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

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Presentation outline

- ✓ Focus: Bilateral **labour migration** agreements (BLMAs) as opposed to agreements on social security and readmission
- ✓ BLMAs as a “good practice”?
- ✓ The role of the international rule of law/ normative framework
- ✓ Challenges in adequately protecting human and labour rights in BLMAs
- ✓ Recommendations



Bilateral labour migration agreements as a “good practice”?

- ✓ BLMAs are often referred to as “good practice” because they aim to provide for organized and regular temporary labour migration between countries of origin and destination with a view to avoiding irregular movements, excessive costs in migration and exploitative conditions
- ✓ However, two pre-requisites
 - Conformity with international minimum standards protecting human and labour rights
 - Regulation of whole migration process (i.e. pre-departure, departure, arrival/ reception, stay, return and reintegration)



The role of the international rule of law/ normative framework

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



Challenges in adequately protecting human and labour rights in BLMAs

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



Challenges in adequately protecting human and labour rights in BLMAs (cont'd)

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



Recommendations

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



Thank you for your attention!

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BIO NOTE

- Ryszard Cholewinski is Migration Policy Specialist in the International Migration Branch of the International Labour Office (ILO). He works on a number of policy, research and training activities, in collaboration with other ILO HQ units and field offices, with a view to advancing a rights-based approach to labour migration with ILO's tripartite constituents. Prior to joining ILO, he was Senior Migration Policy and Research Specialist in the International Organization for Migration (IOM) in Geneva (2005-2010) and Reader in Law at the University of Leicester in the United Kingdom (1992-2005).
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- He has written extensively on the laws and policies relating to international labour migration, the rights of migrant workers, and various aspects of the emerging European Union law and policy on migration. In particular, he is author of *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford, Clarendon Press, 1997) and two publications for the Council of Europe: *The Legal Status of Migrants Admitted for Employment* (2004) and *Irregular Migrants: Access to Minimum Social Rights* (2005). While at IOM, he was Co-Editor-in-Chief of *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy*; co-authored two editions of the *Handbook on Establishing Effective Labour Migration Policies* (2006, 2007), a joint publication of the Organization for Security and Co-operation in Europe (OSCE), IOM and ILO; and co-edited *International Migration Law: Developing Paradigms and Key Challenges* (The Hague, Asser Press, 2007). More recently, he co-edited a special issue on "Human Rights and Mobility" for the *Refugee Survey Quarterly* (Vol. 28, No. 4, 2009).
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- He holds a doctoral degree (LL.D) from the University of Ottawa, a Master in Laws degree (LL.M.) from the University of Saskatchewan, and a Bachelor of Laws degree (LL.B) from the University of Leicester.