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Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review



**Labour
Migration
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Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review

*Piyasiri Wickramasekara**

July 2015

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1. INTRODUCTION

Migration is “a key feature of today’s world of work and one which raises complex policy challenges” (ILO, 2014a: 1). The increasing complexity of the nature and composition of today’s international migration movements underscores the importance of international cooperation in the governance of migration processes and the protection of migrant workers. Such cooperation on migration can take various forms, ranging from multilateral and regional to national-level agreements. International Conventions and instruments relating to migrant workers represent multilateral initiatives. The High Level Dialogue on International Migration and Development (United Nations, 2013b), the Global Migration Group (GMG), the Global Forum for Migration and Development (GFMD) and the on-going Post-2015 Development Agenda discussions all aim at promoting international cooperation in the area of migration. At the regional level there are a number of economic integration initiatives in different regions, and the European Union represents the most mature system of regional integration with free movement of persons and labour mobility for all EU citizens. At the same time, bilateral cooperation has become increasingly popular, as seen in bilateral labour arrangements (BLAs), such as bilateral agreements (BAs) and memoranda of understanding (MOUs)¹ on labour migration found across all regions of the world.

ILO instruments have long recognized the potential of bilateral agreements as a good practice in the governance of labour migration flows between countries, and in contributing to the protection of migrant workers. The ILO Migration for Employment Convention (Revised), 1949 (No. 97) recommends: “Whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large”. To give practical effect to this, the accompanying ILO Recommendation, 1949 (No. 86) contains a Model Agreement on Temporary and Permanent Employment in its annex which has influenced the development of bilateral labour arrangements across the globe over the years, and whose principles still remain valid.² The ILO Tripartite Technical Meeting (TTM) of November 2013 called upon the ILO to “assist governments and social partners with policy guidance in developing, negotiating and effectively implementing bilateral or other international agreements on labour migration, with a view to increasing positive outcomes for migrant workers, countries of origin and destination, and sustainable enterprises” (ILO, 2013). The ILO Director General’s report on Fair Migration for the 2014 International Labour Conference reiterated the role of bilateral agreements for well-regulated and fair migration between member States (ILO, 2014a).

Thus the ILO also needs a strong research and evidence base on BLAs to meet the technical cooperation demands of its constituents in line with the above mandate. The current research has been undertaken as part of ILO’s efforts to fill this need, in cooperation with the Thematic Working Group 3 on Low Skilled Migration of the Global Knowledge Partnership on Migration and Development (KNOMAD) of the World Bank, which supported regional research covering BLAs.

1 In the subsequent analysis, the paper occasionally uses the term ‘agreement’ to refer to all types – BAs, MOUs, Framework Agreements, etc.

2 According to the ILO’s Permanent Migration Committee in its third session: “A Model Agreement is a new instrument and is not covered by the Constitution but as the present proposed Model Agreement is to be annexed to the Recommendation, it will have the same status as a Recommendation” (ILO, 1949: 80)

2. OBJECTIVES OF THE STUDY

- i. To review trends in developments of BAs and MOUs focussing on low-skilled migration based on a global mapping exercise.
- ii. To identify good practices in BAs and MOUs based on specific criteria drawn from international norms, and highlight agreements which could lead to better outcomes in terms of migration governance and protection of migrant workers.
- iii. Formulate policy advice and recommendations based on the findings, and identify areas for further work.

3. CONTRIBUTION OF THE STUDY

The study expands on earlier literature in this field (OECD, 2004; Saez, 2013) by providing broader global coverage, and reviewing more recent agreements.

The analysis adopts a rights-based approach in assessing the quality of BAs and MOUs based on international norms. The set of good practice criteria employed is drawn from the four pillars of international instruments for the protection and governance of labour migration (see Box 1), and the 1949 ILO Model Agreement. It focusses on agreements dealing with low skilled migration, where protection problems are generally more acute. The current study covers agreements concluded in Asia, Africa, Europe, Arab States, and the Americas. It is also the first exercise to undertake a detailed mapping of bilateral agreements from different regions, based on a content analysis of 144 agreement texts. The study also draws attention to the role of gender concerns and social dialogue in relation to these agreements, which have not been given adequate attention in previous studies. Finally, the study explores a preliminary framework for evaluation of BLAs based on good practice criteria and contribution to better governance of labour migration, protection of migrant workers and the development impact – major themes drawn from the ILO Multilateral Framework on Labour Migration (ILO, 2006).

The OECD and World Bank studies, though extensive and insightful, make scant reference to existing international instruments and labour standards, and no reference at all to the ILO's model bilateral agreement. With a single exception, there is no reference made to gender issues in both volumes. There are a few reviews of bilateral labour agreements relating to the Asian region (Battistella and Khadria, 2011; Blank, 2009; Go, 2004, 2012; Vasuprasat, 2008; Wickramasekara, 2006, 2012). Ghosheh (2009) carried out a pioneering analysis of legal agreements applicable to international migrant domestic workers. A comprehensive country level analysis of bilateral MOUs entered into by the Government of India with destination countries in the Gulf Cooperation Council (GCC) states, Jordan and Malaysia was sponsored by the Migrant Forum in Asia (Wickramasekara, 2012). The study failed to find any concrete evidence that the agreements had contributed to improved governance of labour migration between India and concerned destination countries or significantly improved the protection of low-skilled Indian workers in those destinations.

Box 1. Normative foundations of bilateral labour agreements

International Instruments at four levels provide a solid foundation for developing bilateral agreements and MOUs for good governance of labour migration and protection of migrant workers.

- a) Nine UN *Universal human rights instruments* and associated Protocols
- b) Eight *ILO Core Conventions on fundamental principles and rights at work* pertaining to forced labour, freedom of association, child labour and discrimination.
- c) Three international *Migrant worker specific Conventions*:
 - ILO Migration for Employment Convention, 1949 (No.97)
 - ILO Migrant Workers Convention, 1975 (No.143)
 - (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICMW).
- d) *All other labour standards that apply to migrant workers* including particularly the ILO Conventions on Private Employment Agencies, 1997 (No.181) and the Domestic Workers Convention, 2011 (No. 189).

Finally, the 'ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration' is a compendium of principles & guidelines on labour migration based on the above instruments, and negotiated through tripartite consultations (ILO, 2006).

4. METHODOLOGY

4.1. Definitions and concepts

- *Bilateral agreement*: it is a treaty as described under the 1969 Vienna Convention on the Law of Treaties: “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” (cited in United Nations, 2012: 81). BAs are agreements between two States which describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with a view to accomplishing their goals. BAs create legally binding rights and obligations.
- *Memorandum of Understanding (MOU)*: “A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification”³. MOUs entail general principles of cooperation describing broad concepts of mutual understanding, goals and plans shared by the parties. They are usually non-binding instruments.

BAs therefore tend to be more specific and action-oriented than MOUs. An MOU is a softer, often non-binding option, generally providing a broad framework through which to address common concerns (United Nations, 2012). Several forms of bilateral arrangements and cooperation on migration can be identified, and it is important to highlight their diversity of relating to mobility of labour (see Box 2). As the present study focusses mainly on BAs and MOUs for labour migration of low-skilled workers, it excludes a number of these modalities.

Box 2. Diversity of agreements/mechanisms of cooperation

- Bilateral agreements (BAs)
- Memorandum of understanding (MOUs)
- Framework agreements: broad bilateral cooperation instruments covering a wide range of migration related matters, including labour migration but also irregular migration, readmission, and the nexus between migration and development.
- Inter-Agency Understanding (IAU): such as the New Zealand – Pacific Islands States agreements, which are similar to MOUs.
- Protocols (Additional or Optional): instruments entered into by the same parties of, and which amend, supplement or clarify a previous agreement.
- Agreements for hiring seasonal workers (Canada-Mexico; Germany-Poland)
- Cross-border worker agreements
- Statements of mutual labour cooperation or informal assurances
- Bilateral social security agreements
- Anti- trafficking agreements
- Trainee schemes: Japan, Republic of Korea (replaced by the Employment Permit System)
- Working holiday maker schemes
- Multilateral agreements: Mode 4 of General Agreement on Trade in Services: Movement of natural persons

Sources: (ILO, 2010; OECD, 2004; Wickramasekara, 2006)

3 United Nations Treaty Collection web portal: Section on definitions (accessed 10 July, 2014). https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml#memoranda

In general, bilateral labour arrangements are less common compared to international investment agreements and bilateral investment treaties (BITS), which have become the most important international legal mechanism for the governance of foreign direct investment (FDI) over the past four decades. The United Nations Conference on Trade and Development (UNCTAD) reported 3,240 International Investment Agreements globally at the end of 2013 (UNCTAD, 2014). The OECD identified 176 labour agreements involving at least one OECD member in 2004 (OECD, 2004) while the present study identified about 358 labour agreements.

4.2. Research methods

The present research adopted several strategies in its assessment of BAs and MOUs on labour migration.

a) Literature Review

An ILO consultant carried out a preliminary literature survey before the launching of the research project (Khan, 2014). This was followed by a more comprehensive literature search of theory and practice of bilateral agreements by the research coordinator. In addition, the research coordinator has drawn upon his extensive practical experience on labour migration issues in general, and bilateral agreements and MOUs in particular. To supplement the literature survey, the coordinator also conducted informal interviews with officials from Bangladesh, Indonesia, Jordan, Nepal, Philippines and Sri Lanka, and the Migrant Forum in Asia on relevant issues.

b) Regional research and mapping

Three mapping studies were carried out to obtain information from different regions covering 144 agreements (Table 1): Africa, Asia, and Europe and the Americas. Most Asian represented South to South agreements, while Africa and the Europe & Americas (EA) contained both South to North and South to South agreements.

Table 1. Agreements mapped and case studies

| | Known agreements (estimate)* | Full text agreements mapped | Case studies | Source |
|-------------------------|-------------------------------------|------------------------------------|---------------------|------------------|
| Africa | 42 | 32 | 3 | Monterisi (2014) |
| Asia | 96 | 65 | 5 | Ruhunage (2014) |
| Europe and the Americas | 221 | 47 | 7 | Simeone (2014) |
| Total | 358 | 144 | 15 | |

* Figures likely underestimate existing bilateral labour arrangements.

c) Assessment of mapped agreements in relation to international norms and good practices

The research programme adopted two separate (though inter-related) evaluative tools for the comparative assessment of BAs and MOUs in terms of scope (breadth) and quality (depth) of agreements. The first set of criteria (comprehensiveness and scope) assessed the extent of coverage of the provisions of the 1949 ILO Model Agreement on Temporary and Permanent Migration for Employment, including

Migration of Refugees and Displaced Persons.⁴ The second set of criteria (quality) assessed agreements on the basis of 18 good practice criteria (GP) on good governance of labour migration and protection of migrant workers drawn from international norms and consultation with ILO experts. Annex 1 provides more details on the methodology, and Table A1 (Annex 2) and Table A2 (Annex 3) list the good practice criteria and the model agreement provisions by region respectively.

The coding of good practice criteria by regional researchers was harmonized through feedback provided by the lead researcher at different stages, and quality checks of coding of selected agreements undertaken in cases of ambiguity.

d) Case studies of BAs/MOUs known to be promising or with above average scores

The study carried out 15 case studies to highlight good elements and practices on specific BLAs selected on the basis of the mapping exercise (Annex 4: Table A3). The main criteria used for selection are as follows:

- Type of Agreement: BAs, MOUs and Framework Agreements.
- Availability of evidence of implementation or follow-up
- Relatively good scores in terms of good practices and model agreement provisions
- Desirable features such as accompanying Model Employment Contracts
- Need to represent different types of work: domestic workers, seasonal, sectoral and general workers.

The case studies went beyond content analysis to consult secondary sources and evaluations and collect additional information on their working, such as through stakeholder interviews. The available information varied across the agreements studied.

4.3. Limitations of the study

While the research attempted to provide a comprehensive mapping of all known BLAs, it could access full texts for only 144 agreements. In several countries, copies of agreements signed were neither accessible on the public domain nor made available on request (e.g. China, Malaysia, Pakistan and Vietnam).⁵

The study is based primarily on a content analysis of BA/MOU texts. The approach has inherent limitations because it cannot adequately assess the effectiveness of agreements in terms of actual implementation. A good practice on paper does not automatically translate into good implementation. There was also a notable lack of information on follow up and implementation in the countries concerned. Even in the case of the Philippines, which is more transparent about its agreements than most other countries, “the exchange of notes, minutes of consultations and meetings, drafts and implementing guidelines, which are essential to review and revise the agreements, cannot be found (CMA, 2010: 30).”⁶ Therefore, the findings of the regional case studies should be regarded as tentative, which need to be followed up by in-depth field research on implementation processes.

4 Out of the 29 Articles of the ILO model agreement, two (14 and 18) relate specifically to permanent migration. Thus only 27 Articles were considered here as relevant to temporary labour migration. Some sections of other articles also may apply only to permanent migrants or refugees. The ILO model agreement contains 29 provisions or elements – not ‘24 essential elements’ as wrongly claimed in recent literature (e.g. ILO, 1997; Geronimi, 2004; OSCE, IOM, & ILO, 2007; Saez, 2013; Khan, 2014). See Wickramasekara (2014c) for details.

5 The researchers sought assistance of the ILO Offices in the relevant countries for access to agreements.

6 The author’s discussions with embassy officials of the Philippines in Jordan in February 2014 confirmed that this additional material is generally not made available to third parties.

5. HISTORICAL OVERVIEW AND CURRENT DEVELOPMENTS

The use of BLAs dates back to the early 1900s. Böhning (2012) cites the 1904 bilateral agreement between France and Italy as the first one of its kind. The ILO's 1921 International Emigration Commission report highlighted a number of principles to be followed 'when bilateral conventions for the recruitment of bodies of workers are made between Members ... or where collective recruiting takes place in another country', including supervision by competent authorities, recruitment by authorised agencies, consultation of employers and workers' organization and issuance of fully enforceable contracts, among others (ILO, 1921). Rass (2012: 192) noted: "Between World War I and the oil-price shock of the mid-1970s, bilateral agreements between countries became the institutional backbone of labour migration in Europe as people moved from its peripheries to its economic centres".

The period from the 1940s to about 1970 is described as the golden age of bilateral labour agreements (ILO, 2010). The labour demand for the reconstruction of post war Europe also gave rise to major migration movements into European countries based on bilateral agreements in the 1950s and 1960s. Belgium, France, the then Federal Republic of Germany (West Germany), and the Netherlands all concluded agreements with one or more origin countries – Ireland, Southern Europe (Greece, Italy, Portugal, Spain), Turkey, the former Yugoslav Republic and North Africa (Algeria, Morocco, Tunisia) (ILO, 1999). The 1959 ILO global report on international migration covering the period 1945-1957 described 'agreements having the joint organization of migratory movements as their primary purpose' as 'a new development in international law' (ILO, 1959: 285). It noted that migration provisions were previously found in only friendship, trade or navigation treaties, and a number of establishment and labour treaties concluded between European countries.

An important feature of early agreements was the key role played by States in organizing and closely supervising recruitment, employment, and return. High demand and competition for migrant workers led to improved agreements and eventually better working conditions for migrant workers. For instance, the 1964 German bilateral labour agreement with Turkey was a much improved version of the 1961 agreement in terms of labour rights (Rass, 2012). West Germany and some other governments closely adhered to provisions of the 1949 ILO Convention and Recommendation on migrant workers, setting up public recruitment offices under the auspices of bilateral agreements, and medically examining candidates, among other things (Böhning, 2012: 14). According to Rass (2012), labour migration between 1960 and 1973 involved the movement of more than 30 million people into the core economies of north-western Europe from southern and south-eastern Europe and north African countries.

The global recession that followed the oil shock of 1973 effectively put an end to the guest worker programmes of Europe, leading to what has been called the 'demise of bilaterally arranged migration' and emergence of a 'Fortress Europe'(ILO, 2010).

The post-1990 growth in bilateral agreements represents the most remarkable increase in bilateral cooperation on migration since the decline of the guest worker agreements in Europe following the oil crisis. The forms of bilateral agreements which emerged in this period could be described as 'Second Generation' BLAs compared to the 'First Generation' in the 1940-1970 era. There is a clear transformation of the nature of these second generation BLAs, "from primarily tools for labour recruitment to tools with a broader array of functions" (Plotnikova, 2014). The broader objectives include the following (Bobeva & Garson, 2004; Plotnikova, 2014):

- a. Promote regional integration;
- b. Control of irregular migration and ensuring readmission;
- c. Promotion of cultural ties;
- d. Ensure temporariness in stays;
- e. Promote migration and development linkages;
- f. Protect rights and promote the welfare of migrant workers.

The growth of post-1990 agreements was due to several factors: continuing labour demands from oil rich GCC countries, emergence of new countries of immigration in southern Europe (Greece, Italy, Portugal and Spain), the breakup of the former USSR, increasing influence of the European Union over EU immigration policy, and the growing recognition of migration and development linkages.⁷ New forms of bilateral agreements which encourage more temporary and circular forms of migration have also been increasing (Wickramasekara, 2011).

The Asian region has seen a large increase in the number of MOUs signed between Asian origin and destination countries, as well as with the GCC countries since 1990. The rapid growth in some East Asian and South East Asian economies, such as the Taiwan Province of China, the Republic of Korea, Malaysia, and Thailand have increased the demand for migrant labour within Asia, resulting in a rapid growth of irregular movements in the absence of regular channels for migration, especially in Malaysia and Thailand. However, from the early to mid-1990s onwards these economies have officially recognized the need for low skilled workers and introduced legal admission schemes based on MOUs (Go, 2004, 2011; Vasuprasat, 2008; Wickramasekara, 2006).

The GCC countries and Jordan also increasingly signed MOUs with Asian origin countries. Jordan and Qatar were the first to sign bilateral agreements since the 1980s, and have revived old agreements with additional protocols or new agreements in the 2000s. Bahrain, Kuwait and the UAE have also entered into agreements since 2000. These agreements have been superimposed on long standing migration flows, with seemingly minimum changes to existing practices (Wickramasekara, 2012). They were also less guided by provisions in international instruments than in other regions.

An interesting development in Asia is the emergence of new labour migration programmes based on the conclusion of mandatory MOUs, such as under the Employment Permit System (EPS) of the Republic of Korea, the Recognized Seasonal Employer (RSE) scheme of New Zealand with selected Pacific Island countries, and domestic worker agreements of Saudi Arabia. For origin countries to participate in these schemes, they are obliged to enter into a standardized agreement with the destination country. Australia also launched the Pacific Seasonal Worker Pilot Scheme in 2012, but the study was unable to locate any copies of agreements signed with Pacific Islands.

Examining agreements concluded with and between African countries, one can identify two important developments: broad framework agreements with destination countries of Europe, such as those concluded in the context of the EU's Global Approach to Migration and Mobility, and agreements with countries of the Middle East. There has been a shift from traditional BLAs aimed at organising mass recruitment, such as those concluded in the 1960s by France with Morocco and Tunisia, to much broader frameworks of cooperation addressing a wide range of migration issues besides labour mobility to cover irregular migration, readmission, and migration and development linkages. They also envisage forms of cooperation such as exchange of visits and experts, exchange of materials and information, coordination of programmes, and frameworks for capacity building and training (Monterisi, 2014). South Africa concluded traditional bilateral labour agreements in the 1960s and 1970s with Lesotho,

⁷ The European Union's Global Approach to Migration and Mobility (GAMM) focusses on three pillars: curbing irregular migration, promoting legal migration opportunities and promoting migration and development linkages. GAMM has in turn influenced agreements of member States (Monterisi, 2014). For more information, see (European Commission, 2011; 2013).

Swaziland and Mozambique to meet the needs of the mining industry, which have been supplemented by much broader frameworks of cooperation agreements since 2000 (Monterisi, 2014; Bamu, 2014).⁸

In the case of Latin America, most of the growth in agreements during the 1990-1994 period resulted from those with European countries. Between 1974-1990, only 15 agreements each were signed between Latin American countries themselves and with countries outside the region. The 1991-2000 period saw a large increase with 35 agreements signed among Latin American countries and 49 with outside countries (IOM, 2003: 178). During 2000-2004, there was growth in agreements with both regions.

The next section deals with findings of the mapping of agreements in different regions.

⁸ For example the title of the 2006 agreement of South Africa with Mozambique reads: “Co-operation agreement between Mozambique and the Republic of South Africa in the fields of Migratory labour, job creation, training, studies and research, employment statistics, social dialogue and social security”.

6. FINDINGS OF THE BLAs MAPPING EXERCISE

6.1. Type of agreements

Overall, bilateral agreements (BAs) represent about half of the mapped agreements followed by MOUs which represent about one third. The Framework Agreements have dominated French agreements with Africa.

Table 2 brings out several regional differences. In Asia, almost 70 per cent of the arrangements take the form of the looser MOU framework. In contrast, 70-80 per cent of the BLAs in Africa, Europe and the Americas are BAs.

Table 2: Agreement types by region

| Type | Asia | % | Africa | % | Europe & Americas | % | Total | % |
|-----------------------------------|------|------|--------|------|-------------------|------|-------|------|
| Memorandum of Understanding (MOU) | 45 | 69.2 | 1 | 3.1 | 2 | 3.7 | 48 | 31.8 |
| Memorandum of Agreement | 1 | 1.5 | 0 | 0.0 | 2 | 3.7 | 3 | 2.0 |
| Bilateral Agreement (BA) | 10 | 15.4 | 23 | 71.9 | 43 | 79.6 | 76 | 50.3 |
| Inter-Agency Understanding (IAU) | 6 | 9.2 | 0 | 0.0 | 0 | 0.0 | 6 | 4.0 |
| Framework Agreement | 0 | 0.0 | 7 | 21.9 | 1 | 1.9 | 8 | 5.3 |
| Protocol | 3 | 4.6 | 1 | 3.1 | 6 | 11.1 | 10 | 6.6 |
| Total | 65 | 100 | 32 | 100 | 54* | 100 | 151** | 100 |

Source: Based on the ILO-KNOMAD BLA/MOU mapping exercise⁹. * Only 47 agreements with full text were used for the final mapping. **Total agreements mapped=144.

The popularity of BAs in Africa and the Europe and Americas regions could be due to the fact that European countries had a tradition of signing BAs since the fifties. There are several reasons for preference of MOUs in Asia. The looser form of MOUs makes it easier to negotiate and implement than a BA which is legally a more complex instrument. An MOU also provides more flexibility to modify with changing economic and labour market conditions. Many Asian destination countries assume inflows of migrant labour to be need-based, and labour market demand for such workers to be transient or temporary despite the observed longer term dependence. The more important reason seems to be that destination countries in the GCC or Southeast and East Asia have ready access to migrant labour from different countries.

⁹ All subsequent tables and charts in this section will be based on the BLAs mapping exercise, and the source for each table will not be mentioned separately.

There is an excess of supply of low skilled labour, and there is no reason to secure such labour through a formal agreement. They also might fear that an agreement with one country may raise the possibility of further requests from other origin countries for similar agreements. Another reason offered by destination countries is that labour recruitment is usually a private sector business in a market-oriented system requiring no government intervention (Go, 2004).

6.2. Parties to the agreements

In countries reviewed, there are several ministries concerned with migration, and also responsible for international cooperation agreements. A large number of agreements have been signed between Ministries of Labour in origin and destination countries.¹⁰ Among destination countries, Ministries of Labour have been responsible in the GCC countries, Jordan, the Republic of Korea, Thailand, Germany and Italy. Among origin countries in Asia, Ministries of Labour in Cambodia, Lao PDR, Nepal, Indonesia, Philippines, and Vietnam can be mentioned. Where migration is handled by ministries other than labour, the agreements are signed by those ministries. For example, in South Asia, foreign employment is handled by the Ministry of Labour only in the case of Nepal. Bangladesh, India, Pakistan and Sri Lanka have all established separate dedicated ministries to deal with emigration, which have signed recent agreements. In Spanish agreements, three Ministries have been mentioned: Foreign Affairs, the Interior, and Labour and Social Affairs, in accordance with their respective areas of competence in immigration matters. In Brazil, Ministries of Justice and Foreign Affairs are responsible for signing the agreements. In the case of France, the French Office for Immigration and Integration (OFII) is responsible for bilateral agreements.

6.3. Analysis of mapped agreements by date of signing

A good way to examine trends is to look at five year intervals for the post 1990 agreements. Chart 1 shows the situation for all mapped agreements for the same period. The peak is observed in the 2005-2009 period with 43 per cent of signed agreements. The previous period comes second with 22 per cent of signed agreements. Consistent with the Europe and Americas regions, there is a decrease since 2010 which may probably be attributed to the impact of the global economic and financial crisis which made admissions of foreign workers a lower priority for most destinations (Ghosh, 2013).

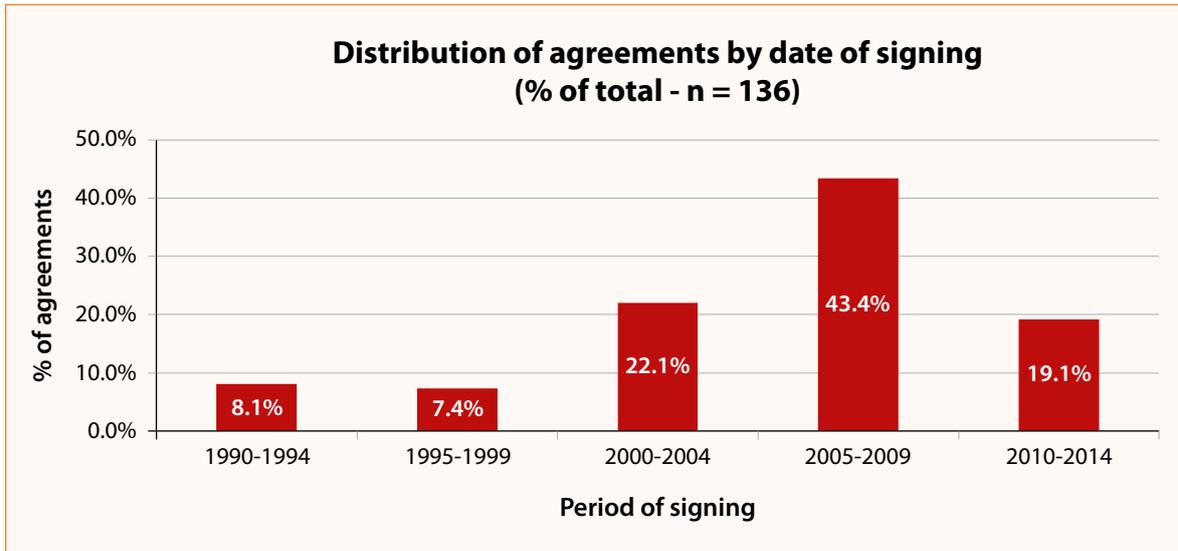
Region wise, the peak in both Africa and Asia is the 2005-2009 period whereas the Europe and Americas (E&A) region shows a peak in the 2000-2004 period (Table 3). This can be due to the labour demand from the new immigration countries in Southern Europe from partners in Africa and Latin America. The decade of the 2000 can thus be considered the “BLAs decade” for the Global South.

Table 3: BLAs by period of signing and regions

| Period | Africa | Asia | Europe and Americas | Total | Percent of Total |
|---------------|---------------|-------------|----------------------------|--------------|-------------------------|
| 1990-1994 | 0 | 0 | 11 | 11 | 8.1 |
| 1995-1999 | 2 | 4 | 4 | 10 | 7.4 |
| 2000-2004 | 1 | 6 | 23 | 30 | 22.1 |
| 2005-2009 | 17 | 32 | 10 | 59 | 43.4 |
| 2010-2014 | 2 | 18 | 6 | 26 | 19.1 |
| Total | 22 | 60 | 54* | 136** | 100.0 |

* Includes a few cases of previous versions of the same agreement. **The total is lower because pre-1990 agreements have not been included. Chart 1: BLAs by period of signing – % of total agreements signed

¹⁰ This refers mostly to agreements with English text.

Chart 1: BLAs by period of signing – % of total agreements signed

6.4. Objective of agreements

The objectives usually listed in an agreement's preamble are quite general, often referring to strengthening of bilateral ties, promotion of social and economic development, promoting cooperation in the field of labour/human resources, and prevention of irregular migration, among others (see Table 4). In general, protection of migrant workers is referred to in only a few agreements, although policy makers may often try to present it as a major objective. A few European and Latin American agreements mention upholding the fundamental rights of workers (Italy with Moldova and Albania; Spain with Ecuador, and Poland). Multiple objectives are common in North-South agreements in both Africa and Europe and the Americas. In Asia, newer MOUs refer to protection of the rights of both workers and employers (e.g. the Kingdom of Saudi Arabia (KSA) domestic worker agreements).

A number of agreements, especially North-South agreements originating from Europe and the New Zealand RSE agreements, have included development of origin countries as an important objective. The agreements refer to several ways through which development can be promoted: the expansion of labour mobility opportunities; ethical recruitment and mitigation of brain drain; return and reintegration; supporting diaspora engagement and initiatives; and remittance facilitation; and skills training provided to returnees.

Table 4. Main objectives of BAs and MOUs in text of agreements by region

| Africa | Asia | Europe & Americas |
|---|---|---|
| <ul style="list-style-type: none"> ➤ Broad range of objectives: admission of workers, assisted voluntary return, integration, migration and development, fight against irregular migration, readmission (Framework agreements) ➤ Regulation of labour migration flows | <ul style="list-style-type: none"> ➤ Strengthening bilateral ties and relations and mutually beneficial cooperation ➤ Enhancing existing friendly relations ➤ Promoting cooperation in the field of 'manpower recruitment' ➤ Regulating the employment of migrant workers | <ul style="list-style-type: none"> ➤ Promoting economic and social development ➤ Strengthening friendship, cultural, and social ties ➤ Prevent irregular migration ➤ Facilitate labour recruitment and migration flows ➤ Upholding fundamental rights of workers |

For instance, the New Zealand RSE agreements include the development impact among success outcomes in the agreement: For New Zealand it means “contributing to the development objectives in the Pacific by fostering sustainable economic development and regional integration under the RSE Policy”. The origin country success outcome (for Kiribati) is: “Kiribati workers are able to generate savings and relevant experience which may contribute to the development of Kiribati”.

6.5. Good Practices in mapped agreements

Chart 2 and Table A1 (Annex 2) show the frequency of good practices included in agreements. The overall picture of good practices clearly shows that some good practices are more common in all regions, and certain destination countries are also more likely to adopt good practice provisions overall than others. For example, Spanish agreements as a whole are among the most comprehensive agreements.

Transparency and publicity (good practices 1 and 2)

Awareness about the content of agreements which define their rights and obligations is highly important to both migrant workers, and their employers in destination countries. The main criterion used here is whether the text of the agreement is available in the public domain.

In some cases, a third party (other than one of the participating governments) may provide access to the agreements.¹¹ In Africa, and Europe and the Americas, all agreements reviewed are publicly accessible. Asia’s performance is more mixed. A number of countries such as Bangladesh, China, Indonesia, Malaysia, Pakistan and Vietnam, among others, do not disclose the texts of agreements publicly. The Philippines, India, and Thailand have consistently followed good practice in this regard by placing copies of relevant agreements online, while some others like Sri Lanka would make copies available to stakeholders.¹² Nonetheless, provisions on exchange of relevant information between the country of origin and destination on labour migration seem to be generally included.

While the provision of relevant information to migrant workers and avoidance of misleading propaganda is an important good practice highlighted in international instruments, it has not received explicit mention in most agreements. A good practice in this regard can be found in New Zealand RSE agreements (Box 3).

Box 3: New Zealand-Kiribati IAU – Publicity

11. PUBLICITY

11.1 The Participants will make efforts to increase awareness and understanding of the RSE Policy in Kiribati and in New Zealand.

11.2 The Participants will act promptly to correct any false or misleading information about the RSE Policy.

11.3 The Participants agree that the IAU document and Schedules will be made publicly available on the Department’s website (www.dol.govt.nz). Information contained in this Understanding can be shared with RSEs.

But placing them in the public domain may not ensure accessibility by the average migrant worker or their employers. What is more important is brief both parties on major provisions of the agreement. A good practice is found in Spanish agreements with Colombia, Romania and the Dominican Republic

11 For example, the Nepal bilateral agreements are found on the website of the Centre for Labour and Mobility (CESLAM), Kathmandu, uploaded with the permission from the government. Most of the Europe and America agreements are found in the UN Treaty Database. The Gulf Research Centre of the European University Institute (Florence) has uploaded some Qatar agreements, mostly in Arabic.

12 For instance, the tripartite National Labour Advisory Council formed under the Ministry of Labour in Sri Lanka can request access to agreements (communication by Mr. L.K. Ruhunage, Asia regional consultant).

where one function of the Joint Coordinating Committee is to disseminate information about the contents of the Agreement in both countries. The Korean MOUs also contain a provision to explain the contract contents to the worker by the sending agency in the origin country (a public employment agency) so that he/she can take an informed decision before signing. It is important to find out whether this is actually implemented. Another good practice in this regard can be found in agreements involving Italy and Spain. Art. 18 of the Italy-Moldova (2011) agreement reads: “The Contracting Parties undertake to disseminate, on their national territories, the provisions of the present Agreement” (translated by Simeone, 2014).

Evidence of normative foundations and respect for migrant rights, based on international instruments (good practice 3)

This good practice identifies any explicit reference made in mapped agreements to upholding rights of migrant workers or to international instruments concerning migrant workers. These would most often be included in preambles to the agreements. The provision was observed in 37 per cent of agreements with considerable regional differences. While 50 per cent of African agreements contain such a provision, only 38 and 32 per cent of Asian and E & A agreements contain it. In the case of Europe and the Americas, the relative absence may be explained by the presence of more comprehensive migration governance regimes which may already incorporate international norms and standards (Simeone, 2014). However, Argentina’s agreements with Bolivia, Peru and Ukraine refer to international instruments on human rights and also spell out rights in detail. Similarly Spanish and Italian agreements do refer to fundamental rights and international instruments. Box 4 highlights some articles pertaining to this practice.

Specific reference to equal treatment of migrant workers (good practice 4)

Equal treatment refers to the elimination of discrimination against migrant workers in employment and occupation, and to the treatment of migrant workers no less favourable than that which applies to nationals of the destination country with respect to employment and working and living conditions. Equality of treatment may not always be provided for, where migrants are mostly hired for temporary migration schemes. Nonetheless, this provision is observed in 41 per cent of all agreements, with the E&A region registering 77 per cent. Both Africa and Asia, especially the latter, score low on this practice.

Box 4: Good practice examples of references to international norms for protection

- **Memorandum of Understanding between Bangladesh and Jordan in the field of manpower, 2012**
Article (3): Both parties undertake to preserve the rights of workers and employers by the legislation and the law in coherence with international standards and treaties in this regard.
- **Memorandum of Understanding on Labour mobility partnership between the Republic of India and the Kingdom of Denmark, 2009**
Article 4: Unless otherwise provided in this memorandum of understanding, the persons specified in Article 3, shall receive equal treatment with nationals of the receiving state in the application of the relevant labour and employment laws of that Contracting State.
- **MOU between Thailand and Myanmar on cooperation in the employment of workers, 2003**
ARTICLE XVIII: Workers of both Parties are entitled to wage and other benefits due for local workers based on the principles of non-discrimination and equality.
- **Agreement on bilateral cooperation on labour migration between Italy and Sri Lanka, 2011**
Preamble: In compliance with the principles of the international provisions concerning the rights of migrants and the fundamental rights of workers,...
- **Agreement Between Spain and Colombia on the Regulation and Management of Migrant Labour Flows, 2001**
Preamble: Motivated by the objective that Colombian workers arriving in Spain should effectively enjoy the rights recognized in the international instruments to which both States are party,...

Provisions to promote fair recruitment practices (good practice 5)

There is increasing attention on recruitment costs as a major cause of poor governance and protection gaps in labour migration (Abella and Martin, 2014; United Nations, 2013a; ILO, 2014b). High recruitment fees lead to high debt burdens and erode savings and remittances, and thus erode benefits from migration, for both origin and destination countries and migrants themselves. BLAs can include provisions to address these, but most agreements do not seem to mention the need to reduce costs or to prevent recruitment malpractices.

62 per cent of total agreements include a reference to recruitment, with both Asia and Africa scoring well. However, 'Ethical recruitment' or 'ethical practice' was mentioned only in 8 agreements – all of them in Asia – whereas 'fair and transparent' recruitment was mentioned only in the India-UAE 2011 MOU.¹³ Surprisingly, Europe & the Americas region scores low on this count. This could be because recruitment malpractices are less of a concern in those regions with more comprehensive labour and migration policies and legislation systems in place. Furthermore, there is little evidence that in GCC or Asian destination countries recruitment systems have fundamentally changed following the introduction of MOUs. In Malaysia in particular, recruitment agencies are found to be acting as labour brokers, providing migrant labour to companies on contract, and denying workers many of the protections existent under labour law (Amnesty International, 2010). More in-depth research would be needed to establish the links between governance regimes and effectiveness of bilateral agreements.

The KSA domestic worker agreements contain specific provisions for joint regulation of recruitment agencies, and reduction of related recruitment costs. The Philippines-KSA agreement mentions: "Ensure the recruitment of domestic workers through recruitment offices, companies or agencies that practice ethical recruitment and are licensed by their respective governments".

Government to government recruitment agreements have attempted to address this issue through arranging worker recruitment through public employment services. The Korean EPS and the 2012 Bangladesh-Malaysia agreement represent good practice in this regard. The New Zealand-Pacific Islands RSE scheme provides for both public and private recruitment.

Addressing gender concerns, and concerns of vulnerable migrant workers (good practice 6)

Women workers face specific problems which need to be addressed in bilateral agreements. Similarly, any workers not covered by national labour laws in destination countries can find themselves in precarious situations. This applies to domestic workers, domestic drivers, gardeners, and agricultural workers of all genders who are among the most vulnerable categories of labourers. At a minimum, agreements should mention the categories of workers that are not covered, and what steps would be taken to protect their rights. Some MOUs merely state that appropriate steps will be taken to address problems of non-covered workers without specifying any concrete measures (Wickramasekara, 2012).

The omission of this provision is common across regions. Special domestic worker agreements have been one response to this issue given that a large number of female migrant workers go for domestic work (e.g. agreements of Jordan with Indonesia, Saudi Arabia with four Asian countries). In many destination countries within Asia as well as GCC and other Middle East countries, domestic work is not covered by labour laws. One exception is Jordan where the amendment to the labour law in 2009 promulgated a regulation concerning domestic workers.

The 2002 Lao-Thailand MOU on labour cooperation states in Art. 18 that "Labourers of the parties shall receive their wages and other benefits according to the local wage rates without exception of male or females, race and religion". The Joint Committee Meeting between Qatar and Sri Lanka in January 2009 considered the issue of establishing a transit house for incoming female workers

¹³ Since some agreements are in languages other than English (French, Italian and Spanish), it was not possible to apply search terms to all the agreements.

by the Embassy, which was not agreed upon by Qatar's delegation.¹⁴ The 2001 Argentina-Ukraine agreement also refers to gender in discussion of non-discrimination.

Social dialogue involving other concerned stakeholders: employers in countries of origin and destination, workers, civil society organizations (good practice 7)

Principle 6 of the ILO Multilateral Framework on Labour Migration clearly states: "Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented" (ILO, 2006, 13). Principle 7 highlights that governments and social partners should consult with civil society and migrant associations on labour migration policy. Most countries which responded to the 2003 ILO General Survey on international migration indicated that they held regular consultations with representative employers' and workers' organizations when adopting or amending laws pertaining to national immigration policy (ILO, 2004). Yet the mapping review did not find any information on consultation with social partners or civil society groups in the drafting, negotiation, or implementation or the review of bilateral agreements in agreement texts. Normally one may not be able to identify from the agreement text about prior consultations on the drafting and negotiation of the agreement. The agreements can of course, provide for involvement of other stakeholders in monitoring and follow up to the agreements. But there was no such provision in agreement texts. The Asia regional study has reported one instance of social dialogue in the case of the New Zealand-Kiribati agreement. The MOU refers to the selection of applicants to the RSE Scheme through a screening committee consisting of relevant ministries, and representatives of church organizations and NGOs. This does not indicate any involvement of social partners. In all cases, secondary sources are needed to establish actual practice relating to social dialogue. According to the Centre for Migrant Advocacy, Philippines, while the Philippine Overseas Employment Administration holds consultative meetings with relevant stakeholders to gather input and recommendations in preparation for the negotiation with the state of employment, "in many cases, there is no participation from the civil society organizations or the implementing agency fails to inform and request their participation" (CMA, 2010).

Coverage of wage protection measures (good practice 8)

This practice tested for a specific clause on wages including some of the following: minimum wage where applicable, compensation for overtime work, allowable deductions, date of payment, issue of receipts and payment into worker bank accounts. These provisions could be spelled out in a standard employment contract annexed to the agreement as well (e.g. Sri Lanka-Qatar 2008 model contract. Employment contracts attached to Malaysia agreements with Bangladesh, Indonesia and Vietnam). While 41 per cent of Asian agreements include references to wages, both Africa (25%) and Europe and the Americas (17%) agreements show lower scores.

In general, the article relating to the employment contract mentions that the contract should specify the applicable wage, and in some cases other allowances. Some Malaysian agreements contain this provision: "The basic wages offered shall be clearly stated in the terms of the contract of employment and shall be similar to the basic wages offered to Malaysian workers in the same capacity". Recent domestic worker agreements of KSA and Malaysia include a provision to pay wages directly into the bank accounts of workers. The KSA agreements prohibit levying of recruitment fees on workers, and unlawful deductions from their wages.

While UAE agreements do not mention payment of wages into bank accounts, the country has a separate regulation (Wage Protection System) requiring all employers to do so. The KSA also has been extending such a regulation gradually to all companies. It is reported that Qatar labour law also has been amended recently to require payment of wages into bank accounts of workers.¹⁵

14 Information provided by Mr. Ruhunage, former Additional Director-General, Sri Lanka Bureau of Foreign Employment.

15 <http://www.squirepattonboggs.com/insights/publications/2015/02/qatar-labour-law-amended>

Concrete and enforceable provisions relating to employment contracts and workplace protection (good practice 9)

These provisions could include (model) written contracts, provisions for ensuring compliance in the workplace, including enhanced labour inspection, and complaints procedures in line with international labour standards. While this practice is provided for in only slightly less than half of all mapped agreements, the Asia study has recorded the highest level of provision (77% of agreements). Yet this needs to be qualified because Asian agreements often contain only basic provisions on the employment contract, which may not always satisfy more stringent international standards.¹⁶ Most complaints in Asia also relate to breach of employment contracts (Wickramasekara, 2014b). In some of the BAs/MOUs in the Asian region, there is provision for a 'Model Employment Contract' (MEC) to be attached. Good examples to this effect can be found in the BAs signed by the Qatar Government with Asian countries of origin, in which it is stipulated that the employer cannot make any changes to the labour contract. The recent assessment of migrant labour in the construction sector of Qatar by the law firm DLA Piper (2014) noted gaps in the existing model contracts, and proposed that Bilateral Treaties with States of Origin should provide for a new standard employment contract (the "Migrant Worker Model Employment Contract"), which includes revised terms, and that the binding nature of these model contracts should be made known to migrant workers.¹⁷ The standard employment contract attached to the KSA domestic worker bilateral agreements contains a number of good provisions, which go much beyond what is generally found in the articles on employment contracts in most MOUs of Asia. Nonetheless, the practical effectiveness of model employment contracts has been questioned,¹⁸ and remains to be investigated in more depth.

Most agreements clearly state that the contract conditions must be in line with the labour laws of the country of employment, and in some cases with laws of both countries. However, it is not always clear how laws of both countries can be applied simultaneously, unless the agreement refers to different stages of the migration cycle. When labour laws in countries of destination are not compatible with provisions of international instruments, even this provision may not reflect a good practice.

Further, the employment contract is subject to authentication by the competent authorities, usually respective embassies of source countries.

Provision for human resource development and skills improvement through in-service training (good practice 10)

Processes for skills improvement are important to low skilled workers, but few countries provide such opportunities to these workers who are mostly in temporary status. Only about a third of all agreements mapped have a provision for this practice. Germany had signed agreements with Albania, Bulgaria, Latvia and Slovakia (and others) in the 1990s "concerning the employment of workers in order to improve their vocational and linguistic skills (Guest Employee Agreement)", though the agreement texts do not mention any special provision to impart such skills. Skills development is expected to take place via on-the-job-training and language learning via contacts with co-workers who are native speakers.¹⁹ There is a similar provision in the Spain-Romania 2002 agreement. Pre-departure trainings in many countries provide only basic skills and information required for better labour market integration in destination countries. The New Zealand RSE and Korean EPS systems also commit to providing additional skills during employment or before return. The 2008 Bahrain-Nepal Memorandum of Understanding in the areas of labour and occupational training mentions training plans, studies and research and skill level measurement systems and methods of the implementation

16 For instance, in the case of India's MOU with Malaysia, the employer is given the right "to determine terms and conditions of employment," later followed by a standard clause that the contract will be in accordance with the labour law of the two countries, which seems contradictory (Wickramasekara, 2012).

17 However, the DLA Piper report available on the web does not include the annexes which contain this Model Employment Contract.

18 The case study on the Qatar-Sri Lanka MOA mentions that the use of the model contract has been very limited (Ruhunage, 2014).

19 For more information and an assessment of the German guest-employee agreements of the early 1990s, see Kuptsch (1995).

in line with labour market needs in both countries, but there is no information on its actual working. A pass in the Korean language test (EPS-KLT) is mandatory for all applicants to the EPS, and the cost is borne by the applicants.

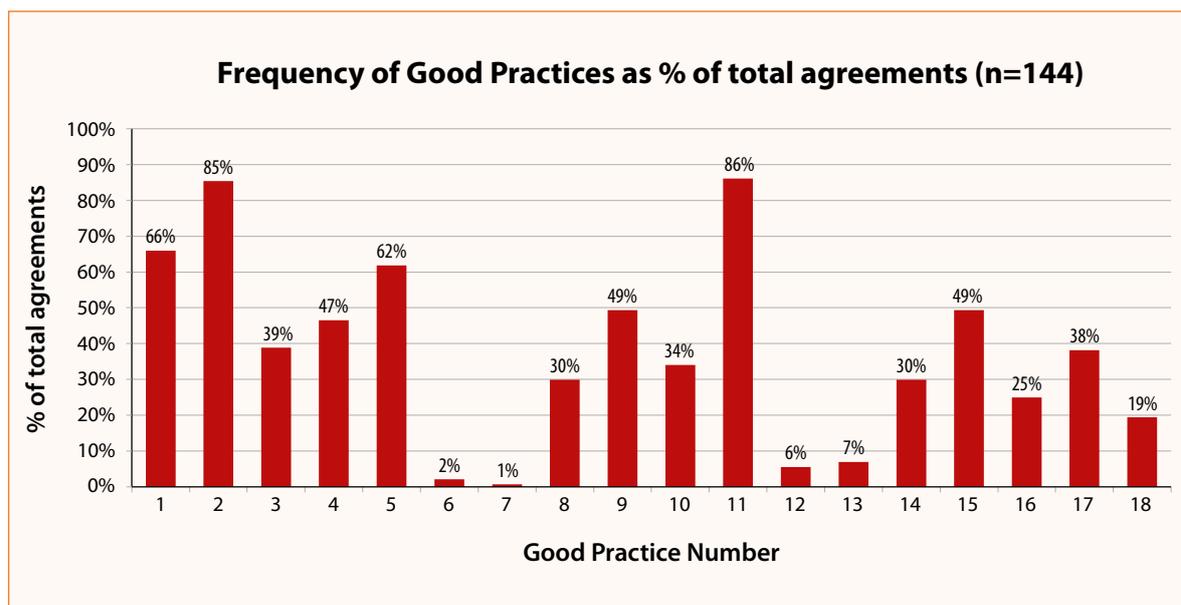
Concrete implementation, monitoring and evaluation procedures (good practice 11)

This provision refers to the establishment of joint committees and their composition, frequency of meetings, involvement of other stakeholders, appointment of a dedicated focal point, or other specific clause on monitoring and evaluation. 86 per cent of agreements commonly contain a provision for the formation of joint committees.

The joint committees (JCs) proposed under many agreements have a major role in making agreements effective. The present study could gather only limited information on actual status of working of JCs and implementation of agreements. The Asia case studies cite the example of the bilateral agreement between Sri Lanka and Qatar which has convened three meetings of the Joint Committee in 2009, 2011 and 2012 (Ruhunage, 2014). A concrete achievement is said to be the withdrawal of the compulsory police clearance certificate on Qatar-bound Sri Lankan migrant workers at the request of the Sri Lanka delegation at the JC (Ruhunage, 2014). The 2011 Protocol amending the 2006 MOU between Indonesia and Malaysia on domestic workers refers to six Joint Working Group meetings held between 2006 and August 2010.

The Ministry of Overseas Indian Affairs held joint working committee meetings under the MOUs signed with three countries in 2012 (Kuwait, Malaysia, and Oman), and four meetings in 2011 (Kuwait, Oman, Qatar and UAE) (MOIA, 2011; 2013). The MOIA mentions the acceptance by Kuwait of a model employment contract as one achievement through JCs. The MOIA report for 2010-2011 notes that the first round meeting for the India-Qatar MOU was convened in January 2011, although the additional Protocol was itself signed in 2007. The Philippines Centre for Migrant Advocacy (CMA) also noted the low frequency of JC meetings of certain countries with the Philippines (CMA, 2010: 29). In new migration programmes under government to government agreements, the coordination and follow up between the two parties can be quite high. The New Zealand RSE scheme shows how success evaluation criteria have been built into agreement texts, which can be monitored and evaluated easily (see Box 5).

Chart 2: Good practice occurrences, % of all mapped agreements (n=144)



Source: Based on Annex 2 – Table A1.

Box 5. Critical Success Outcomes (Inter-Agency Understanding between New Zealand & Kiribati 2011)

| New Zealand Dept. of Labour | Ministry of Labour & HRD, Kiribati |
|---|--|
| <p>5.1 The Department enters into this Understanding with a view to achieving the following outcomes, notably:</p> <ul style="list-style-type: none"> ➤ Achieving objectives of the RSE Policy ➤ Avoiding over staying and exploitation of workers; displacement of New Zealand's workforce, and suppression of wage growth in the horticulture and viticulture industries ➤ Securing at least 50% of the available places under the RSE Policy, over the first five years, from eligible Forum Island Countries. To help achieve this goal specific Forum Island Countries will be assisted to establish facilitative arrangements, and ➤ Contributing to the development objectives in the Pacific by fostering sustainable economic development and regional integration under the RSE Policy. | <p>5.2 The Ministry enters into this Understanding with a view to achieving the following outcomes, notably:</p> <ul style="list-style-type: none"> ➤ Kiribati secures a fair portion of seasonal work opportunities under the scheme ➤ Kiribati workers are able to generate savings and relevant experience which may contribute to the development of Kiribati ➤ Kiribati cooperates effectively with New Zealand to maintain the integrity of the arrangements implemented, and ➤ The cost of transport does not act as a barrier for Kiribati nationals to access opportunities under the RSE Policy. |

Prohibition of confiscation of travel and identity documents (good practice 12)

Since confiscation of travel or identity documents is a major cause of forced labour situations, it is crucial to include this provision and ensure its enforcement in bilateral agreements. Overall the inclusion of this provision in agreement text was only six per cent. This again is a problem in countries of Asia, and the Middle East, which restrict the mobility of workers through the sponsorship system or tying a worker to a specific employer. The Saudi Arabian agreements on domestic workers have set a precedent in this case by including a provision for the retention of such documents by workers. Spain's agreements with the Dominican Republic, Ecuador and Ukraine and the Sri Lanka-Iraq Agreement also prohibits custody of passports by employers. In contrast, the Malaysia-Vietnam (2003) agreement contains a provision: "The employer shall be responsible for the safe keeping of the worker's passport and to surrender such passport to the Embassy of the Socialist Republic of Vietnam in Malaysia in the event of abscondment of the worker". The 2011 MOU on domestic workers with Indonesia and the 2013 Government-to-government agreement with Bangladesh however, allow the workers to keep their passport with them.

Provision for recognition of skills and qualifications in the destination country (good practice 13)

Skills recognition issues arise mainly with the migration of skilled workers and professionals. Since the focus of the current study is on low skilled workers, this provision may not be attached the same significance. This may be why only seven per cent of mapped agreements have provisions for skills recognition. The Argentina-Ukraine (1999), France-Russia (2009) and Peru-Colombia (2012) agreements directly address skills recognition issues. The MOA between the Philippines and Bahrain on Health Services Cooperation mentions that the parties will work towards a mutual recognition agreement on human resources for health. Despite the good provisions, this agreement was never implemented.

Provide social security and health care benefits for migrant workers on par with local workers (good practice 14)

Temporary migrant workers are rarely entitled to social security provisions other than health care. To be considered a good practice, portability of social security contributions can also be considered for temporary workers. This good practice is found mainly in the European and America agreements

(Simeone, 2014). South American agreements in particular provide for social security and health benefits. The GCC countries abolished social security for migrant workers at the end of 1980s. Migrant workers have access therefore to only accident and health benefits. In African agreements, some references are to separate bilateral agreements that regulate these issues (Cape Verde-Portugal, Spain-Morocco, France-Tunisia) or to the national legislation of the destination country (Spain-Mauritania) while in others (Italy with Morocco, Egypt, and Mauritius) the reference is formulated in terms of equal treatment with the nationals of the destination country granted to all types of workers (Monterisi, 2014).

Defining clear responsibilities between partners (good practice 15)

Most agreements reviewed highlight the division of responsibilities between parties. Some spell out obligations of a first and second party, migrant workers and their employers, and in some cases those of recruitment agencies. For instance, some Malaysian MOUs (with India, and Indonesia) contain separate annexes relating to responsibilities of the three parties: employers, workers and recruitment agencies.

Overall, close to 50% of all mapped agreements contain provisions defining clear responsibilities between parties. The proportion is much higher for European and American agreements (around 74% of all those mapped) than for African and Asian agreements (38%).

While a clear division of responsibilities can facilitate implementation, the practical application of such provisions however, remains to be investigated.

Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice (good practice 16)

The normal provision in agreements on complaints and dispute resolution mechanisms is for a two-step process. The first is to strive for an amicable settlement between the parties. If this fails, agreements provide for a judicial review. The criterion adopted in the study clarified that an ‘amicable settlement’ provision alone was not sufficient for the procedure to be described as a good practice. The provision should contain clear guidelines on procedures to be followed, and provide for interpretation and legal assistance where necessary. Overall, only about a quarter of agreements make reference to this practice. The high figure of 50 per cent of agreements in Asia may be due to a more liberal interpretation of the ‘amicable settlement’ provision.

Provision for free transfer of savings and remittances (good practice 17)

Remittances are the most tangible benefit of labour migration. A number of agreements contain provisions for migrant workers to freely remit their savings home, subject to the laws and regulations of the destination country. Overall this good practice is included in 38 per cent of the agreements, with the lowest score in Europe and the Americas. Given that most countries no longer have rigid exchange control regimes as a result of globalization, this may not be a matter for concern since low skilled workers do not individually remit large volumes of funds. Notably, 69 per cent of Africa agreements do contain this provision. An additional good practice related to remittances is found in the Italian agreements with Albania, Egypt and Sri Lanka. For example, the Italy-Sri Lanka agreement states: “The Italian Party agrees to disseminate information on the national remittances system, with the aim of aiding migrant workers in the choice of the most advantageous way”.

Thailand MOUs with neighbouring countries (Cambodia, Lao PDR, Myanmar) raise some concerns in this regard because they stipulate that workers should contribute 15 percent of their monthly wages into a mandatory savings fund to ensure that workers return to their home countries at the end of the contract. Workers who fail to return forfeit their access to these funds (Vasuprasat, 2008). Under the Canada-Caribbean seasonal worker scheme, 25 percent of workers’ wages are withheld and remitted to the country of origin – with the objective of assuring a minimum level of foreign currency remittances to the origin country (Khan, 2014). Such mandatory deductions are not consistent with international labour standards.

Coverage of the complete migration cycle (good practice 18)

While only 19 per cent of all agreements cover the complete migration cycle (pre-departure, working abroad, and return and re-integration), Africa scores highest with 28 per cent conforming to this good practice. Asia reported only 14% of agreements to contain this practice. One good practice worth mentioning is found in the Italy – Sri Lanka agreement – its Article 16 on Integration recognizes the importance of the Sri Lanka community (associations) for the social integration of new migrants and for the implementation of development initiatives in the country of origin.

Several agreements frame return and reintegration provisions in the spirit of improving development outcomes for countries of origin. In this context, a number of agreements include a focus on reintegration support to returning migrant workers. This is to be achieved through remittance facilitation, skills training oriented to needs in the country of origin and also funding for enterprise development on return. The Italian agreements with Egypt and Moldova and France-Tunisia agreements are examples. In Asia, the Republic of Korea also has incorporated a Happy Return programme as part of its Employment Permit System to discourage overstaying. Returnees receive vocational skills in the Republic of Korea unrelated to their current work and also they are given training on return to home countries so that they can join Korean firms or others. In the South American region, the Colombia-Peru (2012) agreement provides a good return and reintegration framework. The Spain-Dominican Republic (2001) agreement includes several measures to promote reintegration.

Most Asian agreements with the GCC countries only refer to return after termination of contracts²⁰ or repatriation earlier for violation of contract terms or being a threat to public security.

6.6. Adherence to the ILO 1949 Model Agreement provisions in mapped agreements

The Model Agreement in the Annex of ILO Recommendation 86 (of 1949) applies to all migrants (permanent and temporary), refugees and internally displaced persons, and therefore all 29 provisions may not apply to temporary migrant workers covered in this study. Two articles – Article 14 on Adaptation and Naturalization and Article 18 on Access to trades and occupations and the right to acquire property – apply only to permanent migrants. 27 Articles thus apply to all migrant categories, but exceptions are also made in particular sub-sections under each provision. For example, only sections 1 and 4 under Article 21 on Social Security apply to temporary migrants.

There are overlapping provisions between the good practice criteria employed in this study and the Model Agreement provisions since the latter was one of the instruments to define good criteria. For instance, exchange of information, equal treatment, employment contract, and remittances can be cited. The Model Agreement also defines the conditions necessary for satisfying each provision. The emphasis in the current mapping was to rely on the good practice criteria for quality assessment, and use the Model Agreement primarily to check on the comprehensiveness of the agreements as pointed out in Section 4.2.

Chart 3 and Table A2 (Annex 3) show the scores on the 27 provisions of the Model Agreement for the mapped agreements.

The results indicate that no agreement incorporates all relevant 27 provisions, which is to be expected since the model agreement covers a broad range of migration types. As described in the case studies, the absence of a formal topic or rights provision within a given agreement does not necessarily imply that there is no such provision under existing domestic law in the destination country. In fact, the average BLA contains only 11 of the relevant 27 provisions—with the most topical provisions (i.e., 18) contained within the Canada-Mexico (2013) agreement. The results further demonstrate that some provisions are much more likely than others to be included within the agreements.

²⁰ A typical article is: “For the purposes of this Memorandum of Understanding the term manpower means all the temporary contractual expatriate workers from Sri Lanka employed in the U.A.E. for a certain period of time, after which the workers shall leave the U.A.E. to Sri Lanka or to another country” (2007 Sri Lanka-UAE MOU).

The more popular provisions relate to organization and procedures of recruitment, exchange of information, and information and assistance to migrants. Equality of treatment provision is found mostly in the E&A region. The employment contract provision is higher in the case of Asia in contrast to the other two regions. This may be due to the predominance of Framework Agreements in Africa which cover multiple objectives not directly involving a contract. The model employment contracts attached to the BAs/MOUs also need to be reviewed in relation to Art. 22 of the Model Agreement.

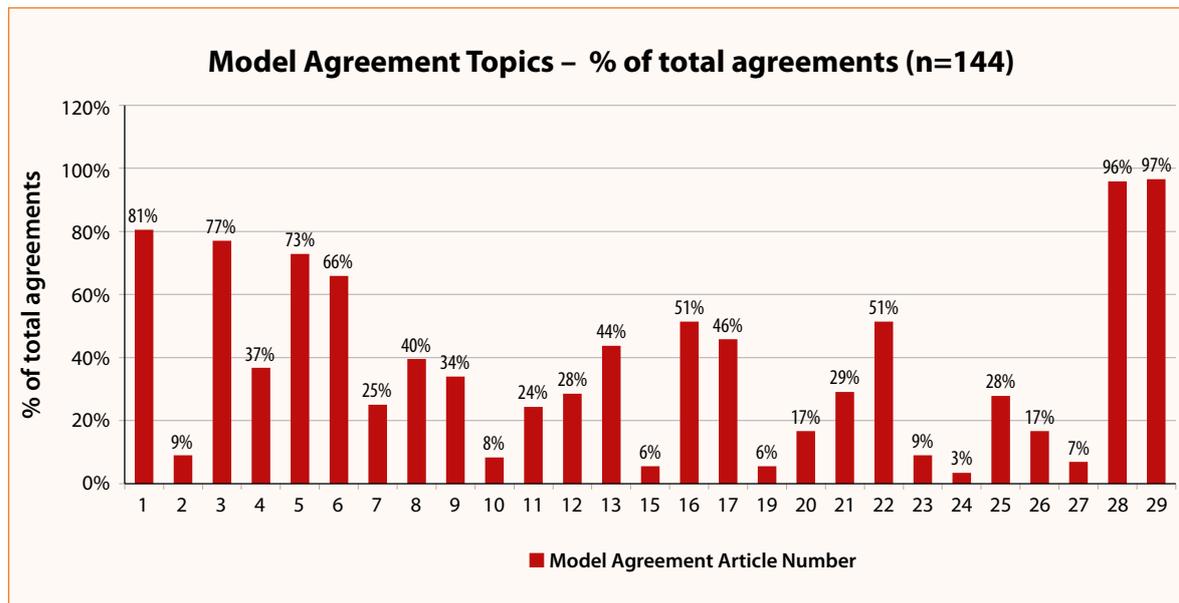
6.7. North-South differences

The study made an attempt to assess variations in the quality of agreements according to whether signatory countries are from the Global North or the Global South.²¹

The Human Development Index (HDI) has been used by the UNDP in their Human Development Report since 2009 and divides countries into low, medium, high, and very high development. Since it takes income, life expectancy and literacy variables into consideration, the HDI provides a broader view of North-South classifications than those of the UN Population Division or the World Bank (Bakewell, 2009). To distinguish between North and South countries, the current study used a level of 0.85 HDI as the cut-off point.

There are more South-North than South-South agreements. Chart 4 indicates average Good Practice and Model Agreement scores by HDI grouping. On both counts, South-North agreements seem to score better than South-South agreements.²² This can be expected because of the generally more comprehensive governance standards of North countries which can positively influence the text of the agreements negotiated.

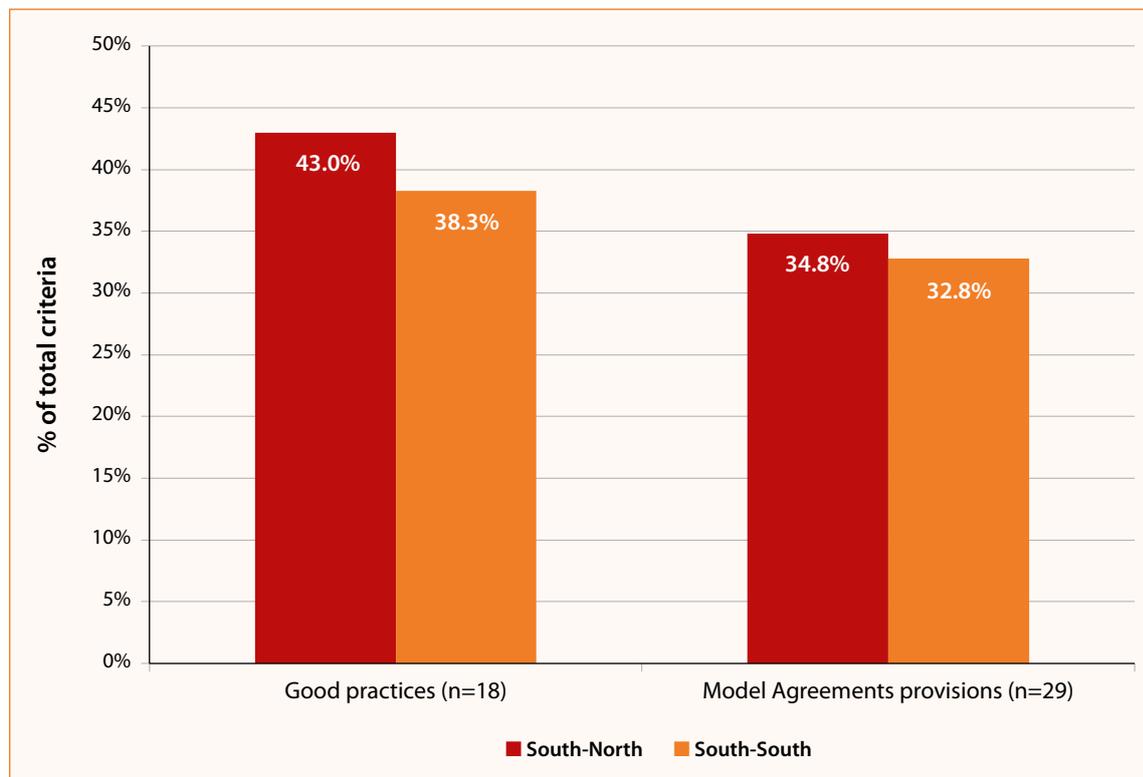
Chart 3: Model Agreements Topics – % of total agreements (n=144)



21 There are some methodological challenges relating to the identification of North and South countries. Bakewell (2009) provides a good review of these issues, and alternative methods of classification. Since 2010 the Human Development Index also includes a measure of inequality within countries, described as the Inequality-adjusted Human Development Index, IHDI.

22 Using IHDI, there are only two North-North agreements. This category has therefore, been disregarded in the analysis.

Chart 4: Good practice and Model agreement scores by North and South



6.8. Findings of the case studies

The BLA research undertook case studies on several agreements to highlight the process and particular good elements and practices.

For example, in Europe and the Americas, while the total sample of agreements contains only seven good practice provisions on average, nearly all case study agreements contain more good practice provisions – with an average of 10 GPs.²³ Most of the case study agreements include good practice provisions related to: (1) transparency and publicity; (2) exchange of relevant information; (3) normative foundations for migrant rights; (4) equal treatment of migrant workers; (10) human resources and skills improvement; (11) concrete implementation, monitoring, and evaluation procedures; (15) division of clear responsibilities between parties; and (18) the reintegration aspect of the migration cycle. Yet there is variation among agreements in relation to the following good practice provisions: (5) fair recruitment practices; (8) wage protection measures; (9) concrete employment contract provisions; (10) skills and human resource development; (12) travel and identity documents; and (16) complaints and dispute resolution procedures. As noted in the mapping overview, case study agreements also have no good practice provisions related to gender concerns and vulnerable migrants and social dialogue.

Table A3 (Annex 4) provides a summary of the case studies which brings out positive features as well as areas for improvement.

Based on the case studies and other reviews, Table 5 attempts to summarise factors that may affect the effectiveness of BLAs. Several factors seem to have more potential to lead to better outcomes for

23 Although the Portugal-Ukraine (2003) agreement lies just below the BLA average on best practices, it is included in the case studies to provide geographic diversity.

migrant workers. These are agreements with limited objectives, or aiming to set up a new migration flow, or addressing specific labour market needs, and with a high degree of transparency. Reluctance to address specific problem areas, a lack of serious commitment, situations of weak labour market institutions and laws, and a lack of transparency seem to inhibit the performance of agreements. More details can be found in the set of case studies of this project.

Table 5. Factors affecting potential impact of agreements

| Factors that may lead to good impacts | Factors that may constrain good impacts |
|--|--|
| <ul style="list-style-type: none"> ➤ Clear and limited objectives ➤ New programmes which institute a previously non-existent migration flow (EPS, RSE) ➤ Those guided by normative foundations & good practices ➤ Addressing specific labour needs of destination countries: quotas and specific sectors (EPS, RSE) ➤ Openness and transparency in design, negotiation, implementation and follow up ➤ Willingness to address problem issues (e.g. recruitment system, wage protection) (KSA domestic worker agreements) ➤ The existence of a democratic political regime, and good labour market institutions compliant with international norms, at least in the country of destination (EU, South America) ➤ Strong commitment of both States parties (Canada SWP) ➤ Good monitoring and evaluation from the inception and good information base (RSE) | <ul style="list-style-type: none"> ➤ Agreements with too many objectives – curbing irregular migration, readmission, development (such as certain France-Africa agreements) ➤ Agreements entered into as diplomatic instruments with little evidence to suggest serious intent to implement (some GCC agreements) ➤ Lack of transparency ➤ Weak labour market institutions ➤ Access to multiple sources of labour on the part of destination countries (Middle East, Malaysia). ➤ Reluctance to address inbuilt exploitative systems (unethical recruitment, kafala system) or introduce innovative features ➤ Lack of prior information on labour migration flows and working conditions |

7. TOWARDS A PRELIMINARY FRAMEWORK FOR ASSESSING BLAs

The current study being primarily a desk review cannot attempt an evaluation of the effectiveness of BAs and MOUs in realizing their objectives. A comprehensive evaluation needs benchmark data on the situation before signing of bilateral agreements, and the situation reflecting the impact of the agreement on variables of concern over some years of operation. Isolating the impact of agreements from other factors is also a challenge.

The limited objective of this section is to raise some issues for developing a framework for evaluation of BLAs focussing on the three major objectives of BAs and MOUs: governance, protection, and development. Needless to add, these three are inter-related objectives. For example, recruitment malpractices, high migration costs and irregular migration are symptoms of poor governance as well as factors affecting migrant protection.

7.1. How can bilateral agreements and MOUs improve governance of labour migration?

The discussion of good practices has already referred to some of these elements.

a) Through formalising the concept of shared responsibility between the country of origin and the country of destination

As noted above, most agreements reviewed highlight the division of responsibilities between the two signatory parties, and in some cases of other stakeholders such as employers, workers and recruitment agencies.

b) Through greater transparency

Transparency is a major component of good governance. Dissemination of the agreements to all concerned stakeholders and their translation into local languages and sharing with migrant workers and their employers is a prerequisite for effective implementation and follow up. Yet the research team came across several instances where origin countries were unable to locate important agreements or related protocols. The frequent change of senior management in concerned ministries may lead to loss of institutional memory of the factors that led to the negotiation of MOUs and their objectives. The good practice of some Italian and Spanish agreements in undertaking to disseminate the agreements among both parties is a good practice which can be replicated by others.

c) By addressing high costs of migration, recruitment malpractices, corruption and bureaucracy in the process at both ends.

A major cause of poor governance and protection gaps is the high cost of migration resulting from recruitment malpractices, collusion between recruiters in origin and destination countries, and bureaucracy and poor regulation (United Nations, 2013a; ILO, 2014b; Wickramasekara, 2014b). BAs/MOUs can include provisions to address these, but most agreements do not seem to mention the need to reduce costs or to prevent recruitment malpractices. The KSA domestic worker agreement with the Philippines has a provision under Article 3: “Regulate or endeavour to control recruitment costs in both countries”.

There is little evidence from GCC countries or Malaysia that recruitment systems have changed following the introduction of MOUs. In Malaysia in particular, the recruitment agencies are found to be acting

as labour brokers. The India-Malaysia MOU, however, refers to the recruitment role of the agent only (Wickramasekara, 2012).

The KSA domestic worker agreements set a precedent in this respect by referring to ethical recruitment, reduction of migration costs and prohibiting levying of fees on workers. It is of course, too early to judge how this would work out in practice. A good start has been made by planning to reform the recruitment system to include only mega recruitment firms for hiring domestic workers. Yet this limits the opportunities for a large number of smaller agencies which abide by the rules.

Government-to-government agreements involving public recruitment services to bypass private recruitment agencies also have led to dramatic reductions in migration costs as noted above. This is especially the case with the EPS system of the Republic of Korea, where the average cost paid by a worker has been reduced from US\$3,509 under the trainee system in 2002 to \$927 under the EPS system in 2011, in part through higher transparency (Kyung, 2014). Since the average wage under the EPS is close to \$1,000, this would represent a month's wage. The government-to-government agreement between Malaysia and Bangladesh which has brought down the costs paid by migrant workers from Taka 250,000-300,000 to Taka 45,000 per person is another case in point (Wickramasekara 2014b). The downside is that the numbers mobilised under the system have been quite low. Malaysia has offered a maximum of 10,000 jobs in the plantation sector, and less than 8,000 workers have migrated up to now.²⁴ When the scheme was announced, expectations were high with 1.4 million persons registering as potential migrants.

d) Preventing irregular migration and channelling workers through legal channels

High levels of irregular migration also reflect poor governance of flows, and a number of North-South agreements concluded with African and Latin American countries by France, Italy and Spain have included the reduction of irregular migration as an explicit objective based on the European Union Global Approach to Migration. The Italy-Egypt agreement preamble contains an explicit reference to the Global Approach to Migration. Re-admission is also part of this approach. Framework agreements reflect this trend as broad bilateral cooperation instruments.

In the South American region, major destination countries – many of which are new immigration countries – have sought to regularize previously undocumented populations. For example, the Argentina-Bolivia (1998) agreement, in contrast to many European agreements, places greater emphasis on protective rights for foreign citizens, and regularization options. The agreement aims to “create an appropriate legal framework for migrant workers from both countries” (Preamble). It therefore aims to regularize previous migration inflows and organize future labour migration inflows to Argentina. In practice, NGOs play a greater role in ensuring these protections. The Spain-Ecuador agreement has had limited success in ensuring return and reducing numbers in irregular status (Simeone, 2014).

Prevention of irregular cross border recruitments represents the major objective of MOUs Thailand has signed with the neighbouring countries of Cambodia, Lao PDR and Myanmar (Ruhunage, 2014), but the programme has had numerous problems in implementation. The state of governance has hardly improved with large numbers of irregular populations still continuing (Wickramasekara, 2013; Vasuprasat, 2008). The Korea EPS system with mandatory MOUs was also introduced to reduce irregular migration stocks – a legacy of the previous trainee system. There is no recent information on achievements relating to this objective.

e) Social dialogue for better governance

As noted above, the mapping review did not find any provisions for consultation with social partners or civil society groups in the implementation or monitoring and follow up of agreements. Secondary sources are needed to establish actual practice.

²⁴ Information provided by the WARBE Development Foundation, Dhaka.

While the ultimate responsibility for migration policies and inter-state cooperation lies with the government, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society (ILO, 2010). Reference has been made to principles 6 and 7 of the ILO Multilateral Framework on Labour Migration which stress the role of social dialogue. Cholewinski (2014) points out: “The key actors in the real economy, namely employers’ and workers’ organizations, need to be involved in the negotiation and implementation of BLMAs, which would make them more effective, for example by being more responsive to real labour market needs and improving protection of migrant workers” (Cholewinski, 2015: 245). Employers – public and private – hire workers, and trade unions are concerned with the welfare of workers. Employers’ organizations play a useful role in promoting skills recognition of foreign workers. Consultation with employers helps in matching labour market needs with migrant supply, and ensures better compliance with national labour laws in the treatment of migrant workers and may minimise resort to workers in irregular status. Support of workers’ organizations is essential for effective protection of both migrant and native workers and to the prevention of conflicts within the working population. They also monitor workplace practices, and help to organize both foreign and local workers. At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to vulnerable groups such as those trafficked and/or in irregular status. NGOs are quite active in the Republic of Korea in supporting migrant workers. In origin countries, employer and worker organizations usually play a major advocacy role in promoting appropriate policies and structures for regulating emigration. Employers impart skills to workers that help them in securing foreign jobs. Trade unions support good governance in migration to ensure better protection to workers. Both unions and NGOs play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and dignity.

The BWI/FES Asia-Pacific Regional Seminar on safeguarding rights of migrant workers held during 25-26 September 2014 in Kathmandu, Nepal, reviewed the role of bilateral agreements in Asia. Trade union representatives voiced their concerns to government representatives in the manner in which bilateral agreements were signed, the gaps in the content (particularly with no reference to labour standards and workers’ rights) and the need to strengthen the overall monitoring mechanism of these agreements.²⁵

f) By helping to change laws, policies, practices and adherence to international norms and practices

One may raise the issue whether BAs and MOUs can have any impact in changing the legal and regulatory framework on labour migration. BAs are binding legal agreements, and legislative reform would be needed in some cases to comply with their provisions. One recent example is the case of Saudi Arabia which brought a new Resolution No. 310, or the Household Regulation on Service Workers and Similar Categories, to bring the law in line with their new bilateral domestic worker agreements. The nature of the political regime and the existing legislative frameworks may facilitate or hinder the negotiation and signing of better agreements.

One indicator of this situation is the ratification of relevant international Conventions by countries. While the record of ratification of migrant worker Conventions is poor in Asia and the Middle East, the Philippines has ratified all three migrant worker Conventions as well as the Domestic Worker Convention (C. 189). 11 European Union member States have ratified at least one ILO migrant worker Convention while Italy, Portugal and Slovenia have ratified both Conventions. In Latin America, a number of countries have ratified the 1990 International Convention on Migrant Workers (ICMW). In general most countries have ratified some of the core Conventions in all regions. Kuwait has ratified seven of the eight ILO core Conventions. One can speculate that the higher incidence of agreements with good rights protection in the E&A regions may be due to the fact that many of the destination countries there are liberal democracies that are likely have similar protections within domestic law (Simeone 2014; Monterisi, 2014).

It is an encouraging trend that the issue of bilateral agreements is being incorporated into national laws and policies (Annex 5). Article 25 of the Overseas Employment and Migrants Act

²⁵ See <http://www.bwint.org/default.asp?Index=5765&Language=EN>

2013 of Bangladesh deals with bilateral agreements on migration and spells out the objectives of agreements and the principles followed, migrant protection being the foremost. The Sri Lanka National Labour Migration Policy 2008 clearly acknowledged the role of bilateral agreements and memoranda of understanding between Sri Lanka and host countries in the protection of migrant workers in the labour migration process and to ensure social security rights for migrant workers (MFEPW, 2008).

7.2. In what ways can bilateral agreements promote and protect the rights of migrant workers?

How can BAs and MOUs ensure better protection? Some of the points mentioned under Section 7.1 on governance are also highly relevant to protection, and will not be repeated here.

There are other important factors which determine protection of migrant workers besides bilateral agreements as Monterisi (2014) observes in her review of African agreements:

“Effective protection significantly depends on factors that go beyond BLAs, such as rule of law standards as well as specific labour and/or immigration legislation of the destination country and respective enforcement mechanisms. In countries where these standards are relatively high, protection mechanisms can be set in motion independently from specific provisions in the BLAs, as shown by several convictions by French courts for cases of exploitation filed by seasonal workers from Maghreb against their employers” (Monterisi, 2014: 51).

The persistence of widespread abuses in some destination countries highlights that bilateral agreements with origin countries have not led to necessary reforms in the national law and practice. Effective implementation of agreement provisions would require a significant reinforcement of the labour inspection system and workplace protection, and adequate mechanisms for lodging complaints and access to justice. The Philippines also considers bilateral agreements only as one of the mechanisms guaranteeing the protection of their migrant workers (Box 6). Origin countries in all regions have tried to reinforce and supplement BAs and MOUs with a number of other measures such as regulation of recruitment agencies, national labour migration policies, pre-departure orientation programmes, consular support and migrant resource centres, welfare funds, unilateral imposition of minimum wages, and social security and insurance agreements, among others. It is important to incorporate some of these good elements into bilateral agreements.

Box 6: The Philippines Migrant Workers and Overseas Filipinos Act of 1995

“I. Deployment:

Sec. 4. Deployment of migrant workers: The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declaration or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers.”

Source: Government of the Philippines, 1995.

a) By incorporating provisions in the MOU to ensure protection of the rights of migrant workers

As shown in the review of good practices, Argentina’s agreements with Bolivia, Peru and Ukraine refer to international instruments on human rights and also spell out rights in detail. Similarly Spanish and

Italian agreements refer to fundamental rights and international instruments. Such provisions are rarely found in Asian agreements.

In this respect, New Zealand agreements with Pacific Islands under the RSE provides a very good example: “Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply. Workers are eligible to join unions in accordance with those laws” (New Zealand-Kiribati IAU).

The more usual provisions specify that the employment of workers would be in accordance with the labour laws of the host country or that they will be protected under host country laws.

As highlighted under good practices, agreements also can contain specific articles to address protection concerns such as retention of travel documents, leave entitlements and hours of work, and non-levy of placement fees on workers among others (KSA domestic worker agreements).

b) Taking measures to implement and enforce provisions in BLAs

What is however, more important is the key role of adoption of concrete measures to realize the rights accorded by the agreements. In this context, measures for provision of adequate information to migrant workers, regulation of recruitment agencies, enforcement of workplace protection and access to justice assume priority. Labour inspection services need to be improved in destination countries to enforce protection provisions under BLAs. The Better Work Jordan programme in the garment sector regularly monitors compliance under the Jordan-US Free Trade Agreement through assessment of compliance of factory working conditions with labour law provisions. It defines compliance with labour standards according to eight clusters: four based on ILO core labour standards regarding child labour, forced labour, discrimination, and freedom of association and collective bargaining, and four indicators based on national law regarding working conditions (compensation, contracts and human resources, occupational safety and health, and working time) (ILO & IFC, 2013). This will be difficult to repeat in all countries with BAs/MOUs but a pilot project can be initiated to monitor compliance with BLA provisions at the workplace.

A major problem in the context of the Middle East is the sponsorship or the Kafala system which restricts mobility of workers, preventing them from leaving exploitative conditions of work. The ITUC Policy Brief on domestic workers highlighted that: “so long as migrant domestic workers are excluded from labour laws and remain subject to restrictive kafala sponsorship laws that grant employers extraordinary control over them, no bilateral agreement will provide adequate protection against exploitation. Workers will continue to be vulnerable to exploitation, including forced labour and physical abuse. A fundamental overhaul of the region’s labour laws and the abolishment of the kafala system is urgently needed” (ITUC, 2014: 49). The principle of shared responsibility between origin and destination countries means that the latter should also undertake reforms to the sponsorship system. Bahrain has already moved towards partial reform by making it easier for workers to move from abusive employers. In the case of domestic workers, Saudi Arabia is making recruitment firms sponsor them instead of individual employers in private households (Migrant Forum in Asia, 2014). The DLA Piper report commissioned by the Government of Qatar concluded that the kafala system was “no longer the appropriate tool for the effective control of migration” (DLA Piper, 2014: 44), and recommended that the State of Qatar “conducts a wide ranging and comprehensive review of the kafala sponsorship system with a view to implementing reforms which strengthen and protect the rights of free movement of migrant workers in accordance with Qatar’s international obligations” (DLA Piper 2014: 8).

In relation to the Employment Permit System of the Republic of Korea, an Amnesty International study in 2009 remarked: “Now five years into the EPS work scheme, migrant workers in South Korea continue to be at risk of human rights abuses and many of the exploitative practices that existed under the previous Industrial Trainee System (ITS) still persist under the EPS” (Amnesty International, 2009: 2). More recently, Amnesty International has found that many agricultural workers hired under the Employment Permit System of the Republic of Korea were working in conditions of forced labour subject to exploitation by employers (Amnesty International, 2014). Lee (2015) cites the pro-employer

bias of the EPS system (further reinforced by the economic downturn) as an explanation of the lack of improvement of human rights of migrant workers as originally intended. These highlight the need for effective enforcement of agreement provisions which aim to guarantee worker protection.

c) Addressing problem areas in the MOU on recruitment and wage protection

As noted above the KSA domestic worker agreements deal with recruitment and cost issues. A model employment contract is another way to deal with the issues. Qatar was a pioneer in appending model contracts to bilateral agreements, but there is hardly any evidence on their usefulness. The case study on the Qatar-Sri Lanka MOA mentions that the use of the model contract has been very limited since obtaining authorization from Qatar authorities was impractical according to Sri Lankan embassy officials in Qatar (Ruhunage, 2014). The Ministry of Overseas Indians (MOIA) has proposed a model contract to be adopted in all ECR countries unilaterally although there is no evidence of such adoption (Wickramasekara, 2012). As mentioned above, the KSA domestic worker agreements contain a model employment contract with a number of good provisions.

A new development is the incorporation of wage protection measures into BLAs as seen by the KSA domestic worker agreements where it is stipulated that wages will be deposited into bank accounts. As noted above, the UAE had started this practice earlier although it is not included in its MOUs.

7.3. In what ways can bilateral agreements promote migration and development linkages?

It needs to be recognised that considerable labour migration flows occur outside bilateral agreement frameworks in all regions, which limits their development impact. Moreover labour agreements may have more limited scope than bilateral investment and trade treaties which can directly impact origin country development.

Still a number of BLAs, especially North-South agreements originating from Europe and the New Zealand RSE agreements, have included contribution to development of origin countries as an important objective. Therefore, it is important to highlight relevant issues on how this is to be realized through bilateral agreements.

There are several ways through which development can be promoted through labour migration: expansion of labour mobility opportunities; ethical recruitment and mitigation of brain drain; return and reintegration; supporting diaspora engagement and initiatives; remittance facilitation; and skills training provided to returnees. Some of these do not strictly apply to low skilled migration or temporary migration. It is outside the scope of this paper to discuss these specific contributions, and only a few observations will be made on a few issues such as expanding labour mobility.

a) Streamlining and facilitation of labour flows

A number of origin countries seem to consider overseas migration as a safety valve providing relief to local employment and unemployment pressures and earning much needed foreign exchange earnings in the context of poverty and slow growth (Wickramasekara, 2014a). In this context, they would generally support a bilateral agreement which may guarantee the continuation of existing flows, or promises more labour migration opportunities. Agreements which are superimposed on an existing flow cannot be expected to increase labour mobility significantly. It is only new schemes like the EPS of the Republic of Korea and the RSE of New Zealand which have given rise to new flows of migrant workers. Yet the numbers admitted have not been large as the schemes covered a number of countries with quotas subject to an annual ceiling. Spain mobilised low skilled labour from a number of Latin American countries while Canada had a seasonal worker programme for decades where the numbers admitted have been in the range of 20,000 annually.

The Korean EPS system is said to have provided jobs to 420,000 foreign workers and helped 44,000 SMEs to solve their labor shortages from its inception in 2004 to 2013 (Kyung, 2014). Of course, these job opportunities over several years have been divided among a number of participating countries, now amounting to 16. The highest annual intake was in 2008 when 72,000 workers were admitted. But the number fell to 17,000 the following year with the onset of the economic crisis, and admissions have risen to 62,000 by 2013. The impact on development in one particular country cannot be considered to be large. The Ministry of Labour estimates that overdue wages have been reduced from 37 per cent under the Industrial Trainee System to 1.1 per cent under EPS (Kyung, 2014).

As for migrant workers hired under the New Zealand RSE scheme, the total number has ranged from 6,000 to 7,500 in the past five years. The numbers admitted vary widely among the countries.

Remittance facilitation

Remittances are the most tangible benefit of labour migration. A large part of the volume of remittances to Asia comes from GCC and other Middle Eastern countries. A number of agreements contain a provision that migrant workers are free to remit their savings home subject to the laws of the destination country concerned. Some agreements, particularly in E&A do not make a reference to this, but it does not mean that there are restrictions on remittance transfers. Whether bilateral agreements have made a difference to the volume of remittance flows is an issue which cannot be addressed from this mapping research. Some Italian agreements commit the Italian party agrees to disseminate information on the national remittances system so that migrant workers can make the best choice in remitting money. Again there is no information on actual practice and impact.

b) Incorporating development as an explicit objective in agreements

As explained earlier, framework agreements normally incorporate development of origin countries as an explicit objective. France, Italy and Spain have generally promoted agreements with multiple objectives including promotion of development benefits. France initiated a number of framework agreements for concerted management of migratory flows and co-development (renamed as “solidarity development” as from 2008). Some Italian agreements provide for facilitation of remittances and mobilisation of diaspora associations. The actual impact would however, depend on the extent to which development receives priority among other objectives such as reducing irregular migration. In Asia, the New Zealand RSE agreements with Pacific Islands have a clear development orientation. An evaluation by the World Bank has described the scheme as one of the most effective development interventions. “Migrants from the main participating countries have experienced large gains in income and well-being and employers in New Zealand have gained access to a more productive and stable workforce” (Gibson & McKenzie, 2014: 25). The EPS of the Republic of Korea has also incorporated skill development and return and reintegration of migrants as an integral part of the scheme.

Findings on the development impact of North-South labour migration agreements in the African context are however, mixed (Adepoju et al., 2009; Panizzon, 2013; Seron et al, 2011). According to Panizzon “In terms of thematic coherence, the pacts’ main deficiency is the discrepancy between developmental direction and the categories of labour admitted to the French market. If development were truly a concern, the pacts’ labour migration component would have to be opened up much more widely to lawful entry of low-skilled workers, including seasonal agricultural labour, domestic workers, cleaners, and waiters/waitresses. To date, these categories are included in only the minority of the pacts” (Panizzon, 2013: 91). Similarly a report on coherence of Spanish policies in Africa has also questioned the interplay between development and migration objectives: “Development policy has received interference and has been conditioned by the interests of immigration policy, very focused on reducing the arrival of migrants and ensuring that countries such as Senegal, Mali and Mauritania accept to cooperate in the control and readmission of their nationals. ... These funds not only hint at the subordination of ODA to the Spanish immigration policy, but there are cases which are clearly contrary to the objectives of reducing poverty, promoting human rights and democratic governance as set out objectives of the Spanish cooperation” (Seron, et al., 2011, cited in Monterisi, 2014).

Box 7 highlights a number of promising developments in relation to bilateral agreements in the Asian region.

Box 7: Recent positive developments relating to bilateral agreements

There are a number of encouraging developments and trends in recently concluded bilateral agreements worthy of special mention.

Dedicated domestic worker agreements (concluded by KSA, Jordan, Malaysia)

Very few agreements across regions have incorporated good practices related to gender. In this context, the above domestic worker agreements clearly stand out in incorporating protection provisions for vulnerable female migrants and ensuring their protection under national law. The KSA agreements in particular, contain a number of good features as highlighted in previous sections.

Reciprocal bilateral agreements (India – Malaysia; Argentina – Bolivia)

These agreements provide for bilateral labour flows or two way mobility, and ensure similar rights and conditions of work for nationals of both parties. There is no information at all on the flow of Malaysian workers (possibly intended for skilled workers) if any to India under this agreement.

Standard or model employment contracts in general, and for domestic workers in particular

While Qatar had this provision for a long time, its effectiveness is not known. A standard employment contract is an integral part of the KSA domestic worker agreements.

Development of new labour mobility programmes with mandatory MOU requirements (such as the Republic of Korea's EPS and New Zealand's RSE)

These have been elaborated in previous sections.

New migration laws and policies with articles on the role of bilateral agreements as in Bangladesh or Nepal

Annex 5 describes these provisions.

Government-to-government agreements and public employment services to address challenges of unethical recruitment (EPS MOUs of Republic of Korea; Bangladesh and Malaysia 2013 MOU)

While all bilateral agreements are signed between governments, the difference is that recruitment is also carried out by the public sector under new agreements.

Agreements between origin countries (2003 Philippines-Indonesia agreement; 2005 Philippines – Lao People's Democratic Republic MOU)

There are mutual cooperation agreements reflecting South to South cooperation. The Philippines with its well-developed migration infrastructure can provide technical support to cooperating countries in administration of labour migration programmes and addressing common concerns.

8. RECOMMENDATIONS

The following tentative recommendations can be drawn from the review of the bilateral agreements and MOUs.

8.1. Recommendations to Governments of origin and destination countries

As shown above, the state parties representing origin and destination countries are the main actors in shaping the design and outcome of agreements.

□ Ensure conformity of agreements with international norms relating to human and labour rights of migrant workers

The ratification of relevant international Conventions by both countries of origin and destination and revision of national laws along those lines and their enforcement assume crucial importance in providing the much needed normative foundation to such agreements. There is good practice in this respect from a number of agreements originating in Europe and Latin America. In the case of some North-South agreements, several instances can be found where the destination country had ratified one or both ILO migrant workers Conventions while the origin country had ratified none. One example is the 2003 Portugal-Ukraine 2003 agreement. Ukraine would have clearly benefitted by ratifying the ILO migrant worker Conventions since Portugal had ratified both. This also applies to Italy's agreements with origin countries because Italy has ratified both ILO Conventions. Both France and Spain have ratified the ILO Migration for Employment Convention, 1949 (No. 97). Origin countries can benefit from the ILO supervisory machinery in case of violations of rights when both sides have ratified relevant Conventions. The preamble of agreements could make specific reference to such instruments and key principles including those of equality of treatment and non-discrimination as a minimum.

The emergence of new domestic worker bilateral agreements also highlights the importance of ratification of the Domestic Work Convention, 2011 (No. 189) by both origin and destination countries. In the light of the spirit of the Convention, a crucial step for both groups of countries is to bring domestic work within the purview of national labour laws. Italy has ratified this Convention while only the Philippines has ratified it in Asia. A number of Latin American countries (both destination – Costa Rica and origin – Nicaragua) have ratified C.189.

□ Provide wide publicity and dissemination of agreements and their follow up

Adequately briefing the major stakeholders of the migration process – workers, employers, recruitment agencies, and NGOs concerned with migrant worker welfare – on the provisions of MOUs, how they affect them and on the follow up to be undertaken, would contribute towards ensuring ownership of agreements, and better compliance with their provisions. A good practice (cited earlier) which can be replicated by other agreements is the provision in Korea MOUs ensuring that contract contents are explained to the worker by the sending agency so that he/she can take an informed decision to sign it or not. The joint coordination committees can be made responsible for distributing timely information of the contents of the Agreement in both countries as found in the 2001 Spain-Dominican Republic Agreement.

A dissemination plan covering both origin and destination countries should thus form part of all agreements. This should include translation and providing easy access on websites, and disseminating them to migrant workers and employers in destination countries in appropriate formats. Pre-departure training programmes should explain and highlight the rights and obligations of the agreements to workers.

❑ Include all stakeholders in consultative processes in the development, implementation and monitoring of bilateral agreements

The above review has shown why it is important for all stakeholders, especially social partners to be involved in the negotiation, drafting and implementation of BAs and MOUs. The ILO Recommendation No. 86 proposes tripartite consultation on ‘all general questions concerning migration for employment’ (Art. 4.2). In practice however, such processes have been generally treated as ‘government business’. The belief that migration is part of state sovereignty to be considered by governments only may be a problem in this regard. While the country of origin can involve these stakeholders in the initial stages of consultation and drafting, their involvement in negotiation, implementation and monitoring is a more complex issue because the destination State party has to agree to such involvement. The present study could not locate any concrete examples of such practice. In countries which do not guarantee freedom of association, involvement of social partners will be a major problem. This issue therefore, requires more dialogue among stakeholders to come up with feasible suggestions.

❑ Increasing share of public employment services (PES) in overseas placements

In the 1950s and 1960s, public employment services played the dominant role in arranging labour flows under BLAs. In the post-1990s period, they have played a minor role. In Asia, the poor record of public employment agencies in handling foreign recruitment is related to their lack of knowledge of market trends and bureaucratic nature. The findings of this study and the widespread concern over malpractices of private recruitment agents make a clear case for revival of public employment services. Increased involvement and coordination of diverse stakeholders with public employment services has the potential to render the service competitive and more equitable for migrant workers and their employers. This has happened in the case of the EPS of the Republic of Korea and the RSE of New Zealand, with obvious benefits to workers in reduction of migration costs and increased transparency. Even in Kerala, India, the State Minister of Labour has made a case for revival of public employment services (Khaleej Times, 2012). The idea is not to replace private employment agencies by PES, but to promote PES to serve as role models, and also offer competition to private employment agencies.

❑ Ensuring inclusion of gender specific issues in BAs and MOUs

The lack of a gender dimension in almost all bilateral agreements is a major gap which needs to be addressed urgently. Guideline 4.5 of the ILO Multilateral Framework on Labour Migration urges States to ensure that ‘labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process’ (ILO, 2006:12,). Women workers face specific vulnerabilities being women and when confined in practice to less protected sectors such as domestic work. The new trend for development of dedicated agreements concerning domestic workers should be promoted given that this group has high vulnerability which cannot be addressed in a general agreement when they are not even covered by labour laws of destination countries. Extension of labour law to this group, and incorporation of provisions in the ILO Convention on Domestic Work (C.189) in labour legislation should be considered a priority by destination country governments. Even agreements covering all workers need to refer to specific problems faced by women migrant workers in relation to sexual harassment, night work and maternity protection (OSCE, 2009). It is important to include non-discrimination clauses, concrete complaints and dispute resolution procedures, redress mechanisms, and model employment contracts in BLAs with explicit attention to gender in addition to gender-sensitive training for staff involved in implementation of agreements (Gallotti, 2014).

❑ Concrete implementation and evaluation measures to supplement agreements

While treating MOUs and BAs as a broad framework, it is critical to supplement them by negotiating for the introduction of concrete or practical measures and mechanisms in several areas (Wickramasekara, 2012). This may be done by Joint Committees or working groups appointed by the Joint Committees as separate protocols or annexes to agreements. The most important issues to be addressed are: plan for dissemination of agreement provisions, fair recruitment practices, standard model employment contracts, wage protection measures including minimum wages agreed by both parties, spelling out

clear procedures for monitoring of work contracts and workplace compliance following the signing of agreements, and provisions for social dialogue. These suggestions have also been echoed in current discussions on reform of Qatar's migration policy. For instance, Jureidini's study on labour recruitment conducted for the Qatar Foundation has proposed that Qatar could enter into renewed bilateral arrangements with origin countries (or to maintain representative monitors there) to ensure effective regulation of private recruitment agencies and individual recruiters (Jureidini, 2014). The DLA Piper (2014) on Qatar's construction sector recommended the revision of Qatar's bilateral treaties with origin countries through incorporation of several concrete measures including specification of minimum wages, mandatory model employment contracts, better accommodation standards, labour information centres and wage payment guidelines.

A deadline for the formation of Joint Committees, such as within three months of the agreement coming into force, should be included in agreements. All records of such meetings should be shared with major stakeholders.

❑ Adopt a system for regular monitoring and periodic evaluation of the agreements

A separate article on monitoring and evaluation should be incorporated in the agreement as suggested by a Kathmandu training workshop on BLAs for South Asian countries (SDC, 2014). The current practice of automatic renewal should be done away with because it encourages complacency and lack of follow up. The two state parties of the agreement are encouraged to set up a monitoring system built into the agreement. Independent evaluation before renewal of any agreement with a view to identifying needed revisions should be made mandatory. The agreement also should define required commitments for mobilisation of resources for monitoring and evaluation. Another good practice that can be replicated is the stationing of a Resident Officer in the origin country partner offices to monitor and assist in the implementation of the agreement as done under the EPS of the Republic of Korea.

The present review has brought out serious gaps in information on BAs and MOUs and their operation. Benchmark data on the situation prior to the agreement are needed, especially if the purpose of the agreement is to launch new migration flows. Clear criteria for assessment of the agreements should also be agreed in advance so that data collection can be geared to those areas by both origin and destination countries.

8.2. Recommendations to regional integration and consultative process

❑ Encouraging regional and multilateral processes to agree on common standards

It is to be anticipated that there are many trade-offs in bilateral negotiations even on core issues, as the Asian experience has shown. It is therefore, important to use multilateral and regional forums to openly debate and agree on mutually beneficial improvements to agreements. There are regional consultative processes and also regional economic communities in all regions. The issue of bilateral labour agreements and MOUs can be taken up at these forums to work towards a consensus on a model agreement framework, recruitment guidelines, and minimum wage setting, among others, to be adopted by countries in the region. Bilateral arrangements are accorded increasing legitimacy and have greater potential for impact when they are concluded in the context of regional and multilateral frameworks, which help to reduce unequal power relations between origin and destination (Wickramasekara, 2012; Cholewinski, 2014). The Global Migration Group (GMG) comprising UN agencies and the inter-governmental Global Forum on Migration and Development (GFMD) are multilateral consultative processes where common standards can be debated and adopted.

8.3. Recommendations to social partners and other stakeholders

Given the complex challenges in labour migration, it is important to promote partnerships between important actors such as social partners and civil society. There are several good practice examples such as signing of bilateral agreements between trade unions in origin and destination

countries.²⁶ The ILO-ITUC model trade union agreement of 2009 has provided a blueprint for such agreements. Trade unions such as BWI Asia and NGOs such as the Migrant Forum in Asia have signed agreements for cooperation in protection of migrant workers. The Migrant Forum in Asia has also signed a MOU to promote the migrant rights in the Asia-Pacific Region with BWI, UNI, and PSI Asia Pacific. Employer organizations in origin and destination need to cooperate and play a pro-active role in advocacy of effective implementation of agreement provisions for good governance of migration processes, and protection of migrant workers.

8.4. Recommendations to ILO and other international agencies

Both origin and destination countries need guidelines on the negotiation of BAs and MOUs (ILO, 2013a). There is limited knowledge of the relevance of international instruments including the ILO Model Agreement in such negotiations among countries. It is important to provide guidelines to countries on the most essential elements that need to be included in a bilateral agreement given the wide variation observed in the content of current agreements. The ILO can take the lead role in developing such a policy guide based on the strength of its tripartite framework. The ILO is already assisting countries with the development or assessment of BLAs on request on an ad hoc basis. Technical cooperation programmes provide a suitable entry point to review such agreements, and provide advice as needed. It is also easier to get governments to agree to broad-based consultative processes with social partners and civil society within such programmes.

International agencies can also promote capacity building of institutions and concerned officials, social partners and other relevant stakeholders for the negotiation, drafting and implementation of BAs and MOUs, and social partners. The labour attaches and consular officials of origin countries and officials responsible for implementation in destination countries need training in follow up to the agreements. The SDC Subregional training workshop on bilateral agreements in South Asia held in Kathmandu in February 2014 (SDC, 2014), and the training workshop on bilateral and multilateral arrangements for health worker treaties by the ILO Decent Work Across Borders (DWAB) project²⁷ are examples of good practice in this respect.

8.5. Areas for further work

- In-depth field research of the implementation and follow up processes to BAs and MOUs in both origin and destination countries are needed. A comprehensive assessment framework refining and expanding the evaluation criteria adopted here, and related impact assessment indicators need to be developed. It would be good to select a few pilot countries for such an exercise covering both origin and destination parties in different regions.
- It is suggested to review existing agreements and to propose the best mechanisms for incorporation of gender concerns in bilateral agreements including domestic worker agreements.
- A review of the role of social dialogue in BAs and MOUs with a view to proposing concrete mechanisms on the participation of social partners and civil society in their development, negotiation, implementation and follow up would be useful.
- Existing studies of dedicated social security agreements for migrant workers in different regions could be expanded, with a view to ensuring access and portability of benefits for migrant workers. Where dedicated social security agreements do not exist, it is necessary to assess how such provisions can be built into bilateral labour agreements and MOUs.
- An ILO online repository of BLAs and related good practices could be created in cooperation with countries concerned.

²⁶ http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32

²⁷ ILO DWAB/DOH Training Course on “Challenges and Opportunities of Bilateral and Multilateral Arrangements for the Mobility of Health Professionals and Other Skilled Migrant Workers”, 8-10 October 2014, Tagaytay, Philippines.

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ANNEXES

Annex 1: Methodological note on assessment of BAs and MOUs

The research programme produced two separate evaluative tools for a comparative assessment of the quality and scope of BAs and MOUs to rate the quality (depth) of arrangements (Annex2: Table A1), and their comprehensiveness (breadth) (Annex 3: Table A2). The first set of criteria, developed especially for the current study, rates agreements on the basis of 18 good practices drawn from international norms for good governance of labour migration and protection of migrant workers. The second set of criteria assesses adherence to the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, reflecting the general breadth of an arrangement, or the extent to which the agreement covers a broad range of topics and areas of concern.

The eighteen good practices were produced to support a global assessment of the quality of bilateral arrangements from a rights-based perspective, in consultation with ILO migration experts and building on international instruments, particularly the ILO Multilateral Framework on Labour Migration. It also took into account the GFMD's Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Arrangements. The good practice criteria are intended to not only examine textual references in arrangements, but also to draw on extraneous information, where available, in order to assess to what extent a provision is practically implementable. In practice, it was very difficult to find information on actual implementation, and reliance had to be placed on agreement text.

There is obviously some overlap between the above good practice criteria and elements of the ILO Model Bilateral Agreement. For instance, the text of the Model Agreement proposes practices relating to each provision. For example, Article 22 on the Employment Contract is very specific on what constitutes an acceptable employment contract, which can be linked to Good Practice 9. Therefore, bilateral arrangements have been evaluated primarily according to their consistency with good practice criteria, highlighting gaps which affect implementation, governance and are not in line with international labour standards. Adherence to the model agreement (see Annex 3: Table A2) is examined to evaluate the extent to which BAs and MOUs aim to be comprehensive in scope.

Annex 2. Table A1: Good practices scores by region (Absolute number and percentage of total agreements)

| GP No. | Good practice description | Africa No. of agreements | % of total (n=32) | Asia No. of agreements | % of total (n=65) | Europe & Americas No. of agreements | % of total (n=47) | Total No. of agreements | % of total (n=147) |
|--------|--|--------------------------------|----------------------|------------------------------|----------------------|--|----------------------|-------------------------------|-----------------------|
| 1 | Transparency and publicity; awareness creation about provisions | 32 | 100 | 17 | 26 | 47 | 100 | 96 | 66 |
| 2 | Exchange of relevant information between COO and COD on labour migration, and provision of relevant information to migrant workers | 19 | 59 | 59 | 89 | 46 | 98 | 124 | 85 |
| 3 | Evidence of normative foundations and respect for migrant rights (based on international instruments) | 16 | 50 | 25 | 38 | 15 | 32 | 56 | 39 |
| 4 | Specific reference to equal treatment of migrant workers, non-discrimination and/or protection of migrant rights | 17 | 53 | 14 | 21 | 36 | 77 | 67 | 47 |
| 5 | Provisions to protect migrant workers from recruitment malpractices at both origin and destination | 30 | 94 | 44 | 67 | 16 | 34 | 90 | 62 |
| 6 | Address gender concerns, and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries. | 0 | 0 | 3 | 5 | 0 | 0 | 3 | 2 |
| 7 | Social dialogue involving concerned stakeholders besides government parties; employers in COO and COD, workers, civil society organizations | 0 | 0 | 1 | 2 | 1 | 2 | 2 | 1 |

| GP No. | Good practice description | Africa No. of agreements | % of total (n=32) | Asia No. of agreements | % of total (n=65) | Europe & Americas No. of agreements | % of total (n=47) | Total No. of agreements | % of total (n=147) |
|--------|--|--------------------------------|----------------------|------------------------------|----------------------|--|----------------------|-------------------------------|-----------------------|
| 8 | Coverage of wage protection measures; e.g. timely payment, allowable deductions, provision for overtime work, issue of receipts and payment into bank accounts | 8 | 25 | 27 | 41 | 8 | 17 | 43 | 30 |
| 9 | Concrete and enforceable provisions relating to employment contracts and workplace protection | 13 | 41 | 51 | 77 | 8 | 17 | 72 | 49 |
| 10 | Provision for human resource development and skills improvement | 11 | 34 | 13 | 20 | 25 | 53 | 49 | 34 |
| 11 | Concrete implementation, monitoring and evaluation procedures | 30 | 94 | 60 | 91 | 34 | 72 | 124 | 86 |
| 12 | Prohibition of confiscation of travel and identity documents | 0 | 0 | 5 | 8 | 3 | 6 | 8 | 6 |
| 13 | Provision for recognition of skills and qualifications in the destination country | 0 | 0 | 6 | 9 | 4 | 9 | 10 | 7 |
| 14 | Provide social security and health care benefits for migrant workers | 9 | 28 | 2 | 3 | 33 | 70 | 44 | 30 |
| 15 | Defining clear responsibilities between parties | 12 | 38 | 25 | 38 | 35 | 74 | 72 | 49 |
| 16 | Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice | 1 | 3 | 33 | 50 | 2 | 4 | 36 | 25 |
| 17 | Provision for free transfer of savings and remittances | 22 | 69 | 24 | 36 | 9 | 19 | 55 | 38 |
| 18 | Coverage of the complete migration cycle | 9 | 28 | 9 | 14 | 10 | 21 | 28 | 19 |

Annex 3. Table A2 – 1949 ILO Model Agreement topics (n= 27) (Absolute scores and percentages of total agreements by region)

| Article | Description | Africa | % | Asia | % | Europe & Americas | % | Total | % |
|---------|---|--------|------|------|------|-------------------|------|-------|------|
| 1 | Exchange of Information | 15 | 46.9 | 59 | 90.8 | 42 | 89.4 | 116 | 80.6 |
| 2 | Action against Misleading Propaganda | 2 | 6.3 | 5 | 7.7 | 6 | 12.8 | 13 | 9.0 |
| 3 | Administrative Formalities | 8 | 25.0 | 61 | 93.8 | 42 | 89.4 | 111 | 77.1 |
| 4 | Validity of Documents | 1 | 3.1 | 16 | 24.6 | 36 | 76.6 | 53 | 36.8 |
| 5 | Conditions and Criteria of Migration | 15 | 46.9 | 51 | 78.5 | 39 | 83.0 | 105 | 72.9 |
| 6 | Organization of Recruitment, Introduction and Placing | 21 | 65.6 | 42 | 64.6 | 32 | 68.1 | 95 | 66.0 |
| 7 | Selection Testing | 6 | 18.8 | 18 | 27.7 | 12 | 25.5 | 36 | 25.0 |
| 8 | Information and Assistance of Migrants | 12 | 37.5 | 24 | 36.9 | 21 | 44.7 | 57 | 39.6 |
| 9 | Education and Vocational Training | 11 | 34.4 | 15 | 23.1 | 23 | 48.9 | 49 | 34.0 |
| 10 | Exchange of Trainees | 3 | 9.4 | 2 | 3.1 | 7 | 14.9 | 12 | 8.3 |
| 11 | Conditions of Transport | 1 | 3.1 | 33 | 50.8 | 1 | 2.1 | 35 | 24.3 |
| 12 | Travel and Maintenance Expenses | 8 | 25.0 | 30 | 46.2 | 3 | 6.4 | 41 | 28.5 |
| 13 | Transfer of Funds | 27 | 84.4 | 28 | 43.1 | 8 | 17.0 | 63 | 43.8 |
| 15 | Supervision of Living and Working Conditions | 6 | 18.8 | 0 | 0.0 | 2 | 4.3 | 8 | 5.6 |

| Article | Description | Africa | % | Asia | % | Europe & Americas | % | Total | % |
|---------|---|-----------|--------------|-----------|--------------|-------------------|--------------|------------|--------------|
| 16 | Settlement of Disputes | 5 | 15.6 | 37 | 56.9 | 32 | 68.1 | 74 | 51.4 |
| 17 | Equality of Treatment | 19 | 59.4 | 12 | 18.5 | 35 | 74.5 | 66 | 45.8 |
| 19 | Supply of Food | 0 | 0.0 | 6 | 9.2 | 2 | 4.3 | 8 | 5.6 |
| 20 | Housing Conditions | 0 | 0.0 | 21 | 32.3 | 3 | 6.4 | 24 | 16.7 |
| 21 | Social Security | 4 | 12.5 | 23 | 35.4 | 15 | 31.9 | 42 | 29.2 |
| 22 | Contracts of Employment | 9 | 28.1 | 54 | 83.1 | 11 | 23.4 | 74 | 51.4 |
| 23 | Change of Employment | 0 | 0.0 | 4 | 6.2 | 9 | 19.1 | 13 | 9.0 |
| 24 | Employment Stability | 2 | 6.3 | 2 | 3.1 | 1 | 2.1 | 5 | 3.5 |
| 25 | Provisions Concerning Compulsory Return | 0 | 0.0 | 36 | 55.4 | 4 | 8.5 | 40 | 27.8 |
| 26 | Return Journey | 8 | 25.0 | 8 | 12.3 | 8 | 17.0 | 24 | 16.7 |
| 27 | Double Taxation | 4 | 12.5 | 0 | 0.0 | 6 | 12.8 | 10 | 6.9 |
| 28 | Methods of Cooperation | 31 | 96.9 | 61 | 93.8 | 46 | 97.9 | 138 | 95.8 |
| 29 | Final Provisions | 32 | 100.0 | 62 | 95.4 | 45 | 95.7 | 139 | 96.5 |
| | Total | 32 | 100.0 | 65 | 100.0 | 47 | 100.0 | 144 | 100.0 |

Annex 4: Table A3 – Summary of case studies

| No | Parties to agreement | Year | Type | Pros and cons |
|----|------------------------------|------|-----------------------|---|
| 1 | Tunisia-France | 2003 | Framework | Both permanent workers, young professionals and seasonal workers (900); Reintegration provisions |
| 2 | Spain-Morocco | 2001 | S-N | Seasonal circular migration; supported by external agencies; preference for women with children |
| 3 | Egypt-Italy | 2005 | S-N | Quota driven; pre-departure skills development; diaspora involvement; |
| 4 | Sri Lanka- Republic of Korea | 2012 | Govt. to Govt.; S-N | Effective monitoring; Language tests; Recruitment from roster; reintegration support; limited numbers hired; low hiring of women |
| 5 | Saudi Arabia- Philippines | 2013 | Domestic workers: S-S | Strong protection articles; model employment contract; Recruitment reform; Labour law not extended to DW |
| 6 | Sri Lanka-Qatar | 2008 | S-S | Model contract ; prohibition of fee; applicability of Qatar labour law; active Joint Committee;: But model contract does not work; fees still charged to workers; Dom. Workers excluded from labour law. |
| 7 | Italy-Sri Lanka | 2011 | S-N | Good principles; effective recruitment system; good monitoring & evaluation; Labour law applies; Good outcomes seen; but migrant workers have to pay transport and medical costs |
| 8 | New Zealand- Kiribati | 2011 | Seasonal workers; S-N | Equal treatments & recognition of rights; Predeparture training; Integration support from diaspora; remittance information; But only 77 employed up to now; No employment contract or complaints procedure specified. |
| 9 | Italy-Moldova | 2011 | | Rights recognised; informed on laws; community involvement and circular migration provision; But circulation not working well; Employment contract terms not spelled out; No joint committees; inadequate reintegration provisions. |

| No | Parties to agreement | Year | Type | Pros and cons |
|----|----------------------|------|-----------------------|---|
| 10 | Portugal-Ukraine | 2003 | Not renewed; S-N | Equal treatment including social security benefits; support (IOM) and robust evaluation through third party (WB): limited to only 50 workers, and also not renewed. |
| 11 | Spain-Romania | 2002 | S-N | Coverage of all workers; Quota based; good information campaign; foundation for circular migration; Return provisions; dispute resolution poor; returns poor. |
| 12 | Colombia-Peru | 2012 | Reciprocal agreement | |
| 13 | Argentina-Bolivia | 1998 | Reciprocal: S-S | Robust migration governance effort; Joint coordination committee to oversee BLA; Equal treatment provisions; robust reintegration provisions: Only small numbers benefitted; No provisions for support and stakeholder involvement- -No exchange of information on labor market vacancies; Rights provisions not or poorly implemented. |
| 14 | Canada-Mexico | 1974 | Seasonal workers; S-N | Long existing circular migration (4 decades); robust evaluation by parties; impressive returns; Lack of transparency in selection; Workers tied to employers; Employers exercise power over who returns; rights limited. |
| 15 | Spain-Ecuador | 2001 | S-N | Database of potential workers; significant numbers employed before crisis; no training provisions; returns poor; high incidence of irregular migration |

Source: Compiled from case studies provided in the reports by: Ruhunage (2014); Monterisi (2014); Simeone (2014)

Annex 5: Recognition of BAs/MOUs in national law and policies – Asia

Bangladesh: Overseas Employment and Migrants. Act No. VLVIII of 2013

Article 25. Bilateral agreement on migration:

- (1) The Government may conclude memorandum of understanding or an agreement with another country with a view to increase opportunities of migration by the Bangladeshi citizens for overseas employment, improving management of labour migration, repatriation and reintegration of the migrant workers in the home country, and to ensure welfare and the rights of migrant workers including the members of their families.
- (2) Any memorandum of understanding or agreement under the Subsection (1) shall be concluded on the basis of, among others, the following principles:—
 - (a) protection of the rights, safety and human dignity of all migrant workers within the country or while overseas;
 - (b) protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards; and,
 - (c) assurance of the migrant workers' right to information and the right to redress if their rights are violated in the concerned country.

Philippines: REPUBLIC ACT NO. 8042- Migrant Workers and Overseas Filipinos Act of 1995

SEC. 4. Deployment of Migrant Workers - The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers:

- (a) It has existing labor and social laws protecting the rights of migrant workers;
- (b) It is a signatory to multilateral conventions, declaration or resolutions relating to the protection of migrant workers;
- (c) It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- (d) It is taking positive, concrete measures to protect the rights of migrant workers

Sri Lanka: National Labour Migration Policy 2008

The State clearly acknowledges the role of bilateral agreements and memoranda of understanding between Sri Lanka and host countries in the protection of migrant workers in the labour migration process. A Memoranda of Understanding between labour-sending parties and labour-recruiting parties serve to ensure protection in situation specific work conditions, rights and benefits for workers. The State also recognizes its role in negotiating bilateral agreements with destination countries to ensure social security rights for migrant workers. (MFEPW, 2008: 10).

India: broad principles built into the MOUs: MOIA

1. Declaration of mutual intent to enhance employment opportunities and for bilateral cooperation in protection and welfare of workers.
2. The host country to take measures for protection and welfare of the workers in unorganized sector.
3. Statement of the broad procedure that the foreign employer shall follow to recruit Indian workers.
4. The recruitment and terms of employment to be in conformity of the laws of both the countries
5. A Joint Working Group to be constituted to ensure implementation of the MOU and to meet regularly to find solutions to bilateral labor problems.

Nepal Foreign Employment Policy 2067 (2010)

Special provision of female worker's safety shall be incorporated in bilateral and multi-lateral agreement.

Source: compiled by the author

Annex 6: Acronyms

| | |
|-------------------------|--|
| ASEAN | Association of South-East Asian Nations |
| AU | African Union |
| BA | Bilateral Agreement |
| BIT | Bilateral Investment Treaty |
| BLA | Bilateral Labour Arrangement |
| COO | Country of Origin |
| COD | Country of Destination |
| E & A region | Europe and the Americas region |
| EC | European Commission |
| EPS | Employment Permit Scheme [Republic of Korea] |
| EU | European Union |
| FDI | Foreign Direct Investment |
| GAMM | Global Approach to Migration and Mobility |
| GCC | Gulf Cooperation Council |
| GFMD | Global Forum on Migration and Development |
| GMG | Global Migration Group |
| GPs | Good Practices |
| IAU | Inter-Agency Understanding |
| ICMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Adopted by United Nations General Assembly on 18 December 1990) |
| ILO | International Labour Organization/ International Labour Office |
| ILS | International Labour Standards |
| IOM | International Organization for Migration |
| JC | Joint Committee |
| KNOMAD | Global Knowledge Partnership on Migration and Development (KNOMAD) coordinated by the World Bank |

| | |
|--------------|---|
| KSA | Kingdom of Saudi Arabia |
| MFA | Migrant Forum in Asia |
| MFLM | Multilateral Framework on Labour Migration |
| MOIA | Ministry of Overseas Indian Affairs [India] |
| MOU | Memorandum of Understanding |
| North | Group of countries characterized as the Global North |
| ODA | Overseas Development Assistance |
| OECD | Organization for Economic Cooperation and Development |
| OFII | Office for Immigration and Integration [France] |
| PEAs | Private Employment Agencies |
| PES | Public Employment Service/s |
| POEA | Philippine Overseas Employment Administration |
| RSE | Recognized Employer Scheme [New Zealand] |
| SAARC | South Asian Association for Regional Cooperation |
| SDC | Swiss Development Cooperation |
| SLBFE | Sri Lanka Bureau of Foreign Employment |
| South | Group of countries characterized as the Global South |
| SWP | Seasonal Worker Programme |
| TWG 3 | Thematic Working Group 3 on Low skilled labor migration, The Global Knowledge Partnership on Migration and Development (KNOMAD) |
| UAE | United Arab Emirates |
| UNDP | United Nations Development Programme |
| WARBE | Welfare Association for the Rights of Bangladeshi Emigrants |



For more information visit the ILO topic portal on Labour Migration
www.ilo.org/migration

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