

Global Interstate Bilateral Labour Migration Agreements (BLMA) as Migration Governance Tools: An Analysis from a Gender Lens

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Table of Contents

Abstract.....	0
I. Introduction.....	0
II. Legal Validity of BLMAs within International Legal System	2
III. Theoretical Approach and Methodology.....	3
IV. Major Trends and Traits of the BLMAs	5
V. Taking Stock of Gender in BLMAs	7
VI. BLMAs Through a Gender-Responsive Analytical Lens.....	8
VII. BLMAs in the Asian Context: the Case of Women Migrant Domestic Workers	14
VIII. Conclusion and Recommendations	17
References.....	19

Abstract

This paper discusses BLMAs as tools of global labour migration governance with a specific focus on gender. Drawing on our global database of 583 Bilateral Labour Migration Agreements (BLMA), we investigate the extent to which these governing instruments connect and align with relevant international normative frameworks, particularly examining the extent to which they represent gains, gaps or gaffs in terms of gender equality and the human and labour 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 BLMAs which are increasingly being used as instruments to govern labour migration contribute toward sustainable gender equality, decent work and reduced inequalities for women and gender diverse migrants?

I. Introduction

As states look to expand “regular pathways” for migration, as evidenced in the Global Compact for Safe, Orderly and Regular Migration (UN, 2018), many are turning to managed labour migration schemes under bilateral labour migration agreements (BLMA), rather than alternative pathways. The key reason is that BLMAs provide states with flexibility and adaptability, or as critical voices would argue, reduce their commitment to and responsibility for migrants in the

longterm. Even prior to the GCM, states have officially recognized the relevance of BLMAs, referencing them in international key documents setting out migrant worker rights. For instance, ILO has promoted bilateral, multilateral and regional frameworks and agreements to facilitate migration of labour as stipulated in the ILO Multilateral Framework on Labor Migration which states that “...where appropriate, bilateral and multilateral agreements [are useful in] addressing aspects of labor migration.”¹ Similarly, the UN Migrant Workers Convention (1990) also references “the importance and usefulness of bilateral and multilateral agreements” in its preamble. Cooperation forged between states can certainly help facilitate regular cross-border movements of people and support effective visa policies, social protection and skills portability and matching to better respond to business and labour market needs. Pertaining to labour migration in particular, states have signed a variety of bilateral agreements, however, with ‘rights clauses’ inserted to varying degrees. Given the sheer diversity of BLMAs, we use the term “bilateral labour agreement” to generically refer to both formal and legally binding bilateral agreements as well as informal and legally non-binding 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, BLMAs contain some common provisions, such as recruitment procedures and criteria for migrant workers, obligation of origin countries to screen migrant workers and the responsibility of the countries of destination to provide legal protections to the migrant workers while providing institutional mechanisms for administering the agreement and overseeing recruiters and employers and (e.g, Chilton & Posner, 2017). Further, through BLMAs as migration governance tools, both the countries of origin and destination aim to facilitate and manage cross-border mobilities of temporary migrant workers, mainly those working in low-paid sectors while protecting their labour rights. The BLMAs indeed represent the “migration management” approach that most states and the United Nations have touted as a “triple win” model which Piper and KC (forthcoming)² argue is born out of the securitized and economic approaches to international migration governance. However, since the BLMAs significantly vary in scope, especially in terms of sectors and issues covered, as well as provisions, such as inclusions or lack of monitoring mechanisms and their effective implementation translate into different outcomes for the countries of origin and destination, as well as men and women migrants (ILO, 2016). From states’ vantage point, BLMAs represent viable tools to manage “orderly and regular” migration pathways, which indeed serve a dual purpose of regulating borders and addressing labour demands in destination countries and unemployment pressures in origin countries. Such a managerial approach to international migration governance which places the states’ interests at the forefront has severely curtailed the rights of migrant workers in both

¹ ILO. International Migration Programme. ILO’s Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach. Geneva: International Labour Office, 2006. 55 pgs.

² The chapter titled “Rethinking the Migrant Rights Agenda in Global Migration Governance: a Decolonizing Approach” by Nicola Piper and Hari KC is forthcoming in the book *Handbook on Migration and Development* jointly edited by Raul Delgado Wise, Ronaldo Munck, Carl-Ulrik Schierup, & Branka Likic-Brboric.

origin and destination countries (Piper and KC, forthcoming), and this is more so in the case of women migrants, since such instruments remain largely gender-blind in significant ways. This paper adopts a broader intersectional feminist theoretical approach (Achilleos-Sarll, 2018; Hawkesworth, 2018) to critically examine the BLMAs as key but gendered instruments of the contemporary infrastructure of global labour 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 examine the extent to which BLMAs represent gains, gaps or gaffs in terms of gender equality and the human and labour rights protection of women migrants.

The remainder of the paper is divided into seven sections. Given the diversity of BLMAs, the next section presents a brief assessment of BLMAs in terms of their legal validity within the international legal system. The subsequent section provides our theoretical and methodological approach that informs data analysis followed by some descriptive and preliminary analyses which shed light on the major general trends and traits of BLMAs in the global context. Then we move on to take stock of the BLMAs in relation to gender and migration. Using a gender-responsive analytical perspective, the next section critically analyzes the BLMAs as gendered tools of labour migration governance producing gendered outcomes. The subsequent section zeroes in on the analysis of BLMAs in the Asian context, providing a case study of a subsample of BLMAs pertaining to women migrant domestic workers who are one of the most marginalized groups of global migrant population. The article concludes proposing a set of recommendations for evaluating BLMAs and enhancing their gender-responsiveness.

II. Legal Validity of BLMAs within International Legal System

In most international documents and migration governance discourses in the past, the term “bilateral agreement” was used in two ways: first, it was used as a generic term to refer to any labour migration agreements between states, and second, it was used as a specific form of labour agreement that is legally binding. However, the ILO seems to predominantly use the term “bilateral labour migration agreement” (BLMA) in recent years to refer to any interstate bilateral agreements that govern the cross-border labour movement. For any interstate bilateral agreement to be legally binding, the state parties should concede it as a “treaty” which the Vienna Convention on the Law of Treaties defines as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (Article 2(1)(a)). In order to receive the status of a treaty, any bilateral agreement, once it has been signed, should go through a ratification which entails the state parties endorsing the agreement as per their own domestic legislative procedures and notify each other about their consent to be bound by the treaty. An agreement between two or more States will not be a treaty unless those countries intend the document to be binding at international law.

Looking at the bilateral agreements in the light of the international legal system, not all BLMAs are considered legally binding. According to UN treaties, BLAs are legally binding, in the same way as a treaty holds states accountable under the law, but an MOU is “used for the regulation of technical or detailed matters” and “a less formal kind” of international instrument which does not require ratification (Wickramasekara 2015, p. 13). According to the ILO, most BLMAs in Europe, Africa, and the Americas were legally binding agreements, while almost 70 per cent of those in Asia were MOUs (cited in Wickramsekara, 2015). The preference for MOUs, rather than BLAs, can be attributed to the fact that they are easier to be negotiated and implemented, and given their non-binding nature, do not require ratification (Popova and Panzica, 2019). Though there has been some empirical research on the impacts of such bilateral agreements, be they formal and legally binding or informal and non-binding, the social sciences have, compared to bilateral trades, paid scant attention to such instruments (O’Steen, 2021), let alone their disaggregated impacts on and implications for women migrants.

III. Theoretical Approach and Methodology

Gender is a significant factor in shaping every stage of the migration experience – from the decision to migrate, transiting across borders, to working or settling in the country of destination, or choosing to return home (Hennebry et al., 2021). Intersectionality as a theoretical and methodological framework is well suited to analyse the position of women migrant workers (Lee and Piper, 2013). In this paper, we employ a gender equity and rights-based analytical framework which is informed by the broader intersectional feminist methodologies. Such a methodological framework places the human and labour rights of women migrant workers at the centre of analysis. We argue that drawing on an intersectional feminist approach helps to be inclusive of the subaltern voices and construct knowledge for practice by redefining the context-specific agendas. In addition, the intersectional feminist lens places gender at the center with an explicit goal of assessing and analyzing the legal and governance instruments and identifying the gaps that lead to the gendered vulnerabilities and challenges that women migrant face. To do this, we developed two sets of indicators which included structural, process and outcome indicators and their interconnectedness. While structural indicators evaluate the commitments undertaken by states, process and outcome indicators assess their implementation. The first set of indicators will evaluate and examine to what extent the BLMAs 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 labour rights of women migrants. We use a two-step approach to operationalizing our theoretical and methodological frameworks in this paper. In the first place, we provide overall descriptive and preliminary analyses of the global BLMA database we have created and then we zoom in on those with gender relevance and implications. The intersectional feminist lens will be applied to provide detailed analyses of the BLMAs in the Asian countries in relation to women migrant domestic workers who are popularly called “khadamas” in the Arabian and Middle East countries.

Given the dearth of a central comprehensive database on global BLMAs, we employed a four-step process for constructing our global BLMA database from 1930 to present. First, we built a database of 318 BLMAs from 1930 to 2014 in 2014 as part of a wider analysis on the relationship between BLMAs, development-related agreements and development itself for 182 countries (Hennebry et al. 2015). Second, we added the “Bilateral Labor Agreements Dataset” from Chilton & Posner (2018), which covered 582 BLMAs 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 BLMAs as well as copies of BLMA texts themselves. Finally, we generated a sub-sample of these BLMAs by coding them for relevance to gender; BLMAs considered to have relevance to gender were included in the sub-sample. We summarise each step below to detail our methodology.

In the first phase, we built a database of 318 BLMAs from 1930 to 2014 in 2014. Since, according to the World Bank, there were no known databases for BLMAs at the time, we conducted a wider search for data (Stephenson & Hufbauer 2011). We used a snowball sampling approach to locate and add identified BLMAs to a structured dataset and stored their texts as available. Based on this, 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 BLMAs (OECD 2004; IOM, ILO and OSCE 2008; Stephenson & Hufbauer 2011; OAS 2014; POEA 2014). We limited our additions to agreements specifically for labour migrant flows and titled “bilateral labo(u)r agreement” or “memorandum of understanding.”³ Looking at dyadic links between countries by year, signing a BLMA was very uncommon, with the average country only signing a BLMA in a given year 4% (1/25) of the time; however, all estimates made here should be taken as conservative due to the often secret and private nature of BLMA signings. By the end of our project, we had assembled 318 BLMAs from 1930 to 2014 for 182 countries; these data became part of the basis of our analysis between BLMAs and development (Hennebry et al. 2015).

In the second phase, we added the “Bilateral Labor Agreements Dataset” from Chilton & Posner (2018). While no BLMA databases existed during our research in 2014, Adam Chilton, Eric Posner and Bartek Woda independently made a dataset of BLMAs using a different methodological approach, eventually identifying 582 BLMAs and collecting texts for 254 of them. This dataset specifically attempted to examine every BLMA 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 BLMAs (ILO 2016; UN 2016; Poast 2020). Finally, they expanded their data by searching academic articles and foreign ministry databases for additional BLMAs. As we noted in our data, Chilton, Posner and Woda stated that their findings are likely to be conservative because most BLMAs are not deposited in international treaty databases. We added

³ 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 to our original database in order to expand our coverage, ensuring 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 BLMA data in Hennebry et al. (2015) to the structured formatting 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., 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 BLMA texts. While this process was incomplete at the time of writing due to the difficulty of locating BLMA texts, we have explicitly sourced 166 BLA texts, along with additional 150 expected in the near future. While our work continues, we currently have over 650 confirmed BLMAs, which we generally describe below. This combined, integrated database forms the source of general and case study data used in this paper.

In the final phase, we generated a sub-sample of BLMAs we expertly considered related to gender, selecting a smaller sub-sample of these for our case study in this paper. To do this, we completed a textual analysis of 166 BLMAs looking for gendered key words, such as but not limited to “gender,” “sex,” “female,” “women” as well as typically gendered fields of labour migration, including “domestic workers,” “housemaid,” “domestic help,” “live-in caregivers.” From this sub-sample, we selected 14 BLMAs with texts related to gender and migration with a specific geographic and industrial focus: the BLMAs included source countries in South Asia or Southeast Asia with destinations in the Gulf Cooperation Council (GCC) countries and which focused on domestic workers. Ultimately, this focused on analysis on four source countries: the Philippines, Indonesia, India and Sri Lanka. We selected these BLMAs based on their representativeness of general labour migration agreements incorporating gender, as well as to apply our findings to specific geographies, thereby enabling a more detailed policy analysis.

IV. Major Trends and Traits of the BLMAs

This brief sub-section examines the properties of the general data, as derived from the above methodology. We specifically describe data for 583 BLMAs for 182 countries between 1930 to 2015. In general, there are three types of variables related to each BLMA: (1) geographic information, (2) agreement information and (3) gender information. Table 1 summarises all variables included in our constructed database.

Table 1. Summary of variables included in BLMA database, 1930 to 2015 (n =583)

Variable	Name	Type	<i>n</i>	Missing values code
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<i>Id</i>	Identification variable	Numeric	583	No missing values
<i>Country A</i>	Name of first country signatory to the BLA	Factor	583	NA
<i>Country B</i>	Name of second country signatory to the BLA	Factor	583	NA
<i>Code A</i>	Correlates of War code for countryA	Numeric	583	NA
<i>Code B</i>	Correlates of War code for countryB	Numeric	583	NA
<i>Pair id</i>	A unique dyadic identifier for each country pair	Numeric	583	NA
<i>Year</i>	Year in which the BLA was signed	Numeric	583	NA
<i>Date signed</i>	Date of BLA signature, stored as days since 1 January 1930	Numeric	583	NA
<i>Ratified</i>	Date of BLA ratification, stored as days since 1 January 1930	Numeric	62	NA
<i>Treaty type</i>	Treaty type: new, amending or superseding	Factor	583	NA
<i>Agreement source</i>	Database source for BLA text	Factor	583	NA
<i>Copy available</i>	Binary variable indicating availability of BLA text	Binary	583	NA
<i>Agreement type</i>	Indicates whether agreement is a BLA, MoU or MoA	Factor	364	NA
<i>Gender code</i>	Binary variable indicating gender relevance of BLA based on text availability	Binary	166	NA

Out of 182 countries available for being listed as BLMA signatories, 128 were included in our data. Given that each country could occur twice (once for each signatory on each BLMA), there were a total of 1,186 country-BLMA values. The countries with the most BLMA signatures from 1930 to 2015 included France (98 BLMAs signed), Italy (57), Germany (80, including West Germany), Belgium (36), Spain (35), Switzerland (32), the Philippines (31), South Korea (29) and the Netherlands (29).

Of the available 86 years for BLMAs to be signed (1930 to 2015), we found at least one BLMA was signed in 70 of them. The majority of these BLMAs (or about 53.5%) were signed after the end of the Cold War (i.e., 1990 to 2015). The following numbers of BLMAs were signed each decade: 1930s (1 BLA signed), 1940s (27), 1950s (77), 1960s (77), 1970s (51), 1980s (38), 1990s (99), 2000s (173) and 2010s (40). Of the 364 BLMAs for which treaty type information was available, 100 of those treaties were explicitly bilateral labour agreements, 1 was a memorandum of agreement, 81 were memorandum of understanding, and 182 others were a mix

of these three types, whereas 219 remained unclassified. 63 BLMAs we examined included specific dates of ratification by signatories, with 521 BLMAs missing this information. Additionally, although 328 BLMAs were stated to have available texts, Chilton and Posner (2018) located only 254, but we only located 166.⁴

V. Taking Stock of Gender in BLMAs

Of the 166 BLMA texts we collected, we identified 66 with general relevance to gender, as per the methodology described above. Based on the relevance of gender, as well as our case study criteria previously mentioned, we selected a total of 14 BLMA texts from this sub-sample for further analysis. Out of 182 countries available, 29 were included in our gender-coded BLMA text sample, with a total of 132 country-BLMA values. Countries with the most BLMA signatures in this sample from 1930 to 2015 included France (18 BLMAs signed), the Netherlands (18), Italy (12), Belgium (11), Austria (8), Sweden (6), Ireland, Switzerland and Yugoslavia (5 each) and Denmark, Finland and Turkey (4 each). In general, the sample was highly concentrated in Europe (83.6% of all BLMA signings), with the remainder of signings falling into North and South America (6.0%), Africa (4.5%), Asia (3.7%) and Australasia (2.2%).

This geographic distribution was highly reflective of a selection bias based on the availability of BLMA texts; specifically, this pattern reflected a predominance of treaties available from the 1940s and 1980s which involved the movement of domestic workers from source to destination countries in the (now) European Union. The hey days for the BLMAs were from late 1940s and 1980s during the period of reconstruction and development of European economy when many guest workers agreements were signed. With respect to time, most BLMAs in the gender-coded text sample were signed in the 1950s (34.3%), 1960s (28.4%) and 1940s (23.9%), with the rest signed in the 1970s to 1980s (13.4%). There were no BLMA texts included which were signed from the 1990s to 2015 due to their typical disappearance from primary and secondary sources, especially international treaty databases.

Among 583 BLMAs, only 66 i.e. about 11 percentage of them were related to gender, and moreover, even out of 66 BLMAs, only 39 of them which we examined remain in force to the present. While agreement types were missing due to lack of data for 56.1% of these BLMAs, for those where data were available, the overwhelming majority (82.8%) of them were legally-binding. The remaining BLMAs (17.2%) had mixed features of both binding and non-binding agreements. Due to the way in which we created the sub-sample, all BLMAs (100%) featured available texts compared to an estimated 56.3% availability in the general sample. In summary, the gender-coded sub-sample we employed in this paper was not representative of BLMAs generally, and, due to data limitations, likely not representative of all BLMAs incorporating

⁴ Despite this reduction in sample size, our search for additional texts continues.

gender into their texts. Despite this, our analysis of 66 BLMA texts incorporating gender represented a critical starting point for a broader analysis of the relationship between gender and migration in relation to BLMAs as tools for migration governance, and we make use of this sample to describe and highlight important features of such agreements.

The development of gender-responsive BLMAs is particularly relevant in situations where the labour laws in the countries of destination and origin do not guarantee the principles of gender equality and nondiscrimination in employment and occupations in line with Convention No. 111 for national and migrant Workers (ILO 2016). However, reviewing such agreements reveals that most BLMAs which are currently operational worldwide have been conceived, negotiated, and implemented in a gender-biased and gender-blind way. They largely ignore gender issues, lack gender responsive measures and monitoring mechanisms, and only a small number contain gender-specific provisions (OSCE, 2009; Wickramasekara, 2015; ILO, 2016). 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. The 2030 Agenda for Sustainable Development reaffirmed the importance of achieving gender equality and empowering women, and underlined that effective gender equality is needed if we are to achieve all 17 Sustainable Development Goals (SDGs). The ILO is in the process of developing a new UN system-wide guidance for the rights-based, gender responsive bilateral labour migration agreements. Additionally, the COVID-29 pandemic has clearly exposed the flaws in labour migration governance systems across many regions with migrant workers lacking social protection and rights protection, recognized need to improve cooperation among states, particularly across migration corridors.

VI. BLMAs Through a Gender-Responsive Analytical Lens

Migration scholars (e.g., Lahav and Lavenex, 2013; Grugel and Piper, 2008) contend that three dominant approaches – securitized, economic and the rights-based – have emerged on the international labour migration governance scene. The securitized approach to migration emphasizes controlling transnational mobilities of people while the economic approach places economic benefits of migration and states’ interests at the centre. As a result of a convergence between these two approaches to international migration has emerged the “migration management” approach 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 (Bastia and Piper, 2019). Further, BLMAs help destination countries to achieve a flow of labour that meets the needs of employers and industrial sectors and the countries of origin to ensure continued access to overseas labour markets. Delgado Wise (2018) claims that 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.

The BLMAs as tools of global migration governance reflect the the “migration management” model, however, as Shamir and Livnat,⁵ in their paper included in this Special Issue, argue that the states primarily use them as tools to control people’s movements, the securitized and economic approaches are dominantly embedded into such structures. Further, Bhagat⁶ highlights the unintended consequences of these instruments, citing the case of Nepal where women particularly migrating for domestic work to the Middle East countries opt for the irregular means and channels of migration since the “orderly” channels add to the costs and hassles while choosing the regular paths make no substantive differences in their working conditions in the destination countries. Furthermore, most BLMAs have been conceived, negotiated, and implemented in a gender-neutral way at best and the gender-biased and gender-blind way at worst. They largely ignore gender issues, lack gender responsive measures and monitoring mechanisms, and only a small number contain gender-specific provisions.

BLMAs do not seem to pay heed to the gendered challenges of women migrant workers by providing specific provisions, consequently producing gendered outcomes (Hennebry and KC, 2021). Even when BLMAs include gender, they contribute to further entrenching gender inequalities by channelling women into the feminized occupations, such as caregivers, cleaners, customer service workers, salesclerks, and entertainers, which are typically considered “low skilled” (proxy for low waged), with high levels of precarity, and low levels of social protection, often in sectors without consistent collective bargaining rights (Lee and Piper, 2017). UN Women (2017) stresses that “gender is not interchangeable with women. 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.” However, even when gender is included in BLMAs, it has often been used to its binary sense which downplays and rejects the presence of migrants from diverse gender categories. Most BLMAs lack specific provisions on women or gender equality, and despite considerable efforts made by states such as the Philippines, to protect women migrants’ rights and and social protection and address rights violations for citizens in the countries of destination. As suggested by the authors, BLAs should incorporate a gender perspective, with specific attention and measures for groups such as women migrant workers.

Despite the limitations of BLMAs which indeed constitute important tools for states to adopt the “managed migration” approach for maximization of their own benefits, as some scholars (e.g., Panhuys et al., 2017; Wickramasekara and Ruhunage, 2018) argue that they have potential to at

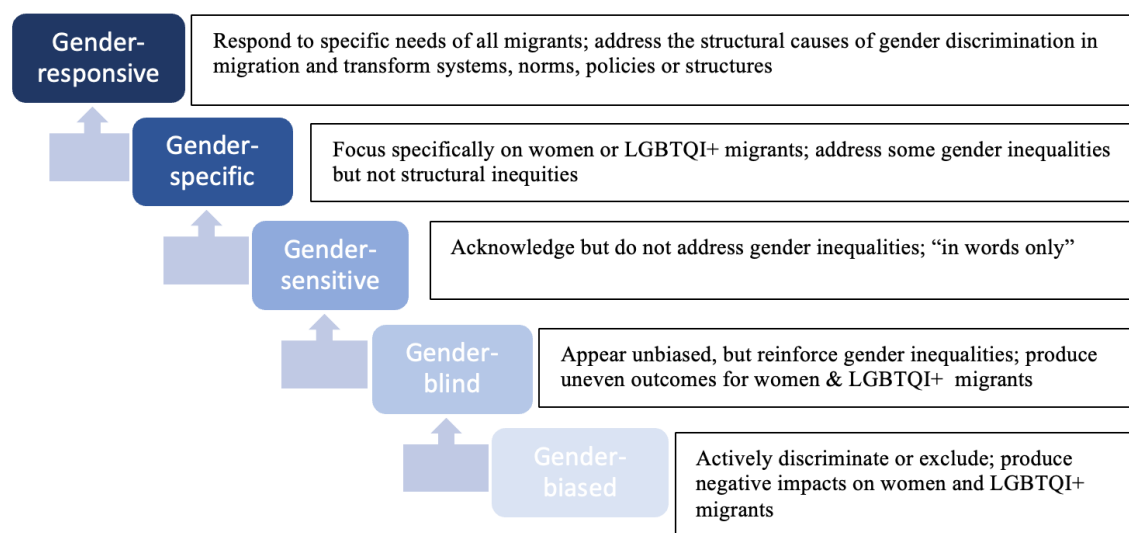
⁵ In the paper titled “Gaining Control? Bilateral Labor Agreements and the Shared Interest of Sending and Receiving Countries to Control Migrant Workers and the Illicit Migration Industry” by Yuval Livnat and Hila Shamir.

⁶ Ayushman Bhagat makes this observation in his article “Bilateral Labor Agreements Bans on Domestic Work in Nepal: Spaces of Entrapment and Exclusion and Their Intimate Consequences.”

least minimize the vulnerabilities and precarity of migrant workers abroad, particularly with regards to social protection. O'Steen (2021) also sees the potential of such bilateral agreements in improving working conditions, negotiating fair contracts, and reducing the exploitation of migrants. In the Asian context, however, most BLMAs offer minimum benefits for migrant workers in that they are formally recruited and thus have a legal status. However, enhancing these potentials to the benefits of the individual migrants is possible only through 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 International Labour Organization (ILO) and UN Women (Piper and KC, forthcoming). As an example, the BLMA 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. In the case of women migrant workers, only a rights-based approach which does not attend and respond to the gendered realities of migration and their gendered impacts and outcomes in the lives of women and gender diverse migrants. Further, as Piper and KC (forthcoming) argue state-centrism which is deeply embedded into the contemporary managerial labour migration governance should be decentred by bringing in the voices of local and regional civil society networks and focusing holistically on addressing the drivers as well as the consequences of migration (e.g., decent work deficits) in the countries of destination.

As shown in the figure below, we propose a six-tiered typology of looking at the models of global labour migration governance in relation to women and gender diverse migrant workers. It is to be noted that our conception of gender is not based on binarity; it is inclusive of LGBTQ+ migrants whose presence has remained completely erased from not only BLMAs but almost all other instruments of labour migration governance.

Figure 1: BLMAs in the gender-responsiveness scale

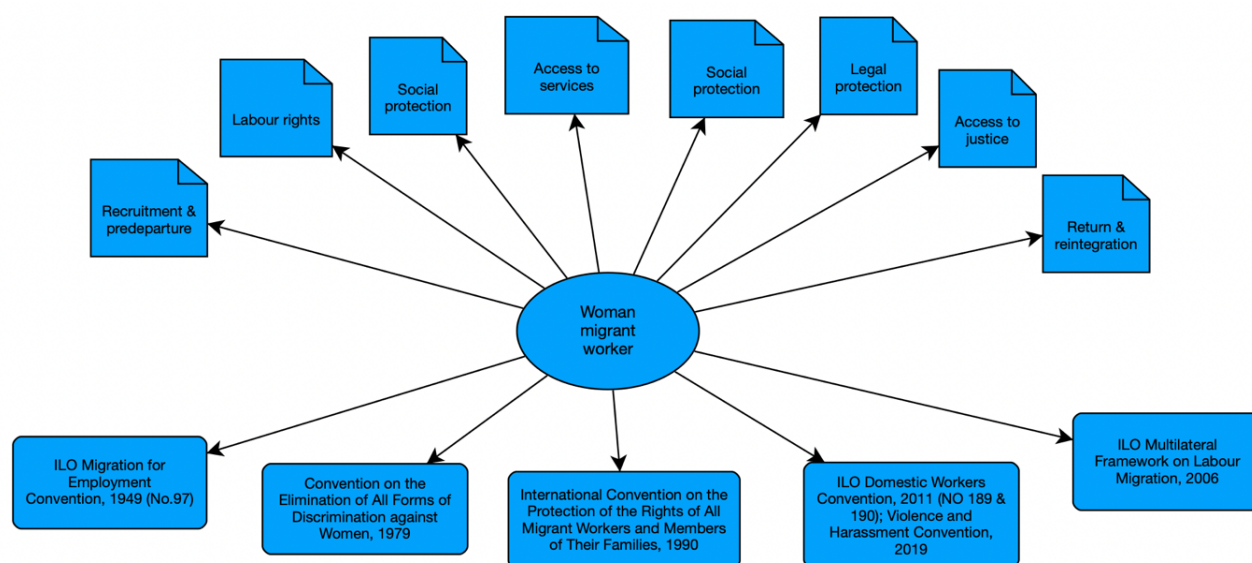


Source: Adapted from 'Gender + Migration Hub (<https://gendermigrationhub.org>)

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

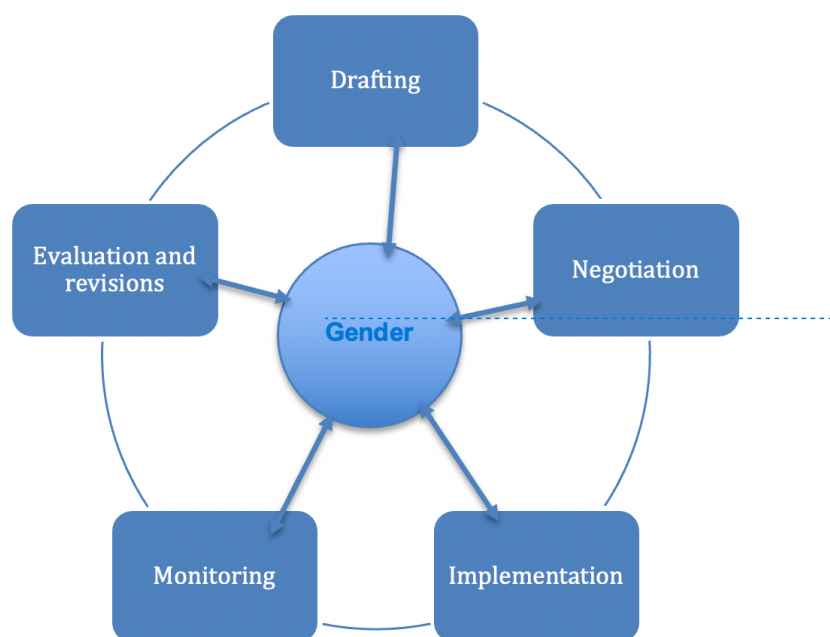
As this figure illustrates, gender-responsive approach to migration governance not only addresses the specific needs of migrants but also the structural causes of gender discriminations, both in the countries of origin and destination, so as to bring about transformative changes in the systems, rather than simply ice-topping the deeply engrained systemic problems. In order to do this, BLMAs should holistically address the issues of gender equality and freedom from gender and sexual violence, protect labour and human rights, ensure access to justice, provide legal and social protection, which we have derived from the international normative migration and gender related documents as shown in the figure below. To operationalize the methodology, a number of key issues that are at the core of the human rights of women have been identified based on the international women's rights and human rights documents, such as the CEDAW, Beijing Platform for Action, GR19, Conventions on the rights of migrants, etc. These core issues pertaining to women's rights and gender equality as provided in the international documents will be used to review and examine the interlinks and synergies that exist across the international documents on development (Agenda 2030), migration (GCM and the International Convention on the Protection of All Migrant Workers and Members of their Families), trafficking and smuggling (Convention against Transnational Organized Crime and its Protocols).

Figure 2: Gender-responsive indicators based on international legal and/or normative documents



In addition to the content of the BLMAs, states should in all the processes of the entire policy BLMA cycle – from inception and negotiation to implementation, monitoring and revisions – should ensure that the voices of all stakeholders particularly those directly impacted by such instruments, are heard and reflected. While the agreement is mutual, the motivations and benefits to sending and receiving countries vary (O’Steen, 2021). A gender-responsive and gender-sensitive approach to BLAs is not a once-and-for-all phenomenon. During the entire cycles of BLAs from the drafting, implementation to their evaluation and revisions, it is critical to have women migrants’ concerns and voices heard and have their specific challenges and issues addressed (Hennebry & KC, 2021). A gender-responsive approach to labour 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 beginning with the drafting of BLA until their evaluation and revisions as shown in the figure below. In light of the increasing share of women migrant workers employed in the care sector, including domestic work, there is a pressing need to address gender-related issues in BLMAs.

Figure 3: Placing gender at the centre of the BLMA cycle



Source: Hennebry and KC, 2021

A gender-responsive approach to BLMAs incorporates the principles of gender equality, rights and empowerment into the formulation, monitoring and review of policies and interventions. Given the vagueness and under-enforcement of BLAs, Chilton finds it unsurprising that these treaties are not translated into actual promotion of equality for female 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 the states' policymakers see the possibility of being excluded from future cooperative agreements (Brewster, 2009). To state the obvious, BLAs are embedded in a power relation between the countries. Further, pertaining to women migrants, even some rich states, especially in the Global North, which identify themselves as the "feminist" shy away from inserting clauses in the BLMAs that treat women in parity with men migrants claiming that women's equal rights are already embedded into their domestic legal systems.

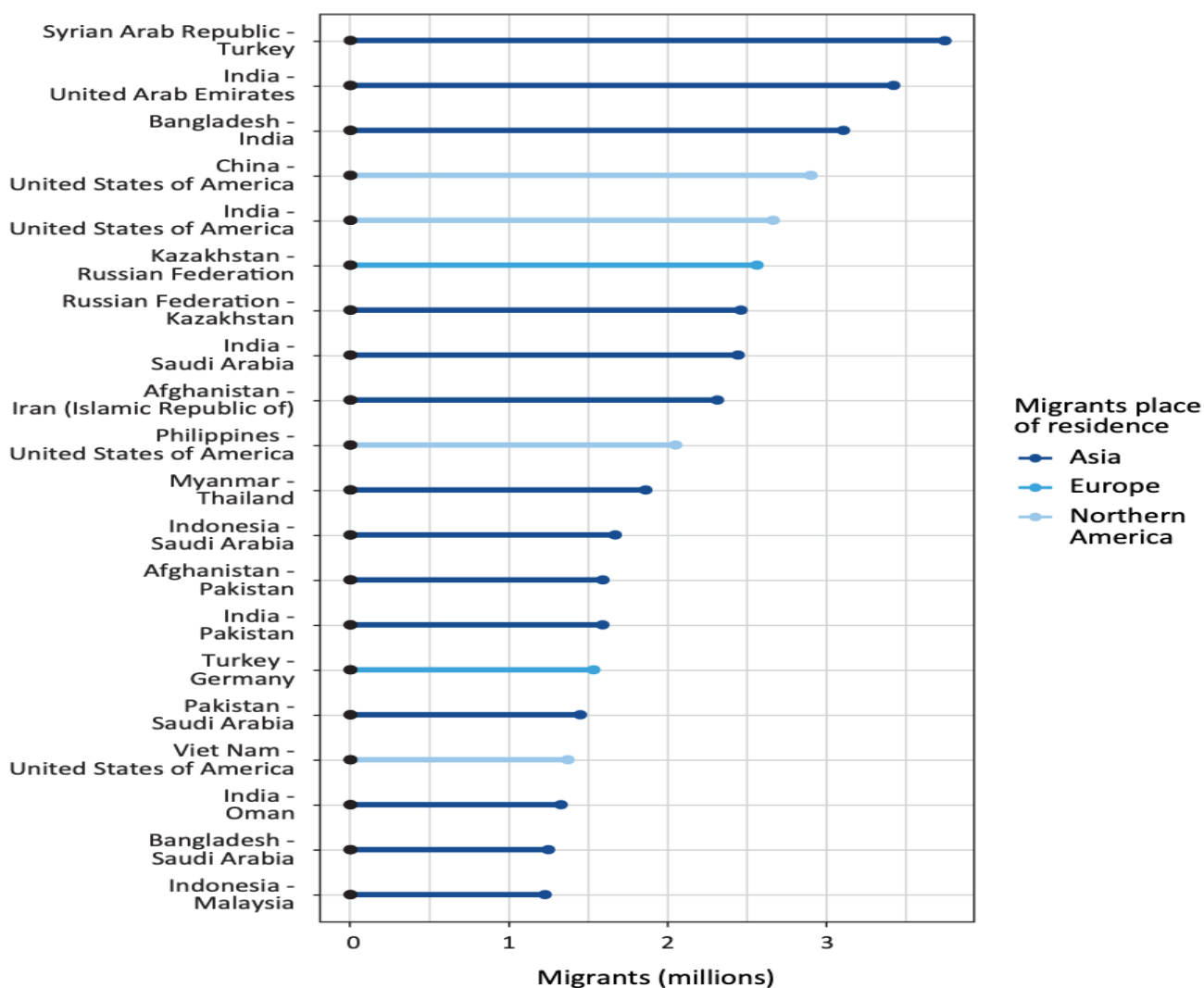
The number of BLMAs on migrant domestic workers has increased largely owing to the worldwide situation of women workers in the context of the ILO Domestic Workers Convention, 2011 (No.189) and the establishment of the International Domestic Workers Federation in 2013. Sector-specific BLMAs crucial for sectors with high informality (e.g., domestic work) that are not included in national labour laws. The GCC countries where some categories of women migrants are excluded from national labour laws reject providing any gender equality clauses in the BLMAs that contradict with their own domestic legal and social systems. Other states fall

somewhere in between these two extremes, but it is in these countries where, pragmatically speaking, there could be more room for inserting pro-women migrant rights clauses in the BLMAs. However, in terms of legally unprotected group of women migrants are the domestic workers in the Arabian Gulf countries where they fall outside the domain of the destination countries' domestic legal systems. In the section below, we examine a subsample of BLMA texts from four pairs of origin and destination countries – Philippines-Saudi Arabia, Indonesia-Jordan, India-Saudi Arabia, and Sri Lanka-Saudi Arabia – through a gender lens. Since only those women migrant workers who migrate through official channels and paths fall under the jurisdiction of the such bilateral instruments, those who have migrated to the destination countries through unofficial means as well as those working in other formal or informal sectors are not obviously included.

VII. BLMAs in the Asian Context: the Case of Women Migrant Domestic Workers

In 2017, Asia and the Pacific hosted 20.4 percent of all women migrant workers with the Arabian Gulf countries sharing a huge portion of women most of whom work as domestic workers. Asia has seen a steady increase in the number of BLMAs 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 was the first time that a country of destination and a country of origin signed a specific agreement on domestic work (ILO 2016).

Figure 1: Top 19 migratory corridors in Asia



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 (ITUC-CSI 2014). The countries of destination prefer MOUs for a number of reasons such that they are easier to negotiate and implement and have the flexibility of amending them to address the changing economic and labour market demands. Particularly in the context of the Gulf states where migrant domestic workers are employed under the kafala system and do not fall within the scope of national labour laws, BLMAs are the only governance instruments that – despite all the challenges of implementation – exist to govern their migration. In the context of women migrant workers in informal sectors such as domestic work which is not even included in national labour laws, (even existing laws do not comply with international standards) BLMAs can be important tools for safeguarding protections. While bilateral agreements can play an important role in ensuring that the labour rights of migrant workers are

protected, in practice they exhibit a number of shortcomings regarding their design, content, monitoring, implementation and impact.

Persistence of kafala system: One common problem of the BLMAs pertains to the lack of addressing the kafala system whereby domestic workers are tied to their employer/sponsor. BLMAs do not seem to pay heed to the gendered challenges of women migrant workers by providing specific provisions, consequently producing gendered outcomes. They contribute to perpetuating the gendered occupations by channeling women into 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. The rights-based BLMAs are non-existent in terms of the state parties committing to women migrants' rights protection, let alone the members of their families. Even where the BLMAs include provisions of standard employment contracts, implementation remains almost impossible to enforce in the absence of adequate national legislation or a supervisory mechanism. The space for social dialogue involving concerned stakeholders is nil.

Preparation and drafting: Successful preparation of BLMAs requires data on labour market and migration dynamics from both countries of origin and destination. Quantitative and qualitative analyses of available and needed skills and workers, existing employment and migration laws and policies, and of gender issues affecting equal opportunities to labour market access are relevant to consider during preparations. Data for the preparatory analyses can be drawn from existing statistical and administrative data sources such as embassies and consular services abroad, labour force surveys, immigration and border authorities, as well as through public employment services and private recruitment agencies, social partners, and NGOs. The delegation should include representatives from several line ministries, including ministries of labour, foreign affairs, migration (where they exist), and other line ministries (e.g ministries of justice, interior, education, health, youth, and gender).

Implementation and accompanying measures: Aligning the BLMA with new and/or existing legislative and regulatory frameworks will be key to its operationalization. Responsibilities for implementation at national, regional, and local levels should also be clearly delineated. While the ultimate responsibility for implementation of BLMAs lies with the State, social partners and civil society organisations can also play key roles in ensuring that the BLMA accurately reflect labour market needs and provides the necessary protection and support services to migrant workers.

BLMAs should include clear provisions for monitoring implementation of the agreement, such as through joint committees. In addition to monitoring, these committees can be tasked with joint interpretation of text, 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 labour attachés, as well as social

partners and civil society actors to monitor decent working conditions of migrant workers unilaterally. Given the dynamic nature of labour markets and potential for changes in the wider context, to ensure that a BLMA remain relevant, there should be scope for making periodic revisions or updates to the agreement. Gender impact assessments of bilateral agreements helps to take into account the specific vulnerabilities inherent in female-dominated sectors.

VIII. Conclusion and Recommendations

In global discussion on migration governance as evident from the Global Compact on Migration and the SDGs, one key policy that has emerged pertains to providing more legal pathways for migrants. BLMAs have (re)emerged and solidified as the main tool to do so. In order to become a “triple win” solution, benefiting all involved including migrants themselves, the inclusion of social clauses and rights protections is vital. The above discussion has demonstrated that in terms of gender equality and the human/labour rights protection of women migrants, existing BLMAs from around the world are characterized by three “gs”: gains, gaps or gaffs. The balance between those is unequal, with gaps and gaffs dominating.

BLMAs should refer to normative frameworks such as ILO R86 and the Multilateral Framework on Labour Migration and cover the whole spectrum of migration, including recruitment, pre-departure, arrival in the countries of destination, return, and reintegration.

States should demonstrate a serious commitment to upholding the human and labour rights of migrant workers by prioritizing the negotiation of legally binding and rights-based BLMAs.

Include the participation of gender advisers with expertise on labour migration. Negotiating governments must ensure that there is a transparent, broad-based consultative process with all stakeholders, including migrant workers, members of their families, civil society, and trade unions, in the development, implementation, and evaluation of BLMAs. While bilateral agreements aim to respond to rights promotion and protection of migrant workers between two countries, States should not overlook their international commitment to ratify and implement key ILO and UN Conventions, particularly the UN Migrant Workers Convention, and incorporate them nationally in law, policies, and regulations.

Make gender analysis and gender impact assessments an integral procedural component, using sex disaggregated statistics on labour 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 male, female and gender diverse migrant workers and their employers, as well as rights advocates, including migrant and other workers’ organizations; employers’ organizations, like associations of recruitment agencies; and civil society organizations with a migrant workers’, workers’, women’s or human rights framework (ILO 2016). Furthermore, gender-specific, non-

discrimination, and rights-based clauses to promote gender and racial equality need to be inserted. The language and content of these agreements should comply with international human rights treaties and labour standards. Appended should be a model employment contract with provisions covering conditions and addressing vulnerabilities in specific employment sectors, and include provisions to ensure that recruitment agencies must explain the terms and conditions to potential migrants – and also to employers – before they sign the contract. Protective provisions for sectors not covered by national labour law, such as domestic work, entertainment, and agriculture by introducing minimum standards need to be created; and specific protection measures concerning labour exploitation, physical and sexual violence, and forced labour against women and men migrant workers throughout the migration process, in workplaces, and in migrant workers' accommodations established. A complaint mechanism for harassment, violence and discrimination, including the option of legal remedy and gender-responsive support services to assist women to seek redress need to be set up, follow-up by regular monitoring. The provision for appropriate health-care and social security benefits is vital, as also demonstrated by the COVID-19 pandemic (Foley and Piper 2020), and the possibility of portability of social security and health benefits (even if the latter has proven to be difficult and challenging) need to be considered.

Include all stakeholders in consultations and negotiations in countries of origin and destination. Although it is the responsibility of governments to engage in negotiations, it is essential for negotiators to share information and consult men and women migrant workers and their employers, and rights advocates, including migrant and other workers organizations, employers' organizations, like associations of recruitment agencies and civil society organizations with a migrant workers', workers', women's or human rights framework. The participation of experts with gender and labour and migration expertise in the negotiation process is also important.

BLMAs cover the entire labour migration cycle, including identification of job opportunities abroad; preparation for migration and travel; working and living abroad; and return and reintegration into home labour markets. In the context of the COVID-19 pandemic which has disproportionately affected women and other groups on margins, particularly the migrant domestic workers, the BLMAs which are primarily used to govern temporary migrant workers should be rights-based, gender-responsive, centred on migrant workers, giving due attention to sectoral needs and opportunities, incorporating the experiences and lessons learned from states, businesses, trade unions, civil society, and migrant workers in responding to the pandemic. Adopting a holistic feminist intersectional approach is of vital importance, since such an approach can help states redress the shortcomings inherent in the existing BLMAs in terms of their design, content, monitoring, implementation and impact and move the needle toward making such instruments not only rights based but also responsive to women and gender diverse migrants.

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