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MIGRATION MANAGEMENT
PROJECT

Gender-responsive and
evidence-based labour
migration policies



Migration today is largely linked to the search for a job and better wages. Even if employment is not the primary driver, it usually features in the migration process at some point. In the SADC region, migrant workers are present in agriculture, fishing, mining, construction, food processing, domestic work, caregiving, cleaning, restaurants-hotels, transportation and retail trade. Migrant workers usually concentrate at both ends of the skills ladder. This is the reason why labour migration policies should take into account labour market needs at all skill levels (low skilled, semi-skilled and highly skilled) through periodic and objective labour market analysis and identification of sectoral, occupational and regional labour shortages.

Gender-responsive labour migration policies should include specific measures to counter exploitation, abuse and discrimination of women and men migrant workers in the labour market and at the workplace. They should take into account the differences in socio-cultural roles, needs, opportunities, constraints and vulnerabilities of women and men and guarantee that human rights, including labour rights, are enjoyed equally by women and men migrant workers, and that migration legislation, policies and programmes promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination based on sex.

The main elements of gender-responsive labour migration policies are that rights should be enjoyed by men and women migrant workers respecting the principles of gender equality and non-discrimination. They do not necessarily mean equal treatment in all instances. Promoting gender equality in labour migration policies may include special gender-specific provisions (e.g. preferential treatment or affirmative action to compensate for long-term discrimination, particularly that suffered by women migrant workers not only vis-à-vis men migrant workers, but also between them and women and men national workers).

If discrimination¹ in terms of working conditions (remuneration, working hours, leave entitlements, occupational safety and health, social security protection, etc) is not detected on time and fully addressed, it can create a sentiment of unfairness among national workers due to a possible “race to the bottom approach²” or “social dumping³” effect. In general, the migrant pay gap continues to be very significant in most regions of the world⁴ while having a negative impact

¹ Migrants face “significant discrimination” in job markets (ilo.org)

² The “race to the bottom” refers to a competitive situation where a company, state, or nation attempts to undercut the competition’s prices by sacrificing quality standards or worker safety (often defying regulation), or reducing labor costs.

³ “Social dumping” is a practice of employers to use cheaper labour than is usually available at their site of production.

⁴ ILO: Full report: The migrant pay gap: Understanding wage differences between migrants and nationals (ilo.org)

on the labour market integration and labour protection of all migrant workers and their family members.

Such policies also need to consider the long-term impact of demographic trends (especially ageing and population growth) and include provisions facilitating the recruitment of migrants in search of employment, and promoting the recognition of their qualifications, certificates and diplomas.

UN DESA data suggests that the feminization of migration has reached significant levels in the Southern African region with 47% of all migrants being female (Table 1). In all countries (with the exception of Seychelles) at least 40% of the migrant stock is female. Five countries (Comoros, DRC, Malawi and Tanzania) have more female than male migrants.

Table 1: Breakdown by Sex of Migrant Stock in Southern Africa, 2019

	Male	Female	% Female
Angola	341,719	327,760	49.0
Botswana	62,943	47,653	43.1
Comoros	6,047	6,457	51.6
DRC	463,954	499,879	51.9
Eswatini	16,582	15,728	48.7
Lesotho	3,751	3,177	45.9
Madagascar	19,897	15,037	44.2
Malawi	117,932	129,720	52.4
Mauritius	15,979	12,870	44.6
Mozambique	161,731	172,934	51.7
Namibia	57,938	49,623	46.1
Seychelles	9,049	3,877	30.0
South Africa	2,350,362	1,873,894	44.4
Tanzania	251,424	257,742	50.6
Zambia	86,098	84,151	49.4
Zimbabwe	233,652	177,605	43.2
Total	4,199,058	3,678,107	46.7

Source: UN DESA, International Migrant Stock by Origin and Destination 2019 Update, Tables 2-3.

Since almost half of all migrant workers in the SADC region are women, labour migration policies should be gender-responsive and evidence-based. As such, labour migration policies should ensure coherence with employment, social protection and skills policies, and should be factored in development policies with a significant involvement of labour market institutions in their implementation.

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 (including violence and harassment as well as forced labour). The multiple layers of discrimination and vulnerability can come in the form of:

- *Being women vis-à-vis men:* 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. For example, women are more likely than men to lack access to realistic and accurate information concerning recruitment and the migration process and the economic and social costs and benefits of employment abroad and are, therefore, much more at risk of being deceived by unscrupulous recruitment agents and traffickers.

Stereotyped labour roles for men and women lead to the concentration of female and male migrants in different sectors or occupations which bring specific and different risks and vulnerabilities. Women are typically concentrated in low-paid feminized jobs which are not, or are only partially, covered by labour laws and social protection provisions. Domestic and care work are performed within the private sphere of the home where abuse and poor labour practices are less visible and support of peers largely unavailable. Men are often concentrated in highly hazardous occupations such as construction or fishing, where their vulnerabilities are often unrecognized and unaddressed.

- *Being foreigners vis-à-vis nationals:* A key source of vulnerability of women migrant workers is that their jobs often lack labour and social protection. Additionally, women -because of gender discrimination in access to information, education and support networks- are less likely than male nationals to be aware of the laws and regulations of the destination country and do not have effective means to seek legal redress in case of violation of their rights. As their male counterparts, women migrants frequently have to deal with difficult living and working conditions, increased health risks, lack of access to social services and various forms of abuse, but their situation of relative disadvantage in societies of origin and destination exacerbates their exposure to abuse. With xenophobia and discrimination against migrant workers on the rise, especially in unstable and poor economic times, female migrants tend to be more vulnerable than male national workers, overall;
- *Being dependent compared to autonomous migrants:* Strong dependency on a specific employer is one source of vulnerability for migrants, especially for female migrants, as their dependent status can be used by the employer or by co-workers, not only for general mistreatment, but also for sexual harassment. Migrant workers are sometimes not allowed to change employers or are required to have their visas sponsored by a national. The 'one employer rule' and the visa sponsorship system tend to put migrants almost totally under the control of the employer/ sponsor, which can show to be particularly challenging for women due to their relative weaker power positions. The specific situation of domestic workers brings this dependency situation to its extreme as the workers are sharing with the employer the work and living space, households typically fall outside the mandate of labour inspection and the lines between personal and employment relationships tends to become very blurred. Some employers foster dependency of a worker by isolating her, confiscating her passport, work or residency papers, limiting her contact to the outside world or evoking fear in her that any complaint will result in job loss and/or deportation. Finally, women might face specific barriers when their migration status is linked to consent of a male family member who "signs off" to their migration (and hence restrict their decision power) or when they migrate as accompanying family members and depend from their spouse/father for the renewal of their residence/work permits;
- *Being undocumented or irregular migrants:* Migrants can enter a country irregularly or they can fall into irregularity because they fail to comply with relevant requirements at destination, for example if they lose their regular job. In some cases, restrictive policies introduced by countries of origin on their mobility (eg age bars, consent from spouses, or even pregnancy test prior to departure), leave no or limited legal migration channel open to women and can push many of them into irregular paths, with higher risk of abuse. In some cases national legislation at destination criminalizes any migrants who leave their job, arguably forcing them to stay in exploitative workplaces. Women can be more vulnerable than men to be undocumented or irregular migrants. Those who are in irregular situations in the destination country have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance.

Progress has been made in fostering improved labour migration governance at the SADC level with the adoption of **SADC's Labour Migration Policy Framework** in 2014. In this context, the Ministers of Employment of the Southern African Development Community (SADC) adopted a new **SADC Labour Migration Action Plan (2020-2025)** in March 2020. The SADC Labour Migration Policy Framework endorsed by SADC ELS (2014) and the SADC Labour Migration Action Plan (2020-2025) called for the development of national labour migration policies in all SADC countries.

The Southern Africa Migration Management (SAMM) Project's work will also comprise support to the adoption and implementation of the **COMESA Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence**.

SAMM's work on labour migration policies ensures to promote gender equality and women migrant workers' empowerment by fostering their labour protection and the issue of gender-sensitiveness. It includes enlarging knowledge about the specificities of women's labour migration, the limitations they face, the policy responses needed to ensure labour migration is fair and safe, and addressing the needs of women migrant workers specifically. The ILO produced in 2017 "General practical guidance on promoting coherence among employment, education/training and labour migration policies". The General practical guidance will be piloted in the SADC context.

MAIN SAMM ACTIVITIES:

1. Support to Gender-sensitive Labour Migration Policies' formulation (ongoing work in their completion in Eswatini, Malawi, and South Africa and starting work in their development in Botswana, Comoros, Democratic Republic of Congo, Madagascar and Mozambique) in the implementation of Labour Migration Action Plans (e.g. Lesotho, Namibia and Seychelles), as well as the implementation of Mauritius' Migration and Development policy;
2. Production of the report "Labour Migration Governance in the SADC Region: A Stocktaking";
3. Production of SADC Member States' Labour Migration Country Reviews;
4. Production of the report "Women Migrant Domestic Workers in the SADC region";
5. Production of studies (e.g. Mauritius, Seychelles, and South Africa) on the recognition of migrant workers' contribution to development;
6. Guidance Notes for Countries of Origin and for Countries of Destination on the Formulation and Implementation of Labour Migration Policies and a Labour Migration Policy Development Template;
7. INFORMATION SHEETS - 5 SADC and 1 COMESA Policy Frameworks;
8. Production of a Manual on Admission and Post-Admission Labour Migration Best Practices in Countries of destination (Quotas, Labour Market Needs Assessments, Labour market tests, Catalogues of occupation difficult to cover/Skills Shortlists, Regularization schemes, Temporary migration programmes, etc.).
9. Organisation of a Civil Society Conference on Gender-issues related to labour migration governance in 2023;

THE UN GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

GCM RELATED PARAGRAPHS

Whole-of-government approach. The Global Compact on Safe, Orderly and Regular Migration (GCM) considers that migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government;

Whole-of-society approach. The Global Compact promotes broad multi-stakeholder partnerships to address migration in all its dimensions by including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and other relevant stakeholders in migration governance.

The Global Compact on Safe, Orderly and Regular Migration's **Objective 7 “Address and reduce vulnerabilities in migration”** declares that Member States commit to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with obligations under international law. Member States further commit to uphold the best interests of the child at all times, as a primary consideration in situations where children are concerned, and to apply a gender-responsive approach in addressing vulnerabilities, including in responses to mixed movements.

To realize this commitment, Member States draw from the following actions:

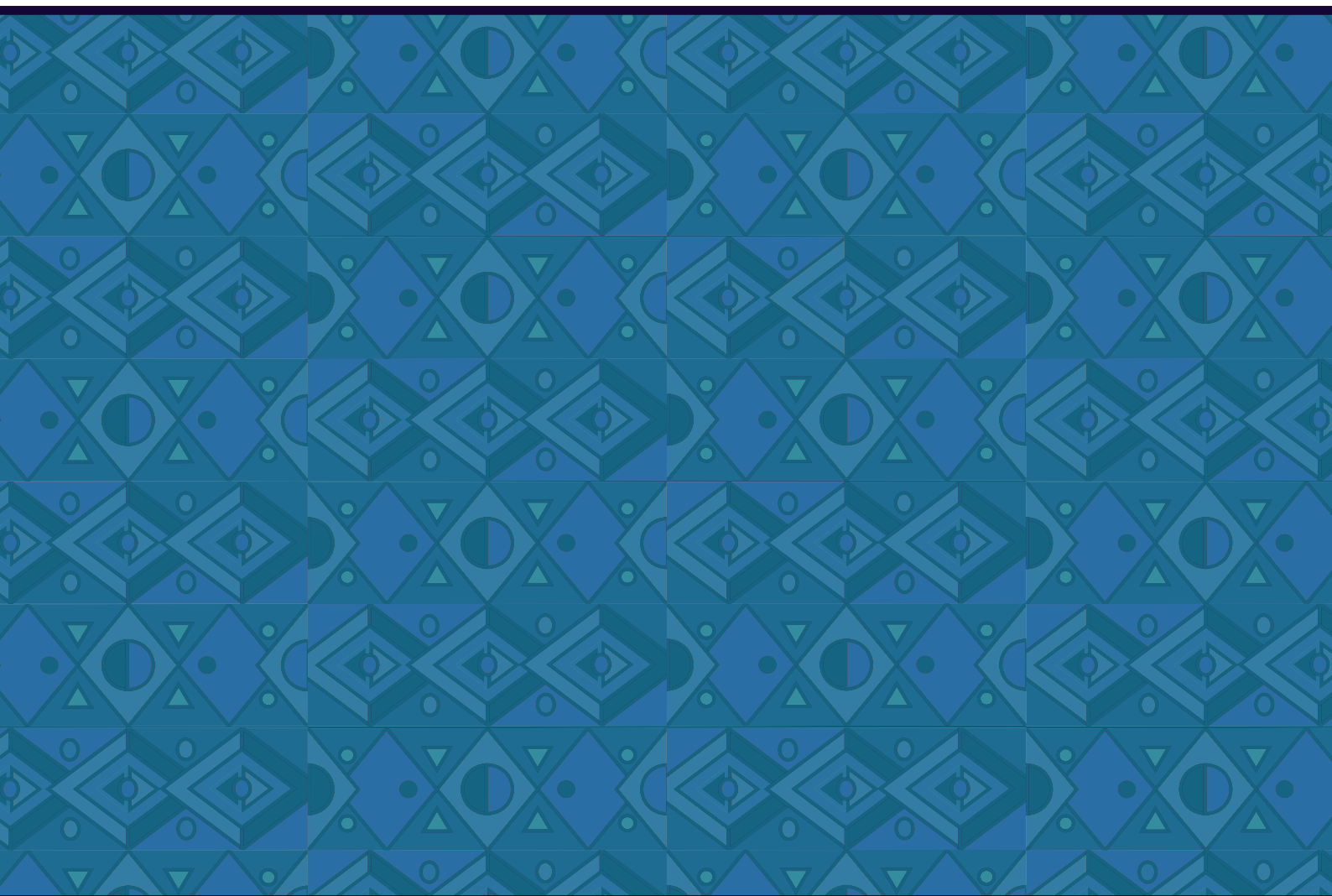
- (a) **Review relevant policies and practices to ensure that they do not create, exacerbate or unintentionally increase vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, as well as age- and child-sensitive approach;**
- (b) **Establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, regardless of their migration status, with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights, in particular in cases related to women at risk, children, especially those unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, including sexual and gender-based violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, workers facing exploitation and abuse, domestic workers, victims of trafficking in persons, and migrants subject to exploitation and abuse in the context of smuggling of migrants;**
- (c) **Develop gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women, girls and boys, which may include assistance, health care, psychological and other counselling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation;**
- (d) **Review relevant existing labour laws and work conditions to identify and effectively address workplace-related vulnerabilities and abuses of migrant workers at all skills levels, including domestic workers, and those working in the informal economy, in cooperation with relevant stakeholders, particularly the private sector;**
- (e) Account for migrant children in national child protection systems by establishing robust procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions, as well as in all migration policies and programmes that impact children, including consular protection policies and services, as well as cross-border cooperation frameworks, in order to ensure that the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities;
- (f) Protect unaccompanied and separated children at all stages of migration through the establishment of specialized procedures for their identification, referral, care and family reunification, and provide access to health-care services, including mental health, education, legal assistance and the right to be heard in administrative and judicial proceedings, including by swiftly appointing a competent and impartial legal guardian, as essential means to address their particular vulnerabilities and discrimination, protect them from all forms of violence and provide access to sustainable solutions that are in their best interests;
- (g) Ensure that migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that all migrants, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory;
- (h) **Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination,**

to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion;

- (i) **Build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case-by-case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option for reducing vulnerabilities, as well as for States to ascertain better knowledge of the resident population;**
- (j) Apply specific support measures to ensure that migrants caught up in situations of crisis in countries of transit and destination have access to consular protection and humanitarian assistance, including by facilitating cross-border and broader international cooperation, as well as by taking migrant populations into account in crisis preparedness, emergency response and post-crisis action;
- (k) Involve local authorities and relevant stakeholders in the identification, referral and assistance of migrants in a situation of vulnerability, including through agreements with national protection bodies, legal aid and service providers, as well as the engagement of mobile response teams, where they exist;
- (l) Develop national policies and programmes to improve national responses that address the needs of migrants in situations of vulnerability, including by taking into consideration relevant recommendations of the Global Migration Group's Principles and Guidelines, supported by Practical Guidance on the Human Rights Protection of Migrants in Vulnerable Situations.

TOOLS PRODUCED BY THE ILO:

1. General practical guidance on promoting coherence among employment, education/training and labour migration policies
2. Practical Guide on Developing Labour Migration Policies;
3. ILO-OECD-World Bank « The Contribution of Labor Mobility to Economic Growth»;
4. ILO-OECD « How immigrants contribute to developing countries' economies»;
5. Addressing governance challenges in a changing labour migration landscape;
6. Decent Work for Migrant Domestic Workers : Moving the Agenda Forward;
7. Circular Migration: A Triple Win or a Dead End?;
8. Information Guide on Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers;
9. ILO's Multilateral Framework on Labour Migration;
10. Labour Migration Policy and Management : Training Modules;
11. Towards a fair deal for migrant workers in the global economy;
12. Sending Workers Abroad ;
13. Employing Foreign Workers ;
14. ILO/IOM/OSCE Handbook on establishing effective Labour Migration Policies ;
15. Labour Migration and Development: Setting a course for the future.



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