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Bilateral Labour Migration Agreements: Trends and Examples of Good Practice

Aurelia Segatti

Labour Migration Expert

ILO Decent Work Team for Southern & Eastern Africa, Pretoria

segatti@ilo.org

Outline

- 1. Terminology: MLAs, BLAs, MoUs, MoAs, etc...**
- 2. Historical overview**
- 3. Recent global & regional trends**
- 4. Key indicators for policy reform**
- 5. Examples and recommendations**

1. TERMINOLOGY

Bilateral labour agreement (BLA):

A format used when the agreements describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with the view to the accomplishment of their goals. BLAs create legally binding rights and obligations (United Nations, 2012b).

Memorandum of Understanding (MOU):

A format entailing general principles of cooperation; the MOU describes broad concepts of mutual understanding, goal and plans shared by the parties. They are usually non-binding instruments.

1. TERMINOLOGY

- MLA: Multilateral agreement
- BLA: Bilateral agreement
- MoU: Memorandum of Understanding
- MoA: Memorandum of Agreement
- Framework Agreements
- Inter-Agency Understanding (IAU)
- Protocols (Additional or Optional)
- 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
- Agreements between origin countries: the Philippines and Indonesia, or Cambodia and Lao PDR
- Reciprocal agreements: India and Malaysia; Lithuania and Poland
- Trainee schemes: Japan, Switzerland, Republic of Korea (replaced by the Employment Permit System)
- Working holiday maker schemes
- Standardized employment contracts
- Multilateral: Mode 4 of General Agreement on Trade in Services: Movement of natural persons

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

1. POLICY MECHANISMS, TECHNICAL INSTRUMENTS, PROJECTS, ETC

MIGRATION AND DEVELOPMENT POLICY FRAMEWORK

Interministerial coordinating structure

LABOUR MIGRATION POLICY

DIASPORA POLICY

ANTI-TRAFFICKING POLICY

MIGRATION CONTROL POLICY

Multilateral protocols

BLAs

Reciprocity agreements

Seasonal workers agreements

Sectoral agreements

Training agreements

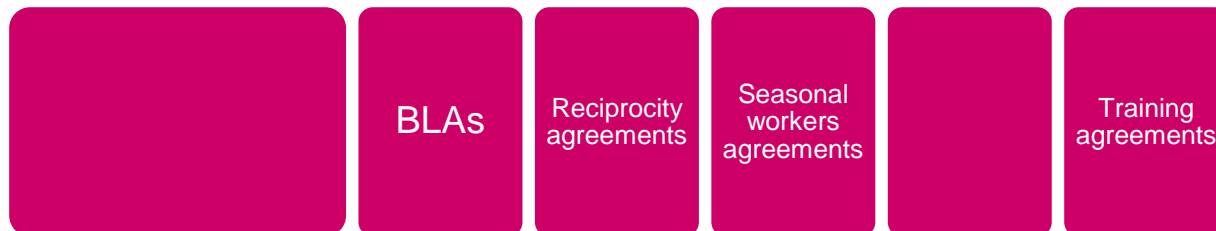
Technical project A

Technical project B, etc...

Bilateral coordinating structure: Joint technical committee with M & E mechanism

1. POLICY MECHANISMS, TECHNICAL INSTRUMENTS, PROJECTS, ETC

Reality of policy development



Uneven and diachronic policy development that needs constant reform and realignment

2. HISTORICAL OVERVIEW

Goes back to early 20th century Europe (France-Italy)

ILO's 1921 Emigration Commission Report issued recommendations

Peak between late 1940s and 1970s (before first oil shock) for reconstruction and development of European economy: Guest workers agreements

New boom since 1990s: but now in emerging countries and South-South

Raises new questions in terms of alignment to ILS, effective protection of workers and competing interests between local and foreign labour forces on dysfunctional labour markets (e.g.: South Africa)

Too little is known on impact of these BLAs on countries in the South

Shift from longer term contracts with benefits to very temporary / circular migration agreements (Wickramasekara 2006) often with decrease in benefits and more precarity for workers

2. HISTORICAL OVERVIEW

Strategies behind BLAS

1. BLAs to accompany growth phases in OECD countries, in GCC countries (labour export / rapid growth rate and labour deficits) between regions

2. BLAs to anticipate on regional integration / pathway to regional integration (in EU for instance) within regional communities

3. BLAs to regularise or formalise existing flows (catch up processes) in developing countries / from developing to developed countries

4. BLAs to deter irregular migration and contribute to development policies

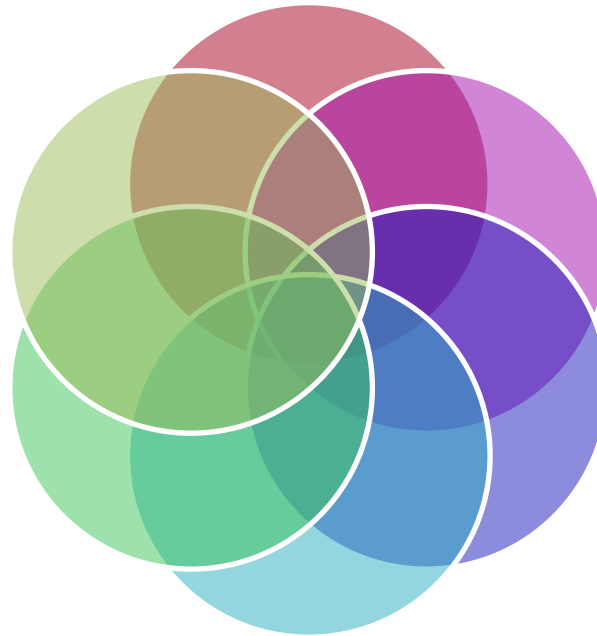
2. HISTORICAL OVERVIEW - INSTRUMENTS

International instruments provide a solid foundation for developing BLAs and MOUs for good governance of labour migration and protection of migrant workers

at 4 levels

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 above instruments, and negotiated through tripartite consultations (ILO, 2006).

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)**.



9 Universal Human Rights instruments and associated Protocols

8 ILO Core Conventions on fundamental principles and rights at work pertaining to forced labour, freedom of association, child labour and discrimination.

3 international migrant worker specific conventions and their recommendations

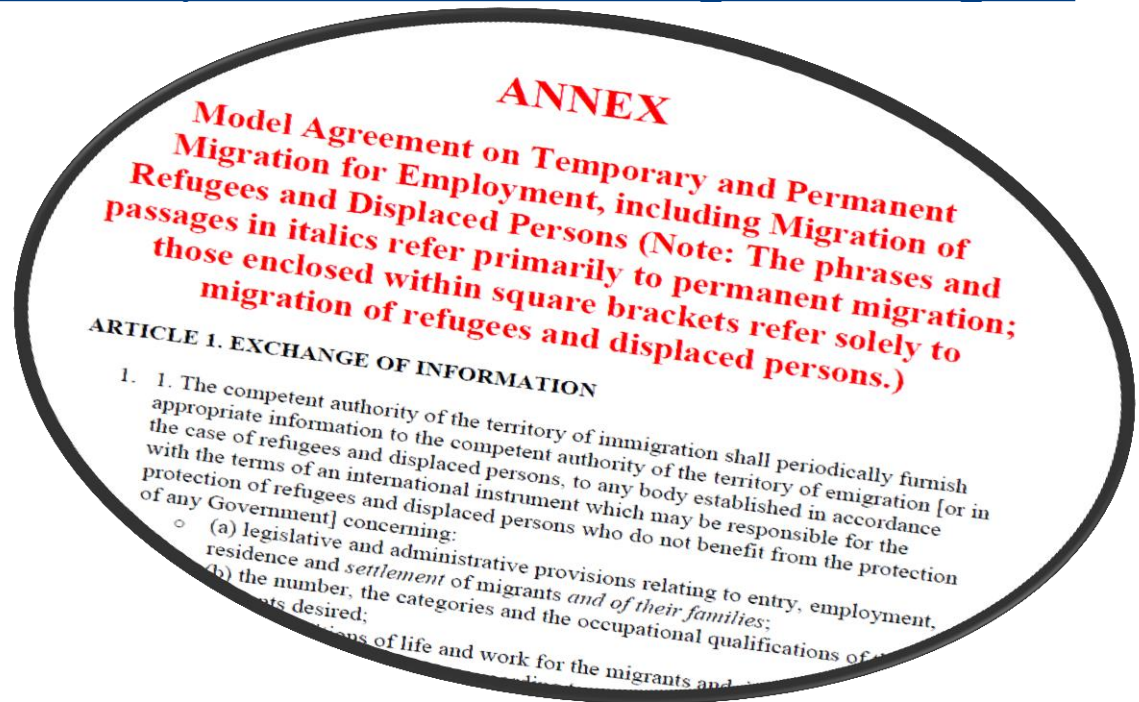
- ILO Migration for Employment Convention, 1949 (No.97) & R86 (**Model Agreement**)
 - ILO Migrant Workers Convention , 1975 (No.143) & R151
- (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

2. HISTORICAL OVERVIEW - INSTRUMENTS

ILO Convention No. 97: Cooperation

- Whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large
- Recommendation No. 86 (Annex): **Model bilateral labour migration agreement**

http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312424



3. RECENT GLOBAL AND REGIONAL TRENDS

- No global study of all BLAs
- Existing data on low skilled labour: ILO-KNOMAD Study (2015)

Table 1. Agreements mapped and case studies

* Figures likely underestimate existing bilateral labour agreements/MOUs.

	Known agreements (estimate)*	Full text agreements mapped	Case studies
Africa	42	32	3
Asia	96	66	5
Europe and the Americas	221	54	7
Total	358	151	15

3. RECENT GLOBAL AND REGIONAL TRENDS

Table 4. Main objectives of BLAs and MOUs on low-skilled workers 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

3. RECENT GLOBAL AND REGIONAL TRENDS

ASIA

Large increase in number of MOUs signed **between Asian origin and destination countries, as well as with the GCC countries;**

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;

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 of the Republic of Korea, the Recognized Seasonal Employer scheme of the New Zealand with selected Pacific Island countries, and domestic worker agreements of Saudi Arabia.

Plans to have free circulation of highly skilled in ASEAN

3. RECENT GLOBAL AND REGIONAL TRENDS

AFRICA

Emergence of 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;

South Africa concluded traditional bilateral labour agreements in the 1960s and 1970s with Lesotho, 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).

3. RECENT GLOBAL AND REGIONAL TRENDS

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 America countries and 49 with outside countries (IOM, 2003: 178).

The growth in agreements during 2000-2004 reflected both with European as well as with other American countries.

4. KEY INDICATORS FOR POLICY REFORM

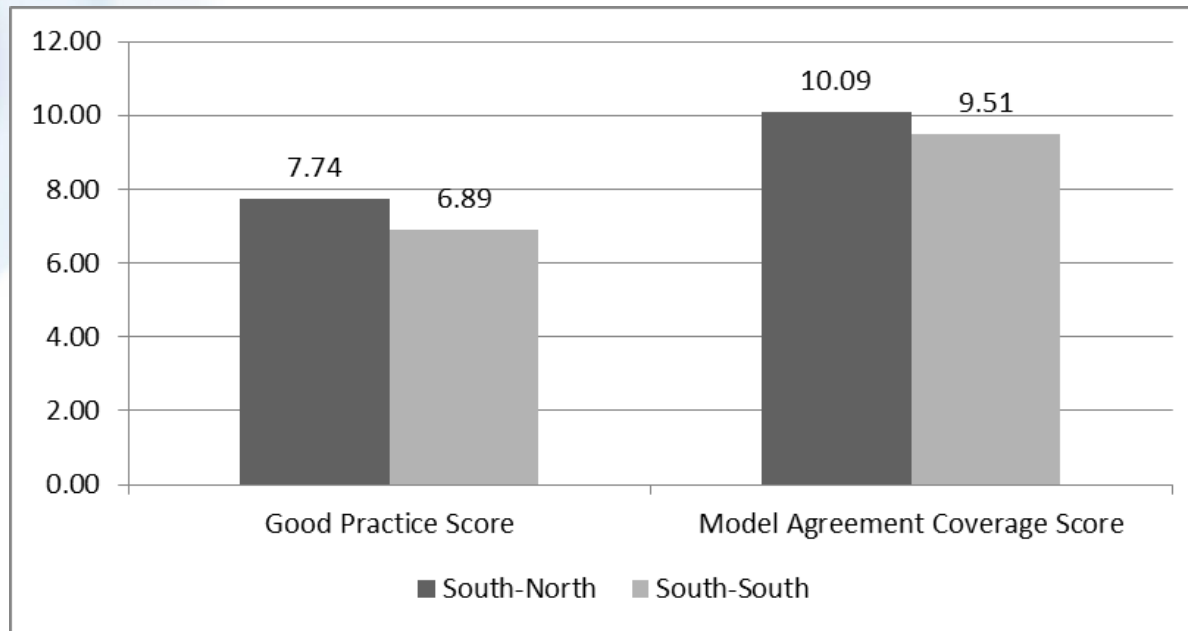
	Criterion	Africa	%	Asia	%	Europe & Americas	%	Total	%
1	Transparency and publicity; awareness creation about provisions	32	100%	17	26%	47	100%	95	63%
2	Exchange of relevant information between CoO and CoD on labour migration, and provision of relevant information to migrant workers	19	59%	59	89%	46	98%	123	81%
3	Evidence of normative foundations and respect for migrant rights (based on international instruments)	16	50%	25	38%	15	32%	56	37%
4	Specific reference to equal treatment of migrant workers, non-discrimination and/or protection of migrant rights	17	53%	14	21%	36	77%	67	44%
5	Provisions to protect migrant workers from recruitment malpractices at both origin and destination	30	94%	44	67%	16	34%	89	59%
6	Address gender concerns, and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries (domestic workers, agricultural workers, etc.).	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%	0	%	0	0%	0	0%
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	28%

4. KEY INDICATORS FOR POLICY REFORM

	Criterion	Africa	%	Asia	%	Europe & Americas	%	Total	%
9	Concrete and enforceable provisions relating to employment contracts and workplace protection	13	41%	51	77%	8	17%	71	47%
10	Provision for human resource development and skills improvement	11	34%	13	20%	25	53%	49	32%
11	Concrete implementation, monitoring and evaluation procedures	30	94%	60	91%	34	72%	124	82%
12	Prohibition of confiscation of travel and identity documents	0	0%	5	8%	3	6%	8	5%
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%	43	28%
15	Defining clear responsibilities between parties	12	38%	25	38%	35	74%	71	47%
16	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice	1	3%	33	50%	2	4%	36	24%
17	Provision for free transfer of savings and remittances	22	69%	24	36%	9	19%	55	36%
18	Coverage of the complete migration cycle	9	28%	9	14%	10	21%	28	19%

4. KEY INDICATORS FOR POLICY REFORM

Chart 4. Good practice and Model agreement scores by North and South (high resp. low IHDI groups)



Source: ILO-KNOMAD 2015 Study

5. EXAMPLES AND RECOMMENDATIONS

Some lessons from case studies (ILO-KNOMAD 2015 study):

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) 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.

BUT none of the case study agreements contain good practice provisions related to: (6) gender concerns and vulnerable migrants; and, (7) social dialogue involving concerned stakeholders.

5. EXAMPLES AND RECOMMENDATIONS

How can BLAs improve governance of labour migration?

1. By formalising the responsibilities of concerned parties:

Spelling out of governments obligations (e.g. KSA domestic worker agreements; MOUs of the Republic of Korea, New Zealand IAUs), migrant workers and their employers, and in some cases those of recruitment agencies;

Malaysian MOUs (with Bangladesh, India and Indonesia) have annexes specifying in detail responsibilities of the three parties: employers, workers and recruitment agencies

2. By adding transparency:

New Zealand RSE;

Spain-Italy;

Korean MOUs contain a provision to explain the contract contents to the worker by the sending agency so that he/she can take an informed decision before signing.

3. By lowering costs and addressing malpractice issues:

KSA domestic worker agreement with the Philippines has a provision under Article 3: “Regulate or endeavour to control recruitment costs in both countries”. The KSA also aims to reform the recruitment system under a mega recruitment initiative.

4. By reducing incentives for irregular migration

Philippines: 30% reduction in irregular migrants to GCC states

5. EXAMPLES AND RECOMMENDATIONS

How can BLAs improve governance of labour migration?

5. By encouraging social dialogue

HOWEVER CURRENTLY MAJOR GAP TO BE ADDRESSED AS NO GOOD PRACTICES

6. By helping to change laws, policies, practices and adherence to international norms and practices.

Philippines has ratified all three migrant worker Conventions as well as the Domestic Worker Convention

11 European countries have ratified Migrant Workers Conventions;

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 domestic workers agreements

5. EXAMPLES AND RECOMMENDATIONS

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 (Recognised Seasonal Employers Policy or RSE in New Zealand, Employment Permit System or EPS in Korea)• 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) (KSA DW agreements)• 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, etc.) (such as certain France-Africa agreements)• Agreements entered into as diplomatic instruments with little evidence to suggest serious intent to implement• Lack of transparency• Weak labour market institutions• Destination countries which have access to multiple sources of labour• 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

5. EXAMPLES AND RECOMMENDATIONS

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).



TAKE HOME MESSAGES FOR PRODUCTIVE BLA (RE)NEGOTIATION

- i. Preliminary study of receiving country's labour record and nature of job offers**
- ii. Assessment of impact on labour market and livelihoods in sending country through analysis of LMIS indicators**
- iii. Assessment of capacity needs to accompany workers and effectively protect them (labour ministries, foreign affairs, trade unions' ability to provide protection and service, etc)**
- iv. Tripartite social dialogue**
- v. A monitoring & evaluation mechanism implemented at regular interval**
- vi. A dispute mechanism that the sending country and workers will effectively be able to access**
- vii. Incorporate a reintegration plan for returned migrants**



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