>.

53 WICKRAMASEKARA, *supra* note 31.

54 The kafala is a system used in the in the Gulf Cooperation Council (GCC) countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates as well as Jordan and Lebanon to regulate migrant workers; the system requires migrants to be sponsored by their employers (kafils) for their legal status and employment.

55 Int’l Lab. Org. [ILO], *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (2016), https://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm.

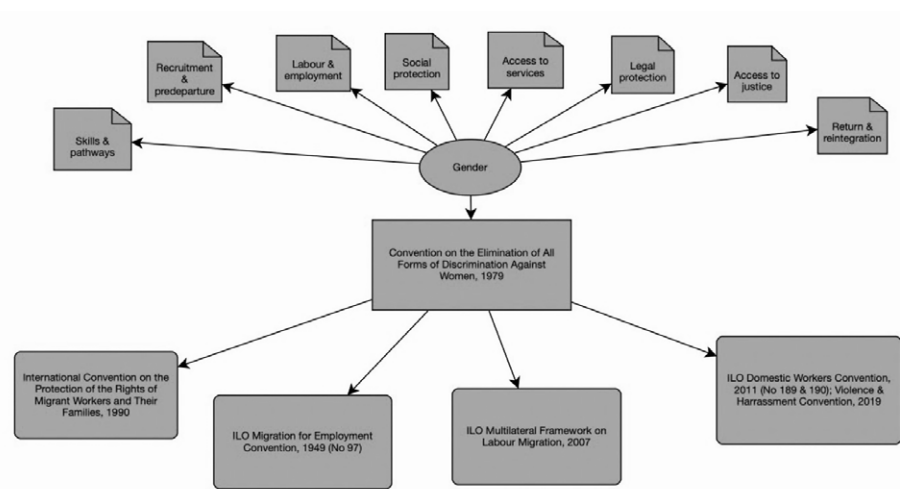
those of their family members. Even where BLAs include provisions for standard employment contracts, implementation remains almost impossible to enforce in the absence of adequate national legislation or a supervisory mechanism. Further, the space for social dialogue involving concerned stakeholders (e.g., International Domestic Workers Federation), or the involvement of such stakeholders in the negotiations of bilateral agreements is particularly rare.

Yet, in the context of women migrant workers in informal sectors such as domestic work, which are not typically included in national labor laws (and even existing laws do not comply with international standards), BLAs could be important tools for safeguarding rights protection. In the Asian context, BLAs can offer minimum benefits for migrant workers in that the latter are formally recruited and thus have a legal status. However, enhancing the potential for the benefit of individual migrants is possible only by pushing states to embrace a rights-based approach to migration governance which is promoted by civil society and trade unions with the support of some international organizations, such as the ILO and UN Women. As an example, the BLA between the Philippines and Germany on the migration of Filipino healthcare workers features a government-to-government hiring arrangement based on ILO and UN normative frameworks. The agreement ensures equality of treatment and social protection for migrant workers and, by including trade unions from both countries in the oversight committee, provides space for social dialogue. With respect to women migrant workers specifically however, the agreement remains gender-blind and as such ignores the gendered realities of migration (e.g., the concentration of women migrants in a devalued carework outside of formally recognized healthcare workers where there are no collective bargaining rights and high level of informality which can raise risks of exploitation and abuse) and their gendered impacts and outcomes in the lives of women and gender diverse migrants. While bilateral agreements can play an important role in ensuring that the labor rights of migrant workers are protected, in practice they exhibit a number of shortcomings regarding their design, content, monitoring, implementation and impact, which can be addressed through adopting a gender-responsive approach to BLAs, as outlined in the following part.

IV. DEVELOPING GENDER-RESPONSIVE BLAs

In order for BLAs to holistically foster gender equality, ensure freedom from gender and sexual violence, protect labor and human rights of women migrants and ensure their access to justice, legal and social protections, they must be grounded in key international legal frameworks as shown in Figure 1. BLAs must reflect the core components of women's human rights as articulated in international law, specifically in the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and General Recommendation No. 19 on Women Migrant Workers, the International Convention on the Rights of Migrant Workers and their Families (ICRMW), and the International Labour Organization Convention No. 189 on Domestic Workers (ILO189), etc.

Figure 3: Gender-responsive indicators based on international normative documents



Additionally, BLAs must be calibrated around gender equality as agreed upon by member states in the 2018 Global Compact for Safe Orderly and Regular Migration (GCM) and the 2030 Agenda adopted by United Nations General Assembly resolution, on 25 September 2015 (A/Res/70/1), which sets a clear time frame to achieve gender equality through its Sustainable Development Goal (SDG) 5: all forms of discrimination against women and girls must be eliminated by 2030. Calibrating BLAs around gender equality means measuring their impact on whether they promote and monitor equality and non-discrimination on the basis of sex (consistent with Indicator 5.1.1). Indices, such as the United Nations Development Programme’s Gender Inequality Index and the World Economic Forum’s Global Gender Gap Index, combined with qualitative and quantitative data on migration and gender can enable the monitoring and tailoring of BLAs towards realizing Goal 5. These legal and normative frameworks provide the basis for the formation, implementation and review of BLAs.

When a BLA is calibrated around the goals of gender equality, then it can be understood as gender-responsive. A “gender-responsive” approach to migration governance not only addresses the specific needs of migrants but also the structural causes of gender discrimination, in both countries of origin and destination, so as to bring about transformative changes in the systems rather than simply ice-top the deeply engrained systemic problems. Most BLAs in our analysis fell solidly into the category of “gender-blind” with very few considered “gender-sensitive”. Indeed, as noted above, there are numerous gaps and blind-spots in existing structures of BLAs worldwide. For example, there is a complete absence of reference to LGBTQI+ migrants, not only in BLAs, but in almost all instruments pertaining to labor migration governance. For an approach to be truly gender-responsive it must address such

gaps directly, and transform systems in a manner that supports the goals of gender equality—for all migrants.

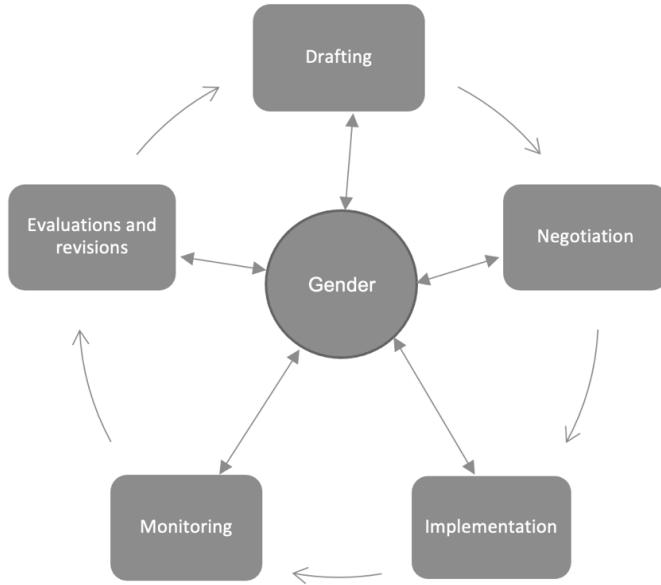
In order to develop a gender-responsive BLA, gender considerations and the voices of migrant women must be integrated into all stages of the policy cycle. An important first step in drafting a BLA is to analyse data on gender, labor market and migration dynamics from both the countries of origin and destination. During preparations, quantitative and qualitative analyses of a range of variables is important, such as skill gaps and labour force characteristics, employment and migration laws and policies, and gender issues affecting equal opportunities for labor market access are relevant to consider. Data can be drawn from existing statistical and administrative data sources such as embassies and consular services abroad, labor force surveys, immigration and border authorities, as well as through public employment services and private recruitment agencies, social partners, and NGOs. These data must importantly include the voices of women migrants themselves, as well as the organizations that support them. Negotiations of BLAs should include representatives from several ministries, including the ministries of labor, foreign affairs, migration (where they exist), and other relevant ministries (e.g., ministries of justice, interior, education, health, youth, and gender) in countries of origin and destination—and most importantly must include civil society organizations, labour and worker representation. During the implementation of BLAs, gender considerations must continue to be integrated, including predeparture training, gender-based training for consular and government representatives, and specific consular services and communication strategies that support access to information and rights for women migrant workers. Once implemented, BLAs require ongoing monitoring to ensure compliance with international conventions (e.g., ILO189) as well as the measurement of gender indicators and outcomes (e.g., gender equality markers such as wage gaps, etc.), employing gender-based analysis tools, such as Canada's Gender Results Framework, as well as the range of global gender equality indices noted above.

To enable gender-responsiveness, gender analysis and gender impact assessments of BLAs must be carried out, using sex-disaggregated statistics on labor migration while ensuring the inclusion of all stakeholders. Although it is the responsibility of governments to negotiate agreements in accordance with protocols on confidentiality, it is essential for negotiators to share information and consult migrant workers of all genders, as well as rights advocates, including migrant and other workers' organizations, employers' organizations, associations of recruitment agencies, and civil society organizations with a migrant workers', workers', women's or human rights framework.⁵⁶ Specifically, the development and monitoring of BLAs requires consultation with women migrants specifically, as well as those with expertise on gender and labor migration.

To further structurally embed a gender-responsive approach to BLAs, gender-specific, nondiscrimination, and rights-based clauses to promote gender and racial

56 ILO, *Gender Sensitivity*, *supra* note 30.

Figure 3: A gender-responsive BLA policy cycle



Source: Hennebry and KC, 2021

equality need to be inserted. In addition to such language, a model employment contract should be provided with provisions covering conditions and addressing vulnerabilities in specific employment sectors (e.g., domestic work). There should be provisions to ensure that recruitment agencies explain the terms and conditions to potential migrants and employers before they sign the contract; protective provisions for sectors not covered by national labor law, such as domestic work, entertainment, and agriculture, introducing minimum standards that need to be created; and specific protective measures concerning labor exploitation, physical and sexual violence, and forced labor, for women and men migrant workers throughout the migration process, in workplaces, and in migrant workers' accommodations that are established. A complaint mechanism must be provided to deal with harassment, violence and discrimination, including the option of legal remedy and gender-responsive support services for women seeking redress, and follow-up with regular monitoring is also needed. The provision of appropriate healthcare and social security benefits is also vital, as protection gaps have gendered impacts, as demonstrated by the COVID-19 pandemic, which disproportionately negatively impacted women migrants,⁵⁷ and the possibility of portability of social security and health benefits (even if the latter has proven to be difficult and challenging) can mitigate gendered impacts, particularly for women migrants.

57 Laura Foley & Nicola Piper, *Returning Home Empty-Handed: Examining How COVID-19 Exacerbates the Non-payment of Temporary Migrant Workers' Wages*, 21 GLOB. SOC. POL'Y 468 (2021).

BLAs are most effective, in terms of human rights protection, when they explicitly link to international human rights frameworks, cover the entire labor migration cycle (from recruitment through working and living abroad, to return and reintegration) and involve consultation with a range of stakeholders (including migrant workers and civil society) in both countries of origin and destination. And, as previously outlined, *only* when these agreements include gender-responsive language and gender-responsive, rights-based clauses, as well as gender-based consultation and monitoring from development to implementation, can they strengthen the rights protection of *all* migrant workers, including women and gender-diverse migrants.⁵⁸

In addition to grounding the content of BLAs in these instruments, in all the processes of the entire policy cycle of BLAs—from inception and negotiation to implementation, monitoring and revision—states should ensure that the voices of all stakeholders, particularly those directly impacted by such instruments, are heard and reflected (as consistent with the GCM guiding principle). While the agreement may be mutual, the motivations of and benefits to sending and receiving countries vary.⁵⁹ A gender-responsive approach can help balance these potentially competing and changing motivations among countries, since BLAs are not a once-and-for-all phenomenon (and typically expire after a short duration). By incorporating the principles of gender equality, rights and empowerment into the formulation, monitoring and ongoing review of policies and interventions, it assures that there are no unintended negative consequences for women migrants as motivations and conditions change across contexts in both countries of origin and destination. During the entire policy cycle of BLAs, from drafting through implementation to their evaluation and revision, it is critical to have women and gender-diverse migrants' concerns and voices heard and their specific challenges and issues addressed.⁶⁰ A gender-responsive approach to labor migration governance and to BLAs should embrace and integrate the norms and principles of gender equality, rights and empowerment into all the processes and cycles of the bilateral agreements, as shown in Figure 3. In light of the increasing share of women migrant workers employed in the care sector, including domestic work, there is a particularly pressing need to address gender-related issues in BLAs in this sector. To do so would be key to the operationalization of the guiding principle of gender-responsiveness as outlined in the GCM.⁶¹

Aligning BLAs with new and/or existing legislative and regulatory frameworks that are compliant with international human rights law is key to their gender-responsive implementation. Responsibilities for implementation at the national, regional, and local levels should be clearly delineated. While the ultimate responsibility for implementation of BLAs lies with the state, social partners and civil society

58 A full analysis of BLAs in terms of gender-responsiveness to the needs and realities of LGBTQI migrants was beyond the scope of this Article, but future work should endeavor to do so.

59 O'Steen, *supra* note 40.

60 Hennebry & KC, *supra* note 35.

61 Jenna L. Hennebry & Allison J. Petrozziello, *Closing the Gap? Gender and the Global Compacts on Migration and Refugees*, 57 INT'L MIGRATION 115 (2019).

organizations can also play key roles in ensuring that the BLA accurately reflects labor market needs and provides the necessary protection and support services to migrant workers.

BLAs should include clear provisions for monitoring the implementation of the agreement, such as through joint committees. In addition to monitoring, these committees can be tasked with joint interpretation of the text, the proposal of amicable solutions to disputes and suggested amendments. In parallel to joint monitoring committees, each country may draw on a network of government institutions such as embassies and consulates, including labor attachés, as well as social partners and civil society actors to monitor decent working conditions of migrant workers unilaterally. Given the dynamic nature of labor markets and the potential for changes in the wider context, to ensure that a BLA remains relevant, there should be scope for making periodic revisions or updates to the agreement based on gender-based analyses and impact assessments of bilateral agreements, particularly in female-dominated sectors characterized by high degree of precarity (e.g., domestic work).

CONCLUSION

Throughout this Article, the idea of gender-responsiveness as consistent with the Global Compact for Migration has been more clearly articulated with respect to BLAs. Based on our compiled database of BLAs and a more focused discussion of a selection of some of those operating in Asia, this Article provides an assessment of the extent to which BLAs incorporate gender, and concludes that more work is to be done to operationalize such agreements in a manner that is geared towards gender equality goals. Indeed, the BLAs in our analysis consistently failed to adopt clauses or measures aimed to ensure women migrants' human/labor rights protection, and do little to foster gender equality. As the use of such agreements expands as possible mechanisms towards enhancing legal pathways for migrants, more efforts must be made to ensure that BLAs are calibrated around rights and gender equality goals. In order to make migration a truly "triple win" solution, benefiting all involved including the women migrants, the inclusion of rights clauses is vital but also requires adopting a gender-responsive policy cycle that integrates gender in the development, implementation and monitoring of BLAs. States must demonstrate a serious commitment to upholding the human and labor rights of migrant workers by prioritizing the negotiation of legally binding and rights-based BLAs. Further, in order for BLAs to enhance the protection of the rights of women migrant workers they must be rooted in international legal and normative frameworks, specifically ILO189, ICRMW, and CEDAW which must also be reflected in national level law, policy, and regulation mechanisms in both countries of origin and destination. Only then, when BLAs are calibrated around gender equality and rights protection, can they be understood as labour migration governance tools that enhance regular pathways for all.