

THE FIVE CORRIDORS PROJECT - CORRIDOR 4

Philippines to Taiwan: Fair recruitment in review

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ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations and Humanity United. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United or OSF.

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Cover photograph: Migrant workers calling for reforms to Taiwan's recruitment and employment system, Taipei 2017. © NurPhoto / Getty Images

3. Bilateral labour arrangements

“The Philippines has made efforts to convene joint oversight committees but these have often been constrained by factors outside our control such as the incessant volatility of political environments abroad, or the intransigence or lack of interest of our foreign counterparts to enter into Bilateral Labour Agreements.” **BERNARD PAUL M. MANGULABNAN, INSTITUTE OF**

LABOUR STUDIES, PHILIPPINES.

Summary

The Philippines commitment to bilateral labour agreements is evident in the number of agreements it has signed, the bureaucratic machinery that exists to facilitate their drafting and their implementation and in its drafting of model Memorandums of Agreement and Understanding in 2018. However, despite ambitious and creditable aims, the Philippines efforts to enshrine rights protection through BLAs has been hampered by its lack of leverage over destination states. The body of BLAs signed by the Philippines are replete with references to ethical recruitment, but the vast majority of these agreements are non-binding MOUs, with weak or non-existent implementation or monitoring mechanisms. There are exceptions to this, but the force and the content of the Philippines BLAs are contingent on the destination state’s respect for labour rights. In practice, BLAs serve largely as a

tool to facilitate labour migration, or as a crude form of leverage whereby negotiation focuses on threats to annul agreements and halt deployment rather than constructive negotiations aimed at enhancing the terms of rights protection within agreements. Crucially, there is little to no evidence that BLAs have been effective in improving protection for Filipino migrant workers.

Taiwan’s bilateral labour agreements are deliberately brief and abstract and are aimed at regulating cooperation on migration, not as instruments for negotiating migrant workers’ rights. Taiwan and the Philippines have signed three bilateral agreements, all of which pertain to the Special Hiring Program for Taiwan. Discussions on workers’ rights take place annually within technical working groups, but these discussions bear no relation to the three BLAs, which are high-level and facilitative.

Recommendations to the Philippine government:

- In all future negotiations on bilateral agreements, press destination states to sign binding Memorandums of Agreement that are public, and commit both countries to protect workers’ fundamental human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the ‘employer pays’ principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.
- Ensure that Taiwan signs a binding labour agreement with any country that intends to provide it with foreign workers. Civil society and other key stakeholders from both countries should

be involved in the drafting of these agreements, which should be public, and should commit both countries to protect workers’ fundamental human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the ‘employer pays’ principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms.

3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

Philippines

The Philippines has signed a total of 27 Memorandums of Understanding and 11 Memorandums of Agreement with 20 countries, and 3 Canadian provinces. Bilateral

labor agreements are considered as public documents, and some are available online. The Philippines has signed three Memorandums of Understanding with Taiwan; in 1999, 2001 and 2003.¹⁷⁰

Taiwan

Taiwan's bilateral labour agreements with the Philippines, Indonesia, Vietnam and Indonesia are all in the form of Memorandums of Understanding. They are publicly accessible online.

3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?

Philippines

Whereas bilateral labor agreements are public documents, the minutes or proceedings of the negotiations, are protected by diplomatic secrecy and confidentiality. Bernard Mangulabnan's study of the Philippines bilateral labor agreements involved a study of Joint Committee Meeting documents and he told us that there was clear evidence that the Philippines incorporated human rights and labour rights into its negotiations and discussions, and that these negotiations had resulted in positive outcomes for Filipino migrant workers, noting that it was through these negotiations that the Philippines persuaded the Jordanian government to provide workers with contracts in a language they could understand.¹⁷¹

In Mangulabnan and Aquino's 2019 study of the Philippines bilateral labor agreements "key informant interviewees" stated that there are "non-negotiable" elements of the model MOA: pre-departure orientation,

medical check-up, travel clearance, prohibition from confiscation of passports and mobile phones, provision of social insurance, and standard employment contract. These are not human or labour rights *per se*, but they contribute to the realisation of rights.¹⁷² However, these provisions only exist within the MOA, they are absent from the less detailed and non-binding MOUs that the Philippines tends to favour.

Taiwan

There is no evidence that Taiwan prioritises fair recruitment in the drafting of its MOUs. The Ministry of Labour told us that "there is no need to discuss labor rights through bilateral agreements" on the basis that "the labor conditions of migrant workers are subject to the same labor laws and regulations as those of Taiwanese nationals."

3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

Philippines

The Philippines' bilateral labour agreements (BLA) come either in the form of Memorandums of Understanding (MOU) or Memorandums of Agreement (MOA). According to the Department of Labor, the MOA format is used "when the agreement describes in detail the specific responsibilities of, add actions to be taken by each of the parties, with the view to the accomplishment of their goals" and it "creates legally binding rights and obligations."¹⁷³ An MOU, by contrast, "is used where the parties have agreements on general principles of cooperation" and describe "broad concepts of mutual understanding, goals and plans shared by the parties." MOUs do not have the legal force of MOAs.

It is beyond the scope of this project to study all of these documents in detail, but a brief comparison of two of

170. <http://www.poea.gov.ph/laborinfo/BLB.html> The POEA separately notes five bilateral agreements for seafarers (Cyprus, Denmark, Japan, Liberia, Netherlands) at <http://www.poea.gov.ph/laborinfo/BSB.html> Email from Bernard Mangulabnan, (13 August 2020).

171. The text of the agreement does not make any reference to this requirement, but article 6 does state that contracts should be verified by the Philippines Overseas Labour Office. Principles and Controls for Regulating Deployment and Employment of Filipino Domestic Workers Between Government of the Hashemite Kingdom of Jordan and the Republic of the Philippines, 2012.

172. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.

173. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018).

the Philippines bilateral labor agreements that have been held up as exemplary - one with New Zealand in 2008, and one with Saudi Arabia in 2012 - demonstrates the extent to which the force and the content of the Philippines BLAs are contingent on the destination state's respect for labour rights.¹⁷⁴

The 2008 Memorandum of Agreement on Labour Cooperation with New Zealand is binding, states that it is in "accordance with universal principles of international instruments on labour and employment," and references the ILO Declaration on Fundamental Principles and Rights at Work.¹⁷⁵ In 2012, the Philippines signed an "Agreement on Domestic Worker Recruitment" with Saudi Arabia.¹⁷⁶ Although the title would suggest that it is binding, an examination of the text reveals it to have the character of an MOU.¹⁷⁷ The agreement provides for standard employment contracts and commits both parties to ethical recruitment, but it makes no reference to human rights or labor standards.

In response to government concerns about the effectiveness of its bilateral agreements, the Department of Labor issued model MOUs and MOAs in March 2018.¹⁷⁸ These provide the "standard template for new generation of MOAs and MOUs that would be negotiated by the DOLE with countries of destination." According to the Department of Labor there will be flexibility to edit some contents "depending on the context of the country that is being dealt with."¹⁷⁹ Nonetheless, they provide us with a clear insight into Philippines government policy on the content of bilateral labour agreements.

Neither the model MOA nor the model MOU refer to internationally recognised human rights and labour standards. The MOA states that it is the obligation of the destination state authorities to ensure workers either retain their passports or deposit them with the Philippines embassy. It also states that Filipino workers abroad should have the right to have and use mobile phones to communicate with their families, and that confiscation of their phones should be prohibited. Destination states are also obliged to take steps to ensure adherence to labor contracts, in particular with regard to working hours, and to provide legal assistance to workers in the event of violations of labor contracts.¹⁸⁰ The model MOU contains no such details or obligations. A paragraph on workers' rights protection states simply that "both participants will promote the welfare of Filipino workers employed in [destination state] and protect their rights in accordance with the laws and regulations of both countries."¹⁸¹

It is notable that while the official title of the MOA refers to its purpose as "the Protection and Employment of Filipino Workers", the MOU makes no reference to protection and refers only to "labor cooperation."

In 2012, one Philippines migration expert noted in a study on the Philippines' use of BLAs that "the increasing focus on agreements [MOAs] intended to facilitate labour admission, with few provisions on labour conditions, indicates that the tension between increasing labour export and increasing protection present in the national legislation is also felt in the bilateral approach."¹⁸² The

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174. Bernard Mangulabnan of the Institute for Labor Studies referred to the New Zealand agreement as an example of a BLA that had advanced Filipino migrant workers' rights. Correspondence from Bernard Mangulabnan, (August 2020, 13). A representative of Migrant Forum Asia, while skeptical about the effectiveness of bilateral labor agreements generally, referenced the Saudi Arabian agreement as evidence of an agreement that had had a broadly positive impact. Telephone interview with Tatcee Macabug, Migrant Forum Asia, (23 July 2020.)
175. Memorandum of Agreement on Labour Cooperation Between the Government of New Zealand and the Government of the Republic of the Philippines, (4 November, 2008).
176. Agreement on Domestic Worker Recruitment Between the Ministry of Labor of the Kingdom of Saudi Arabia and the Department of Labor and Employment of the Republic of the Philippines, (19 May 2013).
177. Whereas the New Zealand MOA committed both parties to a detailed process for dispute resolution, including - if necessary - Ministerial discussions and consultations, the agreement with Saudi Arabia states that any dispute "shall be settled amicably...through diplomatic channels."
178. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (July 2020, 29). Mangulabnan attributed the drafting of the model agreements to Philippines government concerns over the death of Filipina domestic worker Joanna Demafelis in Kuwait in February 2018. Also see Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2. "In light of the high-profile reported cases of maltreatment of Filipino migrant domestic workers, there is a growing clamor from various stakeholders to review all labor agreements entered by the Philippines with countries of destination. A number of congressional inquiries were called on the first quarter of 2018 to shed light as to how the Department concludes agreements, how BLAs are actually implemented, and whether BLAs contribute to the general development outcomes of the country. These made a general review of BLAs not only topical but also urgent and imperative."
179. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.
180. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018), Annex A: "Memorandum of Agreement on the Protection and Employment of Filipino Workers between the Government of the Republic of the Philippines and the Government of []."
181. Philippines Department of Labor, Administrative Order No. 246, "The Philippine Bilateral Labor Agreement Process: Guidelines and Procedures," (2018), Annex B: "Memorandum of Understanding on Labor Cooperation between the Government of the Republic of the Philippines and the Government of []."
182. Graziano Battistella, "Multi-level Policy Approach in the Governance of Labour Migration: Considerations From the Philippine Experience," *Asian Journal of Social Science*, Vol. 40, No. 4, Special Focus: Migrant Workers Between States: In Search of Exit and Integration Strategies in South East Asia (2012), p. 436.

evidence suggests this assessment holds true today.¹⁸³ A Department of Labor official, who conducted an extensive study into the effectiveness of the Philippines' bilateral agreements and "their role in mitigating the negative effects of overseas migration" told us that the Philippines had sought to tailor the content of its BLAs to the specific needs of the destination state, but acknowledged that its record on labour rights had been inconsistent.¹⁸⁴ A representative of the Philippines trade union Sentro drew attention to the lack of any bilateral agreement with Hong Kong, and told us that a bilateral agreement could be useful in enhancing protection for Filipino workers there.¹⁸⁵

Taiwan

Taiwan has signed Memorandums of Understanding with the Philippines, Indonesia, Vietnam and Thailand. These agreements make no reference to internationally recognised human rights and labour standards. A representative of the Ministry of Labour told us that Taiwan viewed its bilateral agreements as a means of regulating cooperation, not protecting rights. He said that Taiwan respected its international human rights commitment by signing up to multilateral human rights agreements and enshrining their provisions in domestic law.¹⁸⁶

3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

Philippines

Mangulabnan and Aquino note that the primary concern of the Philippines' BLAs is the curbing

and prevention of irregular migration between the Philippines and the countries of destination.¹⁸⁷ However, the majority of BLAs have explicit provisions relating to increased bilateral cooperation on ethical recruitment, placement, standardization of employment contracts, and involvement of Philippine Overseas Labor Office (POLO) in the verification of workers' contracts and information dissemination.¹⁸⁸ According to their study, mentions of ethical recruitment "figure heavily" in all BLAs signed with countries in the Middle East and North Africa and the majority of BLAs with those states explicitly state that foreign employers have to pay the direct costs of recruitment and placement of overseas Filipino workers and that there are sanctions for not abiding.¹⁸⁹

Taiwan

Taiwan's bilateral agreements contain no references to fair recruitment.

3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

Philippines

According to Mangulabnan and Aquino's study, almost all of the Philippines' BLAs make provision for a Joint Committee, composed of authorized representatives of both Parties. Their role is to implement the agreement, operationalize its provisions and settle disputes arising from the implementation.¹⁹⁰ The study also notes that a "diversity of contexts and political motives" provides immense challenges to DOLE in relation to implementation, monitoring, evaluation, and follow-up.¹⁹¹

183. This is not only true of the Philippines, see Sophie Henderson, Richa Shivakoti and Matt Withers, "A Critical Analysis of the Migration Ban Lifecycle for Women Domestic Workers in the Indo-Pacific Region", *The Centre for the Study of Global Human Movement*, (June 2020 ,30).
184. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2. Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (July 2020 ,29).
185. Telephone interview with Shiella Estrada, Sentro, (21 August 2020).
186. Interview with Paul Yu-Kuo Su, Deputy Director, Cross-Border Workforce Management Division, Ministry of Labor, (17 January 2020).
187. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.
188. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 11.
189. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 21.
190. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.
191. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, "A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation," *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 2.

The Philippines commitment to oversight is evident in the fact that the Department of Labor has a Bilateral Labour Agreement Committee, and within that sits an Oversight Committee, whose role is to “implement the negotiated BLA and observe timeline and performance parameters.” These committees are to be headed by the senior official involved in the Joint Committee Meetings in any country.

However, a content analysis of records made available to the Institute of Labor Studies researchers revealed that out of the ten countries in the Middle East and North Africa with whom the Philippines has signed BLAs, only three (Qatar, Saudi Arabia, and the UAE) have held any Joint Committee meeting.¹⁹² It is not clear the extent to which this relates to the power imbalances between origin and destination states but in discussions about bilateral agreements migration experts and labour officials in the Philippines referenced origin states lack of leverage as an important overarching factor that hinders the effectiveness of BLAs as a means of protecting migrant workers.¹⁹³ Academic research supports this, although notes that the Philippines exercises more leverage than other destination states in this regard.¹⁹⁴ Mangalumba and Aquino refer pointedly to “the intransigence or lack of interest of foreign counterparts to enter into BLAs” in the section of their paper on joint committees.¹⁹⁵

Taiwan

An official from the Ministry of Labor in Taiwan said that the content of MOUs were deliberately “brief and abstract” in order to regulate collaboration. The most recent of the three MOUs between Taiwan and the Philippines was signed in 2003. It provides for implementation of the Special Hiring Program for Taiwan “through a process of regular and continuing consultations between appropriate authorities of both sides with the end view of coming out with a mutually acceptable system, procedures and mechanism.”¹⁹⁶

According to Mangulabnan and Aquino’s study, Taiwan and the Philippines have held seven joint committee meetings. These appear to be a reference to what a Philippines Labour Attache in Taiwan described as annual technical working group sessions. He told us that the bilateral agreements served as a “reference point” for these meetings, but the topics discussed in these meetings are not covered by the scope of the BLAs. In 2019, for example, issues discussed included “medical expenses, fishery worker hiring fees, jobs at Taiwanese dairy farms, and caregiver training.”¹⁹⁷ As such, the progress made in these discussions is not directly related to issues addressed in the MOUs.

192. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, “A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation,” *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.

193. Telephone interview with Tatcee Macabug, Migrant Forum Asia, (23 July 2020.) Telephone interview with Bernard Paul M. Mangulabnan, Institute for Labor Studies, Department of Labor and Employment, (29 July 2020).

194. Graziano Battistella, «Multi-level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine experience,» *Asian Journal of Social Science*, Volume 2021(1), 40), pp. 446 - 419.

195. Bernard Paul M. Mangulabnan and Carl Rookie O. Daquio, “A Review of Bilateral Labor Agreements Concluded by the Philippines with Countries of Destination: Toward a Framework for Monitoring and Evaluation,” *Philippine Journal of Labor Studies*, Volume I (June 2019), p. 28.

196. Memorandum of Understanding on Special Hiring Program for Taiwan between the Taipei Economic and Cultural Office in the Philippines and the Manila Economic and Cultural Office in Taipei, (2003).

197. Chang Hsiung-feng and Ko Lin, “Taiwan, Philippines discuss key issues at labor meeting in Taipei,” *Focus Taiwan*, (28 October 2019).

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