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Assessment guide for bilateral agreements and memoranda of understanding on labour migration, with a special focus on Bangladesh





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by

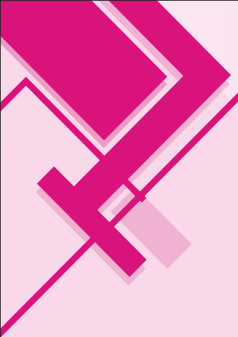
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First published 2018

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English edition

ISBN: 978-92-2-131700-5 (print); 978-92-2-131701-2 (web pdf)

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Printed in Bangladesh

Preface

Bilateral labour agreements (BLAs) and memoranda of understanding (MoUs) between countries of origin and countries of destination provide States with operational frameworks for regulating labour migration flows; ensuring conditions for decent work and protection of migrant workers; and exchanging information on needs and trends of the labour market.

Bangladesh is a key player in the global labour migration discourse, and it is estimated that over 8 million Bangladeshi men and women are currently working overseas, contributing significantly to the country's development. Such impressive flows also bring challenges, especially where migrants', mostly low-skilled, access temporary and precarious work, which further increases their vulnerability.

Oftentimes, workers face problems in countries of destination, where they are either exploited or not provided the working conditions and remunerations they were promised. At other times, employers may also feel cheated when a worker does not fulfil the required profile needed, and so on.

To ensure that workers can effectively benefit from their overseas employment, they need to be supported by effective social protection measures enabling them to live and work with dignity and without discrimination. In this context, agreements and MoUs play a very important role. Several of these issues can be avoided when MoUs and BLAs are rigorously drawn, clearly understood, and effectively implemented. When these instruments are not compliant with human rights protections standards, both the governance of labour migration and the protection of migrant workers suffer.

This document, developed under ILO's project "Application of Migration Policy for Decent Work of Migrant Workers in Bangladesh", and financed by the Swiss Agency for Development and Cooperation (SDC) is intended to support governments in assessing draft MoUs and BLAs against international labour standards.

This assessment was developed through discussions with officials from the Government of Bangladesh, employers' representatives, workers' representatives, and recruitment agency representatives over a period of six months in 2017.

While the document was prepared for the Government of Bangladesh, it will be useful for other governments to assess its current or draft MoUs and BLAs.



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Abbreviations and acronyms

BLA	bilateral labour agreement
CAC	agreement content/text assessment criterion
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CMW	United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families
DAC	development phase assessment criterion
EWOEP	Expatriates' Welfare and Overseas Employment Policy, 2016, Bangladesh
GPOPGFR	ILO General principles and operational guidelines for fair recruitment, 2016
IAC	implementation phase assessment criterion
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1965
ICRMW	International Convention on the Protection of All Migrant Workers and Members of their Families, 1990
ILO	International Labour Organization
IOM	International Organization for Migration
MAA	1949 ILO Model Agreement Article
MFLM	The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, 2006
MEWOE	Ministry of Expatriate Welfare and Overseas Employment, Government of Bangladesh
MOU	memorandum of understanding
OEMA	Overseas Employment and Migrants Act, 2013 [Bangladesh]
RPI	Review Protection Indicators [2014 MOU review of Bangladesh]
TOR	terms of reference
UN	United Nations
UNDP	United Nations Development Programme

1. Introduction

The increasing complexity of the migration of workers across borders highlights the importance of international cooperation in the governance of migration processes and the protection of migrant workers. Such cooperation on migration can take various forms ranging from multilateral and regional frameworks to national-level arrangements. In general, multilateral and regional frameworks and agreements to govern migration are preferable to bilateral arrangements because the latter can be affected by unequal power relations of the States parties (Wickramasekara, 2012; 2015). Yet such multilateral agreements are difficult to achieve in practice, and bilateral forms such as bilateral labour agreements (BLAs) and memoranda of understanding (MOUs) may often be the only available option for countries of origin. There has been a proliferation of bilateral MOUs on labour migration in Asia since 2000. The general objectives of such MOUs are: (a) better governance of the labour migration governance process; (b) assuring access to foreign labour markets; and (c) protection of migrant workers. Yet their effectiveness has been limited (Hennebry et al., 2015; ILO, 2017a; Wickramasekara, 2015).

Bangladesh – a major country of origin in South Asia – has succeeded in entering into agreements with a number destination countries and territories: Hong Kong (China), Iraq, Jordan, Libya, Kuwait, Malaysia, Oman, Qatar, the Republic of Korea and the United Arab Emirates. The Bangladesh Overseas Employment and Migrants Act, 2013, recognized the role of bilateral agreements, and defined their objectives in article 25. Alongwith other origin countries, Bangladesh is keen on improving the effectiveness of signed bilateral MOUs. At the request of Bangladesh's Ministry of Expatriate Welfare and Overseas Employment (MEWOE), the International Labour Organization (ILO) carried out a review of these agreements and prepared a guide on standard provisions and protection indicators for use by concerned officials (ILO, 2014a). A follow up technical cooperation project by the ILO and the Swiss Agency for Development and Cooperation (SDC), called "The Application of Migration Policy for Decent Work for Migrant Workers", has given priority to the Government's interest in MOUs and BLAs in its Output 1.2: "Bangladeshi officials are able to apply International Labour Standards principles and good practices in labour migration in MOUs and Bilateral Agreements."

This assessment guide will first highlight some methodological issues, followed by the objectives of the guide. The next two sections will review the normative foundations of agreements, and existing models for assessment of bilateral agreements. Based on the review, the report presents proposed assessment criteria, with some guidelines for their application.

2. Methodological notes

2.1 Terminology and definitions

The report on “Core elements of a bilateral agreement or a memorandum of understanding on labour migration” has provided the core provisions for an agreement, and suggested appropriate elements and standard provisions under each (Wickramasekara, 2018a). It also dealt with appropriate terminology for a rights-based approach to labour migration as well as definitions in relation to agreements. These elements will not be repeated here.

Assessment

It is important to clarify what is meant by “assessment” in the context of the current report. The 2014 ILO Review Report did not define this term. The Concise Oxford Dictionary defines assessment as “evaluating or estimating the nature, value, or quality of” something. The generic meaning close to our approach is that of judging or deciding on the quality of any selected intervention or feature. This generic meaning is used extensively in the educational field, where assessments document the performance of students in relation to a defined standard of performance. Standard project evaluation manuals, however, do not generally define the term “assessment” separately (ILO, 2015; UNDP, 2002).

Assessments can be informal or formal on the one hand, or qualitative or quantitative on the other hand. This guide will focus on an informal and qualitative type of assessment, because the intent is an assessment model for the internal use of government staff to quickly review agreements. The guide is also geared towards a rapid assessment approach that is low cost and less time consuming.

These assessments can be used for accountability or improvement, though this guide focuses on the latter, since the objective is to highlight how agreements can be improved for the benefit of the origin country and migrant workers.

The assessment criteria have been developed keeping in mind the broad objectives of agreements and international normative standards. It is recommended that these qualitative criteria be used for a rapid assessment of the process, content, implementation, and follow up of agreements.

Monitoring and evaluation are part and parcel of the implementation of a bilateral agreement. They should be distinguished from the term “assessment” used in this guide, and can be defined as follows:

Monitoring

“A function that uses the systematic collection of data on specified indicators continuing with which to provide management and the main stakeholders in an ongoing development intervention with indications of the extent of progress and the achievement of objectives and progress in the use of allocated funds” (ILO, 2015, p. 166). Monitoring is a continuous ad routine procedure usually carried out by programme administrators to ensure that the project is on track, and/or the necessary corrective measures are taken in time.

Evaluation

“The systematic and objective assessment of an ongoing or completed project, programme or policy, its design, implementation and results. The aim is to determine the relevance and fulfilment of objectives, development efficiency, effectiveness, impact and sustainability” (ILO, 2015, p. 163). A series of ongoing assessments can feed into the evaluation process. Evaluations require in-depth

analysis and require more resources. They are usually undertaken during the mid-term or at the end of a project intervention. Independent evaluations (carried out by those not directly connected with the programme) can provide more objective findings and lessons for future project/programme design.

Since assessment is sometimes interchangeably used with evaluation (as in Diminescu, 2004), this report uses the term “assessment” to refer to “rapid assessment”.

2.2 Application of assessment criteria

The guide will develop a set of criteria to assess agreements for different stages of the bilateral agreement process:

- a) assessment of the process leading to an agreement;
- b) assessment of the contents of an agreement; and
- c) assessment of the actual implementation process of an agreement.

A comprehensive assessment should look at all three stages, which are interrelated. The development process during the first stage would determine the quality of an agreement. If the two parties acted as equal partners in the negotiations, the outcome would be balanced and reflect the interests of both parties. Similarly, involvement of the major stakeholders in labour migration would also ensure better outcomes. The second stage would assess the agreements based on the contents in relation to the objectives of the policy-makers and international norms. Good content alone cannot ensure that an agreement is effective, as that also depends on the third stage: actual implementation. Some poorly worded or loosely worded agreements may turn out to be quite effective when there is political will on the part of both parties, or when a good governance framework in the country of destination compensates for the gaps. This is why it is important to develop separate criteria for the implementation stage. The objective is to assess the operation of the follow-up process. This report does not deal with development of impact evaluation of bilateral agreements, which is a separate exercise.

2.3 Limitations

The material developed here builds on existing work, including the 2014 ILO review of Bangladesh’s labour migration agreements (ILO, 2014a); a 2015 ILO global review of such agreements (Wickramasekara, 2015);

Cholewinski (2015); and an ILO report on migration for the 2017 International Labour Conference (ILO, 2017a). The assessment criteria developed here are primarily meant for the internal use of concerned officials charged with the development, negotiation, and implementation of bilateral agreements. The criteria should not be used to publicly rank agreements or to condemn agreements in terms of quality of content or implementation, since the criteria have been primarily discussed in relation to an origin country perspective (i.e., Bangladesh). A bilateral agreement is between two parties, and such assessment or rankings can damage the confidence built up between the two governments.¹

¹ The 2014 ILO-commissioned review of BLAs and MOUs also made a similar point: “Accordingly, it is important to highlight that the identification of provisions and indicators are neither intended to scrutinize the Government of Bangladesh or the second party’s implementation of their obligations under a specific MoU/Agreement or in general, nor as another means of monitoring the ILO constituents compliance with the international labour standards or the other UN or regional conventions and multilateral agreements” (ILO, 2014, p. 14).

3. Rationale and objectives

3.1 Objectives of the Assessment Guide

The basic objective of this guide is to provide a set of criteria for a rapid assessment of planned or existing bilateral agreements or MOUs with a view to improving them. The rationale for the criteria and how to put them into effect will be outlined. The guide will also strengthen the capacity of concerned government officials and other stakeholders in the development, negotiation, and implementation of agreements. It will also serve as training materials for capacity building.

3.2 Role of bilateral agreements in international instruments

ILO instruments have long recognized the value of BLAs as a good practice in the governance of labour migration flows between countries, and in contributing to the protection of migrant workers. The ILO Migration for Employment Convention (Revised), 1949 (No. 97) recommends the conclusion of agreements “whenever necessary or desirable” to regulate migration for employment in cases where the numbers of migrants are “sufficiently large” (Article 10). To give practical effect to this, the accompanying ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains a “Model Agreement on Temporary and Permanent Employment” in its annex which has influenced the development of BLAs across the globe over the years, and whose principles largely remain valid. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families recognized the importance of bilateral agreements, as bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field”. Likewise, the ILO Tripartite Technical Meeting of November 2013 called upon the ILO to “assist governments and social partners with policy guidance in developing, negotiating and effectively implementing bilateral or other international agreements on labour migration, with a view to increasing positive outcomes for migrant workers, countries of origin and destination, and sustainable enterprises” (ILO, 2013a, para. 9(ii)). The Chairperson of the ILO Tripartite Technical Meeting also commented that “a number of bilateral agreements and memoranda of understanding on labour migration had been concluded, but the ILO had very little information on their actual impact” (ILO, 2013b, para. 88). A conclusion of that meeting was to ask the ILO to establish a repository of agreements and good practices on bilateral and other international cooperation on labour migration.

The ILO Director-General’s report on fair migration for the 2014 International Labour Conference also recognized the role of bilateral agreements for well-regulated and fair migration between member States (ILO, 2014b).

More recently the ILO has reiterated the role of bilateral labour agreements and other arrangements for a fair migration agenda, including governance of migration and protection of migrant workers. The 2016 ILO General Survey on Migrant Workers concluded:

The Committee wishes to emphasize the important role that bilateral agreements and other arrangements can play to ensure that migrant workers are able to benefit from the protections contained in the Conventions. In this context, it is important that the content of these agreements and arrangements be made available in understandable terms to those who benefit from them. It should also be ensured that these agreements include adequate monitoring of their implementation and access to enforcement mechanisms and provision of social dialogue (ILO, 2016a, p.55)

The resolution concerning fair and effective labour migration governance stemming from the General Discussion on labour migration adopted by the 106th International Labour Conference in 2017 included the following text on bilateral agreements among areas warranting special attention:

Bilateral agreements can be useful migration governance tools to facilitate safe, regular and orderly labour migration between countries, when addressing both labour market needs and the protection of migrant workers and can be more beneficial if they are based on social dialogue (ILO, 2017b, para. 15).

3.3 Role of bilateral agreements in legislation and policies on overseas employment in Bangladesh

3.3.1 Overseas Employment and Migrants Act, 2013

It is noteworthy that the Overseas Employment and Migration Act, 2013 (OEMA) recognizes the value of bilateral agreements on migration in article 25 of the law, and defines the objectives and the principles on which they are to be based. It is clear that all the principles contained in article 25 – (a) to (c) in box 1 below – reflect the overriding goal of protection of migrant workers.

Box 1

Overseas Employment and Migrants Act 2013: Article 25 on bilateral agreements on migration

25. Bilateral agreement on migration. —

(1) The Government may conclude memorandum of understanding or an agreement with another country with a view to increase opportunities of migration by the Bangladeshi citizens for overseas employment, improving management of labour migration, repatriation and reintegration of the migrant workers in the home country, and to ensure welfare and the rights of migrant workers including the members of their families.

(2) Any memorandum of understanding or agreement under the Subsection (1) shall be concluded on the basis of, among others, the following principles: —

- (a) protection of the rights, safety and human dignity of all migrant workers within the country or while overseas;
- (b) protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards; and
- (c) assurance of the migrant workers' right to information and the right to redress if their rights are violated in the concerned country.

Source: OEMA, article 25

Under the OEMA (article 24), the Labour Welfare Wings in different destination countries are also under obligation to submit an annual report that should highlight “the current status of the implementation of any existing bilateral agreement regarding the rights of Bangladeshi migrant workers in such country” among other things.

However, chapter VII of the OEMA on the “Rights of Migrant Workers” lists only limited rights, mostly relating to problems faced by migrant workers overseas. Regarding gender, the only provision is in article 6, relating to application of the principle of equality where no discrimination is allowed on grounds of sex and several other grounds.

3.3.2 Expatriates' Welfare and Overseas Employment Policy, 2016

The regulations stipulated in the Bangladesh draft Gazette notification dated 26 May 2016, pertaining to the “Expatriates' Welfare and Overseas Employment Policy” (EWOEP) replaced the Overseas Employment Policy of 2006. The EWOEP is based on the following principles:

- ensuring safe labour migration by upholding the fundamental human rights and human dignity of all migrant workers irrespective of sex, religion, race, caste as [a] Constitutional duty of the State;
- keeping conformity with gender-sensitiveness and national and international provisions on elimination of all forms of discrimination against women while taking policies and programmes;
- ensuring standard and decent work for all Bangladeshi workers irrespective of sex, religion, race, caste;
- guarantying right to free choice of employment in country or abroad for all citizens;
- extending all support to protection of all workers by the State while abroad, and to protect their right to proper rehabilitation when they return home;
- solidarity to all international Conventions and legal instruments ratified by Bangladesh on security, protection and human dignity of migrant workers; and

- ensuring welfare service and facilities to empower migrant workers and members of their families and to encourage participation in all stages of labour migration roundup (MEWOE, 2016).

These principles highlight the clear priorities placed by the Bangladesh Government on decent work, the rights of migrant workers, gender sensitivity and non-discrimination towards female migrant workers, respect for international instruments, and state support to workers in the country and abroad.

The EWOEP elaborates on the role of agreements:

The recent initiatives toward bilateral agreements and concluding of memoranda of understanding will be further strengthened and extended, both in order to seek appropriate placements of Bangladeshi skills, as well as to extend increasingly better protection and security of the migrant workers and ensuring dignified labour migration for them and gender sensitive working environment (MEWOE, 2016, pp. 12–13).

The most important provisions of the EWOEP in this regard are:

- The principles guiding protection of migrant workers will underpin the forging and standardization of BLAs and MOUs.
- MOU-specific reviews will be undertaken in consultation with stakeholders, to identify mechanisms and appropriate institutions and agencies, both in Bangladesh and destination countries, to ensure appropriate facilitation, enforcement, and monitoring of the agreements reached.
- Upholding Bangladeshi migrant workers' right to information in the concerned country.
- Provisions of equal treatment in pay for men and women workers and other equality of labour rights, and safe working conditions to be ensured while signing BLAs and MOUs (MEWOE, 2016).

Thus, the OEMA and the EWOEP both provide clear guidelines for the formulation of bilateral agreements and MOUs, and highlight protection of migrant workers as of the highest priority in the process.

4. Normative foundations of migration governance and migrant protection

4.1 International instruments relevant for bilateral agreements and MOU

Taken together, instruments at four levels provide a solid basis for elaborating a rights-based approach to migration.

- 1) Nine universal human rights instruments and associated Protocols, which apply to all persons, including migrant workers: Universal human rights are applicable to all human beings irrespective of nationality or migratory status;
- 2) Eight fundamental ILO core Conventions enshrined in the 1999 ILO Declaration on Fundamental Principles and Rights at Work are applicable to all workers, including migrant workers, without distinction of nationality, and regardless of migration status;
- 3) Three international migrant worker Conventions: ILO and UN instruments dealing specifically with migrant workers; and
- 4) All other labour standards, most of which apply to all workers in the workplace, including migrant workers.

There are also nonbinding normative frameworks, especially the ILO Multilateral Framework on Labour Migration (MFLM), and the General principles and operational guidelines for fair recruitment (GPOGFR).

The MFLM provides non-binding principles and guidelines for a rights-based approach to labour migration, and synthesizes principles and guidelines based on the international instruments above (ILO, 2006). The 2016 GPOGFR also provide a non-binding framework useful in the design of bilateral agreements that focus on labour recruitment (ILO, 2016b).

4.2 Universal human rights instruments of the United Nations

United Nations universal human rights apply to all human beings, and therefore are important in terms of protecting migrant workers from discrimination and exploitation on grounds other than their non-national status. These Conventions are listed in table 1.

Except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICRMW), all the other Conventions have been widely ratified. Of these Conventions, the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and the International Convention on the Elimination of Racial Discrimination, 1965 (ICERD) are highly relevant in addressing any form of discrimination based on race, colour, descent, or national or ethnic origin against all migrant workers and against women migrant workers. CEDAW General Recommendation No. 26 on women migrant workers is particularly relevant to the protection of women migrant workers (CEDAW Committee, 2008). This Recommendation provides guidance to member States on protecting the rights of women migrant workers, even within countries that have already ratified the ICRMW. Appendix I shows the ratification status of universal human rights treaties by 11 destination countries that have signed MOUs with Bangladesh and Singapore. More important is the fact that Bangladesh and nine of out of the 11 destination countries have ratified the ICERD, and all destination countries have ratified CEDAW, so they all have an obligation to eliminate discrimination against women migrant workers.

But the most relevant Convention for protecting all migrant workers and their families –the ICRMW –has been ratified only by Bangladesh, and not by any of its major destination countries.

4.3 ILO Fundamental (Core) Conventions: The ILO 1998 Declaration

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, on 18 June 1998, has provided a firm basis for identifying core labour rights in four areas that apply to all workers, including migrant workers in irregular status:

- 1) freedom of association and the effective recognition of the right to collective bargaining;
- 2) the elimination of forced or compulsory labour;
- 3) the abolition of child labour; and
- 4) the elimination of discrimination in respect of employment and occupation.

Bangladesh has ratified seven of the eight fundamental Conventions, with lone exception being the Minimum Age Convention, 1973 (No. 138).

The 2014 Protocol (P029) to the Forced Labour Convention, 1930 (No. 29) adopted by the ILO is a new, legally-binding instrument that requires States to take measures regarding prevention, protection, and remedy in giving effect to the Convention's obligation to suppress forced labour. Bangladesh has not yet ratified the Protocol.

Core labour standards are “minimum rules” for labour in the global economy. The Declaration makes it clear that these rights are universal, and that they apply to all people in all States, regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. The Declaration recognizes that economic growth alone is not enough to ensure equality and social progress and to eradicate poverty. It is encouraging to note that the eight fundamental Conventions are among the most widely ratified ILO Conventions. The broad ratification of the fundamental Conventions is highly relevant in the case of destination countries in Asia and the Gulf, most of which are unlikely to ratify migrant worker Conventions in the foreseeable future, and where serious rights violations take place. Trafficking of women and children and related human rights abuses are covered by the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), which commit countries to abolish all forms of forced or compulsory labour.

Appendix I shows the ratification status of ILO core Conventions among major destination countries of Bangladesh. The Gulf countries have ratified these Conventions in varying degrees, with Kuwait standing out as having ratified seven of the eight ILO core Conventions. Apart from Oman, other Gulf Cooperation Council countries have ratified at least five of the core Conventions.

In some cases, these Conventions may offer a more promising – or only – avenue to combat some of the major violations of rights faced by migrants, such as the forced labour situations experienced by many migrant domestic workers (Esim and Kerbage, 2011; Wickramasekara, 2011). For example, the ILO has on several occasions used Convention No. 29 to raise issues about forced labour practices engaged in by private recruitment agencies.

Table 1. International human rights instruments and ILO fundamental Conventions

UN universal human rights instruments	ILO fundamental (core) Conventions: 1998 Declaration
1 International Covenant on Economic, Social and Cultural Rights	Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87)
2 International Covenant on Civil and Political Rights	Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
3 International Convention on the Elimination of Racial Discrimination (ICERD)	Forced Labour Convention, 1930 (No. 29)
4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Abolition of Forced Labour Convention, 1957 (No. 105)
5 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Minimum Age Convention, 1973 (No. 138)
6 Convention on the Rights of the Child	Worst Forms of Child Labour Convention, 1999 (No. 182)
7 International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW)	Equal Remuneration Convention, 1951 (No.100)
8 International Convention for the Protection of All Persons from Forced Disappearances	Discrimination (Employment and Occupation) Convention, 1958 (No.111)
9 Convention on the Rights of Persons with Disabilities	

4.4. International migrant worker instruments

4.4.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICRMW)

The ICRMW was adopted by the United Nations (UN) General Assembly on 18 December 1990, following a lengthy drafting process of about 11 years. The Convention drew upon major UN human rights instruments and ILO migrant worker instruments and forced labour Conventions, which are mentioned by name in its Preamble. With 93 articles, it is very comprehensive, and sometimes expands upon the scope of the ILO migrant worker Conventions from which it drew inspiration. The ICRMW is now listed as the seventh core international human rights instrument of the UN.

The ICRMW recognizes the responsibility of the international community, through the UN, to provide standards of protection to serve as a basis for national laws. This is because of the inadequate protection offered to migrant workers and members of their families by the national legislation of destination States or by their own States of origin.

Bangladesh signed the ICRMW in 1998, and ratified it in 2011 without any Declarations or Reservations. Bangladesh also enacted the Overseas Employment and Migrants Act (OEMA) in 2013 to modify national legislation in line with the ratified Convention.

This is the only international migrant worker Convention ratified by Bangladesh, and therefore the most relevant for Bangladesh in improving migration policy, including negotiating BLAs.

Part I of the Convention contains the most comprehensive definition of migrant workers found in any international instrument concerned with migrants. Article 2(1) defines a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

Article 7 provides that “States parties should respect and ensure the rights contained in the Convention without distinction of any kind, such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”. Article 1 also states that the Convention applies to “all migrant workers and members of their families without distinction of any kind (OHCHR, 2005, p. 5).

Part III of the ICRMW defines the human rights of all migrant workers and members of their families migrants, including those in undocumented status, and confers additional rights on documented migrant workers in Part IV.

The Convention reaffirms the principles of equality of treatment; right to social security; right to information; right to form associations and join trade unions; right to transfer earnings and savings; the need for adequate consular and other services; and interstate cooperation, which are all relevant to Bangladesh workers.

Another innovative feature of the Convention is Part VI on the “Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families”. This section deals with:

- the exchange of information between States;
- the provision of information to migrant workers;
- regulation of recruitment;
- prevention of trafficking and irregular migration;
- state cooperation for orderly return of migrants and their reintegration; and
- ensuring equality of treatment in respect of working and living conditions.

The ICRMW has been supplemented by two General Comments:

General Comment No. 1: Migrant domestic workers (CMW, 2011). This General Comment was made before the adoption of the ILO Convention on Domestic Workers, 2011 (No. 189).

General Comment No. 2: Rights of migrant workers in an irregular situation and members of their families (CMW, 2013).

Both General Comments are highly relevant to Bangladesh given the country's emphasis on promoting female migrant domestic workers, Bangladesh's agreement on domestic worker recruitment with Saudi Arabia, and the large numbers of Bangladesh workers in irregular status in countries like Malaysia.

Other relevant UN Conventions

The Palermo Convention against Transnational Organized Crime and Its Protocols, adopted by the United Nations in December 2000 to fight organized crime, are important to address trafficking and smuggling of persons, which have become major international issues of concern related to the protection of migrants. Bangladesh ratified this Convention in 2011, but has not ratified the two associated Protocols, namely the:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and
- Protocol against the Smuggling of Migrants by Land, Sea and Air.

4.4.2. ILO migrant worker instruments

The following are the major ILO standards of direct relevance to migrant workers, consisting of two Conventions and their related Recommendations:

- Migration for Employment Convention (Revised), 1949 (No. 97);
- Migration for Employment Recommendation (Revised), 1949 (No. 86);
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and

- Migrant Workers Recommendation, 1975 (No. 151).

The migrant worker instruments aim: (a) to regulate the conditions under which the migration process takes place; and (b) to provide specific protection to this highly vulnerable category of workers.

These instruments cover all aspects related to the migration process and employment including pre-departure, transit, destination, and return. It also deals with core human rights such as non-discrimination and freedom of association, in addition to labour rights.

The scope of the Convention covers three main areas:

- regulation of conditions under which migration for employment must occur (e.g., exchange of information, cooperation between employment services);
- general protection provisions: public employment services should provide free information; and
- equality of treatment between migrant workers and nationals with regard to destination country laws and administrative practices on living and working conditions, social security, and access to justice.

Recommendation No. 86 supplements Convention No. 97 by providing more detail on the migration process. The Recommendation contains the “Model agreement on temporary and permanent migration for employment, including the migration of refugees and displaced persons” (henceforth the “Model Agreement”), which continues to be relevant in the formulation of BLAs (ILO, 1949).

By the early 1970s, the challenge was no longer one of facilitating the movement of surplus labour, but of bringing migration flows under control, and a renewed commitment to eliminating irregular migration and suppressing the activities of organizers of clandestine movements of migrants –i.e., traffickers. This provided the backdrop to development and adoption of Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Convention No. 143 consists of two parts:

- Part I (Articles 1–9) covers all migrant workers and is particularly designed to address clandestine movements, and protect those non-nationals who are in an irregular situation with regard their entry, stay, or economic activity.
- Part II (Articles 10–14) applies to workers admitted on a regular basis only, and contains a broader definition of the principle of equal treatment to cover equality of opportunity between nationals and migrant workers.

While both ILO Conventions accord a central place to the principle of equality of treatment, conditions of employment, social security, and trade union membership, Convention No. 143 broadens the notion of equality to incorporate equal opportunity as well.

The main features found in ILO migrant worker Conventions include:

- applying mainly to workers admitted on a regular basis (except Part I of Convention No. 143);
- containing international good practices achieved through extensive tripartite negotiation around regulating migrant worker flows and ensuring protection;
- covering the whole migration process, including emigration, immigration, and transit and return;

- with a few exceptions, they do not distinguish between permanent and temporary migrant workers;
- the principle of non-discrimination and equal treatment on par with national workers;
- respect for basic human rights of all migrant workers (regular and irregular) – see Article 1 of Convention No. 143;
- the principle of consultations with social partners on various policies and issues;
- an emphasis on cooperation between States; and
- calls for a robust supervisory mechanism through periodic reports and review of complaints by the ILO Committee of Experts.

4.5 Other relevant ILO Conventions

Most Conventions and Recommendations adopted by the International Labour Conference are of general application; that is, they cover all workers, irrespective of citizenship. There are also many instruments that contain provisions relating to migrants, or the Committee of Experts has referred to the situation of migrant workers in supervising the application of Conventions in recent years. A number of the Conventions that also apply to migrant workers are listed below. Most of these apply to all employed migrants, including those workers with irregular status. Some of these Conventions relate to sectors where migrant workers are concentrated, such as agriculture, hotels and restaurants, and construction, among others. These Conventions include:

- Domestic Workers Convention, 2011 (No. 189);
- Safety and Health in Agriculture Convention, 2001 (No. 184);
- Private Employment Agencies Convention, 1997 (No. 181);
- Protection of Wages Convention, 1949 (No. 95);
- Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172);
- Labour Inspection Convention, 1947 (No. 81);
- Plantations Convention, 1958 (No. 110);
- Equality of Treatment (Social Security) Convention, 1962 (No. 118);
- Maintenance of Social Security Rights Convention, 1982 (No. 157);
- Employment Policy Convention, 1964 (No. 122);
- Minimum Wage Fixing Convention, 1970 (No. 131);
- Occupational Safety and Health Convention, 1981 (No. 155);
- Occupational Health Services Convention, 1985 (No. 161);and
- Safety and Health in Construction Convention, 1988 (No. 167).

Appendix II lists the ILO Conventions ratified by Bangladesh, including the fundamental Conventions. Out of those listed immediately above, Bangladesh has ratified Convention No. 81 on labour inspection and Convention No. 118 on equal treatment (social security).

4.5.1 ILO Private Employment Agencies Convention, 1997 (No. 181)

Initially the ILO favoured public and free employment services, and discouraged, or asked States to supervise, fee-charging private agencies. In June 1997, the International Labour Conference adopted the Private Employment Agencies Convention, 1997 (No. 181), supplemented by the

Private Employment Agencies Recommendation, 1997 (No. 188), which recognized the legitimacy of bona fide private agencies carrying out their tasks, side by side and in cooperation with public employment services. While the Convention recognizes their important role, it requires ratifying States to adopt measures to regulate employment agencies to protect migrant workers and prevent abuses.

Convention No. 181:

- recognizes the dominant role of the private sector in recruitment and placement;
- contains important provisions to regulate and prevent abuses of migrant workers through private employment agencies; and
- reaffirms that the recruitment of migrant workers should be free of charge, but allows for some exceptions

Fiji, Japan, and Mongolia are the only countries in Asia to have ratified this Convention. Bangladesh has, however, ratified the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which has been superseded by Convention No.181. The latter Convention is important for Bangladesh because of the key role played by private employment agencies in migration, and their documented malpractices.

4.5.2 ILO Convention on Domestic Workers, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201)

Convention No. 189 covers all types of domestic workers, including national and migrant domestic workers, who are believed to be among the most vulnerable workers. The Convention defines “domestic work” as “work performed in or for a household or households” (Article 1(a)), and defines domestic workers as “any persons engaged in domestic work within an employment relationship”.

The main contributions of Convention No. 189 are:

- (a) measures for ensuring fair terms of employment and decent working conditions for domestic workers, on par with other workers;
- (b) promoting formalization of the employment relationship; and
- (c) developing of measures for ensuring compliance with laws and regulations protecting domestic workers.

Article 7 spells out the content of employment contracts. Article 8 refers specifically to migrant domestic workers (see box 2).

Box 2

Convention No.189, Article 8 on migrant domestic workers

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies. [...]
3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Article 15 has detailed provisions on the regulation of private employment agencies in order to effectively protect domestic workers – including migrant domestic workers – recruited or placed by private employment agencies from abusive practices. It also urges countries to consider concluding bilateral, regional, or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement, and employment in cases of domestic workers migrating for employment (Article 15 (1d)).

In Asia, only the Philippines has ratified Convention No. 189. In view of the increasing number of female workers migrating for employment, especially as domestic workers to Saudi Arabia, Bangladesh should consider prospects for its ratification with ILO assistance.

4.6 Nonbinding normative frameworks of special relevance

4.6.1 ILO Multilateral Framework on Labour Migration

The UN and ILO standards on migrant workers have been complemented by the 2006 ILO Multilateral Framework on Labour Migration (MFLM), comprising non-binding principles and guidelines for a rights-based approach to labour migration (ILO, 2006).

The MFLM supplements existing ILO and UN migrant worker instruments, and considers new global challenges and developments, such as:

- the growth of temporary labour migration programmes;
- the feminization of migration;
- the greater role of the private sector in arranging migration across borders;
- the high incidence of irregular migration, including trafficking and smuggling of human beings; and
- the growing interest of the international community in migration and development linkages.

What is important to note is that the MFLM is a negotiated framework among tripartite partners. It is a tool kit for guiding migration policies and practices in all countries. It offers a wide menu of policy options to countries. The ILO good practices database² is updating relevant good practices in the MFLM Annex II. The MFLM itself was translated into Bengali by the Warbe Foundation some years back.³ It is important for the ILO to arrange a more formal Bengali translation of the MFLM and promote its dissemination.

The MFLM is useful for governments in several ways. It can serve as a checklist on assessment of existing legislation, policies, and practices; as a ready reference source in designing or improving migration legislation and policies; and as a tool for negotiating agreements on labour migration between source and destination countries.

4.6.2 General principles and operational guidelines for fair recruitment

The General principles and operational guidelines for fair recruitment (ILO, 2016) convey a very clear message regarding bilateral or multilateral labour migration agreements on the importance of international instruments, involvement of social partners, and dissemination and awareness, as seen below:

² See <http://www.ilo.org/dyn/migpractice/migmain.home>

³ Communication by Mr Saiful Haque, WARBE Development Foundation

Operational guideline 13.1, for example, states:

Bilateral and/or multilateral agreements should be rooted in international labour standards and other internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, and should contain specific mechanisms to ensure international coordination and cooperation, including on consular protection, and to close regulatory and enforcement gaps related to recruitment across common labour migration corridors. These agreements should be drafted, adopted, reviewed and implemented with the meaningful participation of the social partners and should include the establishment of oversight mechanisms, such as tripartite committees under bilateral and multilateral agreements. They should be made public and migrant workers should be informed of their provisions. (ILO, 2016, p. 7)

Likewise, operational guideline 23 states: “Labour recruiters acting across borders should respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers’ rights” (ILO, 2016b, p. 9).

The Guidelines have been translated into Bengali by the ILO Office, Dhaka.⁴

4.6.3 ILO Resolution concerning fair and effective labour migration governance

ILO Resolution concerning fair and effective labour migration governance was adopted by the International Labour Conference, 2017 (ILO, 2017b), and it recognizes that bilateral agreements can be useful migration governance tools. The Resolution included bilateral agreements among priorities for action by the ILO, and called for tripartite exchange of good practices on same:

(i). Bilateral and multilateral agreements. Foster tripartite platforms to bring representatives of governments of countries of origin, transit and destination together with social partners, at various levels, to exchange good practices on the design, content, negotiation, implementation, monitoring and evaluation of bilateral and multilateral agreements that are gender-sensitive, in accordance with ILO standards, based on social dialogue, and address the needs of labour markets in countries of origin and destination, as appropriate, and the protection of migrant workers (ILO, 2017b, p. 7).

The Resolution offers clear guidelines on involvement of tripartite partners, but the reference is in the context of exchanging good practices.

⁴ Communication by the ILO Project Office.

5. Review of existing models of assessment criteria

5.1 The 1949 ILO model agreement

The report on core elements for agreements (Wickramasekara, 2018a) discussed the ILO 1949 Model Agreement (ILO, 1949) and its relevance. We shall only discuss its relevance to quality assessment of agreements here.

The Model Agreement can serve two purposes:

- (a) As a checklist of the comprehensiveness of a BLA– The ILO 1949 Model Agreement contains 29 articles corresponding to items to be dealt with in developing a bilateral agreement for migration (see Appendix III). In fact, the 2015 ILO review of BLAs and MOUs used the Model Agreement to assess the scope and coverage of agreements (Wickramasekara, 2015a).
- (b) As a tool to assess the quality of a bilateral agreement based on various provisions of the Model Agreement. The Model Agreement was meant to give effect to the provisions in ILO Convention No. 97 and the related Recommendation No. 56.

The author adopted option (a) above to draw upon the Model Agreement for defining the minimum configuration of a BLA/MOU for the migration for employment of low-skilled workers (Wickramasekara, 2018a).

The most useful articles within the Model Agreement relate to the following:

- coverage of the entire migration cycle: departure, transit, stay and return;
- information exchange and action against misleading propaganda;
- information and assistance to migrants;
- organization of recruitment, introduction, and placing, per article 6(4) – “The administrative costs of recruitment, introduction, and placing not to be borne by the migrants.”;
- detailed employment contract;
- equality of treatment;
- supervision of working and living conditions;
- settlement of disputes; and
- social security arrangements.

The Model Agreement was widely used in the 1950s and 1960s by European governments (Böhning, 2012; Rass, 2012). In the 2017 General Discussion on Labour Migration at the 106th Session of the International Labour Conference, the Workers’ Vice Chairperson “called upon the Office and Governments to make more use of the model agreement in the Annex of Recommendation No. 86 when negotiating bilateral agreements, so as to increase the protection to migrant workers offered by such agreements” (ILO, 2017c, p. 34).

Nevertheless, the Model Agreement was developed almost seven decades back in 1949, and some of its provisions may not appear that relevant in the changed global context. For example:

- Recruitment and placement is now dominated by a private sector recruitment industry that sits in contrast to the dominating role of public employment services at the time.
- Female migration for employment was also not popular at the time.

- The Model Agreement deals with diverse categories – temporary migrant workers, refugees and displaced persons, and permanent migrant workers. Most recent bilateral agreements, including those entered into by Bangladesh, pertain to temporary migration of low-skilled workers.
- The applicability of agreement provisions for family members of migrant workers have generally been restricted to permanent migrant workers only. In contrast, the 1990 International Convention, which was ratified by Bangladesh, is applicable to all migrant workers and members of their families. In practice, however, most Asian low-skilled workers are not allowed to migrate with their families.

In the development of assessment criteria, this report has covered a wider range of instruments while drawing upon some elements of the Model Agreement.

5.2 The 2014 ILO review of Bangladesh agreements

The 2014 ILO-commissioned review of Bangladesh MOUs employed two sets of criteria for the assessment of agreements. According to the review:

This section of the review report presents the quality of the bilateral MoUs and Agreements by considering a number of standard provisions that should be included in a bilateral MoU or an Agreement for labour migration and a set of protection indicators that are likely to reflect on protection workers are likely to have or be able to claim. A set of standard provisions for bilateral MoUs and Agreements and a standard set of indicators are used by the reviewers to assess the MoUs and Agreements, issues covered and implications for protection of the workers, as well as to guide recommendations (ILO, 2014, p. 14).

The review was geared to the following four objectives:

- 1) Identify gaps between the MOUs and agreements that are in force and the Conventions ratified by Bangladesh (or by both Bangladesh and the concerned destination country) for the purpose of understanding areas of improvement and to inform future MOUs.
- 2) Enhance understanding of the specific areas in the MOUs and agreements that would need to be addressed to ensure compliance with the Overseas Employment and Migrants Act, 2013.
- 3) Use the recommendations for amending any of the MOUs or agreements at an appropriate opportunity.
- 4) Give the Joint Committees, which are constituted to support the agreements, a strategic focus for discussions, prioritized agendas, standard procedures to communicate major decisions, and evaluation of committee meetings.

This was a pioneering attempt at developing sets of indicators to assess both the comprehensiveness and the quality of the bilateral agreements in place. For the discussion here, what is relevant is the set of indicators related to protection. It should be noted, though, that the indicators used in the 2014 review were broader than the issue of protection only, and covered governance issues as well.

Appendix IV provides the list of indicators used. The 2014 report ascertained whether each feature was covered or not in the MOUs reviewed, followed by observations for improvement.

These indicators were shared with the relevant division of the Ministry of Expatriate Welfare and Overseas Employment for guidance in preparing future MOUs. The review report also served as the basis for follow-up training programmes for government officials, NGOs, and recruitment agencies organized by the ILO in October to November 2014. The present study has drawn upon these indicators in developing the proposed indicators in chapter 6.

5.3 Good practice criteria used in the 2015 ILO BLA/MOU global review

The ILO's 2015 global review of BLAs and MOUs used a set of 18 good practice criteria to assess the quality of agreements reviewed (see Appendix V). While the Model Agreement was used to assess the comprehensiveness of agreements, the set of 18 good practices used in the 2015 review was produced in consultation with ILO migration experts and building on international instruments, particularly the ILO Multilateral Framework on Labour Migration, to better assess the quality of bilateral arrangements.

This good practice index allocated points to BLAs and MOUs based on adherence of the agreement concerned to each of the identified good practices. The 18 good practices examined not only the text of the arrangement, but also drew upon extraneous information on implementation, where available. For instance, under good practice no. 7, social dialogue with social partners and civil society during the drafting process and during the implementation and monitoring of the arrangement can be ascertained only from additional information.

Appendix V reproduces the 2015 study criteria, and the last column provides some comments for their revision.

The following summary observations can be made about the 2015 ILO review's set of criteria:

- 1) The criteria were basically developed to assess the content or text of the agreements. However, issues like transparency and dissemination cannot be ascertained from the text alone. This also applies to the implementation criteria – i.e., whether what is in the agreement has been applied or implemented in practice.
- 2) There may be varying levels of consistency or degrees of compliance with each practice. For example, provision of information to migrant workers can range from minimal information to full information under pre-departure training. This may be done by the country of origin or country of destination or by both. Similarly, reference to international instruments can be partial or more comprehensive. The ILO 2015 global review of BLAs and MOUs considered the option of applying a graded review, but it was found to be overly complex and hardly practical. This was because of the subjectivity involved in assessing the degree of compliance with various criteria. Moreover, such an assessment of compliance would only be partial in the absence of adequate information from the country of destination that is party to the agreement. The status of compliance also would depend on the status of implementation, on which data is lacking. For the rapid assessment proposed here, it is simpler and more convenient not to apply a graded scheme.
- 3) The sequencing of items was found wanting in terms of logical flow and coherence. Column 3 of table 3 has highlighted some such examples.

6. Proposed assessment criteria

As highlighted under the methodology sections above, it is important to develop assessment criteria for three stages of a bilateral agreement.

- 1) development stage;
- 2) negotiation and adoption of contents stage; and
- 3) implementation stage following the signing of the agreement.

These will be discussed primarily in relation to the needs of a country of origin like Bangladesh.

The consolidated list of proposed criteria for the three stages above have been presented in Appendix VI. The rationale for these criteria is grounded in the previous sections on Bangladesh policies and laws, international instruments, and good practices as reviewed here and in previous research (Bamu, 2015; ILO, 1949; 2006; 2014; 2016; 2017a; Wickramasekara, 2015; 2018a; 2018b). Most of these have also been elaborated in the research report on good practices and provisions (Wickramasekara, 2018b).

Some brief comments on how to assess each criterion and possible means of verification are discussed below.

6.1 Development phase assessment criteria for BLAs and MOUs

The objective of these criteria is to assess whether the development stage of the agreement has been carried out systematically. The country of origin first must ask itself why a bilateral agreement with a destination country is needed, and what difference an agreement would make to the existing migration situation. This also requires the generation of baseline data on the migration situation between the two countries, which can be done by the country of origin.

The development phase assessment criteria (DACs) can be applied while developing an agreement, or they can be applied ex post to assess an existing agreement. The main issue addressed in developing the criteria is whether the process of developing a particular agreement has been robust.

The following two questions are important to consider in preparing a draft agreement text.

- a) Does the agreement address the key areas? The ILO report on core elements of a bilateral agreement (Wickramasekara 2018a) has dealt with the key areas to be included, and it can be consulted in this context. Again, depending on the context and the type of workers involved, all of the provisions listed in that report may not be relevant.
- b) Is the agreement consistent with minimum quality standards? The content assessment criteria discussed in section 6.2 highlight the relevant criteria for the agreement text.

The development phase criteria are discussed briefly next:

- **DAC1: Presence of a coordination unit or focal point for BLAs/MOUs available in lead ministry**

The presence of a coordination unit facilitates the systematic development of agreements. The unit should be responsible for all BLA-related matters, and coordinate development of new agreements or revision of existing agreements. The unit should be the referral point for all agreement documentation. The Philippines provides a good example in this respect.

- **DAC2: Needs assessment for an agreement with the selected country**

This criterion indicates preparedness of the Government in launching a BLA process. The Government should carry out a needs assessment of a new agreement addressing the following issues: What are the critical issues of the current migration situation, and what are the labour market needs of country of destination? How is the agreement going to address these issues? What is the value added by the agreement? What contribution can the agreement make to promoting employment of workers and their welfare? Does the Government have the capacity to administer the planned agreement? If the needs assessment exercise indicates a strong case for an agreement, the Government should launch the process.

- **DAC3: Information available on the baseline migration situation prior to the agreement**

This is essential for the needs assessment (see DAC2), as well as for monitoring and evaluation following the signing of an agreement. The baseline information will enable governments to assess the changes that have taken place following the agreement. All information should be disaggregated by gender where possible, and include: numbers and profile of migration flows; demand for migrant workers and skills; country of origin migration targets; policy, legal, and regulatory frameworks on migration in the destination country; current protection status of migrant workers in the destination country, and patterns of complaints by gender; costs of migration and recruitment; incidence of irregular migration flows; texts of agreements between the country of destination and other countries; international instruments signed by both countries; and the governance framework in the country of destination.

- **DAC4: Common understanding reached on broad areas of the agreement**

This step will help identify priority areas and the major focus(es) of the agreement text with regard to: objectives and mutual benefits; categories of workers; the type of accord; sharing of responsibilities; follow-up arrangements; and the key issues to be addressed. Review of similar agreements with other countries by the country of origin (COO) or country of destination (COD) should provide some guidance in this respect. For example, the initial agreement between the Philippines and Saudi Arabia on domestic workers served as a basis for negotiations of similar domestic worker agreements with Saudi Arabia by India and Sri Lanka.

- **DAC5: Coordination and consultative process involving other concerned government units and relevant stakeholders**

Coordination and consultation should take place at two levels: a) across different government ministries and agencies involved in labour migration; and b) with other concerned stakeholders.

When developing agreements and in their negotiation, the lead ministry may be the Ministry of Labour or the dedicated ministry for overseas employment (MEWOE in Bangladesh). Other key ministries are usually: Ministry of Foreign Affairs; Ministry of Justice, Interior, or Home; Ministry of Women Affairs; and administrative and technical agencies of the government that deal with overseas employment, among others.

While the ultimate responsibility for migration policies and inter-State cooperation lies with governments, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society (ILO, 2010a). Employers – both public and private – hire workers, and trade unions are concerned with the welfare of workers. At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to vulnerable groups such as those who are trafficked and/or those who are in irregular status.

In practice, few governments involve non-state actors in the development, negotiation or monitoring and implementation of agreements. There is, however, a strong case for their involvement.

- **DAC6: Composition of the selected negotiation team**

Negotiation teams play a crucial role in the successful conclusion of an agreement. Important issues to raise in this context are: Do they represent key ministries? Are they specialists and skilled negotiators? Are non-government actors also involved? Is a gender specialist also included when the migration of women workers is negotiated?

- **DAC7: Conducting of negotiations on an equal partnership basis**

Bilateral agreements reflect the response to forces of demand (in the destination country) and supply (in the origin country) of human resources. Therefore, bargaining should be conducted on an equal partnership basis. It is, therefore, important to assess the following. Are there major divergences of views on the agreement text? Are major compromises being made on the protection of migrant workers in the process of negotiations? Do the drafts represent a good balance of interests between the country of origin and the country of destination? Is the timeframe of negotiations realistic?

6.2 Agreement content/text assessment criteria for BLAs and MOUs

The objective of these criteria is to assess whether the contents or text of agreements conform to acceptable provisions based on international and national norms and good practices. Content assessment criteria (CACs) can be applied to the development phase for reviewing existing agreements, and also during the implementation phase (to determine whether intentions have been realized in actual practice).

The rationale for and examples of good practices and provisions relating to the content of agreements have been elaborated in the companion report on good practices (Wickramasekara, 2018b). Given the obvious overlap between content assessment criteria and observed good practices/provisions in agreements, this assessment guide will provide only summary points.

- **CAC1: Evidence of normative foundations and respect for migrant workers' rights (based on international instruments)**

This criterion assesses whether a reference has been made in the agreement preamble to universal human rights, core labour standards, and/or ratified migrant worker instrument(s).

The reference to instruments highlights the respect of the two signatory parties for international norms on good migration governance and protection of migrant workers. Some agreements refer to instruments that have been ratified by both parties. There are also international or regional instruments and frameworks related to migration and migrant workers that can be cited as relevant.

The subsequent text of the agreements also can be based on the instruments as relevant. There can also be mention of soft law frameworks such as the MFLM and the GPOGFR.

The Nepal–Jordan General Agreement of 2017 provides a good example of possible text on this issue among Asian agreements.

- **CAC2: Exchange of relevant information between country of origin and country of destination**

In assessing this feature, exchange of the following information may be relevant: labour market conditions and needs for workers (including skill profiles); profile of emigrant workers; policy, legal, and regulatory frameworks on immigration/migration, labour and social protection in the country of

destination and the country of origin; local laws and customs; and living and working conditions. All these items should reflect gender differences, if any are applicable.

The information should also cover arrangements for protection of those not usually covered by labour laws, such as workers in agriculture and domestic work.

Another important issue is the avoidance of misleading propaganda by recruitment agencies or subagents relating to emigration and immigration possibilities, and working and living conditions abroad.

- **CAC3: Provision of relevant information and assistance to migrant workers**

There is a high priority accorded to the right to information in the OEMA and the EWOEP, as well as in Article 8 of the 1949 ILO Model Agreement. International instruments have recognized this to be a priority need for migrant workers who are moving to another country where they are not nationals. They are in a vulnerable position as non-citizens in the country of destination, where origin country laws do not apply. The ILO Migration for Employment Convention (Revised), 1949 (No. 97) highlights the obligation of ratifying governments to provide a free service to assist migrants with employment, and to provide migrant workers with accurate information.

The ILO recruitment principles and guidelines state: “Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment” (ILO, 2016, p. 8).

Such information should be gender-sensitive, and should enable workers to make an informed decision on whether to migrate or not. Potential examples mentioned in agreements include pre-departure orientation of workers on: the nature of work, laws, and customs of the destination country; employment contracts; and living and working conditions. Inclusion of post-arrival programmes in the country of destination would be another positive feature.

- **CAC4: Defining clear responsibilities between parties**

The inclusion of this provision ensures better operation and accountability of agreements. Responsibilities need to be defined between the two State parties, employers in country of destination, recruitment agencies in both countries, and migrant workers. Examples include Malaysia’s MOUs with Bangladesh (2016; 2012), and Saudi Arabia’s domestic worker agreements with Bangladesh, India, the Philippines, and Sri Lanka. Different stakeholders need to be fully briefed on their specific responsibilities under the agreement.

- **CAC5: Specific reference to equal treatment of migrant workers, non-discrimination**

The principles of equality of treatment and non-discrimination are key features of international instruments concerning migration, as reflected in two core ILO Conventions – the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Article 17 of the Model Agreement spells out in detail the elements to be included: “Such equality of treatment shall apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the territory of immigration.” Migrant workers should enjoy equality of treatment in respect of wages and working and living conditions, social security, and trade union rights on par with national workers in the destination country.

In practice, temporary migrant workers rarely enjoy equality of treatment with national workers. There is disparate treatment between workers from different countries according to nationality and gender in many of the destination countries for Asian workers, as reflected in the wages offered by nationality. Bilateral agreements should contain provisions to prevent such wage discrimination.

Article 14 of the Nepal–Jordan General Agreement in the field of manpower, 2017, contains a very good example of provision for equality of treatment.

- **CAC6: Any reference to protection of migrant workers or their rights in the preamble, objectives, or other part of the agreement text**

Protection of the rights and welfare of migrant workers is a major objective of bilateral agreements. High priority is given in the OEMA and EWOEP of Bangladesh to the rights of migrant workers. While there were hardly any such references in earlier Asian agreements, this is slowly changing. For example, the Nepal–Jordan General Agreement 2017 mentions in the preamble: “Determined to respect, promote and realize the rights of workers and improve their working conditions”, and it also contains numerous other references to worker rights and protection. The Saudi Arabia domestic worker agreements refer to securing “the rights of both the worker and the employer” in the preamble.

- **CAC7: Fair recruitment principles: Regulation of recruitment and reduction of recruitment and migration costs**

Recruitment issues have emerged as one of the most important factors in labour migration, with major efforts underway at the international level to ensure fair recruitment. The ILO has recently adopted the General principles and operational guidelines for fair recruitment (GPOGFR) (ILO, 2016b). One indicator of Sustainable Development Agenda Goal 10 – reducing inequality within and among countries – is the recruitment cost borne by an employee as proportion of yearly income earned in the country of destination (IAEG-SDGs, 2017). The general principle in ILO instruments is that “no recruitment fees or related costs should be charged to, or otherwise borne by workers or jobseekers” (ILO, 2016b, p. 3). Therefore, bilateral agreements should specifically address the recruitment process, and recruitment costs.

The agreement should define the roles of both the COO and COD in this respect. It should clarify who are authorised to undertake recruitment and placement activities (e.g., registered private employment agencies and public employment services of both parties). The agreement can state that joint action – such as joint verification, joint liability principles, prohibition of contract substitution, and assigning employers responsibility to pay recruitment costs – will be taken to minimize recruitment malpractices and minimize recruitment costs, and that costs of recruitment and placement should not be borne by migrants.

Another good practice is mentioning specifically that the employer has to pay the direct costs of recruitment and placement of workers. This is observed in the Nepal–Jordan General Agreement 2017.

References to ethical or fair recruitment can also be made in agreement text.

Given the observed tendency for women migrants to be widely exposed to recruitment malpractices and resultant trafficking, it is important to take into account their specific vulnerability in designing these processes. Article 15 of the ILO Domestic Workers Convention, 2011 (No. 189) has a number of provisions for protecting migrant domestic workers from abusive practices of private employment agencies.

While a number of destination countries (Qatar, Saudi Arabia, and the United Arab Emirates) prohibit the charging of recruitment and placement fees to migrant workers, many origin countries (including Bangladesh) allow the charging of fees by recruitment agencies subject to some ceilings. Therefore, the onus is on origin countries to adhere to international standards concerning the prohibition of such fees. The Nepal–Jordan General Agreement 2017, as noted above, has made the employer responsible for payment of the recruitment fee.

- **CAC8: Address gender concerns and the concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries**

Parties can draw upon general human rights and migrant worker instruments – CEDAW General Recommendation 26, ILO Convention No. 189, and Committee of the Protection of the Rights of all Migrant Workers and Members of Their Families General Comment 1 – in providing protection for women workers.

This criterion can review whether agreements provide two types of protections to women migrant workers: a) general protective measures for all migrant workers; and b) gender-specific provisions, especially those targeting vulnerable workers such as migrant domestic workers. The ILO and the OSCE have provided some guidelines for protection of women migrant workers in formulating provisions in bilateral agreements (ILO, 2016c; OSCE, 2009).

A major step is extension of coverage of labour law to migrant domestic workers, as has been done in Jordan. Dedicated agreements for domestic workers are another option, as in Saudi Arabia. All agreements should apply the principles of equality of treatment and avoidance of gender-based discrimination. Legally binding standard employment contracts specifying hours of work, rest days, leave periods, right to privacy, and right to communication, as well as credible complaints and redress mechanisms are another important option.

- **CAC9: Concrete and enforceable provisions relating to employment contracts and working conditions**

The employment contract plays a central part in a bilateral agreement because it defines the returns to employment (wages and other remuneration), and conditions of work for migrant workers. ILO Model Agreement, Article 22 provides detailed guidelines on the formulation of an employment contract. For domestic workers, Article 7 of Convention No. 189 lists detailed provisions. The Business for Social Responsibility (BSR) Good practice guide on global migration also provides valuable guidance to employers and business on all aspects of the employment contracts (BSR, 2010).

The following can be considered important good practices regarding employment contracts, which can be incorporated in the bilateral agreement text or in attached binding employment contracts:

- making a copy of the contract in understandable language available to the worker before departure;
- explaining the employment contract to the worker before they take up employment;
- binding standard employment contracts (especially in sectors to which Bangladesh sends workers);
- elaboration of the scope of the contract (in the absence of an attached standard contract);
- wage protection measures;
- reference to applicable laws;
- provisions for contract enforcement in country of destination through increased labour inspection;
- specification of working and living conditions;
- access to complaints mechanisms and dispute resolution procedures;
- non-retention of travel and identity documents;
- duration of contract, and conditions for renewal and premature termination; and

- provisions for return and repatriation, including responsibility of employers for travel costs.

The standard text found in most MOUs is that the employment contract will be negotiated between the employer and the worker in line with the labour law of the destination country. It is important to review whether the particular labour laws of host countries are consistent with the minimum standards laid down in international instruments.

The agreement or contract must clarify the conditions for renewal of the employment contract at the end of the initial contract period by mutual consent. The new contract must allow for salary/wage increments based on the period of service.

- **CAC10: Coverage of wage protection measures**

Wage protection is critical, since most complaints by women and men migrant workers relate to non-payment, deferred payment, discriminatory wages, unlawful deductions, non-payment of overtime, and non-issue of receipts.

The following features should be important to realize this criterion: stipulation of minimum wages where applicable; timely payment; allowable deductions; provision for overtime work; the issuing of receipts, and payment into personal bank accounts; the issuing of monthly pay slips to workers; provision of ATM cards so that workers can access their accounts; and readily accessible mechanisms for complaints in case of violations.

All GCC countries (except Bahrain) have introduced wage protection laws, and their inclusion in bilateral agreements should not pose a problem (Jureidini, 2017).

- **CAC11: Provision for supervision of housing and living conditions**

The OEMA places importance on “protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards” (article 25(b)).

The responsibility for supervision of the working and living conditions of migrant workers lies with the competent authorities of the COD, according to Article 15 of the ILO Model Agreement. It also calls for cooperation between the origin and destination country authorities for this purpose with regard to temporary migrant workers. The COD must guarantee an adequate labour inspection system for carrying out this supervision, especially with the entry into force of agreements. It would be important to insert text to this effect in agreements. The consular officials of the COO should be allowed access to visit workplaces and places of accommodation to assess existing working and living conditions.

The laws should include mechanisms for monitoring the workplace conditions of migrant women, especially in the kinds of jobs where they dominate, as recommended in CEDAW General Recommendation 26 (CEDAW Committee, 2008). Regarding domestic workers, Article 6 of Convention No. 189 states: “Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.”

- **CAC12: Provision for human resource development and skills improvement**

Provisions in agreements can promote human resource development (HRD) in two ways: 1) by requiring COOs to train workers for specific skills demanded by the COD; and 2) by the COD to provide training in areas specific to jobs and occupational safety and health (OSH). There are general skills (e.g., language skills) as well as vocational skills to be acquired. While the obligation on the part of the origin country to supply workers with requisite skills is often mentioned in agreements, the corresponding obligation on the part of the destination country to provide

vocational and OSH training is mostly absent. Some Italian agreements provide resources for home training of workers with required skills before migration.

- **CAC13: Provision for recognition of skills and qualifications and competencies in the destination country, and on return in the origin country**

Recognition of skills and qualifications across borders facilitates jobs and skills matching, leading to better labour market outcomes. Lack of skills recognition in destination countries leads to triple losses: to the origin country, which loses valuable human resources; to the destination country, which does not effectively utilize the skills of migrant workers; and to the migrant workers themselves, who suffer deskilling and end up in exploitative work for low wages. The issue is more important for the mobility of skilled workers, who suffer brain waste in destination countries.

While most workers from Bangladesh and other Asian countries who migrate as temporary workers are low-skilled, migration flows also include skilled and semi-skilled workers, such as professionals, nurses, and technicians.

Good cooperation between the COO and the COD is essential to ensure the best outcomes in this area. The Abu Dhabi Dialogue is promoting skills harmonization and pilot schemes for skills development, certification and recognition among Asian origin and destination which is an encouraging development (ADD 2018). Agreements can include provisions to give effect to this in the following manner:

- a) explore possibilities of support to, and accreditation of, local training institutes in COO by destination country institutions;
- b) destination country employers to issue certificates of employment and competences to workers; and
- c) origin countries to provide for recognition of skills acquired abroad.

- **CAC14: Prohibition of confiscation of travel and identity documents**

A major cause of restrictions on freedom of movement and forced labour practices is the retention of workers' travel and identity documents by employers or private employment agencies. Employers (public or private) should not retain passports, work permits, or other identity documents of workers. The ILO GPOGFR contains two references to this practice:

Under "General Principles", paragraph 11 reads: "Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained."

Under "Responsibilities of enterprises and public employment services", paragraph 18 reads: "Enterprises and public employment services should not retain passports, contracts or other identity documents of workers."

Increasingly, Asian bilateral agreements incorporate provisions for non-retention of passports and travel documents. The Saudi Arabia domestic worker agreements are an example.

- **CAC15: Facilitation of transfer of savings and remittances at low cost**

Remittances are the most tangible benefit of labour migration. A large part of the volume of remittances to Asia comes from GCC and other Middle Eastern countries. The standard provision with regard to remittances is that workers are free to remit their savings in accordance with laws and regulations of the destination country.

Increasingly agreements refer to remittance facilitation measures by both the country of origin and the country of destination (e.g., information on low-cost remittance channels). There should be a provision that remittances will not be subject to taxes by either country.

● **CAC16: Social protection and health-care benefits for migrant workers**

The ILO Model Agreement recommends in Article 21 that the two parties shall determine in a separate bilateral agreement the methods of applying a system of social security. Labour and social security legislation in Asian and Middle Eastern destination countries usually exclude temporary migrant workers from comprehensive social security coverage (Panhuys, Kazi-Aoul, & Binette, 2017).

As a minimum, male and female migrant workers need to be provided with medical insurance for work-related injury/disability/death benefits and general health-care coverage – both to be paid by the employers. These should be clearly mentioned in the employment contract. There should be provision for transferring injury insurance to the worker or to the worker's next of kin; and compensation to next of kin in case of worker's death.

● **CAC17: Trade union rights and access to support mechanisms from civil society**

This good provision refers to the right of migrant workers to join local trade unions and/or migrant associations, which is a basic right of workers.

Trade union cooperation for migrant protection is important for several reasons:

- a) addressing widespread exploitation of migrant workers in destination countries;
- b) reaching out to workers excluded from the coverage of labour law (e.g., domestic workers); and
- c) addressing problems faced by low-skilled workers, especially in lodging complaints or accessing redress.

The role that unions can take in destination countries is constrained by restrictions on the formation of trade unions or support for freedom of association principles in some of those countries (such as Saudi Arabia and United Arab Emirates). In the GCC region, only Bahrain, Kuwait, and Oman have legalized trade unions. In Malaysia and Thailand, migrants can join unions, although there are many obstacles in practice. The space for civil society action is severely limited in GCC countries and Malaysia.

In the absence of effective organizations of migrant workers, workers need access to support organizations such as migrant associations and NGOs concerned with migrant welfare, including human rights institutions, diaspora organizations, women's federations and religious-based organizations, all of which can provide support. This is particularly important for women migrant workers, who often suffer multiple discrimination as migrant workers and as women in destination countries. Information on trade unions and civil society organizations offering support in the country of destination should be provided to workers before departure.

Bilateral agreements can contain provisions to facilitate the functioning of such organizations and facilitate migrant worker access to them within the law of the State parties.

● **CAC18: Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice**

This criterion checks for provisions for settlement of disputes between employers and workers, as well as access to justice and effective remedies for workers.

The ILO General principles on fair recruitment state in Item 13: “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred” (ILO, 2016b).

Clear guidelines on complaint and settlement mechanisms are needed and should go beyond the generic “amicable settlement” phrases found in most agreements. Recourse to judicial means in the destination country is a difficult option for low-skilled migrant workers because of legal costs and language problems. Support by consular services is essential for gaining access to interpretation and legal services, labour courts, and judicial services as needed. A separate annex or protocol may be developed for detailed provisions.

- **CAC19: Provision for return, repatriation, and reintegration**

Most Asian labour migration involves only temporary work contracts of two to three years’ duration for low-skilled occupations, generally in the Middle East and other Asian destination countries. There are some schemes for seasonal work, such as those in Europe, New Zealand, and Canada. There is also some circular migration, in the sense of repeated migrations following completion of one contract by the same worker. Special attention needs to be placed on return and reintegration of temporary migrant workers to optimize the benefits from migration.

However, most GCC bilateral MOUs refer to return as part of what they describe as the “end of the temporary contractual migration cycle”, thereby emphasising the temporary nature of the migration process. There is no concern in these agreements about the development aspects for migrant workers and countries of origin. It is standard practice that the employer pays the return expenses of the worker, except under some specified conditions. These conditions relate to the voluntary departure of the worker before the end of the contract and situations in which the worker violates the contract. Failure of the medical test in the Republic of Korea also leads to forfeiture of the return ticket from the employer.

Agreements should specify that the cost of repatriation is not to be borne by migrant workers except in cases of contract violation. There should be provision to ensure freedom to return on expiry of contract without need for separate permission by employer as under the kafala system. Reference to provision of reintegration assistance to workers by the country of destination and the country of origin is a desirable feature to be included as applicable.

- **CAC20: Concrete implementation, monitoring, and evaluation procedures**

Given that most agreements are poorly implemented, there is need for strengthening them to include concrete follow up and implementation procedures. This could consist of several measures:

- specific timeframe for establishment of joint committees;
- spelling out the composition of joint committees;
- provide clear timelines (frequency of meetings, validity, renewals, and extension);
- designation of focal points in country of origin and country of destination;
- no automatic renewals;
- provision for periodic and independent evaluation; and
- provision for involvement of social partners and civil society in monitoring and evaluation.

One good provision is the use of implementing guidelines (e.g., seasonal worker agreements of New Zealand with Pacific Island economies) and detailed terms of reference (TORs) and agendas for Joint Committees. Appendix 1 of the ILO 2014 review of Bangladesh MOUs (ILO, 2014a) contains a model for this purpose (reproduced in Appendix VI and VII in the report on minimum configuration of BLAs (Wickramasekara, 2018a).

An illustrative exercise involving rapid assessment of the content of three agreements (with Iraq, Jordan, and Saudi Arabia) is presented in Appendix VII. This quick assessment exercise is based on a content analysis only, and is not based on implementation status, for which we do not have data. The domestic worker agreement with Saudi Arabia scores better than the other two because of direct references to rights; the inclusion of a standard employment contract in an annex; and coverage of other features. With concrete information on the status of implementation, Bangladesh authorities would be able to undertake a more rigorous assessment.

6.3 Implementation phase assessment criteria for BLAs and MOUs

A general finding is that many Asian agreements lack serious follow up and implementation. Fine words included in an agreement may make hardly any difference to governance and protection if the agreement is not seriously implemented. Therefore, there is a need to develop criteria to assess the actual implementation that can be used by both the country of origin and the country of destination. The list of assessment criteria for the implementation phase (IACs) are presented in table Appendix VI, and each criterion is explained below. These can be applied after the agreement is signed and comes into force.

For instance, transparency and publicity of the agreement can be promoted only after adoption of the agreement. Employers in destination countries and workers migrating from the origin country are the most important stakeholders affected by an agreement. Both parties need to know what their rights and obligations are under the agreement if it is to be seriously implemented. The 2016 ILO recruitment guidelines (GPOGFR) state that “labour recruiters acting across borders should respect bilateral or multilateral migration agreements” (ILO, 2016b, para. 23). This is not possible unless agreements are shared with labour recruiters.

It is important to stress that what is proposed here are criteria for rapid assessment of implementation, and not for an impact evaluation of agreements, which is a different exercise. An impact evaluation will attempt to look into achievements against stated objectives; that is, the impact on governance of labour flows, protection, and development benefits, among other things.

What is relevant for this implementation phase assessment, therefore, is to ask whether the agreement is working or not, and whether the follow-up and monitoring arrangements are taking place as planned in the agreement. For instance, is a follow-up mechanism established and functioning? What is the evidence of adherence by the two countries to the terms of the agreement?

The follow up mechanism – usually taking the form of joint committees – is therefore crucial. Detailed information on standard terms of reference and standard agendas of joint committees can be found in the 2014 ILO review of Bangladesh BLAs and MOUs (ILO, 2014a, appendices 1 and 2), and reproduced as Appendix VI and VII in the report on core elements of BLAs (Wickramasekara, 2018a). This information is therefore, not repeated here.

● IAC1: Transparency and publicity; awareness creation about the agreement

This criterion checks for accessibility and dissemination of agreements. The first step in transparency is to make the text of agreements publicly accessible. A dissemination plan should be included as part of any agreement.

It is most important to adequately brief the major stakeholders in migration – migrant workers, employers, recruitment agencies, migrant associations, and NGOs concerned with migrant worker welfare – on the provisions of agreements; how they affect them, their rights, and their obligations; and on the follow up to be undertaken.

The country of origin should make the text of all agreements translated and easily accessible on websites, and also to disseminate them to their migrant workers and employers in destination countries. The pre-departure training programmes should explain and highlight how workers can benefit from the agreements with the countries they migrate to.

At the same time, the destination country also should disseminate the agreements on public websites and explain the provisions to employers of migrant workers. However, it should be noted there is no evidence to date of the dissemination of the contents of labour migration agreements in major destinations such as the GCC countries and Malaysia. Thailand's MOUs with neighbouring countries, are however, available in the public domain, but no information is available on their dissemination to migrant workers and employers.

Another major gap is the non-availability of information on the implementation and follow up of the agreements in the form of additional protocols, joint committee minutes, and related amendments. Although government parties may consider these items as being confidential, dissemination does indeed help improve both the implementation and follow up of bilateral agreements, benefitting all parties in the final analysis.

- **IAC2: Concrete follow up mechanisms followed.**

As noted above, the joint committee or joint working group is the standard mechanism of the follow up and implementation phase. This criterion would check for the following:

- a) that joint committees have been established as scheduled (within the first quarter of signing the agreement) with well-defined TORs and standardized agendas;
- b) clear timelines are being followed as scheduled in the agreement with regard to meetings, renewals, and extensions;
- c) focal points in both countries, and at the consular level have been appointed; and
- d) Implementing guidelines have been issued and strictly followed.

- **IAC3: Active joint committees**

While most agreements plan to establish joint committees as standard practice, their active operation is crucial for successful implementation of agreements. The following indicators may be used to assess the degree of activity:

- a) frequency of meetings as planned;
- b) critical issues relating to implementation discussed and action taken;
- c) minutes of meetings adopted by both COO and COD;
- d) modifications to MOU and additional protocols on special areas adopted as needed; and
- e) subcommittees appointed on an ad hoc basis to deal with technical issues.

- **IAC4: Broad consultative process in monitoring and follow up to the agreement**

Are all concerned stakeholders – other related government agencies, social partners, concerned NGOs (including migrant and women's organizations), and recruitment agencies – briefed or invited by the governments for the monitoring and follow-up process? This practice should be adopted by both the COO and COD where possible.

- **IAC5: Resource allocation for follow up and implementation**

Follow up and implementation of agreements can be a costly exercise. Each government should plan and set aside resources for this purpose for the duration of the agreement. Joint committee meetings should decide on transparent and fair cost sharing between the two countries for meetings and other activities, such as evaluation.

- **IAC6: Changes in migration laws, regulations, and procedures following the agreement**

Effective follow up and implementation of bilateral agreements may require changes to COD laws and procedures. This is to ensure adherence to the terms of the agreement and enforcement of provisions. Existing laws may not be adequate or could conflict with agreement content. Some categories of workers, like domestic workers, may not be covered by labour law. For example, Saudi Arabia enacted Decree 301 of 1434 on Domestic Workers on 15 July 2013 to give effect to the provisions of the domestic worker agreement signed with the Philippines.

At the same time, several GCC countries (Kuwait, Qatar, and the United Arab Emirates) have recently modified laws affecting foreign workers, including domestic workers. These have obvious implications for existing agreements. Joint committee can discuss modification of the agreements to take account of changed laws or situations as required.

- **IAC7: Resource allocation and commitment by country of destination for supervision and enforcement of workplace protection and living conditions**

A major expected impact of a bilateral agreement is the strengthened protection of workers in the workplace and the improvement their living conditions. This is the responsibility of country of destination authorities. There is however, no evidence that destination countries have done so following the signing of agreements.

It is, therefore, essential to include a provision for this purpose in the agreements. The destination country should commit and allocate additional resources to ensure compliance with labour and other laws and procedures as provided under the agreement. For example, increased inspection of workplaces and living conditions by the labour inspection service is crucial for effective follow up and implementation of agreements.

- **IAC8: Monitoring and progress and evaluation reports of the working of the MOU**

At present the signing Parties hardly seem to place any emphasis on monitoring and evaluation of agreements. It is important to jointly prepare and disseminate monitoring and progress reports annually, and as needed. The minutes of joint committee meetings need to be disseminated to other government actors and non-state stakeholders. The two Parties should jointly plan for mid-term and final independent evaluations on a cost-sharing basis before renewal of the agreement.

The Bangladesh Expatriate's Welfare and Overseas Employment Policy, 2016, has stated the Government's commitment to undertake MOU-specific reviews in consultation with stakeholders (MOWOE, 2016).

7. Concluding observations

This report reviewed previous approaches, and developed a set of criteria to assess the process of bilateral agreements to build upon and improve them. The rapid assessment criteria developed here are qualitative, and easy to apply. The discussion provided guidelines against each criterion on how to assess the adherence to the practice. They may need to be adapted and modified to specific situations and contexts. In this sense, it is complementary to the report dealing with core elements of bilateral agreements (Wickramasekara, 2018a).

It hardly needs emphasis that no agreement may satisfy all these criteria, especially the content-based criteria, because the outcome depends on bilateral negotiations between the origin and the destination country. The unequal bargaining power of the two parties may be a reality, but the origin country should not start negotiations from such a position. Its strength is that the destination country needs their workers, and therefore, the origin country should be able to act as an equal partner

The discussion has also highlighted the crucial role of baseline data and information during implementation of the agreements in order to monitor and evaluate the agreements. It is easier to capture such data for agreements instituting new migration flows, such as the Korean Employee Permit System or the 2012 Malaysia G-to-G scheme. Tracking changes is more difficult for agreements covering long-standing flows. Therefore, policy-makers should place emphasis from the beginning to track changes brought about by these latter type of agreements. The origin and destination countries would need to collaborate in this exercise. The cost of collecting of data and information also needs to be negotiated. It is of course, in the interest of the origin country to collect and maintain such data.

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Appendices

Appendix I. Table of universal human rights instruments, ILO fundamental Conventions, and international migrant worker Conventions ratified by Bangladesh and its major countries of destination

	Bangladesh	Iraq	Jordan	Libya	Malaysia	Kuwait	Oman	Qatar	ROK1	KSA2	Singapore	UAE3
Universal human rights instruments												
1	X	X	X	X	-	X	-	-	X	-	-	-
2	X	X	X	X	-	X	-	-	X	-	-	-
3	X	X	X	X	-	X	X	X	X	X	-	X
4	X	X	X	X	X	X	X	X	X	X	X	X
5	X	X	X	X	-	X	-	X	X	X	-	X
6	X	X	X	X	X	X	X	X	X	X	X	X
7	X	-	-	X	-	-	-	-	-	-	-	-
8	-	X	-	-	-	-	-	-	-	-	-	-

	Bangladesh	Iraq	Jordan	Libya	Malaysia	Kuwait	Oman	Qatar	ROK ¹	KSA ²	Singapore	UAE ³
9	Convention on the Rights of Persons with Disabilities	X	X	X	X	X	X	X	X	X	X	X
	Total No.	7	6	6	3	6	4	4	6	4	3	5
ILO fundamental Conventions												
1	Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87)	X	-	X	-	X	-	-	-	-	-	-
2	Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	X	X	X	X	X	-	-	-	-	X	-
3	Forced Labour Convention, 1930 (No. 29)	X	X	X	X	X	X	X	-	X	X	X
4	Abolition of Forced Labour Convention, 1957 (No. 105)	X	X	X	X	X	X	X	-	X	Denounced	X
5	Minimum Age Convention, 1973 (No. 138)	X	X	X	X	X	X	X	X	X	X	X
6	Worst Forms of Child Labour Convention, 1999 (No. 182)	X	X	X	X	X	X	X	X	X	X	X
7	Equal Remuneration Convention, 1951 (No.100)	X	X	X	X	X	-	-	X	X	X	X
8	Discrimination (Employment and Occupation) Convention, 1958 (No.111)	X	X	X	-	X	-	X	X	X	-	X
	Total No.	7	7	8	6	7	4	5	4	6	5	6

	Bangladesh	Iraq	Jordan	Libya	Malaysia	Kuwait	Oman	Qatar	ROK ¹	KSA ²	Singapore	UAE ³
	ILO migrant-related instruments											
Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-	-	-	-	-	-	-	-	-	-	-
	Other relevant instruments											
Private Employment Agencies Convention, 1997 (No. 181)	-	-	-	-	-	-	-	-	-	-	-	-
Domestic Workers Convention, 2011 (No. 189)	-	-	-	-	-	-	-	-	-	-	-	-
Protocol of 2014 to the Forced Labour Convention, 1930 (P29)	-	-	-	-	-	-	-	-	-	-	-	-
United Nations Convention against Transnational Organized Crime, 2000	X	X	-	-	-	-	-	-	-	-	-	-
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000	-	-	-	-	-	-	-	-	-	-	-	-
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000	-	-	-	-	-	-	-	-	-	-	-	-

Note: X = ratified; - = not ratified/nil

1 Republic of Korea

2 Kingdom of Saudi Arabia

3 United Arab Emirates

Appendix II. ILO Conventions ratified by Bangladesh

Bangladesh has ratified 35 ILO Conventions, including:

- Fundamental Conventions: 7 out of 8
- Governance Conventions (Priority): 2 out of 4
- Technical Conventions: 26 out of 177

Out of the 35 Conventions ratified by Bangladesh – of which 33 are in force – two have been denounced (these have been dropped in the list below); none have been ratified in the past 12 months.

Fundamental Conventions	
Convention	Date
C029 – Forced Labour Convention, 1930 (No. 29)	22 Jun. 1972
C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	22 Jun. 1972
C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	22 Jun. 1972
C100 – Equal Remuneration Convention, 1951 (No. 100)	28 Jan. 1998
C105 – Abolition of Forced Labour Convention, 1957 (No. 105)	22 Jun. 1972
C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	22 Jun. 1972
C182 – Worst Forms of Child Labour Convention, 1999 (No. 182)	12 Mar. 2001
Governance (priority)	
C081 – Labour Inspection Convention, 1947 (No. 81)	22 Jun. 1972
C144 – Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	17 Apr. 1979
Technical	
C001 – Hours of Work (Industry) Convention, 1919 (No. 1)	22 Jun. 1972
C004 – Night Work (Women) Convention, 1919 (No. 4)	22 Jun. 1972
C006 – Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	22 Jun. 1972
C011 – Right of Association (Agriculture) Convention, 1921 (No. 11)	22 Jun. 1972
C014 – Weekly Rest (Industry) Convention, 1921 (No. 14)	22 Jun. 1972
C015 – Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	22 Jun. 1972
C018 – Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)	22 Jun. 1972
C019 – Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	22 Jun. 1972
C021 – Inspection of Emigrants Convention, 1926 (No. 21)	22 Jun. 1972
C027 – Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	22 Jun. 1972
C032 – Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)	22 Jun. 1972
C045 – Underground Work (Women) Convention, 1935 (No. 45)	22 Jun. 1972

C059 – Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	22 Jun. 1972
C080 – Final Articles Revision Convention, 1946 (No. 80)	22 Jun. 1972
C089 – Night Work (Women) Convention (Revised), 1948 (No. 89)	22 Jun. 1972
C090 – Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	22 Jun. 1972
C096 – Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96): Has accepted the provisions of Part II	22 Jun. 1972
C106 – Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) The Government has declared that the Convention also applies to persons employed in the establishments specified in Article 3, paragraph 1(c).	22 Jun. 1972
C107 – Indigenous and Tribal Populations Convention, 1957 (No. 107)	22 Jun. 1972
C116 – Final Articles Revision Convention, 1961 (No. 116)	22 Jun. 1972
C118 – Equality of Treatment (Social Security) Convention, 1962 (No. 118) Has accepted Branches (c) and (g)	22 Jun. 1972
C149 – Nursing Personnel Convention, 1977 (No. 149)	17 Apr. 1979
C185 – Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)	28 Apr. 2014
MLC, 2006 – Maritime Labour Convention, 2006 (MLC, 2006) In accordance with Standard A4.5 (2) and (10), the Government has specified the following branches of social security: medical care; sickness benefit and employment injury benefit.	06 Nov. 2014

Appendix III. 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 heading
MAA1	Exchange of Information
MAA2	Action against Misleading Propaganda
MAA3	Administrative Formalities
MAA4	Validity of Documents
MAA5	Conditions and Criteria of Migration
MAA6	Organization of Recruitment, Introduction and Placing
MAA7	Selection Testing
MAA8	Information and Assistance of Migrants
MAA9	Education and Vocational Training
MAA10	Exchange of Trainees
MAA11	Conditions of Transport
MAA12	Travel and Maintenance Expenses
MAA13	Transfer of Funds
MAA14	Adaptation and Naturalization
MAA15	Supervision of Living and Working Conditions
MAA16	Settlement of Disputes
MAA17	Equality of Treatment
MAA18	Access to Trades and Occupations and the Right to Acquire Property
MAA19	Supply of Food
MAA20	Housing Conditions
MAA21	Social Security
MAA22	Contracts of Employment
MAA23	Change of Employment
MAA24	Employment Stability
MAA25	Provisions Concerning Compulsory Return
MAA26	Return Journey
MAA27	Double Taxation
MAA28	Methods of Cooperation
MAA29	Final Provisions

Source: ILO, 1949.

Appendix IV. Table of protection indicators used in the Bangladesh MOU review of 2014

No.	Description of indicator
RPI1	Preamble highlights workers protection /rights
RPI2	MoU objectives include workers protection/rights
RPI3	Reference to workers protection/rights in other provisions
RPI4	Reference to international law/treaties
RPI5	Principle of non- discrimination
RPI6	Reference to human trafficking
RPI7	MoU has a gender dimension (prevention of gender-based discrimination, abuse and exploitation and response services)
RPI8	Equality of treatment with national workers
RPI9	Equal treatment between men and women workers
RPI10	Pre-departure orientation/training
RPI11	Orientation upon arrival
RPI12	Assistance in understanding contract's contents
RPI13	Promotion of cultural events/social exchanges
RPI14	Involvement of social partners and NGOs
RPI15	Interpretation/translation service for migrants
RPI16	Mediation and legal assistance
RPI17	Psychological counselling
RPI18	Role of Bangladeshi labour attachés/Labour Wing
RPI19	Supervision of living and working conditions
RPI20	Mechanism for filing complaints
RPI21	Enforcement mechanisms and access to justice
RPI22	One-way ticket (return) to be paid by employer
RPI23	Two-way ticket to be paid by employer
RPI24	Minimum wage
RPI25	Rest and overtime
RPI26	Supply of food or allowance
RPI27	Supply of water
RPI28	Housing conditions
RPI29	Respect of workers' privacy
RPI30	Health and occupational safety
RPI31	Medical care
RPI32	Leave
RPI33	Reintegration and rehabilitation
RPI34	Database (where and with whom information about the worker and employment would be recorded and maintained)
RPI35	List of authorized recruiting agencies
RPI36	Contacts with migrants' family members
RPI37	Family reunification

Source: ILO, 2014

Appendix V. Table of good practice criteria used in the 2015 ILO review of BLAs and MOUs

No.	Criterion	Remarks
1	Transparency and publicity; awareness creation about provisions	Sharing with concerned parties: employers and workers at one end to placing the documents in the public domain; translation into local language. Does country of destination also provide transparency and publicity?
2	Exchange of relevant information between country of origin and country of destination on labour migration, and provision of relevant information to migrant workers	Better to separate provision of information to migrant workers as a separate item; On right to information for migrant workers (OEMA, 2013); ILO instruments – information to be provided free to migrant workers
3	Evidence of normative foundations and respect for migrant rights (based on international instruments)	Reference in the preamble to universal human rights and core labour instruments and migrant instruments ratified; Reference to nonbinding frameworks
4	Specific reference to equal treatment of migrant workers, non-discrimination and/or protection of migrant rights	As per ILO instruments: MAA17; some MOUs may contain just a reference to migrant worker protection or rights (without mentioning equality or non-discrimination); it is better to separate them.
5	Provisions to protect migrant workers from recruitment malpractices at both origin and destination	Cooperation in recruitment; specific measures to ensure fair recruitment; policy about recruitment fees and migration costs; Convention No. 181; Convention No. 189; MLFM; –GPOGFR.
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.).	Reference to Convention No. 189. Dedicated agreements for domestic workers preferable.
7	Social dialogue involving concerned stakeholders besides government parties; employers in country of origin and country of destination, workers, civil society organizations.	This is more relevant for development and implementation stages. Monitoring and evaluation provisions may include reference to social dialogue.
8	Coverage of wage protection measures; e.g., timely payment, allowable deductions, provision for overtime work, issue of receipts, and payment into bank accounts	Should be placed after Item 9 for proper sequencing.
9	Concrete and enforceable provisions relating to employment contracts and workplace protection.	A binding employment contract attached as an annex to the agreement: e.g., Saudi Arabia agreements on domestic workers.
10	Provision for human resource development and skills improvement	Clarify that it applies to both origin and destination countries.
11	Concrete implementation, monitoring, and evaluation procedures	This should be shifted to the end for logical sequencing.

No.	Criterion	Remarks
12	Prohibition of confiscation of travel and identity documents	By employers, recruitment agencies, middlemen, or gov't entities.
13	Provision for recognition of skills and qualifications in the destination country	Include recognitions of skills by country of origin upon return.
14	Provide social security and health-care benefits for migrant workers	Should refer to social protection; country of destination national laws may preclude some rights.
15	Defining clear responsibilities between parties	This should be shifted to the beginning.
16	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice	Preferably attached as a separate annex of protocol
17	Provision for free transfer of savings and remittances	In line with national laws and at low transfer costs; measures by origin country to facilitate receipt of remittances.
18	Coverage of the complete migration cycle	Important to spell out as return, repatriation, and reintegration.

Source: Wickramasekara, 2015; additional remarks in column three by author based on Ruhunage, 2017

Appendix VI: Consolidated table of assessment criteria for BLAs and MOUs

Assessment criterion	
Development phase assessment criteria (DACs)	
DAC1	Presence of a coordination unit or focal point for BLAs/MOUs available in lead Ministry
DAC2	Needs assessment for an agreement with the selected country
DAC3	Information available on the baseline migration situation prior to the agreement
DAC4	Common understanding reached on broad areas of the agreement
DAC5	Coordination and consultative process involving other concerned government units and relevant stakeholders
DAC6	Composition of the selected negotiation team
DAC7	The conducting of negotiations on an equal partnership basis
Agreement Content/Text Assessment Criteria (CAC)	
CAC1	Evidence of normative foundations and respect for migrant workers' rights (based on international instruments)
CAC2	Exchange of relevant information between country of origin and country of destination
CAC3	Provision of relevant information and assistance to migrant workers
CAC4	Defining clear responsibilities between parties
CAC5	Specific reference to equal treatment of migrant workers, non-discrimination
CAC6	Any reference to protection of migrant workers or their rights in the preamble, objectives or other part of the agreement text
CAC7	Fair recruitment principles: Regulation of recruitment and reduction of recruitment and migration costs
CAC8	Address gender concerns, and the concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries (domestic workers, agricultural workers, etc.).
CAC9	Concrete and enforceable provisions relating to employment contracts and working conditions
CAC10	Coverage of wage protection measures
CAC11	Provision for supervision of housing and living conditions
CAC12	Provision for human resource development and skills improvement
CAC13	Provision for recognition of skills and qualifications and competencies in the destination country, and on return in the origin country
CAC14	Prohibition of confiscation of travel and identity documents
CAC15	Facilitation of transfer of savings and remittances at low cost
CAC16	Social protection and health-care benefits for migrant workers
CAC17	Trade union rights and access to support mechanisms from civil society
CAC18	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice

CAC19	Provision for return, repatriation and reintegration
CAC20	Concrete implementation, monitoring, and evaluation procedures
Implementation phase assessment criteria (IAC)	
IAC1	Transparency and publicity; awareness creation about the agreement
IAC2	Follow up mechanisms in place
IAC3	Active joint committees
IAC4	Broad consultative process in monitoring and follow up to the agreement
IAC5	Resource allocation for follow up and implementation.
IAC6	Changes in migration laws, regulations, and procedures following the agreement
IAC7	Resource allocation and commitment by country of destination for supervision and enforcement of workplace protection and living conditions
IAC8	Monitoring and progress and evaluation reports of the working of the MOU

Appendix VII. Illustrative Content Assessment (Rapid) Exercise for selected agreements/MOUs with Bangladesh (tentative)

No.	Content/Text Assessment	Iraq	Jordan	Saudi Arabia ¹
CAC1	Evidence of normative foundations and respect for migrant rights (based on international instruments)		X	
CAC2	Exchange of relevant information between Country of Origin and Country of Destination	X	X	X
CAC3	Provision of relevant information and assistance to migrant workers			X
CAC4	Defining clear responsibilities between parties	X	X	X
CAC5	Specific reference to equal treatment of migrant workers and non-discrimination			
CAC6	Any reference to protection of migrant workers or their rights in the agreement Preamble, Objectives or other text.	X	X	X
CAC7	Fair recruitment principles: Provisions to protect migrant workers from recruitment malpractices at both origin and destination		X	X
CAC8	Address gender concerns, and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries (domestic workers, agricultural workers, etc.).			X
CAC9	Concrete and enforceable provisions relating to employment contracts and working conditions	X	X	X
CAC10	Coverage of wage protection measures; e.g. timely payment, allowable deductions, provision for overtime work, issue of receipts and payment into bank accounts			X
CAC11	Provision for supervision of housing and living conditions			
CAC12	Provision for human resource development and skills improvement		X	X
CAC13	Provision for recognition of skills and qualifications and competencies in the destination country, and on return in the origin country			
CAC14	Prohibition of confiscation of travel and identity documents			
CAC15	Provision for free transfer of savings and remittances	X		
CAC16	Social protection and health care benefits for migrant workers			
CAC17	Trade union rights			
CAC18	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice	X		X
CAC19	Provision for return, repatriation and reintegration	X	X	X
CAC20	Concrete implementation, monitoring and evaluation procedures	X	X	X
	Total score out of 20	8	9	12

Note: This quick assessment is based on the content or text of the agreement for illustrative purposes only. X indicates the presence of the criterion/indicator.

1 – For Saudi Arabia the binding standard employment contract specifies additional rights not mentioned in the agreement.



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Published by the International Labour Organization with financial assistance from the Swiss Agency for Development and Cooperation under the "Application of Migration Policy for Decent Work of Migrant Workers" project.