LABOUR MIGRATION IN ASIA
ROLE OF BILATERAL AGREEMENTS AND MOUs

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Structure of the presentation

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

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

- *Bilateral agreements* are more formal and binding than MOUs. More specific, and action-oriented.
- *Memorandum of Understanding* – a softer option providing a broad framework to address common concerns.

- Asian countries seem to prefer MOUs. Why?..
  This is best explained by countries themselves. Possible reasons:
  – Easier to negotiate and implement than a BA.
  – More flexibility to modify with changing economic and labour market conditions
  – MOUs preferred choice for dealing with low skilled admissions?
Why are Asian countries (incl. Middle East) reluctant to enter into labour agreements?

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

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

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

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

(see ILO Recommendation 86, Annex on model agreement)
Objectives of BAs and MOUs in Asia

Receiving countries

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

Sending countries

- To ensure continued access to labour markets of receiving countries.
- Reduce domestic unemployment pressures
- Ensure protection of migrant workers’ rights and welfare.
- Earn foreign exchange through worker remittances.
Example: Objectives - Thailand MOUs

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

(Thailand-Cambodia MOU – unofficial translation)
Asia: selected countries

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

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

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

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

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

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

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

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

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

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