

Review Report

on

Motor Vehicles Agreement for the Regulation of Passenger and Cargo Vehicular Traffic between Bangladesh, Bhutan, India and Nepal

Prepared by the Legislative Committee

The National Council of Bhutan

October 2016

Committee Members:

1. Hon. Sonam Wangchuk, Mongar, Chairperson
2. Hon. Tashi Phuntsho, Trashigang, Deputy Chairperson
3. Hon. Sangay Khandu (Samtse)
4. Hon. Phuntsho Rapten
5. Hon. Karma Tshering
6. Mr. Tshering Dorji, Committee Secretary

1. Background

The BBIN Motor Vehicles Agreement (hereafter referred to as MVA) was initially started as a SAARC Motor Vehicles Agreement during the 14th SARRC Summit held in 2007. It was discussed during the 16th and 17th SARRC Summits and member countries resolved to expedite the signing of the MVA. The Royal Government of Bhutan (RGOB) accorded approval for Bhutan to sign the MVA at the 18th SARRC summit that was to be held in November 2014. However, the signing of the MVA was deferred as one member country stated that it was not yet prepared to do so. Thereafter, four member countries comprising of Bangladesh, Bhutan, India and Nepal (BBIN) decided to proceed with MVA as a sub-regional initiative and termed it BBIN MVA.

It was signed at Thimphu by transport ministers of the four countries on 15th June 2015. The National Assembly (NA) deliberated upon the MVA during its 6th Session but did not endorse it. The Royal Government re-tabled it in NA's 7th Session. With 28 members supporting the Bill, 11 voting against it and 3 members abstaining, the MVA was ratified and sent to the National Council (NC). The NC assigned its Legislative Committee (LC) to conduct a comprehensive review of the report in preparation for deliberation in the 18th session.

2. Consultation Process

The LC started its review consultations with various stakeholders as follows.

2.1 National Assembly Members

The MVA was not assigned to a particular NA Committee for review. However, it was important to understand NA's perspectives. Hence, LC requested three members each from the Ruling and Opposition parties to participate in a consultative meeting. However, only four members, two from each parties could attend the meeting. LC members had the opportunity to raise several questions on the MVA and understand how NA viewed and dealt with these issues.

2.2 Ministry of Information and Communication (MoIC), Road Safety and Transport Authority (RSTA) and Ministry of Foreign Affairs (MoFA)

The Hon'ble Minister of MoIC along with representatives from RSTA and the Policy and Planning Division attended another consultative meeting. Although LC had made a separate request with MoFA, the Hon'ble Minister of Foreign Affairs along with officials from the Ministry's Bilateral Department also attended the meeting with MoIC.

MoIC made a detailed presentation. LC as well as other NC members who attended this meeting sought clarifications on key issues and areas of concern.

2.3. Taxi Association

LC also held meetings with the Taxi Association, which was represented by at least 24 members from four Dzongkhags of Paro, Punakha, Thimphu and Wangdue Phodrang. During the discussion, several concerns and views were shared by the representatives of the Taxi Association.

2.5 Other Meetings

In addition to the above meetings, LC held further consultations with officials from Bhutan Chamber of Commerce and Industry, Tourism Council of Bhutan, Association of Bhutanese Tour Operators, Department of Revenue and Customs, the two departments of Immigration, and Law and Order under the Ministry of Home and Cultural Affairs, as well as the Office of Attorney General.

3. Field Visits

3.1 Meetings with Regional Offices and field visits in Phuentsholing

As a part of its field visit to a few selected areas in the southern part of the country, LC met with Dungkhag, Thromde and Exports Association of Bhutan, Regional Offices of Immigration, Revenue & Customs, RSTA and BCCI in Phuntsholing. Wide range of issues based on ground situation and perceived challenges were discussed. Site visits were made to the proposed Dry Port areas and upcoming integrated check post in Pasakha, Mini Dry Port in Phuntsholing and Amochhu Reclamation Project site.

3.2 Meeting with Truckers Association in Phuentsholing

LC also met with 22 representatives of Truckers Association and five representatives of local taxis in Phuntsholing. Prior to the discussion, Truckers Association made a detailed presentation to the Committee expressing their concerns and recommendations. The LC also made a brief presentation with a view to familiarize the stakeholders on the framework of MVA. The presentations were followed by detailed discussion and exchange of views.

3.3 Meetings with Regional Offices and field visits in Gelephu

LC convened meetings with Dungkhag and Thromde, Regional Offices of Immigration, Revenue & Customs, RSTA and BCCI in Gelephu. A brief presentation was made to the Committee by the Regional Revenue and Customs Office. Views and concerns were expressed by all other representatives at the meeting.

4 Summary of Stakeholders' Views

- After exhaustive engagements with various stakeholders, the Committee finds that the Royal Government did not carry out comprehensive consultations with the relevant stakeholders before signing the MVA.
- Except for the representatives of the Ruling Party and a few participants, overwhelming majority of the stakeholders consulted by the Committee do not support the signing/ratification of the MVA in its current form.
- A few stakeholders who support the MVA expressed the need to include provisions in the MVA such as restricting outside taxis/private vehicles from ferrying passengers once they reach their primary destinations within Bhutan. They emphasise the need for limiting entry restrictions for non-Bhutanese trucks and buses within 5 km of the international border.
- The Committee found out that alongside the BBIN discussions, there is also a parallel discussion happening on the Motor Vehicles Agreement among India, Myanmar and Thailand (IMT MVA). This parallel development is aimed at enhancing connectivity in the South East region, which is key aspect of India's "Look East Policy".

5. Details of Observations

1. The Royal Government did not carry out possible impact assessment of the MVA on domestic laws as some of the provisions of the MVA contradict the provisions of prevailing domestic laws.

Article V of the MVA titled *Passport and Visa* states that “Crew members will carry passports or relevant accepted documents which will be issued to facilitate frequent endorsement of visas and will be granted multiple entry visa, **valid for at least one year**, by Contracting Party(ies) concerned.”

However, Section 84 of the Immigration Act states that “The duration of visa depends upon the purpose of the visit. The visa shall be issued for a **maximum period of ninety days** at the entry points for diplomatic, official/gratis and **thirty days** for ordinary visa.” Section 89 of the Immigration Act states that “The visa for business persons shall be issued for **one year or more** with multiple entries”.

The Committee finds that the Section 89 of the Immigration Act applies only to those foreigners entering Bhutan to establish and operate business in Bhutan as per Section 43 of the Immigration Act. The crew members mentioned in the MVA therefore, fall under Section 84 of the Immigration Act. In view of this, issuance of visa with validity of one year or more to crew members will contradict with the provisions of Immigration Act.

- 1.2 A provision of Article III.8 of the MVA states, “Any deviation from the route will be treated as violation of the permit conditions and of relevant customs laws of concerned Contracting Parties.”

Deviation of routes will tantamount to violation of the MVA resulting in illegal travel through unauthorized routes/premises. This will then violate the Immigration Act and

the Contract Act of Bhutan. However, stringent penalty for deviation of routes is neither covered under the Customs Act nor under the Contract Act of Bhutan except for some remedial provision in the Contract Act. In absence of any stringent penalty to deal with such deviation in our domestic laws, it will not be possible for Bhutan to manage such deviations as and when they occur.

- 1.3 The MVA mentions in Article III.8 that sector and details of route, route maps, location of permitted rest or recreation places, tolls and check posts, etc. will be specified in the Protocol in the format as Annexure-I. It states that any addition or change to the sectors and routes will be decided through mutual consent. It also states that competent authority will be specified in the protocol in the format as Annexure-II. Both Annexure-I and Annexure-II are however, blank in the MVA.

If the MVA were ratified with a blank Protocol, it could be construed as authorizing the Royal Government to negotiate and insert any provisions in the Protocol through mutual consultation and agreement later without submitting to the Parliament. This may then undermine Article 10.25 of the Constitution of Kingdom of Bhutan.

- 5.2 The Committee finds that the Royal Government did not conduct a comprehensive consultation with the relevant stakeholders before signing the MVA.

Majority of the stakeholders expressed their dissatisfactions at the fact that they were neither consulted nor provided comprehensive briefs on the full impacts of the MVA. Their views on the MVA have also not been sought formally. None of the stakeholders supported the ratification of the Agreement in its current form.

- 5.3 Similarly, no study was carried out determine the impact of MVA on our culture, tradition, environment, national security, political, economy, etc. The MVA opens up the danger for influx of more foreigners with different backgrounds and intentions. This

could have both direct and indirect impact on the peace, security and sovereignty of our country.

- 5.4 The Committee further finds that the Royal Government did not consider in detail the carrying capacity of our road and other infrastructure. The volume of traffic and tonnage of vehicles will have huge implications on our limited carrying capacity. Dry ports, integrated check post at the border towns, roads and bridges, parking spaces, etc. are not likely to be ready in a couple of years. The proposed dry ports were conceived earlier, much before the decisions to sign the MVA. They were not proposed or developed in connection with the MVA.
- 5.5 Key Government agencies do not share similar views with respect to the MVA. One important agency feels that there will be both positive and negative impacts from the MVA while another is confident that there will be only benefit if we restrict the entry of passengers and cargo vehicle at the border town.
- 5.6 The Royal Government has not sought legal views of its legal advisor, the Office of the Attorney General, before signing the MVA.
- 5.7 The MVA appears to be driven by the initiative of external agency. Negotiations had taken place under the aegis of Asian Development Bank's SASEC Trade Facilitation Strategic Framework.
- 5.8 The MVA is based on the principle of reciprocity. Bhutan will be disadvantaged due to asymmetry in its size and population compared to the other three countries.
- 5.9 The MVA states that it shall not affect the existing bilateral arrangements or agreements between the Contracting Parties. While the intention of the Agreement is to formalize existing informal arrangements, current problems faced by the Bhutanese vehicles plying

in the bordering Indian States and the problems created by Indian vehicles plying within Bhutan cannot be addressed by the MVA.

Bhutanese truckers and passengers continue to face harassments such as requirements to pay illegal money, unauthorised levies and coerced donations, aggravated by interferences of illegal and quasi-legal authorities as well as involvement of middle men. This will not be addressed by the MVA.

Likewise, influx of unregulated vehicles and passengers of foreign origins without proper control and monitoring system cannot be controlled. The problems associated with the desecration of holy places, negative impact on dollar paying tourists, littering, pollutions, etc will continue with or without the MVA.

- 5.10 The MVA permits opening of branch offices or appointing of local agents as well as employing foreign workers under work permits system. It also allows automatic entry of four persons per vehicles (driver, conductor, helper and cleaner).

Employing foreign workers could lead to increasing unemployment problems and invite other potential firms from abroad to establish similar offices and agents in the country staffed by non-Bhutanese. This will exacerbate the problems associated with fronting, smuggling, illegal immigration and marriage, faith conversion, cultural dilution, etc.

- 5.11 The MVA allows tax and duty exemptions for all the standard accessories of the vehicles, essential spares, fuel and oils contained in its supply tanks.

This could be misused by the drivers in carrying out illegal business and trade. The drivers could declare such accessories and spares as goods for use while in Bhutan and hence, seek duty and tax exemption on new accessories and spares every time they re-enter Bhutan. Evidences of such malpractices are already visible.

- 5.12 The MVA opens up competition from foreign cargo and passenger operators. Though it could benefit domestic consumers in terms of competitive cost, efficiency in delivery of goods and services as well as comfort and convenience, it could dampen the business opportunities of current operators. This is not to suggest that the Committee prioritises benefits of current operators over consumers. Such benefits to the consumer would be welcome if it were a consequence of competition among Bhutanese operators or if competition by foreign operators have no negative consequence on Bhutan's security consideration, environmental concerns, social and cultural sensitivities etc.
- 5.13 Possible agencies and operators beyond the borders already assume that MVA is operational after the Royal Government has signed and the National Assembly passed it. For example, some Indian firms/business entities have already started procuring heavy machineries and trucks perceiving that the MVA is ratified. Some Indian nationals have also begun operating private vehicles as taxis in the border towns. Implicit in such a perception is that Bhutan will rubber-stamp whatever is tabled in terms of regional or international agreements, protocols or conventions. Neither is such perception healthy nor should nurturing of such perceptions be encouraged.
- 5.14 On the positive side, the Committee finds that the MVA could generate benefits through cheaper cost of transportation of goods and other raw materials. However, the concerns discussed in 5.12 remains. MVA could also boost regional tourism, Foreign Direct Investments etc. Besides, it may expedite exports of perishable goods like oranges and apples to Bangladesh.

6. Conclusion

Except for the perceived benefits like cheaper cost of transportation, enhancing trade and promoting regional cooperation, the Committee feels that the MVA does not assure substantial benefits to Bhutan. On the other hand, several negative impacts are foreseeable. They include

undermining of domestic laws, dilution of culture and tradition, deterioration in the quality of environment through pollution and congestion, threats to national security through illegal immigration or movement of people with different backgrounds and intentions, proliferation of malpractices like fronting, smuggling, cross-border marriages, religious conversions, misuse of duty and tax exemption clauses and loss of business opportunities for local passenger/cargo and taxi operators. Besides, our infrastructure is not adequate and will not be ready anytime soon to honour obligations of implementing the MVA.

The Royal Government has neither carried out thorough consultations with various stakeholders nor conducted any impact assessment. Hence, no clear benefits and risks have been identified as demonstrated by different views of key government agencies. Moreover, there are still many uncertainties associated with the MVA.

7. Recommendation

Based on the above observations and discussion, the Committee is of the view that the MVA will not generate significant and tangible benefits to Bhutan. It is rather likely to pose several risks in the immediate and long-term future. The concerns, risks and perceived threats need to be addressed through exhaustive stakeholders consultation, research studies and negotiations. The Committee believes that the opportunity to address them exists owing to Bhutan's special and excellent relationship with India and with Bangladesh and Nepal. The ratification of MVA at this point of time may not only be premature but counter productive. Therefore, the Legislative Committee recommends the National Council not to ratify the MVA in its current form.