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Evaluating Bilateral Labour Migration Agreements in Light of Human and Labour Rights

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Focus: Bilateral labour migration agreements (BLMAs) as opposed to agreements on social security and readmission

BLMAs as a “good practice”?

The role of the international rule of law/normative framework

Challenges in adequately protecting human and labour rights in BLMAs

Recommendations
Bilateral labour migration agreements as a “good practice”? 

✓ BLMAs are often referred to as “good practice” because they aim to provide for organized and regular temporary labour migration between countries of origin and destination with a view to avoiding irregular movements, excessive costs in migration and exploitative conditions.

✓ However, two pre-requisites:
  - Conformity with international minimum standards protecting human and labour rights.
  - Regulation of whole migration process (i.e. pre-departure, departure, arrival/reception, stay, return and reintegration).
The role of the international rule of law/normative framework

- BLMAs are an integral part of such a framework if they are in conformity with it or provide for more favourable provisions
- Indeed, this framework encourages bilateral labour migration arrangements between countries of origin and destination
  - ILO Migration for Employment Convention (Revised), 1949 (No. 97) Whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large
  - ILO Recommendation, 1949 (No. 86) contains a model bilateral labour migration agreement
  - ILO Multilateral Framework on Labour Migration, 2006, Guideline 2.3: “Promoting, where appropriate, bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration …”
- Rule of law framework serves as clear guidance for bilateral cooperation for lawful, humane, and equitable labour migration
Challenges in adequately protecting human and labour rights in BLMAs

- Different power asymmetries between countries of origin and destination in the negotiation process
- Diversity of BLMAs in terms of
  - **Rationale**: to prevent irregular migration or promote development?
  - Legal status (legally binding agreements vs. MoUs)
  - Scope (e.g. categories of migrant workers covered)
  - Content
  - Effective implementation
- Extent of involvement of public/ private employment agencies
- Important areas (e.g. social security, qualifications recognition, double taxation) often regulated separately
Inadequate attention in BLMAs to protection of migrant workers and ensuring their decent work in countries of destination

- Some provisions clearly violate human rights (e.g. prohibition on the right to marry) and labour rights (e.g. withdrawal of work permit on termination of employment contract)
- Deference to national labour laws, which may
  - not protect certain fundamental human and labour rights such as freedom of association
  - not apply fully to certain categories of workers/sectors (e.g. domestic work, agriculture, fisheries)
  - be poorly implemented (including no adequate provision for labour inspection or effective complaints mechanisms)
Recommendations

✓ Conformity in law and practice with international norms protecting human and labour rights
✓ More transparency (publication of BLMAs)
✓ Application to whole migration process
✓ Consultation/ involvement of employer and worker organizations in negotiation and implementation
✓ Need for (greater) gender sensitivity
✓ Better coordination among countries of origin at the regional level to reduce power asymmetries
  ▪ e.g. MoU between Indonesia and Philippines
✓ Provision for mutual and/or independent monitoring and evaluation
Thank you for your attention!

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BIO NOTE

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