



GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES



International
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Organization

Gender sensitivity in labour migration-related agreements and MOUs¹

Based on a report elaborated by Lin Lean Lim

Summary

Bilateral Labour Agreements (BLAs) and Memoranda of Understanding (MOUs) on labour migration have greatly increased in recent years.

The value of such agreements has been recognized as facilitating and managing cross-border movement of temporary, mainly “low-skilled”, workers – including migrant domestic workers – and protecting their rights. However, the BLAs/MOUs vary significantly in scope (in terms of the sectors and issues covered), the inclusion or lack of implementation and monitoring mechanisms, and their effectiveness which translates into different outcomes for the origin and destination countries and, very importantly, for the MDWs themselves. A serious concern is that “as they are conceived, negotiated and implemented at present, they largely ignore gender issues and lack gender-sensitive monitoring mechanisms. In fact on reviewing a number of agreements, it becomes clear that only a small number contain specific provisions concerning women or gender”.² This is highly significant given that women make up nearly 75 per cent of all MDWs in the world, some 8.5 million individuals.

In order to understand why it is important to take into account gender in BLAs and MOUs, it is essential to clarify what it means for BLAs/MOUs to be gender-sensitive, and distinguish different types of BLAs/MOUs in terms of their gender impacts and implications. Examples from a few selected agreements are helpful in illustrating “good” and “bad” practices in incorporating gender considerations. It is also important to look at how source and destination countries

can use BLA/MOUs to promote gender equality and non-discrimination as human rights, including protecting vulnerable women migrants from discrimination, exploitation and violence. Finally, this work seeks to stimulate discussion among the main actors in source and destination countries on why and how to develop, implement and monitor gender-sensitive BLAs/MOUs.

Box 1.

Bilateral Agreements/Memoranda of understanding

Bilateral labour agreements/Memoranda of understanding (BLAs/MOUs): refer to a format used when the agreements describe in detail the specific responsibilities of, and actions to be taken, by each of the parties, with a view to the accomplishment of their goals. BLAs create legally binding rights and obligations. Memoranda of understanding (MOUs): refer to a format entailing general principles of cooperation; they describe broad concepts of mutual understanding, goals and plans shared by the parties. MOUs are usually non-binding instruments.

Why should BLAs/MOUs be gender-sensitive?

The feminization of labour migration is a global trend, although unfolding at different speeds and intensities regionally. Women are migrating for employment on almost the same scale as men and now account for about half of the estimated 232 million migrants worldwide.³ Labour migration, particularly of “low-skilled” workers, tends to be highly gendered (see Text **Box 1**), with male migrants going mainly into the construction, agricultural and manufacturing sectors; and female migrants concentrated in “feminized” service occupations such as domestic work.

In fact, in many parts of the world domestic workers have the face of migrant women. Because of the nature of the work they perform, the place where they perform it (in private households) and often because of their migration status, MDWs face numerous challenges to having their work valued as such, their rights respected and enforced under national legislation, and their voices and concerns duly represented.

Box 2. What is “gender”?

Gender is a term used to describe socially constructed roles for women and men that are socially learned, that can change over time and that vary widely within and across cultures. By contrast, sex identifies the biological differences between women and men.

Gender includes both women and men. Belonging to one gender or the other can create differences of experience linked to the different roles, attributes and behaviour that society deems socially appropriate for women and men and to the division of labour, access to and control over resources and decision making and constraints, opportunities and needs facing women and men.

Gender is intersectional. Gender interacts with other social categories such as national origin, race, ethnicity, age, and marital and/or socio-economic status. Gender affects, and in fact often reinforces vulnerabilities and differences with relation to other social differences.

In many countries domestic workers are not covered by national labour legislation and hence face serious protection gaps. In some cases (as described further on) BLAs and MOUs have been developed to address these specific protection gaps of migrants in this female dominated sector.

Gender Specific Challenges

For many women, as for men, migration can represent a positive experience and have important emancipating and empowering impacts. But often female migrants are confronted with gender-specific disadvantages and vulnerability in the migration process and in their employment. Women workers, especially young female migrants, often end up in situations of double or even triple discrimination, disadvantage, marginalization and vulnerability.

During every stage of their migration experience, women migrant workers tend to be more exposed to human rights violations compared to their male counterparts because they lack access to and control over resources and decision-making. Women from poor countries and low educational level are more likely to lack access to accurate information concerning the migration process overall and are, therefore, much more at risk of being deceived by unscrupulous recruitment agents and traffickers.

Lacking Social/Labour Protection

Migrant women are highly concentrated in domestic work, a low-paid occupation often lacking labour and social protection. At the same time, the nature of the work means they are isolated from peer and support networks and more exposed to abuse. Domestic workers are often unaware of their rights and often do not have effective means to seek legal redress in case of violations of those rights.

Dependency

Strong dependency on a specific employer makes migrant domestic workers, and particularly women, vulnerable to general mistreatment and sexual harassment. Where MDWs are not allowed to change employers or are required to have their visas sponsored by a national as under the “kafala” system (see box 3), workers are under the near complete control of the employer/sponsor. This dependency is extreme in the case of domestic workers as they frequently share living and working space with the employer. Additionally, households typically fall outside the mandate of labour inspection and the lines between personal and employment relationships tend to become blurred.

Irregular Status

Migrant domestic workers can enter a country irregularly or can fall into irregularity because they fail to comply with relevant requirements in the destination country, such as losing employment. In some cases, restrictive policies introduced by countries of origin on MDW mobility (e.g. age bars, consent from spouses, or even pregnancy testing prior to departure), leave no or limited legal migration channels open to women and can push many into irregular paths, with higher risk of abuse. In some cases national legislation in destination countries criminalizes migrants who leave their job, arguably forcing them to stay in exploitative workplaces.

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.

Box 3. Kafala System

A major problem in the context of the Middle East is the sponsorship or the Kafala system which restricts mobility of workers, preventing them from leaving exploitative conditions of work. An International Trade Union Confederation brief on the subject notes that: “so long as migrant domestic workers are excluded from labour laws and remain subject to restrictive kafala sponsorship laws that grant employers extraordinary control over them, no bilateral agreement will provide adequate protection against exploitation. Workers will continue to be vulnerable to exploitation, including forced labour and physical abuse. A fundamental overhaul of the region’s labour laws and the abolishment of the kafala system is urgently needed”.⁴

The principle of shared responsibility between origin and destination countries means that the latter should also undertake reforms to ensure MDWs’ rights. Bahrain has already moved towards partial reform by making it easier for workers to move from abusive employers. In the case of domestic workers, Saudi Arabia requires that recruitment firms sponsor workers, rather than individual employers in private households. The DLA Piper report commissioned by the Government of Qatar concluded that the kafala system was “no longer the appropriate tool for the effective control of migration” and recommended that the State of Qatar “conducts a wide ranging and comprehensive review of the kafala sponsorship system with a view to implementing reforms which strengthen and protect the rights of free movement of migrant workers in accordance with Qatar’s international obligations”.⁵

Examples of gender impact and implications of BLAs/MOUs

Some general BLAs/MOUs specifically exclude certain sectors such as domestic workers from the scope of their coverage:

Examples include MOUs signed between Vietnam and Malaysia and between Indonesia and the United Arab Emirates which differentiate treatment of domestic workers who are mainly female, from the other migrant workers covered by the general agreements. The rights, welfare and security of the domestic workers therefore hinge on whether there are separate BLAs/MOUs covering them and whether these provide similar protections;

Provisions that the “terms and conditions of employment shall be in line with the labour law and regulations of the destination country”, can leave migrant domestic workers in highly precarious situations because often they are not covered under national labour regulations;

Provisions to promote fair recruitment practices typically do not address the situation of women and in particular young, poorly educated women from rural areas with little control over important decisions in their lives who are much more likely to be the victims of recruitment malpractices;

Provisions defining clear responsibilities between the different parties are critical under the sponsorship system in the Middle East. While applicable to both women and men, the kafala system is particularly challenging for migrant domestic workers, as they work in isolation within private households, and especially for women who tend to be more vulnerable to gender based violence and restriction of basic human rights, including freedom of movement;

Exclusion of healthcare and social security benefits for migrant domestic workers unduly affects women. In the Asian context for example social protection is mostly confined to accident and health benefits with no provision for portability of social security benefits. While important for both male and female migrant workers it is an important element for promoting gender equality given the low savings capacity of many MDWs, to accumulate a sufficient retirement fund.⁶

BLAs/MOUs that do not specifically consider gender, use gender-neutral terminology or assume that they will impact equally on both women and men migrants often have unintended or unexpected differential or detrimental effects for women migrants; they do not promote gender equality or non-discrimination and do not address the specific vulnerability of female migrant workers.

Gender-sensitive BLAs/MOUs

Gender-sensitive BLAs/MOUs necessarily consider factors rooted in the gender division of labour and power relations between men and women; they use **gender-disaggregated data** and take into account who benefits and who does not. They aim to bring about equality of opportunity, rights and obligations among men and women and can contain specific measures targeting women. Gender-sensitive BLAs/MOUs:

- Recognize *similarities* in the migration experience of women and men – both women and men migrate for economic reasons and better employment opportunities, and they make significant economic and social contributions to national economies in both origin and destination countries;
- Acknowledge the *differences* in migration experiences for male and female migrant workers – female migrant workers tend to experience more disadvantages and discrimination at all stages of the migration process due to their lack of access to and control over resources and gender stereotyping in the labour market;
- Promote *equality* of employment opportunity and access to benefits for both migrant women and men, reinforcing human rights grounded in the universal values of equal treatment and non-discrimination;
- Provide for *general migrant protection* while at the same time specifically targeting female migrant workers in order to empower them with choices, access to resources and rights;

- Give particular attention to *especially vulnerable groups of women migrants* including MDWs, to ensure their access to safe migration and legal employment opportunities and to protect them from exploitation, violence and abuse.

Sector Specific Agreements

A growing trend is for countries to sign sector-specific agreements on employment. **The number of BLAs/MOUs covering domestic workers has been on the rise**, in large measure due to the spotlight on the worldwide situation of these mainly female workers in the context of the ILO Domestic Workers Convention, 2011 (No.189) and the establishment of the International Domestic Workers Federation (IDWF) in 2013. These BLAs/MOUs covering domestic workers provide various good practices that recognize female-specific vulnerabilities.

Box 4. Philippines-Saudi Arabia MDW BLA

The 2013 Saudi Arabia-Philippines BLA includes “terms and conditions reflecting good practices recognized by international bodies in protection of the rights, security and welfare of the domestic workers who are mostly not covered by the domestic labour laws.⁷ Important provisions include a standard employment contract covering:

- Determination of the contract period
- Payment of wages to an employee’s bank account
- Prohibition of salary deductions
- Provision for continuous rest of at least 8 hours per day and at least one rest day per week, suitable and sanitary living conditions, adequate food or monetary allowance and rest for acceptable medical reasons
- Transportation to the destination country and return home, covered by the employer
- 30 days paid leave for every two years of service
- Special features including stipulations that work is to be performed only for the employer and the immediate family; passport and work permit to remain in employee’s custody; and freedom for MDWs to communicate with family members in their country or origin.

Notably, the agreement does not address: social security concerns; exclusion of the employer/sponsor in legal measures against the recruitment offices, companies or agencies for violations of any applicable laws; minimum and maximum age limits; and freedom of observance of religion by the domestic worker.

At the same time, it should be noted that BLAs and MOUs – even where they include a standard employment contract – remain difficult or impossible to enforce in the absence of adequate national legislation. While an important step, these instruments should not be seen as a substitute for comprehensive protective legislative frameworks in destination countries.

Recommendations for Engendering BLAs/MOUs

The following are guidelines for promoting gender-equality and non-discrimination as human rights, in BLAs/MOUs.⁸ It should be stressed that a general environment of respect for gender-equality in both countries of origin and destination is a must for successful implementation.

Box 5. Normative foundations for gender-sensitive BLAs/MOUs

Conformity with international norms relating to the human and labour rights of migrant workers helps to uphold equality of treatment and non-discrimination. Where there is specific reference in a BLA/MOU to the treatment of migrant workers no less favourable than that, which applies to nationals of the destination country with respect to employment and working and living conditions, both male and female MDWs can benefit:

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979;
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1966;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990;
- ILO Migration for Employment Convention, 1949 (No.97);
- ILO Migrant Workers Convention, 1975 (No.143);
- ILO Domestic Workers Convention, 2011 (No.189);
- ILO Private Employment Agencies Convention, 1997 (No.181);
- ILO Core Conventions on Fundamental Principles and Rights at Work;
- Universal human rights instruments and their protocols;
- **ILO Multilateral Framework on Labour Migration: non-binding principles and guidelines for a rights-based approach to labour migration.**

During the negotiation process, the following measures and aspects should be taken into account and anchored in the negotiated text:

- Make gender impact assessments an integral procedural component (based on sex-disaggregated statistics on labour migration);
- Include all stakeholders. Although it is the responsibility of governments to negotiate agreements in accordance with protocols on confidentiality, it is essential for negotiators to share information and consult migrant workers, employers, rights advocates, and civil society organizations which have a human rights framework. The participation of gender advisers with expertise on labour migration in the negotiation process is important;
- Include gender-specific, non-discrimination and rights-based clauses to promote gender equality. The language and content of these agreements should comply with the respective international human rights treaties;
- Append a model employment contract with provisions covering conditions and vulnerabilities in specific employment sectors, and include provisions to ensure that recruiters must explain the terms and conditions to potential migrants – and also employers – before they sign the contract;
- Create protective provisions for sectors not covered by national labour law, such as domestic service by introducing minimum standards;
- Acknowledge female-specific vulnerabilities by establishing protection measures concerning violence against women in the migration process, in the workplace and in the workers' accommodations;
- Implement a complaint mechanism for harassment and discrimination, including the option of legal remedy and gender-sensitive supports to assist women to seek redress;
- Provide for appropriate healthcare including access to sexual and reproductive health services, and social security benefits, and consider including portability of these benefits.⁹

End Notes

Pre-departure and on arrival:

- Widely disseminate information on legal migration opportunities and migrants' rights and obligations to minimize the risk of female migrant workers being exploited or trafficked;
- Provide information on arrival (on national immigration and labour laws, social welfare system, complaints mechanisms, contact details of counselling organizations, professional organizations and trade unions, etc.).¹⁰

Protective measures during the stay in the destination country:

- Provide gender training to administrative staff implementing BLAs/MOUs. One measure is to provide for a gender adviser in the Joint Committees in charge of implementation and monitoring. Sending countries may also post gender-sensitive labour attachés in destination countries who are well familiarized with challenges faced by women migrant workers;
- Strive to provide equality of wages and work conditions;
- Allow, encourage and support organizations of migrant workers.

On return:

- To ensure migration compliance, the option of repeat migration should be considered – this may reduce the risk of overstay and workers falling into an irregular status;
- Promote the re-negotiation of contracts regarding working conditions and remuneration in the case of repeat migration to account for prior experience/skills gained;
- Implement a gender-sensitive monitoring mechanism during the review process for sectors where a high proportion of women are employed;
- Establish mechanisms and services to assist returnee MDWs and communities of origin in the reintegration process, including assisting returning MDWs to find suitable jobs.

1 This paper was originally prepared by Mrs. Lin Lean Lim as a contribution to the ILO-KNOMAD Technical Workshop on Review of Bilateral Agreements on Low-skilled Labour Migration, 1-2 December 2014, Kathmandu, Nepal.

2 Organization for Security and Cooperation in Europe (OSCE). 2009. Guide on gender-sensitive labour migration policies, Vienna, pp.53-54.

Wickramasekara, P. 2014. Bilateral agreements and memoranda of understanding on migration of low-skilled workers: a review, report prepared for the ILO, Global Migration Policy Associates, Geneva; and ILO. 2014. KNOMAD TWG 3 Review of BLAs and MOUS – Case studies, Draft report, Geneva.

3 The gender breakdown of migrants shows that, globally, 48 per cent are women. However, this figure varies significantly by region: women are a majority of migrants in Europe, the Americas and Oceania. Their share falls to 45.9 per cent in Africa and as far as 41.6 per cent in Asia. Those differences can be attributed, in varying combinations, to differences in propensity to migrate, to gender selectivity in migration policies and to gender segregation in labour markets. ILO, 2014. Fair migration: Setting an ILO Agenda Report of the Director-General to the International Labour Conference, 103rd Session, Geneva, p.10.

4 DLA Piper. (2014). Migrant labour in the construction sector in the state of Qatar: Independent review commissioned by the Government of Qatar, DLA Piper, Doha. <http://www.engineersagainstopoverty.org/documentdownload.axd?documentresourceid=58>.

5 Ibid.

6 Centre for Migrant Advocacy. (undated). Bilateral labour agreements and social security agreements, <http://centerformigrantadvocacy.files.wordpress.com/2012/06/bilateral-labor-agreements-and-social-security-agreements1.pdf>.

7 ILO. 2014. KNOMAD TWG 3 Review of BLAs and MOUS – Case studies, Draft report, Geneva, p.64.

8 See Organization for Security and Cooperation in Europe (OSCE). 2009. Guide on gender-sensitive labour migration policies, Vienna, pp.55-57.

9 The difficulties and challenges of including social security provisions in BLA/MOUs are widely acknowledged. See, for example, Centre for Migrant Advocacy. (undated). Bilateral labour agreements and social security agreements, <http://centerformigrantadvocacy.files.wordpress.com/2012/06/bilateral-labor-agreements-and-social-security-agreements1.pdf>.

10 The Hong Kong Home Affairs Bureau, for example, provides a guide in different languages for migrants coming to work mainly as domestic workers. The Singapore Ministry of Manpower has a guide in four main languages for employers hiring migrant domestic workers.



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