

Negotiating Labour Migration
A comparison of French and Spanish Bilateral Labour
Agreements with Morocco

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February 2014

Executive summary

Introduction

This report on Bilateral Labour Agreements (BLAs) between Morocco, on one side, and Spain and France, on the other, compares forms and dynamic evolution of bilateral cooperation on migration issues, with a specific focus on labour migration, between two key European immigration countries and a major emigration country to the EU. Bilateral Labour Agreements are traditional tools of international migration management: they are one of the most widespread methods regulating foreign labour recruitment schemes and typically serve multiple and varied objectives beyond recruitment and employment, such as the preservation of historical and cultural ties, the enhancement of diasporas capacities abroad, the social protection of migrant workers etc. The diversity, interdependence and complexity of objectives and factors influencing BLAs implementation as well as the multiplicity of actors intervening in implementation

processes strongly influence BLAs' design, coherence, scope and their effectiveness. In addition, BLAs' design and implementation greatly vary depending, among other factors, on the specific institutional and regulatory framework on migration. For instance, while France created in 2009 a single agency responsible for legal migration, the French Office for Immigration and Integration OFII (*Office Français de l'Immigration et de l'Intégration*) three institutions coordinate among themselves in the case of Spain (i.e. the Ministry of Foreign Affairs, the Ministry of Home Office and the Ministry of Labour). Besides, BLAs are currently under stress since most States are ever more reluctant to be constrained by new international norms, especially on migration issues. As a matter of fact, BLAs are embedded in complex and often contradictory national interests, which can create tensions between and within countries especially in times of economic crises. As this report clearly shows, this partly hinders possibilities of a greater international codification and BLAs opportunities of success and political visibility.

The Hispano-Moroccan case

Spain has a long tradition in the use of bilateral agreements although it remained until the 1980's an emigration country. The recent Spanish legislation on migration has been inspired by the EU regulatory framework as well as by other member states' experiences. The main factors driving the conclusion of labour agreements with Morocco were the geographic proximity, security concerns in addition to European pressures and the labour market situation, namely the composition of the Moroccan labour force in Spain and the strong presence of Moroccan workers in irregular employment niches on the Spanish labour market. On this basis, the agreements signed regulate mainly seasonal work in agriculture, often within a circular migration scheme supported by specific measures, such as the lack of family reunification rights for seasonal workers, and through the '*contingente*' instrument. BLAs are not always the most appropriate tool to fight irregular migration but aim at framing movements or enhancing legal entry channels. They play an important role in recruitment through the annual '*contingente*' since job opportunities are preferably offered to countries that have signed an agreement on Regulation of Migration Flow with Spain. Furthermore, BLAs are also linked to wider security issues than irregular employment. Readmission is a key and cross-cutting issue, tightly linked both to labour mobility management and other foreign policy issues. The agreements signed with Morocco are in that sense highly sensitive instruments whose success or cost of defection and renegeing depend on diplomatic relations much more than the French-Moroccan bilateral agreements do. However, the cooperation framework is progressively stabilising. It includes private and public actors which have developed a number of practices linked to labour

migration: facilitation of recruitment through labour market information exchange, creation of job opportunities, organisation of pre-selections, etc. They contribute to make labour migration management more dynamic, flexible and adapted to the changes while redefining the nature of bilateral agreements. Their direct or indirect participation to workers' placement in host countries play an important role in guaranteeing political commitment. Likewise, the progressive enlargement of the cooperation framework has also ensured a greater respect of BLAs engagements: economic and social networks created by shared interests actively participate to establish and maintain cooperation between Spain and Morocco. Therefore, beyond labour issues and in a context of economic crisis, stabilising and maintaining relations between Spain and Morocco may be BLAs primary objectives.

The Franco-Moroccan case

The case of Franco-Moroccan cooperation on migration is considerably different from the Hispano-Moroccan one as France has mainly established a post-colonial framework with Morocco. The first agreements signed by France (1945-1974) had as primary goal to preserve historical and cultural bounds with the former colonies and protectorates, to control and reduce informal recruitments as well as to tackle labour shortages. The first agreement with Morocco (1963) results from this context. It has to be understood as a State attempt to control workers' admission on its territory by limiting the role of non-State actors involved in the recruitment process such as economic entrepreneurs. Besides, it was negotiated in a specific economic context and conceived to respond to important labour needs, organizing massive recruitments through a quota system.

The second bilateral agreement (1987) aimed at renegotiating the first post-colonial agreement, addressing integration issues with preferential provisions for family reunification and access to the labour market with a more restrictive approach: preferential admission granted only to workers with a job contract, measures taken to ensure the temporary nature of migration, etc. The renegotiated BLA lost part of its substance because it was negotiated during a 30-years-long stop (1974-2005) to labour migration characterized by a rigorous control of entry and residence of foreigners, the emphasis put on voluntary return measures and on the re-nationalization of the labour force accompanied by incentive measures for integration and training. In this period it became simpler to recruit a foreigner already settled in France than to recruit abroad. However, the agreements continued to organize seasonal migration, regardless of the national policies or economic and social trends. The agreement on Young professionals signed in 2001 with Morocco is a special case and only targets a small number of young

people. Besides, the attractive measures recently designed for student migration such as the possibility of working under certain conditions or the multiplication of partnerships between schools and universities make the program for young professionals unappealing.

Finally, France has recently adopted new bilateral agreements on migration which fall within a broader framework, both geographically, since they are also negotiated with non Francophone countries, and in their content since they tackle a wider range of migration issues. This corresponds to a timeframe when labour migration issues have been brought back into French public and political debate for the sake of economic competitiveness and when the Council of the European Union adopted the 'Global Approach to Migration' (GAM) (2005). The latter revolves around three pillars :the organisation of legal migration (with an emphasis on circular migration), the fight against irregular migration, and development (co-development). Many elements of the EU Global Approach can be retraced in France's Pacts on concerted migration management and solidarity development (*Accords de gestion concertée des flux migratoires et du développement solidaire*). Since 2006, France (as well as Spain) is among the countries which have further operationalized the GAM through their bilateral agreements and this has modified not only the privileged relations that France maintains with a certain number of countries but also the nature of bilateralism itself. Indeed, there is now one single approach which, on the one hand, aims at improving dialogue between all partners on migration issues but negatively affects agreements' diversity in both design and implementation on the other hand. This restructuring of cooperation with source countries has raised strong reticence and criticism, particularly from Morocco. New bilateral agreements are now admittedly negotiated on a case-by-case basis, although based on a single framework of cooperation. The three pillars, which should function in a coherent manner, are in fact in potential divergence, also due to their different weight and scope. Since Pacts on concerted migration management link migration to other issues of common concern, such as development, trade and security, a shift in the framing of migration was generated, relegating and limiting labour migration issues to a secondary level. In this context, would it be pertinent for Morocco and would labour immigration be better enhanced with the signature of a Pact on concerted migration management? The Pacts offer preferential admission to workers coming from countries which have signed them but the possibilities of legal migration are in fact marginal and most of them already exist in the general immigration regime. Besides, the Pacts have become a complex and ambiguous stake at the service of migration control. Morocco is an important source country for irregular migration to France and signing a new partnership would have important financial and political consequences. In addition, Morocco doesn't need to sign a new partnership that includes

security issues: border controls are already implemented and readmissions are already effective and settled in a convenient, flexible way through administrative arrangements and consular laissez-passer. The fragile balance of costs and benefits between readmissions and visas seems to be stable. In this context, negotiations initiated in 2007 with Morocco about the signature of a new partnership rapidly failed, suggesting not only an inappropriateness of this instrument for the issues at stake in the French relations with Morocco but also a competition with the new EU instruments.

Therefore, the evolution of migration policies in France, combined with the joint effect of the process of Europeanization of migration policy have relegated labour migration issues to a secondary level although they have traditionally been at the core of historical Franco-Moroccan bilateral relations. Bilateralism is thus redefining and recomposing itself at different levels. In a traditional bilateral way, the general cooperation framework between Morocco and France is ever more integrated and dynamic. Nevertheless, Franco-Moroccan cooperation is currently undertaken and evolving beyond traditional political and diplomatic relations. It increasingly relies on the key role of individual or collective private actors which modify bilateralism, expanding and re-structuring formal and informal networks, framing and initiating movements and cooperation initiatives while bilateral agreements still follow a strong State-centred logic.

The new EU-Morocco Mobility Partnership and its effects on bilateral cooperation frameworks

The European Economic Partnership and negotiations on an EU Mobility Partnership (MP) with Morocco were launched at the same time than the Pact on concerted migration with France. A global partnership on a multilateral level with very specific and concrete agreements on a bilateral level seemed more attractive to Morocco than a comprehensive bilateral agreement. This has occurred in a moment when Morocco's economic integration to the European market was already deep and the political cooperation on governance reforms, security, conflict-resolution matters and joint initiatives in international fora on issues of common interest (including migration) were already strong. Besides, some issues of great concern for Morocco like the links between migration and development were enhanced in GAMM (Global Approach to Migration and Mobility) with remittances facilitation, Diaspora empowerment, promotion of circular migration or fight against brain drain. In this regard, the Morocco-EU MP is drawn on the Moroccan government's priorities for migration and development. Morocco has acquired a key equal player position with Member States and the EU in migration talks, formulating expectations and imposing conditions. Besides, a comprehensive approach has been progressively offered to Morocco to ease talks on security, broaden the scope of relations while

guaranteeing a certain level of commitment. It became thus difficult for Morocco, first neighbour partner in furthering the cooperation framework with the EU, to delay or reconsider the signature of the MP. The Political Declaration on a Mobility Partnership (MP) was signed by Morocco on June 2013, after two years of negotiation, with the EU and nine participating Member States. Agreements on readmission and visa liberalisation, planned in the MP, are still under negotiation. In this area, the cooperation remains mainly bilateral and countries usually prefer the bilateral framework because it is more flexible and less visible, although we could interpret the MP as a compromise between both parties (EU and Morocco).

As far as its actual content is concerned, the Morocco-EU MP has to be understood in the broad Morocco-European context. Dialogues on visa liberalisation, readmission and other migration issues are part of a series of negotiations with Morocco, among which the significant Deep and Comprehensive Free-Trade Agreement (DCFTA) on freedom of services, protection of investments and greater harmonisation of legislations. As a consequence, economic issues prevail and are at stakes for both Morocco and the EU, and this has an impact on the MP negotiation process, its content and underpinning power relations. It seems that even if Mobility Partnerships have acquired great political importance for the EU and are presented as promising tool for the integration of labour migration measures into the EU's external relations, the strong interference of economic issues generated an emphasis on mobility at the expense of migration, where mobility has to be understood in the context of human, economic and commercial exchanges between the parties and appears to be only associated with temporary labour-migration schemes and its corollary circular migration. Nonetheless, even if labour issues are not at the core of Morocco-EU relations, it must be underlined that new forms of cooperation and approaches on labour issues and more particularly on migration issues have been promoted recently, especially at a bilateral or regional level, with an increasing trend towards a comprehensive approach, putting bilateral and regional agreements at the core of migration cooperation.

Conclusion

The comparative analysis of bilateral cooperation on labour migration between Morocco, on one side, and France and Spain on the other let emerge important similarities and divergences. On the one hand, while in the Franco-Moroccan case post-colonial relationships largely explain the terms of the bilateral cooperation on migration, in the Hispano-Moroccan case the geopolitical dimension is key to understand cooperation patterns. In the former case BLAs' terms represent pragmatic answers to labour market needs, mainly in agriculture within seasonal migration

schemes, but also to irregular migration concerns and to pressures from the EU and other Member States. On the contrary, the Franco-Moroccan cooperation is undeniably shaped and redefined by dense post-colonial relations where legal arrangements affect a larger range of migration situations and labour mobility. Beyond relevant differences we can observe that in both cases bilateral agreements on labour mobility have become one dimension of a much larger and complex multi-level cooperation on migration issues, that redefines bilateralism and the role that labour migration plays in this framework. The progressive enlargement of the cooperation framework and the involvement of new state and non-state actors in both cases has ensured a greater respect of BLAs engagements, on the one hand, at the same time progressively transforming the nature of bilateralism on the other hand.

The main question this report raises is however the viability of BLAs as attractive and effective tools for Morocco in a regional context which progressively incorporates new ways of governance, beyond traditional bilateral relations. Europeanization of migration governance is indeed substantially changing the framework into which bilateral cooperation on migration has traditionally operated. In this context, while MPs are establishing a multi-level structure on migration and mobility issues, the bilateral level seems to remain so far a better stance for labour migration governance, which is at the same time loosing salience.