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International Labour Organization

Core elements of a bilateral agreement or a memorandum of understanding on labour migration

ILO Country Office for Bangladesh

Core elements of a bilateral agreement or a memorandum of understanding on labour migration

by

Piyasiri Wickramasekara
Global Migration Policy Associates (GMPA)
Hon. Research Associate, School of Social and Political Sciences, University of Sydney, Australia
(former Senior Migration Specialist, ILO)

Assisted by

L.K. Ruhunage
Consultant on Labour Migration
(former Additional General Manager,
Sri Lanka Bureau of Foreign Employment (SLBFE))

First published 2018

English edition
ISBN : 978-92-2-131704-3 (print); 978-92-2-131705-0 (web pdf)

Printed in Bangladesh

Preface

The importance of memoranda of understanding (MoUs) and bilateral labour agreements (BLAs) as instruments of labour migration governance and protection of migrant workers cannot be underscored enough. These instruments become even more critical in a global environment of crisis migration, and global and regional discussions on safe, regular, and orderly migration.

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. While initiatives at national level in Bangladesh aim to upgrade the skills of workers, the larger number of workers migrating from Bangladesh are low-skilled, necessitating strong policy and legislative frameworks to prevent abuse and protect workers, especially women and vulnerable workers.

The Government of Bangladesh has been developing and maintaining bilateral relationships for labour migration with some countries in the Middle East and East Asia. Such relationships are promoted through MoUs and BLAs. To undertake strengthening of labour migration governance and align efforts to its international commitments, the Ministry of Expatriates' Welfare and Overseas Employment of the Government of Bangladesh, with support from the Swiss Agency for Development and Cooperation (SDC) and in close collaboration with the International Labour Organization (ILO) Bangladesh, through its "Application of Migration Policy for Decent Work of Migrant Workers" project, developed this document, which contains a list of minimum standards in developing a rights-based MoU and/or BLA.

This document 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.

Beate K. Elsaesser
Director of Cooperation
Swiss Agency for
Development and Cooperation

Tuomo Poutiainen
Country Director
International Labour Organization
Bangladesh

Dr Nomita Halder, ndc
Secretary
Ministry of Expatriates' Welfare and
Overseas Employment
Government of Bangladesh

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Abbreviations and acronyms

BLA	bilateral labour agreement
BMET	Bureau of Manpower, Employment and Training, Bangladesh Government
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CMW	Committee of the Protection of the Rights of all Migrant Workers and Members of Their Families, United Nations
COD	country of destination
COO	country of origin
G-to-G	government-to-government
GPOGFR	ILO General Principles and Operational Guidelines for Fair Recruitment, 2016
IAU	Inter Agency Understanding (New Zealand agreements with pacific Islands for employment of seasonal workers)
ILO	International Labour Organization
ILO	International Labour Office (Secretariat to the International Labour Organization)
ILS	International Labour Standards
IOM	International Organization for Migration
MFA	Migrant Forum in Asia
MEWOE	Ministry of Expatriates' Welfare and Overseas Employment, Government of Bangladesh
MOU	memorandum of understanding
OSH	occupational safety and health
RSE	Recognised Employer Scheme [New Zealand]
UAE	United Arab Emirates

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 because bilateral arrangements can be affected by unequal power relations of the States parties (Wickramasekara, 2012; 2015a). 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; (c) protection of migrant workers; and (d) accessing development benefits of labour migration. Yet their effectiveness has been limited (ILO, 2017a; Wickramasekara, 2015a).

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. Along with other origin countries, Bangladesh is keen on improving the effectiveness of signed bilateral MOUs, and the International Labour Organization (ILO) has already carried out a review of these agreements to assist concerned government agencies in 2014 (ILO, 2014a). This report deals with the development of a set of minimum set of core elements or provisions of a bilateral agreement[1] to serve as a template in drafting such agreements.

[1] In the subsequent analysis, the paper uses the term "agreement" to refer to both BLAs and MOUs.

2. Clarification of terminology

2.1 Preferred terminology

It is important to use neutral terminology to the extent possible. For example:

- Instead of sending country and receiving country, the preferred terms are "country of origin" (COO) and "country of destination" (COD).
- International instruments always use the term "migrant workers", and the popular term "labour migrants" should be avoided.
- Most agreements use the term "manpower", which is not gender-sensitive. The more appropriate term is "human resources".

Appendix I provides suggestions on appropriate migration terminology, and can be consulted in drafting BLAs and MOUs.

2.2 Definitions: BLAs and MOUs

At the outset, it is important to define the difference between bilateral labour agreements and memoranda of understanding. These will be dealt with in greater detail in the subsequent report on training materials.

- **Bilateral labour agreements (BLAs)** – A format characterized by agreements that describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with the view to the accomplishment of their goals. BLAs create legally binding rights and obligations (United Nations, 2012).
- **Memorandum of understanding (MOU)** – A format that is used where the parties have agreements on general principles of cooperation. An MOU will describe broad concepts of mutual understanding, goals, and plans shared by the parties. They are usually non-binding instruments (United Nations, 2012).

BLAs are therefore, more specific, and action-oriented than MOUs, and they are legally binding. An MOU is a softer, non-binding option providing a broad framework to address common concerns (United Nations, 2012). BLAs are, therefore, preferable to non-binding MOUs.

The format of the bilateral arrangement may often not be a free choice for an origin country, since it depends on the willingness of the destination country as well. Most Asian bilateral arrangements take the form of MOUs, which are less common in some other regions (Wickramasekara, 2015a). Several other forms of bilateral arrangements can also be found:

- **Memorandum of Agreement (MOA)** – The Philippines prefers to use the format of a memorandum of agreement, which is very similar to a BLA. An example is the MOA between the Philippines and Bahrain on Health Services Cooperation.[2] Qatar has also used MOAs with Sri Lanka, among others, but in actual practice, the outcomes have not been very different from an MOU (Wickramasekara, 2015a).
- **Framework agreements** – broad bilateral cooperation instruments covering a wide range of migration-related matters, including labour migration as well as irregular migration, readmission, and the nexus between migration and development. They have been concluded by Spain and France with several West and North African countries.

[2] This MOA was never implemented.

- **Reciprocal agreements/MOUs** – These agreements permit two-way labour migration flows between two countries. An example is the agreement Bangladesh has signed with Iraq whereby Bangladeshi nationals can migrate to Iraq, and Iraqi nationals can migrate to Bangladesh under similar arrangements. The India–Malaysia bilateral MOU is also a reciprocal arrangement (Wickramasekara, 2012). Argentina has entered into reciprocal bilateral arrangements with some other Latin American countries.
- **Inter-agency understanding (IAU)** – The agreements between New Zealand and Pacific Islands States are labelled as IAUs – but they are similar to MOUs.
- **Protocol (Additional or Optional)** – An instrument entered into by the same parties and which amends, supplements, or clarifies a previous agreement. An example is the 2008 Protocol that Bangladesh signed with Qatar to update the bilateral agreement of 1988.

The present study interprets minimum standards to mean the minimum acceptable configuration of an agreement or the core elements of a labour agreement.

3. Why define standard or core provisions for a bilateral agreement on labour migration?

There are a number of reasons to define standard or core provisions of BLAs and MOUs, including the following:

1) Origin countries often respond to a draft MOU text provided by a country of destination (COD). This draft text may contain only minimal provisions for effective protection of migrant workers. It is, therefore, strategic for the country of origin (COO) to have a blueprint ready for negotiation. A template agreement with minimum or core provisions makes it easier to achieve a mutually acceptable agreement through such negotiations.
2) The core or standard template can be adapted to the needs of different countries, and different categories of workers.
3) There is currently considerable confusion in the literature about the core elements of a BLA. For example, various writers have quoted "24 essential elements" of a bilateral labour agreement advocated by the ILO, but this is not correct (see box 2 below).
4) Standardization of agreement structure can help with the streamlining of the content. The wide disparity in BLA/MOU structures for the same country calls for a unified approach to their development. Appendix V shows the structures for a number of MOUs entered into by Bangladesh.[3] For example, the Bangladesh–Saudi Arabia domestic worker agreement is short, but it is supplemented by a standard employment contract that goes into details. By contrast, Bangladesh's agreements with Malaysia go into the details of recruitment procedures and the responsibilities of parties. In addition, some of Bangladesh's bilateral agreements do not refer to rights of migrant workers specifically.

This guide on core elements is meant to be complementary to the *Assessment guide for bilateral agreements and memoranda of understanding on labour migration, with a special focus on Bangladesh* (Wickramasekara, 2018a), which provides criteria for evaluating the quality of the provisions of agreements.

[3] Only a few MOUs, however, have specific headings to facilitate comparison. For others, headings based on the content of articles have been ascertained by the author through analysis of the text.

4. Issues to be considered in developing a core template

When developing the configuration of an agreement and its core elements or standard provisions, consider the following questions and their ramifications:

1) Are separate templates for BLAs and MOUs needed? This may not be required in the present exercise since the core elements would apply to both. The language/text may differ between the two, however. An MOU would generally be short on details.

2) How does one deal with differences in recruitment systems –i.e., Government-to-Government (G-to-G) versus private recruitment-led? G-to-G arrangements may need clear determination of quotas; detailed demarcation of responsibilities; and special recruitment and monitoring procedures such as those found in the 2012 Bangladesh–Malaysia MOU and MOUs with the Republic of Korea (Wickramasekara, 2015b). Public employment services have been assigned the main role in G-to-G agreements. However, the majority of MOUs covering existing flows are those dominated by private employment agencies.

3) What differences are needed in templates for starting new flows of labour and streamlining existing flows?

    a. For the commencement of a new flow, detailed stipulations and operational arrangements are necessary, including demarcation of responsibilities, selection criteria, quotas, and ensuring return, among others. Therefore, a G-to-G MOUis normally suitable for initiating new migration flows. Generally, the numbers of migrant workers handled in these programmes are relatively small, and they have been started as pilot initiatives (e.g., the Employment Permit System of the Republic of Korea and the 2012 G-to-G MOU between Bangladesh and Malaysia). The Korean Employment Permit System has a total quota of 60,000 to 80,000 migrant workers spread over 15 countries. The 2012 Bangladesh–Malaysia MOU handled only about 10,000 workers during its operation from 2012 to 2015 (Wickramasekara, 2015b).

    b. For streamlining an existing flow, there is no need for details because most processes are already in place. These established corridors for Bangladeshi migrants have evolved over a number of years, starting from the Gulf boom period. Most flows are handled by private recruitment agencies. The number of people migrating under these systems is much larger.

4) What are the implications for different categories of workers in drawing up bilateral agreements, i.e., domestic workers, low-skilled workers, and skilled workers? The Asian experience shows that separate dedicated agreements and standard employment contracts are needed for domestic workers, as they are often not covered by labour laws in destination countries. Skilled worker flows also may need separate agreements given the need for skills recognition and family unification, as well as brain drain concerns.

5. Review of previous models for the minimum configuration

5.1 The ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons

The first pioneering guidelines on the design of a bilateral labour agreement was provided by the ILO Model Agreement of 1949, based on the Migration for Employment Convention (Revised), 1949 (No. 97) and the accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86). The Model Agreement holds considerable relevance despite the emergence of many bilateral migration arrangements in recent decades that deviate from being fully-fledged BLAs.

The Model Agreement can serve two purposes:

a) **As a checklist of the comprehensiveness of a BLA** – The 2015 ILO review of BLAs and MOUs used the Model Agreement to assess the breadth of agreements. The coverage of the items in a typical BLA/MOU generally falls short of the 27 elements of the Model Agreement applicable to temporary migration (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 elaborates on different elements drawing upon the Convention No. 97 and the accompanying Recommendation No. 86.

This report adopts option (a) above to draw upon the Model Agreement as a means to decide on the minimum configuration of a BLA/MOU for migration for employment of low-skilled workers that is consistent with practice in Bangladesh and most Asian origin countries. The ILO 1949 Model Agreement has 29 articles corresponding to items to be dealt with in developing a bilateral agreement for migration (table 1). It covers the entire migration cycle: departure, transit, stay, and return.

The most relevant articles of the Model Agreement relate to the following:

- article 1 – information exchange and action against misleading propaganda;
- article 6 – organization of recruitment, introduction and placing; –
    - article 6(4) – “The administrative costs of recruitment, introduction, and placing not to be borne by the migrants.”
- article 8 – information and assistance of migrants;
- article 15 – supervision of working and living conditions;
- article 16 – settlement of disputes;
- article 17 – equality of treatment;
- article21 – social security arrangements;
- article 22 – contracts of employment. This article elaborates the provisions that need to go into an employment contract; and

The Model Agreement was widely used in the 1950s and 1960s by European governments (Böhning, 2012; Rass, 2012). Belgium, France, West Germany, and some other governments set up public recruitment offices under the auspices of bilateral agreements, based on the stipulations of Convention No. 97 and Recommendation No. 86 (Böhning, 2012).

Table 1. List of articles in the ILO Model Agreement of 1949

No.	Article
1	Exchange of information
2	Action against misleading propaganda
3	Administrative formalities
4	Validity of documents
5	Conditions and criteria of migration
6	Organization of recruitment, introduction and placing
7	Selection testing
8	Information and assistance of migrants
9	Education and vocational training
10	Exchange of trainees
11	Conditions of transport
12	Travel and maintenance expenses
13	Transfer of funds
14	Adaptation and naturalization
15	Supervision of living and working conditions
16	Settlement of disputes
17	Equality of treatment
18	Access to trades and occupations and the right to acquire property
19	Supply of food
20	Housing conditions
21	Social security
22	Contracts of employment
23	Change of employment
24	Employment stability
25	Provisions concerning compulsory return
26	Return journey
27	Double taxation
28	Methods of cooperation
29	Final provisions

Nevertheless, the Model Agreement was developed almost seven decades ago in 1949. While it provided a model for agreements in the 1950s and 1970s, some of the operational details and provisions may not appear that relevant in the changed global context. 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. Articles or subsections of articles applicable to permanent migration have been italicized in the Model Agreement text. For instance, the applicability of Model Agreement provisions for family members of migrant workers have been restricted to permanent migrant workers only. Articles 14 on “Adaptation and naturalisation” and 18 on “Access to trades and occupations and the right to acquire property” are also applicable to permanent migration only.

There are some provisions, however, where temporary migrants/migration have been specifically mentioned (box 1):

Box 1

Specific references to temporary migrant workers in the 1949 Model Agreement

Article 15 on "Living and working conditions" provides "for the supervision by the competent authority or duly authorised bodies of the territory of immigration of the living and working conditions, including hygienic conditions, to which the migrants are subject" (15(1))

Article 15(2) mentions: "With respect to temporary migrants, the parties shall provide, where appropriate, for authorised representatives of the territory of emigration … to co-operate with the competent authority or duly authorised bodies of the territory of immigration in carrying out this supervision."

- Similarly, article 21 on social security refers to temporary migrants:
  The agreement shall provide that the competent authority of the territory of immigration shall take measures to grant to temporary migrants and their dependants treatment not less favourable than that afforded by it to its nationals, subject in the case of compulsory pension schemes to appropriate arrangements being made for the maintenance of migrants' acquired rights and rights in course of acquisition (article 21(4)).

  Para. 3, subsection k of article 22 on "Contracts of employment" states, "in case of temporary migration, the method of meeting the expenses of return to the home country or the territory of migration, as appropriate".

One area which lacks sufficient elaboration in the Model Agreement is the overall follow up, implementation, and monitoring. Article 28 on "Methods of cooperation" simply mentions: "The two parties shall agree on the methods of consultation and co-operation necessary to carry out the terms of the Agreement". Article 29 only refers to the duration of the agreement and the notice period for termination. More concrete elaboration would have provided guidance on how to tackle implementation, monitoring, and enforcement, which have proved to be some of the weakest areas in bilateral arrangements.

Still some key provisions of the Model Agreement based on normative foundations retain their validity: e.g., information exchange; cooperation between parties; supply of information and assistance to migrants; nature of employment contracts; equality of treatment; and settlement of disputes, among others. 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. 36).

5.2 BLA structure contained in the 2014 ILO review of Bangladesh MOUs

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 assessthe MoUs and Agreements, issues covered and implications for protection of the workers, as well asto guide recommendations (ILO, 2014a, p. 14).

This was a pioneering attempt at developing sets of indicators to assess both the comprehensiveness and also the quality of agreements. For the discussion here, what is relevant is the first set of indicators.

The list of standard provisions presented in the 2014 review was different for some MOUs with additional indicators provided. A full list has been compiled in Appendix III with some specific observations in the third column of the table found there.

The 2014 ILO report did not go into details, and simply ascertained whether each feature was covered or not in the MOUs reviewed. But the report made pertinent observations for improvement for each feature in commenting on each MOU.

These indicators were shared with the relevant division of the Ministry of Expatriates' Welfare and Overseas Employment for guidance in preparing MOUs.[4] The review report also served as the basis for follow-up training programmes for government officials, NGOs, and recruitment agencies organized by the ILO during October and November 2014. The present study has drawn upon these indicators in developing the proposed indicators in chapter 6.

5.3 Key elements of a BLA proposed by Cholewinski (2016) and cited in the Office Report for the General Discussion on Labour migration at the June 2017 International Labour Conference.

Cholewinski (2016) has proposed a comprehensive list of elements of a bilateral agreement that has been further elaborated upon in the report prepared for the General Discussion on Labour Migration at the International Labour Conference of June 2017(ILO, 2017a). This list has been reproduced in Appendix IV.

In his list, Cholewinski has succinctly classified these bilateral agreement elements under five major headings:

a) pre-departure and recruitment;
b) employment and residence at destination;
c) return and reintegration;
d) cooperation; and
e) implementation, monitoring, and followup.

His scheme also consists of 30 different areas –adetailed list of elements like that proposed in the 2014 ILO review. It is nevertheless difficult to treat all indicators as "key elements". While information exchange between COO and COD is listed, there is no reference to the important issue of information provision and assistance to migrants. Some observations on selected elements are included in column 4 of the table in Appendix IV. The categorization used and the elements included, however, are useful features, and have been drawn upon here in proposing the core set of indicators.

5.4 Has ILO promoted '24 essential elements' of a bilateral labour agreement?

It should be noted that there seems to be a persistent misunderstanding in the literature with regard to the ILO's recommendations concerning the essential elements of a BLA. Box 2 seeks to put to rest the myth that the ILO has prescribed "24 essential elements" of a bilateral labour agreement.

[4] Personal communication by Ms Nisha, Chief Technical Adviser of Phase I of the ILO-SDC project.

Box 2

The persisting myth about‘ 24 essential elements’ of a bilateral labour agreement advocated by the ILO

A 2007 manual on migration policies by the Organization for Security and Co-operation in Europe (OSCE), International Organization for Migration (IOM), and the International Labour Office contains a box (IX.I) of “24 essential elements” along with the following text: “ILO has identified 24 basic elements of a bilateral labour agreement ranging from the identification of the competent authorities to the working conditions of migrant workers” quoting an ILO working paper in Spanish by Geronimi (2004).

This statement is not correct because of a misinterpretation of the ILO position by Geronimi (2004), but it has been widely taken up, with a number of subsequent ILO and non-ILO reports referring to these “24 essential elements”.

While discussing the contents of a bilateral immigration agreement, a 1996 manual by Roger Böhning on “Employing foreign workers” published by the ILO listed 24 questions as “the most basic and typical questions that should be dealt with and resolved in operational bilateral recruitment agreements suited to the circumstances of a wide range of middle- and low-income countries” (Böhning, 1996, p. 29). There is no basis to confuse these questions with ILO recommended essential components of a model bilateral agreement. But this is exactly what has happened.

..

A second manual on “Sending workers abroad” from the following year (Abella,1997) reproduced the same list verbatim, although the focus of this volume was on origin countries. The introductory wording was also changed from a “number of questions that may have to be dealt with” to “considered for inclusion in almost any kind of agreement” (Abella, 1997, p. 64), which is quite a different thing.

The 24 items listed in Böhning and Abella’s manuals also do not fully reflect the 29 articles of the ILO Model Agreement, although there is some overlap. For instance Böhning’s reference to “migrants in an irregular situation” is not a basic element of the Model Agreement, but it is an issue to be resolved by State parties. Similarly Böhning’s questions related to “notification of job opportunities”, “drawing up a list of candidates”, “pre-selection of candidates”, and “final selection of candidates” are not really separate elements, but collectively they could be united under the banner of “migrant selection”, which is addressed under the Model Agreement. Moreover, Böhning/Abella’s item 21 on “activities of social and religious organizations of origin countries” cannot be considered a basic element of a Model Agreement.

Despite these discrepancies, writers have persisted in quoting this list of issues as the ILO’s recommended 24 essential elements of a bilateral labour agreement without consulting the original source by Bohning (IOM, 2008; Koser 2009; Saez 2013; IOM, 2016). .. This is clearly misleading regarding the ILO position on the components of a Model Bilateral Agreement.

6. Proposed core elements for a bilateral agreement

6.1 Main features

In developing the template for a standard agreement with core provisions, the following considerations have been applied.

1) The structure has been developed for a typical Asian country of origin, such as Bangladesh, with a focus on emigration of low-skilled workers.

2) The proposed scheme is for a temporary migration cycle, but it needs to be made clear that temporary migration is only one of the options for labour migration. When the ILO Model Agreement was developed, it covered both permanent and temporary migration in addition to refugee flows. In principle, destination countries should not design temporary schemes to meet permanent or structural labour market needs. For instance, Canada has been using the Seasonal Agricultural Worker Programme for more than three decades without providing an option for long-serving workers to attain permanent status (Keung, 2017).

3) The neglected issues of gender and social dialogue, as well as international standards have to be mainstreamed to the extent possible. Respect for human rights, including the labour rights of migrant workers should be non-negotiable. Incorporation of gender concerns can be especially guided by the General Recommendation No. 26 on women migrant workers of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), and by the ILO Domestic Workers Convention, 2001 (No.189). Most countries, including Gulf countries, have ratified CEDAW, unlike migrant worker Conventions and Convention No. 189. Involvement of social partners and NGOs in design, negotiation, and implementation is rare since the concerned governments view it as their prerogative. The ILO's 2014 review of Bangladesh's bilateral agreements also made a strong plea for their involvement in these processes in Bangladesh.

4) The idea is not to make the agreement comprehensive, but to make it cover standard and core elements. It should spell out standard provisions with flexibility to add or delete content based on the specific contexts of negotiating countries.

5) It is also possible for parties to add annexes or protocols to the agreements for priority areas. The standard employment contract added to domestic worker agreements for Saudi Arabia is one such example. Detailed terms of reference for the joint committees that will serve as a follow-up mechanism during the implementation phase could also be an annex. For instance, Malaysia elaborates responsibilities of various parties in annexes attached to their agreements (with Bangladesh and India). Some countries attach "implementing guidelines" to their agreements (e.g.,the Egypt–Italy agreement, 2005). A complaints and dispute resolution mechanism can also be spelled out to overcome limitations in current agreement text, such as references to "amicable settlement".

The structure also provides guidance on how each item should be handled – suggesting what should be covered as well as the possible text, again leaving room for adjustments by the two parties.[5] The proposed structure is provided in table 2 followed by acommentaryon each item in section 6.3.

[5] It has also drawn upon the reports by the team member (Ruhunage, 2017a; 2017b).

6.2 Proposed minimum standard provisions for the structure of MOUs

Table 2 lists the elements of the proposed structure.

Table 2. Proposed standard/minimum structure of a BLA/MOU

Article No.	Article title
–	Title
–	Preamble
1	Purposes/Objectives
2	Definitions
3	Exchange of information/methods of cooperation
4	Responsible parties or competent authorities
5	Applicable laws
6	Organization of recruitment, introduction, and placing
7	Information and assistance to migrants
8	Contract of employment (with preferred option of standard employment contract to be attached as an annex)
9	Equality of treatment and non-discrimination
10	Wage protection measures
11	Access to training and human resource development
12	Supervision of working and living conditions
13	Transfer of funds/remittances
14	Social protection/social security provisions
15	Protection provisions forfemale workers
16	Trade union rights and access to support mechanisms from civil society
17	Settlement of disputes and access to effective remedies (employer/worker)
18	Return and repatriation and reintegration
19	Joint committee/working group
20	Concrete implementing, monitoring, and evaluation procedures
21	Language versions
22	Effective date and termination clause (MOU)

Source: Compiled by the author drawing upon his previous work (Wickramasekara, 2012; 2015a), including training courses conducted by him (SDC, 2014; ILO, 2016c); ILO, 1949; 2014a; 2017a; Cholewinski, 2015; Ruhunage, 2017a; 2017b

6.3. Explanatory notes on the proposed structure

This section provides some elaboration of the elements of the proposed structure of a bilateral agreement as presented in table 2. It refers to international norms, current practices, and possible good practices where relevant. Migrant rights, gender concerns, and cooperation and dialogue are treated as cross-cutting issues.

Title of the agreement

Some agreement titles are general in that they simply refer to the MOU between the two countries. It is preferable for the title to be specific, and to clarify:

- the type of accord (BLA or MOU or Protocol);
- its purpose (e.g., cooperation in the field of human resources or labour matters); and
- the coverage (type of sectors or workers – all, or specific categories such as domestic service/workers, construction workers, etc.).

If the accord is intended for a particularmigration scheme, that also could be specified (e.g., "Recruiting workers to the Republic of Korea from [name of origin country] under the Employment Permit System"). Good examples of agreement titles include the title of the Romania–Spain agreement (2002): "Agreement between the Kingdom of Spain and Romania on the regulation and organisation of labour force migratory flows between both states"; and the Philippines–Germany "Agreement concerning the Placement of Filipino Health Professionals in Employment Positions in the Federal Republic of Germany".[6]

Preamble to the agreement

The preamble explains the spirit of cooperation underlying the agreement and the context, and would serve as an introduction. It should explain the context and motivations/reasons for the agreement.

The preamble must also carry a reference to the basic goals without going into details (e.g., enhancing friendly bilateral relations, or promoting cooperation in the field of human resources).

References to relevant international, regional, and/or national instruments and frameworks are important here. International instruments relate to universal human rights instruments, core ILO Conventions, or migrant worker instruments that have been ratified by the parties. The Romania–Spain agreement preamble states: "Aware of the necessity of respecting the rights, obligations and guarantees provided by their domestic legislations and by international agreements which they are party to". The 1998 migration agreement between Argentina and Peru states in its preamble: "Mindful of the human rights instruments adopted within the framework of the United Nations and the Organization of American States…", and then lists them.

If the agreement covers migration of female workers, it would be good to include in the preamble a reference to the need for taking into account gender concerns and the specific issues faced by women migrant workers, based on CEDAW General Recommendation No. 26, ILO Convention No.189, and General Comment No.1 on Migrant Domestic Workers (UN Committee on Migrant Workers (CMW), 2011).

[6] It is important to note that the Germany–Philippines agreement, promoted as a "triple win" differs from the typical agreements discussed here in two respects: (1) It is not a South–South mobility agreement; and (2) it covers skilled workers (health professionals), who have the option to become permanent residents in Germany, and does not address low-skilled workers. Therefore, its provisions may not be easily replicable in South–South low-skilled bilateral arrangements.

Article 1. Objectives

The objectives need to be clear and specific: e.g. regulation of labour flows between the two countries; meeting labour market needs; and to ensure protection of the rights of both workers and employers. The subsequent text should be geared to these objectives.

If it is expected that the agreement will cover female migrant workers as well, it is good to mention them specifically in the objectives: e.g., regulation of female and male labour migration; to ensure protection of rights of female and male workers. Specific gender-sensitive provisions can be included in various activities as relevant.

Article 2. Definitions

The definition of key terms used in the agreement serves to avoid subsequent ambiguity in interpretations among parties to the agreement. It is preferable to use internationally accepted and neutral terms to the extent possible. Most MOUs seem to use the term “manpower”, but this is not a gender-sensitive term (see Appendix I). This term should be replaced by “human resources”. International instruments deal with common definitions, and these definitions should be drawn upon to the extent possible. Article 2 of chapter 1 (preliminary) of the Bangladesh Overseas Employment and Migrants Act, 2013, contains legal definitions of commonly used terms that the Bangladesh Government can draw upon.

The definitions may cover the following, among others:

- employers and (migrant) workers;
- recruitment mechanisms and channels (public and private);
- various bodies and special agencies involved in the implementation of the agreement;
- categories of workers by skill level: low-skilled, semi-skilled, and skilled;
- domestic work and care work;
- migration costs and recruitment costs.

The definitions should be mutually agreed upon by the two State parties. MOUs entered into by Bangladesh with Malaysia and the Republic of Korea contain definitions of some common and specific terms. An example of a specific definition from the Bangladesh–Malaysia MOU (2016) is: “‘G to G Plus mechanism’ means the process of employing workers through application to the Government of Malaysia for approval and to recruit workers through the Government of Bangladesh in accordance with the standard operating procedures annexed as Appendix B”.

Care should be taken not to adopt definitions that deviate from those that are internationally accepted or are not gender-sensitive.

Article 3. Exchange of information between the two parties

This refers to the exchange of information between the country of origin (COO) and the country of destination (COD) on a regular basis. Article 1 of the 1949 ILO Model Agreement contains detailed provisions[7] relating to this exchange of information, such as:

(a) legislative and administrative provisions relating to entry, employment, residence of migrants and of their families (COD) and information relating to emigration (COO);

[7] The Model Agreement covered permanent as well as temporary migration. At the time, transfers of labour were mostly arranged by public employment services of the two Parties.

(b) the number, the categories and the occupational qualifications of the migrants desired (COD) and available (COO);

(c) the conditions of life and work for the migrants relating to remuneration, housing, living conditions; and

(d) social security laws and their applicability to migrant workers.

The information exchange 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 or working and living conditions abroad. The two parties can include a sub-article to this effect. The IAUs of New Zealand with Pacific Island countries contain such a provision.

The agreement between the Philippines and Germany stipulates that both parties must share up-to-date information regarding supply and demand for health professionals, the linguistic requirements needed, and procedures to be followed in gaining recognition by the German Government as nurses.

For examples from Bangladesh agreements one could turn to article1(B) of the Jordan MOU, which refers to “Exchange of information and ongoing studies”. Likewise, article 2 of the 2008 Additional Protocol with Qatar states:

> The Parties shall review from time to time, through the Joint Committee referred to in Article (16) of the Agreement, the possible employment opportunities in the State of Qatar, including the general information regarding development plans in the State of Qatar, projected employment opportunities thereunder for particular labour categories or skills, the expected duration of these employment opportunities, the availability of the desire of Bangladesh citizens to make use of them.

Article 4. Responsible parties or competent authorities

Agreements need to identify the primary parties responsible for implementation. While the central government has overall authority, the line ministry responsible for migration for employment (usually labour ministries or a dedicated ministry such as the MEWOE in Bangladesh or Ministry of Foreign Employment in Sri Lanka)would normally sign the agreement. The two parties to the agreement may be designated as the first party and the second party.

They may also assign second levels of responsibility as needed. The Philippines–Manitoba (Canada) MOU (2010) mentions that the Philippines Department of Labour and Employment would include its associated agencies (POEA, OWWA, TESDA, PRC) as appropriate. A good example for this status (though not content) can be viewed in the Malaysia MOUs with Bangladesh, where separate annexes list in detail the specific responsibilities of the employer, worker, the Government of Malaysia, the origin country government, and recruitment agencies.The MOU between Bangladesh and Republic of Korea (2012) also clarifies the specific division of responsibilities among the different agencies involved, citing theMEWOE, the Bangladesh Overseas Employment and Services Limited, the Korean Ministry of Labour, andthe Department for Human Resource Development Services as the competent authorities and detailing their respective operational role within the MOU.

Article 5. Applicable laws

Migration for overseas employment involves different stages: pre-departure; employment and residence in the destination country; and return and reintegration. Origin country laws, policies, and programmes would apply to the pre-departure stage (such as recruitment), and on return and reintegration. Most agreements mention that the laws of the destination country would apply during

the employment and residence stage. In some cases, existing agreements refer to the applicability of both COO and COD laws without providing details on how this this is to be operationalized. An example is the Bangladesh–Jordan MOU, 2012 (see box 3).

Box 3

Bangladesh–Jordan MOU, 2012: References to applicable law

Article 2
Recruitment and employment of workers would be discussed by both parties as per legislation, laws and procedures applicable of both countries. All would be governed by transparency, justice and mutual benefits. The law of the recipient State for Employment will be applied.

Article 3
Both parties undertake to preserve the rights of workers and employers by the legislation and the law in coherence with international standards and treaties in this regard.

Article 4
Recruiting and employing of workers will be after the completion of all necessary legal procedures according to legislation in force in both countries. Source: Memorandum of Understanding between the People's Republic of Bangladesh/ Ministry of Expatriates' Welfare and Overseas Employment and the Hashemite Kingdom of Jordan/ Ministry of Labour in the field of manpower, 2008

The MOUs of the United Arab Emirates (UAE), however, clarify that the COD laws would prevail:

> Entry of manpower to the UAE, and enforcement of mutual contractual obligations between Indian workers and UAE employers, as well as the measures to protect Indian workers while in the UAE, shall be in accordance with the relevant laws, rules and procedures that are applicable in the UAE (article 4, India–United Arab Emirates revised MOU, 2011).

One good practice is to mention the main pieces of legislation applicable to the implementation of the agreement. The Philippines–Manitoba (Canada) MOU, for example, specifies the respective applicable laws of the two parties.

Article 6. Organization of recruitment, introduction, and placing

Recruitment issues have emerged as one of the most important factors in labour migration, with major efforts at the international level to ensure fair recruitment. The ILO has recently adopted *General principles and operational guidelines for fair recruitment* (ILO, 2016a). One indicator of Sustainable Development Agenda Goal 10 (reduce inequality within and among countries) is the recruitment cost borne by employees as proportion of yearly income earned in the country of destination (IAEG-SDGs, 2017). The ILO has also launched a Fair Recruitment Initiative.

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, 2016a, p. 3). Laws in most origin countries, including those of Bangladesh, however, allow charging of recruitment fees subject to ceilings. Yet Qatar, Saudi Arabia, and the United Arab Emirates prohibit the levying of recruitment fees from migrant workers. However, this is hardly realized in practice, given weak law enforcement. It is only through regional cooperation platforms such as the Abu Dhabi Dialogue that countries of origin and destination can jointly take a position on the non-levy of fees and enforce this position.

The agreement should define the roles of both the COO and COD in this respect. It should clarify who are authorized 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 will be taken to minimize recruitment malpractices and reduce migration costs, and that costs of recruitment and placement should not be borne by migrants. A joint monitoring mechanism, however, needs to be put in place to enforce compliance.

The text can state that international or national standards and guidelines relating to recruitment would be respected: e.g., the ILO Model Agreement, article 6; the ILO Private Employment Agencies Convention, 1997 (No. 181); and especially the ILO's 2016 *General principles and operational guidelines for fair recruitment* (GPOGFR)(ILO, 2016a). The GPOGFR states that governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workersthat are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards.

The GPOGFR states:

> 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, 2016a, para. 13).

For G-to-G agreements, more operational details may be added about organization and placement: e.g., the Employment Permit System MOUs of the Republic of Korea, which spell out language tests, selection procedures, and recruitment fees, among others.

While previous Asian MOUs had hardly any reference to recruitment, this is slowly changing. Among South Asian MOUs, article 5 of the India–United Arab Emirates MOU, 2011, provides a useful precedent:

> The two parties agree to strengthen their respective regulations of private employment agencies to enforce fair and transparent recruitment practices intheir respective jurisdiction and compliance of all actors in the process of recruiting Indian workers for employment in the UAE with the rule of law.

The Bangladesh–Saudi Arabia domestic worker agreement (2015) refers to both costs and regulation of private employment agencies: (a) "Endeavour to control recruitment costs in both countries" (article 3.2); and (b) "Take legal measures against recruitment offices, companies or agencies in violation of the laws of either country" (article 3.6). 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 Convention No. 189 has a number of provisions for protecting migrant domestic workers from abusive practices of private employment agencies.

A good practice can be found in article 5.7 of the Bangladesh–Saudi Arabia domestic worker agreement, 2015: "Ensure that Bangladeshi recruitment agencies, offices, or companies shall not charge or deduct from the salary of the [domestic service workers] any cost attendant to his/her recruitment and deploy mentor impose any kind of unauthorized salary deductions."

The General Agreement in the Field of Manpower Between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal contains a separate article (no. 10) on the recruitment process. Article 10(1) states: "The Parties shall adopt necessary legal measures to assure a smooth, fair, transparent and legal recruitment process". It also stipulates that employer pays for the cost of visa fee, return air-ticket, home-leave every two years.

The Philippines–Manitoba (Canada) MOU (2010) has a provision of zero fees for workers:

> The Participants intend that Employers will cover the costs related to hiring of Workers. Employers and Sending Agencies must not request, charge or receive, directly or indirectly, any payment from a person seeking employment in Manitoba, which contravenes The Employment Standards Code and/or The Employment Services Act (article 6).

Article 7. Information and assistance to migrants

International instruments have recognized this to be a priority need for migrant workers who are moving to another country where they are not nationals. Article 2 of the ILO Convention No. 97 highlights the obligation of the ratifying government to provide an adequate and free service to assist migrants with regard to employment, and in particular to provide them with accurate information. Article 8 of the ILO Model Agreement elaborates on this matter, highlighting the shared responsibility of the COO and the COD.

> The migrant accepted … shall receive, in a language that he understands, all information he may still require as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he is going…On arrival in the country of destination, migrants and the members of their families shall receive all the documents which they need for their work, their residence and their settlement in the country, as well as information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in the country of immigration (ILO, 1949).

The ILO GPOGFR states: "Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment" (ILO, 2016a, p. 8).

While some of the Asian agreements mention exchange of information between the parties, the agreements generally expect the origin country to provide pre-departure orientation. In practice, as well, it is mostly origin countries that have adopted concrete measures to give effect to this requirement in the form of pre-departure orientation programmes conducted by the government, employment agencies, or civil society, as well as the distribution of simple guides on applicable destination country laws and customs. It is very important to provide gender-specific information to migrant workers, especially female migrant domestic workers. Except in dedicated domestic worker agreements, gender-specific information is largely absent from bilateral agreements across Asia. The CEDAW General Recommendation 26 recommends the following:

> Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation … targeted to women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women" (CEDAW Committee, 2008, p. 9).

There are several post-arrival orientation programmes for migrant workers conducted by Asian destination countries (ILO, 2015). Since 2004 the Malaysian Government requires foreign workers to attend an induction course on communication skills, culture, and laws and regulations in Malaysia. The orientation is to be provided through training centres in origin countries and is accredited by the Malaysian Ministry of Human Resources. MOUs involving Malaysia generally mention these courses under worker obligations. Singapore also carries out a one-day, mandatory post-arrival orientation programme called the "Settling-in Programme" for first-time or newly-arrived foreign domestic workers. The course educates workers on safety precautions and living conditions in Singapore. The Government of Singapore also requires employers of domestic workers to take a three-hour compulsory programme conducted by the Ministry of Manpower and accredited training centres. Under the Republic of Korea's Employment Permit System regulations, foreign workers must complete an Employment Training Module (20 hours minimum) after entering the country. This is provided through accredited training agencies (ILO, 2015).

What is important is to recognize in MOUs is that a commitment to post-arrival training should be an obligation of the destination country.

In this respect an important regional initiative is the *Regional guide for the modules of the pre-departure orientation (PDO)* being promoted by the Abu Dhabi Dialogue. It has identified nine modules for pre-departure orientation and seven modules for post-arrival orientation (IOM, 2017).[8] Since these modules have been endorsed by both origin countries in Asia (including Bangladesh) and Gulf destination countries, an agreement can refer to them.

Article 8. Contract of employment, with preferred option of a standard contractas an annex

The employment contract plays a central role in a bilateral agreement because it defines the returns to employment (wages and other remuneration), and the conditions of work for migrant workers. The 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 contract provisions.

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 laws of the destination country. The Philippines–Germany agreement on health professionals/nurses (2013) provides a good example of typical contents regarding contracts:

> The contract covers the aspect of equal standard of wages with German employees, details of overtime payments, payment for night work, payment for working on weekly holidays and public holidays, working hours, accommodation and amenities with amount of charges that employee has to pay, condition on meals where employee has to bear the cost, leave entitlement, status of cost of return journey, settlement of disputes under the labour law of Germany, etc.

In view of the common malpractice of contract substitution, it is important to establish a system of joint verification of contracts by authorities of the COO and COD. For instance, the 2011 India–United Arab Emirates MOU (article 7) states:

> The terms and conditions of employment of manpower in the UAE shall be defined by an individual labour contract between the worker and the employer. This contract shall clearly state the rights and obligations of the two sides in conformity with the UAE Labour laws and authenticated by the UAE Ministry of Labour. The terms and conditions of employment shall not vary from those contained in the original application except for alterations that are favourable to the worker.

It is also important to add that migrant workers are “informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner” (Convention No. 189, Article 7). For example, the 2012 Bangladesh MOU with the Republic of Korea reads (in para. 8.2): “The sending agency will explain the content of the labor contract to each worker so that he/she can fully understand it and decide whether or not to sign the labor contract of his/her own free will”. Another good practice is in Philippines–Saskatchewan (Canada) MOU, wherein the Philippines Department of Labour and Employment requires sending agencies to conduct a mandatory orientation for workers on the contents of the employment contract or the written offer of employment sent by the employer to the workers, to ensure their clear understanding of the terms of employment. The contract should be made available in a language that the worker understands.

Another important provision to be included is that the travel and identity documents of the worker should remain with the worker. This is to prevent forced labour practices.

To ensure a level playing field, it is important to attach a standard model contract to the agreements as an annex. The main agreement should state that the contract is an integral part of the agreement

[8] The nine modules consist of the following: (1) Understanding the Work Environment Culture and Living Conditions in Destination Countries; (2) Awareness of Rights and Obligations of the Worker as per the Employment Contract and Laws of Countries of the Countries of Destination; (3) Planning and Preparation of Families Left Behind; (4) Awareness of Human Rights and Gender Dimensions of Migration; (5) Remedies in Cases of Distress and Crises Situations; (6) Staying Healthy while Working Abroad; (7) Management of Earnings and Remittances; (8) Travel and Security Reminders; and (9) Reintegration of Migrant Workers

to be monitored for effective implementation, especiallyby the country of destination (e.g.,Saudi Arabia domestic worker agreement). The individual contract of employment for migrants shall be based on the model contract drawn up by the parties for the principal branches of economic activity. These can go into details of wages, working and living conditions, and provisions for transport. As mentioned above, confiscation of travel and identity documents of the worker should be prohibited. Examples include the domestic worker agreements of Saudi Arabia with Bangladesh, India, the Philippines, and Sri Lanka. Qatar has used standard employment contracts in its bilateral agreements from the beginning, but there is no evidence concerning their effectiveness. The 2017 Nepal–Jordan General Agreement contains standard employment contracts for general workers and domestic workers.

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.

Article 9. Equality of treatment and non-discrimination

The principles of equality of treatment and non-discrimination are key features of international instruments concerning migration. 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 do not enjoy equality of treatment with national workers. There is disparate treatment between workers from different countries and according to gender in many destination countries for Asian workers.

Only a few agreements in Asia specifically include a separate article on equality of treatment. In many cases, the employment contract section mentions that the same labour laws apply to migrant workers. A good provision can be found in article VII of the Bangladesh–Libya agreement, 2008: “The employee shall enjoy all rights and privileges enjoyed by the employees of the host country in accordance with the labour laws in force in the host country.” Article 2 on rights of workers in the 2007 Philippines–Bahrain health worker agreement is more forceful:

> Human resources for health shall be provided equal employment opportunity in terms of pay and other employment conditions; access to training, education and other career development opportunities and resources; the right to due process in cases of violation of the employment contract… Human resources for health recruited from the Philippines shall enjoy the same rights and responsibilities as provided for by relevant ILO conventions.[9]

Article 14 of the General Agreement in the Field of Manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal deals specifically with “Equality of Treatment”. This elaboration of equality treatment on par with nationals is unique for an Asian bilateral labour migration agreement (Wickramasekara, 2018b).

The Brazil–Portugal agreement (article 8) states: “Workers employed under this Agreement shall enjoy the same rights and shall be subject to the same employment obligations applicable to workers who are nationals of the receiving State. They shall also be entitled to the same protection in the implementation of workplace sanitation and occupational safety laws.”

The Philippines–Germany agreement on health professionals (2013) contains the following on working conditions: “Filipino health professionals may not be employed in the Federal Republic of Germany under working conditions less favourable than those for comparable German workers.”

[9] This agreement covers skilled workers. Moreover, it was never implemented.

Article 10. Wage protection measures

Given that complaints relating to wages are very common among migrant workers, the agreement should also contain provisions for protection of wages. Most complaints relate to non-payment, delayed payment, lower payments than specified in the contract, non-issue of receipts, unlawful deductions, non-payment of overtime, and non-supply of food as agreed. If a standard employment contract is attached, this provision can form part of that.

A standard provision increasingly being used is the stipulation that migrant wages will be paid monthly into a personal bank account. All Gulf Cooperation Council (GCC) countries except Bahrain have introduced wage protection systems (Jureidini, 2017). The experience is that while large companies normally follow this practice, there are implementation gaps with smaller enterprises and private households employing domestic workers (ILO, 2017d). This measure does not address issues such as low wages and unlawful deductions. Women workers, especially domestic workers, may have problems in accessing their accounts while being confined to private households.

Workers should have easy access to complaints mechanisms on wage issues without fear of intimidation and retaliation. It is the obligation of the COD to establish such mechanisms.

In view of the seriousness of the problem of low wages, origin countries have taken unilateral measures to define minimum wages. For example, the Philippines and Indonesia unilaterally fixed the minimum wage for domestic workers at US$400 and US$470 respectively in 2007[10]. India has also proposed minimum referral wages for most GCC countries by specific occupations. While origin countries can impose a minimum wage for their workers, what is not clear is how they can enforce it in destination countries. It is more effective if MOUs contain minimum wage provisions, but few MOUs have such a provision. Negotiating with the authorities of destination countries to conclude agreements on the applicable minimum wages carries risks, as the ILO points out: “[S]uch negotiations risk introducing competition between countries of origin to ensure employment for their nationals abroad and at the same time giving rise to discrimination between migrant workers on grounds of nationality” (ILO, 2014b, pp. 95–96). A more effective strategy may be for countries of origin to agree on a regional minimum wage at forums such as the Colombo Process, and negotiate at the Abu Dhabi Dialogue (Wickramasekara, 2014).

Wage protection should also provide for recovery of back wages or unpaid wages, even after the worker returns home.

[10] https://migration.ucdavis.edu/mn/more.php?id=3309

Article 11. Access to training/human resource development

This article should cover general orientation of migrant workers for employment in the destination country as well as vocational training for selected jobs. The Model Agreement, Article 9 states: "The parties shall co-ordinate their activities concerning the organisation of educational courses for migrants, which shall include general information on the country of immigration, instruction in the language of that country, and vocational training."

In the case of temporary, low-skilled workers, destination countries expect the country of origin to undertake the main responsibility for skills training. Employers in destination countries may be reluctant to invest in vocational training or human resource development, and workers may have access to on-the-job training only. As a minimum, it is important for employers in destination countries to provide training in occupational safety and health (OSH) matters, especially when workers are involved in hazardous occupations such as construction.

Another important aspect is the training provided under pre-departure programmes by most origin countries. The ILO Multilateral Framework on Labour Migration calls for "facilitating migrant workers' departure, journey and reception by providing in a language they understand, information, training and assistance prior to their departure and on arrival concerning the migration process, their rights and general conditions of life and work in the destination country" (article12.1). It is important that all this training should be adapted to the specific needs of women migrant workers as well.

Post-arrival training in destination countries is rare, but there are exceptions as noted under article 7 above. For instance, the Bangladesh–Republic of Korea MOU (2012) states that the Korean Ministry of Employment and Labour will conduct post-arrival education and medical check-ups for workers before they start work. Singapore provides post-arrival orientation to domestic workers.

Another good practice observed in some bilateral MOUs is cooperation between the COO and COD to train workers in the country of origin. The MOUs between the Philippines and Canadian provinces usually contain provisions for human resource development in the Philippines prior to migration. Italian bilateral agreements normally provide linguistic and vocational training to elected workers before departure (e.g., the Albania–Italy, Egypt–Italy, and Sri Lanka–Italy agreements). There are some proposals to promote cooperation in skills matching and recognition of qualifications under the Abu Dhabi Dialogue. One possible option is to introduce provisions in MOUs for COD employers to issue certificates of employment and update workers' skills passbooks (where they exist) to facilitate reintegration or re-migration of workers.

Article12. Supervision of working and living conditions

The responsibility of supervising the working and living conditions of migrant workers lies with the competent authorities of the COD, according to the ILO Model Agreement, Article 15. It also calls for cooperation between the COO and COD 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 country of origin should be allowed access to visit workplaces and places of accommodation to assess existing working and living conditions. The Nepal–Jordan 2017 agreement contains good provisions in this area (Wickramasekara, 2018b).

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.

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."

Article 13. Transfer of funds/remittances

The standard text in this regard is the recognition of the right of the migrant worker to transfer savings and remittances in line with local laws and regulations. In view of the SDG Agenda target of reducing remittance transaction costs to 3 percent by 2030, the text can be modified to state that the two parties would facilitate transfer of remittances at a low cost. The Sri Lanka–Italy agreement (2011) is one of the few agreements that goes beyond the standard provision, advocating a more proactive approach: "The Italian Party agrees to disseminate information on the national remittances system, with the aim of aiding migrant workers in the choice of the most advantageous way".

It is also important to make it explicit that remittances will not be taxed at origin or destination.

Article 14. Socialprotection/social security provisions

The Model Agreement (Article 21) recommends 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 East destination countries usually exclude temporary migrant workers from comprehensive social security coverage.

As a minimum, male and female migrant workers need to be provided with workplace insurance and health-care coverage by the employer. These should be clearly mentioned in the employment contract. The Philippines–Lebanon MOU, for example, mentions "the provision of an insurance coverage for the worker in accordance with the existing laws and regulations in the receiving country". Article 6 of the India–Qatar agreement's model contract provides for medical care and workplace insurance. The Philippines–Germany agreement on nurse hiring states under its social security section: "Filipino health professionals are subject to compulsory insurance in the German social security system (health and long-term care insurance, pension, accident and unemployment insurance)". This wider coverage may not be possible in South-South agremeents.

The MOU or the employment contract should spell out a procedure for transferring employment injury insurance to workers who suffer accidents (or to their next of kin) – either as a lump sum or via instalments.

Article15. Protection for female workers

"In order for BLAs/MOUs to achieve their aim of promoting 'fair migration' for regulated and orderly cross-border movement of workers and protecting the human rights of all migrants, they must incorporate a gender perspective and give particular attention to the groups of vulnerable migrant workers including MDWs [migrant domestic workers]" (ILO, 2016b). In providing protection for women workers, parties can draw upon general human rights and migrant worker instruments, such as: CEDAW General Recommendation 26, ILO Convention No.189, and CMW General Comment1.

Women migrant workers can benefit from two types of protections: (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 OSCE have provided some guidelines for protection of women migrant workers in formulating provisions in bilateral agreements (ILO, 2016b; OSCE, 2009).

One option to explore for this purpose are the dedicated agreements for domestic workers introduced by Saudi Arabia and Malaysia. The Saudi Arabia agreements are much better than Malaysian agreements in terms of content and the rights accorded to domestic workers. Given that domestic workers may not be covered by labour laws in most destination countries (Jordan is an exception), it is important to attach model employment contracts addressing issues of concern,

such as equality of treatment, wage protection, rest periods, leave days, hours of work, privacy, right to communication, complaints mechanisms, and prohibition of passport confiscation, with these contract items being in line with international instruments, including the Convention on Domestic Workers, 2011 (No.189). The Saudi Arabian agreements include a model contract that is consistent with some of the international norms. Provision must be made for multilingual hotlines accessible by domestic workers. The Saudi Arabian agreement proposes the establishment of a mechanism that shall provide 24-hour assistance to domestic workers.

Article 15 on the "Protection of Female Workers of the Nepal–Jordan 2017 agreement contains several specific provisions including addressing vulnerabilities of women workers (Wickramasekara, 2018b).

These agreements however, are difficult to implement in the absence of adequate national legislation and protective frameworks for women migrant workers in destination countries.

Article 16. Trade union rights and access to support mechanisms from civil society

This refers to the right of migrant workers to join local trade unions and/or migrant associations, which is a basic right of workers. In practice, however there are many obstacles to this right. Some CODs may not allow union rights, even for local workers (e.g., Saudi Arabia, United Arab Emirates). Others may not allow migrant workers to hold positions in unions. Employers may retaliate if workers join unions, even where legally allowed.

Organizations of migrant workers are also not common, even in origin countries. What is needed for workers is access to support organizations such as NGOs concerned with migrant welfare, human rights institutions, diaspora organizations, or religious-based organizations that can provide support. This is quite important for women migrant workers who suffer multiple discrimination as both workers and women in destination countries. COO and COD trade unions and NGOs can network to offer support to migrant workers. The agreements can contain provisions that aim to facilitate the functioning of such organizations and facilitate access to them by migrant workers within the law of the countries involved.

COO and COD trade unions have entered into bilateral agreements or MOUs for protection of migrant workers. For example, model bilateral agreements were established between trade unions in Sri Lanka and in Bahrain, Jordan, and Kuwait for the protection of Sri Lankan migrant workers in May 2009. However, the agreements seem to be defunct now due to an absence of follow-up action. The General Federation of Nepalese Trade Unions has long been cooperating with destination country unions for the protection of Nepalese migrant workers. It has signed agreements with two GCC country trade unions and trade unions in Hong Kong (China), Malaysia, and the Republic of Korea. Unless the origin and destination governments recognize these in their MOUs, the effectiveness of such collaboration can be limited.

Article 17. Settlement of disputes between employers and workers, and access to justice and effective remedies for workers

Guideline10.5 of the ILO Multilateral Framework on Labour Migration calls for "providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation" (ILO, 2006, p. 20).

All agreements have a section on dispute settlement or resolution. The general position is provision of an amicable settlement between the two parties in dispute, failing which access to judicial means is allowed: e.g.,article 13.2 of the Sri Lanka–Qatar agreement, 2008:

> In case of a dispute between the employer and the worker arising from the employment contract, the complaint shall be lodged with the competent authority of the Ministry of Labour and Social Affairs for amicable settlement.

> If an amicable settlement is not reached, the dispute shall be referred to the competent judicial authorities in the State of Qatar.

The standard contract in the Bangladesh–Saudi Arabia domestic worker agreement states in article 7: "In case of dispute between the employer and the [domestic worker] the two contracting parties may refer the dispute to the appropriate Saudi authorities for conciliation and/or resolution." This clause is vague because the appropriate authorities are not mentioned. Some agreements may specify the applicable language version of the agreement in case of disputes (e.g., India-United Arab Emirates 2001 MOU; India–Bahrain 2009 MOU).

Clear guidelines on complaint and settlement mechanisms are needed that go beyond "amicable settlement" phrases. Recourse to judicial means 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.

One of the tasks of the joint committee in the 2009 India–Denmark MOU is to produce information material about the existing system for dispute settlement to prevent labour disputes.

It is also important to allow workers to lodge complaints and seek remedies even when they have returned to countries of origin. The worker may have to leave immediately upon the end of their contract, according to laws in many destination countries. The joint and solidary liability principle of the Philippines applying to private recruitment agencies and their foreign principals/employers abroad is one mechanism that allows workers to seek remedies for contract violations during employment abroad (MFA, 2014).

Article 18. Return and repatriation and reintegration

ILO GPOGFR General Principle No.12 on recruitment states: "Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer" (ILO, 2016a, p. 8).

This provision is very important in view of the sponsorship system (*kafala*) prevailing in GCC countries, which requires employer permission to change or leave employment. A standard provision (of the agreement or employment contract) is that the return travel/repatriation costs should be paid by the employer except under certain conditions: (a) employee leaving before the end of the contract; (b) employee violates conditions of contract or engages in misconduct; or (c) in some cases, the employee fails the medical test on arrival (e.g., Republic of Korea MOUs[11]). Reintegration support by the COO or COD or by both is another important provision, but it is mentioned in only a few agreements (e.g., Republic of Korea MOUs).

One good example can be found in article 10 of the Romania–Spain agreement (2002) under a chapter dedicated to the return of migrant workers:

> The Contracting Parties hereby undertake to adopt, in a co-ordinated manner, measures to implement support programmes for the voluntary return of migrant workers, nationals of either Contracting Party, to their State of origin.
>
> In this respect, measures to promote the reintegration of the migrant worker in his/her State of origin, with the added value brought about by the experience gained as a migrant worker as a factor of economic, social and technological development, shall be adopted.

Reintegration references are absent in most agreements. Article 15 of The Sri Lanka–Italy agreement (2011) titled "Circular Migration", states: "The Italian Party recognizes the importance of

[11] The medical test requirement on arrival in the Korean MOUs is an unsatisfactory feature. The Korean authorities should arrange their own test in the origin country before workers depart for employment.

the improvement of professional insertion and return paths and will support joint initiatives of circular migration addressed to legally resident Sri Lankan nationals." The 2007 Philippines–Bahrain health services agreement mentions as a general principle: "Provide reintegration for the human resources for health who shall return to their home country". The Republic of Korea MOUs state: "The sides will cooperate to ensure the smooth implementation of the Returnee Support Program, including active job placement services to help returning workers adapt to their home country."

Some agreements include articles for mandatory return (e.g., Thailand's MOUs with Cambodia, the Lao People's Democratic Republic, and Myanmar; and some Spanish agreements, such as their agreement with Colombia). These are not consistent with a rights-based approach.

The Saudi Arabia domestic worker agreements provide for paid leave for return to the home country at the end of two years' service.

The Saudi Arabia domestic worker agreements provide that the COD facilitates the issuance of exit visas for the repatriation of domestic workers upon contract completion, emergency situations, or as the need arises. A provision can be made for compensation and repatriation as needed in case of serious illness, work accidents, or disability of the worker. In the event of the death of a worker, the funeral or the repatriation of the remains should be arranged at the expense of the employer in line with COD laws. Any back pay and all remaining dues should be transferred to the next of kin.

Article 19. Joint committee/working group

An integral part of any agreement is the establishment of a joint committee (JC) to monitor and implement the agreement. The most common practice in this regard is to establish a committee with combination of officials of the two signatory parties under labels such as "Joint Commission", "Joint Committee", "Joint Working Group", "Joint Technical Committee and, "Bilateral Working Group", among others. The committees consist of senior officials from both parties, and the agreements mention the functions of the committees and frequency of meetings in general.

For example, the Philippines–Lebanon MOU, 2012, article VII reads: "Both Parties agree to establish a Joint Working Group within three (3) months after the signing of this Memorandum of Understanding." The important provision is the mention of a timeframe for the establishment of the JC, which is absent from many agreements. Some agreements mention annual meetings with venues alternating between the COO and COD, while some may mention meeting being held "as needed" (SriLanka–Italy) or "as deemed necessary" (Philippines–Lebanon).

Many agreements mention the objectives of the JCs. The Bangladesh–Saudi Arabia agreement provisions in article 6 on the objectives of the Joint Technical Committee are an example:

(a) Periodic review, assessment and monitoring of the implementation of this Agreement;

(b) Conduct consultative meetings in Saudi Arabia and Bangladesh alternately on a date and place mutually agreed by both Parties;

(c) Make necessary recommendations, to resolve disputes arising from the implementation and the interpretation of the provisions of this Agreement; and

(d) Make necessary recommendations to alter, amend, and substitute, if required to any provisions of the Standard Employment Contract.

Some agreements may specify the number of officials from each party that will be in the JC (usually three) and how the costs of meetings are shared. In view of the specific issues experienced by women migrant workers, an official who is familiar with gender issues should be appointed to the JC where women workers constitute an important share of total migrant flows (ILO, 2016b). Only the Malaysian MOUs provide detailed terms of reference for the JC as an annex. The ILO 2014 review of Bangladesh MOUs developed model terms of reference and a standard agenda for JCs (see Appendix Vi and VII).

All records of such meetings should be processed and shared with stakeholders.

One good practice is found in the Romania–Spain agreement,where one of the functionsof the joint coordination committee is "disseminating the appropriate information on the contents of the Agreement in both States". However, some Asian countries (Bangladesh, China, Malaysia, and Pakistan) treat the texts of agreements as confidential and do not share them. Since there are hardly any confidential statements or provisions in MOUs, this practice is not justified.

Article 20. Concrete implementing, monitoring, and evaluation procedures

Given that most agreements are poorly implemented, it is very important to build in concrete implementing, monitoring, and evaluation procedures.

The two State parties of the agreement are encouraged to set up a monitoring system built into the Agreement. Benchmark information on critical variables – such as, numbers of migrant workers, share of female migrants, patterns of complaints by migrant workers, systems of recruitment, migrationand recruitment costs, OSH information, wage information, and the numberof workers returning upon completion of their contracts– can be jointly collected for both the origin and destination country on a pilot basis at least. A system of relevant indicators for assessment of impact needs to be developed.

Monitoring is a continuous process, while evaluation can be periodic. A mid-term evaluation and a final evaluation before renewal should be provided for. Independent evaluation should be made mandatory before any renewal with a view to identifying needed revisions. The current practice of automatic renewal should be done away with because it encourages complacency and a lack of follow up. Joint funding of the evaluationis preferable. If not feasible, the origin country should undertake it.

The New Zealand Recognised Employer Scheme (RSE) presents a good practice in this regard,as it involves systematic monitoring and evaluation and related information collection with the support of the States parties. Indicators of success for both parties should be incorporated in the agreement, as in the RSE case.However, independent evaluation of RSEscarried out by external agencies such as the World Bank can be expensive, and is probably not sustainable.

Given that MOUs are frameworkagreements of a broad nature, it is important to develop specific protocols or annexes for concrete implementation measures (Wickramasekara, 2012). The Philippines–Lebanon MOU (2012) provides a good practice in this regard in its article VIII:

> The Parties may decide to formulate and conclude specific protocols or adopt other documents that will regulate and implement specific areas of labor cooperation under Article I of this Memorandum of Understanding, with such documents to be considered as annexes to and integral parts of this Memorandum of Understanding, to be concluded on the basis of mutual agreement or by an exchange of letters through diplomatic channels and shall take effect as determined by the Parties.

Malaysia MOUs usually contain annexes relating to specific responsibilities of parties and the terms of reference for JCs. The annexes on responsibilities, however, lack any concrete enforcement measures and need to be modified to ensure better protection of migrant workers.

It is also important to include representatives from workers, employers, and civil society where possible in these deliberations in consultation with countries of destination. This is mostly absent in Asian MOUs. The Philippines-Germany nurse hiring agreement (2013) presents a good practice in this regard. Although this was not foreseen in the agreement, following negotiations with the two governments, trade unions from both countries (PS Link and ver.di) have been invited to become members of the joint committee and to monitor the implementation of the bilateral agreements (Help the Children in Distress, n.d.).

A very good provision from the Philippines–Manitoba (Canada) MOU is the designation of the Philippines Overseas Labour Office for monitoring the MOU to protect Philippine workers: "The

Participants intend to allow the Philippine Overseas Labor Office concerned in Canada to monitor Workers recruited under this MOU with the view to ensuring the protection and welfare of Workers under the existing laws and regulations in Canada and the Province of Manitoba". There is, however, no information on the actual enforcement of this provision.

The agreements should provide for periodic and final evaluation before renewal. The JC should negotiate about the responsibility for same and the sharing of costs.

Article 21. Language versions

Agreements also specify the applicable language versions. This is generally inserted in the last article mentioning the signing of the contract in different languages.

In the case of Asian agreements, origin countries generally use the English version while the destination country would use its language version. For MOUs with GCC countries, the document would therefore be in both Arabic and English. It is important to clarify which version would be considered authoritative in the case of settlement of disputes. For example, the Sri Lanka–Italy agreement on bilateral cooperation on labour migration mentions: "Done in ROME on 18/10/2011, in two originals, in Italian, Sinhala and English languages, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail".

Article 8 of the India–United Arab Emirates 2011 MOU refers to the labour contract thusly: "The Arabic and English versions of the labour contract shall be the only authenticated versions recognized by the Ministry of Labour and considered by the Ministry in arbitrating any dispute between the worker and employer arising in relation to the provisions of the labour contract."

Article 22. Effective date, validity, and termination clause.

Agreements usually have a validity period of three to five years. As a minimum they should be of two years' duration. Most mention automatic renewal in the absence of a termination request by either party. It is preferable if the extension is subject to good performance as assessed by an evaluation exercise.

7. Concluding observations

The above analysis proposed minimum provisions for structuring a bilateral agreement or MOU based on a synthesis of previous work and international instruments and good practice. The structure proposed here (covering migration governance, protection of migrant workers and development benefits) is aimed at providing a framework for elaborating the text of agreements.

An origin country such as Bangladesh can use it as a template in preparing a draft agreement, while modifying it to suit specific contexts. There is flexibility to highlight certain areas depending on the issues to be addressed by the agreement, the category of workers involved, and the type of agreement (whether G-to-G or otherwise).

The next step is to develop a draft template of the agreement based on this structure. This requires the use of assessment and good practice criteria on each component based on the overall objectives of migration governance, protection, and development.

This report on core elements, the assessment guide on evaluation criteria of quality of agreements, and the good practice report on bilateral agreements (Wickramasekara, 2018a; 2018b) are complementary. Together they provide guidance to origin countries to negotiate with destination countries on an equal partnership basis. Labour migration takes place to meet the mutual needs of matching labour market demand for workers and skills in destination countries with the supply of labour and skills from origin countries. Migrant workers make a significant contribution to the growth and development of destination countries, while helping their home countries with remittances and skills on return. Therefore, origin countries should undertake negotiations from a position of strength, and attempt to get the best possible options for their workers.

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Appendices

Appendix I. Preferred terminology in migration discussions

Terms to be avoided	Preferred/neutral terms	Justification
Labour exports/imports; Labour exporting/ importing countries	Emigration of labour, or labour outflow; Immigration of labour, or inflow of labour; Emigration/immigration country	Migration involves the movement of human beings who should enjoy human and labour rights, unlike traded commodities. “Labour is not a commodity” – Philadelphia Declaration of the ILO.
Manpower	Human resources	The term “manpower” is not gender-sensitive.
Labour sending countries Labour receiving countries	Countries of origin, or source countries; Countries of destination, or host countries	May imply that governments are engaged in labour emigration/immigration. Most overseas placements are done by the private sector. Workers are also mostly hired by private employers in destination countries.
Labour migrants Temporary contractual labour (GCC countries) Economic migration/ economic migrants	Migrant workers; migrant labour Labour migration/migrant workers.	International instruments have never used the term “labour migrants”. “Economic migrant” is a rather derogatory term used to describe those seeking asylum for economic reasons rather than real persecution.
Migrant domestic helper	Migrant domestic worker	Migrant domestic workers are doing much more than “helping” in the household.They are engaged in full-time work, undertaking many duties, and often working excessive hours.
Unskilled workers	Low-skilled and/or semi-skilled workers	All workers, especially migrant workers crossing a border for work, have specific skills. The preferred terms are consistent with the dignity of labour.
Illegal migration Illegal migrant workers/ clandestine migration	Irregular migration/ undocumented migration Migrant workers in irregular status.	No human being is illegal. The term “illegal” criminalizes migrants who may become irregular due to different reasons.
Voluntary return	When migrants have an option to remain	Return programmes for rejected asylum seekers or deported workers in irregular status are not voluntary returns. They are rather disguised deportation programmes.
Management	Governance	Management suggests control of migration to some extent: Who manages? Governance captures activities of both government and non-government entities.

Source: Compiled by Piyasiri Wickramasekara

Appendix II. "The most basic and typical questions that should be dealt with and resolved in operational bilateral recruitment agreements suited to the circumstances of a wide range of middle- and low-income countries"

No.	Topic
1	Competent authority.
2	Exchange of information.
3	Irregular migrants
4	Vacancy notification
5	List of candidates
6	Pre-selection
7	Final selection
8	Designation by employers
9	Medical examinations.
10	Entry documents.
11	Residence and work permits.
12	Transport
13	Employment contract
14	Terms and conditions of employment
15	Grievance and dispute settlement
16	Right to organize and bargain
17	Social security
18	Remittances
19	Accommodation
20	Family migration or reunification.
21	Welfare or religious organizations
22	Joint Commission.
23	Validity and renewal
24	Jurisdiction.

Source: Böhning, 1996,pp. 29–32.

Appendix III. Checklist/indicators for assessing the standard provisions of MOUs and Agreements, proposed by the 2014 ILOstudy (ILO, 2014a)

Item	A. MOU provisions	B. Observations
1	Preamble	–
2	Purposes/objectives	–
3	Definitions	–
4	Responsible authorities	In COO and COD
5	Applicable law	–
6	Job applications and qualifications	–
7	Selection testing	–
8	Organization of recruitment,	–
	introduction and placing	
9	Migration costs and sending fees	More accepted term for sending fees is "recruitment and placement fees".
10	Pre-departure education/orientation	Orientation in COD is also desirable.
11	Vocational training	Not clear whether in COO or COD or both. For temporary migrants, training in COO prior to migration is more relevant.
12	Information and assistance of migrants	The ILO Model Agreement has identified a wide range of services for this in both COO and COD.
13	Job specification	May overlap with item 6.
14	Contract of employment	16, 18, and 19 should be covered here, and not as separate items.
15	Model employment contract (Annex)	–
16	Endorsement of contract by authorities	In both COO and COD.
17	Inspection of work locations	–
18	Termination of contract	–
19	Renewal of contract	–
20	Settlement of disputes (Employer/Worker)	–
21	Change of employment	–
22	Language versions	–
23	Transfer of funds/remittances	–
24	Financial support	It is not clear whether this means financial support for intending migrants.
25	Return and repatriation	Reintegration also should be mentioned.
26	Exchange of information/ Methods of cooperation	–
27	Joint Committee/Working Group	JC functions are usually defined. Item 30 can be included here.
28	Procedures for review/ amendments (MOU)	Renewal also.
29	Effective date and termination clause	–
30	Settlement of disputes (MOU)	–

– = Nil, no observations

Appendix IV. Key elements of a bilateral labour migration agreement

No.	Elements	Observations
1	**Pre-departure and recruitment**	
1.1	Notification of job opportunities and skills needs	• Some of these items may be subsumed under 1.3 Recruitment Process. • Information provision and assistance to migrants missing.
1.2	Pre-selection and final selection of candidates	
1.3	Recruitment process	
1.4	Medical examination	
1.5	Entry visas	
1.6	Residence and work permits	
1.7	Outgoing transportation and conditions of transport	
2	**Employment and residence at destination**	
2.1	Equality of treatment	• Non-discrimination should be added.
2.2	Contracts of employment	• Model or standard employment contracts.
2.3	Terms of employment, including possibility to change employment	
2.4	Working conditions, including occupational safety and health	
2.5	Trade union rights	–
2.6	Social security	–
2.7	Taxation, including measures addressing double taxation	• May mostly apply to permanent migrants
2.8	Supply of food	–
2.9	Accommodation	–
2.10	Family reunification	• May apply to permanent migrant workers, but not to temporary migrant workers who do not enjoy this right.
2.11	Education and vocational training	–
2.12	Skills recognition	• In COD and on return in COO.
2.13	Activities of social and religious associations	• From Böhning (1996) list: low priority.
2.14	Supervision of living and working conditions, including through labour inspection	• Overlaps with 2.4
2.15	Transfer of remittances	–
2.16	Access to dispute settlement procedures and courts, and effective remedies	–

No.	Elements	Observations
3	**Return and Reintegration**	
3.1	Conditions of return	• Freedom to return at end of contract.
3.2	Return transportation and conditions of transport	–
3.3	Reintegration into the labour market	• In COO.
4	**Cooperation**	
4.1	Identification of the competent government authorities in both countries of origin and destination	–
4.2	Exchange of information between the competent authorities	–
4.3	Agreement on applicable law and place of jurisdiction	• Applicable laws should be separate.
5	**Implementation, monitoring, and follow-up**	
5.1	Establishment of a joint commission/committee to: – Monitor the implementation of the agreement, including resolution of disputes between the parties	• Period of validity, duration of agreement, and conditions for renewal should be included.
	– Propose amendments	
	– Discuss follow-up.	

(Source: Cholewinski, 2015; ILO, 2017a: (Numbering system adopted by the present author)

Appendix V. Structure of selected MOUs of Bangladesh

Art. No.	Saudi Arabia 2015	UAE 2007	Libya 2008	Malaysia 2015	ROK 2012 (Paras)	Jordan 2012	Iraq 2013	Qatar 1988
Pr	Preamble	Preamble	Short preamble	Preamble	Preamble	Preamble	Preamble	Preamble
1	Parties	Definition of manpower	Responsible parties	Definitions	Purpose	Fields of collaboration	Definition of manpower	Responsible parties
2	Objectives	Responsible parties	Review of labour employment and exchange information	G-to-G Plus Mechanism	Definitions	Applicable law	Responsible parties	Recruitment of Bangladeshi labour thru MOLM
3	Areas of cooperation between the parties	Recruitment: applicable laws	Transmission of demand for labour	Implementation	Sending agency and receiving agency	Preserve rights of workers and employers in coherence with international standards and treaties	Applicable laws for dispatch of manpower and entry	Manpower needs communication
4	Responsible of the First Party	Placement and selection:applicable laws	Conditions for employees	Contract of employment	Sending fee	rec and employing workers after completion of legal procedures	Protection under destination country law	Employers in Qatar to inform MOLSA of manpower needs
5	Responsible of the Second Party	Demand specifications for workers	Employment contract	Recruitment conditions	Implications of EPS-TOPIK and skills test	Employment contract specification	Labour demand letter specifications	Employer to nominate representative
6	Joint Technical Committee	Employment contract	Obligations of employee	Period of employment	Recruitment of job seekers	Formation of joint committee and frequency of meetings	Individual empl. Contracts in line with laws of both countries	Recruitment application conditions
7	Amendments to the -agreement	Applicable language versions	Equal treatment of workers	Responsibilities of parties - App C	Management of job seekers roster	Additional documents or annexes to supplement MOU	Applicable language versions	responsibilities of MOLM Bangladesh on sending workers
8	Entry into force	Right to remit savings	Dispute settlement	Repatriation	Labour contract	Review and revision of MOU	Right to remit	Travel expenses and employers role

Art. No.	Saudi Arabia 2015	UAE 2007	Libya 2008	Malaysia 2015	ROK 2012 (Paras)	Jordan 2012	Iraq 2013	Qatar 1988
9	Validity and duration	Dispute settlement	Restrictions on change of employment after expiry of contract	Joint working group	Pre-departure education	Effective date and duration of MOU	Dispute settlement between worker and employee	Conditions for employment contract
10	n.a.	Exchange of information	Conditions for employees	Financial arrangements for cooperation	Visa issuance	Validity of activities on termination of MOU	Exchange of information on skills, tech knowledge, training and experiences	Accommodation obligations for employment contract
11	n.a.	Termination an renewal of contract	Joint committee and functions	Confidentiality	Entry of foreign workers	n.a.	Termination and renewal of contract	Arabic version final
12	n.a.	Joint Committee	Entry of MOU into force	Suspension	Placement of workers	n.a.	Jointcommittee and functions	Joint authentication of employment contracts by consular officials
13	n.a.	Entry into force and validity	Applicability of MOU	Revision, modification and amendment	Employment and sojourn management	n.a.	Dispute settlement (MOU)	Contract termination and renewal
14	n.a.	n.a.	Validity period	Settlement of disputes	Support in the sending and receiving process	n.a.	Applicable law for worker	Right to remit
15	n.a.	n.a.	n.a.	Repeal	Prevention of corruption in the sending and receiving process and countermeasures against illegal stay of workers	n.a.	Exclusions	Dispute settlement

Art. No.	Saudi Arabia 2015	UAE 2007	Libya 2008	Malaysia 2015	ROK 2012 (Paras)	Jordan 2012	Iraq 2013	Qatar 1988
16	n.a.	n.a.	n.a.	Entry into force, duration and termination	General provisions	n.a.	Modification of MOU	Joint Committee and functions and frequency (every two years)
17	n.a.	n.a.	n.a.	Annexes	Entry into effect and term of validity	n.a.	Entry into force and duration	Amendment of MOU
18	n.a.	n.a.	n.a.	A. Contract of employment	n.a.	n.a.	n.a.	Duration and renewal

Note: n.a. = not applicable

Where the agreements/MOUs did not contain headings, the author has inferred them from the texts of articles.

Source: Compiled by author

Appendix VI. Standard terms of reference for the Joint Committees/Joint Working Groups of Bilateral Agreements and Memoranda of Understanding

(Reproduced from ILO (2014). A Report on the MOUs and Agreements On Labour Migration between Bangladesh, and Countries of Destination, namely, Hong Kong SAR PRC, Iraq, Jordan, Libya, Malaysia, Qatar, Republic of Korea and the United Arab Emirates, A report submitted to the Ministry of Expatriates' Welfare and Overseas Employment, Peoples' Republic of the Government of Bangladesh, Dhaka, unpublished, restricted)

A draft proposed by the ILO

Background and rationale

Bilateral agreements and Memoranda of Understanding (MOUs) on labour migration are good practices for States' coordination on migration policies and decent work for migrant workers.

Being non-binding instruments, for their effective and efficient implementation MOUs need to be guided by firm principles and administered through accountable procedures and mechanisms.

Joint Committees/Joint Working Groups (JC/JWG) are the most important institutions set up by bilateral agreements and MOUs to monitor and follow up on the implementation of the same agreements.

Practice shows however that these structures are usually disregarded or only partially used depriving the process, set up by the MOUs, of useful information and arrangements for improvement, including for strengthening the protection of migrant workers.

MOUs have generally a broad and flexible approach and are easier to negotiate and modify. As such JC/JWG represent key decision making bodies for review and amendments of existing agreements and MOUs, allowing for adaptation to changing market conditions and alignment to stronger protection standards.

The following common terms of reference for the JC/JWG are suggested.

Objective/Purpose

Monitoring and Follow up on the implementation of the agreement

Common functions:

1) Propose means for enhancing coordination between the two parties
2) Review employment opportunities and availability of corresponding skills
3) Monitor and evaluate the progress of selection, placement, employment and reintegration of migrant workers according to protection and labour standards
4) Address possible disputes in the interpretation of provisions of the agreement and propose solutions
5) Propose amendments and improvements of the agreement and related documents
6) Specific tasks agreed by the Joint Committee

Principles

Spirit of collaboration between the two parties and confluence of their respective interests Transparency and accountability

Active partnership with relevant social actors and organizations

Respect of international human rights and labour standards

Gender considerations

Composition and representation

Delegations should include three representatives per country. As standard composition, Bangladesh should be represented by:

- Ministry for Expatriates' Welfare and Overseas Employment (MEWOE)
- Bureau of Manpower, Employment and Training (MEWOE/BMET)
- Bangladesh Embassy/Labour Wing

The presence of alternative or additional delegates (Ministry/Department) can be agreed by the two parties depending on issues to be discussed including specific labour markets e.g. Ministry of Home Affairs, Ministry of Foreign Affairs, etc.

Should a different Ministry be the signatory of the Agreement/MOU e.g. Labour and Employment, Foreign Affairs, the representative of that Ministry should attend if not agreed differently with MEWOE.

Each delegation shall be led by a focal point (usually the delegate with more seniority). Participation should be at Secretary, Deputy Secretary or Director General level. Delegations focal points shall have the necessary delegated authority to take decisions on any action including proposals for amendments.

Gender balance in the representation should be actively encouraged.

Partners

Based on the decision of the two parties, representatives of civil society organizations, social partners including trade unions and employers' organizations, migrant workers', recruiting agencies associations, UN agencies and regional organizations can be invited to the meetings to present specific instances or provide comments on planned arrangements and measures.

Chair and reporting lines

The Chairperson shall be the most senior focal point of the delegation of the country hosting the JC/JWG meeting or his/her delegate if so agreed.

The Chairperson will nominate two Secretaries (one from each delegation) and will distribute tasks regarding the objectives of the meetings including taking of notes and reporting.

The JC/JWG will report to the leading ministries/agencies of the respective countries responsible for coordinating the Governments overseas labour migration policy (MEWOE/BMET in the case of Bangladesh). Proposals for amendments shall be shared at national level (national workshops) with key departments, CSOs and social partners for comments before finalization by the JC/JWG. Finalized amended texts should be exchanged between the two parties through respective diplomatic channels.

Meetings/venue

The JC/JWG shall meet at least once a year alternatively in both countries.

Meeting can be hold consecutively in the same venue if so agreed by the Joint Committee e.g. due to organizational factors, security reasons, other.

Each party shall take initiative to propose additional meetings should specific issues require discussions and decisions. Email and official correspondence between parties to follow up on deadlines and actions shall also be encouraged.

The office providing the focal point for agreements/MOUs within the relevant Ministry (the Ministry for Expatriates' Welfare and Overseas Employment in the case of Bangladesh) shall ensure the recording of all JC/JWG's reports and the follow up with relevant offices/Departments on agreed deadlines and administration of the JC/JWG's calendar of meetings.

Methodology
Agenda and time

The JC/JWG meeting will normally be administered in one day. Additional days can be agreed for the visits of the JC/JWG to workers' sites, training centres, specific related projects and/or to meet the migrant workers, employers, recruiting agencies associations.

The agenda shall include as a minimum a review of previous minutes and agreed action points and recommendations, a roundtable on key developments in respective countries relevant for the programme and a punctual review of key MOUs parameters.

The agenda will be agreed by the two parties before the meeting (with the exception of 'AOB' or any development emerged concomitantly with the meeting).

The agenda and all other materials (PPT presentations, assessments, external reports, and statistics on trends) should be shared and agreed in advance enabling both delegations to have enough time to prepare.

Common formats

A joint format of the JC/JWG report shall be agreed to ensure homogeneity in the reporting and allow for coherent progress monitoring of agreed priority issues and indicators.

Spreadsheets will also be shared for focal points contacts and email/telephone directories.
The minutes of the meetings shall be shared with all participants for comments before drafting the final report.

"Do no harm" and confidentiality principles shall be observed and agreed in sharing information on individual cases including migrant workers' complaints. Reports should not include personal details of workers and/or victims.

Interpretation service

Simultaneous interpretation service shall be ensured for the delegations if needed.

Financial arrangements

Hosting costs to be borne by respective parties individually if not agreed differently.

Appendix VII. Joint Committee/Joint Working Group of the BLA/MOU –Standard Agenda for meetings: A recommendation from the ILO

Time	Activity	Description (guideline)
9.00	Welcome of the Chair Introduction of delegations	Appointment of Secretaries
	Administrative/logistic issues Approval of the agenda Rules of the meeting	Inclusion of AoB Principles/Code of Conduct
9.30	Developments and/or emerging issues in the two countries	Legislative, socio-political, economy, security developments Key events/changes (political/electoral) Attended or upcoming regional and/or international conferences
10.00	Follow up on last JC/JWG meeting	Key information on actions/remedial actions undertaken on critical issues identified in the last JC/JWG meeting and their status
10.45	**Pause**	
11.00	Issues for review: Jobs and skills	Number, gender, timeframe, categories and occupational qualifications of desired (receiving country) and available (sending country) migrant workers
	Orientation/vocational training	Facilities for general education and vocational training Effectiveness of vocational training & on the job training imparted Orientation briefings and measures designed to promote adaptation Certificates and recognition at regional and international level in different industries
	Decent work and protection	Conditions of life and work, expectations and challenges International obligations of parties and status of national legislative provisions Cost of living, minimum wages and allowances, equal remuneration per occupational category and area of deployment
12.30	**Lunch break**	
14.00	(cont'd) Issues for review: decent work and protection	Housing conditions, tools and belongings, transport, supply of water and food Social security, health and occupational safety, medical assistance Available mechanisms/procedures for complaint and redress; coordination between Bangladesh
	administrative provisions	Labour Wing and host country's Labour Inspectors/Law enforcement/Courts Settlement of disputes, mediations, prosecutions of employers, changes of employers
	financial arrangements	Incidents, deaths, arrests, detentions, prosecutions of workers
	other services	Administrative provisions relating to entry, visa, work permits, overstay, change of employment, migration costs, recruitment fees, travel fees

Time	Activity	Description (guideline)
		Low interest loans *Bank accounts/funds for migrants' families & children* *Remittances and transfer of savings* *Incentives for reintegration* *Cultural exchanges between migrants and the local population; diaspora meetings; 'Migrants' day'* *Collaboration/projects with NGOs and workers organizations*
15.45	***Pause***	
16.00	*Points for action*	*Action points and recommendations (deadlines/responsible offices) Good practices identified* *Drafting of meeting's report* *Proposals for MOU/BLA amendments*
		Requests for technical assistance
16.45	***AOB***	
	Next meeting of the JC/JWG	*Tentative date, venue, financial coverage*
	Closing	

Source: Reproduced from ILO, 2014a.

ILO Country Office for Bangladesh
2nd floor, Block-F, Plot 17/B&C
Sher-E-Bangla Nagar, Administrative Zone
Dhaka- 1207, Bangladesh

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.