Bilateral Labor Agreements Dataset

Version: 2.0
Release: July 25, 2022

Codebook for "BLAs_Coding_Data.dta"

BLA Formation Dataset Overview

This document describes the variables in the dataset "BLAs_Coding_Data.dta." This dataset includes information on over 500 Bilateral Labor Agreements for which we have been able to code the contents.

Below is a copy of the survey instrument we used to code the contents of BLAs. Our goal was to document whether individual BLAs included the topics identified by the ILO as best practices. We therefore directly used language from the BLA reports we build on to provide the rationale of each of the 20 topics.[1] We also included many examples of BLAs that included those topics from the ILO reports. Thus, we are deeply indebted to the research, writing, and work of Piyasiri Wickramasekara and the International Labour Organization.

The variables in dataset correspond to the answers to the questions in the survey instrument. For more information on the project, please first read "BLAs_Version2_ReadMe.pdf."

Citation

We ask all researchers using these datasets to cite two papers:

- Adam Chilton and Bartosz Woda. 2022. "The Expanding Universe of Bilateral Labor Agreements." *Theoretical Inquires in Law* 23(2): 1-64 (available at the journal website and as a working paper on SSRN).
- Adam S. Chilton and Eric A. Posner. 2018. "Why Countries Sign Bilateral Labor Agreements." *Journal of Legal Studies* 47(S1): 45-88 (available at the journal website and as a working paper on SSRN).

Since the second version of the datasets also builds on work by Margaret Peters, please also considering citing:

- Margaret E. Peters. 2019. "Immigration and International Law." *International Studies Quarterly* 63(2): 281-295 (available at the journal website and as a working paper on SSRN).

[1] *See* Piyasiri Wickramasekara (former Senor Migration Specialist, International Labour Organization), *Assessment Guide for Bilateral Agreements and Memoranda of Understanding on Labour Migration, with a Special Focus on Bangladesh*, (2018) [hereinafter Wickramasekara, *2018a*]; Piyasiri Wickramasekara, (former Senor Migration Specialist, International Labour Organization), *Core Elements of a Bilateral Agreement or a Memorandum of Understanding on Labour Migration*, (2018) [hereinafter Wickramasekara, *2018b*]; Piyasiri Wickramasekara, (former Senor Migration Specialist, International Labour Organization), *Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding*, (2018) [hereinafter Wickramasekara, *2018c*].

CODING INSTRUMENT TEXT

Our goal is to code the contents of bilateral labor agreements ("BLAs"). We specifically are coding whether the text of individual BLAs addresses specific topics that have been recommended by the International Labour Organization as "good practices" for all BLAs to include.

Please attempt to answer each question as either yes or no. We know that it may be ambiguous whether certain treaties address certain topics, but please use your best judgment to decide whether the BLA can fairly be said to include a provision, article, or discussion, or mention of a specific topic.

A few notes about the survey:

- We typically ask whether the BLA "mentions" a given topic. This is because we want to know if the issue is discussed at all, and do not want to require there be an independent article on the topic.
- BLAs, and international treaties generally, often only use noncommittal language. For instance, instead of saying that the parties "are required" to take a certain action, it will say things like "will endeavor to" take a certain action or "recognize the importance of" a certain issue. We want to code BLAs as including provisions even if they are only discussed in this kind of noncommittal way.
- We occasionally refer to the country of origin (COO) and the country of destination (COD). The COO is where the migrant worker is originally from, and the COD is where the migrant worker is going to work.
- We typically call the people who are moving between countries "migrants," but the BLAs may refer to them as laborers, workers, etc.

If you have questions, please email them to: adamchilton@uchicago.edu and woda@uchicago.edu.

-Adam Chilton & Bartek Woda

Background Questions

What is your name? Please type as first initial and last name (e.g., "A. Chilton").

_____

What is the ID number of the BLA you are coding?

▼ ID1 ... ID1500

In the file name, what is the name of the FIRST country listed as part of the BLA?

▼ Afghanistan ... Zimbabwe

In the file name, what is the name of the SECOND country listed as part of the BLA?

▼ Afghanistan ... Zimbabwe

In the file name, what is the year that the BLA was signed?

▼ 1900 ... 2021

What is the exact title of the BLA?

Notes:
(1) We are not looking for the file name; we want the title of the actual agreement (e.g., "Memorandum of Understanding Between the Government of Nepal and the Government of the Republic of Mauritius on the Recruitment and Employment of Workers from Nepal").

(2) Some of the PDFs we have collected are from country gazettes / official register of documents. In these cases,

we do not want the title of the gazette entry, we want the title of the agreement itself (see BLA "ID587" as an example of a gazette).

(3) Write the title in English (even if you are working from a BLA in another language).

(4) You are allowed to make reasonable abbreviations to especially long titles.

(5) Even if it is included at the end of the title, language like "Signed on January 1, 2010" can be excluded.

What is the original language of the BLA you are coding?

Note:
(1) If you are working from a version we did not translate using Google Translate, select the language in the document that you are using to code it.
(2) If you are working from a version we translated using Google Translate, list the language we translated from. If you are unaware what language we translate the treaty from, select the most "common" language among the official languages of the treaty.

▼ English ... Other

Are you coding the BLA from its original language or a version we translated (e.g., we said it was translated using Google Translate)?

- ○ Original language
- ○ Translation

Duration of the BLA

We're going to ask a few questions about the duration of the BLA.

Does the BLA automatically renew?

- ○ Yes
- ○ No

How long is the BLA valid for?

- ○ The BLA is valid for a specified number of years
- ○ The BLA is valid until terminated
- ○ The BLA does not mention when it terminates
- ○ Other _____

Duration of the BLA

You just said the "BLA terminates after a specified number of years." How many years is the specified number of years before termination?

	0 3 6 9 12 15 18 21 24 27 30
Years	

Reference to Prior Agreements

Is this agreement a protocol/amendment modifying a previously signed BLA?

- ○ Yes
- ○ No

Does the BLA specifically reference a prior BLA that the two countries have signed?

- ○ No prior BLA
- ○ One prior BLA
- ○ More than one prior BLA

Does the BLA state that it **fully replaces** a previously signed BLA?

- ○ Yes
- ○ No

Migration Quotas

Does the BLA specify a quota for the number of migrants that will be allowed to enter the country of destination under this agreement?

- ○ Yes
- ○ No

If yes, what is the size of the quota per year?

Notes:
(1) Please enter a single number without commas, e.g., "500," "10000" or "200000."

(2) If the agreement specifies a quota for workers going in each direction (e.g., 3000 workers can go from country A to country B, and 1000 workers can go from country B to country A), add the totals together.

(3) If the quota is not expressed on an annual basis, please note in the box like as follows: "5000, does not specify if annual."

Governance of Labor Migration

The next **7 topics** cover the inclusion of provisions related to the governance and administration of the agreement.

Start of Block: Topic 1

Topic #1

Evidence of respect for migrant workers' rights based on international instruments

Rationale

"International instruments constitute a solid normative foundation for drawing up bilateral labour agreements. These cover UN universal human rights instruments, core ILO Conventions, migrant worker specific instruments, and all other labour standards. These have been explained in a separate complementary report on assessment criteria. The reference to instruments highlights the respect of the two signatory parties for international norms on good migration governance and protection of migrant workers. Some agreements refer to instruments that have been ratified by both parties. There are also international or regional instruments and frameworks related to migration and migrant workers that can be cited as relevant."[2]

[2] Wickramasekara, *2018c*, *supra* note 1, at 16.

Examples

Nepal–Jordan, 2017

Recognizing the international commitments of both parties on human rights and labor rights, in particular the ***Universal Declaration of Human Rights*** *and the* ***International Covenant on Civil and Political Rights****, the* ***International Covenant on Economic, Social and Cultural Rights*** *and the* ***international instruments on the rights and welfare of labor***

Colombia–Peru, 2012

Encouraged by the objective that Colombian workers who arrive in Peru and the Peruvian workers who arrive in Colombia effectively enjoy the rights recognized by the ***international instruments*** *to which both states are parties.*

Question

Does this BLA mention international instruments -- these may be references to specific treaties or international instruments generally -- related to the respect of migrants' or workers' rights?

Note: a general reference to human rights or workers' rights -- without alluding to international treaties, agreements, or instruments -- does not count as mentioning international instruments.

- ○ Yes
- ○ No

End of Block: Topic 1

Start of Block: Topic 2

Topic #2

Exchange of relevant information between countries

Rationale

"This good practice refers to exchange of information between the country of origin (COO) and the country of destination (COD) on a regular basis. Article 1 of the 1949 Model Agreement contains detailed provisions relating to this exchange of information: a) legislative and administrative provisions relating to entry, employment, and residence of migrants and of their families (COD) and information relating to emigration (COO); 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, and living conditions; and d) social security laws and their applicability to migrant workers. The information should also cover arrangements for protection of those not usually covered by labour laws, such as workers in agriculture and domestic work."[3]

Examples

India–Denmark, 2009

This memorandum of understanding shall apply to cooperation between the ***two countries*** *concerning the following branches of labor and employment within their national objectives and the relevant laws as may be applicable:*

(i) Labor market expansion;

(ii) Employment facilitation;

(iii) Organized entry and orderly migration;

(iv) ***Exchange of information and cooperation*** *in introducing best practices for mutual benefit*

Bangladesh–United Arab Emirates, 2011.

With a view to rendering better service, ***the two parties agree to exchange information*** *on skill, technical know-how and training and share their experiences. The UAE will provide Bangladesh with necessary assistance including IT data base system in this respect.*

Philippines–Manitoba (Canada), 2010

ART. 7a: ***LIM*** *[The Department of Labour and Immigration of the Government of Manitoba, Canada]* ***will***

[3] Wickramasekara, *2018c*, *supra* note 1, at 18.

provide *the* ***DOLE*** *specific orientation information that highlights the attributes of living and working in Manitoba including information on workers' rights and benefits under provincial legislation.*

Question

Does this BLA mention the exchange of information between the countries that are party to the agreement?

Notes:
(1) We are referring here to information shared between two governments and not information shared directly with migrants.
(2) Sharing CVs or job postings between the countries counts as mentioning exchange of information.
(3) Language about exchanging instruments referring to the process of ratifying the treaty DOES NOT COUNT as mentioning exchange of information. This is because we are asking about the sharing of information between countries after the treaty goes into effect.

- ○ Yes
- ○ No

End of Block: Topic 2

Start of Block: Topic 3

Topic #3

Transparency and dissemination

Rationale

"The first major step in transparency is to make the text of agreements publicly accessible. It is most important to adequately brief the major stakeholders in migration – workers, employers, recruitment agencies, and NGOs concerned with migrant worker welfare – on the provisions of agreements; how they affect them, their rights, and their obligations; and on the follow up to be undertaken. For the sake of transparency, it is important for the country of origin to make the text of all agreements translated and easily accessible on websites, and also to disseminate them to their migrant workers and employers in destination countries. The pre-departure training programmes should explain and highlight how workers can benefit from the agreements with

the countries they migrate to. A dissemination plan should be included as part of the agreement."[4]

Examples

Colombia–Spain, 2001

Article 17 refers to *"Facilitating the* ***dissemination*** *in both countries of timely information* ***about the contents of the Agreement****."*

Italy-Egypt, 2011

The Contracting Parties undertake to ***disseminate****, on their national territory, the* ***provisions of the present Memorandum***

Question

Does this BLA mention the need to disseminate information about the existence of the agreement?

Note: We are specifically interested in promises to make the existence of the treaty public. Commitments to make information about jobs opportunities that arise under the treaty DOES NOT count as information about the existence of the treaty.

- ○ Yes
- ○ No

End of Block: Topic 3

Start of Block: Topic 4

Topic #4

Defining clear responsibilities between parties

[4] Wickramasekara, *2018c*, *supra* note 1, at 21.

Rationale

"The concerned stakeholders are the two State parties, employers in the COD, recruitment agencies in both countries, migrant workers, and relevant civil society organizations. 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 the 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.

This is a good practice because it facilitates accountability and smooth implementation. Assignment of specific responsibility is an important aspect for proper monitoring and evaluation."[5]

Examples

Sri Lanka–Italy, 2011

Article 1 of this agreement on "Competent Authorities" ***defines clearly the competent authorities responsible*** *for enforcement of the agreement in both countries.*

Philippines–Manitoba (Canada), 2010

It ***states that the Philippines Department of Labor and Employment (DOLE) is the lead agency*** *but responsibility would include its associated agencies: the POEA, the Overseas Workers' Welfare Agency (OWWA), the Technical Education and Skills Development Authority (TESDA), and the Professional Regulation Commission (PRC), as appropriate.*

[5] Wickramasekara, *2018c*, *supra* note 1, at 22.

Question

Does this BLA specify primary government agencies that are responsible for implementation of the agreement?

Note: Here we are not referring to joint committees created by representatives of both countries; we are referring to domestic agencies within each country.

- ○ Yes
- ○ No

End of Block: Topic 4

Start of Block: Topic 5

Topic #5
Establishing a joint committee

Rationale

"An integral part of any agreement is the establishment of a joint committee to monitor and implement the agreement. The most common practice in this regard is to establish a committee with a combination of officials from the two signatory parties under labels such as 'Joint Commission,' 'Joint Committee,' 'Joint Working Committee,' 'Joint Technical and Committee,' 'Joint Common Committee,' 'Working Committee,' and 'Bilateral Working Group,' etc. The committees consist of senior officials from both parties, and the agreements should mention the functions of the committees and the frequency of meetings in general. Given that most agreements are poorly implemented, it is very important to build in concrete implementing, monitoring, and evaluation procedures."[6]

[6] Wickramasekara, *2018c*, *supra* note 1, at 23.

Examples

Philippines–Lebanon, 2012

"Both Parties agree to ***establish a Joint Working Group*** *within three (3) months after the signing of this Memorandum of Understanding" .... "A Joint Committee, constituting at the Joint Secretary level comprising of three representatives from each side shall be established within three months of entry into force of this agreement."*

Nepal-Jordan, 2017

"Both states ***agree to constitute*** *within 3 months of the signing of this memorandum of understanding* ***a Joint Working Group*** *with 2–3 members from each side to be nominated through diplomatic channels."*

Question

Does this BLA mention the creation of a joint committee, joint working group, or other body with officials from both countries to monitor or implement the agreement?

- ○ Yes
- ○ No

End of Block: Topic 5

Start of Block: Topic 6

Topic #6
Regulation of recruitment and recruitment costs

Rationale

"Recruitment issues have emerged as one of the most important factors in labour migration, with major efforts underway at the international level to ensure fair recruitment. The ILO has recently adopted the General principles and operational guidelines for fair recruitment (GPOGFR) (ILO, 2016b). One indicator of Sustainable Development Agenda Goal 10 – reducing inequality within and among countries – is the recruitment cost borne by employee as proportion of yearly income earned at country of destination (IAEG-SDGs, 2017). The objective is to reduce this ratio significantly so that workers benefit from labour migration. The ILO has also launched a Fair Recruitment Initiative (ILO, 2015a). The general principle in ILO instruments is that 'no recruitment fees or related costs should be charged to, or otherwise

borne by workers or jobseekers' (ILO, 2016b, p. 3). However, laws in most countries, including those of Bangladesh, allow for the charging of recruitment fees subject to ceilings."[7]

Examples

Nepal–Jordan, 2017

This agreement has several specific provisions related to the regulation of recruitment.

*First, article 3 asserts the obligations of both parties to regulate, monitor, and enforce action on recruitment agencies. Article 3(a) marks an important commitment: "**Control and regulate costs related to recruitment** and employment in both countries."*

*Second, the agreement controls recruitment fees by **making employers liable for costs of visas, travel expenses, insurance, medical expenses, and other procedures related to the recruitment of workers**.*

*Third, Article 10 dealing with the recruitment process refers to a commitment to adopt "**legal measures to assure a smooth, fair, transparent and legal recruitment process."***

Question

Does the BLA mention that the migrant should not pay recruitment costs?

Note: Costs associated with direct expenses like travel or visas should not be considered recruitment costs, so the treaty may still allow workers to pay these while prohibiting migrants paying recruitment costs.

- ○ Yes
- ○ No

[7] Wickramasekara, *2018c*, *supra* note 1, at 30.

Question

Who does the BLA specifically authorize to undertake recruitment and placement activities? PLEASE SELECT ALL THAT APPLY.

- ☐ Private recruitment agencies
- ☐ Government recruitment agencies
- ☐ Employers
- ☐ Other
- ☐ Does not mention

End of Block: Topic 6

Start of Block: Topic 7

Topic #7
Roles of unions, employer organizations, and NGOs/civil society groups

Rationale

"While the ultimate responsibility for migration policies and inter-State cooperation lies with government, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society (ILO, 2010a). Reference has been made above to ILO Multilateral Framework on Labour Migration, principles 6 and 7 of which stress the role of social dialogue. Cholewinski (2014, p. 16) points out:

The key actors in the real economy, namely employers' and workers' organizations, need to be involved in the negotiation and implementation of BLMAs, which would make them more effective, for example by being more responsive to real labour market needs and improving protection of migrant workers.

Employers – both public and private – hire workers, and trade unions are concerned with the welfare of workers. Employers' organizations play a useful role in promoting skills recognition of foreign workers. Consultation with employers helps in matching labour market needs with migrant supply; ensures better compliance with national labour laws in the treatment of migrant workers; and minimizes the need to resort to workers with irregular status. Support of workers'

organizations is essential for effective protection of both migrant and native workers and for the prevention of conflicts within the working population. Workers' organizations also monitor workplace practices and organize both foreign and local workers.

At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to vulnerable groups such as those who are trafficked and/or in irregular status. NGOs are quite active in the Republic of Korea in supporting migrant workers. In origin countries, employers' and workers' organizations usually play a major advocacy role in promoting appropriate policies and structures for regulating emigration. Employers impart skills to workers that help in securing foreign jobs. Trade unions support good governance in migration to ensure better protection to workers. Both unions and NGOs play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and dignity."[8]

Examples

Nepal–Jordan, 2017

Trade Unions and Collective Bargaining:
a. ***Any worker who wishes to affiliate a registered Trade Union of their sector in Jordan shall be allowed*** *in accordance with the Jordanian laws.*
b. The employer shall: 1. Respect the worker's right to freedom of association and collective bargaining as stipulated in the Jordan Labour Law, and its amendment, including the right to join a Trade Union in Jordan without harassment, interference or retaliation. 2. If the worker is member of a Trade Union of their sector in Jordan, the employer shall provide the Union with the name of the worker and his/her passport number in the first month of every year for the whole duration of the employment relationship.

Papua New Guinea–New Zealand, 2013

These agreements carry the following provision: "Workers may bring any concerns arising from the conduct of their RSE to the attention of their team leader (where one exists), employer, ***union representative****, Honorary Consul, and/or the Ministry staff."*

Fiji-New Zealand, 2014

Fijian RSE Workers will enjoy the full protection of New Zealand employment and workplace legislation, in particular legislation concerning safe conditions of work and the payment of minimum wage rates will apply. ***Fijian RSE Workers are eligible to join unions in accordance with those laws****.*

[8] Wickramasekara, *2018c*, *supra* note 1, at 35.

Question

Does this BLA mention a role for labor unions from the country of origin (COO) in negotiating, monitoring, or implementing the agreement?

- ○ Yes
- ○ No

Question

Does this BLA mention a role for labor unions from the country of destination (COD) in negotiating, monitoring, or implementing the agreement?

- ○ Yes
- ○ No

Question

Does this BLA mention that migrants are allowed to join or form labor unions in the country of destination (COD)?

- ○ Yes
- ○ No

Question

Does this BLA mention that employer organizations should be allowed to participate in committees or meetings related to monitoring or implementing the agreement?

- ○ Yes
- ○ No

Question

Does this BLA mention that NGOs or civil society organizations – other than labor unions or

employer organizations – should be allowed to participate in committees or meetings related to monitoring or implementing the agreement?

- ○ Yes
- ○ No

End of Block: Topic 7

Start of Block: Protection Question

Protection and empowerment of migrant workers

The next **9 topics** cover provisions related to the protection and empowerment of migrant workers.

End of Block: Protection Question

Start of Block: Topic 8

Topic #8
Provision of relevant information to migrants

Rationale

"International instruments have recognized this to be a priority need for migrant workers who are moving to another country where they are not nationals. They are in a vulnerable position as non-citizens in the country if destination where origin country laws do not apply.

The ILO Migration for Employment Convention (Revised), 1949 (No. 97) highlights the obligation of ratifying governments to provide a free service to assist migrants with employment, and provide migrant workers with accurate information:

Article 2: Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3: (1). Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

The ILO Model Agreement, Article 8 elaborates on this matter by 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 recruitment principles and guidelines state: 'Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment' (ILO, 2016, p. 8)."[9]

Examples

Gambia–Qatar, 2010

Recruitment applications shall state *the required qualifications, experience and specialization, the probable duration of contract, detailed conditions of employment, especially the wages, end of service gratuity,*

[9] Wickramasekara, *2018c*, *supra* note 1, at 36

probationary period and facilities regarding transportation and accommodation ***as well as all basic information that may enable the workers*** *to decide on signing the employment contract.*

Philippines–Republic of Korea, 2009

The POEA will upon receipt of the labor contract offered by the employer from the HRD Korea review the terms and conditions, and if the same are compliant with the minimum standards, ***explain it to the jobseeker*** *so that he/she can fully understand it and decide whether or not to accept the offer based on his/her own free will.*

Question

Does this BLA mention that information about employment conditions, living conditions, or cultural conditions should be provided to the migrants by the employer, a government agency, or other body?

Notes:

(1) Providing information to recruitment agencies alone – without mentioning workers – DOES NOT count.

(2) Disseminating information about the existence of the treaty DOES NOT count.

- ○ Yes
- ○ No

End of Block: Topic 8

Start of Block: Topic 9

Topic #9
Equal treatment and nondiscrimination of migrant workers

Rationale

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

working and living conditions, social security, and trade union rights on par with national workers in the destination country.

In practice, temporary migrant workers rarely enjoy equality of treatment with national workers. There is disparate treatment between workers from different countries and according to gender in many of the destination countries for Asian workers as reflected in the wages offered."[10]

Examples

Philippines–Germany, 2013

Filipino health professionals ***may not be*** *employed in the Federal Republic of Germany* ***under working conditions less favorable than those for comparable German workers***.

Bangladesh–Libya, 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.*

Question

Does this BLA mention that migrants should enjoy protections comparable to workers from the country of destination?

- ○ Yes
- ○ No

End of Block: Topic 9

Start of Block: Topic 10

Topic #10
Protections for women or other protected groups

Rationale

[10] Wickramasekara, *2018c*, *supra* note 1, at 39.

"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, 2016c, p. 3). Parties can draw upon general human rights and migrant worker instruments, CEDAW General Recommendation 26, ILO Convention No.189, and Committee of the Protection of the Rights of all Migrant Workers and Members of Their Families General Comment 1 in providing protection for women workers."[11]

Examples

Nepal–Jordan, 2017

"… create mutual understanding between two governments to protect the rights of all workers, with special consideration to the ***specific vulnerabilities of female migrant workers****" (article 1(c)).*

This article provides for:

- addressing specific vulnerabilities of female workers and their protection;

- prohibition of conditions of forced labor, unlawful holding of passports, and restriction of movement and communication with their families and the embassy/consulate;

- provision of mechanisms for justice;

- provision of appropriate privacy to female workers, including a separate room;

- provision of all necessary medical care by the employer.

Ukraine–Argentina, 2001

Immigrants and members of their families who are in the territory of the Parties ***shall enjoy the protection*** *of the State against all acts of violence, intimidation or other forms of discrimination* ***based on race, color, position or political beliefs, and other religious, gender, ethnic and social origin, language or other characteristics****.*

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[11] Wickramasekara, *2018c*, *supra* note 1, at 42.

Question

Does this BLA mention **the protection of women** based on gender? This could be a reference to gender in a general nondiscrimination clause (i.e., "there shall not be discrimination based on race, religion, or gender") or a more detailed set of protections for women (as in the Nepal-Jordan example above).

- ○ Yes
- ○ No

Question

Does this BLA include **a detailed reference to the protections of women** based on gender (as in the Nepal-Jordan example above) or detailed protections for **domestic workers**?

- ○ Yes
- ○ No

Question

Does this BLA mention the protection of any **categories of workers other than women** (like protections based on race, religion, or sexual orientation)?

- ○ Yes
- ○ No

End of Block: Topic 10

Start of Block: Topic 11

Topic #11

Employment contracts

Rationale

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

workers. ILO Model Agreement Article 22 provides detailed guidelines on the formulation of an employment contract. For domestic workers, Article 7 of Convention No. 189 lists detailed provisions. Wage protection is critical, since most complaints relate to non-payment, deferred payment, discriminatory wages, unlawful deductions, non-payment of overtime, and non-issue of receipts. The BSR Good practice guide on global migration also provides valuable guidance to employers and business on all aspects of the employment contracts (BSR, 2010).

The following can be considered important good practices regarding employment contracts:

1) making a copy of the contract in understandable language available to the worker before departure;
2) explaining the employment contract to the worker before they take up employment;
3) standard employment contracts;
4) elaboration of the scope of the contract (in the absence of an attached standard contract);
5) wage protection measures;
6) reference to applicable laws;
7) specification of working and living conditions;
8) access to complaints mechanisms and dispute resolution procedures;
9) non-retention of travel and identity documents;
10) duration of contract, and conditions for renewal and premature termination;
11) provisions for return and repatriation."[12]

Examples

India–United Arab Emirates, 2011

*The t**erms 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.*

Philippines–Germany, 2013

*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 the 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 labor laws of Germany, etc.*

[12] Wickramasekara, *2018c*, *supra* note 1, at 45.

Question

Does this BLA mention there must be an employment contract?

Note:
(1) Assuming or implying the existence of a contract is not enough. The BLA must specifically say that a contract is required.
(2) Saying that the work relationship shall, must, or will be "governed" by an employment contract COUNTs.

- ○ Yes
- ○ No

Question

Does this BLA mention a standard / model employment contract? (Note: for instance, that the BLA might say that a model employment contract is included as an appendix or annex to the agreement.)

- ○ Yes
- ○ No

Question

Does the BLA mention any specific terms of employment that the contract should include (wage, length of the workday, pay for overtime, vacation, weekly days off, etc.)?

Note:
(1) Specifying that the contract discusses a certain topic is enough; we are not asking if the contract requires a specific term. For instance, saying that "the contract must specify the workers' wages" would count, even if the BLA does not mention what the wages should be.
(2) Specifying that workers are told certain facts or provided with certain information is not enough. For instance, saying "workers shall be told their wages" DOES NOT count; but saying "the employment contract shall specify wages" does count.

- ○ Yes
- ○ No

End of Block: Topic 11

Start of Block: Topic 12

Topic #12

Wage protection

Rationale

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

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

All GCC countries (except Bahrain) have introduced wage protection laws, and their inclusion in bilateral agreements should not pose a problem (Jureidini, 2017)."[13]

[13] Wickramasekara, *2018a*, *supra* note 1, at 25.

Examples

Jordan-Nepal, 2011

The salary of the worker will be according to the employment contract. The ***employer shall facilitate opening a bank account under the name of the worker*** *to deposit his/her monthly salary and provide the deposit voucher to the worker and a copy to the relevant labor inspectorate and the Nepali diplomatic mission, if requested.*

Question

Does this BLA mention any measures designed to protect against unlawful withholding of wages (e.g., provisions that the employer will set up a bank account for the employee, pay according to the contract, or not withhold from wages)?

Note:
(1) Here we are not referring to required levels of wages; we are referring to provisions that ensure that the wage will be fully paid and not withheld.
(2) Saying that migrants will receive the same wage protections as citizens in the destination country alone DOES NOT count.

- ○ Yes
- ○ No

End of Block: Topic 12

Start of Block: Topic 13

Topic #13
Provision and supervision of living conditions

Rationale

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

officials of the COO should be allowed access to visit workplaces and places of accommodation to assess existing working and living conditions.

The laws should include mechanisms for monitoring the workplace conditions of migrant women, especially in the kinds of jobs where they dominate, as recommended in CEDAW General Recommendation 26 (CEDAW Committee, 2008). Regarding domestic workers, Article 6 of Convention No. 189 states: 'Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.'"[14]

Examples

Sri Lanka–Qatar, 2008

The First Party undertakes to ***provide appropriate free single-worker accommodation*** *for the Second Party and supply the same with electric power, beds and toilettes in accordance with health conditions.*

Mexico–Canada, 2013

The EMPLOYER agrees to: 1. ***Provide suitable accommodation to the WORKER, without cost****. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province/territory where the WORKER is employed. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT; 2. Provide reasonable and proper meals for the WORKER and, where the WORKER prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the WORKER and to provide a minimum of thirty (30) minutes for meal breaks.*

Question

Does this BLA require the employer to provide the migrants with housing (e.g., accommodations, housing, living quarters)?

- ○ Yes
- ○ No

[14] Wickramasekara, *2018c*, *supra* note 1, at 49.

Question

Does this BLA mention any specific conditions that the housing must meet?

- ○ Yes
- ○ No

Question

Does this BLA mention any kind of government supervision or monitoring of that housing?

- ○ Yes
- ○ No

Question

Does this BLA mention any kind of government supervision or monitoring of **worksites or working conditions**?

- ○ Yes
- ○ No

End of Block: Topic 13

Start of Block: Topic 14

Topic #14

Prohibition of confiscation of travel and identity documents

Rationale

"A major cause of restrictions on freedom of movement and forced labour practices is the practice of retention of workers' travel and identity documents by employers or private employment agencies.

The ILO General principles and guidelines on fair recruitment contain two references to this practice: Under 'General Principles,' paragraph 11 reads: 'Freedom of workers to move within a

country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.'

Under 'Responsibilities of enterprises and public employment services,' paragraph 18 reads: 'Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.'"[15]

Examples

Sri Lanka–Saudi Arabia, 2014

The "Special provisions" section of the standard employment contract, contains the following reference: *"The p**assport and work permit (iqama) of the DW shall remain in his/her possession**."*

Bangladesh–Malaysia, 2012

*The **Employer shall not keep the passport of the Worker** in his custody.*

Question

Does this BLA mention that the migrant has the right to keep their passport or other identity documents?

Note:
(1) This may be ensured by stating that the employer shall not keep the worker's passport.
(2) Stating that the worker has a right to keep their passport but may allow the employer to hold it for safekeeping does count, as long as it clarifies that the worker has the right to choose to keep it.

- ○ Yes
- ○ No

End of Block: Topic 14

Start of Block: Topic 15

[15] Wickramasekara, *2018c*, *supra* note 1, at 50.

Topic #15
Social protection and healthcare benefits

Rationale

"The ILO Model Agreement recommends in Article 21 that the two parties shall determine in a separate bilateral agreement the methods of applying a system of social security. Labour and social security legislation in Asian and Middle East destination countries usually exclude temporary migrant workers from comprehensive social security coverage (Panhuys, Kazi-Aoul, & Binette, 2017). As a minimum, migrant workers need to be provided with workplace insurance and health-care coverage by the employers. These should be clearly mentioned in the employment contract."[16]

Examples

Philippines–Lebanon, 2012

This agreement mentions "the ***provision of an insurance coverage for the worker*** *in accordance with the existing laws and regulations in the receiving country."*

Philippines–Germany, 2013

*This agreement states in 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)."*

Question

Does this BLA mention that the migrant will be provided with either health insurance, accident insurance, unemployment insurance, or social security?

- ○ Yes
- ○ No

End of Block: Topic 15

Start of Block: Topic 16

[16] Wickramasekara, *2018c*, *supra* note 1, at 52.

Topic #16
Mechanisms for complaints and dispute resolution

Rationale

"This good practice covers settlement of disputes between employers and workers, and access to justice and effective remedies for workers. Many agreements also refer to dispute settlement on the interpretation or implementation of the agreement, which is a different issue.

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

Clear guidelines on complaint and settlement mechanisms are needed and should go beyond the generic 'amicable settlement' phrases found in most agreements. Recourse to judicial means in the destination country is a difficult option for low-skilled migrant workers because of legal costs and language problems. Support by consular services is essential for gaining access to interpretation and legal services, labour courts, and judicial services as needed. A separate annex or protocol may be developed for detailed provisions."[17]

[17] Wickramasekara, *2018c*, *supra* note 1, at 55.

Examples

Sri Lanka–Qatar, 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.*

Philippines–Alberta (Canada), 2008

The Provincial Employment Standards Act provides standards for complaints and dispute resolution. The Province encourages employees and employers to solve problems without immediate government intervention. ***If an employee is unable to resolve a dispute with an employer, an employee may make a complaint to the Province****. Although some matters are resolved through investigation, most are resolved through a process of education, mediation and/or adjudication.*

Question

Does this BLA mention a mechanism for the resolution of disputes that arise between migrants and their employers?

Note: Here we are not referring to clauses that provide for dispute resolution between the two countries that are party to the agreement; we are referring to the possibility of individual disputes brought on behalf of migrants or by migrants themselves.

- ○ Yes
- ○ No

End of Block: Topic 16

Start of Block: Migration Rights

Migration and Development

The next **4 topics** cover provisions related to migration and development.

End of Block: Migration Rights

Start of Block: Topic 17

Topic #17
Human resource development and skills improvement

Rationale

"Provisions in agreements can promote human resource development (HRD) in two ways: 1) by requiring origin countries to train workers for specific skills demanded by the COD; and 2) by the COD provide training in specific areas."[18]

Examples

India–Denmark, 2009

Both states agree to cooperate in the fields of vocational training*, standardize testing and certification especially training programs, methodology, studies and research, systems of measuring skill- level, and their methods of application in accordance with the requirements of the job market in both countries* ***aimed at enhancing labour productivity****. The Governments also agree to cooperate in mutually sourcing technically skilled personnel and benefiting from the training facilities available in both countries.*

Moldova–Italy, 2011

The Contracting Parties ***shall encourage candidate migrant workers to attend vocational training*** *and Italian language courses organized on the Moldovan territory, with a particular focus on employability in Italian companies or self-employment.*

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[18] Wickramasekara, *2018c*, *supra* note 1, at 57.

Question

Does this BLA mention any way that the migration will help promote the training of workers or their acquisition of new skills?

Note:
(1) Here we are not referring to provisions that stipulate the skills or qualifications that migrants must already have; we are referring to provisions that are designed to ensure that the migration process can help promote the migrants' human capital.
(2) Referring to the migrants as "trainees" alone is not enough to count. There must be some mention of actually providing training or a process to improve the migrants' skills.

- ○ Yes
- ○ No

End of Block: Topic 17

Start of Block: Topic 18

Topic #18
Recognition of skills and qualifications

Rationale

"Recognition of skills and qualifications across borders facilitates jobs and skills matching, leading to better labour market outcomes. Lack of skills recognition in destination countries leads to triple losses: to the origin country, which loses valuable human resources; to the destination country, which does not effectively utilize skills of migrant workers; and to the migrant workers themselves, who suffer deskilling and end up in exploitative work for low wages. The issue is more important for mobility of skilled workers, who suffer brain waste in destination countries. For example, some university graduates from the Philippines migrate to other countries as domestic workers to avail themselves of migration opportunities."[19]

Examples

Ukraine–Argentina, 1999

The Parties ***undertake to promote the mutual recognition of diplomas and transcripts****. The*

[19] Wickramasekara, *2018c*, *supra* note 1, at 60.

institutions of the Parties shall consider the possibility of drafting a convention on the recognition of diplomas and certificates of study at all levels.

Question

Does this BLA mention the recognition in the country of destination of diplomas, credentials, or qualifications obtained in the country of origin?

Note:
(1) It is not enough to mention that workers will be hired of a particular skill level (or that "skilled _____ workers" will be hired).
(2) We are specifically asking whether the BLA recognizes the diplomas, credentials, or qualifications awarded in one country as valid in another country; implying this is not enough.
(3) Establishing a test to determine the qualification of workers DOES NOT count.
(4) A provision noting "mutual" recognition counts as satisfying this requirement.

- ○ Yes
- ○ No

End of Block: Topic 18

Start of Block: Topic 19

Topic #19
Transfer of savings and remittances

Rationale

"Remittances are the most tangible benefit of labour migration. In view of their development and poverty alleviation potential, one of the targets (10c) of Goal 10 of United Nations Sustainable Development Goals (on reducing inequality within and between countries) is: 'by 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%' (IAEG-SDG, 2017: p.14).

The standard provision with regard to remittances is that workers are free to remit their savings in accordance with laws and regulations of the destination country. Some agreements, particularly in Europe and the Americas, do not make a reference to remittance facilitation, but this may simply mean the absence of restrictions on remittance transfers."[20]

[20] Wickramasekara, *2018c*, *supra* note 1, at 61.

Examples

Sri Lanka–Italy, 2011

"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.****"*

Guinea-Bissau–Spain, 2008

Actions aimed at improving the impact of remittances on the development of the communities to which they are directed. With the latter aim, the ***Contracting Parties undertake to cooperate with the financial institutions of the two countries in order to reduce transaction costs and to adapt the financial system to the reception and productive investment of remittances*** *through promotion of popular savings and credit entities that can provide their services in an accessible manner, both geographically and economically.*

Question

Does this BLA mention the facilitation of sending remittances (i.e., money) back to the workers' home country?

- ○ Yes
- ○ No

End of Block: Topic 19

Start of Block: Topic 20

Topic #20
Reintegration, circulation, and development

Rationale

"Labour migration frequently involves only temporary work contracts of two to three years' duration for low-skilled occupations, generally in the Middle East and other Asian destination countries. There are some schemes for seasonal work, such as those in Europe, New Zealand, and Canada. There is also some circular migration in the sense of repeated migrations following one contract by the same worker. Most agreements relate to a temporary migration cycle. Therefore, special attention is needed for return and reintegration in order to optimize the

benefits from migration."[21]

Examples

Fiji–New Zealand, 2014

Fijian RSE ***Workers, upon returning to Fiji will have access to support information, capacity building training and assistance*** *to start up a small micro-business under the Fijian Government's Foreign Employment Service.*

Question

Does this BLA mention the reintegration of migrants returning to their countries of origin?

- ○ Yes
- ○ No

Question

Does this BLA mention the possibility of renewing migrants' contracts after their initial work contract expires?

- ○ Yes
- ○ No

[21] Wickramasekara, *2018c*, *supra* note 1, at 62.

Question

Does this BLA mention any pathway to legal permanent residence status or citizenship?

Note: The right to renew the employment contract many times by itself DOES NOT count. There has to be a way to live in the country without being subject to the terms of a contract under the BLA.

- ○ Yes
- ○ No

End of Block: Topic 20

Start of Block: Coding Issues

Issues Coding this BLA

Were there any issues coding this BLA that we should be aware of?

_____

End of Block: Coding Issues