

GUIDANCE NOTES FOR COUNTRIES OF ORIGIN

LABOUR MIGRATION GOVERNANCE IN THE SADC REGION



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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 Origin in the development and implementation 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 ensure safe, orderly and regular migration to foreign countries? Does it ensure diversifying countries of employment? Does it aim at establishing order in the migration process and curbing migration in an irregular situation;
2. Is it gender-sensitive and evidence-based?
3. Was it formulated and implemented through tripartism and social dialogue? Does it include specific provisions on the protection of migrant workers?
4. Does the country ensure coherence between labour migration policies and employment as well as education/vocational training policies? If so, please mention how it is linked to:
 - Ensuring job-rich growth and the reduction of unemployment and underemployment;
 - Promoting the formalization of the Informal Economy;
 - Providing support to entrepreneurship;
 - Facilitating job search, career guidance and job counselling for potential migrant workers, and returnee migrant workers;
 - Ensuring that employment contracts conform with International Labour Standards;
 - Promoting employability enhancement (upskilling and reskilling) equipping workers with the necessary qualifications in demand in the national labour market and abroad;
 - Minimizing wage distortion effects;
 - Ensuring the utilisation of new skills acquired abroad;
 - Minimizing the brain drain and protecting domestic industries;
 - Improving the social returns on investments in education;
 - Managing the composition of the emigrant workforce;
 - Improving migrant workers' conditions of employment abroad;
 - Curbing recruitment and job placement abuses.
 - Regulating private employment agencies (PEAs) and informal recruiters through prohibition, registration, licensing, & monitoring).
5. What is the role that each of the following labour market institutions¹ is playing in labour migration management through international cooperation and collaboration with similar institutions abroad? Please explain.
 - Labour Market Observatory;
 - Public Employment Service;
 - Vocational Training Institute;
 - Social Security Institute;
6. What have been the preventive measures taken and labour protection provided to migrant workers before they depart to countries of employment (e.g pre-departure training and information, close monitoring of private employment agencies, etc)?

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.).



7. Does the Government ensure the labour protection of migrant workers through additional means (e.g. enough presence of labour attachés abroad and, provision/facilitation of access to justice mechanisms, ensuring dialogue with labour inspection services abroad, etc)?
8. Has the Government supported the labour market reintegration/enhanced employability of returnee migrant workers through on-line training (e.g. job search skills training, career guidance/job counselling services, upskilling and re-skilling, entrepreneurship training and financial education), recognition of prior learning and skills certification, extension of social protection access to returnee migrant workers, as well as socio economic assessments identifying labour market trends, particularly job creation and employment opportunities for returnee migrant workers? How many migrant workers have benefited from this programmes and please explain the type of programmes offered.



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

9. Has your 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)? If the country has ratified the Conventions, are they effectively implemented and has your country done the reporting on the same?
10. Does the country count with labour migration legislation?
11. Are the country's labour courts, or other instances, active in ensuring justice in the case of migrant workers' abuses? How many cases involving migrant workers have they processed during the past 5 years and what has been the outcome?
12. Are there any Government instances involved in providing support services to migrant workers in vulnerable situations abroad? Trade unions, other instances?
13. Can you please explain the situation of your migrant domestic workers and women migrant workers abroad?
14. Please also mention the list of 8 ILO Fundamental Conventions and the Forced Labour Protocol ratified by the country.
15. 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.
16. How important is the presence of migrant workers in forced labour situations (often hidden under trafficking)?
17. Are large numbers of your migrant children involved in child labour?
18. Are your migrant workers victims to discrimination in occupation and employment abroad? Has the country carried out any assessments on this issue? Please mention the results of these assessments.
19. Do you count with information on discrimination affecting your migrant workers in terms of wages between migrant workers and national workers and resulting in social dumping or race to the bottom effect situations?



20. Do your migrant workers have the right to collective bargaining and freedom of association abroad?



Bilateral Labour Migration Agreements (BLMAs) Workers

1. Has the country negotiated and agreed 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 BLMAs²? Are they implemented effectively?
4. Do existing BLMAs take into consideration gender concerns, vulnerable migrants and social dialogue?
5. Do they include clear information concerning wage protection and working time limits, weekly and annual leave entitlements, 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. Does the Public Employment Service (PES) and do Private Employment Agencies (PEAs) in the country have the right to place workers abroad? If so, is there cooperation/coordination between both of them in this area?
2. 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?
3. How many PEAs function in the country and how many migrant workers go abroad through their services?
4. Are there informal recruiters present in the labour market? How important is their presence?
5. How important is employers' direct recruitment? What is the percentage of migrant workers hired through employers' direct recruitment?
6. Does the country count with national legislation to monitor and regulate³ PEAs? If so, which of the following strategies does it include?
7. Do PEAs charge recruitment costs and fees⁴? If so, are they considered abusive?
8. Does the country apply requirements in the licencing⁵ of PEAs?

2 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.



Skills Recognition of Migrant Workers

1. Does the country collaborate with other countries' national administration skills' system to facilitate the recognition and verification of migrant workers' skills and qualifications (various skill levels)?
2. Is recognition established through social dialogue involving employers' and workers' organizations as well as education and training institutions?
3. Does the system include both academic and professional recognition⁶?
4. Is skills recognition conducted by measuring skills against agreed labour competency or occupational standards?
5. What are the different methods that apply for the validation and recognition of, respectively, academic education, vocational education and work experience⁷?
6. Please mention existing national recognition bodies and processes.
7. 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?
8. Does the country count with a Recognition of prior learning⁸ (RPL) system?
9. Does the country have a list of regulated and non-regulated professions⁹ ?
10. If full recognition is not granted, are there forms for alternative, partial or conditional recognition¹⁰ that apply to migrant workers?
11. Is information on existing recognition systems easily available in the country?



Social protection of migrant workers

1. Does the country count with unilateral provisions, or bilateral and multilateral social security agreements (R. 167 as a model agreement¹¹) to ensure the portability of social security benefits for migrant workers?
2. Has the country signed a social security bilateral 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.

3 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

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 abroad and those that have returned 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 development (share of GDP, job creation, poverty reduction, etc.)



Labour Migration Administration

Does the country count with a Labour Migration Unit? If so, what are its functions and responsibilities?

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.

4 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.

5 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.

6 Academic recognition allows for the continuation of studies at the appropriate level. Professional recognition provides the opportunity to access a particular job, and practice professional skills that might have been acquired abroad. Professional recognition covers both regulated and non-regulated professions.

7 Different methods for assessment and recognition of formal learning apply across countries. Some approaches are based on the length of education/training (quantitative), and others on content (qualitative). Concerning the latter, learning outcomes are playing an increasingly important role in the development of national and overarching qualifications systems and frameworks. Where learning outcomes are taken into account for the evaluation of a foreign qualification, the recognition procedure may focus more on results reached and competences obtained, rather than only on input criteria such as the programme workload and content. However, documentation on the qualification does not always contain clear listings of learning outcomes and recognition bodies may have to deduce the output of a qualification from contextual information such as its place in the national education system or qualifications framework, its subject matter content and duration.

8 RPL is a process by which regulatory bodies and training institutions assess acquired skills, often gained outside of the classroom, against a given set of standards, competencies or learning outcomes.

9 Professions that require authorization from competent authorities in order to be practiced are defined as regulated professions. Binding recognition procedures generally apply to regulated professions. With respect to non-regulated professions, the recognition of qualifications is not a general requirement. There is a plethora of methods that have been developed for both regulated and non-regulated professions. Systems include regulation by national and/or provincial professional bodies, employer-based recognition processes, coordination by one public authority in charge of regulated professions or automatic recognition. Further stakeholders are universities and colleges, credential assessment organizations and provincial, federal and municipal governments.

10 Alternative recognition can include bridging courses offered by the competent authority to make up for differences with the required qualification. While partial recognition would grant the applicant the possibility to enroll in specific programmes in order to earn missing credits, conditional recognition may allow the applicant to commence the desired activity on the condition that certain goals are successfully met during a specific time period.

11 ILO Recommendation no. 167 includes Model Provisions and a Model Agreement for the Conclusion and Coordination of Bilateral or Multilateral Social Security Instruments encompassing: 1. Applicable Legislation; 2. Maintenance of Rights in Course of Acquisition; 3. Maintenance of Acquired Rights and Provision of Benefits Abroad; and, 4. Provisions concerning the Maintenance of Rights in the relations between or with Provident Funds.

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