

GUIDANCE NOTES FOR COUNTRIES OF DESTINATION

LABOUR MIGRATION GOVERNANCE IN THE SADC REGION



International
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INTRODUCTION

Progress has been made in fostering improved labour migration governance, notably at the SADC level with the formulation of the 2014 SADC's Labour Migration Policy Framework accompanied of an adopted SADC Labour Migration Action Plan. The SADC Labour Migration Policy Framework provides an important sub-regional framework and mechanism for cooperation between SADC Member States in the development of national labour migration policies and the management of labour migration. The SADC Labour Migration Action Plan (2016-2019) called on all Member States to have a National Labour Migration Policy in place by 2020. The Ministers of Employment of the Southern African Development Community (SADC) adopted a new SADC Labour Migration Action Plan (LMAP) for the period 2020-2025 during their March 2020 meeting.

The Labour Migration Action Plan (2020-2025) re-emphasizes the call for all Member States to develop comprehensive national labour migration policies and while no specific timeline is attached, it is assumed that it has to be done within the framework of the LMAP and 2025 would be the target year. Indeed, the most recent LMAP calls to 1.2.1 "Undertake a scoping study of existing labour migration policies and laws within SADC Member States to assess their compatibility with regional efforts on migration governance"; and "1.2.3. "Develop rights based, gender sensitive national labour migration policies / instruments in at least 10 Member States.

To date, only four Member States (Lesotho, Namibia, Seychelles and Zimbabwe) have comprehensive national labour migration policies, whereas other four Member States are at various stages of development: Eswatini, Malawi, and South Africa. At the same time, seven additional SADC Member States (three French-speaking: Comoros, the Democratic Republic of Congo, Madagascar; one Portuguese-speaking: Mozambique; and three English-speaking: Botswana, Tanzania and Zambia) recently expressed their interest to develop either a labour migration policy or strategy. In the case of Tanzania,

the request is to develop a Labour Migration chapter within a broad Employment policy. Botswana has requested the development of a Labour Migration Strategy. In the case of Zambia, the country has not taken a final decision to proceed either with a specific labour migration policy or a labour migration strategy. The request from the other four countries is to develop a specific labour migration policy.

The following template provides Guidance notes to Countries of Destination in the development of Labour Migration Policies. They comprise questions that SADC countries could consider in the following eight thematic areas:

1. Gender-sensitive Labour Migration Policies & Coherence with Employment and Education Policies;
2. Labour Migration Legislation and Ratification of International Labour Standards on the Protection of Migrant Workers;
3. Bilateral Labour Migration Agreements (BLMAs);
4. Fair Recruitment of Migrant Workers;
5. Skills Recognition of Migrant Workers;
6. Social Protection Coverage and Portability of Social Security Benefits;
7. Labour Migration Statistics
8. Labour Migration Administration



Gender-sensitive Labour Migration Policies & Coherence with Employment, Education and Social Protection Policies

Policies, Legislation and Practices

1. Does your country count with a labour migration policy to receive migrant workers and ensure their labour protection? If so, is it gender-sensitive and evidence-based? And, does it include an Action Plan and what is its implementation status?
 - Are there provisions in key national and regional processes and mechanisms on labor migration that recognize how gender affects migration experiences and outcomes?
 - How are migration plans supportive to investment in the capacity of national agencies to collect and use sex- and age-disaggregated data on migrants in SADC countries with high levels of female migrants or where they are most exposed to risks?
 - Are there national and regional mechanisms that are supportive to national campaigns and advocacy initiatives focusing on education, awareness raising and networking on women's and girls' rights as migrants in the SADC Region?
 - Are there initiatives for mandatory gender training for agencies that have most contact with female labor migrants, including immigration authorities, the police and health service providers, in situations of gender-based violence, racial discrimination and workplace exploitation and abuse?
2. Was the labour migration policy formulated and implemented through tripartism and social dialogue? Does it include specific provisions on the protection of women and men migrant workers?
3. Does your country ensure coherence between labour migration policies and employment policies? If so, please mention how does it determine labour shortages and the existing supply of migrant workers at all skill levels (e.g. domestic work). For example:
 - Does the country have a permanent migration programme? How is it determined and what are the skill levels it applies to? How many foreigners enter the country through it?
 - Has the country implemented temporary/circular migration schemes during the past 15 years? If so in which sectors and occupations and how many migrant workers have benefitted?
 - Can you explain if women migrant workers are benefiting equally from all the above? If not, please explain the reasons behind.
 - Has your country established labour market needs assessments for periodic, objective labour market analyses that take into account gender issues and that include: sectoral, occupational and regional dimensions of labour shortages and their causes, and relevant issues of labour supply; shortages of skilled workers including in the public, health and education sectors; long-term impact of demographic trends, especially ageing and population growth, and on the demand for and supply of labour?
 - Are these labour market needs assessments part of a national labour market information system (LMIS)?
 - Has the country decided to put together Catalogues of occupations difficult to cover, and has determined quotas/ceilings based on LMIS or through other means? Please explain how they are determined.
 - Does the country count with a vacancy/labour market tests system and how does

- it work in practice and if they are considered fair by national workers?
 - Has the country undertaken regularization schemes (e.g. amnesties)? When and how many migrant workers have been regularized and in which sectors and occupations?
 - How does it ensure migrant workers' working conditions are respected (e.g. wages, working time, leave entitlements, occupational safety and health, social security, etc)?
 - How does it ensure the implementation of Anti-discrimination and pro-Labour Market Integration measures and practices?
4. What is the role that each of the following **labour market institutions**¹ is playing in labour migration management? Please explain.
 - Labour Inspection Service;
 - Labour Market Observatory;
 - Public Employment Service;
 - Vocational Training Institute;
 - Occupational Safety and Health Service;
 - Working Conditions Service;
 - Recognition of Prior Learning/Skills Agencies
 - Social Security Institute;
 - Anti-discrimination and Labour Market Integration Agencies.
 5. Is there an important presence of women and men migrant workers in the informal economy? Mainly those in an irregular situation or also migrant workers in a regular situation? Please briefly describe their working conditions.²
 6. In which economic sectors and occupations are women and men migrant workers more concentrated? Please distinguish skill-levels between those in the formal with those in the informal economy, migrant status (regular or irregular) and gender division.
 7. Do migrant workers often suffer greater risk and incidence of workplace accidents and occupational-related diseases (fatal and non-fatal) compared to national workers?
 8. Has the country done a comparison of wages between migrant and national workers to determine if the "equal pay for work of equal value" principle is respected or if a "raise to the bottom" approach is taking place in certain economic sectors and occupations?
 9. Are the economic sectors where migrant workers are concentrated considered the ones receiving the lowest salaries and the 3 D Jobs (dirty, dangerous and demeaning)? What is the percentage/estimate of women in these types of jobs?
 10. Are migrant workers also present in medium and highly-skilled jobs/occupations (e.g. migrant workers in the health sector, etc)? What is the % of women migrant workers in highly-skilled migrant jobs?
 11. What is the type of Work permit available for foreign workers (type, duration, requirements, skill level) brief description?
 12. Are the administrative processes/practices on the employment of migrant workers straightforward? Is the access to employment and change of employers an easy task for migrant workers?
 13. Does the country count with a Labour Market Integration and Anti-discrimination policy? Does it work in practice?

¹ Labour market institutions –Agencies, institutes that are responsible for transforming policies, laws, and regulations in mechanisms and services (Ministry of Labour), or directly delivering services and using mechanisms for ensuring an optimum labour market situation or an enabling environment/outcome for national and migrant workers (e.g. facilitating skills recognition, labour mobility, jobs and skills matching, providing social protection and benefits, equipping workers with the necessary qualifications in demand in the labour market, improving their working conditions, etc.).

² Working conditions include: wages, daily and weekly working time, weekly and annual leave entitlements, occupational safety and health protection, social protection, and end of contract entitlements.



Labour Migration Legislation and Ratification of International Labour Standards on the Protection of Migrant Workers

Policies, Legislation and Practices

1. Has the country ratified the main ILS (1990 UN Convention, C. 97. C. 143) on the protection of migrant workers and other related standards (C. 181. C. 189, C. 19, C. 118. C. 157)?
2. Does the country count with labour migration legislation?
3. Please also mention the list of 8 ILO Fundamental Conventions and the Forced Labour Protocol ratified by the country.
4. In addition, highlight issues related to Fundamental Principles and Rights at Work such as the strong vulnerability of migrant workers to labour exploitation. There is particular need to pay much more attention to linkages to forced labour, child labour, discrimination, as well as lack of collective bargaining and freedom of association affecting migrant workers.
 - How important is the presence of migrant workers in forced labour situations (often hidden under trafficking)?
 - Are large numbers of migrant children involved in child labour?
 - Are migrant workers victims to discrimination in occupation and employment? Has the country carried out any assessments on this issue? Please mention the results of these assessments.
 - What about the issue of non-discrimination in terms of wages and other working conditions (working-time, social protection, etc) between migrant workers and national workers to avoid a social dumping or race to the bottom effect?
 - Do migrant workers have the right to collective bargaining and freedom of association?
 - Are the country's labour courts active in ensuring justice in these thematic areas? How many cases involving migrant workers have they processed during the past 5 years and what has been the outcome?
 - Are labour market institutions involved in providing support services to migrant workers in vulnerable situations?
 - Can you please explain the situation of migrant domestic workers and women migrant workers in general in the country?



Bilateral Labour Migration Agreements (BLMAs) Workers

1. Has the country negotiated and signed BLMAs with foreign countries?
2. If so, with which countries and how many migrant workers have benefited from them during the past 10 years?
3. What protection provisions are included in BLMAs³? Are they implemented effectively?
4. Do existing BLMAs take into consideration gender concerns, vulnerable migrants and

³ ILO Recommendation no. 86 includes a Model Bilateral Labour Migration Agreement (BLMA) that encompasses the following 28 main protection provisions: 1. Exchange of Information; 2. Action against Misleading Propaganda; 3. Administrative Formalities; 4. Validity of documents; 5. Conditions and Criteria of Migration; 6. Organisation of Recruitment, Introduction and Placing; 7. Selection Testing; 8. Information and Assistance of Migrants; 9. Education and Vocational Training; 10. Exchange of Trainees; 11. Conditions of Transport; 12. Travel and Maintenance Expenses; 13. Transfer of Funds; 14. Adaptation and Naturalisation; 15. Supervision of Living and Working Conditions; 16. Settlement of Disputes; 17. Equality of Treatment; 18. Access to Trades and Occupations and the Right to Acquire Property; 19. Social Security; 20. Contracts of Employment (Model contract included); 21. Change of Employment; 22. Employment Stability; 23. Provisions concerning Compulsory Return; 24. Return Journey; 25. Double Taxation; 26. Supply of Food; 27. Housing Conditions; 28. Methods of Co-operation.

social dialogue?

5. Do they include clear information concerning wage protection, working time, weekly and annual leave entitlement, non-replacement of employment contracts and non-retention of travel and identity documents?
6. Do they include an action plan to ensure their effective implementation through dialogue with Ministries of Labour and Ministries of Foreign Affairs abroad and the effective involvement of labour market institutions?
7. Does the country have a monitoring and evaluation mechanism (National Committee or other) of existing and past BLMAs? If so, has the country considered its conclusions to improve the formulation, negotiation and implementation of BLMAs?



Fair Recruitment of Migrant Workers

1. What is your country's legal and policy framework supporting Public Employment Services (PES) and Private Employment Agencies (PEAs) mandate in the labour migration area, particularly in the fair recruitment and placement of migrant workers? Does your country count with regulation through Orders, Decrees, etc? Does the law require PES and PEAs to cooperate?
2. What are the challenges in the implementation of the legal and policy frameworks? Are there duplication of mandates?
3. Which institutions are responsible for provision of employment services in general and to migrant workers? Are there adequate mechanisms for coordination of their work?
4. How are PEAs regulated? To what extent are PEAs developed in the country, what services do they provide, and are they different between migrant and local workers?
5. Are there existing partnerships between PES-PEAs and how is that functioning? Who is offering what services?
6. What are the services that PES/PEAS are providing/offering to migrant workers and their family members?⁴
7. What are their weaknesses in capacity and gaps?
8. What are the opportunities and recommendations to improve them?
9. Does the Public Employment Service (PES) and do Private Employment Agencies (PEAs) in the country have the right to place foreign workers? If so, is there cooperation/coordination between both of them in this area?
10. Do PES contribute towards matching labour market supply and demand through the provision of information, placement and active support services to job seekers at the international level?
11. Are there informal recruiters present in the labour market? How important is their presence?
12. Does the country count with national legislation to monitor and regulate⁵ PEAs? If so, which strategies does it include?
13. Do PEAs charge recruitment costs and fees⁶? If so, are they considered abusive?
14. Does the country apply requirements in the licencing⁷ of PEAs?

15. Does the country permit employers to do direct hiring of foreign workers? How important is this system and how is it regulated?



Skills Recognition of Migrant Workers

1. Does the country count with a national administration skills' system to facilitate the recognition and verification of migrant workers' skills and qualifications at various levels?
2. Does the country count with a Recognition of prior learning (RPL) system?
3. Is recognition established through social dialogue involving governments, employers' and workers' organizations and education and training institutions?
4. How does the skills recognition of migrant workers relate to existing skills mismatch and skills anticipation systems in the country?
5. Does your country skills recognition system include both academic and professional recognition?
6. Is skills recognition conducted by measuring skills against agreed labour competency or occupational standards?
7. What are the different methods that apply for the validation and recognition of, respectively, academic education, vocational education and work experience?
8. Please mention existing national recognition bodies and processes.
9. Are certification procedures and competency tests in countries of destination complex and imposing financial and time-related costs on migrants tending to create an uneven playing field for migrant workers or refugees?
10. Does the country have a list of regulated and non-regulated professions?
11. If full recognition is not granted, are there forms for alternative, partial or conditional recognition that apply to migrant workers?
12. Is information on existing recognition systems easily available in the country?



Social Protection of Migrant Workers

1. Does the country count with unilateral, bilateral or multilateral social security provisions to ensure coverage and portability of benefits for migrant workers?
2. Has the country signed a social security bilateral agreement (R. 167 as a model agreement)? If so, is it effectively implemented?
3. What are the main legal obstacles (impeding extending social protection coverage to migrant workers (e.g. the principle of territoriality and the principle of nationality)?
4. Do migrant workers face administrative, practical, and organizational obstacles to the portability of social security benefits?
5. Has the national Social Security Institute been able to apply the following?
 - Principle of Maintenance of acquired rights and the provision of benefits abroad
 - Principle of Maintenance of rights in course of acquisition.
6. How many migrant workers benefit from social security portability of benefits in the country?



Labour Migration Statistics

1. Does the country count with labour migration data disaggregated by sex and age, particularly on the following?:
 - Data on the distribution of migrant workers per economic sector, occupation and skill level;
 - Status in employment (employed, unemployed, underemployed, self-employed) in the formal or the informal economy;
 - Working conditions (working hours, wages, rest periods and other contractual conditions, occupational safety and health protection);
 - Social security coverage of migrant workers;
 - The contribution of migrant workers to economic growth and development (share of GDP, job creation, poverty reduction, etc.)


4 Services could be differentiated according to type: employment services (job search assistance and training, profiling and action planning, counselling, matching and placement and post placement support, etc.); provision of labour market information; referral or administration of labour market programmes (labour market training; entrepreneurship support and self-employment; public employment programmes; wage and hiring subsidies, employment retention programs, access to social assistance such as transport, child care, income transfers, or unemployment benefits. It would be good to differentiate by whether the services are provided in house or through other providers.

5 Strategies to monitor and regulate PEAs include the following: a) Compulsory Registration - Private labour recruiters and employment agencies are registered in the same way as any other industrial or commercial business and are subject to controls, just like other businesses; b) Licencing - Private labour recruiters and employment agencies must request a license that is granted when certain conditions are met such as recruitment agents passing a test that demonstrates their knowledge of protective labour laws. A license is generally renewed as long as the conditions are still met. Otherwise they can be withdrawn; c) Self-regulation among recruiters is often an effective means. In some countries, the associations have adopted "codes of practice" to guide their members and assist the government in pursuing errant and unlicensed recruiters. Recruiters are made jointly liable with foreign employers on the respect of labour rights; d) Incentives- Governments can provide incentives to private agencies that meet the criteria for good performance. Standards of good practice in job advertising, labour contract design and fees can be defined; e) Limiting the number of recruitment agencies- Competition is necessary but too much competition can increase the likelihood of worker abuse, some agencies will break the rules to survive; f) Establishing a Limit on recruitment fees- under C. 181, workers should not bear any of the costs associated with their recruitment; g) Requiring a deposit or Financial Guarantee- e.g. requiring recruiters to post a financial guarantee with competent authorities. If migrants suffer losses/abuses, authorities can confiscate the deposit to compensate them; h) Enforcing Labour inspection- To ensure that private recruitment agencies comply with the laws and regulations, the government can provide for supervision; i) Establishing Sanctions and Prohibition- sanctions to deter unethical practices should be put in place, including provisions for the prohibition of private employment agencies engaging in dishonest practices and the suspension or withdrawal of their licences in case of violation. Private labour recruiters and employment agencies are banned from the labour market, and state authorities, usually public employment services, have a monopoly on job matching and placement services.

6 Recruitment fees comprise the following: (a) payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment; (b) payments made in the case of recruitment of workers with a view to employing them to perform work for a third party; (c) payments made in the case of direct recruitment by the employer; or (d) payments required to recover recruitment fees from workers. Recruitment-related costs comprise: (i) Medical costs: payments for medical examinations, tests or vaccinations; (ii) Insurance costs: costs to insure the lives, health and safety of workers, including enrolment in migrant welfare funds; (iii) Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licencing; (iv) Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers; (v) Equipment costs: costs for tools, uniforms, safety gear; and other equipment needed to perform assigned work safely and effectively; (vi) Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation; (vii) Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

7 Typical PEAs licencing requirements comprise the following: a) Financial capability- to provide the necessary logistics and financial resources to support international operations some countries now require private agents to put up financial guarantees (insurance or bond) as a condition for the granting of a licence to compensate workers for any monetary losses resulting from the failure of a recruitment or placement agent to meet its obligations to them; b) Recruitment capability- competence in identifying and selecting qualified persons for jobs abroad. Agency staff should include trained recruitment specialists and documentation officers; c) Management capability- competence in organising and managing a business, including the provision of adequate facilities to undertake international operations and extensive domestic networking; d) Marketing capability- competence in identifying foreign employment opportunities and negotiating contracts that benefit not only the agency owners but also the workers who are to be hired.

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