

Asian Labor Migration: The Role of Bilateral Labor and Similar Agreements¹

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Over the years efforts at finding viable mechanisms of cooperation for the better management of international migration have been pursued at the bilateral, regional and multilateral levels. With the increase of international migration flows in recent decades arising from disparities in economic development among countries as well as conflict and political instability in others, there has been a resurgence of calls for strengthening dialogue and international cooperation in international migration.

Types of Bilateral Agreements. Bilateral agreements (BAs) have traditionally been used to manage migration flows between countries. These are formal, legally binding treaties relating to cooperation in various aspects related to labor migration. They can take the form of bilateral labor agreements (BLAs), bilateral maritime agreements (BMAs), bilateral social security agreements (SSAs), or anti-trafficking agreements (ATAs). On the other hand, bilateral economic agreements, although not primarily labor agreements, could also include a migration component as in the case of the Japan-Philippines Economic Partnership Agreement (JPEPA) awaiting ratification by the Philippine Senate. In this agreement, conditions for the entry Filipino nurses and caregivers to Japan in the initial two years of the agreement are specified, including a quota of 1000 individuals.

Alternative bilateral arrangements in the form of memoranda of understanding (MOU), which are not legally binding on countries, have likewise

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been utilized. While this is so, the effectiveness of these bilateral mechanisms depends not so much on how legally binding they are as on how well they are implemented and enforced by the contracting countries. At its most informal, bilateral agreements can come in the form of statements or assurances of mutual cooperation in labor migration.

These bilateral agreements and arrangements are generally between labor sending and labor receiving countries but they can also be between two labor sending countries, as in the case of the Philippines and Indonesia.

Difficulties of Negotiating Bilateral Agreements. Negotiating formal bilateral labor agreements (BLAs), including Memoranda of Understanding (MOU), Maritime Agreements, and Social Security Agreements (SSAs) for the protection and welfare of workers is a difficult undertaking. In the Asian region it is more the exception than the rule.

Among the most common arguments raised by receiving countries for their reluctance, if not outright refusal, to enter into any formal agreement is that foreign workers are subject to the same laws and regulations as nationals; consequently, they do not need any special attention. Moreover, since the terms of employment are negotiated by the workers and private employers or agencies, government intervention is not necessary since it is a private sector business.

In addition, a formal agreement with one country (e.g. Philippines) would likewise open the floodgate of proposals for similar agreements from other sending countries, which they are reluctant to deal with. As a result, in the case of the Philippines, the most that it has gotten from host countries are informal assurances that Filipino workers will be treated fairly and given utmost protection. While this is so, the Philippines continues its efforts to forge bilateral agreements with other countries.

Bilateral Agreements in Asia. Difficulties in obtaining information regarding the bilateral agreements entered into by countries in the Asian region precludes an exhaustive inventory; however, a sampling of countries in the region gives us some idea of the status and nature of such agreements within Asia.

Philippines. In the Asian region, the Philippines has been the most successful among the labor-sending countries in its attempts to negotiate these agreements (Go, 2006). However, the number of bilateral labor and social security agreements that the Philippines has successfully entered into over the last thirty years attests to the difficulty of such an undertaking. It comes as no surprise, therefore, that the Philippines has been able to successfully forge bilateral labor agreements with only 13 countries (12 labor receiving countries and 1 labor sending country) since the overseas employment program began in 1974. While this is so, it has not been able to enter into such agreements with the largest labor receiving countries of overseas Filipino workers such as Singapore, Japan and Saudi Arabia.

The **bilateral labour agreements** between the Philippines and other countries may be classified into two broad categories, the labour recruitment and special hiring agreements and the labour, employment, and manpower development agreements.

The labour recruitment agreements focus on the terms and conditions concerning the employment and mobilization of Filipino workers or the exchange of trainees. The bilateral agreements with Norway, the United Kingdom, Papua New Guinea, Taiwan and Switzerland are largely recruitment agreements. The agreements with Norway and the United Kingdom specify the terms and conditions regulating the recruitment of Filipino health professionals while the agreement with Sweden specifies the terms and conditions for the exchange of Filipino professional and technical trainees. On the other hand, the agreement with Papua New Guinea details the terms and conditions for the employment of

Filipino workers under a non-citizen employment contract. The Memorandum of Understanding between the Philippines and Taiwan implements a special hiring facility that allows employers in Taiwan to directly hire Filipino workers without the intervention of manpower agencies. This special hiring facility provides employers in Taiwan an alternative option to the hiring of workers through manpower agencies. The agreement also includes the commitment of both parties to advance the interest not only of the employers but also of the Filipino workers.

On the other hand, the labour, employment and manpower agreements with Libya, Jordan, Qatar, Iraq, Kuwait, and the Commonwealth of Northern Marianas Islands (CNMI) contain the following essential features:

- a. Promotion and strengthening of areas of cooperation in the field of labour, employment, and manpower development;
- b. Exchange of information on relevant research, technical expertise, and other matters that would enhance employment promotion and labour administration in both the Philippines and the labour-receiving country;
- c. Enhancement of the welfare and protection of the rights of Filipino workers in accordance with the labour laws of the receiving country; and
- d. Establishment of a Joint Committee composed of members from both the Philippines and the receiving country to do a periodic review of the agreement and its implementation

Since 1974, most of the efforts of the Philippine government has been directed towards pursuing bilateral labour agreements with labour-receiving countries. A significant development in 2003 is the signing of a bilateral labour agreement between the Philippines and another labour-sending country, Indonesia. This agreement is significant because it is the first successful attempt by the Philippines to try to consolidate the efforts of other labour sending

countries in the region towards promoting the welfare of migrant workers and protecting their rights. The agreement identifies the following as priorities for joint initiative and cooperation:

- a. Promotion and protection of the welfare and rights of migrant workers of both countries;
- b. Training and certification of migrant workers; and
- c. Provision of legal aid for the protection of the rights of migrant workers.

It includes various forms of cooperation such as the exchange information, materials and experience, and the exchange of experts and staff. It also includes the development of collaborative training, joint research and development, joint efforts to promote and protect the welfare and rights of workers, and joint efforts to provide legal assistance for the protection of the rights of workers.

A Steering Committee, composed of senior officials of both countries, is to be established which will meet at least once a year to review the memorandum of understanding and to coordinate the implementation of programs. Joint working groups will also be established in receiving countries through the respective embassies or labour offices of the Philippines and Indonesia to promote and protect the welfare and rights of their migrant workers. These joint working groups are to meet regularly and are to pursue programs on site in close coordination with the Steering Committee.

The implementation of this agreement between the Philippines and Indonesia will be interesting to monitor since it can serve as a test case for the viability and the effectiveness of collaborative efforts by receiving countries to gain leverage and to consolidate their strengths toward protecting the welfare and rights of their migrant workers.

In the area of **social security**, the Philippines has also been able to forge bilateral agreements with only 8 countries. The salient features of the treaties include:

- a. Mutual assistance between the Philippines and the other country in the field of social security – Covered members or beneficiaries may file their claims with the designated liaison agencies of the Philippines or the other country, which will extend assistance to facilitate the processing of claims;
- b. Equality of treatment – a Filipino covered by social security, including his/her dependents and survivors, shall be eligible to benefits under the same conditions as the nationals of the other country;
- c. Export of social security benefits – a Filipino shall continue to receive his/her benefits wherever he/she decides to reside (in the Philippines, in the other country, or even a third country); and
- d. Totalization – Creditable membership periods in both the host country and the Philippines (excluding overlaps) shall be added to determine qualification for benefits;
- e. Prorated payment of benefits – Both the host country and the Philippines shall pay a fraction of the benefit due from their respective systems, in proportion to the actual contributions or creditable periods

In 2000, the Social Security System of the Philippines reported that relative to the implementation of the agreements, 260 Filipino claimants were granted benefits, 192 (74 percent) of which were from Canada.

In maritime, the Philippines has been actively negotiating for bilateral agreements to protect the interests of the Filipino shipping industry, in general and Filipino seafarers, in particular. The Philippine government's efforts at negotiating have resulted in the signing of **bilateral maritime transport and merchant shipping agreements** with 8 countries.

On the other hand, the Philippines has been more successful in forging **bilateral agreements on the recognition of Filipino seafarers' certificates** under regulation 1/10 of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), as amended in 1995. The STCW establishes the minimum standards for the training and performance of seafarers deployed in vessels engaged in both overseas and domestic shipping.

The amended STCW, which took effect on February 1, 2002, requires a bilateral agreement between seamen-sending and seamen-accepting countries for the recognition of seamen's certificates of competencies. Seafarers of countries not in the International Maritime Organization (IMO) White List and not covered by bilateral agreements cannot be hired to work on board ocean-going vessels. Since 2000, the Philippines has signed bilateral agreements on the recognition of seafarers' certificates with 31 countries.

People's Republic of China. China has been able to enter into four (4) bilateral labor agreements with Bahrain, Mauritius, Russia, Malaysia and two (2) social security agreements with Germany and Korea (Wickramasekara, 2006).

Taiwan (China) has forged bilateral labor agreements with Thailand and Vietnam through their respective Economic and Cultural Offices for the employment of Thai and Vietnamese workers and Memoranda of Understanding with the Philippines, Mongolia, and Indonesia (Lee, 2006). As discussed above, the MOU between Taiwan and the Philippines specifies the terms and conditions for a special direct hiring facility for Filipino workers that does away with intermediaries. The MOU with Mongolia, on the other hand, is a labor cooperation agreement that spells out employment conditions, duties and responsibilities of the labor sending organization, the labor receiving

organization, duties and responsibilities of the employers, of the employees, and arbitration procedures.

On the other hand, Korea, as of December 2005 had a Memorandum of Understanding with 6 countries, namely the Philippines, Thailand, Vietnam, Indonesia, Mongolia, and Sri Lanka for the hiring of foreign workers under its Employment Permit System (EPS) which replaced the Industrial Trainee System (Ha Sang- jin, 2006). The EPS was instituted to address the problems of irregular migrant workers and to promote and protect the foreign workers welfare and human rights. It sets a quota for the number of workers to be admitted into Korea and the specific industries in which foreign workers are allowed. A 3-year employment period is set with an initial one-year labor contract which is renewable annually. In this new system, the national laws of Korea also apply to the migrant workers. It is a government-to-government hiring scheme.

Malaysia. Malaysia has also signed MOUs with several labor-sending countries to facilitate the recruitment and selection of migrant workers (Dairiam, 2006). These were signed with Bangladesh, China, Indonesia, Pakistan, Sri Lanka, Thailand and Vietnam. However, among the concerns raised regarding these MOUs is that there are no minimum standards for conditions of work specified; workers have no right to join trade unions; and employers can keep worker passports (Wickramasekara, 2006). Moreover, the 2004 MOU with Indonesia does not include domestic workers, which are a vulnerable group.

Thailand. Similarly, Thailand has MOUs with its neighbors Cambodia, Lao PDR and Myanmar for the hiring of foreign workers. The MOUs of Thailand with its neighboring countries are designed to (Chalamwong, 2006):

1. Institute proper procedures for employment of workers;
2. Ensure the repatriation of workers, who have completed their employment or are deported by the authorities
3. Protect the rights and welfare of workers;

4. Prevent and take action against illegal border crossings, trafficking of illegal workers and illegal employment of workers.

Objectives of Bilateral Agreements in Asia. For labor receiving countries the primary objectives for entering into bilateral agreements include:

1. Addressing the manpower needs of employers and industrial sectors;
2. Promoting cooperation in the management of migration, both regular and irregular; and
3. Promoting cultural/political ties and exchanges.

For receiving countries, on the other hand, the main objectives for entering into these agreements are:

1. Ensuring continued access to the labor market of receiving countries;
2. Easing unemployment pressures;
3. Promoting the protection and welfare of their workers; and
4. Obtaining foreign exchange through worker remittances.

Areas of Concern. Evidently, the nature, scope, content and enforceability of the different bilateral agreements entered into by various Asian countries vary. However, the following some are some areas of concern that Asian parliamentarians and legislators can consider when reviewing agreements, particularly its implementing rules and regulations, entered into by their respective countries or in drafting a possible legislative framework governing such agreements:

1. Monitoring and enforcement mechanisms of the agreements. These are generally weak and not much is known about the extent of the implementation of these agreements.
2. Provisions and/or mechanisms for worker welfare and protection. There tends to be greater focus on recruitment procedures and the regulation of migration flows and less on welfare and protection. The economic

interests and the interests of labor receiving countries tend to dominate; consequently, the protective mechanisms are weak. Moreover, in some cases workers rights are denied such as freedom of association, confiscation of travel documents by employers and mandatory withholding of wages. Bilateral agreements, however, should be negotiated from the standpoint of equal partnership between labor-sending and labor-receiving countries

To address the welfare and protective concerns, mechanisms for addressing violations of recruitment intermediaries can be instituted. In addition, in cases where no separate social security agreement is entered into, social security provisions may be incorporated into bilateral labor agreements;

3. Gender sensitivity of agreements. Gender concerns are not specifically addressed. In some cases domestic workers are excluded in the agreements.
4. Equal treatment of migrant workers and nationals in the area of wages, social security, and medical care;
4. Provision of minimum standards of employment;
5. Involvement of civil society and all stakeholders in the formulation, implementation and monitoring of agreements.

In formulating bilateral labor agreements, countries can likewise be guided by international instruments such as the *ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, annexed to Recommendation No. 86 on Migration for Employment (Revised), 1949*. This model agreement offers a useful framework for guidance on the kind of matters that could be regulated in bilateral or multilateral migration agreements. It provides for measures regarding:

- exchange of information;
- action against misleading propaganda;
- conditions and criteria for migration;

- organization of recruitment and placement of migrant workers;
- information and assistance to migrants;
- transfer of earnings;
- adaptation of permanent migrant workers;
- settlement of disputes;
- equality of treatment in a number of areas;
- employment contracts
- employment mobility
- the return of migrants;
- measures on the methods for cooperation
- and consultation between States parties.

Alternative Mechanisms to Bilateral Agreements. In an era of increasing globalization and trade liberalization, the one significant exception to free markets today has been the free movement of people. Few bilateral and multilateral agreements exist for international migration and for many migrant workers, Filipinos included, the absence of any protection under the law has led to exploitation and abuse. While many receiving countries claim a belief in free markets, including labor markets, they use highly restrictive and bureaucratic regulations to control cross-border labor migration, particularly of unskilled workers.

In view of the difficulty of successfully negotiating formal bilateral agreements, alternative mechanisms have been employed by some sending countries to protect their workers:

1. Joint liability between local employment agency and foreign employer. Republic Act 8042 of the Philippines, which is the overarching legislation governing overseas Filipinos, stipulates joint liability between the local employment agency and the foreign employer for violations of the foreign employer.

2. Selective deployment ban to countries violating workers' rights (e.g. Philippines)
3. Formulation of standard model employment contracts (e.g. Philippines, Sri Lanka)
4. Ratification of migrant worker instruments. (The Philippines is the model in Asia, having ratified all three international migrant worker convention: 2 ILO Conventions and 1 UN Convention.)
5. Pushing of migrants' rights and migrant protection standards in international forums (e.g. Philippines in the Asia-Pacific Economic Cooperation or APEC).

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