

Labour Migration Branch, International Labour Office, Geneva  
Thematic Working Group 3 (TWG3): KNOMAD, The World Bank

## Research Brief

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

Bilateral labour arrangements (BLAs) such as bilateral agreements (BAs) and Memoranda of Understanding (MOUs) on labour migration have gained significance as tools to facilitate cross-border movement of low-skilled workers and to protect the rights of migrant workers. Through a systematic comparison of BAs and MOUs on low-skilled labour migration across regions, and using a set of good practice criteria based on international standards and norms as a benchmark, ILO/KNOMAD research undertaken in 2014 throws light on major issues involved. It places particular emphasis on provisions ensuring good governance in facilitating labour migration processes, protecting human and labour rights of migrant workers, and reaping development benefits of migration.

#### Background

The ILO has long recognized the potential of bilateral labour agreements as reflected in the ILO Convention on Migration for Employment, 1949 (No. 97) and the accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86). 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.

The evolution of BLAs shows two distinct stages. The 'first generation' of BLAs, especially in Europe, popular since the 1940s, focussed mainly on labour recruitment. There was a virtual stop to immigration flows under bilateral arrangements with the oil crisis and recession in Europe in the 1970s. The post-1990 period has seen a resurgence of a 'second generation' of BAs and MOUs across many parts of the world, including in new countries of origin and destination, such as Asia, Eastern and Central Europe, Africa and Latin America. In contrast to the 'first generation', these 'second generation' BLAs have tended to take the looser form of MOUs, especially in Asia, and included broader objectives such as curbing irregular migration and fostering migration and development linkages besides facilitating labour mobility. The research undertaken, and described in this Brief, focussed on the second generation agreements.

#### Scope and methodology

The research mapped a large number of agreements across regions, and assessed their quality through a detailed content analysis. The study reviewed 151 BLAs and MOUs in different regions:

Africa (32), Asia (65), and Europe and the Americas (54), covering both South to North and South to South labour migration agreements. It employed two criteria to assess BAs and MOUs using a rights-based approach: i) adherence to the provisions of the Model Agreement on Temporary and Permanent Migration for Employment (Annex of ILO Recommendation, 1949, No. 86); and ii) a checklist of 18 Good Practice criteria identified by the ILO. In addition, 15 case studies of specific BLAs were produced to highlight good elements and practices in more detail. The research also included an examination of whether gender concerns and social dialogue (i.e., consultation with workers' and employers' organizations) had been incorporated in the BLAs under review - issues not addressed in previous studies. The work contributes to ILO's on-going efforts to provide evidence-based technical advice on BLAs to its constituents, and complements KNOMAD TWG3 efforts to measure migration costs of low-skilled migrant workers.

The main limitation of the study is that it could not address the actual implementation of the BLAs which would have required intensive field research. The case studies, although drawing upon wider information sources - progress and research reports, evaluations, and other secondary literature relating to the identified agreements - could merely hint at implementation issues.

### Main findings

The assessment of BAs and MOUs can be geared to the three major objectives common to all BLAs: effective governance of labour migration flows, protection of migrant workers, and promoting development benefits of migration - the three thematic areas of the ILO Multilateral Framework on Labour Migration. The study found wide variation in agreements within and across regions in terms of transparency and disseminations, duration, objectives, protection provisions, and monitoring and evaluation mechanisms.

- There has been a resurgence of BAs and MOUs since 1990 with a peak observed in the 2005-2009 period. The decline in the conclusion of new agreements since 2010 may be partly due to the impact of the global economic crisis.
- Ministries of Labour were parties to most of the agreements reviewed except where there were dedicated Ministries of Migration. Agreements of Brazil, France and Spain involved other ministries as well (dedicated ministries, Ministries of Justice, Foreign Affairs and Interior).
- The average BLA contains about 11 of the 27 provisions of the 1949 ILO model agreement regarding temporary migrants. However, actual practice may not be compliant with the detailed guidance provided in the instrument.
- Good practices on transparency, including public dissemination of agreements, can be found, for instance, in the New Zealand Inter-Agency Understandings with Pacific Island States, and several agreements of Spain and Italy with countries of origin, in which contracting parties undertake to disseminate the provisions of the agreements.
- Only a few agreements explicitly aim to protect migrant workers, while policy makers often project this as a major objective of agreements entered into.
- The achievements of BAs and MOUs are more visible when they usher in new labour migration programmes like under the Employment Permit System of the Republic of Korea and the Recognised Seasonal Employer Scheme in New Zealand. There is less visibility about impact and achievement when they are superimposed on already existing labour migration programmes.
- Agreements have made progress in addressing the full migration cycle (i.e. pre-departure, arrival and stay, and return/reintegration), which is only applicable to temporary migration schemes. Some agreements emphasize the "return" part of the cycle primarily to highlight the temporary nature of migrant employment.
- Agreements between South (origin) and North (destination) countries score marginally better in terms of good practice criteria (ahead of South-South agreements).

- Many agreements contain a follow-up mechanism. Overall, 93 per cent of the agreements mention a specific follow-up arrangement, commonly through a joint committee from both parties. What is more crucial is actual practice.
- Three very important good practices were notably absent from almost all agreements: *gender concerns*; *social dialogue*; and *prohibition of confiscation of travel and identity documents*.

### Factors which appear to influence outcomes

The workings of 15 specific BLAs were analysed in more detail. These were selected using several criteria to represent the following: different types of agreements, evidence of implementation or follow-up, high good practice scores, and different types of work (domestic, seasonal, and general low skilled occupations).

These case studies have generated insights into a set of factors which can **improve outcomes**, such as:

- Clear and limited objectives;
- Government to Government Agreements addressing specific labour needs of destination countries through quotas and specific sectoral agreements (e.g. New Zealand Recognized Seasonal Employer scheme (RSE), Employment Permit System (EPS) of the Republic of Korea);
- Openness and transparency in the design, negotiation, implementation and follow up;
- Willingness to address problem areas such as recruitment malpractices (e.g. KSA domestic worker agreements and Korean EPS)
- Existence of a democratic political regime and good labour market institutions compliant with international norms in countries of origin and destination; and
- Good monitoring and evaluation mechanisms from the inception.

Factors which might **constrain the achievement** of desired objectives include:

- Agreements which focus more on objectives such as curbing irregular migration and readmission, rather than promotion of labour mobility;
- Agreements entered into by parties as diplomatic instruments with little evidence to suggest serious intent or commitment to implement;
- Where destination countries have access to multiple sources of labour; and
- Lack of good information and data, and poor monitoring and follow up.

### Recent positive developments and trends

- Countries with no previous history of concluding BLAs have recently entered into such agreements (e.g. Republic of Korea and Kingdom of Saudi Arabia (KSA)).
- Dedicated domestic worker agreements (KSA, Jordan, Malaysia) are addressing concerns of this group of workers, usually not covered by labour laws.
- Interest in development of standard or model employment contracts: KSA domestic worker model employment contracts; Qatar Foundation (QF) Mandatory Standards of Migrant Workers' Welfare for Contractors & Sub-Contractors (Qatar Foundation, 2013); Sri Lanka-UN Women standard contract for domestic workers.
- New migration laws with articles on the role of bilateral agreements: e.g., Overseas Employment and Migrants Act 2013 of Bangladesh.
- Emergence of Government to Government agreements: MOUs of the Republic of Korea with origin countries, New Zealand RSE, and the 2013 Bangladesh and Malaysia MOU. These have led to dramatic reductions in migration costs.

## Recommendations

- **Strengthen the normative foundation of agreements**, through specific references in the preamble, and commitment to international norms and ratification of relevant international Conventions.
- **Promote transparency, dissemination of and follow up to agreements** to ensure that all stakeholders, at both origin and destination, are aware of the provisions of the agreements, and their respective rights and obligations under these.
- **Negotiate and revise agreements to incorporate concrete implementing measures** including through the monitoring of work contracts and workplace compliance; explicit provisions for workers to retain their passports; introduction of concrete complaints procedure and redress mechanism accessible by low skilled workers without fear of retaliation or intimidation; a model employment contract; wage protection including minimum reference wages; incorporation of gender concerns in MOUs; and articles for social dialogue and consultations with social partners and civil society.
- **Adopt a system for regular monitoring and periodic evaluation of the agreements**, particularly through revitalized Joint Committees. Participation of other stakeholders (workers, employers and civil society) should be considered and minutes/records of meetings should be disseminated. No agreement should be renewed without a formal evaluation.
- **Strengthening BAs and MOUs through complementary measures to address gaps in existing agreements**, particularly by origin countries: e.g. Migrant resource centres, strengthened consular support services, fixing minimum wages, welfare funds, voluntary insurance schemes for migrants, and reintegration support.
- **Using multilateral and regional forums & regional integration areas to arrive at consensus on mutually beneficial improvements to agreements and minimum standards**, encouraging cooperation between signing parties and other national organizations.
- **Promoting MOUs between other stakeholders** including between trade unions, NGOs and employers' organizations in origin and destination countries.
- **Providing ILO technical support to countries on BLAs** through advisory services and support in the drafting, negotiation and evaluation of agreements.

## Areas for further work

- In-depth case studies of several migration corridors to examine the practical implementation of and follow up processes to BLAs in both origin and destination countries.
- Study of social security agreements for migrant workers in different regions and their interfaces with bilateral labour agreements.
- Building up a repository of BAs and MOUs on labour mobility.
- Develop a policy guide on bilateral or other international agreements on labour migration to assist constituents in negotiation, implementation and follow up of such agreements.

For a full synthesis report, please see: Wickramasekara, P. (2015) *Bilateral agreements and memoranda of understanding on migration of low-skilled workers: a review*. International Migration Papers No. 120. ILO, Geneva.