Bilateral Labour Agreements Re-Examined from a Gender Perspective

An Interdisciplinary and Intersectional Framework

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1. Introduction

Bilateral agreements (BLAs) have been used as instruments for facilitating and regulating the international movement of workers between specific origin and destination countries. They are historically not a new phenomenon, with the first of its kind dating back to 1904, signed between Italy and France (Böhning 2012). They have come in multiple forms and under various names, such as the Bracero program (US-Mexico) and the guest worker schemes in Europe. Basic principles in regard to such agreements' design were laid out in 1921 by the International Labour Organisation's (ILO) International Emigration Commission, and more solid normative foundations were gradually developed over time, echoing standards set out in various UN universal human rights instruments and ILO core conventions, including the 1990 UN Convention on the Rights of All Migrant Workers and their Families and the two migrant worker specific instruments adopted by the ILO (see page 11 in Wickramasekara 2015 for the complete list of normative instruments).

It is in particular the period of 1940 to 1970 that was characterised by a steep rise in the signing of BLAs. This phase was subsequently followed by a slowdown, only to experience a revival again in recent years. BLAs have, thus, returned as key instruments of migration governance, and they do so with an increasingly global reach (Chilton and Posner 2018). Their revival and spreading reflect particular political intent on the part of governments as well as among other types of actors or stakeholders (see contributions to special issue *Theoretical Inquiries in La*w 23(2)). As a result, more scholarly attention was also drawn to the study and analysis of BLAs. Gendered analyses, however, were long absent from the scene of policy reports and academic analyses (Hennebry et al. 2022). Yet, the importance of gender becomes clear in the fledgling scholarship that does employ a gender lens, demonstrating how BLAs and other similar instruments structurally mirror socio-legal systems entrenched in patriarchy and gender inequality, thereby perpetuating gender-based migration flows and employment uptake (Hennebry and Hari 2021).

According to UN DESA, the percentage of women among international labour migrants[1] as a global aggregate hovers around 49%. The high percentage of women among the migrant workforce can be explained by the gendered division of the economy and labour

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[1] Also referred to as 'feminisation' of migration, a concept used to highlight the fact that women migrate as autonomous workers in their own right, not accompanying other primary migrants.

markets, i.e. the rising or constant demand for workers in highly feminised sectors or jobs such as the care economy, specific types of manufacturing, and service industry. This means that it is not only due to numbers, i.e., that a gender-sensitive approach is warranted, but also – and more importantly - due to gendered structural dynamics and the specific power relations that ensue. It is based on a gender analysis that a deeper understanding can be gained of the different experiences between the genders leading to different outcomes as to migrant welfare (Piper 2008). Gender also plays a role in migrants' differing ability to act as 'development agents', which is a key objective emerging from global governing debates and policy fora (Piper and Rother 2014; Lee and Piper 2017). Given the importance placed by the global policy community on the 'Triple Win' concept, that is the aim to make migration benefit all parties involved, including migrants themselves, underpins the need to gain insights into gender-based discrimination throughout the migration process, starting with the hiring and deployment stage, followed by overseas employment stint and, especially in the case of temporary contract migrants, the return phase.

Overall, gender dynamics are thus part and parcel of hiring practices, deployment, working conditions and return/reintegration, impacting migrant women's ability to take greater control as agents of their destiny (Lee and Piper 2018). As per the UN Special Rapporteur on the Rights of Migrants, "a greater understanding of the gender perspective of migration could enable States to better protect migrant women and girls from gender-based discrimination, abuses and violations at all stages of migration, as well as to support their empowerment and the fulfilment of their human rights" (2019).

As observed by Martha Nussbaum (2000), sex discrimination and sexual harassment in the workplace pose serious obstacles to women's equality, and similar obstacles impede women's effective participation in political life. All these factors also take their toll on the emotional well-being of women; women have fewer opportunities than men to live free from fear; unequal social and political circumstances give women unequal human capabilities.

In order for the policymaking community to gain better insights into the 'gender effect' and to address those with appropriate measures, feminist scholars have pointed to gendered institutional aspects implicated in the design and implementation of policy frameworks, such as BLAs. To date, little is however known about the gendered governance of BLAs.

1.1 Global context

Revisiting BLAs from a gender perspective is a very timely undertaking in view of recent developments regarding migration and human rights that have occurred at the multilateral level:

(1) The Sustainable Development Goals (SDGs), adopted in 2015, explicitly mention migration (unlike their predecessors, the Millennium Development Goals) in relation to decent work (Goal 8), where female migrants' specific situation is highlighted in relation to care work; it is implicitly included in Goal 5 on gender equality (applicable to "all women"). In addition, the issue of BLAs is also related to SDG 16 on peace, justice and strong institutions (Caron and Lyons, forthcoming).

(2) The Global Compact for Safe, Orderly and Regular Migration (GCM), adopted in December 2018, constitutes the latest addition to the gradual emergence of a globally agreed-upon regulatory framework for international migration. The GCM is closely aligned with the SDGs in various ways. For example, Objective 6 of the GCM (ensuring decent work for all migrants) aligns with SDG Goal 8.

Together, these agreements require action to be taken to protect migrant workers, with special attention to be given to women and domestic workers, against all forms of exploitation and to ensure that recruitment mechanisms and admission systems are 'fair' and ethical. Furthermore, gender-responsiveness is a guiding principle of the GCM, and Objective 5 calls both for gender-responsive labour mobility agreements that follow sector-specific standard employment terms.

Finally, there is an increasing number of institutional actors involved in the design, implementation and monitoring of BLAs; at the global level, the key organisations are the ILO, UN Women and the IOM; (Hennebry et al, 2018). Global unions and CSOs are increasingly involved in advocating for more gender-sensitive and rights-based BLAs, and in some cases, unions are even involved in their implementation and monitoring (see e.g. Germany-Philippines BLA from 2011).

Asian context The movement of temporary migrant workers in Asia is predominately regulated using bilateral intergovernmental mechanisms. These mechanisms commonly take one of two forms: (1) *bilateral agreement* (BA) which is a treaty under the Vienna Convention on the Law of Treaties (1969) that articulates obligations and actions to be

taken by its Parties and creates legally binding rights and obligations between States; and (2) *memorandum of understanding* (MoU) is a less formal international instrument that sets out procedures for cooperation regarding a specific subject or technical matter (see Wickramasekara, 2015). Most of the agreements relevant to key countries of origin in Asia are MoUs, not formal treaties, which means they do not create commitments that are legally binding in international law. This does not mean that a state can derogate from an MOU without consequences. The commitments in a MOU between states are politically binding and operate under the principle of good faith in international law (Aust, 2013). These MoUs therefore represent an opportunity for states to make practical commitments related to the protection of the rights of women migrant domestic workers. A mechanism through which to promote labour rights for migrant workers from Asia is particularly important in the context of the lack of ratifications of the UN International Convention on the Rights of Migrant Workers, and persistent state resistance to the creation of a global system for migration governance. Within the Gulf Cooperation Council, attempts by the 2013-2014 Labour Ministers' meeting to develop region-wide standards for the employment of domestic workers appear to have been abandoned after an agreement could not be reached (Begum, 2016). For these reasons, UN agencies and development institutions are promoting bilateral intergovernmental mechanisms as a key tool to protect and promote the rights of migrant workers in Asia.

However, research into existing bilateral agreements and MoUs regarding temporary labour migration suggests that these instruments suffer from implementation failures. What has to be added but is less well researched are their gendered design and negotiation processes. On the whole, in their current form and practice, BLAs constitute a weak form of migration governance (Testaverde, Moroz, Hollweg, and Schmillen, 2017). With respect to the use of these instruments to protect the rights of women migrant workers, these problems are exacerbated because, in general, the texts agreed between countries of origin (CoOs) and countries of destination (CoDs) are not gender-sensitive or gender-responsive, and are influenced by the pervasive environment of broad socio-cultural gender discrimination and a lack of respect for migrant women who come from low-income and minority backgrounds.

2. Gendering the analysis of BLAs

Migration is increasingly seen as a vital contributing factor to 'development 'and BLAs are a widespread tool for facilitating migrant worker movement, as evident from the case of intra-Asian migratory movements as well as the migration corridors between South/Southeast Asia and the Gulf/Middle East which are heavily feminised.

This Working Paper's objective is, therefore, to assist the reader's critical comprehension of different perspectives on the role of gender vis-à-vis bilateral labour agreements. It aims to do so in two broad ways: *first*, through the adoption of a global governance lens because by placing this overview in conversation with such debates and scholarship on global governance allows the integration of an institutional and legal analysis under one framework (Drahos 2017) which aligns this topic with SDG 16.*Secondly,* through the integration of relevant feminist critiques from IPE, legal and migration scholarship into the analysis. This is important because international organisations (IOs) and states have been optimistic about the role of BLAs, pointing to the potential of well-managed labour migration to contribute to 'triple-win 'development scenarios for sending states, receiving states and migrants themselves (Annan, 2006; ILO, 2006; OECD, 2013; UNDP, 2009). There has been some sparse opposing literature (Crush, 2014; de Haas, 2012; Hennebry et al, 2015) critical of the development potential of BLAs and their weak economic and poor health impacts for migrants. There are a few reviews of bilateral labour agreements relating to the Asian region (Battistella and Khadria, 2011; Blank, 2011; Go, 2007; Vasuprasat, 2008; Wickramasekara, 2006, 2012), and a few analyses of specific cases in the region (e.g. Ghosheh, 2009; Wickramasekara, 2012). The ILO published a report aimed at assisting states to meet technical cooperation demands in cooperation with the Global Knowledge Partnership on Migration and Development (KNOMAD) of the World Bank (Wickramasekara, 2015). While these are useful reviews of BLAs and point to their relevance in terms of rights, they are largely technical rather than scholarly studies. They also neglect gender, do not provide a sectoral comparison pertaining to gender, nor do they provide a critical analysis of these agreements with respect to the theoretical concepts outlined below. Overall, while international organisations (IOs) have recognised the feminisation of migration and the growing care economy, the question of how the dominant paradigm of migration management is shaping (and profiting from) feminised migration is rarely considered. Indeed, many states continue to view BLAs as the primary way to enhance regular migration pathways.

This has been the case throughout the Global Compact for Migration (GCM) negotiations and meetings (which the author has attended), where facilitating regular migration through temporary labour migration is often framed as the ideal manner by which to counter irregular migration and to address labour demand and economic development goals simultaneously (Hennebry, 2017, 2017b; 2018).

Despite mounting scholarship on how gender structures migration (Boyd and Pikkov, 2009; Palmary, et al., 2010; Piper, 2013; Ruhs and Anderson, 2010), the specific gender implications of BLAs remain understudied (Hennebry et al. 2021). Scholarship on gender and migration has shown that women's labour migration involves trade-offs between risks and rights for migrants (Ball and Piper 2005) while enhancing the economic and security interests of states that lead to restrictive pathways (Lavenex and Lahav 2012; Constable 2014). This scenario bears great risks for exploitation on the one hand, offering the *potential* for empowerment and independence from patriarchal constraints on the other (Petrozziello 2013, 2017). This potential needsenhancement in multiple ways, including legal and administrative means. There is a need for a theoretical and methodological approach that goes beyond the dichotomy of rights vs risks implicated in women's labour migration; and one that challenges the primacy of BLAs in the dominant paradigm of 'temporary managed migration' (Chi 2008).

Critics of the overall direction of global migration governance in relation to Goals 5, 8, and 16 have pointed to the need to address migrants' precariousness, commodification, and securitisation - and to do so from a gender perspective (Hennebry et al. 2018: Piper et al. 2017). Hence, need to better understand the way gender functions as a governing code in the political economy of labour migration and how or if it serves to create conditions of control and governmentality that enable the exploitation of women migrants and/or hamper women's ability to be agents of ('their') development (Raghuram 2009; Dannecker 2009). Research on BLAs needs to reflect the migrant experience, involving more than desk research and legal document analysis.

3. Gendering Global (Migration) Governance

The motivation to correct knowledge production that primarily or exclusively reflects men's experience is typically associated with the desire for women's emancipation, empowerment and equality, hence a feminist project. Different academic disciplines have contributed to feminist critiques and gendered analyses of the study into the institutional and legal dynamics ('governance') involved in the regulation of migration, and they have done so to varying degrees and with different speeds (Piper 2006).

There is a wealth of feminist literature on global governance,[2] as evident from the path breaking work of Cynthia Enloe (1990) and that of subsequent feminist scholars who have taken a particular interest in the "everyday" aspects or impact of global governance (such as Elias and Roberts, 2016) amounting to a strong argument for the validity of gendering global governance analyses.[3] As Rai has argued, "who is being governed, in whose interests and how - traditional issues of political science - are disturbed through the introduction of the categories of gender. Gendered readings of global governance can provide insights into the definitional exclusions with which we start our explorations of political phenomena under globalization" (2004, p. 592).

"Global governance" relates to the role and functioning of international organisations (IOs), including in relation to other actors as per descriptors such as 'multi-level', 'multi-sited', 'multi-layered', 'networked' governance; as well as to normative frameworks and concomitant policy prescriptions. Male bias may have intended or unintended consequences for women, their experience of migration and as migrants. Feminist scholarship has contributed to studies of IOs by illuminating places in them that "women have found or carved out niches for themselves and the interests of women" (Meyer and Prügl, 1999, p. 4) and has done so in ways that illuminate the historical roots of contemporary structures (Stienstra, 1994; Tickner and True, 2018). Feminist scholars have documented the multiple resistance encountered by international "femocrats"

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[2] For broad overviews see Meyer and Prügl (1999); Rai and Waylen (2008); Caglar, Prügl and Zwingel (2013); Prügl and Tickner (2018) and the *Handbook of Feminist Governance* (edited by Sawer et al, Edward Elgar, 2023).

[3] Their gender blindness was particularly striking in the discussion of refugees and sex workers where they simply noted in passing that women and children predominated among the former and were silent on the gender(s) of the Tijuana sex workers.

within intergovernmental organisations and the resulting ways feminist ideas can get (mis)translated to fit the dominant discourse.[4]

Feminist critique typically centers upon the issue of power and power imbalances. In relation to BLAs, the power issue has mostly been observed as a phenomenon between the two state parties but less so in relation to who is part of the negotiations, design and implementation (i.e. female civil servants, female government officials). Scholarly concern for the dynamics "between those who decide to engage with multilateral and state institutions and those who do not, between those who are funded by multilateral agencies and those that are less well funded or not at all" (Rai, 2004, p. 592-593) has yet to be extended to the case of BLAs. The gendered process and procedure behind their negotiations and operationalisations remain unexplored.

In the constructivist tradition, feminists have also contributed to the study of global norms. In their important 2010 essay focusing on two aspects of the gender equality norm – gender-balanced decision-making and gender mainstreaming – Krook and True (2010) showed how the very ambiguity of global norms, necessary for their widespread diffusion, renders them vulnerable to ongoing contestation and change.

Echoing the importance of a 'bottom up' view, Weiss and Wilkinson rightly argue for the need to pay more attention to non-state actors, to which feminist scholars have added the need to do so from a gendered perspective (Mahon and Piper forthcoming; Hennebry et al 2018). The literature on transnational care chains has similarly illuminated the role played by a variety of agencies. As Yeates notes, "In addition to state and other institutional migration channels […, commercial recruitment and relocation agents, non-governmental organizations (e.g., professional organizations, trade unions, religious institutions) and informal channels including ethnic-based ones are also central to these networks (Yeates, 2004, p. 384-385). Authors like Calkin (2016) and Roberts (2015) have scrutinised a range of public-private partnerships that promote a shallow conception of women's and girls' empowerment, and do so in a manner that works to deflect attempts to regulate the behaviour of transnational corporations.[5] It is also important however to identify openings even in such spaces (Eschle and Maiguashca, 2014; Prügl, 2015).

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[4] On the OECD see Mahon (2015); on the World Bank, see Bedford's (2009) multi-scalar study of the translation of feminist ideas to fit the Bank's discourse.

[5] See also Piper (2010); and Lindquist, Xiang and Yeoh (2012).

In addition, feminist scholars provide critical insights into the use of global governance instruments such as governance by numbers and indicators, which is so central to the operation of the SDGs. Merry's (2009) work has exposed the way such instruments oversimplify complex relationships while at the same time putting a technical, apparently neutral, veneer on highly political processes. This also holds true for BLAs. Yet, such criticism should not result in ruling out the benefits of quantitative analysis, as Caglar, Prügl and Zwingel (2013, p. 289) concede. Acknowledging these difficulties, they argue for "a strong need for creative quantitative analyses that bring to collect data on the implementation of international gender equality norms, conceptualize causal pathways and begin to establish correlations between international influence, governmental politics in support of gender equality, and impacts of these on gender relations generally and the status of women specifically."

For feminists operating within the international political economy tradition, locating women's paid and unpaid labour in the context of a globalising economy is of particular interest.

Feminist political economy (FPE) approaches to migration (Bakan and Stasiulis, 2003; Gammage, 2010; Safri and Graham, 2010) have led to the examination of the gendered systemic nature of labour migration, which is deeply intertwined with economic factors (labour market demand/desires, access to employment, remittance sending, care economy, etc.) as well as political factors (BLAs are the product of political negotiations between states and are embedded in political instruments). Moreover, gender, the care economy, and women's economic empowerment intersect at the juncture of labour migration – regardless of the sector in which women formally work. Further, since temporary labour migration is a symptom of larger political-economic dynamics that produce demand for low-wage and flexible labour, this work also links to theories on globalisation. An FPE perspective provides the umbrella frame that connects multidisciplinary scholarship on migration and governance, critical migration scholarship pertaining to migration management, securitisation and governmentality (e.g. De Genova, 2013; Anderson, 2010, 2013). Engaging with such scholarship allows for the examination of the role of BLAs in classifying people, creating conditions of governmentality to separate, control and protect according to gender.

A gender analysis of norms as (semi)legal instruments is not only the remit of constructivist IR scholarship but also legal studies rooted in ethics and philosophy.

4. Feminist critiques of international law

Resonating the 'gender turn' in the social sciences, feminist analyses of international law challenge the premise that international law is gender-neutral and seek to demonstrate how, in reality, it functions in a highly male-biased manner. This is what Charlesworth refers to as "the fundamentally male cast of the international legal order" (1994: 2). In short, feminist legal studies have deconstructed the idea that law is neutral and abstract, and have sought to demonstrate how liberal States use legislation to institutionalise the dominance of men over women (MacKinnon 1989). A sub-category of feminist legal critique is feminist legal geography, whose contribution is so far highly relevant to international migration in that it takes us beyond the realm of single states and national legal frameworks. This perspective seeks to understand how unequal power relations are constructed whilst also demonstrating how the law is spatially and territorially embedded in the maintenance of these structures of domination (Brickell and Cuomo 2019). Notably, such a lens invites us to zoom in on how the law regulates space and (im)mobilities and how it disproportionally affects women.

The feminist legal corpus pursues both a deconstructive and a reconstructive aim:

(i) Deconstructive

Feminist critiques of international law challenge the presupposition that international law is rational, objective, and gender-neutral. Instead, they demonstrate how the international legal sphere is male-biased and has been constructed upon male-centric notions and experiences that have the intentional or unintentional consequence of excluding women (Charlesworth and Chinkin, 2000). This deconstructive intellectual analysis seeks to reveal the hidden gendered components of the law and the legal structures surrounding it. Feminist international relationists have also argued that it is impossible to understand how power works in contemporary inter-state relations without taking into consideration the sustaining gender-biased constructions upon which international law is based (Runyan and Peterson 1991). International law, and law in general, has traditionally been framed by men with the effect of marginalising and excluding women by denying them the right to vote and to access education, health care, housing, financial services, etc. Still to this day, it has been argued and shown that the law can and does act as a barrier to women's freedom, dignity and equality, albeit to varying degrees, around the world (Peters and Wolper 2018).

Feminists' critiques have aimed at questioning the tools and notions upon which international law is built. For instance, feminists show how the concept of statehood, at the heart of international law, serves male interests (MacKinnon 1987). Likewise, international inter-governmental institutions such as the UN are affected by male bias, which is reflected, for example in staffing: for example, from 1945 to 2000, only 2 of the 53 UN assembly sessions had been presided over by a woman (Charlesworth and Chinkin 2000). By excluding women's experiences and the voice of women, as it has been argued, the UN inherently operates in a patriarchal manner.

(ii)   Reconstructive

The feminist critical methodology seeks to make international law more gender-sensitive and, thus, less gender-blind. The ultimate goal is not only to deconstruct notions and institutions but also to reform them. This second step, which includes developing new theories, methodologies, concepts and strategies, calls for a 'dedication to political change' (Charlesworth 1994: 5). Since International law historically emerged as structurally built without taking women's voices and needs into consideration, it requires to be profoundly restructured to adopt gender equity within its own ranks and work towards gender equality.

One significant contribution of feminist theory within international law is the essentialism critique. Feminists have criticised patriarchal discourse for being essentialist, i.e. for attributing a fixed essence to women in order to justify their subordination (Grosz 1990). The essence of women is presupposed to be universal and linked to biological attributes. For instance, women are deemed to be 'naturally' non-competitive, supportive, and sensitive (ibid). They are constructed as 'naturally' better to perform reproductive (and undervalued) casework and (badly paid) work that requires "nimble fingers" (Elson and Pearson 1981). Feminist critics seek to challenge these presumptions, which confuse immutable characteristics with socially constructed attributes.

Moreover, essentialism fails to acknowledge the diversity of experience and needs among women. This is in fact a vital critique addressed by Global Southern feminists (such as DAWN, see https://dawnnet.org) to 'first-world' feminists' in exposing and topicalising the latter's tendency to assume that women's experiences lead to identical and universal political projects. Such an essentialist approach is exclusionary because it disregards the particular struggles of women from non-western countries or regions and also women of

colour, who face racial and (post-)colonial subjugation (Harris 1990; Lazreg 2001). Ong (1998) illustrates this problem by way of the example of the 1995 Women Conference in Beijing Conference. She criticised feminists from the Global North for presenting themselves as "enlightened and liberated subjects with the answers to the problems of women in non-Western cultures" (Ong 1998: 113). This claim of superiority reproduces disempowering and oppressive colonial narratives. She points out that emancipation, for example, Asian women is not just about individual rights but also excludes fundamental questions about culture and community. To illustrate this point, Ong uses the example of Muslim women in Malaysia, who seek to redefine gender roles by engaging local men within the framework of Islamic morals and civilisation – not by copying Western feminist patterns. The models and concepts proposed and tried to empower Western women might not work for women elsewhere. This also demonstrates context matters, such as the specificities of Asian women's migration within the regulatory context of BLAs.

The second point to consider regarding feminist legal critique is formal equality or 'equal opportunity'. Offering the same rights to men and women is not satisfactory because it is based on the premise that both genders are in the same position (Lacey 1987). It fails to acknowledge the structural gender-biased institutions and norms that disadvantage women in a myriad of ways. As Lacey puts it, formal equality assumes that the world is made of 'autonomous individuals starting a race', failing to acknowledge that 'men and women are simply running differently' (1987: 415). Inevitably, it means that, in order to achieve concrete equality, provisions that favour women should be put in place. In this regard, Article 4(1) of CEDAW states that 'special measures aimed at accelerating de facto equality' are not discriminatory.

Another related but often neglected point of critique made by feminist legal scholars relevant to the analysis of BLAs concerns the concept of statehood. At the basis of international and regional legal frameworks lies the concept of sovereign States. Feminist critiques of international law, however, argue and demonstrate how this system of sovereign States is inherently gendered and oppressive (Charlesworth 1995). According to Charlesworth and Chinkin, the concept of Statehood has the potential to create a barrier between the State and its citizens, exacerbated by international law failing to effectively limit the national decision-making process. Marti Koskenniemi (2006) has pointed out that the international legal notion of statehood operates to privilege some

voices and silence others – particularly working against women and their interests. International lawyers generally present the state as being gender-neutral, and thus without consequences for sex and gender. By contrast, feminist lawyers argue that the paradigm state in international law is constructed on a "male-based" model. The traditional definition of what constitutes a State in international law is set out in the 1933 Montevideo Convention as including the following criteria: (i) a permanent population; (ii) a defined territory; (iii) a government; and (iv)the capacity to enter into relations with other States. Whilst these criteria seem neutral at first, feminist critiques demonstrate how gendered they are (see e.g. Sawer et al, 2023). Of particular relevance here are (iii) government and (iv) capacity to enter into relations with other States.

Government

International law requires that an entity has an organised and effective government to be considered a state. The notion of governmental power assumed in the definition of statehood, however, does not question women's exclusion from systems of power worldwide; indeed, it can be seen to depend for its smooth functioning on particular versions of masculinity and femininity, which connect men with public political life and women with the private, domestic infrastructure that is necessary to sustain public life.

Capacity to enter into relations with other states

The system of statehood is based on the principle of sovereignty, which means independence from the authority of other States. It implies equality of power externally, and pre-eminence of power internally. Yet, that capacity to enter into relations with other States depends on other States' desire to allow particular voices to express themselves. It is, therefore, an expression of unequal powers relationships. Moreover, sovereignty involves many of the characteristics associated with the Western account of masculinity. Notwithstanding, feminist critiques advance that there are ways to challenge the traditional male-centric interpretation and vision of statehood, notably by including women in leading government positions, advancing human rights, and introduce gender-sensitive interpretations in supranational legal framework. The exploitation of such a feminist legal framework/methodology within the context of BLAs is a major research gap that needs to be addressed.

In sum, feminist scholarship has amply demonstrated that gender is a vital component of global governance and documented the ways in which global governance is gendered and

constructs gender. Yet while cognizant of the global dimension of gender norms and institutions, they have also emphasised the importance of regional and local contexts.

5. Intersectional perspective

As outlined above, analysing the 'gender effect' of BLAs through a governance lens involves not only the investigation of the experience with and the impact on those governed but to broaden the gender analysis to those who govern. The assumption here is that this involves different groups of women, which requires an intersectional perspective.

Crenshaw is usually identified as the first scholar who explicitly and systematically theorised 'intersectionality' despite other forerunners existing[6]. In her ground-breaking work from 1989, she analyses how gender intersects with other individual characteristics, such as class and race, to create specific forms of discrimination. In academic work, intersectionality is now used as a tool to understand how different forms and constellations of identities compound to create specific experiences of marginalisation and discrimination. Components of identities that shall be taken into consideration include gender, race, class, but also, ethnicity, sexuality, religious orientation, skills, (dis)ability, education, age, etc.

Intersectionality has also inspired migration scholars to show how gender, in combination with class, race, nationality, and other social markers, creates specific forms of discrimination against women migrant workers. Human rights risks and violations affecting women migrant workers result from an intersection between 'migrant status, gender and the situation of being a precarious worker' (Lee and Piper 2013). This intersectional and feminist framework is a useful tool in carrying out gender-based policy assessments of BLAs. The application of an intersectional and feminist approach allows the uncovering of the root causes of discrimination and exploitation that prevent women migrant workers from exercising their rights (Hennebry 2017).

Feminist epistemology critically examines how the norms and structures of knowledge production affect women and how they perpetuate structural discrimination and

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[6] It has to be added that there are authors who complicate the way in which the concept of intersectionality tends to be located within the 1970s and attributed primarily to Kimberle Crenshaw by highlighting histories of intersectionality (especially its postcolonial and slave histories) including for example Jennifer Nash, who offers a somewhat cautious and careful intellectual history of intersectionality. This includes the Combahee river Collective, Patricial Hill Collins and Frances Beal (who, in 1969, developed the concept of "double jeopardy" to capture how race and gender colluded to restrict the lives of black women) as well as Kimberle Crenshaw. These are crucial correctives to feminist historiographies that treat intersectionality as a "recent form" of feminist engagement showing that intersectionality has a long intellectual and political history including as long back as the colonial encounter as well as the slave trade, where race gender and class were central to the meanings of personhood and citizenship.

oppression. Anderson describes feminist epistemology as 'the branch of social epistemology that investigates the influence of socially constructed conceptions and norms of gender and gender-specific interests and experiences on the production of knowledge' (1995, 54).

The intersectional feminist scholarship acknowledges that the law does not affect all women in the same ways. Inequalities and experiences of discrimination among women vary depending on race, class, skills, and other identity components. Ignoring class or race when analysing gender automatically makes the analysis incomplete and impartial. According to Charlesworth and Chinkin, 'it would be fruitless, as well as inaccurate, to assume that the lives of, for example, a young Afghan woman refugee, a middle-class Canadian housewife and an older Zimbabwean woman agricultural worker' are similar (2000: 2). This example is particularly useful because it shows how different characteristics need to be taken into consideration by feminists when analysing gender inequality – including nationality, occupation, education, etc.

Postcolonial and intersectional feminists have highlighted the importance to include:

(i)   *Class*: Western feminists have traditionally ignored the exploitation of non-Western women by capitalist forces and actors such as multinational corporations employing a low-wage female workforce, often justified by classifying them as 'un-skilled'. Nesiah (2000) highlights that the international economic system is particularly harder on non-Western women who are exploited for economic reasons that mainly benefit the First World.

(ii)   *Race*: feminists have highlighted the intersection between racism and sexism. Spelman (2000), shows how First-World feminist theories conceive women's rights through a white solipsism view.

The legal scholar Margaret Satterthwaite has importantly related intersectionality to the issue of female migrant rights and its relevance to, or implications for, advocacy efforts and choice of tools to advance their rights (2004, 2008). Based on an intersectional approach, she proposes to utilise various human rights instruments beyond those narrowly addressing *migrants'* or *migrant workers'* rights as a key strategy. This is echoed by the network approach identified as a useful way to overcome organizational silos based on well-defined mandates and specific areas of expertise (Piper 2022; Bastia et al. 2023).

In the case of BLAs, an intersectional analysis of factors leading to migration and shaping its outcomes would involve the study of different groups of women involved and implicated by the governance of migration via such instruments.

6. Concluding Remarks

Bilateral labour agreements have become states' preferred options as tools of migration governance to maintain orderly and regular flows of *temporary* labour migration (Kunz et al, 2011). Yet, such instruments remain largely gender-blind and neglect human rights concerns. BLAs channel women into gendered occupations –such as caregivers, cleaners, service/sales clerks, and entertainers – occupations that 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 (e.g. agriculture, carework). Temporary labour migration also tends to embed prolonged family separation (since, typically, migrant workers must leave families behind) and can have financial and social costs that can resonate for future generations (Hennebry, 2017a). Rather than offering an ideal governance instrument, BLAs (in their current shape and form) may contribute to precarity, exploitation and gender inequality. Even when BLAs are proactive and rights-based, they may still be insufficient to protect rights, counter gender discrimination, and provide access to decent work.

It is, therefore, vital that the study and analysis of BLAs employs a gender lens that draws from interdisciplinary insights on gendered governance generated by feminist scholarship ranging from legal and policy studies, global political economy, international relations to political sociology derived from various and mixed methodologies. Insights on the gender effects of BLAs should be the outcome of research on migration governance not only 'from above' but also 'from below' (i.e. based on migrants' actual experience and input).

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