

# *LABOUR MIGRATION IN ASIA ROLE OF BILATERAL AGREEMENTS AND MOUs*

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# *Structure of the presentation*

- ❖ ILO perspectives
- ❖ Objectives of BAs and MOUs
- ❖ Types and general features
- ❖ Asian situation and examples
- ❖ Areas of concern
- ❖ Elements of good practice
- ❖ Other options to BAs and MOUs

# *ILO Perspectives & key messages*

- ❖ ILO prefers multilateral and regional frameworks and agreements to facilitate migration of labour, and BAs and MOUs to be negotiated within such frameworks.
- ❖ ILO instruments consider BAs to be a good practice – ILO Recommendation, 1949 ( No.86) contains a *Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons*
- ❖ Labour agreements confer benefits to both source and receiving countries (see OECD paper).
- ❖ Some provisions of existing MOUs in Asia do not conform to international norms and good practice on protection of migrant rights.
- ❖ All agreements should ensure protection of rights and decent work for migrant workers.

## *BAs and MOUs – how different?*

- ❖ *Bilateral agreements* are more formal and binding than MOUs. More specific, and action-oriented.
- ❖ *Memorandum of Understanding* – a softer option providing a broad framework to address common concerns.
- ❖ Asian countries seem to prefer MOUs. Why?..
  - This is best explained by countries themselves. Possible reasons:
    - Easier to negotiate and implement than a BA.
    - More flexibility to modify with changing economic and labour market conditions
    - MOUs preferred choice for dealing with low skilled admissions?

# *Why are Asian countries (incl. Middle East) reluctant to enter into labour agreements?*

BAAs and MOUs are the exception rather than the rule in Asia and the Middle East. Why?

- ❖ Receiving countries argue that migrant workers already covered by national laws, and no separate agreement necessary (Stella Go- Philippines).
- ❖ Receiving countries have ready access to labour from different countries; excess of supply of low skilled labour.
- ❖ Labour recruitment regarded as private sector business in a market oriented system: Govt. intervention not needed.
- ❖ Lack of political will – source and receiving countries.
- ❖ Possibility of requests from other sending countries for similar agreements.

# *Diversity of agreements*

- ❖ Bilateral labour agreements
- ❖ Memorandum of understanding: MOU (common in Asia)
- ❖ Statements of mutual labour cooperation or informal assurances
- ❖ Bilateral social security agreements
- ❖ Anti- trafficking agreements:
  - Mekong subregion; Thailand with neighbours.
- ❖ Agreements between labour-sending countries: Philippines and Indonesia
- ❖ Model employment contracts

# *Major issues to be covered in BAs*

- ❖ Exchange of information
- ❖ Recruitment, testing and certification of applicants
- ❖ Sectors, quotas, duration, possibility of renewal
- ❖ Employment contracts and conditions of work
- ❖ Provisions to deal with migrant workers in irregular status
- ❖ Dispute settlement
- ❖ Social security arrangements
- ❖ Return provisions
- ❖ Jurisdiction and enforcement: Joint review committees

(see ILO Recommendation 86, Annex on model agreement)

# *Objectives of BAs and MOUs in Asia*

## Receiving countries

- ❖ Managing irregular migration and promoting orderly labour movements (Malaysia, Korea Thailand)
- ❖ Address labour market needs of employers and industrial sectors
- ❖ Political patronage: accord privileged access to labour market for specific nationalities.
- ❖ Promoting cultural / political ties and exchanges.



# *Objectives of BAs and MOUs in Asia*

## Sending countries

- ❖ To ensure continued access to labour markets of receiving countries.
- ❖ Reduce domestic unemployment pressures
- ❖ Ensure protection of migrant workers' rights and welfare.
- ❖ Earn foreign exchange through worker remittances.

## *Example: Objectives - Thailand MOUs*

- 1) Proper procedures for employment of workers;
- 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party,
- 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
- 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

(Thailand-Cambodia MOU – unofficial translation)

# *Asia: selected countries*

- ❖ China – 4 bilateral agreements (Bahrain, Mauritius, Russia, Malaysia); social security agreements (Germany and Korea)
- ❖ Republic of Korea – MOUs with 8 countries
- ❖ Malaysia: MOUs with 8 countries
  - China, Indonesia, Bangladesh, Vietnam, Lao PDR, Sri Lanka, India, etc.
- ❖ Thailand- MOUs with Cambodia, Lao PDR and Myanmar
- ❖ India: MOUs with Qatar, Lebanon
- ❖ Philippines- 11 bilateral agreements and 7 social security agreements.
- ❖ Taiwan (China)- BAs with Thailand and Vietnam: MOUs with Indonesia, Philippines.
- ❖ Gulf countries: mostly among GCC states only.

# Thailand

- ❖ With 3 neighbouring countries: Cambodia, Lao PDR, Myanmar
- ❖ Transparency of MOUs a good practice; widely disseminated.:
- ❖ Cooperation in curbing irregular migration in exchange for legal migration opportunities: link to registration of foreign workers
- ❖ Workers admitted expected to receive equal treatment in wages and other benefits.
- ❖ 15% of wages withheld into a fund to ensure return
- ❖ Progress: Laos identified 38,000; Cambodia, 7000; Myanmar more difficult because of political situation (Yonyuth paper).
- ❖ End of 2005 Cabinet approved 200,000 workers to be brought in under MOU.
- ❖ 300,000 waiting to be deployed from those in detention and irregular status: Employers to pay 10,000-50,000 baht for each. This measure has caused concern rights groups

# *Malaysia*

- ❖ Very limited information available on MOUs in Malaysia.
- ❖ No standard model: probably conditions different according to sending country.
- ❖ Admitted workers subject to national labour law.
- ❖ Concerns: No minimum standards of conditions of work specified; no right to join trade unions; employers can keep worker passports.
- ❖ Indonesia MOU 2004 leaves out domestic workers – a major vulnerable group.

# *Republic of Korea*

- ❖ Limited information on MOU provisions.
- ❖ 6 signed under Employment Permit System: with Indonesia, Mongolia, Philippines, Sri Lanka, Thailand, Vietnam
- ❖ Linking irregular migration from each country to legal admissions.
- ❖ National labour laws apply to admitted workers.
- ❖ Initial quota uniform and very low in relation to numbers of irregular workers: 6000 workers for each country
- ❖ 3 year work contracts and provision for second assignment
- ❖ Ensuring returns:
  - Only public institutions to be allowed to recruit
  - Limit on fees and runaway workers to affect MOU cancellation; readmission clause

# *Philippines: sending country*

- ❖ Among sending countries most advanced in this area but negotiating “*extremely tedious and difficult undertaking*” (Stella Go’s paper for OECD)
- ❖ 11 bilateral labour agreements (how many active?); 7 social Security agreements (all with Western countries);
- ❖ Not successful to make agreements with countries hosting large numbers of Filipino workers: Saudi Arabia, Singapore, Malaysia, Brunei
- ❖ Major challenge is to monitor and enforcement of agreements signed.
- ❖ Philippines uses other options: high level missions, model contracts, strict regulation of private recruitment companies.

## *Some features of Asian schemes*

- ❖ Competent authority: Ministry of Labour in most cases: China- Ministry of Commerce
- ❖ Tying quotas/admissions to repatriation of workers in irregular status: carrot and stick approach
- ❖ Work permits: short duration (2-3 years); qualifying period for reapplying 1-3 years.
- ❖ Migrant worker rights: All specify application of national labour law, but do not provide enforcement or redress mechanisms.



# *Features: ensuring returns*

- Joint liability and responsibility- source country, intermediaries, employers, workers.
- Possibility of subsequent assignment for worker
- Withholding of wages or social security payments into mandatory funds to be released on return to home country (e.g. Thailand)
- Non-compliant employers may not get rehiring option.
- Focus on jobs /assignments which are by nature temporary
- Withholding part of salary or social security
- Keeping recruitment fees low and making public employment services assume greater control

# *Issues of concern*

- ❖ Focus on recruitment procedures and regulation of migrant flows and not enough on protection: receiving country interests dominant.
- ❖ Major rights denied: freedom of association, confiscation of travel documents by employers; mandatory withholding of wages
- ❖ No provision or guarantees of minimum standards of employment.
- ❖ No standard MOUs implying different conditions for some sending countries.
- ❖ Lack of gender sensitivity: few address gender concerns; some MOUs leave out domestic workers from their scope.
- ❖ No social partner and civil society involvement in design or monitoring
- ❖ Monitoring and enforcement weak and focused on control and less on protection.
- ❖ Does not effectively address the issue of malpractices of migration intermediaries.

# *Good practice*

- ❖ Greater transparency: Thailand MOUs shared.
- ❖ Based on international norms regarding worker rights (e.g. drawing on ILO R86 model agreement)
- ❖ Negotiated on equal partnership between sending and receiving countries: not imposed on weaker economies.
- ❖ Gender-sensitive.
- ❖ Involvement of all concerned stakeholders in design, implementation and monitoring - employers, workers, & civil society in both countries.
  - Malaysian Trade Union Congress 2004 Conference Resolution proposes developing Model MOUs & reviews by unions
- ❖ Backed by effective monitoring, enforcement & evaluation

## *Other options and measures when agreements not feasible*

- ❖ Joint liability provisions: local recruiter liable for contract violations by foreign employers (Philippines)
- ❖ High level missions to and consultations with host countries to look into welfare of migrant workers
- ❖ Establishment of standard model employment contracts (Sri Lanka for domestic workers, Jordan for domestic workers, Philippines)
- ❖ Selective bans to countries violating worker rights
- ❖ Ratification of migrant worker instruments: Philippines is a model in Asia having ratified all three international migrant worker Conventions (both ILO Conventions and the UN Convention).