

## **Something is Better than Nothing**

Enhancing the protection of Indian migrant workers through  
Bilateral Agreements and Memoranda of Understanding

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## 1. Introduction

The character of international labour migration has changed over the last five decades, from a primarily state-driven system to a largely market-driven system. Bilateral agreements have been among the popular strategies for managing migration flows between countries. The 1950s and 1960s were the heyday of bilateral labour agreements (BLAs) in Western countries, when public employment services played a significant part in the recruitment of migrant workers. The global economic downturn starting in the 1970s led many countries to impose curbs on migration flows, and the emergence of ‘Fortress Europe’ with ‘zero immigration’ policy meant a slow demise of the traditional bilateral agreement framework (ILO 2004a). The past two decades has seen a revival of bilateral agreements, with the OECD reporting 173 bilateral agreements in Europe by 2003 (OECD 2004). Until recently, such agreements have been the exception rather than the rule in Asia and the Middle East (Wickramasekara 2006) despite the growing volumes of international labour migrants. A wave of bilateral arrangements in Asia, based on the looser framework of memoranda of understanding (MOUs), has been seen in recent years. India is an interesting case study in this respect given that it is the most important migrant source and destination country in South Asia. The purpose of this paper is to review the status of bilateral MOUs entered into by India and to assess their relevance for the regulation of flows and protection of migrant workers.

## 2. Methodology and definitions

According to the UN Treaty Collection Reference Guide (United Nations 1999: 5), 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. They are entered into either by States or International Organizations.” Technically, bilateral agreements are more formal and binding than MOUs – and closer to “Treaty” status. They are generally more specific and action-oriented. MOUs are also “employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, but are not subject to ratification” (United Nations 1999: 3). The OECD (2004) review of bilateral labour agreements described MOUs as one of the forms of labour recruitment among countries with attention to detail; an MOU may represent a softer option than a legally binding bilateral agreement (BLA), providing a broad framework to address common concerns. The word ‘understanding’ is the key to explaining this difference. Another term adopted in this context is ‘Memorandum of Agreement’ (MOA), which is regarded as more specific and binding than an MOU. As shown below, Qatar has generally used MOAs with Asian destination countries, although in content and practice there seems to be little difference from other MOUs in the region.

This study is primarily a desk review carried out within a short period of time. It employs a content analysis of MOUs signed by India with all GCC countries (excepting Saudi Arabia), Jordan and Malaysia, which represent the bulk of reported migration flows from India. Needless to say, the MOU document itself cannot provide information on the actual outcomes, or the extent to which the provisions were carried out. There is, however, a dearth of official information on the progress of MOUs. It would have been also useful to interview key informants involved in the drafting process, and those who are monitoring the MOUs on both sides. The target group of migrant workers, concerned trade unions, employer organizations, and civil society actors could have provided valuable feedback on their perceptions of the MOUs, but this was not possible in the context of this limited exercise. It was not possible to access the text of the latest revised MOU of India with the UAE, as the Ministry of Overseas Indian Affairs (MOIA) had not published it to its website. The major issue of concern is the follow up to the MOUs and what changes have resulted due to the MOUs. There is no information at all about the meetings of the working committee tasked with overseeing these MOUs, nor is information available on issues addressed or actions taken, either by Indian authorities or the counterpart countries’ officials.

The analysis also did not find any reviews or evaluations of individual MOUs. The references to the operation of MOUs in the media were also extremely limited. The author also did not find any record of where the MOUs had been invoked to help migrants or to resolve situations involving Indian migrant

workers. For instance, the protests and strikes by Indian workers in the UAE in July 2008 led to the arrest of 3,000 workers by the UAE, but there is no record of any discussion of the situation by recourse to the MOU signed with India.<sup>1</sup> There is also no data to analyse the incidence and patterns of worker complaints before and after MOUs were signed.

### 3. Recent interest in MOUs for cooperation on labour migration in Asia

It is the author's view that multilateral agreements are superior to bilateral agreements, since the former provide for a more level playing field in negotiations among parties (Wickramasekara 2006). In bilateral negotiations, the terms can be dictated by the dominant party – in most cases the destination country. The civil society submission to the 2011 Dhaka Consultation also affirmed this: “Multilateral cooperation and agreements are better suited to create a more equitable balance of bargaining power among governments and to avoid market pressures to minimize protections” (MFA, CARAM Asia and HRW, 2011:3). Yet it has been difficult to arrive at multilateral frameworks in Asia on a controversial issue such as migration and bilateral approaches have become the norm.

ILO instruments consider bilateral agreements to be a good practice for governing labour migration flows between countries, and ILO Recommendation 1949 (R.86) contains a Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (ILO 1949). The ILO Multilateral Framework on Labour Migration Guideline 2.3 urges member states to: “promot[e], where appropriate, bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration, such as admission procedures, flows, family reunification possibilities, integration policy and return, including in particular gender-specific trends” (ILO 2006). A recent United Nations meeting involving Asian and Arab states made a recommendation for the need “..to promote transparent and effective bilateral agreements and memoranda of understanding” (UNESCAP 2011: 4).

In the 1950s and 1960s, BLAs between origin and destination countries were the normal means of regulating labour migration. At that time, public employment services played a significant role in the recruitment of migrant workers and supervised contracts setting out wages and working conditions (ILO 2010). However, in most countries this is no longer the case. The international mobility of workers is now increasingly in the hands of private recruitment agencies and state agencies play a minimal role.

In general, there are few bilateral labour agreements in contrast to the proliferation of bilateral investment treaties (BITs), which have become the most important international legal mechanism for the encouragement and governance of foreign direct investment over the past four decades. International competition among potential host countries – typically developing countries – for foreign direct investment may explain this preference. Similarly, there are regional and subregional trading and investment arrangements that are also consistent with the global trend in labour mobility, in contrast to other forms of economic integration (Wickramasekara 2011b).

In Asia and the Middle East there are few bilateral labour agreements that parallel those popular in Europe in the 1950s and '60s (ILO, 2004). The preference among Asian destination countries has been to opt for MOUs for recruitment of foreign labour. I have highlighted some reasons for this preference on the part of Asian countries in an earlier paper (Wickramasekara, 2006):

- The looser form of MOUs make them easier to negotiate and implement than a BLA, which is legally a more complex instrument;
- An MOU provides more flexibility to modify in response to changing economic and labour market conditions. Many 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;

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<sup>1</sup> [http://articles.economictimes.indiatimes.com/2008-07-08/news/27710999\\_1\\_indian-workers-talmiz-ahmed-uae](http://articles.economictimes.indiatimes.com/2008-07-08/news/27710999_1_indian-workers-talmiz-ahmed-uae)

- It is also possible that countries regard MOUs as the preferred choice for dealing with low skilled and semi-skilled admissions. The hiring of low skilled workers has been strictly for temporary stays with no right of settlement or possibility of family unification. The recent approaches of the Republic of Korea, Thailand, and Malaysia lend support to this view, because the MOUs are mainly concerned with the low skilled workers (Dairiam 2006; Lee 2006; Sang-Jin 2006);
- Destination countries also argue that national laws already cover migrant workers, and no separate agreement is necessary (Go 2004). This misses the point that there is a difference between the comprehensive coverage provided by national law and a BLA incorporating international good practice;
- Destination countries in the Gulf or Southeast and East Asia have ready access to migrant labour from different countries. 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 requests from other sending countries for similar agreements;
- Labour recruitment is regarded as a private sector business in a market-oriented system requiring no government intervention (Go 2004).

Some studies fail to distinguish properly between BLAs MOUs: for instance, IOM's categorisation of BLAs and MOUs in Asian origin countries has not been carefully considered (IOM undated). The ILO's 2003 International Migration Survey also referred to BLAs and MOUs interchangeably (ILO 2004b)

### **3.1 Asia and bilateral MOUs on labour migration**

There were very few MOUs on labour migration in the early years of Asian labour migration. The agreements with Qatar (1985) and Jordan (1988) represent the first generation of such agreements entered into by India and the Philippines. The agreement with Qatar is described as a Memorandum of Agreement although it hardly differs from an MOU in format, as noted above. Qatar modified both these agreements by an additional Protocol with India and the Philippines respectively in 2007 and 2008.

There has been a proliferation of MOUs on labour migration over the past 10 years in Asia, as noted above. These started with the decision of the Republic of Korea to introduce the Employment Permit System to admit low skilled workers, and Thailand's decision to enter into MOUs with neighbouring countries of Myanmar, Cambodia, and Lao PDR (Wickramasekara 2006). Both countries of destination were guided by the need to minimise irregular migration, and to meet labour market needs for low skilled workers through regular admissions. At the same time, a number of countries of origin tried to negotiate MOUs with Gulf countries. While this was not possible in the earlier period, there has been a change in attitude among these countries in the recent past. This change may be due to criticisms levelled by NGOs and the media of human rights abuses in the treatment of migrant workers and trafficked persons, and the attempt of Gulf countries to project a better image internationally. Out of 59 agreements in Asia enumerated by IOM (undated)<sup>2</sup>, 53 had been signed in the last five years.

### **3.2 Objectives of MOUs**

There seem to be several main objectives for the drafting of MOUs, although these reasons are not explicitly stated in the texts of these agreements. Destination countries like to use MOUs to manage irregular migration and promote orderly labour movements (e.g. Malaysia, Republic of Korea, and Thailand). At the same time, MOUs can address the labour market needs of employers and industrial sectors. In some cases, political patronage may also account for these programmes, which allow states to accord privileged access to

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<sup>2</sup> Some are not strictly labour migration agreements since they have counted training agreements as well.

the labour market for specific nationalities. Most mention the need to further strengthen or promote cultural and political ties and exchanges.

For origin countries, MOUs may be a means of ensuring continued access to labour markets of destination countries. This is significant, given domestic unemployment pressures felt in many origin countries and the importance of remittances in the economy. MOUs are also regarded as an important step in promoting the protection of rights and welfare of migrant workers.

## 4. India's migration profile in South Asia and the context of MOUs

### 4.1 Statistical profile of Indian migration

India is the most important country in the South Asia region in terms of emigration, immigration, and transit. It hosts 42 per cent of the subregion's total stock of emigrants, and 44 per cent of total immigrant population. However, as a percentage of India's population, both emigrants and immigrants account for less than one per cent, as seen in Table 1.

*Table 1: Population and migration profile – India and South Asia*

	India	South Asia
Population (millions, 2009)	1,155.3	1,568
Population growth (avg. annual %, 2000–09)	1.5	1.6
Population density (people per km <sup>2</sup> , 2008)	383.4	322.7
Labour force (millions, 2008)	447.0	606.6
Unemployment rate (% of labour force, 2008)	—	5.2
Urban population (% of pop., 2009)	29.5	29.8
Surface area (1,000 km <sup>2</sup> , 2008)	3,287.3	5,140
GNI (US\$ billions, 2009)	1,212.6	1,644
GNI per capita, Atlas method (US\$, 2009)	1,180	1,096
GDP growth (avg. annual %, 2005–09)	8.2	7.6
Poverty headcount ratio at national poverty line (% of pop. 2005)	—	
Age dependency ratio (2009)	56.5	58.5
<b>2010</b>		
Stock of emigrants (000s):	11,357.5	26,700
Stock of emigrants as percentage of population:	0.9	1.6
Emigration rate of tertiary-educated population:	4.3	
Stock of immigrants	5,436,000	12,200,000
Stock of immigrants as percentage of population:	0.4	0.7
Females as percentage of immigrants	48.7	45.6
Refugees as percentage of immigrants	2.9	20

Source: (World Bank 2011)

Table 2 shows clearly that India is a country of emigration, immigration, and transit; together with Pakistan, India emerges as the most important in this respect among South Asian countries.

Annex Table A1 shows the outflow of migrant workers from India as recorded by the Protectorate of Emigrants. This is clearly an underestimate, because it covers only those requiring emigration clearance (holding passports marked 'Emigration Clearance Required'). Normally, these would be low skilled and low educated workers who require protection as defined in the Emigration Act of 1983. Currently, there are only 17 ECR countries, as shown in Annex 1. They include all Gulf countries, other Middle Eastern countries, and Malaysia. Annex 2 shows the categories of persons not requiring emigration clearance who are not captured in emigration statistics.

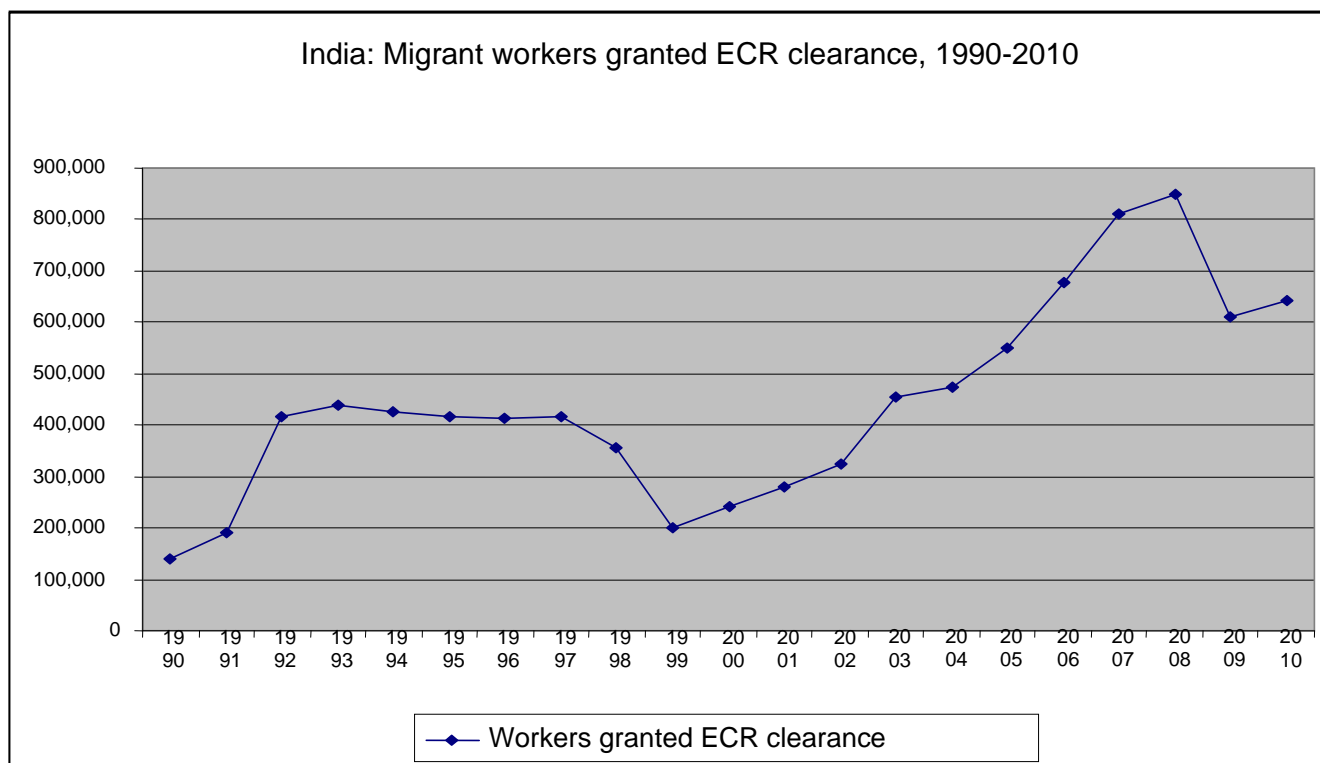
Table 2: Migration status – selected Asian countries

Country	Outflow (annual)	Stock inside 2005**	Stock inside 2010**	Stock abroad (000s) 2010	Remittances US\$ million 2009	Remittances as % of GDP 2009
(1)	(2)*	(3)	(4)	(5)	(6)	(7)
Bangladesh	696,393	1,031,886	1,085,345	5,380,200	10,523	11.8
India	778,322	5,886,870	5,436,012	11,357,500	49,256	3.9
Nepal	211,760	818,702	945,865	982,200	2,986	22.9
Pakistan	204,655	3,554,009	4,233,592	4,667,000	8,720	6
Sri Lanka	218,609	366,390	339,915	1,847,500	3,363	7.9

Notes: Cols. 2-5: no of migrants: \* Column 2 – average of 2006-2008 based on national sources: \*\* \*\*\* United Nations, Department of Economic and Social Affairs, United nations, 2009); Cols. 5 – 7 World Bank 2011; Columns 3 and 4

Figure 1 shows the officially reported number of workers leaving on ECR clearance. The general trend is for an increase in migration outflows, although there has been a drop following the 2008 global economic and financial crisis.

Figure 1



Source: based on data in Annex Table A1

At the all-India level, a major gap in data collection is that emigration data is not classified according to gender. A special survey in the state of Kerala indicated that female emigrants are relatively few, with the share of females among emigrants being 14.4 per cent in 2007 (Rajan 2011). However, an NGO report noted:



Out of the 15 million Indians in the UAE as reported by the Ministry of Overseas Indian Affairs, as of April 2009, unconfirmed sources indicate at least one million are women; every year more than 30,000 (including undocumented) female workers migrate to UAE (MFA, CMA et al. 2010: 3-4).

Even this estimate shows female workers to be only 6.6 per cent of the total.

Another feature of Indian emigration is that it is concentrated in a few states (primarily Kerala, Punjab, Tamil Nadu, Andhra Pradesh, and Maharashtra) (Annex Table A2). Karnataka, Maharashtra, and Rajasthan also account for a sizeable proportion of migrants. Yet these data understate the level of emigration from states such as Kerala, Tamil Nadu, and West Bengal, which have high levels of education, because persons with a secondary level of education are exempted from emigration clearance (Sasikumar and Zakir Hussain 2008).

In terms of destinations, the GCC countries have accounted for about 95 per cent of total reported emigration in recent years (Annex Table A3). Saudi Arabia and the UAE are the largest destination countries, and their relative positions have changed over the years. While the UAE became the largest destination, the numbers have dropped sharply during the global economic crisis period. India has therefore been able to forge MOUs with the most important destinations except Saudi Arabia, which has resisted pressures for agreements from all Asian countries, including India and the Philippines.

#### **4.2 Indian migrant workers – features of vulnerability**

While it is outside the scope of this paper to discuss governance and protection problems of Indian labour migration in detail, this section summarises the context in which MOUs have been designed to address protection and governance issues. As in most South Asian countries, migration flows from India have major features that impinge on the protection and rights of migrant workers (Wickramasekara 2005; Wickramasekara 2011c).

Semi-skilled and low-skilled workers, such as construction workers and retail service workers, dominate the migration flow to the Gulf and Malaysia. These workers face many more problems in both origin and destination countries than skilled workers and professionals. There is also an unknown share of migrants of informal and irregular status in the Gulf countries that may arrive on visit visas or via the free visa system, or whose sponsors have forced them into irregular status, but there is no reliable information on their numbers. The share of female workers migrating independently for overseas employment is also important. India now only permits women who are at least 30 years of age to migrate for low skilled occupations. The commercialisation of the recruitment industry has paved the way for a thriving industry of intermediaries in both origin and destination countries. It is well documented that the recruitment industry has been responsible for various malpractices and for the growth of irregular migration in the region (Wickramasekara 2002; ILO 2008).

There are a number of common governance challenges facing South Asian countries. The main issues relate to fair recruitment practices, high migration costs, corruption, institutional capacities, policy coordination and coherence, among others. In the case of India, the Minister for Overseas Indian Affairs has pinpointed the issue of governance with the following statement:

...the system that the Government had put in place to regulate and streamline the emigration process itself has resulted in corruption and in the formation of a nexus between government officials and recruitment agencies leading to increasing exploitation of the poor (cited in: Rajan et al., 2008).

At the same time, there are widespread violations of basic human and labour rights of migrant workers in destination countries. There are many instances of forced labour in the Gulf and Malaysia, where workers are tied to single employers and cannot leave since they have surrendered passports to their employers. Human Rights Watch, ITUC, and other civil society groups have, in a series of recent reports, highlighted the extreme vulnerability and exploitation of migrant workers in the Gulf,

including Indian migrant workers (HRW 2004; HRW 2006; HRW 2008; HRW 2009; CEC and MFA 2009; ITUC 2011; Verité 2011; Amnesty International 2010; Bormann et al., 2010). Rajan et al (2008) have highlighted common problems with recruitment agencies in Kerala: non-transparency, visa trading, collecting service fees from both foreign employers and emigrants, and collusion with sub-agents and state officials dealing with emigration. Indian migrant workers falling into irregular status because of the free visa trading system or by running away from abusive conditions are extremely vulnerable.

The MOIA has listed the types of complaints received by the offices of the Protector General of Emigrants (PGE) and Protectors of Emigrants (POEs)<sup>3</sup>:

- The employment contract was unilaterally changed to the disadvantage of the workers by the foreign employers;
- The worker was assigned to a different job from the one for which s/he was recruited in India;
- The worker was not given any employment at all by the employer, or was made to look for a job him/herself and forced to pay a commission out of his/her salary;
- The registered recruiting agent charged a higher service fee than prescribed;
- The employer did not pay wages on time;
- The employer terminated the employment contract prematurely;
- The worker was subjected to unsatisfactory living and working conditions or harassment;
- The worker encountered a delay in payment of death or disability compensation.

It is in this context that the newly formed MOIA has strived to revise old agreements and enter into new ones.

## **5. Bilateral cooperation: MOUs of India with destination countries**

### **5.1 Types of bilateral MOUs and agreements**

India has developed three types of bilateral cooperation measures in regard to migration:

- MOUs on labour migration
- Labour mobility partnerships with EU member states (with Denmark)
- Social security agreements

This paper deals primarily with MOUs entered into by the Government of India as listed in Table 4. Among EU member states, India has thus far only entered into a labour mobility partnership with Denmark, although it is actively promoting such partnerships with other EU member states.

Social security agreements developed by the Republic of India with European countries are shown below. Out of these, there are currently six in operation, according to MOIA (Table 3)

There was no progress until the mid 2000s following the labour agreements/MOUs with Jordan and Qatar in the 1980s. The creation of the MOIA in 2004 saw further efforts to enter into bilateral MOUs with destination countries. This led to seven more MOUs being signed between 2006 and 2011, including an additional Protocol for the 1985 Qatar Agreement and a revised UAE agreement, which is indeed a creditable achievement (Table 4).

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<sup>3</sup> MOIA, FAQs on Emigration: How does the Government of India handle complaints filed by emigrant workers?  
<http://moia.gov.in/faq.aspx?cf=11&id1=193&idp=193&mainid=73>

Table 3: Social Security Agreements of India

In force	Date
Belgium	3 November 2006*
Germany	October 2011
Swiss Confederation	29 January 2011
Luxembourg	1 June 2011
Republic of France	1 July 2011
Republic of Korea	July 2011
Not in force	
Kingdom of Norway	
Kingdom of Denmark	
Netherlands	
Hungary	
Czech Republic	

Source: MOIA annual reports and webpage (moia.gov.in)

\*This is the date found in the document, and is not necessarily the date the agreement came into force

Table 4: MOUs of India with destination countries

	Title	Date Signed	No. of Pages	Signatories	Source
1	Memorandum of understanding between the Republic of India and the Kingdom of <b>Bahrain</b> on labour and manpower development	17-Jun 2009	4	Ministry of Labour (Bahrain) & Ministry of Overseas Indian Affairs (India)	Ministry of Labour Bahrain and Ministry of Overseas Indian Affairs (2009)
2	Memorandum of Understanding on manpower between the Government of India and the Government of the Hashemite Kingdom of <b>Jordan</b>	22-Oct 1988	3.5	Ministry of Labour (Jordan) & the Ministry of Labour (India)	Government of India and Government of Jordan (1988)
3	Memorandum of Understanding on labour, employment and manpower development between the Government of the State of <b>Kuwait</b> and the Government of the Republic of India	10-Apr 2007	4	Ministry of Social Affairs and Labour (Kuwait) & the Ministry of Overseas Indian Affairs (India)	Government of Kuwait and Government of India (2007)
4	Memorandum of Understanding on the employment of workers between the government of India and the Government of <b>Malaysia</b>	3-Jan 2009	13 (including annex)	Ministry of Human Resources (Malaysia) & Ministry of Overseas Indian Affairs (India)	Government of India and Government of Malaysia (2009)
5	Memorandum of Understanding between the Ministry of Overseas Indian Affairs in the and the Ministry of Manpower in the Sultanate of <b>Oman</b>	8-Nov 2008	5	Ministry of Manpower (Oman) & the Ministry of Overseas Indian Affairs (India)	Ministry of Manpower Oman and Ministry of Overseas Indian Affairs (2008)
6	Agreement concerning the organisation of manpower employment between the State of <b>Qatar</b> represented by the Ministry of Labour and Social Affairs	11-Apr 1985	5	Ministry of Labour and Social Affairs (Qatar) & Ministry of Labour (India)	Government of India and state of Qatar (1985)

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and represented by the Ministry of Labour

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7	Additional Protocol to the Agreement between the and the State of <b>Qatar</b> on the regulation of the employment of Indian manpower signed on 11 April 1985	20-Nov 2007	3	Ministry of Labour and Social Affairs (Qatar) & Ministry of Overseas Indian Affairs (India)	Ministry of Labour and Social Affairs (Qatar) and Ministry of Overseas Indian Affairs (India) (2007)
8	Memorandum of Understanding between the Government of the <b>United Arab Emirates</b> and the Government of India in the field of Manpower	13-Dec 2006	4	Ministry of Labour (UAE) & Ministry of Overseas Indian Affairs (India)	Government of the United Arab Emirates and Government of India (2006)
9	Memorandum of Understanding between the Government of the <b>United Arab Emirates</b> and the Government of India in the field of Manpower (revised)	23-Sep 2011		Ministry of Labour (UAE) & Ministry of Overseas Indian Affairs (India)	Government of the United Arab Emirates and Government of India (2011)

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Source: Compiled partly based on copies of MOUs at: <http://moia.gov.in/services.aspx?ID1=349&id=m4&idp=81&mainid=73>

Some features of these MOUs should be noted:

First most of these MOUs were developed with countries with which India has had long-running migration flows. Apart from annual flows, these countries also have recorded large stocks of Indian workers. For example, the UAE represents one of India's largest migration corridors. Unlike in the Korean Employment System (EPS) system, which tried to initiate new migration flows, the MOUs of India were imposed on ongoing migration systems. From 2006 to 2011, the MOIA has been able to negotiate and enter into about one MOU per year.

Second, the idea of implementing MOUs was probably not to regulate the flows but to provide a framework to rationalise an already thriving labour circulation programme. Gulf migration provides a good example of the circular migration of low skilled workers where deficits in decent work and rights are highly pronounced (Wickramasekara 2011a).

Third, it is also to be noted that none of the Asian countries of origin, including India, have been able to develop an MOU with Saudi Arabia relating to migrant workers although Saudi Arabia has a very poor record in terms of respect for human and labour rights of Asian migrant workers (HRW 2004). Saudi Arabia has strongly resisted any commitments in this regard, and India has had no success in negotiating an agreement to date.

Fourth, there is also not a single reference to women workers in any of the MOUs. There is mention in some MOUs about categories not covered by labour laws (among which would be migrant domestic workers, predominantly women), but these categories are not specified.

Fifth, the MOUs are renewable, and in fact most are automatically renewed unless either government does not want to proceed with it.

A review of the MOUs brings out the following general structure:

- Preamble/Objective
- Definitions & scope
- Responsible authorities

- Applicable laws for regulation of flows
- Exchange of information/visits
- Job offers & content
- Employment contract rights and responsibilities
- Language versions
- Dispute settlement
- Provision for remittances
- Monitoring and implementation: Joint Committee/Working Group

This is a highly reduced form of the ILO model agreement, which has 26 areas of action (Annex 3). In general, the content of the MOUs seem to highlight that the destination countries have had greater influence in formulating the contents of the MOUs than the country of origin given the competition from a number of other origin countries to send workers (Wickramasekara, 2006).

## 5.2 Analysis of MOUs

The purpose of this section is to review the contents of the various MOUs in relation to the structure shown above.

### 5.2.1 Objectives

The reference to objectives of, or motivations for the MOUs can be found in the Preambles of the MOUs. There are no clearly stated objectives in most MOUs, except for general statements about promoting or strengthening friendly ties and promoting cooperation in the field of manpower and labour. While in press announcements, the government has generally emphasised protection and welfare of migrant workers, this is not explicitly stated in most MOUs except those of Bahrain and Malaysia. Table 5 summarises the information collected from different MOUs.

Only the India-Malaysia MOU (Art. 2) has a specific objective of establishing “a framework relating to the employment, protection and welfare of Workers from India who Intend to work in Malaysia and the Workers from Malaysia who intend to work in India”. It is, of course, a different matter whether these proclaimed objectives are achieved in practice. The 1986 Qatar MOU is also clear in mentioning organising of “the entry of Indian manpower to the State of Qatar”. The Jordan MOU refers to regulating manpower *problems* without specifying what these problems are.

Table 5: Objectives/purposes of the MOUs

MOU with	Purpose/objective (based on Preamble)
Bahrain (2009)	Desiring to enhance the existing friendly relations between the two countries through developing cooperation in labour mobility and manpower development based on the principles of equality and mutual interest in accordance with the laws applicable in both countries and to provide for the protection and welfare of all categories of employees  Reaping mutual benefits
Jordan (1988)	Desirous of strengthening understanding and cooperation between the two countries and further develop their relations and in order to regulate their <i>manpower problems</i>
Kuwait (2007)	Desiring to foster bilateral relations in mutual interest between them  To strengthen cooperation in labour and employment and manpower development

Malaysia (2009)	To establish a framework relating to the employment, protection and welfare of Workers from India who Intend to work in Malaysia and the Workers from Malaysia who intend to work in India
Oman (2008)	Desiring to enhance the existing friendly relations between them through developing cooperation in the field of manpower based on the principles of mutual benefits  Recognizing the benefits to be derived by both countries from close cooperation in the field of manpower
Qatar (1985)	Desirous of strengthening understanding and cooperation between the two countries  To organise the entry of Indian manpower to the State of Qatar
UAE (2006)	Desiring to enhance the existing friendly relations between the two countries through developing the cooperation in the field of manpower based on the principles of mutual benefits  Recognizing the benefits to be derived by both countries from close cooperation in the field of manpower;

### 5.2.2 Scope of the agreements

While not specifically mentioned, the MOUs seem to apply to all workers, but especially low skilled and semi-skilled workers. In the case of India, these are the workers who have to go through ECR process.

The Malaysia-India MOU is the only one that has mutual obligations applying to workers from either country working in the other country; therefore, it is different in tone from the other MOUs. Mutual benefits in other MOUs all are assumed to stem from the supply of workers to meet labour market needs, and possible remittances and employment opportunities for Indian workers.

All MOUs are clear regarding the temporary labour migration regime under which labour flows operate, as seen in the following statement: “All the temporary contractual expatriate workers employed in the UAE for a certain period of time, after which the workers shall leave the UAE to their countries of origin or elsewhere” (Government of the United Arab Emirates and Government of India 2006: Art. 8). The MOUs for both Bahrain and Oman contain similar provisions. None of the MOUs refer to migration or migrant workers, although all the agreements pertain to migration of labour. It is interesting that the India-Bahrain MOU contains a reference to “cooperation in *labour mobility* and manpower development based on the principles of equality” (Preamble). While the GCC countries, particularly the UAE, refer to them as ‘temporary contractual labour’ rather than ‘migrant workers’, they are indeed migrant workers as defined in ILO and UN international instruments (Wickramasekara 2011c).

### 5.2.3 Job offers and the employment contract (UAE, Oman)

A number of MOUs mention that a job offer should consist of the following information: required specifications and qualifications for the jobs; duration of contract; conditions of employment, including the salary agreed on; end of service benefits; medical facilities; leave entitlement; to and fro passage and other facilities such as transportation and accommodation. The Bahrain MOU is much shorter, mentioning only specifications & qualifications for jobs, duration of contract, conditions of employment including salary and end of service benefits. These descriptions fall short of a model employment contract that consists of 15 items as defined by the MOIA on the basis of Emigration Rules of 1983 (Annex 4). The MOIA in its Office Memorandum of 29 July 2011, however, has listed only some of these elements (the first eight) for the model contract to be negotiated (MOIA 2011c).

All MOUs clarify that the individual labour contract should be drawn up between the employer and the employee in accordance with the labour laws of the country concerned. This contract may not be changed or terminated by the employer except when the employee has provided false information about his/her skills or experience. But there is no mention of the right of the employee to redress if s/he has been cheated out of wages, or if the employer has not honoured the contract terms. Qatar is the only case in which the MOA mentions a specimen (model?) contract form, but this annex is missing in the copy of the MOA published online by the MOIA. A web search found a copy of the model contract on the Qatar Indian embassy website; this model contract seems quite detailed.<sup>4</sup> What is not clear is whether this model contract has been adhered to in regard to worker migration to Qatar, and if so, to what extent.

Both Bahrain (Art. 8) and Kuwait MOUs specify that the copy of the contract will be given to the Indian worker within 2 months of arrival. This seems to contradict the requirement in some MOUs that the contract be verified by both destination country and Indian authorities, and shared with the migrant before departure. It also makes it difficult for the migrant to make an informed choice. There is no explanation given for this delay in issuing the contract. If the migrant worker encounters different terms and conditions from what s/he was initially expecting, or the contract is presented in a language that s/he cannot understand, there seems to be no redress available at this point.

The India-Malaysia MOU highlights the “right of employer to determine terms & conditions of employment”. It later adds the standard clause that it will be in accordance with the labour law of the two countries. The Malaysia MOU also contains a separate appendix on the terms and conditions for employment of workers; however, these terms and conditions are not so much on conditions of work, but on the responsibilities of employers, recruiting agencies, and workers. The appendix lists 13 responsibilities for employers, 3 for recruitment agencies, and 4 for workers. Most of the conditions deal with procedures and have little to do with the protection or welfare of workers. The employer has to ensure that the terms and conditions of the contract of employment are clearly stated and that they are fully explained and understood by the worker prior to recruitment. The contract should also state the basic wage and workers’ compensation, and the employer cannot change the contract. The appendix also mentions that the employer should obtain a foreign worker card each of his/her employees, and this should be kept with the worker.

While these are good features, there is no mention of any enforcement mechanism. The MOU is also silent on the issue of passport retention, which is a problem with most Malaysian employers and recruitment agencies (Amnesty International 2010). While recruitment agencies are expected to interview, recruit, and inform workers, the actual situation is that many recruitment agencies assume the role of employers and act as labour contractors for employers in Malaysia (Bormann et al 2010). The MOU does not include any provisions to prevent such abuses.

#### **5.2.4 Provisions for the protection and promotion of the welfare of workers**

It is only the MOUs for Bahrain and Malaysia that directly refer to protection and the welfare of workers in the Preamble. The UAE MOU stipulates that “all workers recruited shall be given protection under the labour law and regulation in the U.A.E” (2006: Art. 4). This is important, but there is no elaboration of how this is done, as most migrant workers continue to experience high levels of abuse and exploitation in the UAE.

The Qatar MOU (Art.8) states: “The Parties agree to take appropriate steps to curb practices detrimental to the welfare of Indian workers seeking work or working in the state of Qatar.” This is a very important provision, but its relevance is diluted by the absence of any clarification of the detrimental practices. It neither specifies what these practices are (high fees by recruitment agents, misleading propaganda, the Kafala system, retention of passports, non-payment of wages, etc.) nor explains what steps would be taken.

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<sup>4</sup> <http://www.indianembassy.gov.qa/imagesOld/lab-cont.html>

It is interesting to examine whether any of the MOUs refer to the rights of workers apart from the standard phrase of rights and obligations. For instance, Art. 6 of the Bahrain MOU mentions that the individual contract between the employer and the worker “shall clearly state the rights and obligations of the two sides and shall be in conformity with labour laws of Bahrain”. A similar statement applies in the case of India’s MOU with Jordan. Malaysia uses the term ‘right’ only in relation to the right of the employer to define the terms and conditions of employment including “wages, allowances, other benefits and hours of work.” Most MOUs accept the right of the worker to remit his/her savings in line with financial regulations of the host country.

The two fundamental principles of migrant worker Conventions and the R86 Model Agreement is that of equality with national workers in relation to terms and conditions of employment and non-discrimination. Only the Preamble of the Bahrain MOU mentions the principle of equality, while there are no references to the need for fighting discrimination in any of the MOUs. Most of these countries have ratified ILO Convention on Discrimination, No. 111.

### **5.2.5 Information provision and sharing**

According to the 1949 ILO model agreement (Art. 8), information and assistance to migrants is very important both before departure in the country of origin and in the destination country upon arrival. The MOUs, however, refer mainly to the exchange of information on labour needs and the availability of Indian labour (Qatar additional Protocol Art. 2), but not to the provision of information to the migrant. It is only the 1985 Qatar MOA (Art. 7) that has a direct reference to the obligation of Indian authorities to provide information to migrants “on the conditions, cost and standard of living” in Qatar. This is much narrower than information needs defined in Article 8 of the ILO model agreement.

### **5.2.6 Dispute resolution**

The standard provision in these MOUs is elaborated in Bahrain’s Article 10:

In case of dispute between the employer and the employee, complaint shall be presented to the competent department in the Ministry of Labour to endeavour for an amicable settlement. If no amicable settlement is reached, the complaint shall be referred to the competent judicial authorities for settlement.

This wording is identical in Art. 9 of the India-UAE MOU (2006). The Kuwait MOU however, mentions that authorities of both states will strive for an amicable settlement of the dispute, after which it will go to judicial authorities of the host state. The India-Malaysia MOU (Art. 13) is careful to pre-empt the involvement of any third party or international tribunal in dispute settlement, and relies only on diplomatic consultation.

The problem with these provisions is the assumption that the parties or the competent authority will find an ‘amicable’ solution to disputes without indicating what procedure will be followed as pointed out by Ghosheh (2009). He adds that:

The procedures to address a dispute between the migrant worker and the employer should be clear and ideally involve some form of arbitration to equitably resolve the issue (Ghosheh 2009: 322). There is good practice internationally: the MOU between Argentina and Bolivia, and another between Argentina and Peru, “include provisions stipulating that national labour inspectors in the country where the migrant domestic workers work are obliged to check on disputes before they are taken further” (Ghosheh 2009: 322).

In the case of Indian MOUs, there is no information at all with respect to whether this procedure has been resorted to after the MOU was signed. In fact, this was understood to be the situation even before the MOUs were signed, where workers covered by labour laws could report or lodge complaints with the Ministry of Labour or with the competent authority, although chances of success have generally been remote.



An assessment of the effectiveness of the dispute resolution procedure is not possible because there is no information about the use of this option before or after the MOU had been signed.

### **5.2.7 Joint Committees for monitoring and follow up**

In all cases, joint committees have been proposed to monitor and follow up on the MOUs, usually consisting of at least three persons from each party. The functions expected are more or less common across the MOUs:

- (a) to review employment opportunities in the destination country and availability of corresponding skills in India;
- (b) to co-ordinate between the two states in the implementation of the MOU and to take necessary action;
- (c) to interpret the provisions of the MOU in case of any dispute and to settle the difficulties that might arise in the implementation;
- (d) to propose review or amendment of any of the articles of the MOU whenever necessary.

This is the most important institution set up under the MOU, and it is indeed a pity that there is hardly any information on its operation, the meetings convened, or issues dealt with.

The MOIA (2011: 9) states that the Joint Working Group:

...serves as a platform to deal with issues such as model contract, minimum wages, documentation requirements, labour dispute redressal, retention of passports, substitution of contracts, dealing with recalcitrant employers, practical solutions to problems of exploitation and abuse of workers, regulation of intermediaries, sharing of experience in manpower deployment, exchange of information on legislative and administrative measures and exchange of labour market information etc.

Few many of the MOUs include provisions on minimum wages, retention of passports, substitution of contracts, dealing with recalcitrant employers, practical solutions to problems of exploitation and abuse of workers, and regulation of intermediaries. It is therefore, unrealistic that the joint working groups will devote too much time to discussing matters not included in the MOUs. In fact, these issues should have been negotiated for inclusion in the MOUs when they were formulated. This is further discussed in the next section 5.3 on Areas of Concern.

### **5.2.8 Summary**

The above review of the MOUs confirms the limited framework of such agreements. The MOIA has listed the broad principles that have been built into the MOUs (MOIA 2011a: 18-19):

- (i) Declaration of mutual intent to enhance employment opportunities and for bilateral cooperation in the protection and welfare of workers;
- (ii) The host country to take measures for protection and welfare of the workers in organized sector;
- (iii) Statement of the broad procedure that the foreign employer shall follow to recruit Indian workers;
- (iv) The recruitment and terms of employment to be in conformity with the laws of both countries;

- (v) A Joint Working Group (JWG) to be constituted to ensure implementation of the MOU and to meet regularly to find solutions to bilateral labour problems.

The second principle has not come out strongly in any of the MOUs, except in the statement that workers will be protected under labour laws. Since this provision was already present in the labour laws even before the signing of MOUs, the value addition of this element cannot be appreciated unless special measures have been proposed by the host countries to ensure compliance with labour laws. The other principles really focus on the process, not so much on protection, which is common to MOUs in Asia (Wickramasekara, 2006).

### **5.3 Areas for concern**

#### **5.3.1 Applicable labour laws**

The MOUs 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.

The issue, however, is that these laws are not generally known to the average migrant worker. The pre-departure country training manuals prepared by the MOIA should highlight the salient features of the labour laws in the host countries, which may differ from country to country (MOIA undated-g). For instance, trade unions are legal in Bahrain, Kuwait, Jordan, and Oman, but not in the other countries covered by MOUs. In the absence of an effective implementation mechanism, there is little in the MOUs to prevent the continuation of the status quo of widespread violations of labour laws by the employers in all the countries concerned. As Verité notes: “Indian migrant labour to the UAE [suffer] the largest concurrence of vulnerabilities to forced labor” (Verité 2010).

It is also important to raise the issue of whether national laws are in conformity with internationally recognized human and labour rights of the migrant workers. The rationale behind the development of international instruments is the recognition that national laws are not adequate to deal with workers who are employed in a country other than his/her own. Such instruments define minimum standards that should be met by all countries. It is important to review national labour laws and their consistency with international labour standards as a matter of priority in these countries, including India.

It is unlikely that the average migrant worker from India or any other Asia country is familiar with the labour laws in the GCC countries, Jordan, or Malaysia. In fact it would even be difficult for Indian policy makers and practitioners or researchers to locate the relevant and up-to-date laws and regulations for some of these countries. In this context, MOUs should have an annex stating clearly what the most relevant provisions relating to ‘rights and obligations’ repeatedly mentioned in the MOUs are. It should also serve as a checklist for the contracts drawn up.

Workers not covered by national labour laws in destination countries are in an even worse situation. This applies to domestic workers, domestic drivers, gardeners, and agricultural workers; these workers are among the most vulnerable categories of labourers. MOUs merely state that appropriate steps will be taken to address their problems. This is a vague statement with no teeth in implementation. At minimum, the MOUs should mention the categories of workers that are not covered, and what steps would be taken to protect their rights.

#### **5.3.2 Absence of a normative framework to guide the MOUs**

A major issue is that none of the MOUs refer to any international instrument that can serve as the basic framework for the elaboration of the MOUs. The three international conventions on migrant workers (ILO Convention No. 97, Migration for Employment [1949], ILO Convention No. 143, Migrant Workers [Supplementary provisions] Convention [1975], and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [1990]) represent an international charter on migrant rights and also on organizing migration movements among countries. India has not ratified any of

these Conventions, nor has Jordan or any Gulf state. The Sabah State of Malaysia ratified C97 under British rule, but it does not apply to other parts of Malaysia. The ILO Multilateral Framework on Labour Migration (MFLM) provides a valuable synthesis of international principles and guidelines on the treatment of migrant workers, and serves as a toolkit for both origin and destination countries to elaborate migration policies as well as to negotiate bilateral MOUs. There is no reference to any international instrument in the MOUs signed by India.

In contrast, the Bahrain-Philippines agreement on health resources refers to the ILO Conventions as noted above. Of course, this applies only to one category of workers that is probably small in number, and the general MOU with India does not make such a reference. India can raise its moral standing by ratifying one or all the migrant worker Conventions, which would be an asset in the negotiation of MOUs.

Table 6 provides information on ILO Core Conventions ratified by the countries concerned.

*Table 6: Ratification of ILO Core Conventions by year*

Country	Freedom of Association		Forced Labour		Discrimination		Child Labour	
	C087	C098	C029	C105	C100	C111	C138	C182
Bahrain			1981	1998		2000		2001
Jordan		1968	1966	1958	1966	1963	1998	2000
Kuwait	1961	2007	1968	1961		1966	1999	2000
Lebanon		1977	1977	1977	1977	1977	2003	2001
Oman			1998	2005			2005	2001
Qatar			1998	2007		1976	2006	2000
Saudi Arabia			1978	1978	1978	1978		2001
United Arab Emirates			1982	1997	1997	2001	1998	2001
Malaysia		1961	1957	1958 den: 1990	1997		1997	2000
India			1954	2000	1958	1960		

Source: ILO labour standards department website (<http://www.ilo.org/global/standards/lang--en/index.htm>)

Indian civil society organizations have recommended that: “In general, the government must make the human and labour rights of its nationals working abroad a central component of any agreement” (CEC and MFA 2009: 20). The Philippines’ Centre for Migrant Advocacy (CMA) has also called for a human rights framework in the formulation of MOUs. GCC countries have ratified some of the ILO’s Core Conventions, especially those relating to forced labour and discrimination (C111), and also some UN universal human rights instruments that could address major protection problems facing migrant workers. Kuwait is the only GCC state to have ratified seven of the core Conventions, including the two Freedom of Association Conventions. Jordan and Lebanon also have ratified seven core Conventions. India’s own record in this respect is poor, since it has ratified only four Conventions, leaving out child labour and freedom of association Conventions.

### **5.3.3 The MOUs confer disproportionate powers on employers**

All MOUs/MOAs recognize the right of employers to define the individual labour contract. While this is qualified by stating that the contract will be in accordance with the labour laws of the country concerned, there is no mechanism spelled out to ensure this. Initial authentication of contracts by the Indian missions in destination countries and the Protectorate General of Emigrants in India is probably one measure. But the problems may arise later when the worker commences work when contract variation or substitution is common. While such unilateral changes or substitution is clearly not in line with the spirit of the MOUs, workers cannot effectively fight against contract substitution, because the laws are heavily weighted in favour of employers.

A recent survey of Kerala workers in the UAE by Verité highlights these issues (Box 1).

**Box 1: Kerala workers in the UAE**

Once in the Gulf countries, workers are subjected to routine violations of terms of employment by employers. Leveraging the threat of deportation, employers force workers to accept poor working conditions and contract violations. Freedom of movement is severely restricted, primarily because workers are required to provide their passports to employers to receive a work permit: In the case of the UAE, one hundred percent of Keralite workers surveyed by Verité had their passports withheld. Workers are not permitted to transfer to other employers, and those who try to work illegally are often caught and jailed. Various illegal deductions take place; for instance, although the contract usually states that food will be supplied for free by the employer, Keralite workers indicated it was not. Further, fifty percent of the workers surveyed by Verité indicated the salary stated in the contract was much higher than what they actually received. Payments are often late and overtime is often underpaid, challenging workers' ability to pay loans incurred for travel fees.

(Verité 2010: 7)

The ILO Survey (2011) of migrant workers in Kuwait and the UAE has also highlighted the day-to-day problems workers experience at the workplace and in living spaces despite having written contracts and legal entries.

**Box 2**

"Behind the gleaming cities of Doha (Qatar) and Dubai (UAE)," are "stories of migrant workers with few rights and inhuman living conditions."

ITUC (2011: 1)

"I never got a raise during my service [of seven years] despite the cost of living doubling. There are a lot of laws to protect our rights here, but companies are violating them shamelessly." – Kumar: an Indian worker in Dubai

Cited in: (Surk and Abbotarch 2008)

The strikes and protests by Indian workers in the UAE in 2008 was a desperate but forceful reminder that little had changed as far as their daily working and living conditions were concerned despite the existence of MOUs. The UAE harshly reacted by arresting 3,000 workers and deported some without taking any action to redress their justifiable grievances.

As ITUC (2011: 3) stated: "Governments in both Qatar and the UAE have taken steps recently to improve the migrants' situation, but application of new laws is patchy, and lengthy court procedures can leave the workers waiting for months without pay when they do seek legal redress."

Amnesty International has summed up the disturbing situation of migrant workers in Malaysia despite the existence of MOUs with countries concerned:

Drawn by the promises of jobs in Malaysia, thousands of men and women travel there every year from Bangladesh, India, Indonesia, Nepal, Vietnam and other countries in the region. Once they arrive, many toil for 12 hours each day or longer, often in unsafe conditions, sometimes enduring physical and verbal abuse from their employers. Many do not receive the wages they were promised in their home countries. The Government of Malaysia has a responsibility to prevent such abuses, which can include exploitation, forced labour, and trafficking in persons. Too often, the state fails to do so (Amnesty International 2010: 5-6).

### **5.3.4 Absence of enforcement mechanisms**

The major gap in the signed MOUs is the absence of any credible mechanism for the settlement of disputes and access to justice. The odds are heavily weighed against individual workers from the start. When passports are taken from the workers, they are like forced labour with no mobility. The Gulf Survey (ILO 2011) found that all workers in the UAE (sample of 1,300) and 80 per cent of workers in Kuwait (sample of 1,000) had to surrender their passports to their employers.

There is no evidence that the labour inspection system has been strengthened following the signing of these MOUs. For the workers, therefore, it is a continuation of the status quo.

In the case of Malaysia, Amnesty International notes:

In principle, most migrant workers are covered by the employment laws generally applicable in Malaysia. In practice, however, the lack of effective enforcement and the dependence of migrant workers on their employers and recruitment agents mean that they have few or no safeguards against abuse (Amnesty International 2010: 7).

The ILO MFLM provides the following guidelines for effective protection of migrant workers at the national level in destination countries (Box 3). Guideline 10.5 is very instructive in this regard: “providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation” (ILO 2006: 20). This is sadly lacking in all of India’s MOUs, which do not seem to create effective and accessible channels to lodge complaints. Therefore, the promised protection is not realised in practice. The average worker may not understand the procedures for lodging complaints, and may risk losing his/her job if s/he attempts to do so.

### **Box 3: ILO Multilateral Framework on labour Migration**

**Principle 10. The rights of all migrant workers ... should be protected by the effective application and enforcement of national laws and regulations in accordance with international labour standards and applicable regional instruments.**

The following guidelines may prove valuable in giving practical effect to the above principle:

10.1. extending labour inspection to all workplaces where migrant workers are employed, in order to effectively monitor their working conditions and supervise compliance with employment contracts;

10.2. ensuring that the labour inspectorate or relevant competent authorities have the necessary resources and that labour inspection staff is adequately trained in addressing migrant workers’ rights and in the different needs of men and women migrant workers;

10.3. promoting the establishment of written employment contracts to serve as the basis for determining obligations and responsibilities and a mechanism for the registration of such contracts where this is necessary for the protection of migrant workers;

10.5. providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;

10.6. providing for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;

10.7. providing effective sanctions and penalties for all those responsible for violating migrant workers’ rights;

10.8. providing information to migrant workers on their rights and assisting them with defending their rights;

10.9. providing information to employers’ and workers’ organizations concerning the rights of migrant workers;

10.10. providing interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary;

10.11. Offering legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration.

(ILO 2006: 19-20)

### 5.3.5 Non-operational Joint Committees

The issues highlighted by the MOIA in relation to the Joint Working Groups, as indicated in section 5.2, seem exaggerated, since many of the MOUs do not refer to a number of pressing issues, e.g. minimum wages, retention of passports, substitution of contracts, dealing with recalcitrant employers, practical solutions to problems of exploitation and abuse of workers, and regulation of intermediaries.

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 signed in 2007. A second meeting with the Kuwait JWG in 2010 is also mentioned, calling attention to a “success story”—the elaboration of a Kuwait work permit format—although this is not explained. The report also states that the first round of JWG meetings was held with all the countries with which labour MOUs have been signed. This is not consistent with the provision of some MOUs, which stipulate a greater frequency for meetings. CMA notes that this is also the case with the Philippines (CMA 2010: 29). In the case of Sri Lanka, meetings of joint committees have not been frequent, and have been largely ineffective.<sup>5</sup> Such meetings normally comprise only government nominees from Ministries of Labour and Foreign Affairs among others. Neither workers nor employers are given a place on such committees, although the MOUs directly concern them. This may be the case with India also, though no information is available on the composition of the JWCs.

## 6. Commissions or Omissions? What the MOUs leave out

The previous analysis was concerned with the contents of the MOUs. It is equally important to look at what they do not contain. In other words, the issue is not about ‘commissions’ but about ‘omissions’. One could hardly find fault with most of the contents analysed above, which are presented at a very broad level in diplomatic language. Yet the MOUs with the Gulf countries, Jordan and Malaysia do not cover issues that are central for migration governance and the protection of migrant workers:

- The Kafala or sponsorship system is a major cause of worker exploitation, and the free visa trading associated with the practice results in irregular migration and forced labour situations. The MOUs avoid any reference to the Kafala System, although there are occasional references to recruitment agencies. In practice, there have been some encouraging reforms, especially in Bahrain, which has established the Labour Market Regulatory Authority. The UAE and Qatar have also made some modifications to make the system more flexible (Khan and Harroff-Tavel 2011; ITUC 2011).
- The MOUs do not refer to high migration costs arising from both sides, and the role of recruitment abuses, which are pronounced in Malaysia as well as in the Gulf countries.
- There is no spelling out of the procedures by which workers can find an amicable settlement or recourse to justice through judicial procedures, as highlighted above.
- The MOUs contain no reference to vulnerable workers, especially women workers who are among the most abused. A few MOUs mention those who do not fall within the purview of labour laws, but their treatment is vague; the MOUs only state that appropriate steps should be taken by the parties. This is important because female domestic workers are extremely vulnerable to forced labour situations. Undocumented workers, or workers in an irregular status, are found in all these countries who fall into this status mostly through abusive recruitment practices. They are exposed to extensive abuse and exploitation, but their situation is completely ignored in the MOUs (Amnesty International 2010; ITUC 2011).

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<sup>5</sup> Private communication by Mr. L.K. Ruhunage, former Deputy General Manager of the Sri Lanka Bureau of Foreign Employment.

- There are no references to minimum employment standards or to enforcement machinery to ensure compliance with labour law provisions, although the MOU mentions repeatedly that the contract and treatment will be in line with national labour laws.
- A major cause of forced labour situations and continuing exploitation is retention of passports by employers—a practice prevalent in all countries concerned. The MOUs are silent on this pernicious practice and measures to deal with it.
- There is no reference to return and reintegration provisions. The MOUs only refer to departure after termination of contracts or repatriation earlier for violation of contract terms or being a threat to public security (Art. 6 of the Qatar Additional Protocol of 2007).
- The MOUs are not accompanied by model contracts of employment, leaving it to employers to formulate the contract. Only the Qatar Agreement contains a model MOU.
- While workers often experience non-payment of wages or delayed payment or unlawful deductions as highlighted by the MOIA, the MOUs contain no specific provisions to protect migrant wages.
- The MOUs contain no reference to the principle of equal treatment (except the India-Bahrain MOU) or to non-discrimination – fundamental rights of migrant workers according to international instruments.
- The MOUs have no provisions for gender-related issues and the special problems experienced by them and the need for special provisions.

## 7. Comparison with other agreements

MOUs of the Philippines and Indonesia with a few Gulf countries were examined with a view to ascertaining whether these countries had been able to negotiate MOUs with more effective protection and welfare provisions for their migrant workers. In general, the contents of these MOUs were qualitatively not much different from those of India.

Article 6(3) of the Philippines MOU with the UAE mentions: “A standard labour or model contract shall be drafted jointly by the joint Committee, as stated in Article 10 below, as part of its functions.” This provision is not found in the 2006 India-UAE MOU. It was not possible to ascertain whether a model contract is mentioned in the 2011 MOU with the UAE.

An important agreement is the MOA between the Philippines and Bahrain on Health Services Cooperation, negotiated in 2007 (Republic of the Philippines and Kingdom of Bahrain 2007). While the scope is narrower, covering only health service personnel, it has some good practice features.

First is the explicit recognition of the rights of workers and the principle of equal treatment. The MOA states: “Human resources for health shall be provided equal employment opportunity in terms of pay and other employment conditions; access to training, education and other career development opportunities and resources; the right to due process in cases of violation of the employment contract.” Next, it adds that: “Human resources for health recruited from the Philippines shall enjoy the same rights and responsibilities as provided for by relevant ILO conventions”.

The innovative element is the commitment to provide the same rights and responsibilities as provided for in relevant ILO Conventions. This should be seen in relation to the fact that the Philippines has ratified both C97 and C143, while Bahrain has not ratified them. The Philippines has ratified all of the ILO’s Core Conventions, but Bahrain has ratified only four (including the two forced labour conventions, C182 and C111).

The MOA also commits to provide “an ethical framework that will guide the recruitment policies and procedures of the contracting parties”. It is clarified in a footnote that this is to be further defined in a separate agreement.

Other important provisions are: a) provision for reintegration for the human resources for the health of those who return to their home country; b) mechanisms for sustainability of the development of human resources for health; and c) mobilization of financial resources to carry out the collaborative actions (Republic of the Philippines and Kingdom of Bahrain 2007). It is important to review whether these good practice features have actually been implemented.

The other interesting model is the labour mobility partnership agreement between India and Denmark (Denmark and India 2009). It has clearly defined areas of labour cooperation (Art. 2): (i) Labour market expansion; (ii) Employment facilitation; (iii) Organised entry and orderly migration; (iv) Exchange of information and cooperation in introducing best practices for mutual benefit. The MOU also specifies equal treatment with nationals in the application of the relevant labour and employment laws of Denmark. It also promotes direct contacts between the employers in Denmark and the state-managed or private recruiting agencies in India without intermediaries. It also commits to ensuring that the terms of the contract are not altered, and that the contract is not substituted by the employer or his/her authorized recruiting agent to the detriment of the worker following recruitment.

In terms of active joint consultations and regular monitoring, the Korean EPS system also has some lessons (Lim, 2011). Its advantage is that it is a government-to-government to recruitment system relying on public employment services. It also provides for pre-departure orientation and proficiency in the Korean language for all recruits, although most of these costs ultimately fall to the workers. It also applies the same agreement to all participating countries with transparency. The Korean EPS attempted to launch a new admission system for low- and semi-skilled workers to replace the previous industrial trainee system. This new initiative launched new migration flows, which gave rise to large stocks of irregular migrants.

## **8. MOUs – Do they make a difference to migration flows and protection and welfare of the average Indian worker in destination countries?**

In theory, one can expect better regulation of labour flows between two countries following the signing of an MOU. In relation to existing MOUs signed by India or other Asian countries this is unlikely to occur, because these MOUs contain no commitments of resources (staff, finance, etc.) to streamline the ongoing migration processes. For an agreement initiating a migration flow for the first time, it may be possible to assess impact on flows. This is the case with the Korean EPS, which is another example of a government-to-government recruitment system. However, it is not realistic to expect an impact on flows when the flow has been established over a period of time, and handled mainly by the private sector. Battistella and Khadria (2011) have tried to assess patterns of labour migration flows based on the signing of MOUs in some Asian countries, including India (Battistella and Khadria 2011). The lack of consistent results is to be expected, because there were no accompanying measures to augment flows. In common with other Asian countries, it is mostly the private sector that handles recruitment and placements together with their counterparts in the Gulf countries, Jordan, and Malaysia—the MOUs had hardly any impact on these arrangements. The global crisis also meant that new demands for migrant workers have been minimal since 2008.

This can be further substantiated by raising the question as to what actions have been or could have been taken by the two countries following the signing of an MOU. In other words, are there any reasons to expect substantive changes following the signing of an MOU?

### *India*

- Has there been any briefing of the stakeholders on the MOU? (i.e. recruitment agencies, state governments, intending migrant workers)
- Has the competent authority modified recruitment procedures in line with the MOU?



- Has the country made any plans or forecasts of targets of migration flows to be achieved?

In general, there is little evidence to show that the Indian Government has made any tangible measures following the signing of MOUs.

#### *Country of destination (COD)*

- Has the COD publicized the MOU and briefed employers, sponsors, and workers on the provisions of the MOU?
- Has the COD introduced or revised any enforcement legislation or procedures in line with the MOU?
- Has the COD allocated more resources to labour inspection and supervision of workplaces and employer practices to ensure compliance with labour law as mentioned in the MOU?
- Has the COD created any new complaints and redress mechanisms for the individual workers?

Again, there is hardly any information to show that the MOU has made any difference in the country of destination.

#### *Migrant workers*

- Has the individual migrant worker experienced greater employment and job security following the signing of the MOU?
- Have there been fewer complaints following the signing of the MOU?

There is little evidence to trace tangible improvements in the protection and welfare of workers either in Gulf countries or Malaysia in recent years.

#### *Joint action by India and the COD*

- Has either country carried out studies on the impact or evaluation of the MOU?
- How effective have the Joint Committees been? Have they met as specified? Were they able to address key issues?
- Has there been transparency in these processes?

In sum, apart from the initial press publicity, there is little evidence of any concrete measures following the signing of MOUs. Therefore, the MOUs cannot be expected to have tangible impacts on the living and working conditions of the large number of migrant workers in destination countries.

## **9. MOUs are not everything: Other possible measures for protection of migrant workers**

It is clear that MOUs or MOAs are by no means panacea for dealing with the complex issues of labour migration governance and protection of migrant rights. Many Asian countries have used, and are using a number of other initiatives and measures to govern migration and to protect their workers. The 2010 ILO publication – *International labour Migration: A rights based approach* – highlighted the elements of a protection package to be adopted by origin countries (Box 4). It clearly shows that MOUs and MOAs are only one of the options.

#### Box 4: A Protection package for countries of origin

"Protection of migrant workers is an important consideration for policy-makers in both origin and destination countries. Clearly, protection of migrant workers' human and labour rights should begin in the country of origin. Adequate preparation for the conditions of work abroad and information about their rights will be conducive to a better experience for migrant workers in destination countries. A protection package by origin countries for their nationals should normally consist of the following: ratification of international standards; pre-departure orientation and information; regulation of private recruitment agencies; provision of adequate consular support functions; negotiation of model employment contracts; establishment of bilateral agreements and memoranda of understanding with destination countries; engagement of social partners and civil society to provide support to migrant workers; provision of welfare funds and welfare programmes for families left behind; and aid in reintegration for those returning."

(ILO 2010: 156-157)

Table 7 provides a detailed list of the range of government interventions in the field of overseas migration and protection of migrant workers in selected Asian countries, including India.

- *Joint liability between local employment agencies & foreign employers*  
The Philippines is using this option to ensure that local recruiters are held responsible for employer malpractices. How this is ensured in practice is not clear.
- *Selective deployment ban to countries violating workers' rights*  
A number of countries have used this option to protect their workers from rampant abuse, even with MOUs. For instance, Bangladesh, Cambodia, Indonesia, and the Philippines have adopted the practice. India has banned deployment of Indian workers in Iraq. The revised *Filipino Migrant Workers Act* prohibits the deployment of Filipino workers to countries without the necessary certification as "safe destination" from the Department of Foreign Affairs (DFA); one criterion in deciding a safe destination is whether or not the country had signed a bilateral MOU or agreement with the Philippines. However, this has not prevented protection problems for Filipino workers. Cambodia imposed a temporary ban on sending domestic workers to Malaysia on 15 October 2011 in the face of significant abuse of workers (HRW 2011). Indonesia also imposed a ban on sending domestic workers to Malaysia in the face of continued abuse in June 2009. Normally these bans imposed on women migrants have evoked mixed responses from NGOs and rights activists as discriminatory for women. In practice, these bans are temporary and are usually removed following assurances from the host country.
- *Model employment contracts*  
A number of countries including India, Philippines, and Sri Lanka have adopted model employment contracts to counter continuing contract problems. India was successful in negotiating such a model contract with Qatar in its 1985 agreement, although there is no available information on its enforcement. Now the MOIA has instructed its missions in all 17 ECR countries to develop model contracts based on the 1983 Emigration Rules as part of bilateral MOUs or outside them (MOIA 2011c).
- *Unilateral fixing of minimum wages*  
Another measure adopted by origin countries in Asia is the fixing of minimum wages for specified categories of workers to prevent the erosion of wages in destination countries through unhealthy competition and unfair recruitment practices. The Philippines fixed the minimum wage for domestic workers at US\$400 in 2007, although it met with a lot of opposition from employers, particularly in Saudi Arabia. It is mentioned that the demand for Filipino domestic workers fell by almost 50 per cent as a result (Surk and Abbotarch 2008). Sri Lanka also fixed wages of domestic workers at a minimum of US\$250, although there is no information on how this was enforced. India had attempted to fix a minimum wage in Bahrain (BD 100) in early 2008, but decided to put it on hold following resistance from employers and the Bahrain government. The MOIA has recently instructed missions in all 17 ECR countries to fix reference minimum wages for broad categories such as

Table 7: Government Functions and Services Provided by Overseas Employment Programmes, Selected Labour-Sending Countries

Countries	Bangladesh	India	Sri Lanka	Philippines
<b>Standard setting and enforcement</b>				
Minimum standards for work contracts	*****	*****	*****	*****
Pre-employment briefing				*****
Pre-deployment briefing	*****		*****	*****
Restriction on passport issue	*****	*****	*****	
Emigration clearance to leave country	*****	*****	*****	*****
Trade test requirement		*****	*****	*****
State-subsidized skills training	*****	*****	*****	*****
Negotiation of supply agreements	*****	*****	*****	*****
Social security arrangements			*****	*****
Performance bond from worker		*****	*****	*****
Repatriation bond or fund		*****	*****	*****
<b>Supervision of Private Recruitment</b>				
Licensing/regulation of private recruiters	*****	*****	*****	*****
Ban/restriction on direct hiring	*****	*****	*****	*****
State operation of recruitment agency	*****	*****	*****	*****
Periodic inspection of recruitment agency	*****	*****	*****	*****
Limit recruitment fee charged to worker	*****	*****	*****	*****
Cash/security bond requirement	*****	*****	*****	*****
Regulation of job advertising	*****	*****	*****	*****
Renewal of contract clearance				*****
Joint and solidarity liability			*****	*****
Client referral service				*****
<b>Settlement of Claims/Disputes</b>				
Conciliation on site/upon return	*****	*****	*****	*****
Adjudication system		*****	*****	*****
<b>Welfare Services</b>				
Contribution to Welfare Fund	*****		*****	*****
Labour Attaché assistance	*****	*****	*****	*****
Welfare Centres			*****	*****
Welfare Officers			*****	*****
Low-cost insurance	*****		*****	*****
Legal aid to worker in distress on site	*****	*****	*****	*****
Repatriation assistance	*****	*****	*****	*****
Social welfare services	*****		*****	*****
Education facilities	*****		*****	*****
Scholarships for children of workers			*****	*****
Health/medical facilities				*****
Livelihood programmes for family				*****
Financial loan programme			*****	*****
Employment assistance for returnee				*****
Returnee training programme				*****
Trauma care centre for returnees			*****	
Duty-free privileges	*****	*****	*****	
<b>Institutional Capacity</b>				
Organizational chart	(III)	*****	*****	*****
Vision/Mission statements			(III)	*****
Written policies and procedures	(III)	*****	(III)	*****
Recruitment policies and procedures		*****	*****	*****
Planning system			(III)	*****
Management Information System			(III)	*****
Training policies and programmes			(III)	*****
Performance appraisal system			(III)	*****
Position description			(III)	*****
Records management		*****	(III)	*****
Incentives and promotions schemes			(III)	*****
Physical structures and equipment	*****	*****	*****	*****

Legend: \*\*\*\*\* = in place and fully implemented | 00000 = in place but minimal implementation/development  
Source: (OSCE, ILO, IOM 2007: 91).

domestic/unskilled workers, semi-skilled workers with training, and semi-skilled workers without any training (MOIA 2011c). Although the memo mentioned posting such reference minimum wages on MOIA and OWRC websites, the researcher could not locate any such information. While the measure may not succeed as a unilateral one, it conveys the message that origin countries are not prepared to turn a blind eye to the continuous erosion of wages and incomes of their workers. It is important to incorporate minimum wage specifications in MOUs or in extensions to such MOUs by Joint Committees.

- *Ratification of international migrant worker instruments*

In Asia, the Philippines serves as a role model, having ratified all three international migrant worker conventions. Bangladesh and Sri Lanka have ratified the International (UN) Convention (ICMW) of 1990. The issue is that it is primarily origin countries that have ratified the Conventions. The best scenario is one in which both the origin and destination countries have ratified the relevant Conventions. As argued above, India can raise its moral standing in the international arena by ratifying at least one of the relevant Conventions. Since migrant domestic workers are a major vulnerable group, India should also consider ratifying the ILO Convention on Domestic Workers, 2011 (No. 189).

- *Regional and international dialogue*

The Colombo Process is a regional consultative process among a number of Asian origin country governments, including India.<sup>6</sup> The objective is to discuss common issues facing the countries and to seek practical measures of cooperation. Following the first Ministerial consultation in Colombo in 2003, the member states of the Colombo Process have met in Manila, Bali and Dhaka in 2004, 2005, and 2011 respectively, to review and monitor the implementation of previous recommendations and to identify areas of future action. The International Organization for Migration (IOM) has been acting as the secretariat with a limited role for other international agencies. The process is different from other IOM-driven regional consultative processes, which focus on irregular migration and trafficking issues since the initiative was by origin countries. The Colombo Process has now become somewhat broad-based, involving destination countries from the Gulf as observers, and also civil society participation. Migrant protection and rights issues now seem to be more on the agenda, although the initial focus was on IOM's 'migration management' approach.

The Abu Dhabi Dialogue convened by the UAE as an offshoot of the Colombo Process consists of Gulf destination countries, Malaysia, and Singapore, and Asian origin countries.<sup>7</sup> The limited outcome of the first meeting – the Abu Dhabi Declaration - proposed four practical partnership measures: i) enhancing the knowledge base on migration; ii) building capacity for effective matching of labour demand and supply; iii) preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers; and iv) developing a framework for a comprehensive approach to managing the entire cycle of temporary contractual mobility that fosters the mutual interests of countries of origin and destination. A pilot project between the UAE on the one hand and India and the Philippines on the other was initiated under partnership iv to develop a model migration programme, but it seems to be inactive. Again, there was a lack of transparency in this initiative, with no information on the negotiations carried out or any indication of why it failed. The second meeting of the Abu Dhabi Dialogue is scheduled to be held in Manila in April 2012.<sup>8</sup>

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<sup>6</sup> There were ten initial participating countries: Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam. See <http://www.colomboprocess.org/>

<sup>7</sup> The Abu Dhabi Dialogue consists of eleven Colombo Process countries of migrant worker origin, namely, Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam; and nine Asian destination countries, namely, Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia, Singapore, United Arab Emirates, and Yemen.

<sup>8</sup> <http://www.gov.ph/2011/12/07/baldoz-announces-manila%E2%80%99s-hosting-of-abu-dhabi-dialogue-in-2012/>

The South Asian Association for Regional Cooperation (SAARC) has not dealt with migration as an important issue, unlike the Association of Southeast Asian Nations (ASEAN), which came up with a landmark Declaration on the Promotion and Protection of Rights of Migrant Workers.<sup>9</sup>

The Global Forum on Migration and Development (GFMD) is an international forum with active participation of countries of origin and destination from Asia. The UAE is active in the forum, and is currently a co-chair (together with the Philippines) of the Ad Hoc Working Group on Protecting and Empowering Migrants.<sup>10</sup> Participating countries of the 2011 GFMD Workshop on Recruitment of Workers for Overseas Employment, convened by the UAE, agreed to develop a pilot recruitment system by the UAE to be presented to the next Colombo Process.

All these are multilateral forums where India and other origin countries can bring up critical issues and try to achieve some degree of consensus on the format of MOUs and crucial issues affecting the welfare and protection of migrant workers. The Colombo Process and the Abu Dhabi Dialogue should be made use of as platforms to discuss the implementation problems and achievements of the MOUs squarely, with participation of all stakeholders, including civil society.

- *Pre-departure orientation and related manuals*

Most origin countries have now introduced pre-departure orientation programmes tailored to the needs of different categories of workers. In India, different states have supported such programmes, and have been running them for some time.

An interesting initiative by the MOIA is the preparation of country manuals for all the GCC countries - UAE, Bahrain, Oman, Kuwait, Qatar, KSA - and Malaysia, which combine general country information and important information for employees.<sup>11</sup> It is, however, not clear when these were produced, since none carry dates of publication. It is important to periodically update them and disseminate widely in languages understood by the average migrant worker.

It is indeed strange that none of these MOIA pre-departure training manuals contain a single reference to the MOUs (MOIA undated-a; MOIA undated-b; MOIA undated-c; MOIA undated-d; MOIA undated-e; MOIA undated-f; MOIA undated-g). If the MOIA is serious about the value of these MOUs, the intending migrants need to be aware of the existence of the MOUs and what their rights and obligations are, as elaborated in these MOUs. Moreover, the manuals contain contradictory statements. They advise the worker not to surrender his/her passport, but this important provision is not included in any of the MOUs. Only the pre-departure training manual for Saudi Arabia mentions that both the passport and the work contract will be kept with the employer in Saudi Arabia.

What is important to ascertain is whether these manuals have been translated into the local languages and freely disseminated to intending migrants and actual migrant workers.

- *Consular support and Migrant Resource Centres*

The Philippines is a pioneer in strengthening consular support services, using a One Team approach and expanding these services into migrant resource centres offering a range of advice on legal and other matters. In view of the vast numbers of migrant workers in these countries, a single labour attaché cannot realistically attend to the various challenges. A good initiative by India is the establishment of the Indian Workers' Resource Centre (IWRC) in Dubai and the launching of the Overseas Workers Resource Centre (OWRC) in Delhi.

The IWRC at Dubai was inaugurated on 23rd November, 2010 with the aim of disseminating information, registering, and responding to complaints as well as providing a grievance redress

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<sup>9</sup> <http://www.aseansec.org/19264.htm>

<sup>10</sup> <http://www.gfmd.org/en/adhoc-wg/protecting-and-empowering.html>

<sup>11</sup> <http://moia.gov.in/services.aspx?id1=366&idp=366&mainid=73>

system and services to follow up with stakeholders. The centre has a 24x7 helpline, provides grievance redress and counseling, and also manages a shelter for runaway housemaids and deserted housewives. By its Office memorandum of 29 July 2011, the MOIA has instructed that all Indian missions in the 17 ECR countries should establish similar IWRC centres, which is also a good initiative (MOIA 2011b). There is, however, no information on how many of these centres have already been established. It is also important to link the complaints received at these centres with the dispute settlement process mentioned in the MOUs to see how they really work to help migrant workers.

The OWRC has the following objectives:

- Information dissemination on matters related to emigration
- Registering, responding to and monitoring complaints received from emigrant workers or prospective emigrants
- Grievance redressal and follow up with the stakeholders
- Walk-in Counselling
- A 24-hour, 7-day helpline to provide need-based information to emigrants and their families through a toll free number
- Countries such as the Philippines and Sri Lanka regularly publish a summary of complaints received and attended to by country and by gender. The Indian government should also publish such summaries based on OWRC and IWRC records.

- *Regular consultations with stakeholders*

It is important to have regular consultations with overseas missions, state governments, recruitment agencies, and other relevant stakeholders to assess progress and plans for the future. The MOIA has been active in this respect, holding annual conferences with Heads of Missions of important destination countries and state governments. These consultations should cover:

- (a) Signing of Labour MOUs with remaining countries and renegotiating with countries with which it was signed more than 10 years ago
- (b) Regular holding of Joint Working Groups (JWGs), especially for discussing the following issues:
  - i. Payments to workers especially domestic workers and low skilled workers through banks
  - ii. Passports of emigrant workers not to be kept by the employer
  - iii. Enforcement of a model employment contracts
  - iv. Workers may be allowed to change employer (end the sponsorship system)

The above recommendations are directly related to the critical issues highlighted in earlier sections of the paper.

- *Databases and web-based attestation systems*

The Indian Government is working with the UAE under the revised MOU to initiate with the UAE Ministry of Labour a web-based attestation system of employment contracts in the Indian missions at Abu Dhabi and Dubai.<sup>12</sup>

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<sup>12</sup> [http://articles.economicstimes.indiatimes.com/2011-09-29/news/30218357\\_1\\_indian-workers-overseas-indian-indian-missions](http://articles.economicstimes.indiatimes.com/2011-09-29/news/30218357_1_indian-workers-overseas-indian-indian-missions)

## 10. Is something better than nothing? Conclusions and Recommendations

### 10.1 Conclusions

This analysis has shown that India's recent record has been impressive in negotiating MOUs, and social security agreements, and one labour mobility partnership. The discussion above shows that most MOUs have not been operational in delivering the promised benefits to migrant workers due to lack of effective enforcement mechanisms. For example, the MOUs have not been successful in addressing the protection and exploitation of low skilled workers from India in the countries concerned. Retention of passports by employers, contract substitution, and other unethical practices continue. Some Gulf countries have also introduced several measures in good faith to improve the protection of migrant workers, including the reform of the Kafala System (Bahrain), introduction of the wage protection system (UAE), and revision of labour laws, among others. The capacities of ministries of labour to monitor and enforce many of these provisions, however, remain limited.

This should not imply that India or other countries are better off without MOUs. The existence of MOUs has political value and signals growing cooperation between source and destination countries, which are positive developments. They have also provided a firmer foundation for the countries to build upon in this regard. In this sense, an agreement or MOU is better than a situation of no agreement or MOU, as I have argued in relation to the South Asian situation (Wickramasekara 2011c).

MOUs provide a broad framework, but they need to be backed up by concrete initiatives in the areas of model contracts, workplace monitoring, dispute resolution mechanisms and monitoring practices of recruitment agencies, and adequate labour inspection systems. While these may be harder to negotiate, they should nevertheless receive high priority if MOUs are to be of operational value.

The ongoing multilateral and regional forums such as the GFMD, the Colombo Process, and the Abu Dhabi Dialogue have considerable potential for negotiating common formats for MOUs and related enforcement mechanisms that can promote protection of migrant workers. India could also try to introduce the issue of international migration into the agenda of the SAARC.

It is also important to recognize that bilateral MOUs or MOAs are only one of the measures available to countries of origin in governance of migration and ensuring protection of their national workers abroad. The complex problems of governance and protection of millions of migrant workers require action on many fronts. The fundamental problem of rewarding decent work opportunities at home also need to be addressed in the longer term.

In the next section, a number of recommendations are made to make India's MOUs more effective tools in the governance of labour migration and in the protection of migrant workers.

### 10.2 Recommendations

As an emerging economic superpower and also the largest source of workers to the Gulf countries, India has considerable clout to negotiate a better deal for its migrant workers.

#### *Wide publicity of MOUs*

There seems to be no evidence of any publicity of MOUs apart from initial press announcements. The major stakeholders in migration—workers, employers, recruitment agencies, and NGOs concerned with migrant worker welfare—are not adequately briefed on the provisions or how they affect them, or on the follow up to be undertaken according to available information. While the texts of most MOUs have been uploaded on the MOIA website<sup>13</sup>, it has not been possible to locate a copy of the revised India-UAE MOU of September

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<sup>13</sup> The MOIA website has wrongly given the titles of Bahrain and Jordan labour migration MOUs as social security agreements. <http://moia.gov.in/services.aspx?ID1=349&id=m4&idp=81&mainid=73>

2011 either on the MOIA or any other website. For the sake of transparency, it is important to make the text of all MOUs easily accessible. The pre-departure training manuals of the MOIA should contain references to MOUs for the countries concerned.

### *Conformity with international norms relating to human and labour rights of migrant workers*

The importance of drawing upon the normative framework provided by the two ILO migrant worker Conventions – Migration for Employment, 1949 (No.97) and the Migrant Workers (Supplementary Provisions), 1975 (No. 143) - and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families cannot be overemphasized. The ILO Multilateral Framework on Labour Migration contains a synthesis of the major principles and guidelines contained in these international instruments. The MOUs could make specific reference to the principles of equality of treatment and non-discrimination at a minimum. It was shown that the Bahrain-Philippines MOA on health resources refers to ILO Conventions and the principle of equality. The Denmark-India Labour Mobility Partnership also has made clear commitments to the principle of equality. These instruments can provide a broad human rights framework in developing MOUs as highlighted by CMA (2010). A civil society consultation in India also stressed that: “In general, the government must make the human and labour rights of its nationals working abroad a central component of any agreement” (CEC and MFA 2009: 20). It added:

As a framework for guiding its international migration policy, and for negotiating future treaties with sending and receiving countries in particular, the Indian government should consider ratifying and implementing ILO conventions 97 and 143, and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Doing so would provide successive governments a stable frame of reference for setting, implementing, and monitoring standards for migrant workers. It would also maintain a labour and human rights focus in bilateral negotiations (CEC and MFA 2009: 19).

In this context, it is difficult to support the argument put forward by Blank in his analysis of the Philippines’ MOUs that the origin country negotiators should emphasise efficiency aspects and benefits to destination countries rather than worker protection issues in negotiating MOUs with countries such as Saudi Arabia (Blank 2011). He also confuses ILO with IOM, and erroneously refers to ‘IOM labour laws’ and ‘IOM Conventions’ (Blank 2011: 200).

### *Negotiating for concrete implementing measures to supplement MOUs*

While treating MOUs as a broad framework, it is most important to supplement them by negotiating for the introduction of concrete or practical mechanisms in several areas; this may be undertaken by the Joint Committee or working groups appointed by the Joint Committees as separate agreements or annexes.

First, initial validation of contracts by both parties will not be adequate in preventing later contract variation or substitution. India is introducing web-based attestation of contracts starting with the UAE. While this is a major initiative, what matters is not what is in the written first contract, but what the worker is forced to sign or conditions imposed in the course of employment. Web-based attestation alone will not prevent errant employers and recruiters from resorting to such unethical practices. A procedure for monitoring changes in contracts at least on a sample basis needs to be introduced.

The MOUs should explicitly specify that migrant workers should not surrender their passports to employers or intermediaries at any stage. This is important because it is a major factor leading to forced labour situations. In its study of the Malaysia migrant worker situation, Amnesty International called upon the government of Malaysia to: “Make the withholding of passports and other identity documents an offence subject to appropriate penalties, and immediately amend policies and memoranda of understanding accordingly” (Amnesty International 2010: 8). This should apply to all destination countries given the vulnerabilities faced by migrant workers not in possession of their passports.



Introduction of a complaints procedure and redress mechanism accessible by low skilled workers spread in different parts of the host country through which workers can lodge their complaints without fear of retaliation or intimidation. Experience has shown that provisions for ‘amicable settlement’ contained in MOUs carry little meaning in practice because of the absence of an arbitration and enforcement mechanism and the undue power of employers over workers.

Development of a fair recruitment system to replace the Kafala System: This can draw upon an ongoing initiative. At the 2011 GFMD Workshop on Recruitment of Workers for Overseas Employment Convened by the UAE, participating Governments committed themselves to making the recruitment process fair, transparent, and free of abuse, and to leverage the support and expertise of the ILO, IOM, and OHCHR in achieving this goal.<sup>14</sup> The government of the UAE plans to develop a draft framework of regional cooperation on recruitment practices as a follow up (GFMD 2011), which is a step in the right direction.

Drawing up of model employment contracts and stipulation of minimum reference wages: the MOU between India and Qatar has already incorporated a model contract. The MOIA has commissioned drawing up of model employment contracts in all ECR countries, and it is important to negotiate for these to be attached to the existing or new MOUs.

Of course, one should not underestimate the extent to which destination countries may accommodate these on a bilateral basis. This is why multilateral forums may prove useful in openly discussing these mutually beneficial improvements.

#### *Revitalize Joint Committees and arrange meetings as stipulated in the MOUs*

A major weakness at present seems to be the lack of effective follow up by Joint Committees set up under the MOUs, as noted above. The meetings are infrequent and held years after signing of the MOU, and also the procedures are hardly transparent, because there are no accessible records of issues taken up and actual outcomes. It is also important to include representatives of workers, employers and civil society where possible in these deliberations.

#### *Adopt a system for periodic evaluation of the MOUs*

In consultation with the relevant destination country, it is important to plan for a systematic joint evaluation of the MOU before its automatic renewal, with a view to identifying needed revisions. For example, the Qatar MOA has been in existence since 1985 and the Jordan MOU since 1988, but little is known of the actual impact or experience of these MOUs.

Include all stakeholders in consultative processes in the development, and implementation and monitoring of MOUs and MOAs

At present, all matters relating to drafting, implementation and monitoring are confined to responsible government parties from both sides. Several groups have made a case for a more broad-based consultative process in all stages of the MOU process (Go 2007; CMA 2010; Cholewinski 2011). There are precedents for such involvement at the regional level as seen in discussions of the Philippines Government with civil society organizations on the development of the ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers (CMA 2010).

#### *Promote multilateral dialogue through regional and international forums*

Reference was made above to the Colombo Process, Abu Dhabi Dialogue, and the GFMD consultations where India and some of the countries concerned have been important players. Unlike bilateral negotiations where parties may have unequal bargaining power, these forums allow multilateral negotiations on a more

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<sup>14</sup> GFMD (2011). A report on the Workshop on Recruitment of Workers for Overseas Employment, Dubai, January 18-19, 2011

equal basis and arrive at common solutions. As the MFA/CARAM Asia/HRW submission to the Dhaka Consultation pointed out, “Multilateral cooperation and agreements are better suited to create a more equitable balance of bargaining power among governments and to avoid market pressures to minimize protections” (MFA, CARAM Asia et al. 2011: 3). It is important to take up the issue of MOUs at these forums and evolve a consensus on a model MOU framework based on regional minimum labour standards to be adopted by countries in the region. As mentioned above, efforts are already underway to develop a fair recruitment system under these initiatives that can be debated and adopted at the above forums.

#### *Reform of the Kafala sponsorship system and dealing with unfair recruitment practices*

There is growing agreement among sending countries, and even among GCC countries that the sponsorship system needs to be changed, since it can lead to irregular migration, forced labour situations, and exploitation of migrant workers (ILO 2011). However, none of the MOUs make reference to this practice. Recruitment practices in origin countries, including India, are also responsible for heavy debt burdens on the part of migrants resulting from excessive fees and misleading information about jobs. In Malaysia in particular, the recruitment agencies are found to be acting as labour brokers, providing migrant labour to employers on contract, and denying workers many of the protections under labour law (Amnesty International 2010). The India-Malaysia MOU, however, refers to the recruitment role of the agent only. It is important to include in the MOU explicit prohibition of such practices and enforcement procedures.

#### *MOUs should apply to the entire migration cycle: pre-departure, employment in destination country, return, and re-integration*

None of the MOUs signed by India cover the entire migration process – there is no mention of return and reintegration in the MOUs. The only references to return are about repatriation or in regard to the temporary contracts at the end of which workers have to leave. The Bahrain-Philippines MOA on health resources provides a good practice in this regard, covering the full migration cycle. The ILO Multilateral Framework in its guideline 2.3 urges countries to “promot[e], where appropriate, bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration, such as admission procedures, flows, family reunification possibilities, integration policy and return, including in particular gender-specific trends” (ILO 2006: 7).

#### *Use general economic and trade commission negotiations to bring up labour MOU issues*

India has major economic, trade, and investment partnerships with most of the countries of destination. Since these joint commission meetings or high-level missions would be accorded high priority by both parties, it is important to make use of them to bring out issues related to labour MOUs to the extent possible. The advantage is that labour cooperation would also be recognized as part of the broader economic cooperation and partnership agreements.

#### *Incorporation of gender concerns into MOUs*

There is no reference to female migrant worker issues in any of the MOUs. While India has no information on the extent of female migration at the national level, it is to be expected that females constitute a good proportion of migrants, among both ECR and ECNR categories. As pointed out earlier, women workers engaged in domestic work are not covered by labour law in the destination countries, and are therefore quite vulnerable. In addition to Guideline 2.3 mentioned above, Guideline 4.5 of the ILO Multilateral Framework on Labour Migration urges all countries 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: 11).

#### *Promote MOUs between trade unions and NGOs in India and destination countries*

A good practice from the region is the signing of bilateral agreements between trade unions in Sri Lanka and trade unions of Bahrain, Jordan and Kuwait for the protection of Sri Lankan migrant workers in May 2009.

The agreements follow a rights based approach, and undertake to protect Sri Lankan migrant workers in the three countries through union action aimed at granting Sri Lankan migrant workers “the full panoply of labour rights included in internationally-recognized standards”.<sup>15</sup> This practice is fully consistent with Guideline 2.6 of the ILO Multilateral Framework on Labour Migration: “promoting bilateral and multilateral agreements between workers’ organizations in origin and destination countries” (ILO 2006: 8). While trade unions are not legal in the UAE and Saudi Arabia even for national workers, similar agreements can be developed by unions for Oman and Malaysia. Concerned Indian NGOs also can identify suitable counterparts in these countries to enter into such collaborative agreements to supplement state-driven processes

#### *Seek technical assistance from relevant international organizations*

As shown above, bilateral MOUs do not seem to draw upon international labour standards and norms in regard to labour migration flows and protection of migrant workers. It would therefore be useful to draw upon the expertise of international organizations like the ILO and IOM in drawing up such agreements. The ILO provided advisory services to Cambodia and Lao PDR in their negotiations with Thailand in development of bilateral MOUs. The Republic of Korea has been working with the ILO on the effective implementation of the EPS system in both South and Southeast Asia.

#### *Develop a new Migration Law and Policy*

There is a glaring need for India to define a new migration policy to address the changed context and current and future challenges. The Emigration Act of 1922 was only replaced in 1983. In the last three decades, the migration scene and challenges have changed in character, and the 1983 Act has not succeeded in protecting the rights of low skilled workers as intended. The creation of the independent Ministry of Overseas Indian Affairs (MOIA) in 2004 has provided a good opportunity for developing a new policy on international migration.

A high level team coordinated by the Centre for Development Studies, Trivandrum, has made a series of recommendations for the new policy to be considered by the government (CDS 2009). Its primary recommendation is to develop the policy as an inclusive policy on international migration covering both Indian migrant workers, and foreign workers in India—this recommendation is to be welcomed. It also proposes full deregulation and facilitation, and migration by choice – creating a single class of passport for emigration irrespective of skills and destination. The policy proposals also urge the Indian government to seek bilateral agreements with countries of destination, which would offer a safer context for temporary migration.

It is, of course, premature to discuss the appropriateness of these proposals, since there is no information as to whether the MOIA is considering them for serious adoption. Nonetheless, the CDS proposals raise concerns in two areas: first, the proposed deregulation measures could lead to more exploitation, and second, there is no reference to international instruments, including the ILO Multilateral Framework on Labour Migration (ILO 2006), which should guide sound and rights-based labour migration policies.

There is also lack of transparency with respect to the formulation of a new migration policy, which should ideally be based on a broad-based tripartite plus consultative process as seen in the case of Sri Lanka (MFEPW 2008). A press report mentioned in June 2011 that a new Immigration Bill had been drafted to replace the 1983 Act.<sup>16</sup>

The ratification of international migrant worker instruments, as argued above, would also provide a solid foundation for India to define its new migration policy.

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<sup>15</sup> See the entry in the ILO online Good Practice Database, *Bilateral trade union agreements on migrant workers’ rights between Sri Lanka and Bahrain, Kuwait and Jordan*, [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=32](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=32)

<sup>16</sup> New immigration bill to address issues of Indians in Gulf, *The Times of India*, June 17, 2011.

[http://articles.timesofindia.indiatimes.com/2011-06-17/other-news/29669408\\_1\\_recruitment-agents-emigration-act-indians](http://articles.timesofindia.indiatimes.com/2011-06-17/other-news/29669408_1_recruitment-agents-emigration-act-indians)

### *Improve the information base on migration and MOUs*

It was shown above that the labour migration data of India seriously underestimates actual flows because the official records account only for those migrating under ECR categories. Given the wide range of persons exempted from such requirements (Annex 3), it is impossible to obtain an accurate estimate of the numbers migrating annually or of the stock of migrants in any of the countries under the ECR category. The ECR-ECNR division has become anachronistic in the current context. The Centre for Development Studies recommendations on migration policy in India stated:

The new approach should be multi-dimensional and cover the varying needs of all those who want to migrate. For instance, a single class passport should be available for all citizens irrespective of their skills and destination. A system for collection of information and the creation of a database are also fundamental steps towards a sufficient governance of migration (CDS 2009: 1).

Unlike other countries, Indian statistics do not cover occupations of migrant workers; therefore, there is no reliable estimate of the target group being reached through bilateral MOUs and MOAs. Additionally, the data is not gender-disaggregated, which is the standard practice in many other countries of the region. It is crucial for the government to introduce a system for collection of migration data on a comprehensive basis, including gender aspects. The current initiatives with e-migration and web-based attestation systems should provide the basis for a better information and knowledge base on migration from India.

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## Annex 1: List of countries requiring Emigration Check (ECR)

No.	Country
1	Afghanistan
2	Bahrain
3	Indonesia
4	Iraq
5	Jordan
6	Kuwait
7	Lebanon
8	Libya
9	Malaysia
10	Oman
11	Qatar
12	Saudi Arabia
13	Sudan
14	Syria
15	Thailand
16	United Arab Emirates
17	Yemen

Source: Ministry of Overseas Indian Affairs, Government of India

## **Annex 2: Categories of Individuals who do not require Emigration Clearance**

1. All holders of Diplomatic/Official Passports
2. All Gazetted Government servants
3. All Income-tax payers (including agricultural income-tax payers) in respect of their individual capacity;
4. All professional Degree Holders, such as Doctors holding M.B.B.S. degrees or Degrees in Ayurveda or Homoeopathy; Accredited Journalists; Engineers; Chartered Accountants; Lecturers; Teachers; Scientists; Advocates etc.
5. Spouses and dependent children of category of persons, listed from (2) to (4).
6. Persons holding class 10 qualification or higher degrees.
7. Seamen who are in possession of Continuous Discharge Certificate (CDC) or Sea cadets, Desk cadets (i) who have passed final examination of three years B.Sc. Nautical Sciences Courses at T.S. Chanakya, Mumbai; and (ii) who have undergone three months Pre-Sea training at any of the Government approved Training Institutes such as T.S Chanakya, T.S. Rehman, T.S Jawahar, MTI(SCI) and NIPM, Chennai after production of identity cards issued by the Shipping Master, Mumbai/Kolkata/Chennai.
8. Persons holding permanent Immigration visas, such as in UK, USA and Australia.
9. Persons possessing two years' diploma from any institute recognized by the National Council for Vocational Training (NCVT) or State Council of Vocational Training (SCVT) or persons holding three years' diploma/equivalent degree from institutions like Polytechnics recognized by Central/State Governments.
10. Nurses possessing qualification recognized under the Indian Nursing Council Act, 1947.
11. All persons above the age of 50 years.
12. All persons who have been staying abroad for more than three years (the period of three years could be either in one stretch or broken) and spouses.
13. Children below 18 years of age.

Source: <http://moia.gov.in/services.aspx?ID1=109&id=m7&idp=104&mainid=73>

**Annex 3: Structure of the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, ILO Recommendation, 1949 (R.86) accompanying the ILO Convention on Migration for Employment, 1949 (No. 97)**

Article 1: Exchange of Information	Article 16: Settlement of Disputes
Article 2: Action against Misleading Propaganda	Article 17: Equality of Treatment
Article 3: Administrative Formalities	Article 18: Access to Trades and Occupations and the Right to Acquire Property
Article 4: Validity of Documents	Article 19: Supply of Food
Article 5: Conditions and Criteria of Migration	Article 20: Housing Conditions
Article 6: Organization of Recruitment, Introduction and Placing	Article 21: Social Security
Article 7: Selection Testing	Article 22: Contracts of Employment
Article 8: Information and Assistance of Migrants	Article 23: Change of Employment
Article 9: Education and Vocational Training	Article 24: Employment Stability
Article 10: Exchange of Trainees	Article 25: Provisions Concerning Compulsory Return
Article 11: Conditions of Transport	Article 26: Return Journey
Article 12: Travel and Maintenance Expenses	Article 27: Double Taxation
Article 13: Transfer of Funds	Article 28: Methods of Cooperation
Article 14: Adaptation and Naturalization	Article 29: Final Provisions
Article 15: Supervision of Living and Working Conditions	

## **Annex 4: MOIA Model contract**

*(Details to be furnished in employment agreement)*

An agreement under sub-section (3) of section 22 of the Emigration Act r.w.r 15 of the Emigration Rules IPB3 shall provide for the following matters:

1. Period of employment/place of employment
2. Wages and other conditions of service
3. Free food and food allowance provision
4. Free accommodation
5. Provision in regard to disposal or transportation to India, of dead body of the emigrant
6. Working hours, overtime allowance, other working conditions, leave and social security benefits as per local labour laws
7. To and fro air passage at the employers costs
8. Mode of settlement of disputes
9. Medical benefits
10. Leave benefits
11. Travel and transportation expenses
12. Conditions for the termination of employment
13. Provisions in regard to coverage of special risks including war
14. Provisions in regard to remittances
15. Provisions in regard to renewal of contract

Source: <http://moia.gov.in/services.aspx?ID1=113&id=m6&idp=104&mainid=73>

**Annex Table A1: India - Emigration clearances granted, 1990-2010**

Year	Number of migrant workers
1990	139,861
1991	191,502
1992	416,784
1993	438,338
1994	425,385
1995	415,334
1996	414,214
1997	416,424
1998	355,164
1999	199,552
2000	243,182
2001	278,664
2002	323,973
2003	455,456
2004	474,960
2005	548,853
2006	676,912
2007	809,453
2008	848,601
2009	610,272
2010	641,356

Sources: Sasikumar and Hussain 2008; Khadria 2009; MOIA (2011)

**Annex Table A2: State-wise Labour Outflows from India: 1995-2010**

State	1995	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Andhra Pradesh	30,284	29,999	37,331	38,417	65,971	72,580	48,498	97,680	105,044	97,530	69,233	72,220
Bihar	5,867	6,726	9,711	19,333	17,104	21,812	9,366	36,493	51,805	60,642	50,227	60,531
Delhi	3,281	3,165	3,183	4,018	6,513	6,052	6,024	9,098	5,327	4,512	2,501	2,583
Goa	969	1,331	2,255	3,545	3,494	7,053	1,627	4,063	3,102	2,210	1,659	8,380
Gujarat	12,182	5,722	10,294	11,925	17,012	22,218	49,923	13,274	20,066	15,716	9,185	8,245
Haryana	794	52	154	424	1,779	919	2,313	193	1,852	1,779	1,052	958
Karnataka	33,496	10,927	10,095	14,061	22,641	19,237	75,384	24,362	27,014	22,413	18,565	17,295
Kerala	65,629	69,630	61,548	81,950	92,044	63,512	125,075	120,083	150,475	180,703	119,384	104,101
M.P.	4,248	1,706	5,035	7,411	10,651	8,888	5,312	7,047	3,616	2,321	1,897	1,564
Maharashtra	26,312	13,346	22,713	25,477	29,350	28,670	29,289	15,356	21,496	24,786	19,128	18,123
Orissa	3,685	576	3,014	1,742	5,370	6,999	1,258	4,114	6,696	8,919	6,515	7,344
Punjab	11,852	10,025	12,422	19,638	24,963	25,302	24,088	39,311	53,942	54,469	27,291	30,974
Rajasthan	28,374	10,170	14,993	23,254	37,693	35,108	21,899	50,236	70,896	64,601	44,744	47,803
Tamil Nadu	65,737	63,878	61,649	79,165	89,464	108,964	117,050	155,631	150,842	128,791	78,841	84,510
UP	18,932	9,157	13,912	19,288	24,854	27,428	22,558	66,131	91,613	139,254	125,783	140,826
West Bengal	2,278	1,940	4,830	8,338	8,906	8,986	5,102	14,929	24,817	26,094	21,187	28,900
Others	101,414	4,832	4,895	9,788	6,882	8,189	4,894	1,909	924	13,861	13,044	13,999
<b>Total</b>	<b>415,334</b>	<b>243,182</b>	<b>278,664</b>	<b>367,663</b>	<b>464,691</b>	<b>471,917</b>	<b>548,853</b>	<b>676,912</b>	<b>809,453</b>	<b>848,601</b>	<b>610,272</b>	<b>641,356</b>

Source: Sasikumar &amp; Hussain 2008; MOIA annual reports, 2006/07 to 2010/11



**Annex Table A3: Table: Outflow of migrant workers from India by destination, 2005-2010**

	2005	2006	2007	2008	2009	2010
<b>South Asia</b>						
Afghanistan	--	--	--	405	395	256
Maldives	3,423	4,671	ECNR	ECNR	ECNR	--
<b>Subtotal</b>	3,423	4,671	--	405	395	256
% share of total	0.62	0.69	0.00	0.05	0.06	0.04
<b>Southeast Asia</b>						
Brunei	--	--	--	607	2	1
Indonesia	--	--	--	33	9	3
Malaysia	71,041	36,500	30,916	21,123	11,345	20,577
Thailand	--	--	--	15	5	5
<b>Subtotal</b>	71,041	36,500	30,916	21,778	11,361	20,586
% share of total	12.94	5.39	3.82	2.57	1.86	3.21
<b>Gulf Cooperation Council Countries</b>						
Bahrain	30,060	37,688	29,966	31,924	17,541	15,101
Kuwait	39,124	47,449	48,467	35,562	42,091	37,667
Oman	40,931	67,992	95,462	89,659	74,963	105,807
Qatar	50,222	76,324	88,483	82,937	46,292	45,752
Saudi Arabia	99,879	134,059	195,437	228,406	281,110	275,172
UAE	194,412	254,774	312,695	349,827	130,302	130,910
<b>Subtotal</b>	454,628	618,286	770,510	818,315	592,299	610,409
% share of total	82.83	91.34	95.19	96.43	96.99	95.17
<b>Other Middle East &amp; Africa</b>						
Iraq	--	--	--	--	390	390
Jordan	1,851	1,485	1,254	1,377	847	2,562
Lebanon	--	**	**	75	250	765
Libya	--	--	3,223	5,040	3,991	5,221
Mauritius	1,965	1,795	ECNR	ECNR	ECNR	--
Syria	--	--	--	74	--	2
Sudan	--	--	--	1,045	708	957
Yemen	--	--	--	492	421	208
<b>Subtotal</b>	3,816	3,280	4,477	8,103	6,607	10,105
% share of total	0.70	0.48	0.55	0.95	1.08	1.58
<b>Others</b>						
	15,945	14,175	3,550	--	--	0
% share of total	2.91	2.09	0.44	0.00	0.00	0.00
<b>Total</b>	<b>548,853</b>	<b>676,912</b>	<b>809,453</b>	<b>848,601</b>	<b>610,662</b>	<b>641,356</b>

Source: compiled from Table B, Page 48 of the MOIA (2011). Annual Report 2010-2011 Government of India, Ministry of Overseas Indian Affairs, New Delhi, 2011: [http://moia.gov.in/writereaddata/pdf/Annual\\_Report\\_2010-2011.pdf](http://moia.gov.in/writereaddata/pdf/Annual_Report_2010-2011.pdf) (MOIA 2011a)