

Policy Brief No. 10: BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

MIGRANT FORUM



in ASIA

Winter 2014

BACKGROUND

In recent years, a number of Asian governments have forged bilateral agreements (BLAs) and memoranda of understanding (MOUs) to govern labour migration. These government-to-government agreements are negotiated frameworks to facilitate the recruitment and movement of workers from country of origin to country of destination. BLAs and MOUs can be useful documents by which migrants, migrants' rights advocates, lawyers, and other stakeholders can understand the commitments that origin and destination country governments have set for themselves in governing labour migration.

Members and partners of Migrant Forum in Asia (MFA) have long been engaged in monitoring such agreements where they exist and in advocating for greater transparency and involvement in the process of their negotiation. In some cases, MFA members have advocated for the establishment of rights-based BLAs or MOUs where none yet exist as a mechanism of encouraging States to commit, on paper, to migrant labour regimes that respect and promote the rights of migrant workers and members of their families.

While migrant communities and their supporters generally welcome the initiation of BLAs and MOUs, recognizing the potential of such agreements to hold governments to account for rights violations, it is also well understood that such agreements do not guarantee non-exploitative or rights-respecting conditions for migrant workers. Government decisions to enter into such agreements are politically and economically motivated, and the strength of rights-based language and commitments varies widely across agreements.

HISTORY OF BILATERAL GOVERNANCE OF LABOUR MIGRATION

Following WWII, BLAs governing labour migration emerged as a means of fulfilling the demand for low-skilled labour to rebuild Europe. In this first generation of bilateralism, from the 1950s to 1960s, states led the recruitment of migrant workers via supervised contracts that set out wages and working conditions.¹ The BLAs in this era followed international norms and instruments that provided for the equal treatment of migrant workers.²

Perhaps the most notable migrant labour recruitment regime of the time was Germany's *gastarbeiter* program, which governed largescale temporary labour migration, particularly from Turkey, and eventually resulted in the permanent settlement of many migrant

workers from Turkey in the country. Because of the inability of this program to ensure that migrants were repatriated at the end of their contracts (i.e., that migration through the program remained circular), this program was deemed a failure. This precedent, combined with the oil crisis of the early 1970s, marked the end of this period, as European economies stopped largescale hiring of migrant workers.

The current generation of BLAs is of a lower quality than those that were agreed to in the 1950s and 1960s.³ At present, the movement of migrant workers is increasingly controlled by private recruitment agencies, with States having diminished roles in the recruitment process.

¹ Piyasiri Wickaramasekara, 2012 and 2014.

² Swiss Agency for Development and Cooperation (SDC), "Summary of Proceedings of the Sub-Regional Training Workshop on Bilateral Agreements and Memoranda of Understanding on Labour Migration." Park Village Hotel and Resort, Kathmandu, Nepal, 18 to 21 February 2014.

³ Wickaramasekara, 2014.

What was once a State-driven system has become a market-oriented, profit-based scheme. Asian governments show a strong preference for negotiating MOUs over BLAs, given their non-binding nature (see Box 1).

It should be noted that differences between BLAs and MOUs are contentious in Asia. The UN Treaties definitions may well not be taken into consideration by States when establishing bilateral instruments. As explored in the later sections of the paper, States' discernment on such definitions are not entirely clear, the likely consequence of which is noncompliance with provisions of binding treaties. It can be said then that in this case, the terms BLA, MOA or MOU, is not so much as important as the content of the instrument.

As noted in table 1, in the last decade, Asia has seen a steady increase in the number of MOUs signed – beginning with the signing of the Employment Permit System (Korea), followed by agreements between the countries of West Asia and countries of origin in South and Southeast Asia.

Economic or market demand is repeatedly cited as the rationale for States to enter into bilateral talks. “Agreements on short-term employment of less than a year (seasonal employment) exist between a number of countries. In that way economic sectors with seasonal [employment] requirements (e.g., agriculture, tourism, construction) tap human resources lacking in the domestic labour market, while the migrant and the country of origin benefit from increased earnings.”⁴

Box 1: Definitions

Bilateral Agreement:

BLAs are legally binding, in the same way as a treaty holds States accountable under the law. BLAs bind States Parties to their commitments both in principle and practice, making them much stronger documents in terms of their enforceability. (UN Treaties definition)

Memorandum of Understanding:

MOUs are less formal instruments than BLAs. “MOUs set out operational arrangements under a framework international agreement. [They are] used for the regulation of technical or detailed matters. [MOUs are] typically in the form of a single instrument and does not require ratification.” (UN Treaties definition). They are not legally binding, but reflect the political will of the States parties to mutually adhere to the negotiated commitments included in the text.

MOUs provide States with the flexibility to modify arrangements in response to changing economic and labour market conditions. Many destination countries justify the forging of MOUs and BLAs by arguing that there is a labour market demand for temporary workers, despite their long-term dependence on this purported temporariness.⁵

MOUs developed in the region tend to more strongly reflect economic motivations than rights protection motivations. Agreement titles which are commonly used rarely reference rights—e.g., Memorandum of Understanding on Labour, Employment and Manpower Development, In the field of Manpower, Labor Cooperation and Agreement on Labor Cooperation for Domestic Worker Recruitment.⁶

CHARACTERISTICS OF MOUs AND BLAs IN ASIA

BLAs and MOUs in Asia largely cover the low-skilled and semi-skilled sectors, as well as medical and technical traineeships and professions. BLAs and MOUs clearly create patterns of and a demand for circular migration that become entrenched in national economies, enabling the recruitment of workers who are strictly regulated for temporary stays. Workers hired under these agreements rarely have the right to settle permanently, and low- and semi-skilled workers have few (if any) opportunities for regularization. Additionally, these bilateral instruments can stimulate the role of the recruitment sector in facilitating the movement and the “development” of the skills of migrant workers, but do not make any clear distinctions between the responsibility of States and the accountability of private employment agencies.

Regulating migration flows and curbing trafficking are

other issues that Asian countries attempt to address through BLAs and MOUs. “Both countries of origin and destination [are] guided by the need to minimize irregular migration, and to meet labor market needs for low skilled workers through regular admissions.”⁷

The prevalence of human and labor rights violations against migrant workers throughout the migration process has only recently been taken into consideration in bilateral negotiations initiated in Asia. The repeated pressure from migrant communities, civil society, and media have encouraged States to consider adding provisions for employment contracts, wage protections, and redress mechanisms as part of BLAs and MOUs. However, the extent to which these provisions are adhered to and monitored remains questionable.

⁴ IOM, Labour Migration Service Area, “Bilateral Labour Agreements for Managing Migration,” November 2003.

⁵ Piyasiri Wickramasekara, *Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers through Bilateral Agreements and Memoranda of Understanding*. Quezon City: Migrant Forum in Asia, 2012. 49 pgs.

⁶ See a compendium of MOUs in Asia at <http://lawyersbeyondborders.mfasia.org/?cat=118>

⁷ Wickramasekara, 2012.

Table 1: MOUs signed in Asia⁸

Country of Origin	Country of Destination
Bangladesh	Libya (2008); Malaysia (2003, 2012); Qatar (1988; 2008); UAE (2007); Rep. of Korea (2010, 2012)
Cambodia	Thailand (2003); Vietnam (on trafficking (2005))
Greater Mekong Sub-region	MOU on Cooperation against Trafficking (2004), with Cambodia, People's Republic of China, Lao, Myanmar, Thailand and Vietnam
India	Bahrain (2009); Jordan (1988); Kuwait (2007); Malaysia (2009); Qatar (1985; 2007); Oman (2008); UAE (2006; 2011); Saudi Arabia (on domestic workers (2014))
Indonesia	Jordan (2001; 2009); Republic of Korea (2010); United Arab Emirates (2007; 2010); Malaysia (domestic workers (2006)); Qatar (2008); Taiwan (2004, 2008); Saudi Arabia (on domestic workers (2014))
Lao	Thailand (2002); Vietnam (on trafficking (2010))
Myanmar	Thailand (2003, 2009 (on trafficking))
Nepal	Bahrain (2008); Rep. of Korea (2007); Qatar (2005); UAE (2007)
Pakistan	Qatar (1978, 2008); UAE (2006); and Rep. of Korea (2008)
Philippines	Bahrain (on health workers (2007)); Jordan n.a. (1981, 1988, 2010); Indonesia (2003); Japan (2003); Lao (2005); Lebanon (2012); Libya (2006); Rep. of Korea (2004, 2005, 2006, 2009; 2011); Kuwait (1997); Qatar (1997; 2008); Taiwan (2003); UAE (2007), Saudi Arabia (on domestic workers (2013))
Sri Lanka	UAE (2007); Qatar (2008); Libya (2008); Jordan (2006); Bahrain (2008); South Korea (2004,2010); Oman (2012); Saudi Arabia (on domestic workers (2014))

ANALYSIS

Members and partners of Migrant Forum in Asia have highlighted significant gaps in BLAs and MOUs, bringing their concerns to national, regional, and international processes on migration governance. The preference of governments to negotiate non-binding MOUs makes it easier for States to expedite negotiations, which would not be the case in legally binding BLAs and multilateral treaties. The absence of political will to negotiate binding, rights-based commitments is glaring, and MOUs demonstrate an absence of attention to established human rights principles, people-centered development, and multi-stakeholder, multilateral collaboration.⁹

The act of negotiating and signing non-binding MOUs signifies States' intentions to cooperate with each other on the governance of labour migration, influencing migration patterns and labour market composition in countries of origin and destination. The non-binding nature of MOUs is of particular concern with respect to human and labour rights provisions. Although some MOUs include an "understanding" or rights-based principles, MOUs do not legally bind them to take action to address systemic problems. Indeed, MOUs are diplomatic instruments that lack accountability mechanisms to demand implementation.¹⁰

⁸ This is not an exhaustive list. This information is sourced through desk and internet research and interviews and discussions with stakeholders.

⁹ Migrant Forum in Asia (MFA), "Conference Declaration – Civil Society Parallel Event on the 2nd Abu Dhabi Dialogue, Manila, Philippines, 17-19 April 2012.

¹⁰ Wickramasekara, 2014.

Absence of normative frameworks

At the international level, governments have officially recognized the relevance of BLAs and MOUs, referencing them in key documents setting out migrant worker rights. For instance, the UN Migrant Workers Convention (1990) references “the importance and usefulness of bilateral and multilateral agreements” in its preamble, and the Multilateral Framework on Labor Migration likewise states that “...where appropriate, bilateral and multilateral agreements [are useful in] addressing aspects of labor migration.” BLAs and MOUs can be effective if guidelines with rights-based approaches are applied.

In addition to the international recognition of the importance of BLAs and MOUs, there exists a number of international normative frameworks providing guidance to States on rights-based labour migration governance (see Box 2). Despite this wealth of guiding material and the technical support available from international agencies with expertise in the field, governments rarely refer to international normative frameworks in negotiating BLAs and MOUs on labour migration, compromising the rights-based emphasis that should exist in such agreements.

Failure to reflect national laws and relevant international human rights and labour rights treaties

National laws and international human rights and labour rights treaties offer comprehensive coverage and oversight for the promotion and protection of the rights of all migrant workers and members of their families. BLAs become practically necessary in situations in which protection needs are immediate and ratification of relevant conventions and their incorporation into national law and policy will take too much time. However, bilateral mechanisms are becoming the main reference points for labour migration governance and the precedence of national and international statutes are less prioritized. MOUs in Asia generally fail to cite existing national policies and international conventions that guarantee protections for migrants and their families (see Box 2). Through MOUs, the regulation and governance of migration is relegated to a two-State “understanding,” which is not legally binding.

Failure to consider fundamental issues in the protection of the rights of migrant workers and members of their families

The range of migrant workers’ rights violation is extensive and well documented. Labour related disputes are often reported, including the confiscation of travel and employment documents, delays in or non-payment of wages, premature lay-offs, and worker-job mismatches.

Box 2: International Normative Frameworks on Labour Migration

In addition to the many international conventions and recommendations related to labour migration, the International Labour Organization has set out a comprehensive framework for the development of BLAs and MOUs.

Relevant International Conventions:

International Convention on the Rights of All Migrant Workers and Members of their Families (1990)
ILO C97 — Migration for Employment (Revised) (1949)
ILO C143 — Migrant Workers (Supplementary Provisions) Convention (1975)
ILO C181 — Private Employment Agencies Convention (1997)
ILO C189 — Domestic Workers Convention (2011)

Relevant ILO Recommendations:

ILO R086* — Migration for Employment Recommendation, 1949
ILO R201** — Decent Work for Domestic Workers, 2011.

*The Annex to R86, Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, provides a comprehensive framework for the development of BLAs and MOUs and includes detailed text (Article 22) to guide the drafting of employment contracts.

**Similarly, Article 6 of R201 recommends that States establish model employment contracts for domestic workers and include in the contract terms and conditions of employment (See Table 2).

ILO Multilateral Framework on Labour Migration:

This framework is considered one of the most inclusive collections of principles, guidelines, and best practices on labor migration policy, and should be used to inform the drafting of all BLAs and MOUs. The guidelines are derived from relevant international instruments and global reviews of labour migration policies and practices of ILO constituents. It endorses measures to protect migrant workers, prevent abusive migration practices, advises coverage of the entire migration process and supervision of recruitment agencies, and advocates for gender responsive migration policies that address problems distinct to women migrant workers. Country specific provisions are also acknowledged as important to include in the BLAs and MOUs, keeping in mind the core principles of international human rights and labour rights treaties and normative frameworks.

Migrant workers are also often subject to physical, psychological and sexual abuse and harassment; torture; refusal to give rest or leisure time; refusal to provide social security and medical care; arbitrary arrest and detention; denial of access to redress mechanisms; gender discrimination; and prohibition of family unity and reunification among many other human rights violations.

**Table 2: Articles in the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons
(Annex to ILO R086 - Migration for Employment Recommendation, 1949)**

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	

Note: MFA has drawn up a standardized employment contract to promote and protect the rights and welfare of migrant domestic workers. The arguments for a standardized contract can be read in MFA's 2012 policy brief, accessible here: <http://www.mfasia.org/home/464/mfa-policy-brief>.

Draconian labour policies and employer-tied visa regimes such as the Kafala system restrict the mobility of migrant workers, affecting their human and labour rights and their ability to access justice.

Additionally, the recruitment regime in Asia is highly unregulated, with corruption among recruiters, government agencies, and employers in both countries of origin and destination. The costs of recruitment are often passed on to the migrant workers and members of their families, and the consequences of this financial burden manifest in migrant worker exploitation, fraud, and illicit practices.

Many of these rights violations and the measures to address them are not reflected in BLAs and MOUs. Although some bilateral instruments include general clauses on protection, enforcement mechanisms remain weak.

Lack of transparency and inclusivity in the bilateral negotiation process

Participation of relevant stakeholders, particularly migrant workers, members of their families, civil society, and trade unions that advocate with and for

migrant workers, is nearly always limited or excluded from bilateral negotiations. The involvement of relevant stakeholders is crucial in the consultation processes, since the agreements developed directly affect migrant workers' lives and livelihoods. Migrants are rarely given a space to participate in such settings, and as key allies, civil society advocates and trade unions are also excluded from these important conversations, making it less likely that rights-based language will be strong and integrated in the text.¹¹ In fact, migrant workers and civil society are often unaware of the movement of bilateral talks.

In instances where inter-governmental, inter-agency cooperation should be involved in the bilateral negotiation process, little interaction is seen between relevant international organizations such as the UN and the ILO. Coordination between the standard-setting agencies is crucial, as they are in strong positions to advise all stakeholders in the development of bilateral instruments that serve the common interests of States Parties and the protection of the rights of migrant workers.

¹¹Similar situations happen with the participation of migrant workers and their supporters in the development of social security agreements. See Migrant Forum in Asia's (MFA) 2013 policy brief on Social Protection for Low-Skilled Migrant Workers and their Families: <http://www.mfasia.org/resources/publications/464-mfa-policybriefs>

The conclusions of bilateral meetings are not generally made public until the BLAs or MOUs have been finalized. In addition, access to copies of the agreements can be difficult to obtain, even after they have been concluded. Some countries of origin in Asia have made their BLAs and MOUs available online¹² while others are slowly catching up in making the instruments accessible.

Uneven power relations in bilateral negotiations

In an attempt to secure spaces for their workers in foreign labour markets to alleviate domestic unemployment and buoy their economies through remittances, countries of origin in South and Southeast Asia negotiate recruitment arrangements with countries of destination such as in West Asia. Wages and working conditions for migrant workers vary depending on what their home countries negotiate with the destination countries, and the extent to which their officials can provide oversight and protection while these workers are abroad.

BLA and MOU negotiations do not occur in a vacuum; national, regional, and international economic and political interests influence where destination countries seek to recruit from, and where origin countries seek to send their workers. Aside from questions of linguistic, cultural, racial, or religious affinity—which may well inform such arrangements—wages and working conditions ultimately seem to be the most prevalent concerns among the negotiating governments. Often, countries of origin compete with one another in entering into BLAs and MOUs, accepting substandard minimum wages for their workers and challenging destination country governments less forcefully on subpar working conditions and concerns of human and labour rights violations. In some cases, destination countries use their position of power by refusing to negotiate with or receive workers from countries of origin that are perceived as too demanding, turning instead to countries willing to accept less favourable terms. Unhealthy competition results in a race to the bottom, whereby workers are entered into employment arrangements in which standards are at the lowest and in which they have the fewest rights.¹³

In addition, BLAs and MOUs that aim to regulate the deployment of workers to countries of destination give disproportionate powers to private employment agencies and employers. “Where recruitment regimes are regulated by recruiter licensing or bilateral agreements, the informal nature of many recruitment operations, systemic corruption among officials, insufficient monitoring mechanisms, and unhealthy competition for labour market placements among countries of origin stymie their effectiveness.”¹⁴

Lack of mechanisms for implementation, monitoring, and evaluation

Most BLAs and MOUs in Asia identify Joint Committees or Commissions as the authority that should monitor and evaluate the terms of the agreements of contracting States. A series of consultations and interviews with government officials, civil society, and trade unions confirm¹⁵ that Joint Committees are generally non-operational, and there is no evidence that countries of origin and destination are carrying out evaluations on the progression and progressiveness, if any, of BLAs and MOUs.

It is difficult to verify whether States Parties have established databases and forecasts of migration flows, migration costs, recruitment practices, and monitoring of migrant workers’ rights violations. In countries of destination, there is no trace of government action based on agreed provisions of the MOUs, such as strengthened workplace inspection procedures and increased awareness of employers about workers’ rights.¹⁶

The general and vague objectives set out in bilateral instruments make it difficult to follow up on State obligations, and the secrecy of negotiations prevent parliaments and people from holding their governments to account. The implementation, monitoring, and evaluation of BLAs and MOUs are possible if the process is open and inclusive of relevant stakeholders.

¹² India and the Philippines

¹³ A reference wage is being advocated in the region, in which the reference wage is potential answer to the race to the bottom of wages and living standards for migrant workers between sending countries as they compete to provide labour and gain remittances from destination countries. Countries of origin may have poor labour standards or be prepared to strip their own citizens of their rights in order to secure overseas employment for their nationals. If one country offers oppressively cheap labor, other countries may be compelled to do the same to merely remain competitive. This global race to the bottom subsequently undermines the rights of all workers by creating unfair pressure in the global economy. Read Migrant Forum in Asia’s (MFA) 2012 policy brief, A Reference Wage for Domestic Workers: <http://www.mfasia.org/home/464-mfa-policy-briefs>

¹⁴ Open Working Group on Recruitment, <http://recruitmentreform.org/wp-content/uploads/2014/11/OWG-Report-to-the-SR-FINAL.pdf>, accessed 18 November 2014.

¹⁵ Extensive interviews and reviews were held which resulted to the following publications and training workshop with government officials: Center for Migrant Advocacy (CMA), Bilateral Labor Agreements and Social Security Agreements: Forging Partnerships to Protect Filipino Migrant Workers’ Rights. Quezon City: CMA, 2010. 68 pgs.; Piyasiri Wickramasekara, Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers through Bilateral Agreements and Memoranda of Understanding. Quezon City: Migrant Forum in Asia, 2012. 49 pgs; and the Sub-Regional Training Workshop on Bilateral Agreements and Memoranda of Understanding on Labour Migration.” Park Village Hotel and Resort, Kathmandu, Nepal, 18 – 21 February 2014.

¹⁶ Sub-Regional Training Workshop on Bilateral Agreements and Memoranda of Understanding on Labour Migration.” Park Village Hotel and Resort, Kathmandu, Nepal, 18 to 21 February 2014.

Failure to reflect rights-respecting principles agreed to in multilateral processes

On their own, BLAs and MOUs cannot completely respond to the demands of international labour migration governance or the protection of the rights and welfare of migrant workers and members of their families. In addition to forging agreements that adhere to national and international laws, bilateral negotiations should look to identify points of agreement that conform with principles agreed to in regional platforms for multilateral engagement.

Regional consultative processes (RCPs) and regional groupings in Asia provide vital spaces for multilateral dialogues among member States. Common concerns about international labour migration, including ratification and implementation of international conventions and obstacles to the realization of the rights of migrant workers and members of their families, are deliberated in such forums (see Box 3). Although RCPs follow a migration management approach and limit the participation of relevant stakeholders such as civil society, trade unions and migrant workers and their families, they nevertheless demonstrate efforts to collectively respond to the challenges and opportunities posed by international labour migration.

At the international level, the UN High Level Dialogue on Migration and Development (UNHLD) and the Global Forum on Migration and Development (GFMD)

aim to discuss the multidimensional aspects of international migration and development and identify appropriate ways to maximize its development benefits and minimize its negative impacts. Both inter-governmental processes¹⁷ see cooperation among governments as crucial and bilateral and multilateral agreements should incorporate rights based approaches.

The governments negotiating BLAs and MOUs are the same governments that participate in these regional and international multilateral discussions on migrants' rights.

Bilateral negotiations on labour mobility are important opportunities for governments to actualize the principles, guidelines, and laws agreed to multilaterally.

Missions and consulates in the countries of destination can strike a balance between bilateral and multilateral mechanisms in their duties to protect the interests and welfare of the nationals they represent. The normative frameworks set forth by international treaties and the guidelines that BLAs and MOUs are supposed to have can be the basis for dialogue among diplomatic officials, labour attachés, and welfare officers and receiving States. Missions and consulates oversee that guidelines are being followed and can act and provide recommendations to responsible ministries should they observe rights of their nationals are at risk.¹⁸

CRITIQUE

BLAs and MOUs are political agreements between governments that symbolize their aspiration to address the growing challenges of international labour migration. BLAs and MOUs are steadily making impressions on circular migration and migration management.

BLAs and MOUs must reflect migrant workers' wellbeing, not only in terms of how well they adapt to the workplaces (e.g., knowledge of the work rules, language, social services, etc), but also in terms of their human and labour rights and personal dignity. Migrant workers must also be aware of essential information on their rights and protection mechanisms available to them. They must also know how to use that information to navigate the support systems in the countries of destination. Understanding the well-being of migrant workers must be holistic and extend to the members of their families.

Contract labour mobility can temporarily and superficially improve the economic situation of migrant workers and members of their families and their countries of origin through remittances and returns of investments. However, temporary migration schemes currently operationalized in Asia have the tendency to replace permanent employment, which would provide more sustainable development for migrant workers, their families, and their countries of origin. The current regime tramples the rights to family unity and reunification, especially when employers impose a bond on labour. Countries of origin experience brain drain when their skilled workers migrate to other countries that offer better employment opportunities. It is also a cause for concern that contract labour mobility increases the vulnerability of migrant workers to exploitation and rights violations, especially when they enter into employer-tied contracts.

¹⁷ The UNHLD is multi-stakeholder and in the realms of the UN system, while the GFMD is government-led

¹⁸ Refer to Migrant Forum in Asia's (MFA) policy brief on the role of missions, <http://www.mfasia.org/home/464-mfa-policy-briefs>

Although BLAs and MOUs attempt to address labour mobility concerns and establish protection measures, States parties should carefully consider their processes of negotiating, drafting, implementing, and evaluating BLAs and MOUs. MOUs are preferred by governments because they are non-binding, and both BLAs and MOUs are weak in terms of the protection of rights, inclusion of gender responsive provisions, mechanisms for implementation and monitoring, and conformity with existing norms and standards. Furthermore, the strength of these agreements is diminished by the uneven bargaining power between countries of origin and destination, and the lack of consultation with migrant workers, civil society, trade unions, and other stakeholders.

Box 3: Multilateral Spaces for Engagement Regional Consultative Processes

The Colombo Process:

The Colombo Process is an RCP for countries of origin, in which member states share experiences, discuss issues, and identify steps towards the protection of vulnerable migrants and provision of support services; optimizing benefits of organized labour migration; capacity building; data collection; and interstate cooperation. The first ministerial consultation took place in Colombo in 2003 and since then convened in Bali, Manila and Dhaka in 2004, 2005 and 2011 respectively.

The Abu Dhabi Dialogue:

The Abu Dhabi Dialogue was one of the key outcomes of Colombo Process. Convened by the UAE, this RCP consists of the destination countries in the Gulf, Malaysia, Singapore, Thailand, and countries of origin in Asia. The first Abu Dhabi Dialogue happened in the capital of the UAE in 2008, in which particular focus was placed on promoting the welfare and well-being of workers, on the development of both origin and destination countries through labour mobility, and on fostering greater inter-governmental cooperation and collaboration. In 2012, the Member States met for the second ministerial consultation in Manila where a Framework for Regional Collaboration was adopted. Kuwait hosted the third convening of Member States on November 2014.

Regional Groupings

South Asian Association for Regional Cooperation (SAARC):

Established in 1985, SAARC is a geopolitical bloc comprised of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. SAARC has held 18 summits, where heads of state convene to deliberate on developments and critical matters for the region. Outcomes of these gatherings take the form of Summit Declarations, which provide directives and mandates for regional cooperation. The last summit was held in Kathmandu, Nepal in November 2014. Although the SAARC has moved its agenda on trade, investment, and securitization in the region, it is making slow progress in including migration and labour mobility issues as part of its agenda.

Association of South East Asian Nations (ASEAN):

Formed in 1967, ASEAN is a geopolitical bloc comprised of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. During its 12th Summit in the Philippines in 2007, ASEAN members signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers. This was affirmed in the 2009-2015 Roadmap for an ASEAN Community, and with the establishment of the ASEAN Committee on Migrant Workers (ACMW) to develop an instrument that will implement this commitment. ASEAN is organized and institutionalized in terms of developing regional policies, although its emphasis on non-interference and its sensitivity to openly discussing human rights and labour migration issues impede progress in translating the bloc's commitments into good practices. Nonetheless, ASEAN projects an example of inclusivity and consensus building with stakeholders such as civil society and trade unions. The ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant, once finalized and implemented, can address the challenges to the rights of a significant number of workers in the region.

Post – 2015 Development Agenda:

The target date to achieve the Millennium Development Goals is fast approaching in 2015. The UN system, governments, and relevant stakeholders began debates as early as 2010 on the contents and form of the post -2015 agenda. Governments are in the midst of negotiating, and civil society, young people, businesses and others are also having their say in this global conversation. World leaders are expected to adopt the agenda – The Sustainable Development Goals, at a summit in New York in September 2015.

The Sustainable Development Goals can be one of the comprehensive human rights frameworks for attaining a just world and promoting sustainable and inclusive development, which will benefit all regardless of age, sex, disability, culture, race, ethnicity, origin, migratory status, religion, economic or other status. Migrants rights advocacy movements particularly strive to define development with a human-centred, rights-based approach. States tend to favor the 'migration for development' discourse, which positions migrants as remitters and agents of development, rather than as human beings whose human and labor rights are the central concern.

Migrant Forum in Asia developed a position paper to influence States and other relevant stakeholders to include explicit human rights language in the SDGs to ensure that they live up to their potential of being truly transformative and human rights-centred. Download the full paper here: <http://www.mfasia.org/home/538-position-paper-migration-and-the-sustainable-development-goals>

RECOMMENDATIONS

In negotiating BLAs and MOUs to govern labour migration, Migrant Forum in Asia urges governments to consider the following recommendations:

- BLAs and MOUs should refer to normative frameworks such as ILO R86 and the Multilateral Framework on Labour Migration and cover the whole spectrum of migration, including recruitment, pre-departure, arrival in the countries of destination, return, and reintegration.
- BLAs and MOUs must either include explicit provisions for the full protection of the human and labour rights of all migrant workers covered under the agreement or refer to existing standards and normative frameworks to guarantee that such protections will be upheld by the contracting States.
- States should demonstrate a serious commitment to upholding the human and labour rights of migrant workers by prioritizing the negotiation of legally binding and rights-based BLAs over non-binding MOUs.
- Negotiating governments must ensure that there is a transparent, broad-based consultative process with all stakeholders, including migrant workers, members of their families, civil society, and trade unions, in the development, implementation, and evaluation of BLAs and MOUs.
- States parties to a BLA or MOU must institute a defined system of procedures and entities to monitor and evaluate the implementation and compliance with normative frameworks and report results to all stakeholders for policy review, development and renewal or termination. States should regularly collect, compile, analyze and publish an appropriate range of data and disaggregated statistics and indicators on international labour migration. Establish a coordinating body or activate Joint Committees that include all stakeholders to be responsible for the drafting, implementation and evaluation of BLAs and MOUs.
- States should consider multilateral engagements of governments in regional consultative processes, international inter-governmental forums, and the deliberations on the Post-2015 Development Agenda as complementary to bilateral negotiations. These spaces strive to demonstrate efforts to collectively respond to the challenges and opportunities posed by international labour

migration that bilateral talks and related instruments may not wholly address on their own.

- While bilateral agreements aim to respond to rights promotion and protection of migrant workers between two countries, States should not overlook their international commitment to ratify and implement key ILO and UN Conventions, particularly the UN Migrant Workers Convention, and incorporate them nationally in law, policies, and regulations.

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RecruitmentReform.org is an initiative of the civil society Open Working Group on Labour Migration and Recruitment. With members from civil society organizations across the world, the Open Working Group is committed to knowledge sharing and collective advocacy to reform migrant labour recruitment practices globally. Building upon years of civil society advocacy on labour migration, human rights, and recruitment reform, the Open Working Group was initiated in May 2014 by Migrant Forum in Asia and the Global Coalition on Migration (GCM) together with other civil society organizations. The Working Group is coordinated by Migrant Forum in Asia and forms part of the Migration and Development Civil Society Network (MADE). If you are interested in joining the [Open Working Group on Labour Migration & Recruitment](#), please email us at mfa@mfasia.org to express your interest. Please check recruitmentreform.org/contribute-to-the-openworking-group to see how members can contribute to the working group!



Step It Up: Dignity, Rights, Development is the global campaign launched by the Migrant Forum in Asia network and affiliated civil society organizations, trade unions, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the International Labour Organization, which highlights the significance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW / UN Migrant Workers Convention). 18 December 2015 marks the 25th anniversary of the adoption of the Convention that specifically guarantees the rights of all migrant workers and members of their families.

The 25th anniversary of the UN Migrant Workers Convention is the perfect occasion for the migrants' rights movement to magnify the unwavering advocacy for further ratification and implementation of this international human rights instrument, which looks after the human rights and labor rights of migrant workers and extends protection to members of their families. Launched on 18 December 2014, the Step It Up campaign encourages all stakeholders – States parties, trade unions, employers' organizations, civil society organizations, migrant workers and members of their families to take part in this year long global initiative, beginning on 18 December 2014 to 18 December 2015. Activities relating to the promotion of the human rights of migrant workers and members of their families as well as engagements with States to ratify the CMW will find space in the online platform of the Step It Up campaign.

The online platform of the Step It Up campaign centers on the following themes: promotion of the ratification of the UN Migrant Workers Convention, children of migrant workers, particularly ending immigration detention of children, migrant domestic workers, contributions of migrant workers in the countries of origin and destination, and situations of forced labor, human trafficking and slavery-like practices that migrant workers experience. The campaign also links up with other ratification efforts, including the ILO Convention on Domestic Work No. 189 (C189), ILO Convention No. 97 (Migration for Employment Convention), ILO Convention No. 143 (Migrant Workers Convention) and the ILO Forced Labour Protocol. These themes and the ratification of international human rights and labor rights treaties directly impact the lives and the realization of the rights of all migrant workers and members of their families. The Step It Up campaign through the online platform strives to weave together these interrelated issues and underscores that migration is not an isolated matter but is tied to various dimensions of peoples' struggles for equality, dignity, decent work and human rights.

To know more about the campaign, please visit www.cmw25.org

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MIGRANT FORUM IN ASIA SECRETARIAT
84-C Maginoo corner Masigla Extension Streets
Brgy. Central District, Diliiman
Quezon City 1100 Philippines

Tel: (63-2) 277-9484
Fax: (63-2) 433-3508
E-mail: mfa@mfasia.org
Web: www.mfasia.org