

## ILO - KNOMAD

### Thematic Working Group 3 on Low-skilled Labour Migration Technical Workshop on

### Review of Bilateral Agreements<sup>1</sup> on Low-skilled Labour Migration

1-2 December 2014, Kathmandu, Nepal

#### SUMMARY

1. This note summarizes the deliberations of the workshop on the issue of bilateral labour agreements (BLAs), which was jointly organized by the World Bank's KNOMAD Thematic Working Group (TWG) 3 on Low-skilled Labour Migration and the International Labour Organization's (ILO) Labour Migration Branch, and held in Kathmandu, Nepal from 1 to 2 December 2014. It drew upon the findings of related research led by the ILO as a co-chair of KNOMAD's TWG 3.
2. The workshop brought together delegates from across the globe from government, social partner organizations, academia and civil society organizations (see Annex I and II for the conference agenda and the participants' list).
3. Its aim was to discuss ways of improving the design, content and implementation of bilateral agreements on labour migration, thereby enhancing the governance of migration flows and the protection of migrant workers in both countries of origin and destination. More specifically, the workshop:
  - (i) Discussed the research findings regarding BLAs, including emerging implementation modalities, innovative features and their relevance to achieving the BLAs' objectives.
  - (ii) Discussed the good practice criteria employed by the research team to evaluate BLAs' effectiveness.
  - (iii) Reviewed the policy recommendations on reforms and mechanisms to make BLAs more effective.
  - (iv) Identified areas for further work, including how to address constraints on the effective implementation of BLAs.
4. Participants recognized the added value of the research to the BLA literature and suggested revising the good practice criteria for future follow-up research. Despite the possible adverse effects on greater fiscal burdens, and the increasingly negative public perception of migrants, participants recognised that the potential gains stemming from enhanced labour mobility can be higher than those generated from further trade liberalization. While many of these alleged adverse impacts are not supported by empirical evidence, such concerns underscore the importance of providing a strong evidence base for policy making based on a coherent approach.

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<sup>1</sup> Hereafter, 'bilateral agreements' and 'agreements' will be used to refer to all types of agreements covered by the research, including but not limited to Bilateral Labour Agreements (BLAs), Memoranda of Understanding (MOUs), Framework Agreements, and Protocols (*Additional or Optional*).

To this end, a dedicated research team carried out a detailed mapping and content analysis of 151 BLAs, covering Africa, the Americas, Asia and Europe. Researchers also conducted 15 detailed case studies to highlight examples of good practices, and to examine more in-depth issues relating to the implementation of BLAs in different national policy contexts. The mapping was based on a set of pre-determined profile features. The quality of BLAs was assessed taking the provisions of the ILO's Model Agreement on Temporary and Permanent Migration for Employment (appended the ILO Recommendation No. 1949 (No.86), and a set of 18 good practice criteria, as benchmarks (see Annex III). The good practice criteria, drawn from international labour standards and consultation with experts, cover: migration governance, migrant worker protection, and the link between migration and development. Participants agreed on the relevance of the good practice criteria and suggested they be used as a basis for phase II of the KNOMAD TWG3's work on BLA. Suggestions were made about eventually reducing the number of criteria and to acknowledge the growing participation of private recruitment agencies in the migration process.

5. Participants discussed the research findings related to the newer generation of BLAs, namely those that have been concluded since 1990. There were significant variations in findings within and across regions. Certain good practices, such as including references to an exchange of information, employment contracts, and implementation and monitoring mechanisms, were common to most agreements.
6. With regard to the practical implementation of BLAs and MOUs, the research team highlighted that the main limitation of the current study, and in fact of many BLAs themselves, was the glaring *lacuna* concerning the availability of information on follow up and implementation of these agreements in both countries of origin and destination. Participants agreed that effective implementation starts with strong monitoring, evaluation and implementation through joint committees and broad, multi-stakeholder consultation, which should include the strong presence of employers' organizations and trade unions, but is also dependent on national legislative and employment policy contexts, such as BLAs' and a country's flexibility to adjust to changing labour market needs.
7. More focused attention needs to be devoted to social security and gender issues in the next phase of the research, widening the scope of the research to how these matters are regulated and operationalized through national laws and policies. The research team reported that good practices pertaining to gender issues and social dialogue were almost universally absent. The issue of eligibility and portability of social security for temporary migrant workers was raised, as well as the importance of engendering agreements to ensure equal protection for some categories of workers who might otherwise not benefit from BLAs' provisions. This was considered especially relevant for migrant domestic workers, who often are not covered by the labour codes of destination country.
8. The participation of Ministries of Labour and social partners (in some case together with NGOs and migrants' associations) in designing and implementing bilateral agreements was identified

as key to the success of agreements. While an analysis of the BLAs' text show very limited reference to social dialogue, participants highlighted that this often happens in practice since the consultation processes of multi-stakeholders are often guaranteed by national legislation and social dialogue mechanism. Bilateral agreements between trade unions and between employers' organizations were also considered an important support to implement correctly bilateral agreements. Bilateral trade union agreement, however, can face serious limitations if/where the rights of unions are restricted. The value of active involvement by employers in implementing BLA provisions and worker protection was recognized.

9. Participants agreed on the need to increase regional cooperation on labour migration through regional integration and regional consultative processes. Many regional trade agreements, and, in fact, many destination countries, favour increasing the mobility of skilled workers, but not low-skilled workers. Therefore, there is a stronger need to explore policy coherence at national and regional levels. Participants also pointed out that regional agreements among origin countries can provide a meaningful framework through which to coordinate bilateral agreements, without encouraging unhealthy 'competition' between origin countries. Several tools for promoting policy coherence on labour migration were introduced and discussed, including KNOMAD's Policy Coherence Indicators which may warrant further refinements, for instance reflecting the rights aspect.
10. The discussion took note of the considerable challenges related to good labour migration governance and the effective implementation of these agreements. Thus, it is essential that national legislation and policy frameworks comply with International Labour Standards (ILS), and that effective enforcement mechanisms are enhanced, including through adequately-staffed and trained labour inspectorates. Participants agreed on having a system where all the stakeholders involved can benefit from labour migration, which could be provided through technical cooperation projects or by building the capacity of implementing institutions. . They also recognized the pressing need to explore the ways and means to make bilateral agreements more effective.
11. Suggestions for a second phase of research were discussed and agreed upon. Participants endorsed the proposal for TWG 3 to focus on in-depth implementation assessments of selected BLAs (within the overall context of legal and policy frameworks of both origin and destination countries) based on empirical and participatory research methods. This research would thereby complement other research on migration costs being conducted by the TWG 3.
12. Findings are also expected to lead to the development of evidence-based policy guidance/tools, as well as a strategy for dissemination/communication of policy guidelines to improve local and national policies and capacities for implementation. Suggestions for criteria with regard to the selection of possible country studies were made, including diversity in coverage and geographic representation, compliance with a wide range of good practice criteria, transparency and accessibility of information, along with authorities' commitment to engage and disclose information about the BLAs. Several participants, including representatives from Brazil, Italy and

Kuwait, indicated an interest in taking part in the second phase of this research, subject to the provision of additional information on the scope and modalities of the research. Throughout the process, the research team would maintain contact with relevant national and international stakeholders.

***Immediate follow up action:***

- Research team to circulate the final draft of the research report and expert meeting report for eventual comments.
- Research team to share information about KNOMAD Phase II with participants, and approach individual countries to inquire about their availability to participate into next research phase.

## 1. AGENDA

Day 1: Monday, 1 December 2014	
08.30-09.00	<b>Registration</b>
	<b>Welcome and Introduction</b>
	<b>Mr Jose Assalino:</b> Director, ILO Country Office for Nepal
09.00-09.30	<b>Ms Alcestis A. Mangahas:</b> Deputy Regional Director, ILO Regional Office for Asia and the Pacific
	<b>Ms Soonhwa Yi:</b> Senior Economist, Development Economics Prospects Group, World Bank, Washington, D.C
	<b>Ms Girija Sharma:</b> Under Secretary, Foreign Employment and Labour Attaché Coordination Section, Ministry of Labour and Employment, Nepal
09.30-10.30	<b>Session I: Elaboration of ILO-KNOMAD research programme on bilateral agreements and Memoranda of Understanding: Research design and methodology</b> Chairperson: Ms Maria Gallotti, ILO, Geneva
	Presentation: Mr. Piyasiri Wickramasekara, Global Migration Policy Associates (GMPA)
	Open discussion with interventions and feedback from national and other experts
10.30-11.00	<b>Break</b>
11.00-12.30	<b>Session II: Major findings of ILO-KNOMAD research on bilateral agreements and Memoranda of Understanding research:</b> Chairperson: Mr. Piyasiri Wickramasekara, Global Migration Policy Associates (GMPA): Highlights of findings common to all regions
	Mr. Justine Simeone: Highlights of findings from Europe & the Americas region Mr. L. K. Ruhunage: Highlights of Findings from Asia
	<i>Discussants: Ms. Liberty Casco (Philippines) and Ms Tiziana Ruberto (Italy) (TBC)</i>
	Open discussion with interventions and feedback from national and other experts
12.30-14.00	<b>Lunch</b>
14.00-15.15	<b>Session III: Way forward: Making the design and implementation of BLAs and MOUs more effective</b> Chairperson: Mr. Nilim Baruah, ILO Regional Office for Asia and the Pacific
	Presentations: Mr. Piyasiri Wickramasekara, Mr. Justin Simeone and Mr. Ruhnage
	<i>Discussants: Mr. Ganesh Gurung (Nepal) and Mr Rinaldo Gonçalves de Almeida (Brazil)</i>
	Open discussion with interventions and feedback from national and other experts
15.15-15.30	<b>Break</b>

<b>15.30-16.15</b>	<p><b>Session IV: Social Security for migrant workers: BLAs and Social Security agreements</b> Chairperson: Andrea Salvini, ILO Regional Office for Arab States</p> <p>Presentation: Migrant access to social security and social protection under BLAs and SS agreements – Ms. Clara van Panhuys, ILO, Geneva (Skype presentation).</p> <p><i>Discussant: Ms Laura Grecu (Moldova)</i></p> <p>Open discussion with interventions and feedback from national and other experts</p>
<b>16.15-17.00</b>	<p><b>Session V: Incorporating gender issues in BLAs and MOUs</b> Chairperson: Ms Padmini Rathnayake, Coordinating Secretary to the Secretary, Ministry of Labour and Labour Relations, Sri Lanka</p> <p>Presentation: Ms. Maria Gallotti, ILO, Labour Migration Branch, Geneva</p> <p>Open discussion with interventions and feedback from national and other experts</p>
<b>18.00-20.00</b>	<b>Reception/Dinner</b>
<b>Day 2: 2 December 2014</b>	
<b>9.00- 9.15</b>	<p><b>Recap of day one and overview of day two</b> Mr. Jesse Mertens, ILO</p>
<b>09.30-10.45</b>	<p><b>Session VI</b> <b>BLAs and MOUs: Role of Social Dialogue</b> Chairperson: Ms Anna Engblom, ILO, Kathmandu</p> <p><i>Discussant: Ms Chidi King (ITUC)</i></p> <p>Open discussion with interventions and feedback from national and other experts</p>
<b>10.45-11.00</b>	<b>Break</b>
<b>11.00-12.15</b>	<p><b>Session VII</b> <b>Regional and multilateral agreements and regional integration</b> Chairperson: Soonhwa Yi, World Bank</p> <p>Presentation on Trade agreements including GATS Mode 4 by Soonhwa Yi, World Bank Presentation on KNOMAD Thematic Working Group 5 by Amy Hong, OECD</p> <p><i>Discussants: Mr Mangala Randeniya (Sri Lanka)</i></p> <p>Open discussion with interventions and feedback from national and other experts</p>
<b>12.15-13.00</b>	<p><b>Session VIII</b> <b>Expanding research scope and areas for further work</b> Chairperson: Ms. Alcestis A. Mangahas</p> <p>Presentation of second phase research on BLAs and MOUs - Ms Manuela Tomei, Director of Conditions of Work and Equality Department, ILO (Skype presentation)</p> <p>Feedback from participants, and suggestions for ways forward.</p>
<b>13.00-13.15</b>	<p><b>Closing Remarks</b> Ms. Soonhwa Yi, World Bank Mr Yoshiteru Uramoto, Regional Director, ILO Regional Office for Asia and the Pacific</p>
Lunch	<b>13.15-14.00</b>

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### 3. GOOD PRACTICE CRITERIA AND MODEL AGREEMENT PROVISIONS

#### Good practice criteria used in the review of BLAs and MOUs

	Criterion
1	Transparency and publicity; awareness creation about provisions
2	Exchange of relevant information between Country of origin and Country of Destination on labour migration, and provision of relevant information to migrant workers
3	Evidence of normative foundations and respect for migrant rights (based on international instruments)
4	Specific reference to equal treatment of migrant workers, non-discrimination and/or protection of migrant rights
5	Provisions to protect migrant workers from recruitment malpractices at both origin and destination
6	Address gender concerns, and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries (domestic workers, agricultural workers, etc.).
7	Social dialogue involving concerned stakeholders besides government parties; employers in COO and COD, workers, civil society organizations
8	Coverage of wage protection measures; e.g. timely payment, allowable deductions, provision for overtime work, issue of receipts and payment into bank accounts
9	Concrete and enforceable provisions relating to employment contracts and workplace protection
10	Provision for human resource development and skills improvement
11	Concrete implementation, monitoring and evaluation procedures
12	Prohibition of confiscation of travel and identity documents
13	Provision for recognition of skills and qualifications in the destination country
14	Provide social security and health care benefits for migrant workers
15	Defining clear responsibilities between parties
16	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice
17	Provision for free transfer of savings and remittances
18	Coverage of the complete migration cycle

**List of Articles of the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (Annex- Migration for Employment Recommendation, 1949 (No.86)).**

Article No.	Article
1	Exchange of Information
2	Action against Misleading Propaganda
3	Administrative Formalities
4	Validity of Documents
5	Conditions and Criteria of Migration
6	Organization of Recruitment, Introduction and Placing
7	Selection Testing
8	Information and Assistance of Migrants
9	Education and Vocational Training
10	Exchange of Trainees
11	Conditions of Transport
12	Travel and Maintenance Expenses
13	Transfer of Funds
14	Adaptation and Naturalization
15	Supervision of Living and Working Conditions
16	Settlement of Disputes
17	Equality of Treatment
18	Access to Trades and Occupations and the Right to Acquire Property
19	Supply of Food
20	Housing Conditions
21	Social Security
22	Contracts of Employment
23	Change of Employment
24	Employment Stability
25	Provisions Concerning Compulsory Return
26	Return Journey
27	Double Taxation
28	Methods of Cooperation
29	Final Provisions