

Preliminary Stocktaking Study: Development and Implementation of Bilateral Labour Migration Arrangements by African Union Member States

June 2019

Developed under the Joint ILO-IOM Project
“Towards Comprehensive Global Guidance on Developing and
Implementing Bilateral Labour Migration Arrangements:
Unpacking Key Obstacles to Implementation in the Africa Region”



Acknowledgements

This stocktaking study was produced through the joint ILO-IOM project, “Towards Comprehensive Global Guidance on Developing and Implementing Bilateral Labour Migration Arrangements: Unpacking Key Obstacles to Implementation in the Africa Region,” funded by the Government of Sweden. The project was jointly coordinated by Katerine Landuyt, ILO Labour Migration Specialist, and Vassiliy Yuzhanin, IOM Senior Labour and Human Mobility Facilitation Officer, under the guidance of Michelle Leighton, Chief, ILO Labour Migration Branch and Marina Manke, Head, IOM Labour Mobility and Human Development Division.

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Significant contributions, including valuable comments, advice and feedback were provided on previous drafts by: Ida Dalgaard Steffensen, Samia Kazi-Aoul Chaillou, Jason Theede and Katarina Tomolova-McDonald.

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List of Abbreviations

ANAPEC	<i>Agence Nationale de Promotion de l'Emploi et des Compétences</i> (Moroccan Public Employment Agency)
ANETI	<i>Agence Nationale pour l'Emploi et le Travail Indépendant</i> (Tunisian Public Employment Agency)
AU	African Union
BLA	Bilateral Labour Arrangement
CAPMAS	Central Agency for Public Mobilization and Statistics - Egypt
ECOWAS	Economic Community of West African States
ETF	European Training Foundation
EU	European Union
GCC	Gulf Cooperation Council
GIZ	German Agency: <i>Gesellschaft für Internationale Zusammenarbeit</i>
GFMD	Global Forum for Migration and Development
HLD	High-level dialogue
IGAD	Intergovernmental Authority for Development
ICMW	UN International Convention for the Rights of Migrant Workers and their Families, 1990
ILO	International Labour Organisation
IMIS	Integrated Migration Information System
IOM	International Organization for Migration
LMMIS	Labour Market and Migration Information System
MLSP	Italian Ministry of Labour and Social Policy
MoFA	Egyptian Ministry of Foreign Affairs
MoMM	Egyptian Ministry of Manpower and Migration
MOU	Memorandum of Understanding

OWWA	Overseas Workers Welfare Administration in Philippines
REC	Regional Economic Community
SADC	Southern African Development Community
SDG	Sustainable Development Goals
TVET	Technical Vocational Education and Training
UAE	United Arab Emirates
UN	United Nations

Chapter 1. Introduction

1.1 General introduction

Migration for employment is a long-standing feature of African economies and societies. Though much of it occurs outside of government-driven channels, African governments have increasingly sought to use bilateral labour migration agreements to better regulate migration and enhance its benefits through greater cooperation. For countries of origin seeking to balance the dual objectives of relieving domestic unemployment pressures and protecting their workers abroad, these migration agreements can open up job opportunities for their workers within a well-defined rights framework. For destination countries, increasingly aware of the limits of unilateral migration measures and potentially pressed to meet labour shortages, bilateral agreements offer a flexible means to respond to specific demand and contribute to more regular and orderly migration, while opening the door for broader cooperation.

African experiences with bilateral labour agreements date back more than one hundred years (Harris, 1959), having endured varying levels of interest over the years on the part of governments, employers, and workers. Despite this long experience, results have often fallen short of expectations. Countries of both origin and destination encounter practical difficulties in developing and implementing bilateral labour agreements, effectively limiting their positive impact. At the same time, these agreements do not operate in isolation. They are highly context-dependent and require technical capacity, strong labour market institutions, robust regulatory and legal frameworks, effective implementation and monitoring mechanisms, resources, and a commitment to inter-State cooperation (AECID, 2008; Nonnenmacher, 2008; Segatti, 2016).

The present study seeks to unpack some of the obstacles preventing bilateral labour migration agreements from reaching their full potential in Africa and discuss possible options for the way forward. In doing so, it aims to contribute towards the broader objective of developing global guidance on bilateral labour agreements for governments, social partners, non-government actors, and the broader UN system.

1.2 About this study

This study builds on existing research and guidance on bilateral labour migration agreements (ILO, 2015; ILO, 2017; IOM, 2016; OECD, 2004). The focus in the current study is on bilateral labour migration agreements concluded by selected African countries, covering labour migration both within the region and towards other regions. The study takes stock of emerging trends, challenges, and promising practices in the implementation of these migration agreements. Drawing on country experiences, it analyses the main obstacles and roadblocks for successful implementation thereof and provides preliminary recommendations for achieving greater impact from bilateral labour migration agreements in relation to improving the governance of labour migration and strengthening the protection of migrant workers.

The study examines a broad range of bilateral cooperation tools for labour migration governance, referred to throughout under the umbrella term “bilateral labour migration agreements (BLMAs).”

These commonly take the form of bilateral labour agreements¹ (BLAs) or memoranda of understanding² (MOUs), but can also be in the form of framework agreements or protocols for cooperation.

Other forms of bilateral and multilateral migration agreements which may influence labour migration, including trade agreements and free movement protocols, are discussed where relevant.

The study is structured as follows:

- Chapter Two provides an overview of contemporary characteristics of labour migration in Africa and of migration governance frameworks at global, regional, and national levels of relevance to BLMAs.
- Chapter Three presents an assessment tool for BLMAs, describing key steps and assessment criteria for each phase of the development and implementation cycle, which was tested to the case studies presented in the subsequent chapters.
- Chapters Four and Five present the results of rapid assessments of two migration corridors, Egypt-Italy and, within the broader context of SADC, specifically the Lesotho-South Africa and Zimbabwe-South Africa corridors, providing perspectives from both countries of origin and destination. The case studies examine in detail the concrete challenges encountered in implementing BLMAs and identify elements of good practice.
- Chapter Six reviews experiences from other regions in using technological platforms and applications to promote ethical recruitment of migrant workers, which can be used to support the implementation of BLMAs.
- Chapter Seven summarizes preliminary findings and recommendations based on the case studies and consultations with relevant labour migration stakeholders in Africa.

This study was developed under the joint ILO-IOM project "Towards Global Guidance on Developing and Implementing Bilateral Labour Migration Agreements: Unpacking Obstacles to Implementation in the African Region," funded by the Government of Sweden.

¹ A bilateral labour agreement is an international agreement concluded between two States and governed by international law, which describe in detail the specific responsibilities of, and actions to be taken by, each of the parties, with a view to accomplishing their goals.

² According to the United Nations Treaty Collection web portal (<https://treaties.un.org/>, accessed on 25/05/19), "a memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification." These are usually non-binding. However, in many cases MoUs include provisions which in effect makes them binding for the signatory parties.

Chapter 2. Background and Context

2.1 African labour migration trends and characteristics

Migration dynamics within and from Africa are changing rapidly. According to recent estimates, 36.3 million Africans have migrated internationally, representing a 68 per cent increase since the year 2000 (UN, 2017). While international migrants from Africa are still underrepresented in the world migration population (UN, 2017), net numbers are expected to continue to rise. Demographic pressures, together with imbalances in labour market supply and demand, global income differentials, insecurity, and situations of crisis, including conflict and climate change, constitute key drivers of migration (ILO, 2016, IOM, 2018). At the same time, migration is increasingly facilitated by lowering costs of transportation, greater access to information and communication technologies, and increasing global economic integration (IOM, 2018).

In contrast to global trends, the African labour force is young and growing, and is projected to continue in this direction over the next 40 years (UN, 2015). Although the African economy is also growing, this has not yet translated into significant improvements in the labour market. North Africa has the highest rate of youth unemployment in the world, and women's unemployment is twice as high as men's. In Sub-Saharan Africa, over 72 per cent of workers are in vulnerable forms of employment.³ Informal employment is also pervasive, affecting women in particular (ILO, 2018a). Workers continue to look abroad to access more and better employment opportunities and higher wages, often filling gaps in foreign labour markets left by ageing populations and changing lifestyles and skills profiles.

Africa itself hosts an estimated 13 million international migrant workers in a regular situation, of which 3.9 million are women. The majority of migration for employment in Africa is intra-regional (ILO, 2018b, IOM, 2018). Flows are particularly dense in Western and Southern Africa, where migrant workers are often self-employed or informally-employed (Oucho, 2011; Adepoju, 2011). In addition to temporary and permanent intra-regional migration, circular migration has strong historical roots in the region, with much informal movements for cross-border trading, seasonal agricultural work, as well as nomadic movements, which may go largely uncaptured in migration statistics (Adepoju, 2011; Jonsson, 2009). While a number of sub-regions in Africa are moving towards the implementation of free movement regimes, as described below, barriers remain. Africans continue to need visas to travel to 55% of other African countries (AfDB, 2016),

Migration towards other regions, represents close to half of all African flows (IOM, 2018). It tends to be accessible primarily to relatively better-off and more educated migrants, and has historically been dominated by North African migration towards Europe (Ratha et al, 2011; de Haas, 2018). However, in recent years, extra-continental migration has increased, and with it, routes and destinations have diversified. Arab and Asian countries, as well as North America, Australia and New Zealand have attracted increasing numbers of migrant workers originating from Africa (UN, 2017; UNECA, 2018).

³ The ILO (2018a) defines vulnerable forms of employment as "own-account work and contributing family work" (p.6)

Table 1. Labour market and migration characteristics, Africa

	Africa
Population (millions, 2017)	1,256,268
Labour force (millions, 2017)	404,5
Unemployment rate (2017)	7,9 %
Unemployment rate of foreign born (2016)	10.6%
Vulnerable employment rate (2017)	65,8 %
Number of migrant workers in Africa (millions, 2017)	13,1
Number of female migrant workers in Africa (millions, 2017)	3,9
Migrant workers as a proportion of all workers, Sub-Saharan Africa	2,9 %
Number of emigrants from Africa (millions)	36,3
Emigration rate	2,9 %
Percentage of all international migrants originating from Africa	14,1 %
Remittances Paid	412.3 billion USD

Sources: ILO 2018a, ILO 2018b, OECD, UN 2017, World Bank

Temporary labour migration to Gulf Cooperation Council (GCC) states and other Arab countries from Africa is thought to have grown significantly in recent years.⁴ In contrast to European destination countries, where migrant workers complement national labour forces, GCC states are structurally dependent on foreign labour. Over 80% of jobs in the private sector occupied by non-nationals.⁵ While many low- and semi-skilled jobs continue to be filled by workers from Asian as well as from neighboring Arab countries, GCC states have sought to 'diversify' source countries from other regions (Kapiszewski, 2006). African workers are increasingly found employed in the region in low- and semi-skilled positions in construction, manufacturing, agriculture, food services, retail trade and domestic and care work (IOM, 2018). Although little data disaggregated by country of origin is available, in part because much of these flows occur outside of regulated channels, the West African countries of Nigeria, Ghana, Liberia, Mali, and Sierra Leone have all recorded increased migration

⁴ This is e.g. seen in a recent spike of low and semi-skilled migrant workers going from East Africa towards the GCC countries and temporary work contracts (IOM, 2018; 53)

⁵ <http://gulfmigration.org/percentage-of-non-nationals-in-government-sector-and-in-private-and-other-sectors-in-gcc-countries-national-statistics-latest-year-or-period-available/>

to GCC and Middle Eastern countries. From East Africa, migration from Eritrea, Ethiopia, Kenya and Uganda is also rising towards to GCC states, as well as to Lebanon and Jordan (von Martius, 2017).

The increase in demand for workers in GCC and Middle East has also contributed to the feminization of African migration flows. As in many high-income countries, there has been a surge in demand for workers in the traditionally female sectors of domestic work and other forms of care work, and GCC countries have in response developed substantial care-specific temporary worker programmes (King-Dejardin, 2018). Between 2008 and 2010, Ethiopia alone recorded 37,000 female domestic workers in a regular situation in Lebanon, Kuwait, Saudi Arabia, and the UAE, with significantly higher numbers estimated to be in an irregular situation (ILO, 2013). In Lebanon, migrant domestic workers from African countries originate mainly from Kenya, Togo and Ghana (ILO, 2016a). Domestic work is currently the main form of employment for women migrant workers in GCC countries, and is only likely to continue to grow in line with changing family structures, as well as changing attitudes and policies on care work, and increasing labour force participation of women from high-income countries (ILO 2018c; King-Dejardin 2018).

Recent African migration trends imply new development opportunities for migrant workers as well as for countries of origin and destination, but also a number of challenges for the governance and protection aspects of labour migration. First, private recruitment agencies and other labour intermediaries, including informal recruiters operating outside of legal and regulatory frameworks, now playing a major role in matching labour supply and demand internationally (ILO, 2016c; von Martius, 2017). Reports have multiplied of unscrupulous recruiters charging exorbitant fees to migrants and engaging in deceptive practices, leading at times to trafficking in persons for the purpose of forced labour (ITUC, 2018; Kakande, 2015). Women from low-income countries with low levels of education are particularly susceptible to deception and abuse, as they have less access to services and accurate information on the migration process, including their rights (ILO 2016b).

Second, as described above, African migrant workers are primarily concentrated in low- and semi-skilled positions, often in poorly-regulated sectors with limited access to information, support systems or communities and trade union representation. This leads to difficulties of addressing breaches of rights, ensuring knowledge about rights, and complicates appropriate support, oversight, and control of working conditions. In many countries, national labour legislation does not apply to agricultural or domestic workers, or to workers in export processing zones, all occupations where migrant workers are concentrated. Where legislation does apply, mechanisms for enforcement may be inadequate or incomplete (ILO, 2016). Domestic and other home-based care workers are particularly isolated in under-valued and under-paid jobs, cumulating disadvantages based on the low status associated with their profession, their gender, race, ethnicity or nationality (King-Dejardin, 2018).

Third, opportunities for migration outside of the region, particularly for low-skilled workers are increasingly limited to temporary schemes, including in countries which once welcomed permanent migration. In addition to paying high recruitment costs, temporary migrants may face inequality of

treatment, particularly in relation to social protection, trade union rights, wages and working conditions (ILO, 2017).

2.2 Brief history and recent developments of BLMAs in Africa

Bilateral labour migration agreements first came into wide use on the African continent in the early 1960s, on the impetus of destination countries, mainly in Western Europe, seeking to meet large-scale demand for low and semi-skilled workers. During this period, a number of African countries ratified the ILO Migration for Employment Convention (Revised), 1949 (No.97), which had been ratified by many Western European destination countries in the 1950s.

These "first generation" migration agreements usually took the form of legally-binding bilateral labour agreements (BLAs), intended to regulate temporary or circular migration of workers in sectors such as manufacturing, construction, agriculture, and in the case of South Africa, mining. Agreements with European countries were implemented primarily through government-to-government cooperation via public employment services. They had few objectives beyond meeting labour demand, and were indexed mainly on unemployment rates in destination countries (Martin, 2008; Martin, 2011; Stephenson and Hufbauer 2010; Wickramasekara, 2015).

Typical of the BLAs with Europe are those signed between France and Morocco and Tunisia (1963) and Algeria (1964). Morocco signed similar agreements with former West Germany (1963), Belgium (1964) and the Netherlands (1969) (Jolivel, 2014). While migration between Maghreb countries and Europe, in particular to France, was already established prior to 1963, it intensified substantially during the decade following the conclusion of agreements, with several hundred thousand workers emigrating under various temporary foreign worker programmes (Fadlollah, 1994).

The first generation agreements between European and African countries ostensibly met their primary objective of responding to labour demand for low-skilled workers, yet they also generated a series of unintended effects, ultimately leading to their abandonment in the 1970s. Research on temporary foreign worker programmes in Europe and the United States indicate that the agreements contributed to the emergence of "immigrant sectors" in destination country economies, often marked by poorer working conditions than those enjoyed by nationals, and various forms of abuse and exploitation (Ruhs, 2002; Cross, 1983). In some cases, migrant workers emigrating under the BLAs had fewer rights than those admitted under the general migration admissions regime (Monterisi, 2014). Another unintended outcome of temporary migration programmes under bilateral labour agreements was the significant amount of long-term migration they generated, due in part to growing structural dependency of employers on migrant labour as well as changing expectations of migrants themselves (Martin, 2011). Finally, although BLAs regulated migration flows to some degree, they also gave rise to parallel irregular migration flows, or had no noticeable effect in reducing them, as employers and migrants sought to bypass regulations (Ruhs, 2002; Plewa and Miller, 2005).

The "golden age" of bilateral labour agreements was largely brought to a halt from 1974 with the start of the global economic recession and changing public opinion on migration. The period that followed was marked by tightening border controls and restrictive admissions policies, leaving few regular migration channels open for low skilled workers in particular (Wickramasekara, 2015).

Within Africa, South Africa signed agreements with Portugal (1964) to regulate migration of Mozambican mine workers, at that time still a colony of Portugal. Agreements were also signed between South Africa and Botswana, Lesotho and Swaziland (1963), which were updated in 1973 and 1975 (Bamu, 2014), and with Malawi (1967). These agreements sought to meet growing demand for workers primarily in the mining industry, through tight regulation of migrants' entry for temporary contract work, usually limited to a maximum period of 24 months to avoid long-term settlement (Crush, 1997; Siddique, 2004).

Despite their checkered past, BLMAs have experienced somewhat of a revival over the past two decades. Though these "second generation" migration agreements vary widely in their objectives, scope, and level of formality, those concerning African countries can be roughly categorized into three main types: (1) framework cooperation agreements with Western European countries and among SADC countries, (2) BLAs or MOUs with Arab countries covering low-skilled workers, and (3) sectoral agreements to meet structural needs for highly skilled workers, both between African countries and with countries of other regions.

Framework cooperation agreements were pioneered by France and Spain with North and Sub-Saharan African countries starting in the mid-2000s (Panizzon, 2013). In addition to providing for labour market access for migrant workers, the agreements also address a range of other issues, including irregular migration, readmission, return, technical cooperation and development. Since 2005, the Governments of Spain and France have concluded at least 9 such migration agreements respectively with North and West African countries. Portugal and Italy have entered into similar agreements with African countries (ILO 2016; Monterisi, 2014).

These types of agreements have been supported by the EU, seeking to integrate legal migration opportunities into EU external policies with third countries. Starting around 2005, the European Commission began promoting such agreements as "mobility partnerships" between EU and third countries, under which third countries would commit to greater cooperation to fight irregular migration in exchange for improved labour market access for their nationals as well as financial and technical support for migration management. These mobility partnerships also promote circular migration, in particular for highly-skilled migrants, seasonal workers, and trainees (EC, 2007).

European destination countries' motivations for entering into these types of agreements have been interpreted as both a corrective measure to redress a migration policy bias towards highly skilled migration and as a means to limit or dissuade irregular migration. In contrast to earlier generation bilateral agreements, they appear to have been designed more in response to situations in origin countries, such as unemployment and low wages, rather than in response to destination countries' labour shortages (Panizzon, 2013). These agreements have been concluded with primary countries

of origin for migrants in an irregular situation, often in tandem with readmission agreements (Jolivel, 2014). However, their effectiveness in reducing irregular migration, either by offering potential migrants an alternative, regular channel for emigrating or by inducing origin countries to cooperate in exchange for access to labour markets, has been questioned (Adepoju et al, 2010; Battistella and Khadria, 2011; Amin and Mattoo 2006).

In a second recent development, a number of African countries have concluded or begun negotiating bilateral agreements and MOUs with GCC and Middle Eastern countries. These are not the first agreements between African and Arab countries; in the late 1970s and early 1980s United Arab Emirates (UAE) and Qatar pursued "pro-Arab" labour policies, entering into BLAs with Tunisia, Morocco and Egypt and Sudan to recruit workers, though few of these were actually implemented (Kapiszewski, 2006). More recently, Kenya has concluded agreements with Qatar (2013), Saudi Arabia (2017) and UAE (2018). Similarly, Ethiopia has concluded migration agreements with Qatar, Saudi Arabia and Jordan, and is in the process of negotiating agreements with four other GCC countries. Madagascar and Uganda are also in negotiations with GCC countries to conclude bilateral labour agreements.⁶

While further research is needed to establish how each of the respective agreements came about, in breaking with past practices, it appears that a number of these were initiated by the origin country rather than by the destination country. Concerns over lack of protection under national labour legislation, recruitment malpractices, and the high level of dependency on individual employers inherent to the *kafala* sponsorship system⁷ have incited some origin countries to actively seek out bilateral migration agreements in order to address protection gaps, both through dedicated domestic worker agreements or agreements for all categories of workers.

Finally, BLMAs have been used by African countries to fill structural shortages in specific sectors, particularly of highly-skilled workers. The Seychelles, a small island nation with limited capacity to train sufficient numbers of highly-skilled workers, has entered into such cooperation agreements with Mauritius, Kenya, Cuba and China to recruit workers for the public health and education sectors. Uganda has also concluded agreements with South Sudan for the secondment of civil servants and for professionals in the oil sector with Tanzania.

2.3 Lessons from the past and limitations of BLMAs

The history of BLMAs both in Africa and elsewhere indicates that on balance, the social, economic and political considerations of destination countries tend to weigh more heavily than those of origin

⁶ Based on information collected from representatives of Ministries of Labour during the joint ILO-IOM *Expert Consultative Workshop on Assessment of Bilateral Labour Migration Arrangements* Addis Ababa, Ethiopia, 22 November 2018.

⁷ The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has made a number of relevant observations to GCC governments in this regard on ILO Forced Labour Convention, 1930 (No. 29) and Discrimination Convention, 1958 (No. 111). See for example, observations to Saudi Arabia on Convention No. 111 adopted n 2016:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P1110_COUNTRY_NAME,P11110_COMMENT_YEAR:3302413,103208,Saudi%20Arabia,2016

countries in the design and implementation of migration agreements (Nonnemacher, 2008; Adepoju et al, 2010).

At the same time, BLMAs have been underutilized as tools to advance the protection of migrant workers' rights (Wickramasekara, 2015; Cholewinski, 2015). Key labour rights are often insufficiently addressed in provisions of agreements, at times resulting in agreements extending less rights than those contained in ratified international conventions or even less than those contained in national legislation. An assessment of 32 agreements in Africa (Monterisi, 2014) identified a number of deficiencies in relation to coverage of rights issues: few made reference to international normative frameworks guiding agreements, most failed to address social dialogue⁸, wage protection, social security, and mechanisms for complaints and access to justice; none of the migration agreements addressed gender issues or migrants in vulnerable situations.

These omissions may in part be a reflection of the asymmetrical power relations that often exists between origin and destination countries (Cholewinski, 2015; Wickramasekara, 2012). And, as bilateral labour migration agreements are 'single issue' agreements, origin countries have few bargaining chips to obtain more favourable conditions (Saez et al, 2013: 54). In contrast, destination countries may have multiple sources of labour and relatively low initial interest in signing bilateral agreements. Origin countries may therefore accept lower labour standards within agreements or may avoid broaching 'sensitive' protection issues in negotiations to avoid losing the possibility of privileged labour market access (Wickramasekara, 2015). At the same time, even well-drafted migration agreements may not be sufficient if major protection gaps or deficiencies exist in national legislation (ILO, 2016)⁹.

Finally, the net development impact of bilateral labour migration agreements remains somewhat unclear. Though they can in theory have positive impacts through skills upgrading, remittances, technology transfer and human capital, they can also have a negative impact in the form of brain drain in countries of origin (Saez et al., 2013; OSCE et al, 2006). Even when functioning well, bilateral migration agreements cover just a small portion of overall labour migration flows, and are unlikely to fully resolve structural imbalances in labour supply and demand (AECID, 2008).

2.4 Links between BLMAs and the international normative framework

Bilateral labour migration agreements can be considered 'good practice' from a rights perspective on the condition that they are grounded in the principles contained in the international normative

⁸ Social dialogue is defined by the ILO as including "all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy" *Source:* [%20%20a](https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm) Accessed on 15/01/2019.

⁹ According to the ILO General Survey on migrant worker instruments (2016: xx), "... the ITUC indicated that bilateral agreements often failed to fully protect migrant workers. For example, the ITUC mentioned that the proliferation of bilateral agreements obscured the more pressing need of ensuring that migrant workers are covered by effective national labour legislation in the country of destination, such as the right to freedom of association,"

framework for the protection of migrant workers (ILO, 2016). These normative foundations provide legitimacy to agreements and establish minimum standards for rights to be enjoyed by all migrant workers. Ideally, governments can use these standards as a starting point from which to develop bilateral migration agreements extending more favourable rights than those embodied in the standards. In this sense, bilateral migration agreements can be considered an integral element of the normative framework (Cholewinski, 2015:4). At the same time, international human rights and labour standards do not depend on bilateral labour migration agreement to come into force, as they create international obligations for those countries that have ratified them. Countries prescribing to these standards are held to the obligation to respect its international commitments unilaterally regardless of whether they are referred to in bilateral migration agreements.

As further described in chapter three, international human and labour rights instruments provide substantial guidance to governments and partners in drafting bilateral labour migration agreements. The broad range of ILO instruments specifically relevant for migrant workers¹⁰ helps to ensure that there are no protection gaps in relation to labour rights pertaining to migrant workers, whether or not they are in a regular situation (ILO, 2016a, para. 72). The ILO Model Agreement on Temporary and Permanent Migration for Employment, Annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No.86), now nearly seventy years old, continues to be used widely as a blueprint for developing and assessing bilateral migration agreements (ILO, 2004), despite significant changes in the context in which labour migration occurs since it was first developed (Wickramasekara, 2015).

¹⁰ Including the ILO fundamental Conventions as well as Conventions on social security, private employment agencies, protection of wages, labour inspection and domestic workers See <http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::>

Box 1. Bilateral labour arrangements in international migrant worker conventions

All three migrant worker specific conventions are premised on the expectation of cooperation between countries of origin and destination, and make explicit reference to the use of bilateral labour arrangements to apply the principles they embody:

- ILO Migration for Employment Convention (Revised), 1949 (No.97), Art. 10: "In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention."
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), Art. 15: "This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application."
- (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICMW), Preamble: "[Recognizes] also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,"

Among African countries, the ratification rate of the ILO fundamental Conventions¹¹ is quite high providing a sound basis for building bilateral labour migration agreements, as is ratification of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). Ratification of the Private Employment Agencies Convention, 1997 (No. 181) and the Domestic Workers Convention, 2011 (No. 189) among African countries is quite low, yet they can still serve as useful references for elaborating the texts of bilateral migration agreements.

Ratification of the migrant worker specific conventions across the region has been uneven, though more than half of all countries have ratified at least one of the three. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990) has obtained higher ratification rate than ILO migrant worker instruments; many of the provisions in the ILO instruments are included or expanded on in the ICMW. At the same time, ratification of the ICMW is quite low for major destination countries outside of Africa, whereas ratifications of the ILO migrant worker instruments are higher.

2.5 BLMAs in the context of global migration governance

Today, bilateral labour migration agreements coexist with a multitude of global and regional frameworks for migration, all based on the underlying premise that international cooperation is

¹¹ The eight fundamental Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ; Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ; Forced Labour Convention, 1930 (No. 29) ; Abolition of Forced Labour Convention, 1957 (No. 105) ; Minimum Age Convention, 1973 (No. 138) ; Worst Forms of Child Labour Convention, 1999 (No. 182) ; Equal Remuneration Convention, 1951 (No. 100) ; Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

needed to govern migration. Yet until the mid-2000s, multilateral cooperation on migration was relatively rare. Still today, it tends to take the form of informal discussion and consultation, suggesting a certain reluctance among governments to pursue hard commitments on migration multilaterally (Martin, 2007; Betts and Kainz 2017). In fact, the persistent popularity of bilateral labour migration agreements has been interpreted as a response to the lack of coherent frameworks for governing migration at the multilateral level (Betts, 2008). Nonetheless, it is clear that multilateral discussions on migration have evolved rapidly in a very short period of time.

The first United Nations High Level Dialogue (HLD) on International Migration and Development, held in 2006, marked a milestone on the path towards multilateral cooperation on migration. Since then multilateral fora have proliferated, both within and outside the UN system. During the 2006 HLD, participants recognised the usefulness of bilateral agreements for labour migration, indicating that they should be complemented by initiatives at the global level (UN, 2006). Subsequent multilateral migration fora have resulted in similar recommendations encouraging states to pursue bilateral migration agreements for migration.

The Global Forum on Migration and Development (GFMD) created in 2007 as an outcome of the HLD, set in motion a government-led process intended to build up mutual trust and consensus through voluntary, non-binding consultation and consolidation of best practices, including for the recruitment, admission, integration and return of migrant workers. The GFMD directly addressed bilateral migration agreements in its 2011 thematic meeting on labour mobility, generating a number of case studies and good practices. Through its outcomes and recommendations, the GFMD contributes to building intergovernmental consensus around the need for multilateral dialogue on migration (Betts and Kainz, 2007).

The second High-level Dialogue on International Migration and Development, held in 2013, expanded the scope of multilateral discussions beyond migration and development linkages to include broader issues such as the protection of migrants' human rights, reducing the costs of labour migration, and enhancing migration partnerships and cooperation. In the text of the final declaration adopted by the General Assembly, Member States were encouraged to "cooperate on mobility programmes that facilitate safe, orderly and regular migration, including through labour mobility."

Two years later, the UN General Assembly adopted the 2030 Agenda for Sustainable Development. In contrast to its predecessor, the Millennium Development Goals, in which migration was wholly absent, the 2030 Agenda directly or indirectly addresses migration through several of its Sustainable Development Goals (SDGs), indicating that migration has been firmly placed on the global governance agenda. Bilateral labour migration agreements can potentially contribute to reaching several targets of the SDGs, as summarised in Box 2 below.

Finally, the most recent multilateral migration initiative, the Global Compact for Safe, Orderly and Regular Migration (2018)¹², sets out a range of principles and actionable commitments among UN Member States around 23 objectives, on good governance of migration. The Global Compact for Migration encourages States to conclude bilateral rights-based labour migration agreements as a means to open pathways for regular migration.

Box 2. Bilateral labour migration arrangements' contribution to reaching global migration governance objectives

Specific targets of the Sustainable Development Goals which bilateral labour arrangements can contribute to include:

- Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- Target 8.8: Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
- Target 10.7: Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.

The Global Compact for Safe, Orderly, and Regular Migration, refers to bilateral labour agreements under the actions proposed to achieve its fifth objective, to "enhance availability and flexibility of pathways for regular migration":

“Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders, drawing on relevant ILO standards, guidelines and principles, in compliance with international human rights

2.6 Regional and intra-regional migration governance frameworks

At the continental level, the African Union and its regional economic communities (REC) have focused on advancing intraregional forms of migration governance, with the long-term objective of implementing free movement regimes, considered to be a cornerstone of regional economic integration and development (AU, 2018). In comparison to bilateral labour migration agreements, regional frameworks tend to have the advantage of ensuring a more level playing field between negotiating parties and avoiding "unhealthy competition" among origin countries (Cholewinski, 2015). They may also be more efficient, as a smaller group of countries with similar levels of development can more easily find common ground for cooperation (Nonnenmacher, 2008).

¹² The Global Compact for Migration: <https://www.iom.int/global-compact-migration> (last accessed on 25.01.2019)

Free movement within African RECs is usually defined as the right to free entry, residence, and establishment in Member States. To date, the most significant progress has been made on removing barriers to entry, in particular within ECOWAS and the EAC, through measures such as removal of visa requirements and reducing border formalities (Oucho, 2015, AU, 2018). In SADC, a Protocol on the Free Movement of Persons was adopted in 2005, though it is not yet in force, with only seven of its 16 member states having ratified the Protocol to date. SADC member states have thus continued to make bilateral migration agreements for visa-free entry between neighbouring countries, described in further detail in Chapter Five of this study. Similarly, countries within IGAD have entered into bilateral migration agreements to establish free movement by waiving visa requirements, as there is not yet a regional free movement protocol.

Although free movement is recognized as a priority for regional integration by all RECs on the continent, a number of political and practical obstacles remain. The level of political will is uneven, and much is left to do to harmonize or coordinate key areas such as qualification recognition and social security systems. In some cases, national legislative and regulatory frameworks also need to be revised to fully align with free movement principles (Oucho, 2015; AU, 2018).

The African Union continues to be at the vanguard of the push towards free movement, having adopted in January 2018 the landmark African Union Free Movement Protocol,¹³ and road map for implementation, which does not prevent member states from continuing to advance on free movement at the sub-regional level. The AU has also developed a number of migration policy frameworks aligned with international human rights and labour standards, providing guidance to its member states. Though they contain little specific guidance on the design and implementation of bilateral labour migration agreements (Segatti, 2016), several of the priority issues identified within these frameworks intersect with issues that can be addressed through bilateral labour migration agreements, including advancing regional integration, developing skills recognition frameworks, opening legal avenues for labour migration, and facilitating remittance transfers.

The Migration Policy Framework for Africa, adopted by the African Union in 2006, places particular emphasis on labour migration and the protection of migrants' rights. In its revised version, the AU Migration Policy Framework (2018) recommends a number of strategies in relation to bilateral labour migration agreements under the theme of 'labour migration and education':

- Align national laws, policies and regulations; bilateral and multilateral agreements; and voluntary codes of conduct with the ILO General principles and operational guidelines for fair recruitment (2.1.iv)
- Promote the standardisation of bilateral labour agreements to ensure the protection of migrant workers and facilitate remittance transfers (2.1.xi)
- Ensure coherence at the national level between bilateral and regional agreements pertaining to the movement of workers, national labour market policies, migration policies and other relevant policy areas, such as health or agriculture, in line with international human rights law, norms and standards (2.1.xii)

¹³ Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, Adopted by the 30th Ordinary Session of the AU Summit, January 29th 2018 in Addis Ababa, Ethiopia

Finally, Regional Consultative Processes (RCPs) have increasingly been utilised to address issues of labour mobility. Initially established in the mid-1980s as fora to informally discuss issues related to labour migration, cooperation, capacity building and information exchange, RCPs' agendas have progressively evolved towards broader approaches to migration governance (Nonnenmacher, 2008). The East African states of the IGAD region have held regional dialogue on labour migration practices (2008) as have COMESA states (2013). Both RCPs included labour migration among their points of discussion. The SADC-level RCP, known as the Migration Dialogue for Southern Africa (MIDSA), was initiated in 2000 in the aim of facilitating cooperation and consensus building on a range of migration issues. Under its auspices, a SADC Labour Migration Action Plan 2016-2019 was developed with support from ILO and IOM. The Action Plan has among its expected outputs the establishment and implementation of mechanisms for benchmarking and monitoring bilateral labour agreements between SADC member states.

RCPs have also been used as inter-regional fora for cooperation on migration issues, as was the case of the Rabat Process summit (2006) and Tripoli process (2007) which initiated EU-Africa dialogue on migration in particular across the Mediterranean (Betts, 2008), paving the way for EU Mobility partnerships and implementation of bilateral migration agreements such as the agreement between Spain and Morocco, (described in Section 2.2 above).

2.7 Other forms of bilateral and multilateral cooperation

2.7.1 Bilateral and multilateral trade agreements

International trade agreements have the potential to significantly impact the mobility of workers across borders, either directly, through provisions addressing the movement of persons, or indirectly, by increasing the density of economic relations and information flows between countries of origin and destination. The 1994 General Agreement on Trade and Services (GATS), under the auspices of the WTO, includes rules known as Mode IV on the temporary movement of people among member states for the purpose of providing a service. As the majority of African states¹⁴ are members of the WTO, they are bound to commitments under GATS. In practice however, rules under Mode IV have been applied to limited categories of temporary migrants. These are intra-company transferees considered to be “essential personnel” such as executives and technical specialists who are thus linked to an existing commercial presence in the destination country, and short-term business visitors, usually limited to 90 days. Additional restrictions can also be applied by countries, including non-renewable visas, quotas, and labour market testing, which can effectively limit further temporary migration opportunities in practice.¹⁵

Developing countries in particular have sought to extend coverage under Mode IV to other categories of workers not linked to a commercial presence, such as contractual service suppliers and independent professionals, and to remove additional restrictions. Some countries have also

¹⁴ With the exception of Eritrea, all states on the African continent are either members or hold observer status at the WTO.

¹⁵ https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm

suggested extending coverage to lower skilled workers (WTO, 2005). To date however, the lifting of barriers to the movement of people under GATS continues to be limited, particularly in comparison to the parallel lifting of barriers on the movement of goods and capital. In this context, bilateral labour agreements have been promoted as an alternative or complement to multilateral and regional agreements on trade in services in order to speed up the liberalization of the movement of labour (Saez et al, 2013).

Within Africa, a number of free trade migration agreements exist which could also potentially impact the movement of workers. The COMESA-EAC-SADC Tripartite Free Trade Area, intended to bring together 27 member states, was launched in June 2015, and contains an annex on the free movement of business persons within the tripartite region. The agreement continues to be under negotiations, with discussions focussed primarily on the removal of tariffs (Luke and Mabuza, 2015). At the continental level, also in 2015, negotiations were launched for the Continental Free Trade Area. Negotiations, though still in the early stages, are expected to cover trade in services, which may bring about discussions on the movement of workers. However, African countries tend to have relatively restrictive policies on trade in services (Luke and Sodipo, 2015).

2.7.2 Skills recognition frameworks

Mechanisms for recognizing the skills and qualifications of migrants – whether national, bilateral, or regional/multilateral - are critical to making bilateral labour migration agreements operationally meaningful. Effectively matching workers to jobs is often a key objective of these migration agreements - without such mechanisms, skills acquired abroad are not easily transferrable or “portable”¹⁶ to other contexts. As a result, migrants can find themselves placed in jobs which underutilize or are ill-matched to their skills, leading to further mismatch (Branka, 2016).

While skills recognition processes are in the early stages of development in main destination countries, at the continental level, improving the recognition of skills and qualifications, including quality assurance mechanisms, has been a recent focus of the African Union, particularly at the tertiary education level. Among the most recent initiatives are:

- The AU Free Movement Protocol (2018) contains an article on mutual recognition of qualifications encouraging states to mutually recognize academic, professional and technical qualifications and stipulates that states will establish a continental qualifications framework to promote movement of persons (Article 18).
- The AU Assembly Declaration on Migration adopted at its 25th Ordinary Session in Johannesburg in June 2015 calls for the establishment of “a harmonised mechanism to ensure that tertiary education in Africa, is compatible, comparable, with acceptability and enable recognition of credentials that will facilitate transferability of knowledge, skills and expertise”;

¹⁶ According to the ILO (2007), the portability of skills combines the possibility to use employable competences in different jobs, occupations and industries; and the certification and recognition of competences within national and international labour markets.

- The Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, known as the Addis Ababa Convention (2014), which has among its objectives to encourage greater mobility of students and workers, includes provisions for the recognition of qualifications by accredited tertiary institutions for the purpose of employment;
- The Continental Education Strategy for Africa 2016–2025 has among its action points to set up national qualifications frameworks (NQFs) and regional qualifications frameworks (RQFs) to facilitate mobility as well as means to acquire skills and competencies.

At the sub-regional level, a number of RECs have promoted mutual recognition mechanisms to facilitate the movement of students and workers in the context of progressive implementation of free movement protocols. SADC has drafted a Regional Qualifications Framework (SADCQF), which provides a benchmark for Member States to develop and align their national frameworks with regional descriptors and quality assurance guidelines. For its part, the East African Community (EAC) has included the promotion of mutual recognition of qualifications within its Common Market Protocol (2010) as a means to facilitate free movement of persons and labour. To date, mutual recognition agreements exist for three professions in the EAC (ILO, 2017). Finally, ECOWAS adopted in 2003 a Convention on the Recognition and Equivalence of Degrees, Diplomas, Certificates and other Qualifications in Member States. Faced with implementation difficulties, mainly due to language barriers and to variations in education systems, ECOWAS has launched a series of technical meetings since 2011 intended to identify recommendations for the way forward, with a special focus on harmonizing technical and vocation education and training (TVET).

2.7.3 Social security agreements

As described above, few bilateral labour migration agreements in Africa contain provisions to ensure social security coverage of migrant workers. Without these, migrants can find themselves partially or wholly prevented from enjoying their rights, as access to national social security schemes may be restricted, in particular on the basis of territoriality or nationality. Migrant workers may thus lose coverage in their home country while they are working abroad, and may not be able to access coverage in the destination country due to restrictions based on nationality or migration status. Temporary and seasonal migrant workers as well as workers in poorly regulated sectors such as domestic work are particularly likely to face obstacles in accessing social security rights, in particular long-term rights such as pensions, as they can face difficulties in cumulating sufficient periods of duration of employment and residence.

Social security agreements between origin and destination countries providing for equality of treatment and portability of benefits, as well as maintenance of acquired rights and aggregation of insurance periods, among others, can go some way in extending rights to migrant workers, though these agreements are limited to formal sector workers in a regular situation (Van Panhuys et al). Several such agreements exist between African and European countries, though a number are outdated or obsolete. Morocco has been particularly successful in negotiating bilateral social security agreements with destination countries, having concluded more than 18 agreements. However, gaps in geographic coverage of agreements persist, as a number of major destination countries still do not have agreements with North African countries, including Italy and the United Kingdom. Furthermore, existing agreements frequently exclude self-employed and seasonal

workers, and migrant workers are often unaware of their rights and the means to accessing them. (ILO, 2017a). There are also a number of bilateral social security agreements in effect between West African countries. No such social security agreements exist to date between African and GCC or Arab states.

At the multilateral level, some African RECs have made progress, in particular ECOWAS, the EAC, and SADC (Olivier, 2018). Compared to bilateral agreements, multilateral agreements offer the possibility of greater uniformity in the treatment of migrant workers from different countries of origin residing in a single country of destination (Kulke, 2006), and can ease bureaucratic burdens through the establishment of common administrative procedures (OSCE, 2006).

2.7.4 Trade union cooperation

Organizing migrant workers, in particular those in temporary or circular migration programmes, can be particularly challenging for trade unions. Through bilateral cooperation, trade unions in origin and destination countries have sought to broaden their impact through organizing, information exchange, and support services to migrants. Trade unions in South Africa and Zimbabwe have cooperated to this end (ILO, 2016). The ILO ACTRAV Model Trade Union Agreement on Migrant Workers' Rights has been used as a template to formalize this type of cooperation, on the basis of principles of trade union solidarity, social justice, equality of treatment and opportunity, and gender equality.¹⁷

Trade unions in the region are also increasingly involved in international cooperation networks on migration, such as *Reseau Syndical Migrations Meditteraneennes – Subsahariennes* (RSMMS), created in 2014 by unions from North Africa, Sub-Saharan Africa, and the European Union to promote the rights of migrants in the Mediterranean area and African continent

2.8 Unilateral approaches

Governments in Africa are keenly aware that bilateral migration agreements constitute just one means for improving the governance of labour migration and protection of their workers abroad, and have continued to pursue unilateral strategies in parallel. Two emerging trends can be highlighted in this regard. First, African countries have increasingly sought to develop national labour migration policies to establish a coherent framework for action and strategic vision. Recent examples include Nigeria (2014), Sierra Leone (2018), Lesotho (2018) and The Seychelles (2018).

Second, conscious that many situations of migrant worker exploitation have their origins in faulty recruitment processes, a number of African governments have placed a high priority on better regulating the recruitment of migrant workers and improving recruitment practices. Countries such as Burkina Faso, Ethiopia, Ghana, Uganda and Kenya have recently introduced stricter regulations for private recruitment agencies (PRAs) or binding recruitment guidelines. These include introducing licensing requirements and mandatory pre-departure training programmes, and imposing minimum age limits for the recruitment of women as migrant domestic workers (von Martius, 2017). In some

¹⁷ http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=61

countries, the private recruitment sector has adopted voluntary codes of conduct, such as the Charter for South African PRAs of the South African Confederation of Associations for the Private Employment Sector. Countries have also experimented with fixing a unilateral minimum wage for their nationals employed abroad, prohibiting recruitment agencies to employ workers at a lower wage in the destination country (ILO, 2014b).

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Chapter 3. Assessment tool for bilateral labour migration agreements

3.1 Introduction¹⁸

The present tool is intended to a concrete contribution to the development of global guidance to govern labour migration through BLMAs and other types of agreements as a tangible step towards effective implementation of the GCM and targets 8.8 and 10.7 of the SDGs.

At an operational level, the objective of the assessment tool is to support governments, RECs, associated Member States and partners, including workers' and employers' organizations, in improving the effectiveness of BLMAs, to the benefit of both countries of origin and destination, and migrant workers themselves. The tool will also assist governments to be more aware of the existing gaps and challenges in the design and implementation of BLMAs and will allow them to identify and implement solutions to overcome these challenges.

Assessment in the context of this tool refers to the process of collecting information from different sources on different phases of the BLMA cycle and analysing their quality and effectiveness based on international standards and good practices. The intention is also to identify gaps and challenges, thereby contributing to the improvement of ongoing and future agreements.

The main users of the tool could be State parties to BLMAs, and social partners, who may wish to use it to conduct a joint assessment of an existing BLMA and to providing indications in regard to its strengths and weaknesses and possible revisions/updates to be considered. The assessment tool may also be used by one of the BLMA parties acting independently and the results shared with the other signatory party for consideration and potential follow-up.

The tool could also be of help to experts who are carrying out BLMA assessments. Furthermore, it covers the entire BLMA cycle (design, negotiation, implementation, monitoring and evaluation, and revision/update phases), and could therefore be utilized as a manual for the preparation of new BLMAs. It could be also used by research institutions, and international organizations.

The BLMA assessment tool consists almost exclusively of qualitative research, based on in-depth interviews with key stakeholders involved in the BLMA process, and has been developed to complement the five main phases of the BLMA cycle. For each **phase**, a list of necessary information to be collected for the purpose of the assessment along with the possible sources is provided. The lists provide a complete overview of all areas of the BLMA cycle to be covered and also allow for comparison of different BLMAs, so as to identify good practices.

¹⁸ This chapter is a summary of a more comprehensive tool for assessing BLMAs, which has been jointly developed by the ILO and IOM, and will be submitted as a separate document.

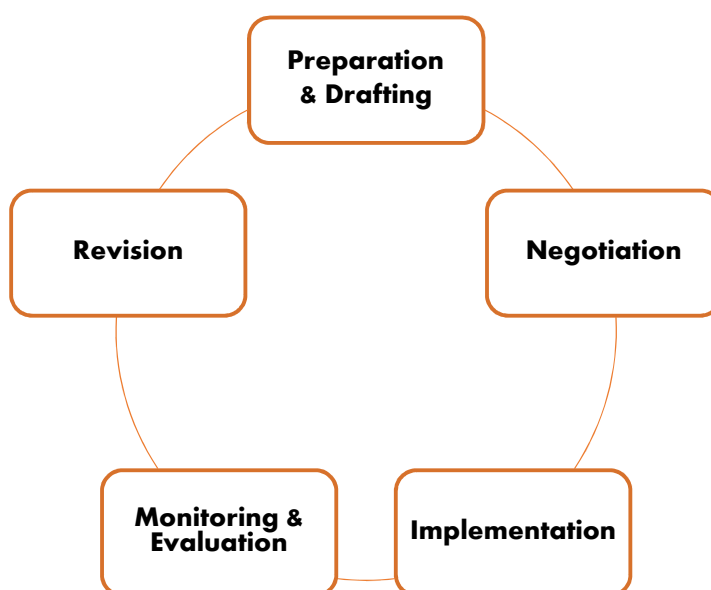
The tool also includes migrant workers, as the primary beneficiaries of BLMAs, in the assessment process through focus group discussions. A set of questions that can be used to guide such discussions is provided in Annex II and more detailed information is provided in section 3 below.

Other useful information for BLMA assessments can be collected by desk reviews of relevant publications and policy documents, as well as analyses of secondary data, when available.

3.2 Bilateral Labour Migration Agreement Cycle

The phases of the BLMA cycle are shown in Figure 1. While the negotiation of a BLMA is reserved to State institutions (Ministry of Foreign Affairs and main line ministries), the preparation, implementation, monitoring and evaluation (and in case of need, a revision of the BLMA) should involve other stakeholders.

Figure 1. BLMA cycle



Source: Authors' elaboration based on Wickramasekara (2015) and IOM (2016)

The BLMA cycle should ideally cover the entire labour migration cycle. In reality, this is not always the case and the BLMA content could cover only selected stages in the labour migration cycle (e.g. recruitment, travel and work abroad).

Three contextual elements are key for understanding the BLMA process and its current status:

- **Political will.** This refers to the priorities of each of the parties at the time of negotiation of the BLMA. At times, one party's effective priorities may be beyond the scope of what is actually declared in the text of the BLMA. For example, a BLMA may be conceived within a broader strategy to limit irregular migration, rather than simply to facilitate the flows of migrant workers.
- **Economic context.** A BLMA may be signed with an indefinite duration. In the meantime, the economic conditions in both the origin and destination countries may change significantly, modifying the labour supply and demand dynamics. This may require modifications to the

BLMA in order to take on board the new economic context. In some cases, this could also lead to closure of the agreement, and potentially a negotiation of a new one;

- **Political stability.** The political situation may evolve over time in one or both signatory countries, modifying the level of interest or priority given to labour migration issues. The assessment tool can assist in evaluating the level of relevance of the agreement within the current political environment.

3.2.1 Preparation and Drafting

The preparation phase is one of the most important aspects of the successful negotiation of a BLMA. In fact, it is in this phase that the issues to be addressed throughout the negotiation process with destination countries should be clearly defined.

In this phase, the knowledge of the labour market of the country with whom the negotiation of a bilateral agreement is planned is especially relevant. From the perspective of the destination country, it is relevant to have qualitative and quantitative analyses, skills available and those lacking in the sectors of interest of their employers. This may help in the preparation of training packages for selected migrant workers and may also contribute to the prevention of brain drain, for which the labour market of the origin country may have a competing need.

It is crucial that in the context of this analysis, it is evaluated whether and how gender issues could be taken on board. This may require an assessment of whether policies on employment and skills and related migration policies have a differentiated impact on women and men, and how policies can capitalize on skills of both men and women without gender bias. The assessment should also cover any differences, when it comes to equal opportunities between women and men accessing the labour market or training. It should consider any restrictions for women to access formal employment, as well as conditions of work.

It could be helpful in this phase to initiate an informal exchange between key ministries in both countries to verify mutual interest for entering into an agreement and determine critical issues to address in it. Further, areas of common interest and mutual benefits as well as possible areas of disagreement could be identified.

During the preparatory phase, each party should reflect on the 'red lines': what are the compromises that are not acceptable to make? It would be also important to determine the format for the BLMAs, whether a bilateral labour agreement, MoU, or other types. At the end of this phase, there should be an understanding of a reasonable time frame for negotiations.

Preparations draw on information from various sources. Among the relevant ministries, the ministry of foreign affairs may use information provided by the consular offices. The ministry of labour may also use information coming from ad hoc studies, reports from labour counsellors or attachés within the origin countries' embassies (where they exist) and inputs from diaspora organizations. The ministry of interior may draw on information coming from the operations of migration agencies, immigration and border control authorities and customs agencies. The ministry dealing with gender equality, may use information from civil society organisations or academia and practitioners working on gender equality and migration. The collection of relevant information may be simplified if the coordinating ministry prepares a position paper or a needs-assessment paper instead of having each ministry collect information separately.

Other important sources of information and, as appropriate, technical advice, include the social partners, NGOs operating in the field of labour migration, training centres, public employment services and private employment agencies. The early involvement of these key partners can facilitate the implementation and monitoring of BLMAs later on. This may be achieved through ad hoc meetings or through the establishment of specific committees.

During the preparation phase, the negotiation team should carefully assess the legal framework and ensure conformity with accepted international human rights and labour standards.

3.2.2 Negotiation

The negotiation phase should be managed by a team/delegation consisting of high-level officials authorized to negotiate on behalf of the State. The negotiation team is usually composed of representatives from different institutions, e.g. the ministry of labour, the ministry of migration (if existing), the ministry of foreign affairs and other line ministries (e.g. ministries of justice, interior, education, health, youth, gender).

Negotiation may progress through direct meetings of the two parties' delegations or through exchange of drafts until a common understanding is reached and the BLMA is ready for signature. However, it is advisable that at least one or more direct face-to-face meetings take place, given the importance of the issue.

It is important to understand how the draft text has been consulted and processed by each negotiating party. It is also key to understand how the draft text has been consulted and processed within each negotiating party, who is also in charge of the signature of the BLMA. It is usually the ministry of foreign affairs. It may also be the ministry of labour or the ministry of migration (if existing) or the ministry responsible for migration issues.

To be more functional, the delegation is normally structured hierarchically and should include:

- A decision-maker, ensuring a coherent implementation of the negotiation strategy, with a clear mandate to make decisions on behalf of the Government;
- Technical persons and experts in the key areas under negotiation, e.g. different ministries, including the ministry of foreign affairs, labour, migration, justice and other line ministries including education or health;
- Gender-balanced composition of the negotiating team.

3.2.3 Implementation

The implementation phase of the BLMA focuses on the impact of implementation on governance, protection and development objectives.

This BLMA phase focuses on the impact of implementation on governance, protection and development objectives.

- **Alignment with the legislative framework** - When new obligations are introduced into the legal framework of a country party to an international agreement, it is necessary to assess if the existing legislation is compatible with the new obligations, or if new laws or amendments may be necessary.

Usually, for BLMAs there is no need for new laws as the agreements make reference to the existing legislation of the parties involved. If obligations in the BLMA conflict with existing legislation of one of the parties, legal adaptations or amendments need be introduced.

- **Responsibilities at federal, state/regional and local levels of government** -While the capability to negotiate, sign and ratify international agreements is the responsibility of federal level institutions (Government and Parliament), the implementation has to take into consideration the constitutional competences held by the various other levels of government. This can include states of a Federation (e.g. USA, Ethiopia, Germany), provinces (e.g. Canada), or regions. For example in Italy, in which the 20 regions can have important responsibilities in areas of international agreement, labour market and vocational training competences, are in the remit of the regions, not the federal government. In this situation, the international norms have to be integrated into domestic law in a way that respects the division of federal, provincial, and regional powers in the Constitution.
- **The role of social partners, civil society, and public opinion in implementing BLMA.** The implementation of a BLMA is under the final responsibility of the public institutions identified in each agreement, but usually requires the involvement of other national actors. Social partners and civil society organizations can be consulted in the preparation and negotiation phases of a BLMA, as well as in the implementation for more effective action (see Paragraph 42 of the ILO Recommendation No. 86).

In particular, the following stakeholders may or should be involved in implementing a BLMA:

Ministry of labour	for assistance to migrant workers (identification of job opportunities abroad, selection, pre-departure training, reintegration of returnees) and for ensuring visibility of the BLMA;
Ministry of migration (where existing) or the Ministry responsible for migration issues	for overall responsibility for the migration process, including return migration and relations with the diaspora;
Ministry of foreign affairs	for assistance to migrant through embassies and consular services, and for ensuring visibility of the BLMA;
Ministry of interior	through border control and residence permit services;
Ministry of education	for skills and qualifications recognition;
Ministry, department or other institution (including human rights or equality bodies) responsible for gender issues	should be involved and consulted in the entire BLMA process;
Social partners	A tripartite approach is recommended for the overall governance process of labour migration, including potential labour market impact and workers' rights issues. Worker organizations can play an important role in informing migrants about their rights. The ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) guarantees, without distinction, the freedom of association and right to organize of workers, including

	<p>migrant workers irrespective of their legal status. ILO Convention No. 143 requires ratifying States to respect the basic human rights of all migrant workers, including the right to freedom of association. It also, together with ILO Convention No. 97, requires equality of treatment with regard to membership in trade unions. In destination countries, a growing number of unions are involved in promoting and protecting the rights of migrant workers, whether union members or not. The protection could be further enhanced by strengthened cooperation between workers' organizations in origin and destination countries. A good practice in this regard is the agreement reached in May 2013 between the Italian and the Moldovan and Ukrainian trade unions, following the ILO ACTRAV model.¹⁹ Employers' organizations are also interested in being involved in BLMA implementation as a way for their members from the other signatory country to fill labour market shortages or to benefit from the skills of return migrant workers;</p>
NGOs operating in the field of labour migration	<p>NGOs can provide advice to potential migrant workers, promoting regular labour migration channels. In this context, they can also provide referrals to employment agencies and can use specific BLMA provisions to justify and facilitate their support. Some NGOs can also organize pre-departure training. In destination countries, NGOs can provide also various services to migrant workers, such as legal and practical assistance;</p>
Private/public employment services	<p>Public employment services and private employment agencies are among the main implementers of BLA/MoU provisions (e.g. in Morocco). Some of the services offered to migrant workers include:</p> <ul style="list-style-type: none"> - providing advice on how to access international job opportunities; - helping jobseekers to identify skills and competences; - referring to training opportunities and employment promotion measures; - assisting foreign employers in the selection of potential migrant workers as part of the BLA; - delivering occupation-related training, if appropriate; - organizing pre-departure language training and cultural orientation.
Social security institutions	<p>BLMAs can contain provisions for social security which require the participation of national social security institutions. Alternatively, access to social security can be covered in a separate bilateral or multilateral social security agreement²⁰. In the case of short-term migration, the provision may be that the contribution to long-term benefits could also be maintained in the country of origin;</p>
Diaspora organizations	<p>BLMAs may contain provisions encouraging migrant workers to join diaspora communities, which can offer an extended protection</p>

¹⁹ See: http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=61

²⁰ See as an example the social security agreements that the EU signed since the 1990's with some Maghreb countries (Algeria, Morocco and Tunisia) containing provisions for the portability of benefits.

	through their networks, and may facilitate labour and social integration;
Diplomatic networks (embassies, consulates and missions)	An important role is played by counsellors and labour attachés, who not only assist migrant workers in the destination country but may also provide ministries of foreign affairs and labour with key feedback on issues that might require an amendment of the BLMA or of its implementation modalities. Access to consular services and consular protection can be provided, as appropriate.

3.2.4 Monitoring and evaluation

Monitoring should be considered as part of the implementation phase, but due to its specificities, it will be analyzed in this section. In most cases, BLAs incorporate provisions for the monitoring of their implementation. Mechanisms can include steering committees or joint monitoring groups. Committees can be tasked not only with monitoring but also with joint interpretation of text, proposal of amicable solutions to disputes and suggested amendments.

Besides joint monitoring, each participating country may wish to activate mechanisms to assess the state of implementation, collect information on challenges and use this information to make proposals for amending BLMAs, as appropriate. One important aspect of BLMA monitoring that needs to be further developed is the possibility for migrant workers as well as the social partners and other relevant stakeholders to have access to dispute resolution and grievance mechanisms or other channels to alert competent national authorities regarding possible abuse and violations.

3.3 Main Sources of Information for the BLMA Assessment

- **Review of relevant literature and policy documents** – A detailed review should be carried out on existing literature and policy and programme documents, covering the BLMA agreement.
- **Interview with key stakeholders** - The information to be collected for each phase of the BLMA cycle can be based on in-depth interviews with key stakeholders.
- **Focus group discussion with migrant workers** – The BLMA tool can be used to collect qualitative information through a focus group discussion with migrant workers, based upon a series of prepared questions. Three different types of focus group discussions can be useful to carry out:
 - **Focus Group 1.** Discussion with return migrant workers in their origin country who have participated in the BLMA and are now back home;
 - **Focus Group 2.** Discussion with return migrant workers in their origin country who have NOT participated in the BLMA and are now back home;
 - **Focus Group 3.** Discussion with migrant workers in their destination country.

The focus group discussions will allow deeper insights to be obtained into the BLMA, in terms of the effectiveness of its design and implementation. In an ideal scenario, all three focus group discussions should be conducted. In particular, the discussions with migrant workers who have not migrated through a BLMA modality may provide important information of migration channels they have used instead of the BLMA provisions.

- **Presentation of the assessment results** - Given the different realities, needs and information available in each migration context, the structure of the results document should be tailored accordingly.

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Chapter 4. Assessment of the bilateral labour migration agreement between Egypt and Italy

4.1 Background²¹

Egypt and Italy have a long tradition of cooperation and, following negotiations aimed at creating a channel for safe and regular labour migration, two documents were signed by the Egyptian Ministry of Foreign Affairs and the Italian Ministry of Labour and Social Protection: (i) a BLA, including an implementing protocol, dated 28 November 2005; and (ii) a readmission agreement, including an executive protocol, dated 9 January 2007, which establishes the modalities for the identification of the nationality of irregular migrants, procedures and costs for their repatriation.

The 2005 BLA consists of 12 articles, of which:

- Article 1 identifies the competent authority of each country for the implementation of the agreement and defines migrant workers as a citizen of one of the Parties who is performing or will perform a job as employee, seasonal or not, in the territory of the other Party.
- Article 2 calls on the competent authorities of both contracting parties to work together to regulate migrant labour flows in accordance with the demand and supply of their labour markets;
- Article 3 underlines the need for training of potential migrants to facilitate skills matching in the destination country;
- Article 4 includes a specific reference to national laws that the BLA procedures should comply with; this means that, in principle, there is no need for adaptation of the national legal framework to make the BLA operational;
- Article 5 envisages the possibility of granting an annual quota for regular migration to Italy; this quota indicated 7,000 work contracts per year, which was further increased to 10,000 as of 2007;
- Article 6 allows for the transfer of earnings and savings back to the country of origin;
- Article 7 states that “migrant workers enjoy the same rights and the same protection accorded to workers who are nationals of the receiving state, including social security, in accordance with the regulations of the receiving states”;
- Article 8 makes reference to the international conventions that will apply to the BLA if the instruments are ratified by both countries;
- Article 10 encourages social dialogue between state actors, employers, trade unions and institutions to promote activities related to the selection and training of migrant workers;
- Article 11 identifies the modalities for monitoring the BLA and modalities for addressing implementation problems. This is based upon mutual trust, but does not foresee the creation of specific joint monitoring committees;
- Article 12 indicates the modalities for the entry in function date, interpretation, modification or revocation of the agreement.

²¹ This chapter is a summary of the assessment carried out of the BLMA between Egypt and Italy, using the assessment tool described in Chapter Three.

The implementing protocol, which was signed on the same day as the BLA, defines the executive procedures of implementation. It provides more details regarding the requirements of Egyptian workers to be employed in Italy and stresses the need for the consistent and transparent exchange of information regarding the supply of labour from Egypt and the demand for labour in Italy.

The BLA was complemented by (i) a protocol on the implementation of the agreement on cooperation in the field of labour migration, signed in Sharm al Shaik on 12 May 2009; and (ii) a MoU signed on 17 May 2011 that aims to provide effective mechanisms for the implementation of the 2005 BLA.

The MoU of 2011 consists of 15 articles, of which:

- Article 1 identifies the authorities of both parties who are responsible for the enforcement of the MoU;
- Article 2 creates a local coordination office at the Italian Ministry of Labour and Social Solidarity to support the process of matching labour demand and supply within the BLA;
- Article 3 and 4 detail the procedures for searching for manpower and creating lists of available candidates;
- Article 5 defines selection procedures and establishes that Egyptian candidates will not bear any costs during the selection process;
- Article 6 refers to the language and vocational training of selected workers and stipulates that candidates will not bear any costs during the training process;
- Article 9 foresees the issue of a three-year working permit for Egyptian seasonal workers;
- Article 11 allows for the transfer of remittances within the framework of domestic rules;
- Article 12 calls for the creation of a joint high-level steering committee to follow up the implementation of the MoU;
- Article 13 focuses on the visibility of the BLA and therefore of the dissemination of its contents to reach the possible beneficiaries.

The formal agreements between the two countries were complemented by two initiatives in the field of migration funded by Italy and implemented by the Egyptian Ministry of Manpower and Emigration, in cooperation with the IOM: 1) an integrated migration information system (IMIS), and 2) an information dissemination project for the prevention of irregular migration from Egypt (IDOM). Initiated in June 2001, IMIS was a technical tool and capacity-building mechanism that supported the Emigration Sector of the Egyptian Ministry of Manpower and Migration. A website for matching potential migrants and employers for job vacancies abroad and the creation of a portal for Egyptian expatriates represented the main outputs of the project.

The IDOM project aimed, through the provision of information, to prevent irregular migration and included a field survey in 2006 of 1,552 respondents to assess the attitudes of Egyptian youth towards migration to Europe. The second or extension phase of the project, known as IDOM Plus, started in mid-2007, with the same mandate.

4.2 Methodology

The BLMA assessment methodology follows each phase of the BLMA cycle to assess the 2005 BLA, related Protocols and MOU: preparation, negotiation, implementation, monitoring and evaluation.

For each phase, there is an indication of relevant information that can help assessing if everything worked as it had been envisaged.

The collection of information uses three sources: 1) reports and statistics; 2) interviews with main stakeholders in the labour migration process in Italy and Egypt; 3) whenever possible, focus group discussions with migrant workers.

Accordingly, field missions were organised to Rome and Cairo to meet relevant authorities and social partners to collect information on the BLMA. Focus group was organised in Turin, Italy with Egyptian migrant workers. Due to the time constraints, it was not possible to organise focus group discussion in Egypt.

4.3 Findings

4.3.1 Preparatory phase

This initial phase is particularly important since many of the challenges encountered later in the process have their origins in this period. A key factor is the identification of issues that each party intends to address through the negotiation. In this regard, the assessment found that the negotiating parties had different agendas: Egypt was more interested in offering regular job opportunities for its workers in general and Italy in finding a way to reduce the irregular migration flow. This is confirmed by statements included in the BLA (e.g. in article 4 of the implementing protocol to the BLA, it is indicated that the “migration quota” is subject to the assessment of the status of bilateral relations on migration issues) and by the signature of the readmission agreement almost one year later (February 2007).

The assessment indicated that during this phase, neither Egypt nor Italy carried out consultations for the identification of potential challenges and opportunities. No consultative tripartite body on labour migration existed at the time in both countries and even informal consultations were not organized with the social partners. In Egypt, a Supreme Emigration Committee has been provided for by law (article 5 of the Law on Migration and Welfare of Egyptians Abroad, No. 111 (1983)); however, the Committee functions on a limited basis and is composed of ministries’ representatives only, without workers’ and employers’ organizations.

Thus, the preparatory phase did not include neither thorough consultations with key stakeholders (workers’ and employers’ organizations), nor preliminary analyses of potential labour market needs and implications. This in turn, is reflected in the text of the BLA, which tends to be very general and does not fully address some important aspects, such as the protection of migrant workers’ rights in the destination country (e.g. social security, discrimination, access to justice) and does not contain a standard model employment contract.

During the assessment, it was not possible to analyse the negotiation process in detail and no evidence was available on the negotiating strategies and tactics of the parties involved. However, it may be assumed that the negotiation teams of Egypt (Ministry of Foreign Affairs) and Italy (Ministry of Labour and Social Protection) had their respective negotiation strategies due to their prior experience with BLMAs.

4.3.2 Negotiation

In this phase of the BLMA process, it should be noted that the Contracting Authority for each of the Parties was different -- in Egypt, as in many other countries, the international agreements are under the remit of the Ministry of Foreign Affairs. In Italy, Bilateral Labour Agreements are negotiated and signed by the Ministry of Labour and Social Protection.

As for the content related aspects, the Ministry of Foreign Affairs in Cairo benefitted from the inputs from the competent line ministry, in this case the Ministry of Manpower and Migration. The negotiations were conducted through exchanges of drafts, consulted with key Ministries, until a final text had been agreed.

Other institutions could have been possibly involved in both Italy and Egypt, such as the Ministry of Education, however no such evidence was identified. As for the Italian side, the Ministry of Labour and Social Protection could benefit from the technical advice from its implementing agencies Italia Lavoro²² and ISFOL²³. The absence of an advisory body on labour migration in both countries, at this BLA phase, that could have provided both negotiating Authorities with advice and inside views, could have facilitated the finalization of the Agreement, as well as strengthened its labour market relevance.

No records of the negotiation process were available and only very few persons who took part in it were available for interviews. That is why the analysis of how negotiations took place had to be derived from a careful reading of the BLA and of the MoU.

It is clear that one fundamental element of negotiation, the political will, was present in both Parties. The Egyptians were trying to find viable opportunities for their citizens wishing to migrate and avoid the risks associated with irregular migration. The Italians were interested in reaching an agreement with two objectives: i) reducing the flow of irregular migrants from Egypt, and ii) providing workers to meet demand in their domestic labour market.

As a result, the focus of the bilateral negotiations was the opening of channels for regular labour migration and, indirectly, preventing irregular migration. The main focus was on the departure phase of the migration cycle, with little attention given to the other phases. A general statement on equality of treatment of migrant workers with nationals is included to address the phase of working abroad, but with no indication on how migrants' rights can be protected and potential conflict resolved. The return of migrants and their reintegration in the labour market back home have not been considered in the text.

The theme of remittances and transfer of savings back home was only referred to by indicating the respective national legal framework. No special provisions were included, targeting women migrant workers, youth, or low-skilled workers.

It would be worth looking at the provisions of Article 8 of the BLA, which refers to the respect of all international treaties related to migrant workers, when ratified by both Parties. Italy has ratified the Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Private Employment Agencies Convention, 1997 (No. 181); and the Domestic Workers Convention, 2011 (No. 189). These have not been ratified by Egypt.

²² Currently the Agenzia Nazionale Politiche Attive del Lavoro (ANPAL)

²³ Currently the Istituto Nazionale per l'Analisi delle Politiche Pubbliche (INAPP)

Egypt has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, which Italy has not. The above situation might induce to erroneous conclusion that the above international standards would not apply to the migrant workers in this migration corridor as the parties to the BLA did not ratify the same conventions. However, it is important to keep in mind the following:

- The principles of both Conventions Nos 97 and 143 have been incorporated in the UN Convention 1990;
- International conventions become legally binding upon the ratifying State. Ratifying countries also commit themselves to applying the Convention in national law and practice and to reporting on its application at regular intervals. The fact that they are referenced in a BLMA is certainly a good practice but not required in order for these Conventions to be binding upon the ratifying State with respect to the migrant workers in the migration corridor covered by the BLMA. Moreover, there is no requirement of reciprocity for the application of the protections set out in the above instruments. This means that a migrant worker does not have to be the national of a member State which has ratified the instruments, or which guarantees equal treatment to the subjects of the ratifying State, for the provisions to apply.

4.3.3 Implementation

According to some stakeholders interviewed during the field visit to Egypt, the expected benefits from the BLA did not materialize, which can probably be attributed in part to insufficient preparation and insufficiently detailed provisions in the agreement itself. The main constraints in the implementation of the BLMA included:

- *Stakeholders' involvement*: from the very beginning, the social partners and civil society were not involved. The social partners in both countries underlined that the entire process was managed at the ministerial level only. Of particular relevance is the role played by the workers' organizations in Italy since they provide advice and support to migrant workers through dedicated services (e.g. ITALUIL).²⁴
- *Changing political and economic context*: There was a lack of clear and detailed implementing rules in the BLMA. This was partially addressed by the 2011 MoU, which included procedures for recruitment and enhanced monitoring mechanisms. In the meantime, the global economic crisis changed dramatically the conditions that provided the basis of the BLMA. As a result, the quotas allotted on a yearly basis to migrant workers from Egypt (7,000 for 2006; 8,000 per year from 2007 to 2011) were no longer valid. The number of foreign workers allowed to enter Italy through regular channels,²⁵ according to the annual decree of the President of the Council of Ministers, was fixed in small numbers (less than 18,000 per year from 2012 to 2016). Thus, the quotas allotted for the countries with whom Italy had specific agreements were no longer available and it was only for seasonal jobs (specifically mentioned in the 2011 MoU) that Egyptian workers were included in a list of origin countries from which applicants could migrate to Italy;

²⁴ See: <http://www.italuil.it/jsps/216/Attivita/573/Immigrazione.jsp>

²⁵ Every year, the Government identifies labour needs and issues two *decreto flussi* (quota agreements) indicating how many migrant workers can enter Italy legally, for seasonal and non-seasonal jobs, respectively; employers willing to hire a worker residing abroad initiate the procedure online; a request for the issue of a work permit is made electronically and permits are issued up to the quota established for that year.

- *Recruitment practices:* As mentioned above, with the support of the Italian Cooperation Fund (Ministry of Foreign Affairs), it was possible to finance the establishment of the IMIS. A website for matching potential migrants and employers for job vacancies abroad and the creation of a portal for Egyptian expatriates represented the main outputs of this initiative. The structure of the IMIS is very detailed; there are seven electronic sheets that participants should complete. In particular, the sections referring to the skills of the potential migrant are based on the ISCO 88 classification of occupational profiles. Here, the issue consists of the fact that there is no match between the declared qualifications of the applicants and the profiles requested. Furthermore, it is not compulsory to provide information about skills in the system, which is what the employers are most interested in. Hence, it is crucial that these electronic fields be made obligatory. Concerning the quality of skills information, it appears necessary to establish an assessment process since what is declared is not verified in a quality-assured way. Once the data have been inserted into the IMIS, the Ministry's Validation Unit checks if the compulsory information has been filled in. The validation does not verify the correctness or truthfulness of the data.

This tool has been experiencing two main difficulties regarding its implementation: a) the high number of registered jobseekers (data available in July 2009 indicated that the IMIS included 233, 712 CVs (European Training Foundation, 2012), coupled with 895,078 CVs in the database of the 307 public employment services; 26 and b) the poor quality of information on skills that might not correspond to the effective competence of the candidates. There was no control of the information provided by the applicants concerning their levels of schooling and skills. There was often a discrepancy between the information declared and the real situation. The Italian employers were used to selecting their workforce through face-to-face contact and were not prepared for electronic matching. There were also alternative sources for finding workers in Italy and the Egyptian option was seen as too complicated and time-consuming. This fact might have lowered the interest from the Italian side to invest in making the BLMA a viable option. The unused quotas were used for the regularization of irregular migrant workers already present in Italy;

- *Skills matching:* it is important to note that neither the BLA nor the MoU included clauses on skills recognition. Construction was identified as a sector that was experiencing high levels of labour demand in Italy; however, the Egyptian vocational training system could not respond to the Italian skills demands as the Egyptian occupational profiles were not harmonized with Italian occupational demands. Another difficulty was the comparability of the skills required: the issue was not only terminological but also related to the methods of performing the operations/processes required for each occupation involved. The selected candidates were trained at the Don Bosco training centre in Italian language, cultural orientation and technical aspects to fill any occupational gaps;
- *Timing:* timing was critical for the Italian employers, yet the selection process and visa issuance took several months. Before migrant workers were ready to leave, the jobs they were selected for were no longer available;
- *Return:* of the entire migration cycle, no mention at all is made of return migration. It is true that repatriation of irregular migrants is part of the specific readmission BLA of 2007, but it

²⁶ A. Semlali and D.F. Angel-Urdinola: *Public employment services and publicly provided ALMPs in Egypt* (Washington, DC, World Bank, 2012). Available at: <https://openknowledge.worldbank.org/handle/10986/12993>.

provides no indications for other workers in terms of their reintegration in the labour market and the validation of their skills acquired abroad.

- *Awareness-raising:* Even if the 2011 MoU called for ensuring visibility of the BLA, there is very little evidence of any information-raising campaign in Egypt and Italy, which might also have affected the possibility to reach the effective beneficiaries;
- *Monitoring and evaluation:* Article 11 of the BLA indicates that the parties should consult each other for monitoring the implementation of the BLA, but indicates nothing about the frequency and modalities of these meetings. As a result, no meeting has been reported to have been organized. For making the above provision effective, article 12 of the 2011 MoU provides for the creation of a joint high-level steering committee. While there is a detailed list of duties for this body, no indication is given on the composition, frequency and modality of meetings, nor is there any evidence that the committee ever met. The lack of any monitoring activity meant that the BLA was never modified in order to address the many challenges that it was experiencing

4.3.4 Monitoring and evaluation

Article 11 of the BLA indicates that the Parties should consult each other for monitoring the implementation of the Agreement, but there are no indications on the frequency and modalities of these meetings. As a result, no meeting has been reported to have been organised.

To make the above provision effective, the 2011 MoU foresees (Article 12) the creation of a joint high-level steering committee. While there is a detailed list of duties for this body, no indication is given on composition, frequency and modality of meetings here either. There is no evidence that the Committee has ever met. The lack of monitoring had as a consequence that the BLA was never modified in order to address the many implementation challenges encountered.

4.4 Conclusions and Recommendations

4.4.1 Preparatory phase

Conclusions and recommendations regarding the preparatory phase include:

Enhanced knowledge of the other country in terms of the labour market, legal frameworks, social security, etc. - The forecast of international labour market needs may be done through ad hoc studies conducted by the Ministry of Manpower, in collaboration with the CAPMAS and other international partners (e.g. the ILO and the IOM). The results of those studies may also provide inputs to the national education systems for adapting the skills supply to the demand from domestic and international labour markets;

Improved availability and quality of labour market and migration data - Policy decisions on labour market needs should be based on sound evidence. The Ministry of Manpower has already inherited the IMIS and it should be adapted to become more functional. So far, there is no detailed study available on the skills mismatch in specific sectors and whether migrant workers are really creating skill gaps in the Egyptian labour market. In coordination with the CAPMAS, different sources of information and statistics on labour market and migration (e.g. the Ministries of Migration,

Manpower, Foreign Affairs and Social Solidarity) should converge for the creation of an effective labour market and migration information system;

Extended consultation with relevant national stakeholders on labour migration - The different phases of a BLA should be supported by a broad network of expertise. In Italy, consultations were not conducted in a structured way by the Ministry of Labour. It is suggested to establish an advisory forum on labour migration, including the relevant line ministries and agencies, social partners and NGOs.

Enhanced cooperation at national level of the lead negotiating agencies - The fact that two negotiating Ministries (Ministry of Labour and Ministry of Foreign Affairs), in both countries, are in charge of different policy domains could potentially have an impact on the BLA in terms of whose interests dominate (e.g. foreign policy vs. labour issues) if discussion and adequate coordination are not put in place. In addition, the structure and organization of development cooperation could also influence the success of the BLA. For instance, the Italian Ministry of Foreign Affairs has the offices of the Italian development cooperation and network of embassies and consular services in many countries around the world. This is not the case for the Ministry of Labour and Social Protection. These structures should be taken into accounts, even at the negotiating stage, when assessing feasibility and sustainability of the future BLA implementation.

Enhanced cooperation with on-going regional processes for economic integration - BLAs should consider also the on-going regional integration process, which are influencing the countries involved. In the case of Egypt- Italy, the issue is harmonization of modalities for governing labour migration, which in turn can influence the on-going regional consultative processes and also regional economic communities in Africa and the EU.

4.4.2 Negotiation

Conclusions and recommendations regarding the negotiation phase of the BLMA include:

Structure of the agreement - The model adopted by the contracting parties was probably not adequately detailed to achieve the indicated objectives. Even if there is no standard model for BLMAs, a good reference can be offered by the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86). It might also be useful to append a standard contract model as indicated by the ILO Convention No. 181. Future agreements could also include an option for review and subsequent revision, if appropriate, on regular basis to adapt the arrangement to the evolving needs of the labour market in both origin and destination countries;

Social security - The BLA does not include any specific provision for social security benefits and their portability. There is a mention of equal treatment of migrant workers compared with nationals, but this is not sufficient to ensure, for example, the portability of pension rights. There is a need for specific bilateral agreements or, at least for migrants to EU countries, the extension of social security agreements that the EU has signed since the 1990s with some Maghreb countries (Algeria, Morocco and Tunisia) containing provisions for the portability of benefits. This might be possible as part of the Euro-Mediterranean partnership (Barcelona Process). Meanwhile, it is necessary to increase the efficiency of the voluntary social security scheme administered by the Ministry of Social Security of

Egypt, which is currently not used extensively by migrant workers. Revamping the scheme, on the basis of the experience of the Overseas Workers Welfare Administration in the Philippines, could show positive results (see box 2);

Box 3: Filipino Overseas Workers Welfare Administration

The Overseas Workers Welfare Administration (OWWA) is the government welfare institution that protects and promotes the interest of overseas Filipino workers. It develops responsive programmes and services for the social protection of its members. For a membership fee of US\$25.00, a migrant worker is entitled to the benefits and services outlined below.

Social benefits

Members are entitled to some economic benefits in case of accidents, while working abroad, that result in disability or death.

Education and training assistance

Pre-departure orientation seminar: the one-day seminar is a compulsory orientation for migrant workers in adapting or adjusting to the work environment as well as to the culture of their country of destination.

Comprehensive pre-departure education programme: jointly conducted by accredited NGO providers and the OWWA, it includes language, culture and stress management sessions.

Other programmes include training programmes for Filipino seafarers and a programme to provide scholarships for dependents of migrant workers.

Repatriation assistance programme

The program is available for all migrant workers, regardless of their membership to OWWA and provides services including negotiations with employers, agents and host country authorities to facilitate the immediate repatriation of migrant workers who are distressed or physically/mentally ill, and corpse repatriation. Emergency repatriation is carried out in the event of political unrest or natural calamities.

Reintegration programme

This programme offers livelihood opportunities to migrant workers who have finished contracts and have no wish to go back to work abroad.

Source: Department of Labour and Employment (2019), Overseas Workers Welfare Administration. Available at <https://www.owwa.gov.ph/index.php>.

Gender issues - International migration is not a “gender-neutral” phenomenon: men and women face different risks and challenges when they engage in international migration. The Egypt-Italy BLA did not specifically address the needs of any migrant groups, including women. Guideline 4.5 of the ILO Multilateral Framework on Labour Migration urges States to ensure that ‘labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process’. This would include not only gender-sensitive training for individuals involved in the implementation of BLAs, but would also refer to the inclusion of non-discrimination clauses, concrete complaint mechanisms, dispute resolution procedures, redress mechanisms and model employment contracts that pay particular attention to gender (Gallotti, 2014). That is why, the protection of female migrant workers should be considered a priority in negotiating BLMAs.

Inclusion of training – Based on the interviews and analyses conducted, it became apparent that there was a need to include at the BLA negotiating stage a support mechanisms, including eventually

funding, for adaptation of vocational training for specific occupations. This provision in the BLA could play an important role for upgrading the national education and training system in the origin country, and be part of a broader framework of development cooperation with the destination country, also in the perspective of potential labour migration. Here, employers' organizations, in both countries, should be involved for identification of skill needs for potential and return migrant workers.

Return - There is a need to plan the labour market reintegration of migrant workers, when designing the BLA. This gap might be filled in by the Ministry of Manpower through the adoption of specific active labour market policies. This does not suggest that an ad hoc strategy should be developed for the reintegration of returnee migrants, but simply that some existing services for this group should be reinforced, including:

- Counselling and career guidance;
- Self-employment schemes, including training, financial incentives and non-financial business development services;
- Assistance in the recognition of skills developed abroad, not necessarily those acquired through formal training

4.4.3 Implementation

Among the main implementing agencies of a BLA are the public and private employment agencies. Conclusions and recommendations in this regard include:

Public employment services - They need to be more proactive in the identification of job opportunities abroad and support migrant workers in preparation for departure by filling skill gaps and contributing to the reintegration of returnees in the domestic labour market. The Egypt PES needs to be further strengthened in terms of having a sufficient number of staff, in particular job counselling specialists, and of modern equipment. The average case load per PES frontline staff member averages at 577 (Angel-Urdinola, Kuddo and Semlali, 2013). According to opinion polls, conducted within ILO youth employment projects, young people and employers indicated mixed opinions regarding the relative performance of private employment offices as compared to public employment offices (ILO, 2017: 30).

The Italian PES, on a different scale, is confronted with not having sufficient number of staff, mainly specialists, dealing with vulnerable groups, migrants being one of them. In 2016, the average case load per job counsellor was reported to stand at 274. There is a need for capacity building for PES staff to manage effectively services, targeting migrant workers specifically. The need for IT upgrades has been indicated by 47 per cent of the PES offices (ANPAL, 2017: 48).

Private employment agencies - By linking to sister organizations in the destination countries, private employment agencies can provide access to job opportunities for migrant workers and support in the organization of labour migration. In this context, the ILO General principles and operational guidelines for fair recruitment²⁷ can assist countries, social partners, labour recruiters and other key stakeholders in developing effective labour recruitment policies and practices, based on internationally recognized human rights and labour standards. Guidelines are also included in

²⁷ See: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_536755.pdf

the ILO Private Employment Agencies Convention, 1997 (No. 181)²⁸. Special attention needs to be devoted to the provisions of its Article 7, forbidding agencies to charge “directly or indirectly, in whole or in part, any fees or costs” to workers. Many bilateral agreements contain their own definition of recruitment fees and related costs. The ILO Tripartite Meeting of Experts of November 2018²⁹, agreed on a definition of recruitment fees and related costs, to further assist in efforts to eliminate abusive and fraudulent recruitment practices. Further, the ILO and the World Bank have jointly developed guidelines for measuring recruitment costs to support Sustainable Development Goal (SDG) indicator 10.7.1 “Recruitment cost borne by employee as a proportion of monthly income earned in country of destination”.

Involvement of social partners - The involvement of the social partners should be made effective. This important need was recalled in the BLA in Article 8, but there was no evidence of its enforcement according to interviews with the social partners in both countries. This has a strong impact on the protection of migrants’ rights, which should be one of the most important objectives of the BLA. In particular:

- **Workers’ organizations.** Workers’ organizations can offer support in dealing with the compliance of contractual clauses, health and safety at work issues, conflict resolutions with employers, etc. Some workers’ organizations³⁰ in Italy have specific services for the support of migrant workers. The protection could be further enhanced by strengthened cooperation between the workers’ organizations of the origin and destination countries. A good practice in this regard is the agreement reached in May 2014 between the Italian and the Moldovan and Ukrainian trade unions. These agreements followed the ILO ACTRAV model. Workers’ organizations are involved in a number of international cooperation networks on migration, such as UnionMigrationNet, which is funded by the EU and provides the possibility to search services and competence in different languages. Another network is the Réseau Syndical Migrations Méditerranéennes Subsahariennes (RSMMS), which consists of African (sub-Saharan and Maghreb) and European unions and was formed in 2014 to promote the rights of migrants in the Mediterranean and Sub-Saharan Africa (Casablanca Declaration, 2014). The RSMMS is engaged in promoting conditions for the protection of rights of migrant workers and for decent work.
- **Employers’ organizations.** They play a fundamental role in the identification of skills needed in the domestic labour market, providing inputs to the education systems on future skill needs and identifying areas of skill oversupply. Employers also have an interest in being involved in BLMA implementation for the possibility to receive needed manpower or to benefit from the skills of return migrants. Based upon the field interviews with the employers’ representatives in Egypt, it appears that they are interested in being more involved in BLMAs, while at the moment the process has been managed only by the relevant Ministries. They indicated as a positive experience, the tripartite approach that the ILO-Switzerland project “Improving the Governance of Labour Migration and Protecting the Rights of Migrant Workers in Tunisia, Morocco, Libya, and Egypt (IRAM)” project promoted, aimed at improving the governance of labour migration and enhancing the protection of workers’ rights in these countries.

In the case of Italy, social dialogue takes place through a constitutional body, the National Council on Economy and Labour (CNEL). Employers are formally involved in the designing of

²⁸ See: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326

²⁹ See: https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_632651/lang-en/index.htm

³⁰ INCA CGIL; ITAL UIL; ANOLF CISL.

occupational profiles and in delivery of training (on-the-job training, and quality assurance). In Egypt, at the time of the BLMA negotiation, a Supreme Council on Human Resource Development was established, a tripartite body chaired by the Minister of Manpower and Emigration, which was subsequently dissolved and replaced by specific councils (e.g. public universities council, private universities council, technical institutions council) under the coordination of the Prime Minister's Office. In both countries, these venues could potentially facilitate the development of sound labour migration and skills policies.

Skill matching and recognition of competences - Skill adaptation through apprenticeship may contribute to better matching of job seekers with vacancies, but the majority of small enterprises in Egypt consider this as an unbearable burden in terms of time and financial resources. As BLMA's may target skilled workers, it is necessary to include provisions in them for measures allowing access to training opportunities. This would facilitate the up-skilling of Egyptian workers for both the Italian labour market and facilitate labour market integration upon return to Egypt. Such provisions should focus on specific sectors and occupational profiles that are on demand in the Egyptian and Italian labour markets. As the origin and destination countries have different education systems and different occupational standards, skills matching for migrant workers is a challenge. The comparability of the profiles cannot be secured through providing certificates as the name of a given task may correspond to different ways of performing tasks in different countries. To overcome this difficulty, there are at least three different options:

- Matching origin and destination country occupational profiles to create combined occupational profiles. The profiles of the two countries are compared and, where possible, matched. The comparison considers the similarity of the two profiles, establishing whether the occupation in question covers the same technical area in both countries. The combined profile can be used to assess people who want to migrate and makes possible recognition of the skills of potential migrants that are subsequently portable to the destination country. These combined profiles usually consist of subcomponents that identify key activities and tasks and allow them to be easily compared. A further step is the assessment, to be done in authorized assessment centres, of the skills possessed by the potential migrant for the specific trade. If the certification is based on a transparent and systematic quality-assured process, the competences can be trusted by the employers in the destination country. The employer will need to offer some additional training, such as induction into the procedures and rules of the company and the specific standards of the establishment. However, in general, employers should expect the prospective employee to have experience in a specified range of activities and to have a demonstrated competence in them;
- To organize training courses that are recognized in both origin and destination countries. This is the case for courses organized by the Don Bosco Training Centre in Cairo, which are based on Italian occupational standards and recognized in both countries. There is therefore no need for any further recognition in the Italian labour market;
- Another good experience was offered by the project financed by the Italian cooperation for enhancing skills of workers in the area of eco-tourism in the Fayoum Governorate. The project was implemented by IOM, in cooperation with the Egyptian Ministry of Education.³¹ Instead of having courses of one-year duration, the project established a

³¹ For more information, see: <http://openaid.esteri.it/en/projects/initiative/007424/>

shorter duration training course, lasting three months, after which workers were ready to work in the tourism sector in the Fayoum area or in Italy. The trainees have been absorbed in their majority by the local labour market.

It should be noted that skills matching for labour migration and the above mentioned options cannot substitute an overall reform of the education and training system in Egypt. These options represent good practices or could constitute relevant pilot experiences to be scaled up, yet the need for systemic approach to improving the quality and relevance of education remains. The issue of skills mismatch is particularly critical for those graduating from TVET institutions, many of whom never make the transition from school to work, and are often forced to go abroad in search of livelihood. The National Authority for Quality Assurance and Accreditation (NAQAAE) in Egypt is responsible for the implementation of the national qualifications framework (NQF). The NQF covers all aspects of TVET and uses an outcome-based methodology for defining qualification and assessment standards. However, it remains a challenge to harmonise different approaches/methodologies for developing NQF, piloted in Egypt over the years by different projects/initiatives, into a coherent system (ETF, 2017) and to successfully engage key stakeholders, beyond the education sector, such as the social partners, in this process.

Developments related to labour migration, such as the conclusion of a BLMA, could have a spill-over effect for improving skills matching and building a functioning national qualification systems, if implemented in combination with systemic reforms and linked to the existing policy framework on employment, training and labour migration.

4.4.4 Monitoring

Conclusions and recommendations on monitoring include the following:

Consular services - A first instrument for the protection of migrants is offered by the network of consular services of the Ministry of Foreign Affairs, duly integrated by labour counsellors and labour attachés. Their presence in the country of destination is an important reference because they can provide legal support and advice to their nationals working abroad. The diplomatic network is also an important observatory of the implementation challenges met by migrant workers, providing information on how these might be addressed, such as through a revision of the existing BLMA.

Adoption of monitoring system – the Parties should adopt a system for regular monitoring and periodic evaluation of an agreement (Wickramasekara, 2015). In an ideal situation, this would include a mandatory independent evaluation in order to identify needed revisions of any agreement before its renewal as well as concrete commitments for the mobilization of resources. A further option would be to station a Resident Officer in the country of origin in order to monitor and assist in the implementation of the agreement.

Joint Monitoring Committees - usually provided for in the BLMA, these need to be properly convened and made functional. They should act as the steering committee of the BLMA, adopting all necessary implementing rules in both countries to make the agreement effectively workable. The analyses conducted for this report indicated that the problem of having a functional joint monitoring committee consists in the fact that the BLMA does not clearly indicate which Party should initiate

the monitoring process and who will cover the expenses for it. This translates into no Party feeling responsible for starting the monitoring.

When the joint monitoring committee involves also other stakeholders, in addition to the signatory Parties, the responsibility for monitoring is even further diffused. In order to enhance the accountability of these partners, they should be involved since the very beginning of the BLMA process.

In addition to the joint, bilateral monitoring, there could be envisaged also unilateral monitoring. Each Party can conduct independent assessment and then share the results. This approach could address the issue of cost and organization, and the results would be still valid for potential future revisions of the BLMA.

Diaspora - The current Italian migration policy places a special emphasis on involving the Diasporas in order to facilitate integration. There is an attempt to include the Diaspora in the policy development process, following a bottom-up approach, and in this regard there is a special project, called Summit Nazionale delle Diaspore. The idea is that this type of cooperation could also facilitate skills and job matching. It would also be good to consider involving the Diaspora in the BLMA preparations.

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Chapter 5. Bilateral labour migration arrangements in two SADC corridors

5.1 Background, Scope and Methodology

This chapter contains a rapid assessment of experiences in developing and implementing bilateral labour migration agreements (BLMAs) along the Southern African Development Community (SADC)³² corridors. It deals with the general context of bilateral labour arrangements in SADC but also focuses on two specific SADC corridors – i.e. Lesotho-South Africa and Zimbabwe-South Africa. It researches past experiences, including good practices, challenges and bottlenecks, opportunities, as well as lessons learnt in the development, implementation, and monitoring/evaluation of BLMAs and other arrangements affecting labour migration (including past and recently concluded BLMAs). Based on the identified practices and lessons learnt, it draws conclusions and recommendations to inform the process of assessing, developing and implementing bilateral labour migration arrangements.

The chapter is informed by a methodology comprising the following components:

- An in-depth desk study (literature review) in relation to the assessment framework indicated below. The study involved a thorough analysis of the normative guidance for the SADC context, obtained from a wide range of international, continental (AU) and sub-regional (SADC) instruments and their embedded standards, as well as other resource materials, including guiding frameworks operating at the international, continental and sub-regional level, specific studies undertaken,³³ and other regulatory and operational arrangements impacting on the contents and implementation of bilateral labour migration arrangements. Apart from bilateral labour agreements and memoranda of understanding, the latter arrangements comprise other bilateral arrangements (e.g., sectoral and bilateral labour arrangements other than bilateral labour agreements; bilateral social security agreements; bilateral trade agreements; and bilateral investment treaties). They further comprise a range of multilateral arrangements, among others, continental and sub-regional free movement,³⁴ free

³² The Southern African Development Community (SADC), first established as a development coordinating conference (SADCC) in 1980, was transformed into a development community in 1992: "It is an inter-governmental organisation whose goal is to promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance and durable peace and security among fifteen Southern African Member States." see <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/>, accessed on 16 March 2019. It needs to be indicated that SADC now consists of sixteen Member States: Comoros joined SADC in the course of 2018 – see <https://www.sadc.int/news-events/news/union-comoros-becomes-16th-sadc-member-state/>, accessed on 16 March 2019.

³³ Among others A Segatti *Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community* (IOM, 2016) and P Bamu *An analysis of SADC migration instruments in light of ILO and UN principles on labour migration* (ILO, 2014).

³⁴ See in particular the recently adopted AU Protocol on Free Movement of Persons, the Right to Residence and the Right of Establishment (2018) – among others, Article 19, which arranges for portability of social security benefits. Sub-regional level instruments include the SADC *Draft Protocol on Facilitation of Movement of Persons* (2005), the ECOWAS *Protocol relating to Free Movement of Persons, Residence and Establishment* (1979) and antecedent instruments, the EAC *Common Market Protocol* (2009) and related Annexes, and the COMESA *Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence* (2001).

trade/trade in services,³⁵ and social security agreements.³⁶ These arrangements also operate in other global contexts.³⁷ In addition, although of less relevance to migrant workers in or from SADC countries and in particular the countries specifically covered by this corridor report,³⁸ higher order regional regulatory frameworks include the all-important EU provisions regarding the status and mobility of so-called third-country nationals, EU migration policy, and EU Association Agreements.³⁹ Selected experiences at the national level were also consulted.

- Consultative interviews with relevant stakeholders, either individually or in groups that institutionally or otherwise had a common link – relevant government ministries (in particular, ministries of labour, home affairs and foreign affairs), social partners, and, in the case of Lesotho, also a recruitment agency, and an ex-migrant worker organisation. These interviews were informed by a framework of guiding questions, made available to the interviewees prior to the interviews, which had to be adjusted on a case by case basis, depending on the interviewed institutions/individuals.
- An expert consultative workshop where initial research findings were discussed, took place in Addis Ababa, Ethiopia on 22 November 2018. Stakeholder representatives from Lesotho and Zimbabwe were present at this occasion. A consultative validation meeting with South African government representatives concerning this version of the report was held on 29 January 2019; written feedback from stakeholders in Lesotho and Zimbabwe has not been received.
- Feedback received from the donor (the Swedish Ministry of Justice), the ILO and the IOM.

In view of the reality of SADC countries, as is the case with many other African countries, increasingly concluding Memoranda of Understanding (MOUs), whether binding or not, but often with minimalistic content, it was necessary to develop and utilise an assessment framework with the necessary flexibility to be used for bilateral labour migration agreement purposes, or any other bilateral arrangement affecting labour migration. For reasons explained more fully later in this report, the assessment framework in Chapter 3 had to be significantly adapted to suit the SADC corridor context, which is the subject of this report. The framework employed for this report, in the form of a list of issues and questions, is attached as the First Annexure and incorporates the following main elements of both the labour agreement cycle and the migration cycle: Preparatory framework

- Recruitment, selection and placement
- Engagement, assistance and protection
- Return and reintegration
- Implementation

While elaborated in the First Annexure, it needs to be emphasized that the said main elements are typically contained in many good practice bilateral labour migration arrangements around the world. On the one hand the framework addresses key elements of the bilateral labour agreement cycle, i.e. firstly, the preparatory framework informing the negotiation and conclusion of bilateral agreements and, secondly, the implementation of these agreements. However, any type of bilateral

³⁵ At continental level, see the newly adopted AU *African Continental Free Trade Area* (AUCFTA) and its associated *Protocol on Trade in Services* (2018). This is replicated at the level of several AU RECs.

³⁶ See, among others, the new (Draft) AU *Protocol on the Rights of Citizens to Social Protection and Social Security* (2019), and at sub-regional level (among others) the ECOWAS *General Convention on Social Security* of 2013.

³⁷ For example, global and regional free trade and trade in services agreements, such as GATS, operating within the WTO context.

³⁸ But note that sizeable numbers of Zimbabweans in particular have emigrated to the UK.

³⁹ For a more elaborate discussion of the EU context, see M Olivier *Access to social security for migrant workers from Africa, including portability regimes* (Final report, submitted to the ILO, 2016) par 4.5.1-4.5.3 (p 81-91) and par 4.5.5 (98-108).

labour migration agreement would need to do more, as it should also address critically important components of the migration cycle – with reference to, firstly, recruitment, selection and placement; secondly, engagement with, assistance to and protection of migrant workers; and, thirdly, return and reintegration.

The structure of the report is as follows. This part on the background, scope and methodology is followed, firstly, by a brief overview of SADC and its migration and labour migration context and responses and, secondly, an analysis of the corridor findings. The final part of the contribution concerns high-level conclusions and recommendations.

Finally, the limitations of the scope of the report should be made clear. While it considers both the general context of bilateral labour arrangements in SADC and comments more broadly on bilateral arrangements concluded by the three countries concerned, its focus is on two specific SADC bilateral contexts/corridors – i.e. Lesotho-South Africa and Zimbabwe-South Africa. It therefore does not provide a representative picture of all the SADC corridors.

5.2. Overview: SADC and its Labour Migration Context

5.2.1 SADC migration⁴⁰

SADC consists of 16 Member States,⁴¹ and is one of eight Regional Economic Communities (RECs) in Africa, comprising 277 million residents. Its major migration drivers include poverty and high unemployment rates in several SADC countries. SADC migration is further associated with the impact of HIV/AIDS (on a regional basis, SADC has the highest HIV prevalence rate in Africa (i.e. 12.6%)).⁴² Other drivers of migration include economic development in the region, supported by significant increases in cross-border trade. The services sector constitutes the largest contribution to regional GDP (51%), as opposed to industry (32%) and agriculture (17%). Also, total SADC trade almost quadrupled between 2000 and 2011; total intra-SADC imports have grown steadily over the past ten years, more than tripling in total.⁴³

A considerable part of the labour migration is of a mixed and irregular nature. As has been remarked:

⁴⁰ This paragraph and the next paragraph rely in part on M Olivier *Migration in Namibia: A country profile 2015* (IOM, 2016) 28-33.

⁴¹ I.e. Angola, Botswana, Comoros, Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe – see <https://www.sadc.int/member-states/>, accessed on 16 March 2019

⁴² <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/>, accessed on 18 January 2019.

⁴³ See <https://www.sadc.int/about-sadc/overview/sadc-facts-figures/>, accessed on 10 December 2018.

Box 4: Overview of SADC migration⁴⁴

"The Southern Africa region continues to experience a significant rise in mixed and irregular migration flows. These flows originate mostly from the Horn of Africa, particularly Ethiopia and Somalia, and consist of refugees, asylum-seekers, economic migrants, and victims of trafficking, including women and children. The large majority of these migrants attempt to reach their destinations through established smuggling and trafficking networks. At least 20,000 migrants travel through the Great Lakes and Southern African Development Community (SADC) regions to try to reach South Africa each year. Human rights violations and the lack of protection of migrants, including from extortion, abandonment and physical, and to a certain extent sexual, violence continue to be a harsh reality for these mobile populations. In addition, relatively large mobile populations move between Angola and the Democratic Republic of the Congo, as well as from Zimbabwe to South Africa, and often prompt the affected governments to take measures to promote the departure of irregular migrants. Insecurity, lack of economic livelihood, drought and crop failure are some of the push factors that motivate migrants seeking better opportunities to undertake risky migratory routes. Labour migration remains one of the dominant forms of population movement in the region. Some migrants experience xenophobia, including negative social attitudes, discrimination and, at times, violence."

There has also been an increase in trafficking in persons⁴⁵ and internal and external refugee movements,⁴⁶ while skills flight ('brain drain') to and the growth of diaspora (particularly) in developed countries, have been substantial.⁴⁷ In fact, the very nature of migration within SADC is undergoing changes. It has, in particular, been reported that the change has been dramatic over the last 20 years as far as, for example, Lesotho is concerned: the focus and incidence of migration has

⁴⁴ IOM *Regional Strategy for Southern Africa 2014–2016* (IOM Regional Office Pretoria, South Africa, 2014). Available from www.iom.int/sites/default/files/country/docs/AUP00579-RO-Pretoria-Regional-Strategy.pdf, p. 7, accessed on 18 December 2018.

⁴⁵ There is increasingly evidence of growing numbers of local smugglers and an expanding network of transnational criminal syndicates involved in a diverse range of human trafficking activities: Crush, Williams, Peberdy 21-23, 25-26; Mudungwe 50. See generally US Department of State *Trafficking in Persons Report 2018* (2018).

⁴⁶ Internally displaced persons (IDPs) in SADC – the result of among others political and military instability in some of the countries – made up 2,9 million of the approximately 13 million IDPs in Africa in 2005 – more than half of the global total of IDPs and dwarfing the number of refugees: Brookings Institution - University of Bern Project on Internal Displacement *Regional Seminar on Internal Displacement in the Southern African Development Community (SADC) Region* (Gaborone, Botswana, 24-26 August 2005) 4-6; Black 6. And yet the position is that a coordinated response to the challenge of internal and external refugee movements is lacking in SADC: "Individual countries are left to shoulder the burden as best they can with support from international agencies. All are signatories to the major refugee conventions but few have advanced or adequate systems of refugee determination in place. Regional burden sharing is a key concept that SADC could easily turn into a reality." (Crush, Williams & Peberdy 13-14).

⁴⁷ While there is significant intra-regional brain drain, especially from countries such as Zimbabwe, Mozambique and Angola to South Africa and Botswana in particular, this is counterbalanced by significant emigration of SADC professionals to countries *outside* SADC. The health sector in SADC is most severely impacted by the brain drain, with nearly 30% of SADC-born physicians and 10% of SADC-born nurses resident outside their countries of birth. Major destinations for SADC health care professions include the UK, USA, Portugal, Australia and Canada. See Crush and Williams (2010) 27-29 and the studies referred to there, as well as Mudungwe 46-47.

shifted from mainly male mineworkers to higher-income migrants, and also large numbers of female migrants.⁴⁸

The importance and role of migration in SADC countries is also demonstrated by the extent and significance of remittances to the survival of recipient households, as they are fundamental in enabling families to meet their everyday needs.⁴⁹ For most households with outgoing migrants, migrant remittances comprise the main source of household income; also, the 2010 study undertaken in five SADC countries found that 85 per cent of households with outgoing migrants receive cash remittances.⁵⁰ For example, in 2012 Lesotho was, in relative terms, the second leading recipient country in the world, after Tonga:⁵¹ remittance income in Lesotho surpassed other sources of external financial inflows and constituted 28.6% of GDP.⁵² Remittances also play a significant role in the economic development of SADC countries. As remarked in a 2012 study, and echoing the international experience in this regard:⁵³ "[F]or national economies, cross-border remittances are a source of foreign exchange and taxes, contribute to the balance of payments, and provide capital for enterprises and valuable household incomes."⁵⁴ Therefore, SADC governments and even international organisations have started to integrate remittances as a tool for development in their poverty reduction strategies.⁵⁵

5.2.2 Labour migration: Overview

Traditionally, there has been a strong focus on labour migration in SADC, due to economic opportunities in receiving countries. Also, the cultural and linguistic similarities between migrants from Botswana, Eswatini (previously Swaziland), Lesotho and Mozambique with the population of South Africa allow them to easily blend into communities in South Africa, thereby encouraging migration.⁵⁶ In fact, *intra*-SADC movement is the prevailing characteristic of migration from SADC countries. Southern African cross-border migration tends to occur within the region or with neighbouring regions, while only a small percentage moves overseas, confirming the South-South nature of SADC migration.⁵⁷ As noted in an African Development Bank study, in Southern Africa

⁴⁸ LJ Ntema *et al* *The levels of access to public services in the Free State by non-South Africans/non-Free State residents* (Centre for Development Support, University of the Free State) (2011) 59.

⁴⁹ B Dodson, H Simelane, D Tevera, T Green, A Chikanda & F de Vletter *Gender, migration and remittances in southern Africa* (Cape Town, IDASA, 2008) 8, 30.

⁵⁰ Pendleton *et al* 4. Remittances are sent on a regular basis and "easily outstrip agriculture in relative importance as a household income source": *ibid*, 5. In fact, the same study remarks that, "across the region as a whole, annual median income from wage employment and cash remittances is the same . . . When cash and commodities are combined, however, the value of remittances exceeds all other forms of income.": *ibid*.

⁵¹ Nalane *et al* *The remittances framework in Lesotho* (2012) xiii-xiv, 1, 7

⁵² *Ibid*.

⁵³ C Thouez "The impact of remittances on development" in UNFPA *International Migration and the Millenium Development Goals* (Selected papers of the UNFPA Expert Group Meeting, 11-12 May 2005, Marrakech).

⁵⁴ Crush, Williams and Peberdy 18.

⁵⁵ C Ramírez, M Domínguez & J Morais *Crossing Borders: Remittances, Gender and Development* (Working paper) (Instraw (United Nations International Research and Training Institute for the Advancement of Women 2005)) 52.

⁵⁶ A Shimeles *Migration Patterns, Trends and Policy Issues in Africa* (Working Paper Series No 119, African Development Bank Group, 2010) 11.

⁵⁷ P Mudungwe *Migration and Development in the Southern Africa Development Community: The Case for a Coherent Approach* (Intra-ACP Migration Facility, 2012) 45.

slightly more than 65% of international migrants relocate within the same region in search of better economic opportunities; 26.5% migrate to East Africa and 6.5% to Central Africa.⁵⁸

In South Africa, the major destination country within SADC,⁵⁹ migrants from within SADC constitute 94 per cent of the total stock of African migrants⁶⁰ and around 75 per cent of all (regular) migrants in the country.⁶¹ In addition, a 2010 study of migration within Southern Africa revealed that 86 per cent of the total number of migrants from Lesotho, Botswana, Eswatini (Swaziland), Southern Mozambique, and Zimbabwe work in South Africa, confirming a clear trend, namely that most South-South migrants travel across contiguous borders.⁶² In particular, it has been said that the main destination for migrants from Lesotho, a landlocked country with limited employment opportunities, is South Africa: 99.8% of Lesotho migrant workers are said to work in South Africa.⁶³

In fact, migration has been a long-standing feature of the labour market framework in southern Africa, particularly as far as work on the mines and in agriculture is concerned.⁶⁴ Apart from informal cross-border trade-related migration,⁶⁵ historically work on the mines – again, particularly in South Africa – served as a magnet for both internal and external migrants. As a result, it could be argued that the economic development of several countries in the region was made possible only by the use of labour from other countries.⁶⁶ From a historical perspective, as is supported by data on modern-day migration movements within SADC, it can be said that labour migration practices in southern Africa are deeply entrenched and have become part of the movements of people for generations, primarily in search of better living and working conditions.⁶⁷

⁵⁸ Shimeles *Migration Patterns, Trends and Policy Issues in Africa* 9.

⁵⁹ Political migration has largely been the result of instability in countries such as the Democratic Republic of Congo (DRC) and, earlier, Angola and Mozambique. Economic migration has within SADC resulted in the flow of migrants to countries with better economies and skills shortages, namely Botswana, Namibia and especially South Africa. See M Olivier *Regional Overview of Social Protection for Non-Citizens in the Southern African Development Community (SADC)* (Report prepared for the World Bank) (Social Protection Discussion Paper, No 0908, 2009) 10, accessed at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0908.pdf> accessed on 10 December 2019 and the studies referred to there.

⁶⁰ See J Crush & V Williams "Labour Migration Trends and Policies in Southern Africa" (SAMP Policy Brief 23, March 2010) 5.

⁶¹ Crush and Williams (2010) 7.

⁶² W Pendleton, J Crush, E Campbell, T Green, H Simelane, D Tevera & F de Vletter *Migration, Remittances and Development in Southern Africa* (Southern African Migration Project) (Migration Policy Series No. 44) (IDASA 2006) 2-3; R Sabates-Wheeler and J Koettl "Social Protection for Migrants: The Challenges of Delivery in the Context of Changing Migration Flows" 63(3-4) *International Social Security Review* (2010) 116.

⁶³ J Crush, J Dodson, J Gay, T Green & C Leduka *Migration Remittances and 'Development' in Lesotho* (South African Migration Programme, 2010) 26.

⁶⁴ Cf C Fenwick and E Kalula "Law and labour market regulation in East Asia and southern Africa: Comparative perspectives" *International Journal of Comparative Labour Law and Industrial Relations*, 21:193–226 (2005) 193–226.

⁶⁵ See generally J Crush, V Williams & S Peberdy *Migration in Southern Africa* (Global Commission on International Migration, 2005) 5-6; P Delius *The History of Migrant Labor in South Africa (1800– 2014)* (Oxford Research Encyclopaedia of African History, Southern Africa Online Publication, May 2017), accessed at <http://oxfordre.com/africanhistory/view/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-93> on 12 December 2018. This has in particular been true of the extensive labour migration from (southern) Mozambique to South Africa: see N Gaspar *The reduction of Mozambican workers in South African mines, 1975-1992: A case study of the consequences for Gaza Province - District of Chibuto* (2008) 16-20, accessed at <http://hdl.handle.net/10539/4839> on 12 December 2018.

⁶⁶ *Ibid.*, 5-6.

⁶⁷ *Ibid.*

While many cross-border migrants in southern Africa are circular migrants,⁶⁸ migration patterns within SADC have largely been characterised by their permanent or ongoing nature: Once immigration linkages are established, they are very difficult to break, and migration flows are almost impossible to reverse.⁶⁹ This is particularly true of the mining and agricultural industries in southern Africa. Migration is essentially regarded as a long-term engagement rather than as a passing phase in the working lives of migrants, despite the fact that they maintain strong links with the home country.⁷⁰ This also flows from the fact that, according to the 2010 study referred to above, migrants from the countries concerned⁷¹ are predominantly older,⁷² married,⁷³ and, in most cases, heads of households.⁷⁴ In addition, the study indicates that many households have a migration 'tradition' which is passed on from one generation to the next in that parents and even grandparents worked outside the home country.⁷⁵ Furthermore, it is generally accepted that SADC-related migration is characterised by several dimensions, including contract labour migration,⁷⁶ declining levels of regular migration to and within the region and an increase in clandestine and undocumented (irregular)⁷⁷ as well as informal migration;⁷⁸ and an increased feminisation of cross-border migration.⁷⁹

5.2.3 Bilateral and other responses to SADC labour migration

Limited use has been made of bilateral labour migration agreements in SADC. Involving South Africa as the country of destination, five bilateral labour *agreements* were concluded under the previous political regime, primarily to provide labour for South African mines: these countries are

⁶⁸ Circular or seasonal migrants, who in the case of SADC, include seasonal agricultural workers in border areas, construction workers, informal cross-border traders, move for short periods from their country of usual residence to one or more countries for purposes of employment, or to conduct an economic activity: Mudungwe 49.

⁶⁹ M Reitzes *Regionalizing international migration: Lessons for SADC Migration Policy Brief No. 11* (Migration Policy Brief No. 11, 2003) (SAMP (Southern African Migration Project) 18).

⁷⁰ Pendleton *et al* *Migration, Remittances and Development in Southern Africa* 4.

⁷¹ I.e., (migration from) Botswana, Lesotho, Mozambique, Swaziland and Zimbabwe: Pendleton *et al* 1.

⁷² Only 7% of the migrants covered in the survey were under the age of 25; in contrast, 41% were over 40 (Pendleton *et al* 2). See also Crush, Williams and Peberdy *et al* 21-23.

⁷³ As many as 62% of the migrants covered by the survey were married: Pendleton *et al* 2.

⁷⁴ Just over half the migrants were actually the head of the household rather than an ordinary member of it, although the pattern differed from country to country: Pendleton *et al* 2-3.

⁷⁵ About 50% of the migrants covered in the survey indicated that their parents had been cross-border migrants: Pendleton *et al* 3.

⁷⁶ See Crush, Williams and Peberdy 7 and Mudungwe 48.

⁷⁷ Irregular migration appears to be widespread and on the increase in southern Africa, although the exact numbers of irregular migrants are a subject of constant debate and conflicting opinion. It was reported that South Africa deported over 1.5 million irregular migrants to neighbouring countries between 1994 and 2010: Mudungwe 49-50; see also Crush and Williams (2010).

⁷⁸ Mudungwe 50. This applies in particular to informal cross-border traders: for example, it has been suggested that 30%-50% of border crossings into South Africa, except from Namibia and Botswana, are by small-scale traders: M Olivier *Reflections on the feasibility of a multilateral SADC social security agreement involving South Africa and Lesotho, Mozambique, Swaziland and Zimbabwe* (report submitted to the ILO, Nov 2010) par 32-35.

⁷⁹ Crush, Williams and Peberdy 14; SAMP & IOM *HIV/AIDS, Population Mobility and Migration in Southern Africa: Defining a Research and Policy Agenda* (Southern African Migration Project (SAMP) & International Organisation for Migration (IOM) 2005) 17; Mudungwe 48. Yet, it has been remarked that across all the African RECs, SADC has the largest gap (i.e. 23%) between male and female (migrant) employment: P Mehra *Labour migration within Africa: A snapshot of statistical data trends* (Paper presented at an international Symposium on Fostering Labour Mobility within and from Africa, Nairobi, Kenya, organised by the IOM, 9-12 July, 2018) 14 and authority cited there.

Botswana,⁸⁰ Eswatini (Swaziland),⁸¹ Lesotho,⁸² Malawi⁸³ and Mozambique.⁸⁴ One was concluded in the 1960s (Malawi) and three in the 1970s (Botswana, Eswatini (Swaziland) and Lesotho). The remaining agreement, with Mozambique, was concluded in 1964, but had been preceded by a range of earlier agreements with the Portuguese colonial government regulating the provision of temporary labour from Mozambique, initially dating back to the 19th century.⁸⁵ The agreements specify conditions and obligations on issues such as recruitment, contracts, remittances and deferred pay, taxation, required documentation, unemployment insurance and appointment of labour officials to be stationed in South Africa.

In the course of the consultations informing this report, it became clear that given the time periods during which these agreements were concluded, there is seemingly no institutional knowledge of: (i) the history of the agreements (other than that they were supposed to arrange for migrant labour to be made available to, in particular, South African mines); and (ii) challenges experienced with the conclusion and inception of these agreements. Also, in particular in the case of South Africa, the democratisation of the country in the early 1990s brought about a clear break with the past, which in part has led to a reconsideration by South Africa of the value and appropriateness of the agreements. Nevertheless, for reasons discussed in par 3.1 below, the future existence of these bilateral labour agreements is uncertain. In the course of consultations held for this report, the South African Government (i.e. the Department of Labour) has indicated that it has no intention to conclude new bilateral labour agreements and that it prefers MOUs as the primary vehicle to establish and maintain bilateral labour migration relations. The reasons for this stance on the part of the Department of Labour are varied – according to the Department these agreements have become obsolete; the Department prefers the relative flexibility of a framework arrangement regulating labour relations in the broader sense of the word contained in a MOU; it prefers a less

⁸⁰ *Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana relating to the Establishment of an office for a Botswana Government Labour Representative in the Republic of South Africa, Botswana citizens in the Republic of South Africa and the Movement of such Persons across the International Border – Treaty Series 3/1973.* The agreement entered into force on 24 December 1973.

⁸¹ *Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border, and addendum thereto – SA Treaty Series 3/1986.* The agreement entered into force on 22 August 1975.

⁸² *Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho relating to the Establishment of an Office for a Lesotho government Labour Representative in the Republic of South Africa, Lesotho Citizens in the Republic of South Africa and the Movement of such Persons across the International Border – SA Treaty Series 1/1973.* The agreement entered into force on 24 August 1973.

⁸³ *Agreement between the Governments of the Republic of South Africa and Malawi relating to the employment and documentation of Malawi nationals in South Africa – SA Treaty Series 10/1967.* The agreement entered into force on 1 August 1967.

⁸⁴ *Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa – SA Treaty Series 11/1964.* The agreement was concluded between the Government of the Republic of South Africa and the then colonial government, the Government of the Republic of Portugal, and entered into force on 1 January 1965.

⁸⁵ See N Gaspar *The reduction of Mozambican workers in South African mines, 1975-1992: A case study of the consequences for Gaza Province - District of Chibuto* (2008) 16-20, accessed at <http://hdl.handle.net/10539/4839> on 12 December 2018; R Plender *International Migration Law* (Martinus Nijhoff 1988) 339. See also M Harris "Labour Emigration among the Moçambique Thonga: Cultural and Political Factors", *Journal of the International African Institute*, Vol 29(1), Jan 1959, 50-66 – at p 50: "The emigration of Moçambique labourers to the South African mines has been governed by a series of international agreements beginning in 1897 between Moçambique and the Transvaal Republic, followed by the Modus Vivendi of 1901, the Transvaal-Moçambique Convention of 1909, and the Portuguese-South African Convention of 1928, revised in 1934, 1936, and 1940.

exacting instrument than one that imposes onerous obligations; and labour migration as such, according to the Department, should be managed via the normal immigration and work visa route. This tendency is also reflected in the recent practice in Mauritius, another SADC migrant-receiving country. In the course of negotiations (2018) with Lesotho on the exchange of labour between the two countries, Mauritius indicated its willingness to conclude a MOU (supported by an accompanying Declaration of Intent), but not a bilateral labour agreement, as the appropriate instrument.⁸⁶ According to Lesotho government stakeholders consulted, Mauritius also preferred the flexibility of a less onerous MOU instrument. According to the draft MOU,⁸⁷ which concerns cooperation on a reciprocal basis as regards the recruitment and development of specified categories of professionals and low-skilled workers, the MOU gives effect to the respective national labour migration policies, the SADC regional framework, also in relation to labour migration, as well as regional and international instruments ratified by both countries. Limited provision is made concerning the position and protection of affected migrant workers, save for some reference to integration in host communities, and bilateral meetings to reflect on the welfare of migrant workers from both countries.

Increasingly in SADC, use is made of MOUs or other *cooperation* arrangements. Several of these arrangements have been concluded by South Africa, but other SADC countries have followed suit. South Africa have concluded such arrangements with Lesotho (first in 2006, and again in 2013),⁸⁸ Mozambique⁸⁹ and Zimbabwe (replacing preceding MOUs of 2004 and 2009).⁹⁰ Similarly, Zimbabwe has concluded MOUs with Malawi⁹¹ and Mozambique;⁹² renegotiating a lapsed bilateral (labour) MOU with Namibia and considering the conclusion of MOUs with Botswana and Zambia are some of the priorities of the Zimbabwean government.⁹³ As discussed above, Lesotho has concluded a draft MOU with Mauritius.

The focus of these arrangements is on cooperation in the fields of employment and labour. Indicated areas of cooperation of relevance to labour migration usually include but are not limited to social security issues, often specified to also cover compensation in respect of occupational injuries and diseases and pension portability; occupational safety and health; and public employment services. In the case of the Zimbabwe – South Africa MOU, labour migration management is also specifically indicated. Particularly noteworthy is the fact that, unlike the bilateral labour agreements mentioned above, after a stipulated period of time, most of the MOUs

⁸⁶ See Ministry of Labour and Employment (Lesotho) *Study tour of the Government of the Kingdom of Lesotho to the Republic of Mauritius and Negotiation of bilateral Labour Agreement* (Report, February 2018).

⁸⁷ (Draft) *MOU between Lesotho and Mauritius on Cooperation in the Field of Labour* (2018).

⁸⁸ *MOU between Lesotho and South Africa on Cooperation in the Field of Labour* (signed in Maseru on 30 October 2006 and 3 December 2013 respectively).

⁸⁹ *Co-operation Agreement between Mozambique and South Africa in the fields of migratory labour, job creation, training, studies and research, employment statistics, social dialogue and social security* (signed in 2003). The objective of this agreement is to define the basis for institutional relations under which co-operation ties are developed.

⁹⁰ *MOU between Zimbabwe and South Africa on cooperation in the fields of employment and labour* (2017).

⁹¹ *MOU between Zimbabwe and Malawi on cooperation in the fields of employment and labour*. Several such MOUs have been concluded. According to Zimbabwean government representatives the latest version has lapsed and not yet been reactivated.

⁹² *MOU between Zimbabwe and Mozambique on cooperation in the fields of employment and labour* (2015).

⁹³ Information obtained during consultation with Zimbabwean government representatives.

are said to renew automatically, subject to termination by either party on (usually) six months' written notice.

A number of countries in SADC have also concluded other types of bilateral arrangements. For example, South Africa has concluded bilateral arrangements to provide for the *regulation of movement* across country borders. These arrangements, for example with Lesotho in 2007⁹⁴ – have subsequently been subsumed in special permit regimes established by South Africa, with Lesotho (2016) and Zimbabwe (2017). The primary focus of these permit types that have been issued to considerable numbers of Lesotho and Zimbabwean citizens irregularly in South Africa, was to *regularise* their stay in the country. The Lesotho permit regime, known as the Lesotho Special Permit, is due to expire by the end of 2019, while the Zimbabwean permit type, referred to as the Zimbabwe Exemption Permit (ZEP) will expire by 2021.⁹⁵ A related measure is the introduction in 1996 of a Border Resident Card, on the basis of a bilateral agreement to this effect between Namibia and Angola, to allow border residents to have access to a 60-km zone in the neighbouring country without a passport.⁹⁶ However, these agreements cannot strictly be seen as a *labour* agreement. A Mauritius-Seychelles MOU of 2017 concerns the *recruitment of Mauritian teachers and other professionals* to meet the needs of the Seychelles labour market.⁹⁷ In fact, sectoral (labour exchange) arrangements have generally been concluded by individual Ministries in several SADC countries in order to procure much-needed skilled professionals.⁹⁸

Finally, other measures, of relevance for labour migration but not included in BLMAs, have also been contemplated by SADC countries. These include visa arrangements and, in particular, special visa categories/regimes. For example, the South African *White Paper on International Migration* (2017) envisages treatment of migrant workers on the basis of specialised visa categories, i.e. the SADC special work visa; the SADC traders' visa; and the SADC small and medium enterprise (SME) visa.

5.2.4 National level institutional arrangements

Before reflecting on an assessment of existing arrangements, it is necessary to briefly indicate the institutional arrangements operative in the three countries that form the subject of this corridor study, as regards labour migration. In South Africa, the Department of Labour (DoL) is the chief

⁹⁴ *Agreement between South Africa and Lesotho on the facilitation of cross-border movement of citizens of the two countries* (June 2007). The objective of the agreement is to facilitate the movement of citizens of the RSA and Lesotho (other than through designated airports) who intend visiting; and to minimise the escalating costs related to improving service delivery regarding immigration clearance of their citizens who routinely cross the borders between the two countries. The agreement allows the citizens of the two countries to freely move between them without reporting to the migration officers for examination, as long as they have valid passports (art 3).

⁹⁵ A related initiative has aimed at the regularisation of the position of Zimbabwean agricultural workers on farms in South Africa's Limpopo province. In terms of the 2004 *MOU on Employment and Labour* between the two governments, the government of Zimbabwe agreed to issue them emergency travel documents: See Government of Zimbabwe *National Labour Migration Policy* (Draft, 2016) 5; see also <https://www.hrw.org/report/2006/08/08/unprotected-migrants/zimbabweans-south-africas-limpopo-province>, accessed on 12 December 2018.

⁹⁶ M Olivier *Migration in Namibia: A country profile* 2015 44.

⁹⁷ Similar MOUs with other countries are apparently being considered by Seychelles: see <http://www.seychellesnewsagency.com/articles/8625/Zambians%2C+Mauritians+boosting+teacher+ranks+in+Seychelles+state+schools>, accessed on 12 December 2018.

⁹⁸ Author's observation based on years-long engagement with labour migration practices of SADC countries.

custodian of labour migration and has taken the initiative with developing among others the draft National Labour Migration Policy. The overarching responsibility for migration policy more generally lies with the Department of Home Affairs (DOHA). This Department is the custodian of the *White Paper on International Migration* and of the special permit regime applicable to Lesotho and Zimbabwe. The chief responsibility for cross-border relations, also with regards to the joint bilateral cross-border commission framework (which also accommodates labour migration matters) is with the Department of International Relations and Cooperation (DIRCO). Social partners are also involved, in particular via the National Economic Development and Labour Council (Nedlac). Nedlac is the vehicle by which Government, labour, business and community organisations seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues and related challenges facing the country. Labour market policy constitutes one area of Nedlac's work. Private recruitment agencies are voluntarily organised in the Confederation of Associations in the Private Employment Sector (CAPES).

In Lesotho, the Ministry of Labour and Employment (MOLE) bears primary responsibility for labour migration matters, in particular via its Migration Liaison Office. This Ministry is the custodian of the Lesotho National Labour Migration Policy. The Ministry of Home Affairs (MOHA) has the overarching responsibility for migration policy in the country. Under its auspices the (draft) Migration and Development Policy was developed. The Ministry of Foreign Affairs and International Relations fulfils the counterpart role of DIRCO in South Africa as regards the bilateral joint cross-border commission framework. Together with other stakeholders, and supported by the IOM, these government ministries form part of the National Consultative Committee on Migration. The other stakeholders include, but are not restricted to, the social partners, migrant workers associations (including ex-mineworkers associations), The Employment Bureau of Africa (TEBA) (mainly involved in recruitment of and liaison with mineworkers and ex-mineworkers), the Basotho Immigrants Protection Organization (BIPO) and a recruitment company (labour export agency).

In Zimbabwe, the custodian for labour migration is the Ministry of Public Service, Labour and Social Welfare, and its various subdivisions. This Ministry took responsibility for the development of the (draft) National Labour Migration Policy. Migration policy generally lies with the Ministry of Home Affairs. This Ministry, through its Permanent Secretary, also takes the lead as regards the Inter-Ministerial Committee for Migration. The Ministry of Foreign Affairs and International Trade fulfils the counterpart role of DIRCO in South Africa as regards the bilateral joint cross-border commission framework. It also has a Diaspora Directorate that took the lead in terms of the development of the draft *Diaspora Policy* and liaison with the Zimbabwean diaspora.

5.3 Assessment of bilateral labour migration agreements, other responses and related regulatory considerations

5.3.1 Bilateral labour agreements

During interviews held for purposes of this report, the appropriateness of the current bilateral labour agreements regime involving South Africa as the receiving country, has been questioned by both South African and Lesotho stakeholders (no such agreement has been concluded with Zimbabwe). It has been indicated that –

- These agreements were concluded in a previous political dispensation, primarily with a view to provide "cheap labour" to South African mines and partly also South African farms, with little regard to the protection needed by the migrant workers;
- The relevance of the agreements has over the years diminished due to the rapidly declining number of foreign mineworkers employed in South African mines, the restructuring of mining operations leading to large-scale retrenchments, and the fact that many mining companies use recruitment avenues outside the agreement framework to procure the services of (migrant) mineworkers and ex-mineworkers;
- According to the South African Department of Labour, the considerable unemployment rate in South Africa renders it inappropriate to provide for a special regime allowing access for foreign workers to a part of the South African labour market;
- The agreements do not cover other critical labour market sectors, such as domestic, construction and textile workers;
- In particular in the case of the agreement with Mozambique, South Africa effectively forfeits the tax payable by Mozambican mineworkers, as the agreement provides for tax to be paid in Mozambique.

There are also other considerations emanating from the extensive literature written on this subject,⁹⁹ and largely shared by the interviewees during consultations. One of these considerations relates to the *deferred pay arrangement* contained in these agreements. In terms thereof, after an initial period of employment, as much as 60% of a mineworker's salary is compulsorily deferred and can only be received once the worker returns to the country of origin. Concerns raised during the consultations include that mineworkers are not properly informed about the payment options available to them in the country of origin. Objections against the deferred pay arrangement itself have been raised in the literature on this subject, and include the remark in an authoritative report prepared for the ILO that "[s]uch mandatory deductions are not consistent with international labour standards";¹⁰⁰ and the fact that the *UN Migrant Workers Convention*, ratified by among others Lesotho and Mozambique, but not by South Africa, stresses that migrant workers have the right to (freely) transfer their earnings and savings to their State of origin, or any other State.¹⁰¹ It is further echoed by the provision in the *SADC Labour Migration Policy Framework* that migrant workers have the right to transfer earnings and savings on return to their country of origin.¹⁰² In fact, the organised labour movement in South Africa, which also represents employed mineworkers from the

⁹⁹ See generally M Olivier *Developing a framework for a redesigned bilateral labour migration regime between South Africa and Mozambique, with particular emphasis on Mozambican mineworkers* (Report submitted to the International Organization for Migration (IOM) and Lawyers for Human Rights, 2016) 16-18 and authorities cited there.

¹⁰⁰ Wickramasekara, P *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Report prepared for the Labour Migration Branch, International Labour Organization, March 2015) 31.

¹⁰¹ Article 47(1) and (2) of the *UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

¹⁰² *SADC Labour Migration Policy Framework*, par 5.1.5 (iii)(c), (e) and (j), par 5.1.5 (iv)(e).

origin SADC countries, has consistently argued for the deferred pay arrangements to be abolished¹⁰³ – given the obligatory and inflexible nature of the deferred payment system and the fact that it is "... felt to be discriminatory in the sense that South African nationals are not subject to the same kind of regulations."¹⁰⁴

An analysis of the agreements reveals that they were entered into to regulate the flow of migrant labour from these countries to South Africa.¹⁰⁵ However, with the possible exception of the 1964 labour agreement regulating the employment of Mozambican mineworkers in certain South African mines,¹⁰⁶ it is clear that the obligations outlined in the agreements¹⁰⁷ are primarily imposed upon the relevant employers, and not the South African government. The agreements invariably refer to the fact that the South African authorities "shall endeavour to ensure ..." compliance by employers. Furthermore, there are several other reasons why these agreements, to the extent that they may still be operational, must be seen as limited in scope and effect:

- For most part, the agreements are focused on imposing unilateral conditions from the perspective of the country of destination, and paying little attention to the protection of the migrant workers.
- Return and repatriation regulation is dealt with not with a view to the reintegration of those affected in the countries of origin, but as a measure of removal of unwanted migrant workers. For example, in terms of the agreement between Eswatini (Swaziland) and South Africa, the Government Labour Offices and Representatives established under the agreement have the function to "assist the Government of the Republic of South Africa with the repatriation¹⁰⁸ of sick, injured or destitute Swaziland citizens who are or were employed in the Republic of South Africa and of other such citizens whose presence in the Republic of South Africa is or has become unlawful."

Furthermore, social security and related arrangements, in particular portability issues, have received limited attention in the agreements. As a rule, but subject to some limited exception (i.e. the provisions on workers compensation in the case of Mozambique), they do not cover public social

¹⁰³ The National Union of Mineworkers (NUM) in South Africa has recommended that the deferred pay system be abolished as it does not serve the interests of workers. However, the Chamber of Mines and the supplying states think otherwise: see B Maharaj *Immigration to post-apartheid South Africa* (Global Migration Perspectives No. 1, 2004) 18.

¹⁰⁴ T Sparreboom & P Sparrenboom-Burger *Migrant worker remittances in Lesotho: A review of the deferred pay scheme* (ILO) (1996) 4.

¹⁰⁵ The agreements typically provide that employment may only occur in accordance with the provisions of the agreement, that a citizen of the sending country entering South Africa for purposes of employment must also have in possession a written employment contract attested in the home country, and that the period of employment may not exceed 24 months. With some exceptions, recruitment is limited to agencies which have been authorised to do so. Entering into or remaining in South Africa in contravention of the agreements is made subject to repatriation.

¹⁰⁶ The agreement with Mozambique amongst others provide for:

- (a) The payment of workers compensation benefits partly in South Africa and partly in Mozambique (art XXII);
- (b) The transfer of assets in the estate of a deceased worker, as well as other "unclaimed moneys" due to Mozambique workers, to Mozambique (art XXIII);
- (c) Application of the Occupational Diseases in Mines and Works Act 78 of 1973 (South Africa) to Mozambique migrant workers who have returned to Mozambique, as far as mining-related lung diseases are concerned (art XXV).

¹⁰⁷ Specifically: (a) deferred pay to be paid to the foreign national in the sending country upon return to that country; (b) allowances payable to family members; and (c) monies to be paid into a welfare fund which may be set up by the government of the sending country for the purpose of supporting such citizens during periods of their disablement upon return to the sending country.

¹⁰⁸ Art 5 requires prior consultation.

security transfers, but only employer- and occupational-based payments. Also, no provision is made for retirement or related disability benefits in the agreements, including death benefits in favour of the dependants or survivors of migrant workers in South Africa and ex-migrant workers. Insufficient provision is made in the agreements concerning compensation procedures, required documentation and informing mineworkers and ex-mineworkers of their social security entitlements. As has been noted, " ... compensation authorities in South Africa have failed to disseminate culturally sensitive information about the autopsy process widely enough."¹⁰⁹ Furthermore, the agreements also fail to provide appropriately for the tracking and tracing of beneficiaries to whom compensation or other payments are due, be it the mineworkers themselves or their dependants. Large sums of unclaimed money have consequently accumulated over the years – a matter of serious concern to both the South African government and the governments of countries of origin. Finally, health and safety guarantees and protection are largely absent from the agreements.¹¹⁰

The shortcomings of the bilateral agreements indicated here and earlier in this report have prompted the Department of Labour in South Africa to argue for the "nullification" of the agreements and for providing for the limited protective elements present in the agreements to be captured in new MOUs. The Department is of the view that broader-based MOUs with flexible provisions, on the basis of which concrete measures could be taken as the need arises, present a more acceptable solution than bilateral labour agreements. It is further of the view that labour migration as such should be left to be dealt with in terms of the South African immigration and visa regime, rather than through bilateral arrangements.

5.3.2 Memoranda of understanding

Bearing in mind the above discussion, it is clear that since the democratisation of South Africa in 1994, and barring the possibility of limited sectoral bilateral agreements arranging for categories of manpower to be provided to sectors of the South African labour market,¹¹¹ no bilateral labour *agreement* has been concluded by South Africa. As indicated above, this pattern is also discernible from the practice of other SADC countries – including Lesotho, Malawi, Mauritius, Mozambique, Namibia and Seychelles. This is the case even though –

- Government representatives of Zimbabwe expressed their wish to let the (labour cooperation) MOUs they have concluded graduate into bilateral labour agreements; and
- In exploring the possibility of entering into a bilateral labour arrangement with Mauritius, the Lesotho government was intent on concluding a bilateral labour agreement and had to this effect prepared Draft Guidelines and a Model Agreement – however, as indicated, the

¹⁰⁹ Yale Global Health Justice Partnership *Fulfilling Broken Promises* (2014) 23 accessed at <http://www.polity.org.za/article/fulfilling-broken-promises-reforming-the-century-old-compensation-system-for-occupational-lung-disease-in-the-south-african-mining-sector-2014-01-15> (accessed on 12 December 2018).

¹¹⁰ See Olivier *Developing a framework for a redesigned bilateral labour migration regime between South Africa and Mozambique* 20-22 for further details.

¹¹¹ These agreements, if they do exist, are not publicly available and appear to be inaccessible.

outcome of the bilateral negotiations was a MOU, preceded by a Declaration of Intent to this effect.

And yet, even though for the moment MOUs appear to be the preferred channel of regulating bilateral labour relations in SADC, several concerns have been raised by most of the stakeholders met for purposes of this report. The concerns expressed by the stakeholders relate to the fact that these MOUs have a restricted scope from a labour migration perspective, as their overarching focus is on bilateral labour relations. Also, clearly stipulated obligations imposed on the parties are largely absent, as little is said in terms of concrete undertakings. Also, there is limited reflection on measures aimed at protecting the rights and interests of migrant workers in these MOUs. Finally, stakeholders indicated several problems, which are experienced with implementing the MOUs, reflected on in par 4.5 below.

5.3.3 Special permit regimes

Special permit regimes have been introduced by South Africa to deal with the considerable numbers of Lesotho and Zimbabwean citizens irregularly in South Africa, in an attempt to regularise their stay in the country. These regimes were the subject of a bilateral understanding with each of the two affected countries.¹¹² Significant numbers of Zimbabwean¹¹³ and Lesotho¹¹⁴ citizens have benefited from the permit regimes. Naturally, since the purpose of the two respective regimes is the regularisation of the position of irregular migrants from these countries, the regimes do not as such extend any other form of rights protection to these migrants. Nevertheless, the logical implication of regularised stay in South Africa is that such migrants are meant to be covered by among others the labour law and social security framework in South Africa applicable to any short-term migrant.

The success of these regimes does, however, hinge on the citizens of these two countries coming forward to apply for such a permit, and the existence of and access to a reliable citizens database in the respective countries. According to some of the stakeholders met, at least in the case of Lesotho, several challenges are experienced in this regard, prompted mainly by the fact that a considerable number of citizens of Lesotho have already acquired South African identity documents.

It is the view of the South African Department of Home Affairs (DHA) that the permit regime should be subsumed in an appropriate regional labour migration policy response to be developed by South Africa.

5.3.4 Regulatory considerations

The extensive literature on the subject suggests that immigration laws and policy in SADC countries generally focus on the effects of migration, and not on its underlying causes. The policy and legal

¹¹² For example, the Lesotho Special Permit Regime was confirmed in a "Statement of Intent from Bilateral Negotiations" signed by the Ministers of Home Affairs of Lesotho and South Africa, dated 22 September 2015.

¹¹³ 300,000 according to the South African *White Paper on International Migration*.

¹¹⁴ 120,000 citizens according to feedback given by the Lesotho government.

framework in this regard emphasises the tightening of controls, the monitoring of borders and, particularly in receiving countries, the establishment of detention centres and the increased deportation of irregular migrants.¹¹⁵ A study of a few years ago remarked that "[N]o country, with the possible exception of Botswana, has migrant or immigrant-friendly legislation on the books."¹¹⁶

In addition, legal and policy coordination, also in the corridor countries explored in the context of this study, appears to be largely absent: primacy is generally given to immigration laws and policy, at the expense of in particular social security and labour laws.¹¹⁷ As indicated by several stakeholders during consultations for purposes of this report, migrant workers who have lost their work become irregular migrants and are barely left with sufficient time to enforce labour law entitlements and finalise access to social security entitlements they may have.

Ethical recruitment is an area that has attracted attention in recent years, but requires further unfolding – this is discussed in more detail in par 4.2 below. However, it is in particular in the social security domain that legal and policy challenges occur. As noted in an ILO study,¹¹⁸ there are clear indications of nationality discrimination in both social security and related laws and practice of some of the SADC countries. Also, significant scope exists for the cross-border payment of benefits and provision of social security services by host country social security institutions. Limited provision is made for the exportability of social security benefits, unless the few existing bilateral treaties contain different arrangements.¹¹⁹ Also, as noted in the same ILO study, service delivery problems and deficiencies are experienced by migrant workers and their survivors as a result of the policy, institutional and operational fragmentation in the host country social security system and the lack of cooperation amongst social security institutions in the host country and with counterpart institutions in neighbouring countries. Some steps have been taken or are considered to address deficient service delivery; however, these appear to be insufficient and too limited to have a substantial effect on the nature, extent and impact of the current fragmented, inconsistent and uncoordinated approach.¹²⁰

And yet, it is also evident that SADC governments have realised the need for proper policy formulation and implementation. As regards the three countries selected for this corridor study, mention could be made of the following developments:

¹¹⁵ B Maharaj *Immigration to post-apartheid South Africa* (Global Migration Perspectives No. 1, 2004) 23; M Siddique *South African Migration Policy: A Critical Review* (University of Western Australia Business School, 2004) 32.

¹¹⁶ Crush, Williams and Peberdy *Migration in Southern Africa* 10 24.

¹¹⁷ M Olivier *Regional Overview of Social Protection for Non-Citizens in the Southern African Development Community (SADC)* (ILO, 2010), 55-56; S Mitchell *Migration and the remittance euphoria: Development or dependency?* (NEF (New Economic Foundation) 2006) 22.

¹¹⁸ M Olivier *South African social security benefits for migrant workers from Lesotho, Mozambique, Swaziland and Zimbabwe, and their survivors: deficiencies, challenges and suggested approaches* (report submitted to the ILO, Nov 2010) par 13 *et seq.*

¹¹⁹ The Law on Social Protection 4 of 2007 (Mozambique) art 15.2 stipulates that, subject to contrary provisions contained in "international conventions", benefits acquired under compulsory social security are not portable. Also, no provision for portability of benefits is made in the case of the current Lesotho legal framework.

¹²⁰ M Olivier *Reflections on the feasibility of a multilateral SADC social security agreement* paras 72, 194, 197, 542.

- South Africa: A recently (2017) overarching migration policy framework, in the form of the *White Paper on International Migration*, guiding the development of clear and consistent policies. One of these policies in the making is the draft *National Labour Migration Policy*.
- Lesotho: A *National Labour Migration Policy* was adopted in 2018, while a draft *Labour Policy*, which contains pertinent provisions in relation to labour migration, is currently being considered.
- Zimbabwe: A draft *National Labour Migration Policy* awaits finalisation, in addition to the adoption of a *National Diaspora Policy* in 2016 (with its Action Plan for the period 2017-2022) and a *Labour Export Policy*.¹²¹

A perusal of the above documents reveals that, cumulatively, a number of key issues are addressed by each of the three countries concerned:

- The importance of the international and regional normative frameworks
- Embedding migration policy and in particular labour migration policy in national legal and policy frameworks
- Overarching principles, vision and objectives for labour migration
- Governance, coordination and data management issues
- Labour immigrants and emigration for employment
- Bilateral arrangements
- Diaspora liaison and integration
- Mainstreaming (labour) migration into national development
- Treatment and protection of migrant workers to, within and from the countries concerned

5.4 Findings from a bilateral labour agreement cycle and migration cycle perspective

5.4.1 Preparatory framework

The history and nature of migratory flows seemingly play some, albeit limited, role in informing bilateral and other responses in the selected SADC countries. Important examples of where they do play a role include historically the need for migrant mineworkers informing the conclusion of the bilateral agreements referred to above;¹²² the comprehensive scale of irregular migration prompting the special permit regimes applicable to Lesotho and Zimbabwe citizens; and the new SADC visa types envisaged in the South African *White Paper on International Migration*.

At a micro level, the issuing of a work permit in South Africa to individual foreign workers *outside* the framework of the bilateral labour agreements is dependent on proof that a suitable South African could not be found to fill the position.¹²³ Generally, however, from a macro perspective, limited consideration is given to labour market needs and available workers in South Africa, or whether workers specifically needed in South Africa are indeed available in any of the two countries

¹²¹ Reference to these two policies are made in the draft Zimbabwe National Labour Migration Policy.

¹²² Apparently, as transmitted during the consultative interviews, still today there is a practice of allowing a son of a deceased foreign mineworker to replace the worker, to ensure continued family support.

¹²³ The Employment Services Act of 2014 also requires that once a foreign national is employed, the employer needs to prepare a skills transfer plan for that person in that specific position.

of origin. This is the position despite the fact that the South African government has drawn several scarce skills lists. These include the Department of Higher Education and Training (DHET) Occupations in High Demand List 2015; the establishment by DHA of a Quota List gazetted in 2007; and the publication by DHA of a Critical Skills List in 2014.

South Africa does have a system of skills/qualifications assessment in place. However, the SADC regional framework in this regard, which is meant to inform and support cross-border skills flows, has not yet been finalised. Under the SADC Protocol on Education and Training of 1997, the region is implementing a SADC Qualifications Framework (SADCQF) to enable easier movement of learners and workers across the SADC region and internationally. The SADCQF is a regional mechanism for comparability and recognition of full qualifications, credit transfers, creation of regional standards and facilitation of quality assurance at regional level. A SADC Qualifications Framework Implementation Model was adopted in 2017 and 8 Member States are piloting the alignment of their national qualifications framework to the SADCQF.¹²⁴

Also, most of the stakeholders consulted for purposes of this study indicated that the legislative and administrative requirements for the regular migration of workers are often not known, nor are they consistently shared on a cross-border basis. An important exception was the work done by the Beitbridge Reception Centre (at the main South Africa-Zimbabwe border) to inform interested Zimbabwean migrant workers, including in particular domestic workers, of the South African requirements and the protections available under South African law and policy. The Beitbridge arrangement is not yet fully operational.

5.4.2 Recruitment, selection and placement

The bilateral agreements concluded by South Africa specifically provide for recruitment of migrant workers. From a domestic perspective, in South Africa, the Employment Services Act (Act No. 4 of 2014) (to be supported by the recently published draft Employment Services Regulations) informs the employment of foreign nationals in a manner that is consistent with the objects of the Act and the Immigration Act (Act No. 13 of 2002). It also provides for the registration and regulation of private employment agencies, as well as the establishment and functions of public employment services. According to the Act, foreign nationals employed in South Africa enjoy the protection of the right to ethical and fair labour practices enshrined in the South African Constitution. It further provides that private employment agencies may only charge fees to any work seeker to the extent that the Minister of Labour may by notice in the Government Gazette approve such fees.

Otherwise, however, no legislative and institutional arrangements pertaining to ethical recruitment exist in the South African system – in respect of both immigrant workers and in particular emigrant workers. Also, in other SADC countries, including Lesotho and Zimbabwe, such arrangements seemingly are still weakly developed, despite advances made – including the already mentioned *Labour Export Policy* to be developed in Zimbabwe and certain provisions in the Lesotho *Labour Code* (to be revised). Therefore, standardised arrangements concerning costs, rights and obligations are

¹²⁴ Information extracted from the decisions taken at the SADC ELS meeting, March 2019.

generally lacking, as is the case with formalised government-organised pre-departure information and training.

It is evident that this is an area that requires considerable further investment in SADC countries, including the selected corridor countries. Fair and ethical recruitment principles emanating from the ILO, IOM and the World Employment Confederation (WEC)¹²⁵ are particularly instructive and helpful. At the SADC level, per the decisions taken at the occasion of the Employment and Labour Sector (ELS) meeting of March 2019, and aligned with the UN Global Compact for Migration, Ministers of Labour and Social Partners were invited to approve the prioritisation of fair and ethical recruitment programming in the follow up to the SADC Labour Migration Action Plan (2016-2019). The ELS decision noted that, in accordance with the Global Compact objectives to which SADC Member States agreed, there had to be a "review of existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination."¹²⁶

Also, much can be learnt from regulatory frameworks related to recruitment and overseas employment existing in other developing countries, also in Africa. One of the most comprehensive and recent frameworks is that of the Ethiopian *Proclamation 923/2016, providing for overseas employment*.

Furthermore, and in addition, there is need to arrange for self-regulation of private employment agencies – in particular via the establishment of umbrella bodies exercising professional control (among others via the issuance of Codes of Conduct) – the Kenyan examples of KAPEA and ASMAK can in particular be mentioned. Private regulation provides for professional standards set by the industry itself, and for supervision by the industry. If effective, these can strengthen and complement public regulation. Also, scope exists for involving public employment services in recruitment as well. For the moment, in the South African case, the public employment service arranged for in the Employment Services Act of 2014 is primarily aimed at providing state assistance to unemployed South African job seekers. In South Africa, private recruitment agencies are voluntarily organised in the Confederation of Associations in the Private Employment Sector (CAPES). Members are required to adhere to the CAPES Code of Conduct and the CAPES Charter, which set out key principles regarding recruitment of workers.¹²⁷

Finally, there is a clear need to build capacity at the levels of government and the private sector to operationalise suitable arrangements. The need for capacity-building goes beyond the areas of recruitment, selection and placement and includes among others –

¹²⁵ previously the International Confederation of Private Employment Services (CIETT)

¹²⁶ Information extracted from the decisions taken at the SADC ELS meeting, March 2019.

¹²⁷ See www.capes.org.za/, accessed on 16 March 2019.

- The requisite set of skills to negotiate bilateral labour migration agreements and a clear understanding of the subject area;¹²⁸
- The ability to conclude bilateral labour migration agreements that make sufficient provision for the protection of migrant workers' labour, social security and other rights;
- The capacity to implement and to review existing arrangements, and to improve systems and processes to support the implementation of bilateral arrangements, for example in relation to border management, reliable data sources, and cross-border data exchange;
- Strengthening enforcement capacity, also with regard to penalising employers who contravene labour and migration legislation;
- Investing in the capacity of government and other role-players to effectively integrate return migrants after the expiration of their contracts.

5.4.3 Engagement, assistance and protection

An analysis of the bilateral labour migration agreements referred to in this report, and of feedback received from migration stakeholders in the selected corridor countries, gives rise to the following findings –

- The integration into the country of destination (e.g., South Africa), and decent living and working conditions, as well as access to basic services (health, housing, etc.) has not been provided for; neither has provision been made for family protection and reunification, and the unique position/needs of women, in particular in relation to family responsibilities, including maternity contexts;
- A model employment contract is not included in any of existing legal and policy instruments; apparently, however, the main recruiting agency for South African mines makes use of a contract template for the recruitment of mineworkers;
- Assistance with advice, support, physical and mental protection and complaints, grievance and dispute resolution has also not been provided for;
- As indicated above, social welfare/security provisions are contained in some arrangements, but if so, only to a limited extent;
- Limited provision is made for (voluntary) transmission of earnings – in fact, as discussed, compulsory deferred pay arrangements are a hallmark of the bilateral labour agreements concluded by South Africa;
- Except for the Zimbabwean *Diaspora Policy* (supported by several concrete steps taken by the Zimbabwean government), formal provision has not yet been made in policy and legal instruments aimed at engaging the diaspora.

¹²⁸ See in this regard among others A Segatti *Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community* (IOM, 2016) 22-25; F Fonseca *Negotiation* (Presentation made at an ILO Labour Migration Academy workshop, Johannesburg, December 2016); and O Akinboade *A framework for negotiating bilateral migration agreements for Lesotho* (2013) (on file with author); and from a broader negotiation principle perspective, ILO *Joint Union/Management Negotiation Skills – Training for Social Partners on Negotiation Skills* (International Training Centre of the ILO, 2012) and ILO *Joint Union/Management Negotiation Skills Training Course – Trainer's Guide* (International Training Centre of the ILO, 2012). For purposes of devising new bilateral labour arrangements, it is important to take note of different negotiation approaches, ranging from position-based negotiation to (the more preferable) interest/needs-based negotiation – the latter approach involves an understanding of the mutual gains bargaining flow, the problem-solving process, and critical elements of what are regarded as (required) behaviours of effective negotiators: See Fonseca *Negotiation* (2016) for further details.

And yet, countries of origin have taken several steps to assist their migrant workers abroad. In Lesotho, the Ministry of Labour and Employment, through its Migration Liaison Office, invariably assists migrant workers in South Africa in addressing their concerns. In the case of Zimbabwe, the Diaspora Directorate of the Ministry of Foreign Affairs and International Trade regularly engages with the diaspora. Trade unions in South Africa have been approached, for example by the trade union movement in Zimbabwe, to assist with monitoring enforcement of the rights of migrant workers and with resolving disputes with employers. At times, the advice and support of international agencies, in particular the ILO and the IOM, have also been secured. Other measures are being considered, including the appointment of labour attachés.

Finally, central banks in the countries concerned have commenced with measures to ease the flow of remittances, including the reduction of remittance costs. From a sub-regional perspective, the SADC region is implementing a *SADC Financial Inclusion Strategy* (2016-2021) adopted in 2016 which, among other objectives, seeks to facilitate easier and cheaper remittance flows in the region.

5.4.4 Return and reintegration

While newly adopted policies (e.g., the draft Zimbabwean *National Labour Migration Policy*) envisage steps to support the return and reintegration of migrant workers, little provision in this regard is made in the bilateral labour migration agreements operating in the SADC region. Apparently some ad hoc support is given to ex-mineworkers returning to Lesotho and Zimbabwe respectively. Generally, however, skills training and job-seeking services have yet to develop. Regarding portability of social security benefits, with limited exceptions, bilateral labour migration arrangements are not yet providing for this, although certain unilateral legislative measures do exist in this regard in South Africa and Zimbabwe respectively. Mention should be made, however, of the drive towards dedicated arrangements in this regard within the context of the *SADC Policy Framework on Portability of Accrued Social Security Benefits* (2016).

5.4.5 Implementation

The various bilateral labour migration agreements and arrangements covered by this report invariably provide for cross-border institutional bodies to implement, monitor and review the BLMAs – i.e. a Joint Bilateral Coordinating Commission (JBCC) established for purposes of implementing the Lesotho-South African MOUs; and an apex-level Binational Commission to monitor the implementation of the Zimbabwe-South African MOUs. At times, action or implementation plans are developed, also to deal with concrete measures that require attention, and with monitoring specifically provided for in the BLMAs. However, concern has been expressed that these bodies, in particular the JBCC, do not meet regularly, and that the jointly developed Annual Plans are not always implemented.

Several other challenges are experienced with implementing the BLMAs and in relation to give concrete effect to operational measures bilaterally agreed on by the countries concerned. Most critical is the absence of adequate information systems and supporting documentation. Neither Lesotho nor Zimbabwe has an operational Labour Market Information System – data is reportedly

still captured manually, although steps have been introduced to digitalise labour migration-relevant information. Also, household and population surveys generate insufficient labour migration data due to insufficient coverage and capturing of labour migration thematic issues.

In-country collaborative structures exist, both at the governmental and multi-stakeholder level. However, there is a perception amongst governmental stakeholders in the countries concerned that inter-governmental cooperation in relation to labour migration issues has not been properly developed. Also, trade unions in particular, in both Lesotho and Zimbabwe, allege that they have not been (sufficiently) involved in the consideration, conclusion and implementation of BLMAs.

Of critical importance for the successful implementation of any BLMA regarding the employment of migrant workers is an existing skills recognition system. While the countries covered by this corridor study have their own skills and qualification recognition systems in place, cross-border cooperation arrangements are in their infancy. The SADC framework in this regard is only currently being established, and rolled out on a pilot basis in some SADC countries.

Finally, stakeholders in Lesotho seem to agree that capacity – both in human and technical terms – is needed to support the task of negotiating, concluding and implementing BLMAs.

5.5. Overall Conclusions and Recommendations

5.5.1 Dealing with inadequate provisions and weak protection appearing from current BLMAs.

The analysis of BLMAs and other arrangements affecting labour migration contained in this report makes it clear that several key elements of the bilateral labour agreement cycle and the migration cycle approach have been inadequately provided for. This also applies in particular to the weak and at times non-existing social protection of the rights of migrant workers. Both the South African and Lesotho governmental stakeholders are of the view that the traditional, extensive framework of international guidelines for concluding bilateral labour agreements is unnecessarily comprehensive from a SADC perspective, and that a more streamlined and focused approach is desirable. Also, they are of the view that it should be left to the countries concerned to decide how to give effect to agreed guidelines in the formulation and implementation of BLMAs. There seems to be general consensus of the stakeholders consulted for purposes of this report that the attached Assessment Framework provides a pliable and flexible frame of departure for this purpose.

5.5.2 Alternative(s) to current bilateral labour agreements?

For the reasons indicated in this report, serious doubt has been expressed by the consulted stakeholders regarding the appropriateness of the existing bilateral labour agreements concluded with South Africa and their effectiveness. Reference was made in this report of the view of the Department of Labour, South Africa to have the current agreements "nullified". Mention should in this regard be made to the possible impact of a recent judgment of the South African Constitutional Court, to the effect that the signing by the ex-President of South Africa of a Protocol at the SADC level that would suspend the then established SADC Tribunal was constitutionally invalid. Crucial for this report and the view that the existing bilateral labour agreements can be unilaterally "nullified",

is the fact that the court made it clear that the executive authority does not have the power to unilaterally remove rights of South African citizens and citizens of other SADC countries enshrined in the SADC Treaty and the founding Protocol of the SADC Tribunal, and embedded in the South African Constitution.¹²⁹ By parity of reasoning, it is suggested that the protections embedded in the current BLMAs, limited as they are, cannot be removed merely by executive act. It may be possible to terminate the bilateral labour agreements on the strength of the termination provisions contained in the very agreements (implying, in the case of Mozambique, a termination period of three years), provided at least that existing/accrued rights of migrant workers are not affected. Alternatively, the renegotiation of the agreements may be called for.

5.5.3 The need for an overarching conceptual and policy framework, bearing in mind the imperatives of regional integration.

It would appear that an underlying principled and overarching policy approach to dealing with labour migration has not yet been sufficiently developed, at least not in South Africa – although the development currently of a draft national labour migration policy is meant to address this very shortcoming. Therefore, it appears necessary to develop and implement BLMAs and arrangements impacting on labour migration in SADC within a broader and holistic conceptual and policy perspective. Furthermore, it is necessary to consider how South Africa and the other affected SADC countries view the unfolding of the labour market structure and requirements from a regional, rather than purely individual country perspective. This should be done, mindful of the fact that all SADC Member States have repeatedly committed to furthering regional integration. As far as South Africa is concerned, mention should in particular be made of the *White Paper on International Integration* in this regard. The *White Paper* considers integration within SADC as paramount to South Africa's international migration policy and proposes a set of measures to facilitate further the safe, orderly and regular migration of SADC nationals to South Africa (Chapter 11).

5.5.4 The importance of adjusting to the normative and guiding regional framework.

Due attention should be paid to adjusting the objectives, scope and content of BLMAs in SADC to continental and sub-regional policy and regulatory approaches pertaining to labour migration. As far as *continental approaches* are concerned, mention should be made of –

- *AU Declaration on Poverty Eradication, Education and Inclusive Development* (2015)
- *Joint Labour Migration Programme (JLMP)* (2015)
- *Revised Migration Policy Framework for Africa and Plan of Action* (2018-2030)
- *Free movement and free trade arrangements* – see below
- *New draft Protocol on the Rights of Citizens to Social Protection and Social Security* (2019)
- *New draft Social Agenda 2063* (2019)

The sub-regional frameworks, operating at SADC level, include –

- *Charter of Fundamental Social Rights in SADC* (2003)
- *Code on Social Security in the SADC* (2007) (in particular, Article 17)

¹²⁹ See *Law Society of South Africa and others v President of the Republic of South Africa and others* 2019 (3) BCLR 329 (CC).

- SADC *Revised Regional Indicative Strategic Development Plan* (2015–2020) (Human and social development cluster)
- SADC *Labour Migration Action Plan* (2016–2019) (currently being revised)
- SADC *Labour Migration Policy Framework* (2014)
- SADC *Protocol on Employment and Labour* (2014) (in particular, Article 19)

Of particular importance are the relevant *free movement regimes*, which effectively give expression to the regional integration agenda of both the AU and SADC, expressed above. Note should in this regard be taken of –

- Continental and sub-regional free movement regimes, linked to regional integration considerations
 - E.g., the new AU *Protocol on Free Movement of Persons, the Right to Residence and the Right of Establishment* (2018)
 - Several AU regional integration initiatives – e.g. the *Abuja Treaty* (i.e. *Treaty Establishing the African Economic Community*) (1991); see now also *AU Agenda 2063* (2015)
 - Similar arrangements at the level of at least four African RECs – ECOWAS and EAC, and in principle also COMESA and SADC
 - See also the impact of the EU migration policy and regulatory framework in relation to Third Country Nationals; see also the Association Agreements
- Continental and sub-regional free trade and associated trade in services arrangements
 - AU African Continental Free Trade Area (AUCFTA) and its associated Protocol on Trade in Services (2018)
 - Similar arrangements at the level of several RECs – e.g., COMESA, EAC, ECOWAS and SADC, and also at an inter-RECs level (the Tripartite, involving COMESA, EAC and SADC)
 - Critical implications for the mobility of among others workers and professionals, and their labour and social protection
- Continental and sub-regional social security arrangements/interventions
 - The developing continental framework – see, e.g., Article 19 of the Protocol on Free Movement of Persons, the Right to Residence and the Right of Establishment (2018) and the JLMP
 - ECOWAS – General Convention on Social Security (2013)
 - EAC – developing arrangements based on the EAC Common Market Protocol (2009)
 - SADC – Policy Framework on Portability of Accrued Social Security Benefits (2016)

5.5.5 The value of comparative African experiences

It is submitted that there are valuable lessons to be learnt from the labour migration experiences of other African countries. In addition to the experiences already indicated in this report, the following can be mentioned:

- Diaspora arrangements (e.g., Rwanda, Ethiopia, Kenya, Uganda)
- Protection of migrant domestic workers (e.g., Ethiopia, Kenya)
- Pre-departure training (e.g., Ethiopia, Ghana, Kenya, Uganda)
- Unilateral protective measures, also in the area of welfare (e.g., Lesotho, Uganda)
- LMIS (Labour Market Information Systems) and MIS (Management Information Systems)
- Mutual recognition arrangements relating to (a) qualifications and (b) professional bodies (e.g., Kenya and other EAC countries)
- Free movement regimes impacting on labour migration – especially EAC and ECOWAS countries

5.5.6 Addressing (weak) implementation and lack of capacity

There is need to address the weak implementation of BLMAs in the SADC region. Areas that come to mind include deliberate attempts to improve and streamline in-country and cross-border coordination and alignment of institutional structures, operations and programmes. In addition, in some countries there is a need to strengthen human and technical capacity. Some of these matters were reflected on earlier in this report.

5.5.7 More comprehensive regulatory frameworks needed

In several respects regulatory frameworks may be in need of strengthening and expansion. Areas affected include:

- Improved regulation of public and in particular private employment agencies
- Unilateral arrangements that can be introduced by countries of origin to support the protection of their migrant workers abroad – including, among others, extending where necessary extending social security protection extra-territorially
- Harmonising and aligning immigration, labour law and social security legal frameworks

5.5.8 The need for broader corridor studies to be undertaken

The specific arrangements made and conclusions drawn in relation to the selected corridors leave a clear impression of unique approaches, among others characterised by a movement away from reliance on general government-to-government bilateral labour agreements, to other types of BLMAs and other arrangements with limited content. There is an evident need to explore the practice, legal and policy framework in other SADC corridors, and for that matter in other parts/regions of Africa not covered by this report, to determine a set of principles and guidelines that could possibly be applicable throughout the continent.

5.5.9 Further involvement of multilateral agencies

Multilateral agencies already play an important role in assisting governments and other labour migration stakeholders in the three countries covered by this report. Among others they support or

have supported the development of national labour migration policies, helping to steer collaborative labour migration structures, in particular in Lesotho, and assisting with building capacity in this area. Specific areas of needed further/future intervention, as appears from this corridor study, include the building of human and technical capacity in relation to the range of issues highlighted in this report – regarding among others negotiation skills, the conclusion of BLMAs, implementation modalities, data management systems, revision of existing BLMAs and other arrangements affecting labour migration, enforcement capacity, and the integration of return migrant workers. Dependant on the need therefor, multilateral agencies can also assist the countries and stakeholders concerned with exposing them to good practice experiences in particular areas of interest/importance – such as organising and regulating recruitment, diaspora mapping and engagement, and skills transfer plans/programmes. Multilateral agencies such as the IOM and the ILO have considerable experience in their area of speciality, which could be put to further use by the countries concerned – for example, in the areas of better alignment with international and regional standards and guidelines, border management, regularisation programmes, and return of migrant workers.

Annex to the SADC corridor assessment: Assessment Framework

Explanatory note: This framework and its embedded questions should be able to assist labour migration stakeholders, in particular relevant government ministries, to have a benchmark against which labour migration could be successfully managed. The framework could be applied regardless of the mode of BLMA, or other arrangement affecting labour migration, selected – e.g. a bilateral labour agreement, a MOU. It might even be of value if governments need to decide which arrangement modality is the most suitable for the specific context. It is also capable of being applied/adjusted when governments consider the introduction of unilateral measures. The framework will help government and other stakeholders to consider and address key elements of both the labour agreement/arrangement cycle, on the one hand, and the migration cycle relevant to migrant workers and their dependents, on the other. This is done by posing questions that governments and other stakeholders should ask and address, in relation to, the preparatory framework; recruitment, selection and placement; engagement, assistance and protection of migrant workers and their family members; return and reintegration; and implementation (of the arrangement).

A. PREPARATORY FRAMEWORK

1. Has consideration been given to the nature, scope and focus of migration flows between the countries, with reference to matters such as who would typically migrate, the duration of migration, whether the migration is of a regular/irregular nature and unilateral or bilateral, whether workers migrate and if so for what purpose, the education and skills levels of persons who so migrate, as well as the gendered context of migration?
2. Is there a legal, policy and/or operational framework in place informing the management of bilateral labour migration and the sending and receiving of migrant workers?
3. Is there a proven need for migrants to work in the country of destination, with reference to:
 - (a) Employment/labour market needs of the country of destination, in particular occupational categories, labour market sectors and/or geographical areas? Has a labour market and skills assessment been undertaken?
 - (b) Availability of suitable and sufficient workers in the country of origin who could fulfil the identified employment needs of the country of destination?
4. Are the legislative and administrative provisions and requirements regarding entry, employment, residence and return, and documentation known in the country of destination and have they been:
 - (a) Shared between the parties?;
 - (b) Made available to interested and selected candidates?; and
5. Are there any legal or practical obstacles for women (or certain other groups of the population) to migrate for employment in certain occupations or sectors, or generally?
6. Is there a system of skills and qualifications recognition existing in the country of destination and/or origin that can inform the movement of migrant workers to the country of destination in terms of the BLMA?
7. Have a gender-responsive stakeholder analysis and needs assessment been undertaken to identify interested and needed stakeholders and their needs and views?

B. RECRUITMENT, SELECTION AND PLACEMENT

1. Does a legal and an operational institutional framework for fair and ethical recruitment, selection and placement of candidates exist?
2. Is there clarity regarding recruitment, placement and travel cost, cooperation between and the rights and obligations of the various parties involved?
3. Has the direct involvement of the government or other indicated intermediaries of the country of origin and/or destination in the recruitment, selection and placing of candidates been determined?
4. Is the country of origin or country of destination, or both, able to monitor and supervise the operations of recruitment agencies operating within the framework of the bilateral arrangement?
5. Are measures in place to ensure that the selected candidates have complied with health, qualifications, security, insurance, language, documentary and other requirements imposed by the country of destination and if relevant the country of origin and that assistance that may be required is available?
6. Is sufficient provision made for appropriate pre-departure sensitisation and equipment, as well as on-arrival induction of selected candidates? Are the specific and differentiated needs and concerns of women and men taken into account?
7. Do the countries of origin and destination have laws, mechanisms and procedures in place, in particular in relation to documentation, to enable workers to enter, reside and work, and access services, in the country of destination?

C. ENGAGEMENT, ASSISTANCE AND PROTECTION

1. Has an employment contract containing clear terms and conditions that comply with both the labour, social security and other laws of the country of destination and international labour and social security standards been agreed upon and, where relevant, vetted/approved by one or more government and/or other indicated institutions in the country of destination and/or country of origin?
2. Has provision been made for decent living and work conditions, including occupational safety and health arrangements and access to basic services, such as needed health care?
3. Do arrangements exist to appropriately provide in the needs of families of workers, in particular minor children, and with particular reference to family reunification, access to employment for family members, and access to school and health services for children?
4. Do arrangements exist to sufficiently protect women workers and provide in their needs, with reference among others to maternity protection, and work arrangements?
5. Are measures in place to ensure the integration of the worker into society and the workplace in the country of destination?
6. Do measures and institutions, known to the worker, and established by (a) the country of destination and (b) the country of origin exist to assist the worker with advice, support, physical and mental protection and complaints, grievance and dispute resolution?

7. Have measures been adopted to guarantee the protection of the worker's human, labour and social security rights, and in particular equal treatment and protection against abuse?
8. Is support given to the worker to freely use and inexpensively transmit earnings?

D. RETURN AND REINTEGRATION

1. Is assistance given to the worker to plan their return and reintegration?
2. Has a supportive regime been developed to ensure portability of social security and other benefits?
3. Have measures been adopted to ease labour market integration, including recognition of skills and experience required, skills training opportunities, and job-placing services upon return?

E. IMPLEMENTATION

1. Have institutional partners with the necessary mandate in both countries been identified that should negotiate, conclude and implement the arrangement, on the basis of consultation and cooperation –
 - (a) Within the country of destination and origin respectively?; and
 - (b) Between the two countries?
2. Are the necessary operating systems and processes, backed by needed data exchange measures in place to implement the arrangement?
3. Is it agreed how often cross-border institutions shall meet to monitor and review implementation of the arrangement?
4. Does a mutually agreed framework exist to deal with disputes arising from the implementation and/or interpretation of the arrangement?
5. Have the commencement date and duration of the arrangement been confirmed?
6. Are the social partners and other stakeholders involved in the implementation of the arrangement?

F. GENERAL MATTERS TO BE CONSIDERED

1. Do the parties intend the arrangement to be binding?
2. Do the parties intend the arrangement to be a labour migration agreement, a memorandum of understanding or a different kind of arrangement?
3. Has the impact of other relevant regulatory and operational arrangements applicable to one or both of the parties been considered – in particular:
 - (a) Other bilateral arrangements (*e.g., sectoral and other bilateral labour arrangements; bilateral social security agreements; bilateral trade agreements; bilateral investment treaties*)?; and
 - (b) Multilateral arrangements (*e.g., international, continental and regional free trade, trade in services, free movement, human rights, labour and social security and regional integration instruments; higher order regional regulatory frameworks*)?

Chapter 6. Technological applications and platforms for fair and ethical recruitment

This chapter is an excerpt from a larger study on recruitment technology that the ILO and IOM will be jointly publishing in 2019.

6.1 Introduction

ILO and IOM are conducting a study of government-run technological applications and platforms that aim to facilitate the ethical recruitment of migrant workers. This chapter is an excerpt from the forthcoming report, to be published in early 2019, which will provide a review of select current platforms compared to a set of criteria that are based on internationally accepted labor standards. The report will also make suggestions for consideration by other governments developing platforms with similar objectives.

The aim is to provide highlights to governments considering the usage of new technologies that currently, or have the demonstrated potential to, achieve ethical recruitment in accordance with internationally accepted labor standards. Specifically, the technologies being reviewed in the forthcoming ILO/IOM report analyze the ability of certain technologies to promote transparency and efficiency in the labor migration process. Key criteria for review also include the potential of emerging technologies to reduce the costs of migration and job placement to workers and employers; the accessibility of the technologies and their usability; the implementation of data protections; and, how the platforms enable better oversight of what is in many geographies an exploitative industry.

The research indicates that while there are technologies in development that could add value to promoting fair recruitment, there are many technologies already in use today that have proven worth and need investments for further scaling and broader application. That is, while further innovations are needed and encouraged, existing technologies that have proven their efficacy need the investments and political will to be expanded for broader application. Governments can play a key role in helping create market conditions, through enforcing existing laws and labor regimes to incentivize further adoption of proven technologies, while continuing to invest in further innovation.

6.2 Background

Migration for work—and recruitment of workers across borders is a complex and multilayered process that is plagued with corruption and exploitation. With this complexity, ensuring that workers' rights are respected requires the political will to invest in practices that uphold labor laws, while meeting the needs of employers. That said, recruitment across borders and subsequent migration is also, in practice, a series of business processes that can be isolated and quantified. Technology applications can in some cases improve these targeted processes and contribute to better results for workers and employers and the meeting of labor standards set by governments. This overview provides examples where technology is helping now, and what applications are in development that can demonstrate value in the future.

6.3 Challenges

Both source and destination governments play a key role in regulating migration and the adoption and implementation of laws that protect migrant workers. Ethical recruitment of workers, and their subsequent crossing of borders also requires cooperation and a commitment to transparency and respect between source and destination governments. In some contexts, however, there also exists a power imbalance between source and destination countries. For example, a source country, with limited domestic economic opportunity relies upon the remittances of its nationals migrating abroad, and may have limited leverage to influence the practices in popular destination countries. Many migrant workers, however, are fleeing violence and may experience additional barriers to social acceptance and workplace rights in the countries they are able to settle in. Many of these challenges simply cannot be addressed by technology alone, however, should the political will exist, tools do exist that can facilitate some good practices.

The migration-for-work process itself is complex, layered and involves multiple stakeholders, and crosses borders, cultures and political realities. Labor sourcing practices also vary greatly by region and industry. Different jurisdictions have different laws, regulations and practices that afford workers' rights, and regulate the movement between source and destination countries. This diversity is compounded by language and cultural differences, and the power imbalance that may exist between a job seeker and a job provider. Furthermore, migrant workers often come from historically marginalized communities or ethnic groups that can add to their vulnerability. Finally, weak rule of law and high levels of corruption can further impede ethical recruitment practices that fairly match migrant job seekers to the best suited opportunity.

6.4 Focus and Scope

For the purposes of this overview, a broad view was taken of the overall process and different nodes that may benefit from technological interventions were identified. Given this geo-political context and complexity of the process, ethical recruitment is not something that can be achieved and scaled through technology alone—but there is tech being used today to alleviate some identified pain points, primarily for workers and employers, and to enhance the ability of government regulators and others to monitor how workers are treated.

Each stage in the recruitment and migration process is dictated by the relationships between various actors, often with limited transparency across layers. For example, a factory or farm that relies upon migrant workers, may not be familiar with the specific methods that a labor recruiter employs in the home countries of its workers. A multi-national company may not realize the depth of subcontracting for workers its suppliers engage in, the specific actions a factory manager takes to fulfil labor shortages, or about the various fees a worker pays to a recruiter. On the other hand, a worker may not be aware of the laws and regulations governing their migration, the rights that they have, the illegality of fees charged, or insight into the reputation and past conduct of labor recruiters, agents and employers.

6.5 Key Challenges Where Technology Can Assist

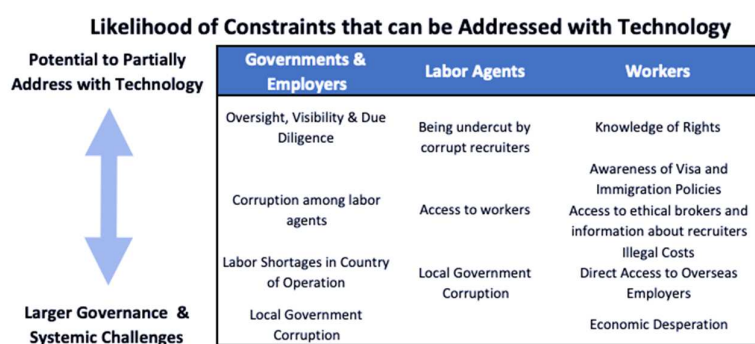
Given this complexity, it is important to acknowledge where in the process technology can assist. Most problem areas of recruitment and migration are not “technological” in nature. With this in

mind, technology has proven to be useful in helping actors on the ground to implement the following criteria:

1. **Oversight:** Collecting data from hard to reach areas/communities and enabling analysis of large, seemingly disparate sets of data. These include tools that enable governments and other stakeholders to monitor and verify (due diligence) labor agent and employer recruitment practices.
2. **Transparency:** Increasing visibility in complex processes and systems, particularly if multiple stakeholders are involved. These include online platforms and mobile tools that increase worker access to information. Applications also include emerging technologies that create an immutable record of transactions and thus help prevent fraud and deception.
3. **Costs:** Creating avenues for workers to be informed of true costs and reduce the cost of remittances.
4. **Accessibility:** Providing workers with job information and platforms that connect low skilled individuals with jobs in their home countries and regions.

Established tech-enabled products exist that can assist civil society organizations, governments, multi-national companies and employers to independently monitor labor recruiters and agents. Many of these tools incorporate workers stated experiences through a variety of tech-enabled channels (often referred to as incorporating “workers’ voice”). Other novel technologies that are widely being used in commercial applications are being newly applied in the counter-human trafficking space and may help provide contract immutability and traceability.

Figure 3. Likelihood of Constraints that can be Addressed with Technology



6.6 Technological Interventions

6.6.1 Indicator 1: Oversight

The Leadership Group for Responsible Recruitment reiterates the general awareness by brands and employers about the existence of corruption and rights violations that workers experience. Similarly, governments also face the challenges of not having visibility into the specific practices of labor recruiters, labor agencies and agents. This lack of visibility can hinder oversight.

Employers can be shielded to the actions of labor agencies as they may not work directly through them. For a commission, labor agencies provide workers to employers by subcontracting with labor recruiters and local labor agents. Labor recruiters can operate dubiously, and are often independent entities. It can be difficult for employers to verify agent conduct, or become aware of collusion between their own HR department.

One aspect where technology can assist is monitoring labor agent and employer practices, particularly if a government has limited resources to do so. Technology can assist in providing snapshots of work sites, to at least point in the direction of where further investigations are needed if not definitive evidence of labor law violations. Furthermore, aggregating “due diligence” data from multiple sources and channels (e.g. labor inspections, criminal filings, NGO reports, employee surveys) can provide governments with information about specific production facilities, and industry level insights. That is, governments can also conduct “due diligence” of the industries in their jurisdictions that rely heavily upon low-wage migrant workers, to uphold their labor laws and share that data with stakeholders to drive systemic improvements.

While technology can assist in providing insights that can lead to better oversight, it is not by itself a replacement for a culture of respecting workers’ rights that is established when governments foster environments where multiple stakeholders are incentivized or expected to be involved in ensuring the upholding of labor standards. Technology can then be used to determine issues that can be addressed at the individual and systemic level by this collaborative process. Fundamentally, workers, particularly migrant workers, need to enjoy the right to associate without reprieve or threats. Worker representatives should then be part of any multi-stakeholder efforts (that include government labor oversight entities, employers, NGOs and others).

While technology does not replace sure-fire ways of ensuring labor rights, for example the right to organize and collective bargaining, it can aid in collecting information directly from workers about their experiences—that can then inform these multi-stakeholder approaches to ensuring worker rights. Technology can be deployed to collect worker perspectives in real time, across multiple mobile and social channels, and at a fraction of a cost compared to traditional data collection methods.

Few companies are using digital reporting tools to provide concrete outcomes for workers who identify breaches in labor standards and other grievances.

[-- Transformative Technology for Migrant](#)

Data Collection

Since in-person surveys are time and resource intensive, in its research on the topic, BSR recommends the adoption of technology enabled tools that provide greater oversight and capture the specific experiences of workers through mobile-enabled surveys. That is, sending surveys to target workers through mobile phones, smartphone applications or websites. Such tools can reduce costs involved

There may be a misperception that initiatives underpinned by digital technology can be more easily evaluated because they generate “hard data.” This is not necessarily the case. Evaluations that are focused only on superficial factors that are easily quantifiable, such as frequency of usage or downloads, are not the same as evaluating the quality or outcomes of worker engagement. These can be much harder to assess, and may require ongoing qualitative evaluations that are likely to take time and additional resources.

[--Transformative Technology for Migrant Workers](#)

in commissioning worker surveys and help capture “worker voice”. This primary source data provides direct insight about production level conditions. Mobile tech surveys and/or other platforms can be used to monitor for violations in real time, augmenting and in some cases replacing in-person surveys. Technology is thus being used to provide oversight through:

- Surveys directly with workers
- Aggregation of data and combing of data to find patterns
- On-going monitoring of industry

While mobile based tools to capture “worker voice” have much utility and can provide unique insights, there are some challenges to deploying with a migrant population. For example, mobile phone based surveys require a worker to have access to a feature or smartphone; or, brands and employers may have to work with the management of product facilities to advertise a survey and encourage workers to participate.

While companies like Labor Link/Elevate, LaborVoices, IST Research and Ulula have developed such applications and shown impact in diverse areas, their utility can vary by geography and in some cases benefit from the commitment of employers to act upon feedback received. For example, a worker may participate in a survey, but if she does not experience any improvements based on her feedback, she may not be inclined to continue to use that tool. Furthermore, developers have to be very aware of protecting worker privacy to avoid retaliation should a factory manager be able to identify the source of disparaging information.

Data Aggregation

Many tools exist today that enable such Due Diligence through multiple means. Some product providers aggregate open source data, such as news and NGO reports, public records and court filings about suppliers, production facilities or industry and some deploy SMS or Interactive Voice Response based mobile tools to survey workers directly. Others are analyzing worker social media data to gauge perceptions of certain industries or production facilities. This data is then made available to inform diligence on supplier conduct and recruitment practices. Still others use WeChat, FB Messenger, QuestionPro and SurveyMonkey to gain insights from workers at different worksites.

For example, Diligence®, an online public records search engine developed by Lexis Nexis enables a company to “screen individuals for potential government connections to mitigate financial crime, corruption and other risks” and “identify potential conflicts of interest for prospective customers or business partners”. The tool can also search across legal databases to determine whether an agent has faced litigation or court action for past malfeasance. Increasingly, such research tools are incorporating open source information from NGOs and advocacy organizations who conduct in depth studies on human and labor rights, providing further insight into specific industries and on the ground practices. Thus, the tools are also used by brands to conduct background searches of employers and suppliers they are considering doing business with to assess their human rights practices.

The above are not new technologies, and have only improved in the past few years of implementation, iteration and application. They are in fact a perfect example of how investments are needed by companies and governments to proliferate existing proven technologies, while continuing to invest in innovation to further future development.

Data Analysis

Another technology-enabled source of potential—and challenge, is the growing field of Artificial Intelligence (AI). AI is already being used to uncover human rights violations that many workers face around the world in the factories, farms and mines that they labor in. For example, companies, or labor departments of governments, may struggle with oversight of the thousands of companies operating in their jurisdictions. Each company’s due diligence practices vary, and each one of these multiple suppliers operates in its own legal and social environments and has varying labor practices. Many companies will use on the ground audits to verify that the supplier is indeed complying with its standards and the local labor laws. These audits generate a lot of data—close to 50 to 100 pages per factory, multiplied by thousands of factories, at least once a year.

Artificial Intelligence (AI) can be defined as intelligence exhibited by machines. It includes both “machine learning” (an approach to achieve AI), which uses algorithms to parse data, learn from it, and then make a determination or prediction, and “deep learning” (a technique for implementing machine learning), which is inspired by understanding the biology of our brains.

--BSR

This is a large amount of information that government regulators can use machine learning and AI to process and analyze, far quicker than a human can. However, audits can be forged—these falsified audits could contaminate an AI enabled analysis that may then not paint a complete and accurate picture of whether labor laws are being upheld. AI systems can be used to conduct outside validation to complement audit data through accessing and processing other information sources, such as news reports, court filings, public records, any materials that compromise the open source data footprint of a supplier and its business associates. Furthermore, as workers also leave a data footprint—government AI systems can scan social media, chat forums, message boards or public comment websites for any references about employers. AI systems can comb through various streams of data from multiple channels to provide assessments of an employers’ labor practices.

However, while AI can be a powerful tool to be used to enforce labor laws, there are obvious risks as well. For example, any AI informed analysis can be used for illicit purposes as well. Machine learning and AI can be used to comb through worker social media posts to identify union organizers or those a repressive government may deem to be a “trouble maker”. Facial recognition technology can be coupled with AI to target migrant workers who challenge poor working conditions; and, data-enabled predictive analysis could be used, to identify or “flag” workers who the system is programmed to deem risky for arbitrary detention or harassment based on the AI informed suspicion that they might challenge employment practices and poor working conditions in the future. While AI has lots of potential to uphold human rights, without adequate protections, it can be used to suppress the rights of workers at considerable scale.

To mitigate some of these concerns, a new report by Data and Society states, “Governments should acknowledge their human rights obligations and incorporate a duty to protect fundamental rights in national AI policies, guidelines and possible regulations”. In short, should governments use AI in the area of labor migration into or from their countries, they should abide by guiding principles established by multi-lateral institutions and ensure their duty to protect rights also extends to usage of new technologies. This should also extend to avenues for ensuring remedy should workers’ rights be violated by either state or non-state actors.

Furthermore, BSR states, “there are opportunities to integrate a broader range of human rights considerations—such as nondiscrimination, freedom of expression, and labor rights—into existing processes. These efforts should also draw upon learning from the practice of human rights due diligence in other settings, such as cross-functional collaboration, the integration of rights-holder perspectives, and a focus on vulnerable groups.” The advice that BSR generates for companies should be applied to governments employing companies that utilize AI in the context of labor related technology deployment—whether that is conducting due diligence or using other types of machine learning to manage or regulate the labor sector. Furthermore, the Center for Data Innovation recommends the concept of “algorithmic accountability”, which they define as “the principle that an algorithmic system should employ a variety of controls to ensure the operator can verify it acts in accordance with its intentions, as well as identify and rectify harmful outcomes.”

Outcome Driven Investments

With these protections and considerations, governments should continue to invest developing applications that aim to promote labor rights. Governments can provide seed funding and/or be customers for such applications. However, it is imperative that insights that AI and machine learning deliver be acted upon. The investment criteria should not be limited to the development and deployment of AI or other technology, it should be measured by the outcomes for the intended beneficiaries, in this case migrant workers, that actually occurred. For instance, in the due diligence example, AI can be used to help pinpoint exactly which labor agent falsifies contracts or overcharges workers, but that insight is wasted if they are not held accountable.

There is thus tremendous opportunity for various government entities to use AI and machine learning to verify how workers in their legal jurisdictions are being treated. Again, AI is just another technology. In the supply chain management field, even without AI there is ample technology already available to determine if a supplier is treating its workers fairly; however, governments don’t often act upon the insights gleaned.

6.6.2 Indicator 2: Transparency

Another promising application of tech is increasing process transparency and access to actionable information for workers. For example, mobile phone based applications can be used to convey rights based and process information to workers, connecting them to job opportunities and helping them learn about labor agent and agency practices. Some of these employ a “peer to peer” model where workers inform each other of their experiences with certain brokers and employers.

Peer to peer sites

For example, Contratados.org sources information from workers themselves to rate employers and labor agents. Workers post “Yelp-like reviews... based on their personal recruitment and employment experiences”. A project of Centro de los Derechos del Migrante, the site also provides blog posts with information about rights and processes that workers can utilize. Staff of the center also source publicly available data from government sources about recruiters that further inform workers.

Smartphone Applications

Another example is the established Golden Dreams App by Bangkok based NGO Issara Institute and the recently piloted Just Good Work. Golden Dreams is a native-language application that Burmese workers can access to obtain and share information about their experiences, deployed primarily in the Myanmar to Thailand corridor. Just Good Work is being piloted in the Kenya to Qatar corridor, and its aim is to “find the most effective deployment technology to equip workers and companies with trustworthy information”.

Both and other similar applications are predicated upon the theory of change that primary sourced information about actual experiences, sourced securely via accessible technology through workers, can inform and improve overall recruitment and migration decisions.

Issara Institute launched Golden Dreams in January 2017, with the support of the Walmart Foundation and the U.S. Agency for International Development, capitalizing on the high usage rates of smartphones with data packages by Burmese workers in Thailand.

“A blockchain is a digital record of transactions. The name comes from its structure, in which individual records, called blocks, are linked together in single list, called a chain. Blockchains are used for recording transactions made with cryptocurrencies, such as Bitcoin, and have many other applications. Each transaction added to a blockchain is validated by multiple computers on the Internet. These systems, which are configured to monitor specific types of blockchain transactions, form a peer-to-peer network. They work together to ensure each transaction is valid before it is added to the blockchain. This decentralized network of computers ensures a single system cannot add invalid blocks to the chain.”

--Techterms.com

The technology’s utility is predicated upon the on-the-ground relationships that Issara has built and the commitment by these multiple stakeholders to respond and implement systemic reforms informed by the information gleaned. For example, while individual issues may be uncovered and investigated, Issara mines the data to find patterns of problems (or successes) and responds accordingly. Should illegal activity be

reported or uncovered, the NGO passes it along to law enforcement and follows up with them. Regular communication and reporting to their corporate partners creates the political leverage that is required to compel some suppliers to implement changes; and, the team also provides technical assistance and guidance to employers to implement changes.

The App is thus one channel, in a varied arsenal that Issara and its in-country stakeholders have that provides an avenue for workers to provide feedback and input into the supply chain decisions that

impact their lives. However, the technology itself is not the end. It is part of an overall effort that is heavily reliant on “non-tech” means: human relationships, political pressure and the development of shared goals among multiple stakeholders who are committed to making changes to problems highlighted by workers.

Also, important is the multiple stakeholder approach that Issara takes in deploying solutions—while the audience may not always be government regulators (as opposed to global brands and local employers), government has a key role to also be informed by the data generated and shared. This worker informed data, coupled with broader insights provided by the various stakeholders who are engaged and involved, provides insights that government regulators can use to compel and enforce industry-wide improvements. Furthermore, the U.S. government was one of the early investors in Golden Dreams, demonstrating the critical role that governments can play in seeding funding (and thus sharing in the risk) for technology applications with benefit for both the public and private sectors.

Emerging Applications of a Novel Technology

A key area of concern in the migrant worker recruitment process is deceptive practices that are employed by some labor agents in regards to contracts. The promise an agent makes to a worker about wage rates, working and housing conditions, may be different from what the worker actually faces upon arriving in the destination country.

Contracts that were shown to and signed by a worker in her home country can be altered or forged. Some organizations are thus testing the applicability of Blockchain technology to create an immutable record of contracts. Though data stored on a Blockchain may be altered, there is a record of that change, thus providing workers with some avenues of recourse, and evidence of fraud, should legal avenues be available.

One such pilot project testing an application of Blockchain is the Coca Cola Company’s experiment with “smart contracts” with the non-profit Blockchain Trust Accelerator. The multi-stakeholder partnership that includes the U.S. Department of State is using the secure ledger provided by the technology to provide a method to validate worker contracts. By providing incontrovertible evidence and security in contracts, the technology aims to enable the Coca Cola company to audit and review how labor agents are interacting with workers.

While future iterations of Blockchain’s application for this use might entail having an entire recruitment process digitized and available online, currently its main utility appears to be for contract immutability. However, in many instances, workers still have to have a paper contract that has to be uploaded to the Blockchain, and in many cases where technology is not accessible, this may have to be done by a labor agent (for example by creating a pdf of a paper contract).

Furthermore, looking ahead, there are challenges to relying on a Blockchain to fully automate the recruitment process—for example the technology would have to be integrated with other online systems that a government may have (e.g. e-Migrate in India or Musaned in Saudi Arabia) for visas or job request fulfillments which may be a technological challenge. In addition, some government

laws don't recognize "e-contracts" where a paper contract has to be signed, witnessed and notarized. Thus, while the potential is there for Blockchain to fully automate and digitize the complex layers and paperwork required in the migration process, there still are challenges of accessibility, and some policy hurdles to overcome.

Another aspect of testing and experimentation with the usage of Blockchain is its reliance on "private keys", a critical component of ensuring security of private data on the system. A private key is "essentially a randomly generated number which is analogous to a password" and is mathematically related to an individual user's Blockchain address, and can be either stored on a secure hard drive, or printed on paper. That is, a private key is what connects a user securely to his or her Blockchain, and thus requires a certain level of literacy and understanding to have full control of. The company Diginex and the NGO the Mekong Club are piloting the use of Blockchain for ethical recruitment in Thailand, specifically testing migrant workers' interest and capacity to manage private keys, and gauge their reliance on brokers to assist with the technology. Of note in this pilot is that the Mekong Club has established partnerships with corporations who are willing to participate, and lend the necessary political will required to test the technology's application. The pilot is experimental, and Diginex aims to prove its applicability in this space, thus prove a use case and demonstrate to investors and customers that it can be scaled and deployed.

6.6.3 Indicator 3: Costs

One area of concern to both home and destination country governments is the illegal fees that many migrant workers pay to access a job. As has been documented in numerous studies, unethical labor agents often manipulate the inefficiency and informality of the migration process to profit off of workers who have limited options.

For example, a labor agent will charge fees to an employer to fulfil a labor order (generally per head) and also from workers to connect them to those jobs, despite the fact that the government may have a cap on fees that can be charged, or an employer participates in the "employer pays" principle. On top of these "placement" fees, labor agents may also charge workers extra fees to arrange transport and obtain medical certifications, thus fraudulently maximizing their earning opportunities. These practices have become so pervasive, and the reliance on agents so structural, that workers report that paying a broker a "placement fee" and surcharges for related tasks is "just the cost of getting a job".

Numerous previous studies indicate that this corruption plagues many aspects of the recruitment system that adds costs at every layer. Most countries have legal limits to how much a labor agency or agent can charge a worker for a job placement and others have codified "no fee" policies in their national laws. These laws, however, are often violated and not enforced.

As described in the previous section, there are multiple technology-enabled tools that exist to enable governments to have oversight over the labor agents in their jurisdiction—and share that data with the multiple stakeholders who are charged with driving system with improvements. In addition to oversight, there are tech-enabled tools geared for workers directly that can provide cost

transparency. For example, these are tools that home country governments can invest in to add transparency to the issue of illegal costs. An example in Nepal is illustrative about how technology benefits from being combined with on-the-ground assets that help provide transparency in what fees workers should pay, and enable better government oversight of costs they do pay.

For example, F1soft, Nepal's "leading FinTech company" created eSewa, a mobile wallet that connects communities to Nepal's banking system. In order to outreach to "technology illiterate" mainly rural populations, F1soft established "eSewa zones" that rely on an existing network of payment service providers in towns and villages throughout Nepal. Users rely on these entities to pay bills, buy phone credits and other services. Relying upon an existing, trusted infrastructure that workers and their families already utilize has enabled eSewa to get buy-in from workers and their families. The eSewa zones are running pilot projects to connect job seekers with registered labor agencies and utilizing their financial systems to increase fee transparency, and reduce the costs of remitting funds back to their villages from their jobs overseas.

6.6.4 Indicator 4: Accessibility

There are also technologies that home country governments can invest in to make jobs in general, and jobs that require migration more accessible to their residents. These can include supporting "simple" websites that connect job-seekers with employers. Typically, such job-sites focus on high skilled workers, but there are some companies that are tailoring their platforms to low-skilled workers with limited opportunities, or those who need to migrate for economic opportunity. As access to technology can be a concern or barrier to some low skilled workers, some governments are investing in strategies that promote such connectivity.

Combining Tech and Non-Tech

The Bangladeshi Committee on Rights of Migrant Workers determined that in practice there are twenty-seven different steps a worker has to undertake just to receive authorization to migrate. These layers, each of which entails a different level of complexity, can lead to corruption that results in higher, illegal fees and the time required for workers to go through the process. Thus, the government of Bangladesh established a multi-stakeholder approach to simplify this process. Importantly, while the new approach is technology-enabled, the government smartly utilized tech to complement physical locations and service centers that workers already trust.

Recognizing that rural communities in Bangladesh have to travel long distances to access basic services provided by the government, the government created a network of Union Digital Centers (UDCs) that "decentralize the delivery of public services and take them to the doorsteps of millions of underserved citizens...". With support from UNDP and USAID there are 4,500 UDCs throughout the country to provide underserved rural communities access to information and services. The UDCs

Illegal Fees Paid by Workers (Nepal):

The Nepalese government has set a 10,000-rupee limit to how much a worker can be officially charged for a job. In reality, workers pay up to 150,000 rupees, often made up of illegal surcharges that include:

- Airport Exit Fee
- Work permit
- Police clearance report
- Embassy or visa fee
- Pre-departure orientation

have also been used to formalize the informal migration process and provides information to job seekers and aspiring migrants. This has achieved an “80 percent savings in migration costs” and provided an avenue for training to upgrade skills. For example, the average cost of migration for a Bangladeshi is between \$2,600 and \$3,200, equivalent to three years’ worth of income, much of which gets eaten by unscrupulous labor agents. UDCs have formalized the recruitment process and thus created fee transparency.

Enabling Direct Hiring

Tech-enabled “direct hiring” websites have their own challenges and may not be feasible in many contexts due to the complexity involved in recruiting migrant workers, or the perceived lack of a skilled local workforce. While technology enabled e-hiring tools are generally widespread, there also exist promising platforms that specifically target low-wage workers who are usually left out of more popular job search engines.

For example, Babajob connects employers and job seekers through a digital platform to “make jobs accessible to everyone, and make hiring fast and easy”. The Indian website connects previously hard to reach job seekers in rural areas with employers and also outreaches via mobile phones to make workers aware and register on their platform. While Babajob has focused on “skilled, aspiring workers” who can be connected to jobs within their city, they are experimenting with connecting migrant workers within India with employers in different cities. Babajob provides a promising platform that can be used by employers who have pledged to hire directly. As of 2016, Babajob had raised over USD 12 million in funding from social and other venture funds as well as USAID which has enabled them to register 5 million job seekers, and in an indication of their widespread appeal, was acquired in 2017 by Quikr.

6.7 Conclusion

The above sections provide an overview of the analysis being conducted by the ILO/IOM in a forthcoming publication on technology being applied to promote ethical and fair recruitment.

Where a platform is not intended to have direct outcomes for the individuals who engage with it, considerations arise regarding the ethics and consequences of asking the worker for his or her time and contribution. Such outcomes may include longer-term improvements to conditions for workers in general, or influencing a company’s choice of suppliers.

-- [Transformative Technology for Migrant Workers](#)

As is being evidenced by the research underway for this forthcoming report, technology applications are not an end to themselves and require the political will and market demand to maximize their potential. There is not always a tech solution to the decidedly human dimensions of migrant worker exploitation, and tech alone is not able

to address those human dynamics. Technology is an enabler and facilitator of good human interventions: it has proven to decrease costs, reduce time and human resources required to fulfil the intent of good labor laws, norms and regulations.

Furthermore, while many workers have limited economic or social options that drive them to migrate, many labor regulators have limited access to technology, which limits the implementation and usage of new technologies. Tech “solution” providers are operating in this environment.

Chapter 7. Conclusions and preliminary recommendations

7.1 Obstacles and challenges to developing and implementing BLMAs

Although bilateral labour migration agreements are developed in response to specific situations in diverse contexts, the assessments contained in this study, as well as broader consultations of experts and stakeholders,¹³⁰ point to a number of common obstacles and challenges ultimately affecting their implementation.

- **Availability of data on the initial migration and labour market situation**

There is scope for more systematic data collection in the preparatory phase of BLMAs to establish a clear picture of the initial labour market and migration situation. Reliable migration data on the number and profiles of migrant workers currently abroad in both a regular and irregular situation, existing recruitment channels and costs, and the protection issues they face may not be readily available, making it difficult to tailor the arrangement accordingly. Sex-disaggregated migration data may also be lacking, making it difficult to design and integrate appropriate gender-responsive measures.

There is also limited evidence from the assessed corridors that countries took into account existing labour supply and demand when preparing BLMAs, including its gender dimensions. This may in part reflect weaknesses in labour market information systems, and the resulting lack of data on sectors facing shortages and skills available, as well as difficulties in ensuring quality control of the data collected. Furthermore, while the scope of the corridor research did not allow for an in-depth analysis of gender issues, stereotyped assumptions regarding women's aspirations, capabilities and "suitability" for certain jobs in the national labour market, if not challenged, can result in the undervaluation of skills and competencies for work performed predominately by women. Such views tend to be reinforced with regard to jobs available for women abroad, leading to the concentration of migrant women in certain low-skilled, low-paid sectors.

- **Mechanisms for consultation and coordination**

Consultation with actors of the world of work – namely employers and workers' organizations – is not systematic, whether during preparation, drafting, implementation, monitoring or evaluation phases. While formal tripartite consultative mechanisms on labour migration at national level may exist to varying degrees, these are not always sufficient to ensure substantive participation by social partners in BLMAs. There are also few mechanisms in place to disseminate concluded BLMAs, or to ensure that key stakeholders, including recruitment actors, social partners, and migrant workers themselves, are aware of their contents and implications. Simply posting BLMAs on government websites, where this is done, may be insufficient to raise awareness on their contents.

Within government, coordination across ministries may be deficient, leading at times to incoherence between various policies and laws – in particular between the areas of migration, labour, employment, training/education, and social protection.

¹³⁰ "Expert Consultative Workshop on Assessment of Bilateral Labour Migration Agreements," Jointly organised by ILO and IOM, Addis Ababa, Ethiopia, and an "Expert Workshop on Self-Assessment and Monitoring Tool of BLAs" organised by ILO and held in Geneva, Switzerland 22 November 2018.

- **Balance of bargaining power among governments**

Countries of origin and destination often have differing motivations or policy objectives for entering into BLMAs; a key challenge is to achieve the appropriate balance between the concerns and priorities of the two countries. Because BLMAs are “single issue” agreements leaving few points of leverage for countries of origin, and countries of destination may have a number of alternative source countries for labour to choose from, bargaining power may not be equitably distributed. Countries of origin may also have limited experience in negotiating BLMAs.

While it was not possible to analyze the negotiation processes of the 2 assessed corridors due to lack of available information, stakeholders in the Africa region have pointed out difficulties in negotiating agreements that embody the principle of equality of treatment among all workers. In particular, countries may enter into bilateral negotiations on applicable minimum labour standards (including minimum wages) for their nationals, without reference to objective wage-setting criteria or social partner involvement. These practices need to be considered carefully as they may lead to downward pressure on protections and wage discrimination between migrant workers on the basis of nationality, and risk introducing competition among countries of origin and distort perceptions between migrant and national workers.

Findings from the assessed corridors suggest that destination countries can also have more weight in the choice of format of arrangements, and increasingly prefer to use MOUs rather than BLAs, as these tend to be less onerous to conclude, and do not require ratification processes. They are also often broader, more flexible frameworks of cooperation which can be easily adapted. However, such agreements, if too vague, can dilute responsibilities, posing additional difficulties in implementing and enforcing migrant workers’ protection.

- **Addressing protection and development aspects of labour migration**

The BLMAs analyzed in this report focus primarily on the regulatory aspects of labour migration, such as recruitment and admission procedures, and addressing irregular migration. Few arrangements take a “whole of migration cycle” approach, covering each phase of labour migration. There are notable gaps on the return and reintegration phases, which can have implications in terms of maximizing development gains of labour migration. Whereas migrants’ return may be addressed in relation to irregular migration, it is not addressed from the angle of facilitating reintegration in the country of origin.

A number of common protection gaps were also identified, including on gender-specific elements, as well as access to basic services and family reunification, often ignored in the context of temporary migration arrangements. There is also room to address social protection coverage more comprehensively, including maternity benefits and the possible portability of rights, particularly in the absence of bilateral social security agreements. Furthermore, standard model employment contracts, which would allow for detailed provisions on working conditions and respective obligations of employers and workers, were absent from the assessed BLMAs.

Rather than setting out specific protection provisions, BLMAs may simply defer to “applicable national legislation” in destination countries. However, labour legislation in the destination country may exclude sectors where migrant workers are concentrated (such as domestic work) or may contain discriminatory provisions. BLMAs may contain provisions which are not compatible with existing national legislation or with ratified international human rights, labour standards, or with ratified free trade and free movement obligations, or with supra-national or other regional obligations.

In contexts where protections afforded to migrant workers by national legislation are considered insufficient, some countries in Africa have experimented with unilateral restrictions on migration towards those countries. However, the capacity of governments to effectively control the movement of workers is often limited in practice. Such restrictions may lead to increased irregular migration or the growth of unlicensed recruiters, further exposing workers to abuse and exploitation. In addition, in practice, such restrictions often disproportionately affect women's employment opportunities abroad, as they have been used mainly in relation to domestic work.

- **Capacity of national regulatory and institutional frameworks**

Countries of origin may be insufficiently equipped institutionally to implement BLMAs and the necessary accompanying measures. While strengthening regulations of private recruitment agencies has received increasing attention from governments in Africa, regulatory frameworks and capacity to enforce fair and ethical recruitment practices remain weak. The capacity of public employment services and private employment agencies to efficiently select and place qualified candidates is also uneven across countries, with several countries just beginning to develop recruitment services for job opportunities abroad, particularly to other continents.

- **Mechanisms for the recognition of skills**

The absence of mechanisms for the standardization and recognition of skills acquired abroad also constitutes a barrier to effective job matching, as it can contribute to deskilling and prevent sustainable labour market reintegration upon return. Though countries may have national skills and qualifications recognition systems, mutual skills recognition frameworks – whether at bilateral or multilateral levels – are in the early stages of development in many areas of Africa, and BLMAs may not contain specific provisions in this regard.

Based on the interviews and analyses conducted, it became apparent that there was a need to include provisions in BLMAs on support mechanisms for the adaptation of vocational training for specific occupations, and potentially on the means for funding these. This could contribute to upgrading the national education and training system in the origin country, and be part of a broader framework of development cooperation with the destination country. Here, employers' organizations and the private sector, in both countries, should be involved for identification of skill needs for potential and return migrant workers.

- **Monitoring the changing political and economic context**

Negotiations of bilateral arrangements can take several years to conclude and operationalize. During this time, changes in labour market dynamics, turnover of relevant decision-making authorities, and broader social and political events may weaken the relevance of concluded arrangements or the political will to implement them.

A related issue is the lack of monitoring of BLMA implementation. Neither of the migration corridors assessed were found to have functioning bilateral monitoring bodies. Where agreements did provide for joint monitoring committees, they did not clearly indicate the means or the costing arrangements. In addition, as BLMAs may be valid for an indefinite period or renewed automatically, evaluations may not be regularly conducted, leaving limited opportunities to identify needed adjustments to adapt to changing contexts.

7.2 Preliminary recommendations for more effective BLMA development and implementation

The following practices and initial recommendations, based on existing research, as well as the corridor assessments and consultations undertaken within the project, are intended to assist stakeholders in developing and implementing BLMAs that would benefit both countries of origin and destination and migrant workers themselves.

- **Conduct a preliminary assessment to inform the BLMA development process**

Countries of origin and destination may gain in effectiveness and coherence by conducting preliminary assessments to collect relevant data and reflect on how bilateral arrangements contribute to overarching development objectives and fit into broader policy areas of labour migration, employment, education and training. These assessments should be informed by a gender responsive analysis of labour supply and demand in both countries of origin and destination, including identification of sectors and occupations facing shortages, availability of skills, and their appropriateness in light of labour market need. These assessments should be done with the active participation of all related government stakeholders, the social partners and civil society.

Relevant national legal frameworks and the international commitments of each Party should also be reviewed to ensure that BLMAs do not have the effect of weakening protections afforded by national or international standards.

More broadly, preliminary assessments should seek to: (1) clearly identify the core labour market needs and (2) identify available skills and competencies of workers in the country of origin to ensure a match between supply and demand; (3) protection issues to be addressed by the arrangements; (4) evaluate the technical and financial capacity of and relevant actors to implement bilateral arrangements; and (5) assess how the arrangements contribute to meeting existing government priorities, both nationally and regionally.

- **Align BLMAs with applicable international standards**

In formulating BLMAs, governments should be guided by the underlying principles of human rights and ILO standards relevant to migrant workers. These include not only the specific ILO migrant workers instrument, but also those relating to fundamental principles and rights at work, wages and working time, employment, social security or occupational safety and health. Together with the UN Convention on the Protection of the Rights of Migrant Workers and their Families (ICRMW), these instruments provide for a robust and comprehensive framework for the protection of the rights of migrant workers, including equality of treatment.

- **Strengthen institutional and regulatory frameworks for fair and ethical recruitment**

Solid institutional and regulatory frameworks for fair and ethical recruitment and efficient placement of qualified candidates are key to instilling confidence in BLMA-facilitated recruitment channels among both employers and workers, which can also potentially reduce the use of unregulated recruitment channels. This may require capacity building of regulatory bodies, as well as both public employment services and private employment agencies (PrEAs) and recruitment agencies. Specific areas to develop capacity in include: formulating proactive strategies for the identification of opportunities for placement abroad, streamlining recruitment and related administrative processes, developing pre-departure information and training for migrant workers, and developing reintegration assistance for returnees.

The ILO *General principles and operational guidelines for fair recruitment* as well as the IOM's *International Recruitment Integrity System (IRIS)*¹³¹ can assist countries, social partners, labour recruiters and other key stakeholders in developing effective labour recruitment policies and practices, based on internationally recognized human rights and labour standards. Guidelines are also included in the ILO Private Employment Agencies Convention, 1997 (No. 181), in particular its Article 7(1), which prohibits agencies to charge "directly or indirectly, in whole or in part, any fees or costs" to workers.¹³²

Increasing effectiveness of the regulation of private employment agencies is a priority for several countries, through registration, licensing and monitoring schemes, such as IRIS, as well as self-regulation such as codes of conduct. It is critical that the obligations of PrEAs, as well as workers and employers be clearly specified both in law and in practice. In this regard, the use of standard employment contracts, together with mechanisms for the verification of contracts and labour inspection to ensure enforcement and respect of working conditions, are essential.

- **Integrate provisions for mutual skills and qualifications recognition**

Mechanisms for mutual skills and qualifications recognition facilitating portability of skills, either in bilateral or multilateral arrangements, are essential to ensuring that countries of origin and destination have a common understanding of skills requirements to fill vacancies to improve skills matching. Greater attention to skills recognition can also potentially reduce "deskilling" of migrant workers in destination countries, and allow them to better leverage skills and qualifications acquired abroad upon return. As a first step towards developing mutual skills and qualification recognition provisions, the relevant occupational profiles in the origin and destination country should be compared, e.g. in the initial labour market assessment, to identify whether there is a need for additional training of workers. Skills recognition mechanisms would need to take account of the different needs of men and women potential and return migrants, which would require further research to better unpack how gender and access to skills training and recognition intersect.

- **Address gender-specific issues within BLMAs**

Given the growing global demand for workers in the care sector, including domestic work, and the fact that this sector employs an increasing share of women migrant workers from Africa, there is a pressing need to address gender-related issues in BLMAs.

The recent use of dedicated domestic worker agreements by African countries to address their rights, welfare, and security is a positive step, but these are not in themselves guarantees of greater protection. For example, care should be taken to ensure that bilateral arrangements do not reinforce existing gender inequalities and occupational segregation. Special attention is needed when negotiating and determining wages for occupations where migrant women predominate. Rates of remuneration should be fixed based on objective criteria, free from gender bias, to ensure that the work in sectors with a high proportion of women migrants is not being undervalued in comparison with sectors in which male migrants are predominantly employed.

- **Operationalize mechanisms for regular monitoring mechanisms**

¹³¹ Also see <https://iris.iom.int/> for more information on the International Recruitment Integrity System for recruiters, employers and governments.

¹³² See also ILO (2019). *Final Report. Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs*. Geneva, 14-16 November 2018, International Labour Office, Governance and Tripartism Department, Geneva.

Regular monitoring of labour market and migration contexts, as well as joint mechanisms to monitor implementation and make adjustments as needed can contribute to keeping arrangements relevant and operational. During the negotiation and drafting phases, detailed procedures for joint monitoring committees should be developed, which can include annexing terms of reference, defining cost-sharing arrangements, and establishing work plans and regular meeting schedules. In addition to bilateral monitoring, each Party can conduct individual assessments of agreements and then share the results.

- **Involve social partners and civil society in preparations, implementation, and monitoring of BLMAs**

Social partners should be involved from the development phase of BLMAs. Among other roles, social partners can assist in preliminary identification of skills gaps and surpluses relevant for labour migration. They can also contribute to disseminating arrangements and building public acceptance for their provisions, potentially leading to greater adherence to its provisions, and monitoring working conditions. Trade unions can also build linkages with migrant workers' organisations, resource centers, human rights organizations and other concerned civil society groups to ensure their inclusion, and engage in bilateral partnerships among trade unions in countries of origin and destination.

- **Encourage transparency and access to information by publishing and disseminating BLMAs**

Once bilateral arrangements are concluded, they need to be disseminated widely to ensure that key stakeholders, including recruitment actors, social partners, and migrant workers themselves, are aware of their contents and implications. Providing easy access to concluded arrangements, for example through government websites, can also facilitate their use as reference points for other countries seeking to initiate bilateral negotiations to establish similar arrangements with a given country, and encourage greater transparency in negotiations.

- **Continue to supplement BLMAs with accompanying measures to protect migrant workers abroad**

As has been found elsewhere, effective protection depends on factors beyond BLMAs, including labour legislation and enforcement mechanisms. Whereas countries of origin may have limited capacity to modify labour legislation abroad, in parallel to concluding BLMAs, African countries of origin have initiated a number of unilateral measures to protect their workers. These include establishing welfare funds and emergency housing for migrant workers, extending social protection to their workers abroad, posting labour attachés in embassies of destination countries to monitor worker protection issues, and developing compulsory pre-departure orientation and training programmes for migrant workers. Such measures can serve to operationalize provisions of BLMAs and address protection gaps.

- **Utilize regional mechanisms to develop common standards for BLMAs**

As described in the corridor assessments, sub-regional and regional frameworks such as at the African Union, Regional Economic Communities, and regional consultative processes, can serve as fora to share information and consult on BLMAs. Countries within regional blocs can also move towards developing common regional positions to ensure rights-based agreements on the basis of equality of treatment and opportunity among all workers, and to avoid unfair competition between neighboring countries on the basis of lowering rights standards, wages or labour protections.

- **Facilitate bilateral and multilateral trade union cooperation for the protection of migrant workers' rights**

Trade unions, such as in South Africa and Zimbabwe, can also engage in bilateral cooperation to protect migrant workers' rights through organizing and support, and to increase information exchange and support services to migrants, and should be supported to ensure that they position themselves as protectors of all workers' rights, including migrant workers. The ILO ACTRAV Model Trade Union Agreement on Migrant Workers' Rights can be used as a template to formalize this type of cooperation. Trade unions in the region are also increasingly involved in international cooperation networks on migration.

- **Build bridges with migrant rights' associations and civil society**

Migrant associations and rights protection civil society groups are also instrumental in providing support to migrant workers. They often have the trust of migrants, and can provide important information to governments on the actual conditions of migrant workers, their migration related challenges as well as disseminate information to migrants themselves. In SADC countries for example, migrant worker associations play a decisive role in the protection of migrant workers and assisting with accessing social security and other benefits to which ex-migrant workers are entitled. In Italy, the current migration policy places a special emphasis on involving diasporas in order to facilitate integration. Diasporas are included in the policy development process, following a bottom-up approach, also in the aim of facilitating skills and job matching. Diasporas could potentially be consulted during BLMA preparations.

7.3 Recommendations for UN actors

The recommendations are developed with consideration of the on-going UN reform and evolving architecture for the implementation of the Global Compact for Migration. The proposed recommendations are initial as they are based on limited findings thus far. They will, however, be further developed, amended and adjusted based on future findings, corridor analyses and testing of the BLMA Assessment Methodology.

- **Establish a sustainable multi-stakeholder mechanism for providing enhanced and coherent guidance for governments and partners on BLMAs**

The jointly implemented project confirmed the added value of cooperation between ILO and IOM on BLMAs. It further strengthened cooperation between the two organizations creating a solid basis for continuation. Both organizations possess strong expertise on multiple aspects of labour migration, and complement each other, enjoy already established relations with a number of governments with an interest in developing BLMAs, expert communities, regional organizations and non-governmental actors. Further solidifying the established long-term cooperation between the two organizations, at global as well as on regional and national levels where possible, is a natural next move.

On the global level, such cooperation may therefore be co-led, at least initially, by ILO and IOM with gradual involvement of other specialized UN Agencies. Both IOM and ILO are members of the Executive Committee of the UN Network on Migration, and, within this framework, are planning to co-lead the development of global guidance on BLMAs within this framework.

Involvement of other UN agencies should depend on concrete needs and priorities, which correspond to the recommendation of the Report of the Special Representative of the Secretary-General on Migration of 3 February 2017 to create a multi-agency support structure¹³³. The structure will provide governments and partners with pooled expertise from various agencies, working with aspects related to labour migration, to better develop, negotiate, implement and monitor BLMAs taking into account the multiple dimensions they should cover, including labour and economic aspects, gender, skills, protection, etc. A multi-UN Agency approach will ensure a holistic way forward in BLMA work.

Other international and non-governmental organizations, think-tanks, academia and research institutions could also be involved, based on the same grounds. At a later stage, once tools have been further developed and tested and information from the migration corridors, as well as research of a nexus with other related areas as specified below, ILO and IOM may establish close cooperation with specific UN Agencies and international organizations. These could include the World Bank, UNDP, UN Women, OHCHR, OECD, and national development cooperation agencies, among others.

- **Ensure Inclusion of BLMAs in global, regional and national development frameworks, and action plans, supported by the UN**

To build further basis for policy advice on labour migration, decent work and human mobility, including the BLMAs as an important tool and cooperation mechanism into a workplan of one of the thematic groups of the UN Network on Migration for the implementation of the Global Compact for Migration.

One of the aspects which needs to be considered on the local and regional level is the link to the UN-wide priorities, coordination and mainstreaming of the BLMA-related work into UNDAFs and similar frameworks. On regional and national levels, it will be important to map and identify relevant frameworks that benefit from close UN cooperation, including regional organizations, integration and consultative processes, as well as stakeholders such as non-governmental organizations and, importantly, private sector. This will help ensure effective development, drafting, implementation, monitoring and evaluation of BLMAs. Inclusion of BLMA related work into regional and national research, development framework action plans, labour migration policies and synergies with other related initiatives and projects supported by UN agencies would be essential.

7.4 Areas for further work and cooperation

Building the knowledge base

Given the broad range of bilateral labour arrangements and the variety of contexts to which they are applied, further research is needed to build a more representative knowledge base on current practices. In particular, additional case studies are needed to monitor the implementation of BLMAs in other regions such as Asia and Latin America. Further case studies from the Africa region, including those concerning feminized flows and migrant women in specific categories of care occupations, are also needed to build a fuller picture and contribute to the development of global guidance. This includes assessing their impacts on the terms and conditions of employment and

¹³³ General Assembly, Seventy-first session, Report of the Special Representative of the Secretary-General on Migration, A/71/728, Paragraph 59, d.

migrant workers' protection, including recruitment practices, as well as how they affect policy, legal, and regulatory frameworks at both national and regional levels.

Technical assistance

Countries across the globe are increasingly approaching both ILO and IOM for assistance and support on bilateral labour migration arrangements. Taking into account the above recommendations, and dependent on the existing capacity found in countries of origin and destination, areas to strengthen assistance include:

- Support intragovernmental cooperation and whole of the society approach to labour migration governance to ensure effectiveness and policy coherence, as well as further coherence on the intergovernmental level to maximize the effectiveness of the BLMAs.
- Continuing to provide technical assistance to governments and stakeholders in drafting, negotiating, and implementing BLMAs, with particular attention to multi-stakeholder negotiation approaches, improving skills anticipation and matching and portability, social protection, fair and ethical recruitment practices, and attention to gender equality;
- At the global level, within the working groups of the UN Network on Migration, ILO and IOM will co-lead the process of developing of global guidance on the development and implementation of BLMAs.
- Providing capacity building on recruitment practices for public employment services and private recruitment agencies, as well as government institutions, including labour attachés involved in monitoring BLMA implementation. This can include the development, adaptation and dissemination of practical tools such as assessment methodology and e-learning toolkit, as well as offering regular regional training courses;
- Facilitating greater social dialogue and strengthening social partner, migrant association and civil society capacity to participate more substantially in all BLMA phases;
- Assessment of existing bilateral and multilateral agreements on skills recognition and reintegration measures to identify good practices and policy lessons, to be used then for designing new BLMAs, or improving existing ones, and to identify good practices in relation to sustainable labour market reintegration;
- Elaborating a wider capacity building tool and training enriched by the findings of the project, in addition to currently developed on-line and existing training courses on BLMAs. ILO and IOM would need to consider broadening access to training on BLMA development and implementation in regions with a strong interest, including by offering tailor-made trainings at national and regional levels and through existing projects such as the Joint Labour Migration Priority Programme implemented by the two organizations. This initiative should target governments and other stakeholders such as private sector and NGOs, regional organizations, integration processes and other partners.
- Capacity building for identification of occupational profiles for labour migration, along specific migration corridors, with the participation of the social partners, in order to design adequate pre-departure occupation-specific training and facilitate labour market integration in destination countries;
- Technical assistance on aligning occupational profiles to directives/indications/frameworks from the RECs to ensure coherence and facilitate mobility. The assistance could also include

development of bilateral agreements with other members of the REC in order to make this mobility effective in terms of implementation.

- Developing capacity of the governments in migration related data collection and analysis on a regular basis and use of best practices to inform labour migration policy development, such as Migration Governance Indicator and Migration Profiles. Such capacity development initiatives may further be elevated to bilateral and multilateral level to further inter-government cooperation on labour migration and development and implementation of BLMAs;
- Assist regional economic communities in developing common positions on BLMAs based on relevant international instruments to ensure that Member States are in a position to conclude rights-based arrangements on the basis of equality of treatment and opportunity among all workers.
- Building on initial findings in the framework of the joint ILO-IOM project, and existing expertise and experiences, develop comprehensive global policy guidance on BLMAs, based on the international and regional standards, interstate regional mobility agreements and the Global Compact for Migration

Exploring funding mechanisms

Funding for the immediate initiatives is of key importance and needs to be approached jointly by the leading partners, namely the ILO and IOM. One of the evident, flexible and pragmatic approaches could be a project or initiative-based funding, which will depend on the needs of respective governments, regions and other stakeholders as well as needs assessment results. It will be strongly built on the methodological materials and tools developed and tested within the current project.

Continued integration of BLMA support into existing labour migration programmes and initiatives to ensure coherence with overarching migration policy objectives in active cooperation and involvement of the wider UN system where relevant. In this regard the involvement of the regional organizations may bring further added value and opportunities.

Lastly, on the global level the UN Migration Network forming funding mechanisms need to be used in case BLMAs would become a priority for one of the Working Groups.