



Southern Africa Trade Union Coordination Council (SATUCC)

Information Guide for Trade Union Organisations in the SADC Region

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1. Introduction

1.1. Background

International migration today is largely linked to the search for a job and better wages. Even if employment is not the primary driver, it usually features in the migration process at some point. Hence the importance of involving World of Work actors (Ministries of Labour, workers and employers' organisations) in fostering fair and effective labour migration governance and the protection of migrant workers.

Cross-border migration, particularly for employment purposes within the SADC region was prevalent long before the 1990s. In fact, international labour migration within the Southern African region for wages dates back at least 150 years. Southern African countries have been sending and receiving migrants since the mid-nineteenth century when 50-80,000 labour migrants came to work on the Kimberley diamond mines, including from modern-day Lesotho, Zimbabwe and Mozambique (Williams, undated¹). Several studies confirm that the migratory labour system is not new to Southern Africa include Whiteside, 1988; Wentzel, 2003; Martiniello (undated²). Thus, labour mobility in Southern Africa stretches back to the pre-colonial era, when people traversed the region to work in various employment sectors.

Maximizing the benefits of labour migration and minimizing the risks and social costs requires sound and effective labour migration governance. A central policy objective of the International Labour Organization (ILO) is to promote fair and effective labour migration governance through tripartism (engaging Ministries of Labour/Employment, workers' and employers' organisations) and social dialogue particularly in the development of rights-based, gender-sensitive and evidence-based labour migration legislation and policies, taking account of labour market needs.

Early labour migration in Southern Africa was driven by mining and agriculture

Labour migration driven by mining: The discovery of diamonds in Kimberly in 1870 and the later discovery of gold in Witwatersrand in 1886 resulted in the exponential growth of a Southern African regional migrant-labour system as miners sought cheap labour to support their production base (Wentzel, 2003). Initially, there was a massive flow of unskilled labour force to work on the mines, necessitated by the launch of a very extensive recruitment campaign in neighbouring countries, Mozambique, Malawi and Lesotho.

Labour migration driven by agriculture: The other major employer of migrants in South Africa, Zimbabwe, Namibia, Swaziland, Mauritius and Tanzania were commercial farms and plantations. The emergence labour migration in the agriculture sector can be traced as far back as 1860s when Mozambicans from the Gaza, Inhambane and Lourenco Marques districts sought employment on farms in the Western Cape. The Pedi and Sotho males also often moved across the Cape Colony to work on public works and farms as a way to earn wages.

Source: SATUCC 2017

¹ An overview of migration in the SADC region

² <http://www.inventati.org/ababilonia/migrantlaboursouthafrica.pdf>

Indeed, tripartism and social dialogue in all its different forms, lies at the heart of the ILO's mandate and is central to achieving fair labour migration. The participation of the World of Work actors at the local, national, bilateral, subregional, regional, interregional and global levels can strengthen the effectiveness and sustainability of labour migration governance. Social dialogue has proven to be more effective where employers' and workers' organizations and government come together to dialogue³.

Migrant workers usually concentrate at both ends of the skills ladder. Thus, the significance to ensure that labour migration policies take into account labour market needs at all skill levels (low skilled, semi-skilled and highly skilled) through periodic and objective labour market analysis and identification of sectoral, occupational and regional labour shortages.

Moreover, it is important to mention that migrants present a higher labour force participation rate compared to the non-migrant economically active population. Globally, in all four income groups (high-income; upper-middle income; lower-middle-income; and low-income) the labour force participation rate of men migrants was higher than non-migrants in 2019, the largest participation gap being estimated at 10.3% points for high-income countries. In the case of women migrants, the participation gap between migrant and non-migrants was again largest in high-income countries at 11.8% points. Women migrants have higher labour force participation than non-migrants in all income groups except in low-income countries, which could be attributed to limited jobs availability and possibilities for family reunification⁴.

According to the International Conference of Labour Statisticians Guidelines concerning statistics of international labour migration, the term international labour migration⁵ is used as a generic term to refer, in general, to concepts related to the process and outcome of international labour migration and, in particular, to the following three concepts:

- a. international migrant workers;
- b. for-work international migrants;
- c. return international migrant workers.

International labour migration may take the form of international labour mobility, as temporary or short-term movement of persons across countries for employment-related purposes in the context of the free movements of workers in regional economic communities. The latter are considered migrant workers if they meet the criteria listed above under the definition of international migrant workers: (a) usual residents, and, (b) not usual residents, or non-resident foreign workers.

³ International Labour Organization: ILC Conclusions and Resolution concerning Fair and Effective Labour Migration Governance, June 2017, Geneva.

⁴ International Labour Organization: *ILO Global Estimates on International Migrant Workers: Results and Methodology*, Labour Migration Branch, Conditions of Work and Equality Department and Department of Statistics, Third Edition, Geneva, 2021.

⁵ ILO: *Guidelines concerning statistics of international labour migration*, International Conference of Labour Statisticians, Geneva, 2018.

1.2. About the Guide

1.2.1. How can this guide be used?

There are different ways of using the guide:

- ✓ Working through it, in a union meeting, together as a team of union office bearers or active members. Following-up the suggestions, making plans, organizing events, and actions.
- ✓ In a workshop/seminar/course – but the guide is not solely meant for use in an education programme.
- ✓ As a source of reference – keep referring to it – it is not something you read through once and then put it away.

1.2.2. The objective of this guide is to assist trade unionists to:

The objectives of the guide are:

- ✓ Understand that migration and the rights of migrant workers are an important issue for trade unions;
- ✓ Develop a gender-sensitive trade union perspective and approach to the issue of migrant workers, understanding the difficulties and differences women and men face in the labour market;
- ✓ Organize migrant workers – regardless of their legal status or work in the formal or informal part of the economy;
- ✓ Defend migrant workers' rights, including using international and national law to defend migrant workers.

1.2.3. Who is this guide for?

The guide has been developed for:

- ✓ Union office bearers and national committee members.
- ✓ Trade union activists from the SADC region working with migrant workers coming to and leaving from the region.
- ✓ Educators/education committees.
- ✓ Union legal staff/lawyers.
- ✓ Other users interested in defending migrant workers' rights.

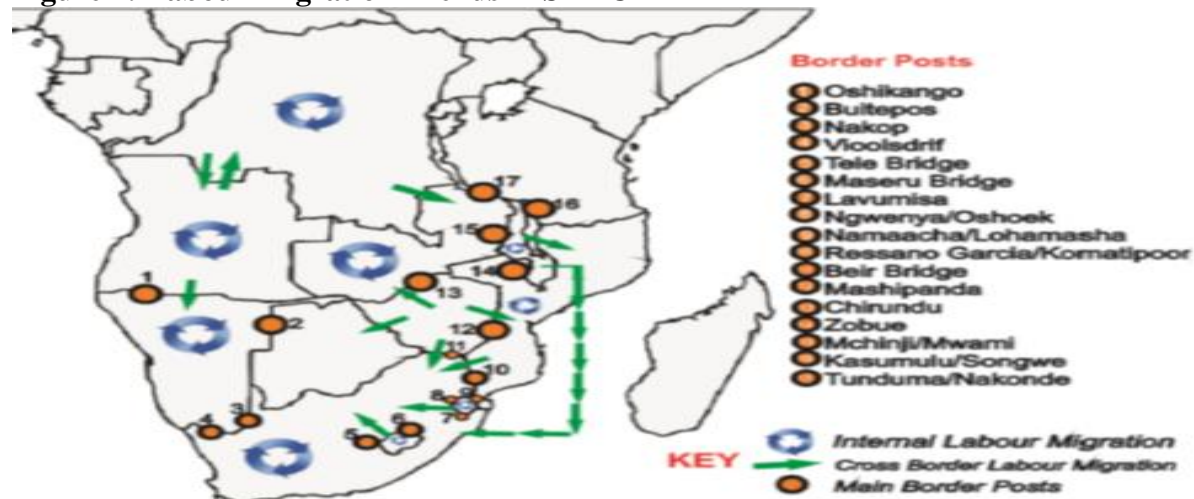
1.3. Facts and figures

The Southern African region has had a long history of intra-regional migration. All Member States of the Southern Africa Development Community (SADC) are involved in labour migration flows as countries of origin, transit, or destination and often they play the three roles at the same time. In the SADC region, migrant workers are present in agriculture, fishing, mining, construction, food processing, domestic work, caregiving, cleaning, restaurants-hotels, transportation and retail trade. In the past ten years, a significant spike has been recorded with 3 million more migrants in the region. Data from UNDESA shows that Angola, the Democratic Republic of Congo (DRC), South Africa, and Tanzania have accounted for 96% of this increase and count with 81% of the total migrant stock in the region. Other countries remain quite stable except for Comoros, which saw a marginal decline⁶.

⁶ UNDESA, UN Migrant Stock by Origin and Destination 2019 Update.

Figure 1 illustrates the current trends in labour migration in Southern Africa.

Figure 1: Labour Migration Trends in SADC



Source: Mariano, 2014

Table 1: Migrants by Country of Origin and Destination in SADC (migrants as percentage of total population), 2019

	Total number of International migrants	Within SADC Migration by Country of Origin	Within SADC Migration by Country of Destination	Within SADC Net Migration	Total Population of Destination Countries	Total Migrants as % of Total Population	SADC Migrants as % of Total Population
Seychelles	12,926	18,686	1,625	-17,061	98,460	12.7	1.7
South Africa	4,224,256	89,226	2,137,519	+2,048,293	59,308,690	7.1	3.6
Botswana	110,596	79,136	82,169	+3,033	2,351,630	4.7	3.5
Namibia	107,561	187,691	72,978	-114,713	2,540,920	4.2	2.9
Eswatini	32,310	93,536	23,394	-70,142	1,160,160	3.0	2.0
Zimbabwe	411,257	607,420	283,387	-324,033	14,862,930	2.8	1.9
Mauritius	28,849	15,956	3,050	-12,906	1,265,740	2.3	0.2
Angola	669,479	358,473	100,140	-258,333	32,886,270	2.0	0.3
Comoros	12,504	12,806	9,755	-3051	869,600	1.4	1.1
Malawi	247,652	298,831	165,951	-132,880	19,129,960	1.3	0.9
DRC	963,833	295,509	179,065	-116,444	89,561,400	1.1	0.2
Mozambique	334,665	921,513	269,161	-652,352	31,255,440	1.1	0.9
Tanzania	509,166	42,139	110,956	+68,817	59,734,210	0.9	0.2
Zambia	170,249	192,970	113,621	-79,349	18,383,960	0.9	0.6
Lesotho	6,928	339,943	3,199	-336,744	2,142,250	0.3	0.2
Madagascar	34,934	14,027	11,932	-2,095	27,691,020	0.1	0.0
Total	7,877,165	3,567,902	3,567,902		363,242,640	2.1 (ave)	1.0 (ave)

Source: UNDESA, UN Migrant Stock by Origin and Destination 2019 Update, Table 1

Note: Population data from <https://data.worldbank.org/indicator/SP.POP.TOTL>

South Africa is the most important SADC country of destination in terms of numbers counting with 4,224,256 international migrants in 2019, followed by Eswatini, DRC, Angola and Tanzania. However, it is also interesting to note that Seychelles is the most important SADC country of destination in terms of migrants as a percentage of its total population. South Africa (7.1%), Botswana (4.7%), Namibia (4.2%), Eswatini (3%), Zimbabwe (2.8%), Mauritius (2.3%), and Angola (2.0%) follow with a migrant population representing more than 2% of their total population. Migrants originating from the SADC region are also significantly present in South Africa (3.6%), Botswana (3.5%), Namibia (2.9%) and Eswatini (2.0%).

UNDESA data suggests that the feminization of migration has reached significant levels in the Southern African region with 47% of all migrants being female (Table 2). In all countries (with the exception of Seychelles) at least 40% of the migrant stock is female. Five countries (Comoros, DRC, Malawi and Tanzania) have more female than male migrants.

Table 2: Breakdown by Sex of Migrant Stock in Southern Africa, 2019

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

Source: UN DESA, International Migrant Stock by Origin and Destination 2019 Update

Expert studies and data show that migration, particularly labour migration, is an important enabler and beneficiary of regional integration and economic development in Africa. For example, the key findings of a 2018 ILO/OECD study on the impacts of immigration on developing countries' economies⁷, showed the following:

- Migrants can have a positive impact on economic growth. The study's conclusions state that overall immigration is unlikely to depress gross domestic product (GDP) per capita,

⁷ ILO-OECD: How Immigrants Contribute to Developing Countries' Economies

<http://www.oecd.org/migration/how-immigrants-contribute-to-developing-countries-economies-9789264288737-en.htm>

on the contrary. In some countries, the estimated contribution of immigrants to GDP represents up to 19% such as in Cote d'Ivoire.

- Immigrants may also generate additional employment opportunities for native-born workers. Overall, in South Africa⁸ the study shows that recently arrived migrants actually represent a positive impact on native-born employment rates and monthly wages as well as a decrease in unemployment rates.
- At the same time, when migrant workers are employed in the formal economy, their employment can have a positive effect on public finance. In Ghana, the contribution of immigrants to the government's fiscal balance exceeds the contribution of the native-born population (on a per capita basis). In addition, in South Africa immigrants have a positive net impact on the government's fiscal balance.
- However, migrant workers' contribution to the economy depends on their job and working conditions as well as migration status. Thus, specific measures to counter exploitation, abuse and discrimination in the labour market and at the workplace should be put in place.

1.4. Why is labour migration a trade union issue?

There are several issues that labour migration raises for trade unions or workers' organizations: the treatment and protection of the human and labour rights of migrant workers, the prevention of unfair competition mainly in terms of wages and other working conditions (working hours, wages, leave entitlements, occupational safety and health protection, social protection coverage, etc) with national workers who make up the greater part of their membership, and what each of these issues imply for the roles and functions of workers' organizations at different levels. This is the reason why trade unions strongly advocate for the principles of equal treatment and opportunities between migrant workers and national workers included in ILO Conventions.

Indeed, one of the main areas of work of trade unions is the combat against xenophobia, racism and discrimination against migrant workers. If discrimination⁹ against migrant workers in terms of working conditions is not detected on time and fully addressed, it can create a sentiment of unfairness among national workers due to a possible "raise to the bottom"¹⁰ approach or "social dumping"¹¹ effect. In general, the migrant pay gap continues to be very significant in most regions of the world¹² while having a negative impact on migrant workers' labour market integration and labour protection. Other important areas of concern to trade unions can also include the:

Reaching to migrant workers, organizing them into trade unions and representing them;

- Collaborating, where appropriate, with workers' organizations in foreign countries (through Bilateral Trade Union Agreements on the Protection of Migrant Workers) or

⁸ ILO-OECD: How Immigrants Contribute to South Africa's Economy

https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_620797/lang--en/index.htm

⁹ [Migrants face "significant discrimination" in job markets \(ilo.org\)](#)

¹⁰ The "Race to the bottom" approach refers to a competitive situation where employers, companies, the state or nation attempt to undercut the competition's prices by reducing labour costs, sacrificing quality standards or worker safety (often defying regulation).

¹¹ "Social dumping" is a practice to use cheaper labour than is usually available at the site of production or provision of services.

¹² ILO: [Full report: The migrant pay gap: Understanding wage differences between migrants and nationals \(ilo.org\)](#)

cooperating with other agencies / bodies / associations (private or public) to advance a common interest of upholding and protecting the rights of migrant workers.

- Establishing special programmes for women migrant workers, especially protection against gender-related discrimination and forced labour situations as well as Violence and Harassment particularly affecting women migrant workers (e.g. domestic work);
- Assisting migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights.
- Advocating for the Social protection coverage and portability of social security benefits of migrant workers;
- Advocating for policies and programmes that would lead to the reduction or abolition of fees charged to migrants, including recruitment fees, as provided for in ILO Conventions;
- Discussing the situation of migrant workers with employers' organizations and including migrant workers in collective bargaining agreements.
- Providing access to justice counselling and referral services, particularly for migrant workers who have suffered from abuse and labour exploitation.
- Contributing to prevent the “deskilling” and “brain waste”, of the migrant workforce.
- Advocating for Regularization Programmes, (if necessary) to regularize the situation of migrant workers in an irregular situation that are usually present in the informal economy.

Trade unions have a clear objective of protecting all workers and promoting social justice. This is why trade unions fight for equality, for decent work for all, for social protection and against child labour or forced labour, although not all these workers will be union members¹³. As migrant workers are among workers in the most vulnerable situations, they are in need of particular attention in organizing efforts, and at the negotiating table.

Trade unions have a critical role to play in countries of origin and destination alike by promoting the ratification of relevant Conventions and Protocols and monitoring compliance in law and practice with international labour standards. They play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and respect for their dignity. Trade unions are particularly well placed to provide migrant workers with legal advice, support and assistance in seeking redress when their rights are violated¹⁴.

1.5. Myths about migrant workers

There are many myths about migrant workers. These myths are harmful as they help spread negative attitudes towards migrants. That's why we wanted to help shed some light on these common myths and see if there is any truth behind them.

a. Migrant workers are a burden to the host nation

“Migrant workers are an asset to every country where they bring in labour” says Juan Somavia, the ILO Director-General. In fact, most industrial economies would be worse off without the help of migrant workers, and without this injection of new blood the receiving countries will see their population age and decline even more rapidly [Peter Stalker, International Migration, New

¹³ ILO, 2021- Trade Union Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance

¹⁴ Ibid

Internationalist publications, Oxford, 2001]. "The perception that migrants represent a financial burden on host countries is not sustained by research," says Brunson McKinley, IOM Director-General (International Herald Tribune, 24 June 2005). For example, the UK Government has calculated that in 1999 and 2000, migrants established in the United Kingdom added US\$4 billion (£2.2.billion) net to the budget - that is, they paid more in tax and social security contributions than they received in benefits.

b. Migrant workers only benefit their home country.

While remittances from migrant workers all over the world are huge, migrant workers also generally have a positive impact on the host country's economy. Migrant workers often do the jobs that others don't want to. Many of these jobs are not visible to the general public, which causes people to overlook how important migrant workers are for the local economy.

c. Migrants pose a threat to the socio-cultural status quo.

False. Particularly in several Asian nations, this fear is prominent. Yet there is no proof to support this claim, especially since migrants tend to represent only a small percentage of a host country's population.

d. Migrant workers steal our jobs

The idea that migrant workers are taking the jobs of national workers is based on the concept that there is a fixed number of jobs in any given country and that therefore if more people come there will be fewer job opportunities. In fact, each person creates jobs for others. Empirical evidence suggests that migrant workers often act as a complement to national workers and do not compete with them for work. For example, high-skilled migrants fill vacancies that go unmet by national workers and thus increase productivity, while low-skilled migrants take jobs avoided by national workers, and jobs in sectors that are traditionally affected by strong seasonal fluctuation such as agriculture, construction, and tourism.

Migrant workers often take on jobs that others do not want to. There may be some competition with the local population, depending on the job market, however, migrant workers do not only take jobs but also help create more jobs. With an increase in migrants comes an increase in demand for services and products. So while there may be some overlap for certain jobs, migrants in general, are not 'stealing' jobs.

e. Migrant workers cause unemployment.

There is no fixed number of jobs migration has increased the number of jobs, not reduced it. Put simply, immigration increases the size of the economy creating more jobs for everyone. That's not to mention the taxes and National Insurance that are paid into the economy providing more resources to better fund our public services.

f. Migration is a choice

As IOM's Brunson McKinley points out, "An end to the fruitless debate over whether or not to have migration is long overdue. We have migration. We will continue to have migration. Our choice lies in the policies we develop and pursue to channel migration into safe, orderly, humane and productive avenues that benefit the individuals and home and host societies" (International Herald Tribune, 24 June 2005).

To underscore that sentiment, the President of Mexico Vicente Fox, on an official visit to the United States during May 2006, said, "It is a priority today for governments to recognize the urgency of finding mechanisms and methods which guarantee an immigration that is safe, an immigration that respects human rights and the right to work" (Agence France Presse, 24 May 2006).

g. Migrant workers mean increased crime.

This is a common fear in many countries. Several studies have shown that there is no evidence to support this myth. Some studies from around the world even show that migrants tend to commit less violent crimes. The evidence does not support theories of a large-scale crime wave generated through migration. In fact, crime has been falling across the country over the past year.

Key terms to understand

✚ **Deskilling:** Labour market-related term that describes the phenomenon experienced by skilled or highly-skilled workers who enter the labour market and obtain a job below their skills or qualification level (compared to their acquired qualifications) and are considered to be "overqualified" for the job they occupy. This practice results in situations where workers perform lower-skilled jobs, and are often badly paid. If they stay (which is often the case) in that same job, they rarely climb the occupational ladder. The longer they stay in that lower-skilled job, the harder it is for those foreign workers to obtain a job in accordance with his/her qualifications, since unused skills might be lost or lose value after time – and workers suffer deskilling. The end result is an unfair loss of the time and money that the worker spent in obtaining (eventually unused) qualifications and the waste of funds that his/her family and country spent on human resources.

✚ **Brain waste:** A term commonly used in migration terminology in relation to other terms such as brain drain and brain gain. It determines the lack or bad utilization of potential foreign human resources available in the labour market. It relates to migrant workers' skills, qualifications and job experience acquired in the country of origin that are not properly utilised in the labour market of the country of destination. The main causes include the lack of recognition of skills and qualifications and hence underutilization of people's skills, and/or difficulties to obtain work permits, also driving migrant workers to work in the informal economy and often in jobs below their skills level. This results in a loss-loss situation for workers, countries of origin and countries of destination.

✚ **Migration Regularisation or Amnesty Programmes** are administrative schemes to allow migrants in an irregular or undocumented situation to apply for legal residence and work permits. They take place for economic and humanitarian reasons and they have the long term goal of curbing irregular immigration. Arguments against state that such programs reward lawbreakers and encourage further unauthorized immigration; arguments for point to their importance in increasing tax revenues, integrating migrants and reducing their vulnerability to exploitation, formalizing the informal economy, and "wiping the slate clean" for future immigration enforcement. There are usually two categories of regularization programs: de facto or "one-shot". De facto regularization programs automatically grant permanent residency to migrants after they have lived in a country for a certain number of years and are implemented on a rolling basis. The "one-shot" regularizations target a limited number of migrants who have specific residency and work requirements; such programs also have deadlines for applications.

✚ Migrants are considered to be in an **irregular situation or non-documented** situation if they are unauthorised «to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreement to which that State is a party.

2. Understanding Labour Migration

2.1. What is labour migration

Labour migration is defined as the movement of persons from their home State to another State for the purpose of employment. Labour migration in Africa is largely intra-regional (80%) and mainly characterized by the migration of low-skilled workers. Of great importance in the region is the consolidation of significant South-South migration corridors to neighbouring labour markets in the search for a job and better wages.

Indeed, today, there are few African countries not participating in migration flows, whether as countries of origin, transit or destination. Migrant workers contribute to growth and development in their countries of destination, while countries of origin greatly benefit from their remittances and the skills acquired during their migration experience. Yet, the migration process implies complex challenges in terms of governance, migrant workers' protection, migration and development linkages, and international cooperation. Despite the efforts made to ensure the protection of migrant workers, many migrants continue to experience numerous problems particularly more vulnerable groups, such as female domestic workers, entertainers and lower skilled workers.

Good governance of labour migration is therefore critical in order to harness the full potential of benefits from labour migration for both origin and destination countries. In this regard, labour migration instruments, policy frameworks and legislation provisions are a key component of governance of labour migration. Organized and well managed labour migration has enormous potential for Governments, communities, migrants, employers and other stakeholders in countries of origin and destination. While job creation at home is the first best option, an increasing number of countries see international labour migration as an integral part of national development and employment strategies by taking advantage of global employment opportunities and bringing in foreign exchange. In countries of origin labour migration can relieve pressure on unemployment and can contribute to development through the channeling of remittances, transfer of know-how, and the creation of business and trade networks.

In countries of destination facing labour shortages, orderly and well-managed labour migration can lighten labour scarcity, facilitate mobility, and add to the human capital stock. To protect migrant workers and to optimize the benefits of labour migration for both the country of origin and destination as well as for the migrants themselves, clearly formulated labour migration policies, legislation and effective strategies are required.

2.2. Defining the migrant worker

According to ILO C 143 Migrant Workers (Supplementary Provisions) Convention, 1975 the term migrant worker means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker. The Convention does not apply to: (a) frontier workers; (b) artistes and members of the liberal professions who have entered the country on a short-term basis; (c) seamen; (d) persons coming specifically for purposes of training or education; (e) employees of organisations or undertakings operating within the territory of a country who have

been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

The International Labour Organisation's International Labour Standards on the protection of migrant workers cover displaced persons and refugees where they are employed as workers outside their country of origin. Temporary international migrants are defined as international migrants entering the country of labour attachment or country of destination with the intention of stay for a limited period of time which may be less or more than 12 months. According to the International Conference of Labour Statisticians Guidelines concerning statistics of international labour migration, particular categories of international migrant workers include :

- a. frontier workers, who are not usual residents of the country of measurement but have been granted permission to be employed on a continuous basis in that country provided they depart at regular and short intervals (daily or weekly) from the country;
- b. seasonal workers, who are not usual residents of the country of employment, whose work by its character is dependent on seasonal conditions and is performed during part of the year;
- c. itinerant workers, who are not usual residents of the country of measurement but travel to the country for short periods for work-related reasons;
- d. project-tied workers, who are admitted to the country of employment for a defined period of employment solely on a specific project being carried out in that country by their employer;
- e. specified-employment workers, who have been sent by their employer, such as a multinational enterprise, for a restricted and defined period of time to the country of employment to undertake a specific assignment or duty, or to undertake work that requires professional, commercial, technical or other highly specialized skills or work that is transitory or brief, and who are required to depart from the country of employment either at the expiration of their authorized period of stay or earlier if they no longer undertake that specified assignment or duty or engage in that work;
- f. self-employed workers, who are engaged in a remunerated activity otherwise than under a contract of employment and who earn their living through their activity normally working alone or together with members of their family, also including any other migrant worker recognized as self-employed by applicable legislation of the country of employment or bilateral or multilateral agreements;
- g. seafarers, including fishermen employed on a vessel which is registered in the country of measurement, of which the workers are not nationals;
- h. workers employed on an offshore installation that is under the jurisdiction of the country of measurement, of which the workers are not nationals;
- i. foreign domestic workers engaged by resident employers;
- j. foreign students who entered the country on the declared purpose of studying but then were working or seeking work or combining work and study;
- k. international travellers on tourism trips whose main purpose is to be employed in the country of visit and receive compensation for the labour input provided;
- l. working or seeking work refugees and asylum-seekers, irrespective of authorization to work during processing of refugee status or sanctuary request;
- m. forcibly displaced persons across borders due to natural or human-made disasters working or seeking work in the country of displacement;
- n. persons trafficked across international borders for forced labour or labour exploitation.

2.3. Reasons and causes for labour migration

Economic opportunity is often highlighted as a major driver of migration. However well-acknowledged “drivers”, includes social factors such as the search for educational opportunities or obligations to kin, such as marriage or inheritance practices, political factors which includes discrimination or persecution, conflict, levels of security and policy incentives, demographic factors which includes population density and structure and risk of disease and environmental factors, including exposure to hazards and land productivity.

According to the AU, multiple factors spur migration both within and out of Africa (African Union, 2006a), including poor socio-economic conditions, low wages, high levels of unemployment, poverty and lack of opportunities. These are because of a mis-match between rapid population growth and available resources as well as low levels of technology and capacity to create employment and jobs in countries of origin. In addition, various political and social factors such as poor governance, corruption, political instability, conflict and civil strife lead to migration of both skilled and unskilled labour in Africa (African Union, 2006a).

The perceived opportunity for a better life, high income, greater security, pressure to join relatives, families and friends, better quality of education and health care in destination countries influence decisions to migrate. Lower costs of migration, improved communication and readily available information facilitate migration in Africa. Globalization and information technology have also played a part in shaping migration trends by opening new frontiers and avenues for movement. Thus, emigration becomes a survival strategy for communities. This section focuses on drivers of migration in the different African sub-regions.

South African Development Community (SADC)

Three SADC Member States – South Africa, Botswana and Namibia - enjoy sustained economic buoyancy that has attracted large volumes of foreign migrant labour over the years. Crush and Williams (2010:4) cite a Southern African Migration Project (SAMP) study of 30 000 migrants from five SADC countries in 2005 “which showed that 23% of migrants had grandparents who had gone to work in another country, and 57% had parents who had done so.” Mining remains the largest employer of labour migrants from SADC (almost 50%). Lesotho, Swaziland and Mozambique are clearly dominated by mine migration to South Africa. Other key factors driving migration in Southern Africa are demography that leads to rising migration pressure and differential economic opportunities among countries. Growing unemployment and economic hardship have prompted some households to look elsewhere for economic livelihoods, either in the urban informal economy or outside the country or both.

2.4. Economic Impact of Labour Migration

Migration has had significant political, social and economic impact in origin, transit and destination countries in Africa. The impact has been both positive and negative, and varies by region and country. This section focuses on the economic impact of labour migration.

2.4.1. The Positive Impact of Migration¹⁵

- Remittances - The remittances sent by migrants back to their countries of origin provide significant financial capital flows and a relatively stable source of income. Remittances are generally a less volatile and more reliable source of foreign currency than other capital flows in many developing countries. Globally, remittances are now more than three times the amount of official development assistance. Not only have remittance flows been substantial, they have also been more stable than other financial inflows and more countercyclical, thus, sustaining consumption and investment during recessions. Remittances are also the continent's most significant source of net foreign inflows after foreign direct investment (World Migration Report 2018).
- Diaspora Participation in Development - There is a growing consensus that the Diaspora can have a significant impact in the development of their home countries. The challenge however, is in designing effective strategies through which the Diaspora can be fully harnessed for national development. Most government schemes have mostly focused on filling the financing gap, while donors have mainly sought to address the human capacity gap. From a brain gain perspective, emigrants are able to learn new and innovative skills that can be adopted in the country of origin, if and when the migrant chooses to return. The country will benefit from innovative skills, which will contribute to economic and social development, especially when new employment opportunities are created through establishment of industries. Migration can also result in the transfer of skills, knowledge and technology – effects that are hard to measure, but that could have considerable positive impacts on productivity and economic growth.
- Temporary and Permanent Returns - IOM has implemented several temporary return programmes for diaspora professionals in efforts to mitigate the shortage of human resources in affected sectors. For example, the IOM and the United Nations Development Programme (UNDP) has implemented the Transfer of Knowledge through Expatriate Nationals (TOKTEN) programme in a number of African countries, which have provided opportunities for highly skilled and qualified Diaspora to contribute to their origin countries through short-term consultancies. Under the programme the average cost of a TOKTEN consultant amounted to about a quarter of the cost of a standard international expert consultant.
- Leveraging Financial Resources of Diaspora - The financial contributions of the Diaspora can be non-commercial (private transfers: direct remittances to family or collective remittances to community groups to support development projects) or philanthropic contributions to specific projects. They can also be commercial/financial investment in commercial enterprises. Diasporas can play a critical role in accelerating technology exchange and foreign direct investment.
- Leveraging Remittances or Financial Institutions' Access to Capital Markets - Large and stable remittance flows improve a country's creditworthiness and thereby the creditworthiness of financial institutions as well. Banks in many countries have used future remittances as collateral for raising bond financing from international markets, and thus benefiting commercial lending.

¹⁵ 2016- Evaluation of the African Union Migration Policy Framework for Africa.

2.4.2. The Negative Impact of Migration

- *Brain Drain* - It is estimated that some 70,000 skilled professionals emigrate from Africa each year, leaving the continent with a huge human capacity gap. Because of the brain drain, about US\$4 billion (35% of official development assistance to Africa), is spent annually to employ about 100,000 expatriates (African Development Bank, 2011).
- *De-Skilling of Qualified Professionals* - However, some highly skilled migrants end up performing low skill jobs overseas due to their inability to secure a job in their area of expertise, which leads to brain waste/de-skilling (though paying higher wages than in countries of origin).
- *Cost of Meeting Humanitarian Obligations* - According to Amnesty International, ten countries - which account for just 2.5 percent of the global economy - are hosting more than half (56%) of the world's refugees. Thus, poorer nations endure the most of a worsening crisis. Countries like Ethiopia, Kenya, Uganda, DRC and Chad have had to deal with big numbers of refugees, and face challenges with providing for the increasing population of refugees, including challenges related to security, providing employment/livelihood opportunities, human trafficking, civil unrest (xenophobia) and pressures on the environment.
- *Cost of Managing Boundaries and Security Implications of Migration* - Some of the externalities of irregular migration include threats to national/regional security and the cost of managing international boundaries, which in some cases may require joint cross border operations of relevant security authorities of neighbouring countries. The continuation of irregular migration in different AU Member States is a concern for African governments.

3. International Labour Standards and Regional Frameworks on Labour Migration

3.1. International Labour Standards on Labour Migration

The mandate and vision of the International Labour Organisation (ILO) is to promote decent work for all workers. The ILO from its inception has had ILS that speak to specific provisions on migrant workers, as well as technical assistance work in areas such as women migrant workers, bilateral labour migration agreements, the recruitment of migrant workers and labour migration statistics. Through its Constitution and the Declaration of Philadelphia, the organization has confirmed the continuing concern of the institution on the protection of migrant workers. Unless otherwise specified, all migrant workers are protected by fundamental human rights instruments, international labour standards, and other economic and social policies.

The ILS guiding ILO's Labour Migration work is mainly composed of four migrant workers' International Labour Standards (ILS), five specific ILS related to migrant workers' social protection, six ILS containing specific provisions on migrant workers, the eight Fundamental Conventions that apply to all migrant workers irrespective of migration status, and the four Governance Conventions underlined by the ILO Declaration on Social Justice for a Fair Globalization and its follow-up.

Four migrant workers' International Labour Standards

i. ***Migration for Employment Convention (revised), 1949 (No. 97)*** - The Convention requires member states to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

ii. ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)*** - Each Member that ratifies the Convention is expected to declare and pursue a national policy

The 11 Fundamental Conventions

- ✓ 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) (and its 2014 Protocol)
- ✓ 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)
- ✓ Occupational Safety and Health Convention, 1981 (No. 155)
- ✓ Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

- iii. ***Migration for Employment Recommendation (revised), 1949 (No. 86)*** - The Recommendation states that it should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency. The measures taken by each Member should have due regard to the manpower situation in the country and the Government should consult the appropriate organisations of employers and workers on all general questions concerning migration for employment.
- iv. ***Migrant Workers Recommendation, 1975 (No. 151)*** - The Recommendation states that members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member.

Specific International Labour Standards related to migrant workers' social protection	International Labour Standards containing specific provisions on migrant workers
<ul style="list-style-type: none"> ○ Maintenance of Social Security Rights Convention, 1982 (No. 157) ○ Maintenance of Social Security Rights Recommendation, 1982 (No. 167) ○ Employment Injury Benefits Convention, 1964 (No. 121) ○ Equality of Treatment (Social Security) Convention, 1962 (No. 118) ○ Social Security (Minimum Standards) Convention, 1952 (No. 102) ○ Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) 	<ul style="list-style-type: none"> ○ Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) ○ Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) ○ Domestic Workers Convention, 2011 (No. 189) ○ Domestic Workers Recommendation, 2011 (No. 201) ○ Private Employment Agencies Convention, 1997 (No. 181) ○ Private Employment Agencies Recommendation, 1997 (No. 188)

3.2. Regional Framework on Labour Migration

3.2.1. Regional Policy Frameworks

There are three main policy frameworks either directly covering the issue of labour migration or touching upon labour migration areas in the Southern Africa and Indian Ocean region: the SADC Labour Migration Action Plan (2020-2025), the SADC Employment and Labour Policy Framework (2020-2030), the SADC Free Movement of Persons Protocol and the COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence.

The broad objective of the **SADC Labour Migration Action Plan (2020-2025)** is to enhance the contribution of labour migration to regional cooperation and integration in SADC. The specific outcome is to improve labour migration management for regional socio-economic development. The Strategic objectives (SOs) of the Plan are the following:

- **Strategic Objective 1:** To strengthen labour migration policies and regulatory systems for better labour migration governance including the following outputs
 - Ratification and implementation of key global, continental and regional migration instruments promoted, including the SADC Protocol on Employment and Labour, 2014, and the SADC Protocol on Facilitation of Movement of Persons, 2005.
 - National policy frameworks that address labour migration, including in combination with other thematic areas, adopted and implemented in all SADC Member States.
 - Bilateral cooperation on labour migration strengthened.
 - Institutional mechanisms, including the Secretariat, strengthened
- **Strategic Objective 2:** To protect migrant workers' rights and improve advocacy and awareness of their contribution to development and regional integration comprising the following targeted outputs:
 - Core labour standards and those relating to labour migration ratified and implemented, through responsive legislation and practice
 - Fair and ethical recruitment initiatives implemented.
 - Labour migration knowledge products, including statistical reports and research papers, produced and disseminated.
- **Strategic Objective 3:** To enhance the participation of migrant workers in socio-economic development processes in countries of origin and destination that encompasses the following outputs
 - Mechanisms for remittance transfers improved.
 - Social protection for migrant workers is enhanced.
 - SADC Qualifications Framework promoted.

The SADC 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.

The **SADC Employment and Labour Policy Framework (2020-2030)** was adopted in April, 2021. Labour migration is reflected in **Strategic objective 5:** To enhance labour migration

governance for safe, orderly and regular labour migration. The SADC Employment and Labour Policy Framework (2020-2030) recalls that the expedited removal of obstacles to the free movement of goods and services, and of people in general, will be a key milestone in the process of regional integration in SADC and that the SADC Labour Migration Action Plan (2020-2025) has been adopted to enhance the contribution of labour migration to regional cooperation and integration in the region. To achieve its objectives, it prioritises the following:

- a. Promoting and monitoring the ratification and domestication of key global and regional migration instruments, including core ILO conventions, through responsive legislation and practice;
- b. Developing national policy frameworks that address labour migration, taking into consideration the need to leverage migration as a development enabler and thus requiring a whole of government/societal approach to achieve and maximize the gains from well managed gender-responsive labour mobility.;
- c. Strengthening bilateral and multilateral cooperation on labour migration to leverage the development potential of labour migrants throughout the mobility continuum, while preventing and mitigating exploitative migrant labour practices, including through fair and ethical recruitment initiatives;
- d. Producing and disseminating labour migration knowledge products, utilising digital technologies, to enhance broad understanding of labour migration's role in development, including aspects of social cohesion and integration/reintegration; and
- e. Implementing the SADC Guidelines on Portability of Social Security Benefits, including enhancing mechanisms for remittance transfers in cooperation with finance sector, together with other state and non-state actors.

3.2.2. Progress made

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.

4. Rights of Migrant Workers and the Protection of Migrant Workers

Lack of labour protection for migrant workers undermines protection generally for all workers. This has seen the international community developing several legal instruments covering areas such as human rights, employment and labour, social security, or trafficking and smuggling of persons, within the labour migration arena. The protection of migrant workers and their families is firmly rooted in ILO Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) adopted in 1990 by the United Nations General Assembly.

4.1. ILO: Migration for Employment Convention (Revised), 1949 (No. 97); and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Conventions Nos 97, 143 and their accompanying recommendations cover the entire labour migration process and focus on providing an international cooperation framework to regulate international labour migration. They also provide guidance on the conditions in which labour migration should take place (e.g. bilateral labour agreements; employment contracts; regulation of recruitment practices; services provided before departure on arrival and on return; regulation of conditions on the recognition of labour qualifications, certification and diplomas; identification of short and long-term labour market needs, etc.).

Conventions Nos 97 and 143 call for enhancing international cooperation to regulate international labour migration providing a framework not only between Member states, but also between social partners from countries of origin, transit and destination. The ratification of Conventions Nos 97 and 143 contributes to improving the protection of the rights of migrant workers through ensuring workplaces comply with labour standards, particularly in respect of their working conditions, health and safety. Ratification of these ILO Conventions contributes to creating equal opportunities for both the existing workforce and new arrivals, thus also laying the foundations for an improvement in the situation of all workers.

Relevant ILO Labour Migration Conventions ratification in SADC include the following¹⁶:

- ❖ ILO: Migration for Employment Convention (Revised), 1949 (No. 97) - Six SADC countries (Comoros, Madagascar, Malawi, Mauritius, Tanzania (Zanzibar), and Zambia) have ratified this Convention.
- ❖ ILO: Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) - Comoros and Madagascar are the only two SADC countries that have ratified this Convention.
- ❖ ILO: Private Employment Agencies Convention, 1997 (No. 181) - Madagascar and Zambia have ratified this Convention in the SADC region.
- ❖ ILO: Domestic Workers Convention, 2011 (No. 189) - Four countries in the SADC region (Mauritius, Madagascar, Namibia, and South Africa) have ratified this Convention.

¹⁶ Visit the [NORMLEX](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::)- Information System on International Labour Standards website to track country level ratification. <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>

- ❖ ILO: Violence and Harassment Convention, 2019 (No. 190) - Two SADC countries (Namibia and South Africa) has ratified this Convention.

4.1.1. Main Principles in ILO Convention 97

The main principles included in ILO Convention 97 comprise the following:

- ✓ Equal treatment between migrant workers in a regular situation and national workers: Convention No. 97 (Article 6) guarantees equal treatment without discrimination on the basis of nationality, race, religion or sex, to migrants lawfully within the territory of countries of destination in relation to the following:
 - i. working conditions (remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home-work, minimum age for employment, apprenticeship and training, women's work and the work of young persons);
 - ii. membership of trade unions and enjoyment of the benefits of collective bargaining;
 - iii. accommodation;
 - iv. social security;
 - v. employment taxes, dues or contributions payable in respect of the person employed;
 - vi. access to justice
- ✓ Bilateral labour migration agreements (BLMAs) - Convention No. 97 promotes the conclusion of bilateral labour migration agreements (BLMAs) between States where there is a considerable flow of migrant workers. In this regard, Article 10 stipulates that “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”. Accompanying ILO Recommendation No. 86 contains a model bilateral agreement in its Annex. BLAs can help origin, transit and destination countries by including specific provisions to combat abusive migrant recruitment practices, promote sound skills and jobs matching, portability of social security entitlements, etc. These measures would also reduce the incidence of trafficking in persons and forced labour.
- ✓ Fair recruitment: ILO migrant workers Conventions contain provisions dealing with regulation of recruitment, the provision of services to facilitate recruitment, arrival and employment, and unregulated recruitment. They mention the importance to take measures by both countries of origin and employment to prevent abusive and fraudulent practices (including trafficking in persons and forced labour) in the recruitment for employment and placement abroad. The successful regulation and transparent management of recruitment of migrant workers plays an important role in effectively suppressing irregular migration and reducing labour migration in abusive conditions. The main purpose of these provisions is to: protect migrant workers; facilitate the control of recruitment; and suppress clandestine employment. They cover not only direct engagement by employers or their representatives, but also operations conducted by intermediaries, including public and private recruitment bodies (Article 7 and Annexes I and II of Convention No. 97 and Paragraphs 1(b), 1(c), 1(d), 13, 14 and 15 of Recommendation No. 86). The Conventions

help provide an appropriate framework for implementing ILO's *General Principles and Operational Guidelines for Fair Recruitment*.

- ✓ Model Employment Contracts: Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 mention the need to issue to migrant workers (prior to departure from the country of origin) an employment contract setting out the conditions of work and remuneration, and information on living and working conditions in the country of destination. As far as possible, the information provided to migrant workers on the terms and conditions of employment should be in their own language or in a language with which they are familiar. Contracts of employment should regulate such essential matters as hours of work, weekly rest periods and annual leave.
- ✓ Identification of labour market needs: Article 1 (b) of the Model Agreement annexed to Recommendation 86 also mentions the need for immigration countries to furnish appropriate information to emigration countries mentioning "the number, the categories and the occupational qualifications of the migrants desired". In addition, Paragraph 1 of Recommendation 151 states "Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term labour needs and resources but also of the long-term social and economic consequences of migration both for migrants as well as for the communities concerned."

4.1.2. Main Principle of ILO Convention No. 143

ILO Convention No. 143 aims to prevent all forms of irregular labour migration in abusive conditions including both irregular migration and unauthorized employment of migrant workers, as well as, in its most extreme form, trafficking in persons. Main principles included in ILO Convention 143 include the following

- ✓ Recognition of fundamental rights at work of all migrant workers: Convention No. 143 recognizes the need to ensure full respect of human rights of all migrant workers, including those in an irregular situation (Article 1). Notably, these comprise the fundamental rights at work contained in the eight ILO fundamental Conventions: the right to freedom of association and collective bargaining (Conventions Nos 87 and 98), the prohibition and abolition of forced labour (Conventions Nos 29 and 105 as well as the 2014 Protocol to the Forced Labour Convention No. 29), the elimination of child labour (Conventions Nos. 138 and 182), as well as the right to equal remuneration and the prohibition of all forms of discrimination in employment and occupation (Conventions Nos 100 and 111).
- ✓ Equality of treatment and opportunity between migrant workers in a regular situation and national workers: Convention No. 143 (Art. 10) also calls on member States to pursue a national policy designed to promote and guarantee, by methods appropriate to national conditions and practice, for persons who, as migrant workers or as members of their families, are lawfully within its territory, equality of opportunity and treatment, in respect of: (a) employment and occupation; (b) social security; (c) trade union and cultural rights; and, (d) individual and collective freedoms.

- ✓ Equal treatment between migrant workers in an irregular situation with regard to rights arising out of previous employment: Convention No. 143 (Article 9) also establishes that equal treatment must be guaranteed to migrant workers in an irregular situation with regard to rights arising out of previous employment concerning: (a) remuneration due; (b) social security and other benefits accrued as entitlements; (c) access to justice in defending their rights before a competent body; and, (d) the costs of expulsion, which should not be borne by migrant workers and their families
- ✓ Free choice of employment after a period of two years while ensuring the right to geographical mobility: Convention No. 143 (Article 14a) stipulates that a Member State may “make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract”.
- ✓ Address Irregular migration: Convention No. 143 is the first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants, while laying down the general obligation to respect basic human rights of all migrant workers. In fact, it aims to prevent all forms of irregular migration in abusive conditions, including the unlawful or unauthorized employment of migrant workers. It includes targeted provisions to address the problems arising out of irregular migration flows and illegal employment of migrants and on suppressing the activities of organizers of clandestine movements of migrants and their accomplices. Migrant workers in an irregular situation are covered by Part I which provides for certain protective measures for migrant workers who have lost their employment and for those in an irregular situation (Articles 1–9).
- ✓ Recognition of skills: Convention No. 143 (Article. 14(b)) provides for the recognition of occupational qualifications as a prerequisite to migrant workers being capable of competing on equal terms with national workers in the labour market, and calls for making regulations concerning the recognition of occupational qualifications acquired abroad, including certificates and diplomas. Article 4 (Validity of documents) of the Model Agreements annexed to Recommendation No. 86 provides that the “parties shall determine the conditions to be met for purposes of recognition in the territory of immigration of any document issued by the competent authority of the territory of emigration in respect of migrants and members of their families [or in the case of refugees and displaced persons, by anybody established in accordance with the terms of an international instrument which may be responsible for their protection...] concerning:(c) occupational qualifications; (d) general education and vocational training.

4.2. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990¹⁷.

This is the UN Convention devoted to the protection of migrant workers and the furtherance of their rights. The Convention provides a broad range of protections for migrant workers and their families in many areas of work and life. The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights—a policy topic that is drawing increasing attention worldwide. The Convention sets minimum standards for migrant workers and members of their families, with a focus on eliminating the exploitation of workers in the migration process.

The Convention defines groups of migrant workers in specific categories: frontier, seasonal, self-employed, seafarer, and itinerant, and consists of nine parts: scope and definitions; non-discrimination with respect to rights; human rights of all migrants; provisions applicable to particular categories of migrants; the promotion of sound, equitable, humane, and lawful conditions in connection with international migration; application of the convention; general provisions; and final provisions .

The Convention requires States to make it unlawful for private individuals to confiscate, destroy or attempt to destroy migrant workers' identity or other documents authorizing their presence in the country. It gives migrant workers the right to the assistance of the consulates of their own countries. In terms of employment, all migrant workers are entitled to treatment not less favourable than that applying to nationals with regard to pay and conditions of work. All are entitled to join trade unions and engage in union activity, to receive emergency medical care, and to transfer their earnings out of the country upon the termination of their stay. Migrant workers in regular status are further accorded equality of treatment with nationals with regard to protection against dismissal and to unemployment benefits.

The protection of migrant workers is broadly broadened, as regards, inter alia, respect for fundamental freedoms, access to justice for all migrant workers, access to emergency medical care, guarantees in matters of expulsion (suspensive appeal, control of procedures, increased security for migrants in a regular situation), access to education for children of foreigners in an irregular situation, prevention of double taxation, the consequences of migration in terms of political participation, rights conferred on individuals with regard to the procedures for monitoring the application of the Convention.

Additional provisions contained in the Convention relate to the orderly return of migrant workers, preventing and eliminating irregular or clandestine movements, and employment of migrant workers in irregular status. These provisions include imposing sanctions against those who operate such movements or employ those in irregular status.\

¹⁷ ILO, 2021 - Trade Union Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance

4.3. ILO's 2016 Guiding principles on the access of refugees and other forcibly displaced persons to the labour market¹⁸

The provision of decent work opportunities for all, including nationals, refugees and other forcibly displaced persons, in countries of origin, host and third countries is important. A Tripartite Technical Meeting on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market was held in 2016, where the principles were adopted to guide the work of Member States:

- **Governance frameworks on access to labour markets.** Members should formulate national policies, and national action plans to ensure the protection of refugees and other forcibly displaced persons in the labour market. National policies and action plans should be formulated in conformity with international labour standards, decent work and humanitarian principles, and foster opportunities for formal and decent work that support self-reliance. Members should make easily available information regarding laws and regulation applicable to entrepreneurship.
- **Economic and employment policies for inclusive labour markets.** Members should formulate coherent macroeconomic growth strategies, including active labour market policies that support investment in decent job creation that benefit all workers.
- **Labour rights and equality of opportunity and treatment.** Members should adopt or reinforce national policies to promote equality of opportunity and treatment for all, in particular gender equality, recognizing the specific needs of women, youth and persons with disabilities, with regard to fundamental principles and rights at work, working conditions, access to quality public services, wages and the right to social security benefits for refugees and other forcibly displaced persons, and to educate refugees and other forcibly displaced persons about their labour rights and protections.
- **Partnership, coordination and coherence.** Members should promote national, bilateral, regional and global dialogue on the labour market implications of large influxes of refugees and other forcibly displaced persons, and the importance of access to livelihoods and decent work.
- **Voluntary repatriation and reintegration of returnees.** Countries of origin should reintegrate refugee returnees in their labour market. The ILO and its Members in a position to do so should provide assistance to countries of origin in areas of refugee returnees in creating employment and decent work for all, as well as livelihoods and self-reliance.
- **Additional pathways for labour mobility.** Members should promote labour mobility as one of the pathways for admission and for responsibility-sharing with countries hosting large numbers of refugees and other forcibly displaced persons and include such pathways for admission in their national policies.

4.4. SADC Frameworks on the protection of rights of migrant workers

4.4.1. The SADC Employment and Labour Protocol

In the Draft SADC Protocol on Employment and Labour, labour migrant are classified under “vulnerable groups.” Articles 3 and 13 speak specifically to labour migration.

¹⁸ https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_671737/lang--en/index.htm

Article 3: General Objectives, states:

- (b) promoting inclusive, full and productive employment, including self-employment, in particular for the vulnerable groups especially youth, women, persons with disabilities and migrant workers; and,
- (i) establishing a responsive labour migration governance system, taking into account the regional migration context and the capacities of the State Parties.

Article 18 Migrant Workers, states:

1. State Parties shall formulate and implement labour migration policies and legislation to enhance labour migration governance and regulatory systems in order to safeguard the welfare and rights of migrant workers and their families, including enjoyment of fundamental labour guarantees under Article 4 of this Protocol.
2. State Parties shall ensure equality of treatment and non-discrimination of migrant workers in respect of the basic conditions of employment as provided for in Article 11 of this Protocol and any other terms of employment as provided under national law.
3. State Parties shall ensure that labour migration policies and legislation: (a) promote safe, orderly and regular labour migration; (b) contribute to combating smuggling and trafficking in persons; (c) promote fair and ethical recruitment processes; (d) ensure that the status of migrant workers in a State Party does not deprive them of redress mechanisms to access accrued rights and benefits; and (e) promote the use of formal channels to transfer remittances by migrant workers.
4. State Parties shall co-operate on labour migration, including through multilateral or bilateral and unilateral measures so as to maximize the developmental potential of labour migration.
5. Nothing in this Article shall be interpreted or construed as establishing the rights to entry, residence or establishment in the territory of a State Party.

4.4.2. SADC Guidelines on the Portability of Social Security Benefits

The SADC Ministers of Employment and Labour and Social Partners adopted in March 2020 the SADC Guidelines on the Portability of Social Security Benefits. The SADC Guidelines aim to support the creation of a favourable system across the SADC region that enables workers to accumulate and access social security benefits, regardless of which country they are in. Institutions responsible for social security across the SADC region have the primary responsibility for implementing the Guidelines through appropriate policy measures.

The guidelines are based on the principle of non-discrimination and equal treatment of nationals and non-nationals. Thus, Member States guarantee migrant workers and their survivors the same social security rights and benefits as those accorded to citizens. The Guidelines are further inspired by ILO Conventions, in particular: Social Security (minimum standards) Convention, 1952 (n° 102); Equality of Treatment (social security) Convention, 1962 (n° 118); and Maintenance of Social Security Rights Convention, 1982 (n° 157).

The Guidelines cover all workers, who are nationals of a SADC Member State, as well as members of their family and their survivors. They are applicable to migrants in an irregular status as well as workers in informal employment. The Guidelines apply to the 9 key branches of social security: a) Retirement benefits; b) Unemployment benefits; c) Survivors benefits; d) Occupational injury

and disease benefits; e) Health insurance; f) Maternity benefits; g) Invalidity; h) Sickness benefits; i) Family benefits.

The Guidelines only affect benefits that Member States assure under their laws. For the guidelines to become effective countries have to sign bilateral/multilateral agreements. To enhance social security for migrant workers and their families in the SADC region, the SADC Secretariat and its 16 Member States are working with partners, notably the ILO, to increase awareness and knowledge of the Guidelines and support their implementation. Five SADC countries (Eswatini, Lesotho, Malawi, South Africa and Zimbabwe) decided to pilot the SADC Guidelines on the portability of social security benefits in March 2020. Additional SADC Member States have recently showed interest in piloting them: Botswana, Comoros, DRC, Mauritius, Madagascar and Seychelles.

4.4.3. SADC Qualifications Framework (SADCQF)

Migrants face significant challenges around the issue of recognition of qualifications, diplomas and skills through the Recognition of Prior Learning (RPL) systems and labour competency frameworks as well as through National and Sub-regional Qualification Frameworks. The SADC Qualifications Framework (SADCQF) is a comprehensive Regional Qualifications Framework (RQF) for schooling, Technical and Vocational Education and Training (TVET) and higher education. It was established in 2011 by the SADC Ministers of Education. Its purpose is to enable easier movement of learners and workers across the SADC region and internationally. The SADCQF is a 10-level RQF underpinned by learning outcomes and quality assurance (QA) principles that will provide a regional reference for qualifications and QA mechanisms in SADC. Member States agreed to align their qualifications and QA mechanisms to the SADCQF.

The vision is that, in the SADC region, all new qualification certificates, diplomas and other qualification credentials issued by competent authorities will contain the relevant level on the SADCQF. Alignment will enable this recognition of achievement at a regional level. The resulting transparency and information about the qualifications and QA of aligned Member States will further assist in embedding mutual trust in and between SADC countries. Regional alignment would also enable institutions and individuals to compare their learning and competence levels, and would reduce unnecessary duplication of learning and effort when moving through SADC for study or work purposes.

To give effect to this decision by the Ministers, a Technical Committee on Certification and Accreditation (TCCA) was given the task of overseeing implementation of the SADCQF. The TCCA is a group of experts from the SADC Member States and is supported by the SADC Secretariat. In order to provide support and centrally drive co-ordination of implementation, a TCCA Executive Committee (EXCO) was established, based on the SADC Troika principles. To ensure the sustainability of the SADCQF, funding mechanisms for a SADCQF implementation unit have been developed. In the meantime, Member States volunteer to support the SADC Secretariat with the implementation efforts.

The SADCQF plays a key role in setting the regional reference point for comparing qualifications obtained in SADC. Currently the SADCQF is a reference framework only with the prospect of later developing into a framework that has qualifications registered onto it. Eight SADC countries

are piloting alignment of their National Qualifications Frameworks (NQFs) or National Qualifications Systems (NQS) with the SADCQF. The pilot countries are Botswana, Eswatini, Lesotho, Mauritius, Namibia, the Seychelles, South Africa and Zambia. South Africa has started to implement a digital E-Credentialing system and the SADC E-certificate is being piloted in four countries of the SADC region (Botswana, Namibia, South Africa and Zambia as part of the SADCQF implementation plan "verification cluster".

5. The working and living conditions of migrant workers

Migrant work has been characterized as being low-paid and precarious, with workers reporting higher job insecurity and limited entitlements. Migrant workers face discrimination and bullying compared to local workers, this has extended implications which include increased job dissatisfaction and frustration, making workers vulnerable to work-related stress. Below are some on the challenging working and living conditions of migrant workers.

5.1. Working conditions of migrant workers

The Three (3) D Jobs: Migrant workers often carry out the “3-D” jobs: difficult, dangerous and degrading. Most migrant workers are employed in sectors that were renowned for high levels of fatal accidents, injuries and diseases. These sectors commonly include agriculture, mining, construction, cleaning and maintenance, hotel and restaurant services, labour intensive assembly and manufacturing, and the sex industry.

Working time: Migrant workers more often report having long working hours, working in the evenings or at night, doing shift work or work during weekends, and these workers are more often involved in work accidents. They work seven days a week, with no regular working hours or rest periods. As some migrant workers are exposed to multi-tasking, and are still expected to meet target. For domestic workers, living with their employer tend to experience a blurring of work and free time.

Wages: The wages of migrant workers as a whole are lower, unstable and irregular than those for national workers, which may be partly explained by different levels of skills among migrants, but discriminatory practices do play a role. There are also wage disparities between groups of migrants and, in general, women migrants are worse off. Migrant workers are subjected to wage theft - the denial of wages or employee benefits that are rightfully owed to an employee by the employer. Wage theft is conducted through various means which include: failure to pay overtime; minimum wage violation; employee misclassification; illegal deductions in pay; working off the clock; not being paid at all. Wage theft has been used by employers to keep migrant workers' dependent to them, as they have to continue working, as they wait to get they wages.

Occupational safety and health: Occupational safety and health is an important issue for migrant workers for several reasons, these include: (i) migrant workers tend to be employed in high-risk sectors; (ii) language and cultural barriers require specific OSH communication, instructions and training approaches; (iii) many of these workers overwork and/or suffer from poor general health and are therefore particularly prone to occupational injuries and work-related diseases; and, (iv) many migrant workers are obliged to live in makeshift accommodation, shantytowns and substandard accommodation. This can lead to poor general health, which makes migrant workers more vulnerable to occupational diseases. As migrant workers are considered to be temporary, employers may not invest in training for them.

Violence and harassment: Abuses in the workplace take multiple forms, from outright physical abuse or harassment to what has been termed benign neglect when managers fail to implement or enforce safety measures. The actual or perceived lack of legal protection for migrant workers often

results in their exposure to abuse in the workplace. The threat of physical violence and exposure to verbal abuse contributed to workers' acquiescence to working longer hours or working in unsafe conditions. The occurrence of physical, mental, and sexual abuse has been reported in many different fields employing migrant workers. Abuses suffered in the work environment lead to negative mental health outcomes, which include mood instability and depression. Also migrant workers are more likely to suffer from exposure to psychosocial risks at work due to a lack of social and family support in the country of relocation.

Limited access to social benefits: Migrant workers are typically recruited on short-term contracts and paid cash-in-hand. They barely exist on labour registers and have limited access to social protection. Employers side-step their duties to provide benefits such as holiday or sickness pay, social insurance contributions, maternity provision, and so on. This means employers get more value out of these workers at lower cost. It lowers working standards for everyone.

Discrimination: Migrant workers accumulate 'multiple layers of discrimination,' based not only on migration status, but also nationality, ethnicity, and gender, which contribute to their marginalization and exclusion from the formal economy. Migrant workers are often the ones hired because they can be discriminated against, compared to local workers. Many receive less pay than local workers for the same work, as well as far worse benefits, for example severance pay when dismissed. Migrant workers are frequently subjected to unequal treatment and opportunities, as well as discriminatory behaviour, and these are the key reasons why migrant and ethnic minority workers face greater obstacles than the majority population. Migrant workers are regularly subjected to various forms of discrimination, including in access to employment and unequal treatment in the workplace, practices which are inconsistent with international instruments on migrant workers.

Vulnerability in economic crises: The vulnerability of migrants' situation as informal economy workers becomes more deepened during times of crisis. Insecure working arrangements, combined with a lack of access to social safety nets, and concentration in sectors most sensitive to business cycle fluctuations, make migrant workers particularly susceptible. Also in times of crisis, the perception that migrants are competing with native workers increases, which can reinforce xenophobia and lead to a rise in discriminatory employment measures, mass deportations, and violence against migrants.

Racism and Xenophobia: There is increasing xenophobia and racism in many societies towards migrant workers. Local workers tend to say '*they have come to take our jobs*', even though the work done by migrants often adds to the economic well-being of the country, increasing the level of jobs available. It should also be noted that those extreme chauvinist groups which raise the issue of migrant workers are never the friends of trade unionism. They seek to divide workers on the basis of race, religion or nationality. Trade unionists know that division is fatal to our cause. These same parties are always in favour of reducing trade union power. The trade union movement plays a leading role in fighting racism and xenophobia.

Training and career advancement: Migrant workers are not only segregated into low-paid jobs, but they also have little likelihood of progressing out of them. Unfortunately, there are limited opportunities for migrant workers to have access to career development courses or training. In

some countries upward occupational mobility is heavily dependent upon variables such as gender, ethnic origin and language competence. It is not clear, however, if and to what extent language requirements work as a useful excuse that hides prejudices against ethnic minorities. In some countries opportunities for training and further education for migrants are virtually non-existent, since educational programmes are offered only in the local language, without any translation.

5.2. Living conditions of migrant workers

Unscrupulous employment agents and Debt bondage: International recruitment of workers is increasingly becoming more and more in the hands of private fee-charging recruitment agencies which play a crucial role in facilitating migration for employment. Sadly, they are also responsible for a number of unethical practices which promote irregular migration and cause immense hardship to actual and potential migrant workers. A serious problem facing many migrant workers is that they are hired through employment agents. The result can be to put migrant workers deeply in debt so they have to continue working; they have no money to go home, *thus debt bondage*. Migrants often have to borrow the money for these upfront charges from moneylenders at a high interest rate, and it remains a debt that hangs over them and their family.

Housing: Many migrant workers have to live in extremely poor conditions: in decrepit old buildings, shacks, broken down caravans, and so on. When in buildings, the rooms are often overcrowded and there is no privacy. Overcrowding also increases the vulnerability of women and children to sexual abuse, and reduces their safety and security. Substandard housing conditions are a common issue migrant workers face. Not only do many workers live in crowded, unsanitary conditions, but they often lack basic utilities, live in isolated areas far away from important services like health clinics, grocery stores, and public transportation, and in many cases must pay exorbitant rates for rent.

Isolation, loneliness due to limited movement: Loneliness is an unpleasant, subjective experience that results from the lack of social relationship satisfying in either quantity or quality. Owing to migrant workers' socially isolated status, separation from distant families and friends, and reduced social network sizes, they might be at increased risk of feeling lonely and isolated. Feeling lonely poses not only a threat to mental health like depression and impaired cognition, but also to physical health as indicated by increased mortality risk.

Confiscation of passport: Although passport confiscation is considered an illegal practice in many countries. It still persists, and this underlies numerous forms of manipulation or exploitation that many migrant workers reportedly put up with to keep their jobs¹⁹. Employers gave various explanations for this practice, including the suggestion that their workers preferred that employers hold the documents to keep them safe, but the purpose of holding passports was to ensure that workers did not leave. Some countries of destination have passed regressive laws that empower the employers to legally hold workers' passports. In some cases, because employers ordinarily pay to renew their employees' work permits and then recoup that cost through monthly deductions, they may demand money from workers before turning over passports, either in reimbursement for those costs or as a form of security that the workers will stay on the job.

¹⁹ This goes against the General Principles and Operational Guidelines and Recruitment fees and related costs definition on Fair Recruitment.

6. Gender equality and women's empowerment in labour migration governance

The need for proactive engagement of women migrant workers in the development, implementation, monitoring and review of labour migration policies and procedures has been noted as an effective strategy for ensuring the policies and systems which facilitate migration are rights-based and inclusive. Since almost half of all migrant workers in the SADC region are women, labour migration policies should be gender-responsive and evidence-based. As such, labour migration policies should ensure coherence with employment, social protection and skills policies, and should be factored in development policies with a significant involvement of labour market institutions in their implementation.

6.1. Challenges faced by women migrant workers

For many women, as for men, migration can represent a positive experience and have important emancipating and empowering impacts. But often female migrants are confronted with gender-specific disadvantages and vulnerability in the migration process and in their employment. Women workers, especially young female migrants, often end up in situations of double or even triple discrimination, disadvantage, marginalization and vulnerability (including violence and harassment as well as forced labour). The multiple layers of discrimination and vulnerability can come in the form of:

- ✓ *Being women vis-à-vis being men:* During every stage of their migration experience, women migrant workers tend to be more exposed to human rights violations compared to their male counterparts because they lack access to and control over resources and decision-making. For example, women are more likely than men to lack access to realistic and accurate information concerning recruitment and the migration process and the economic and social costs and benefits of employment abroad and are, therefore, much more at risk of being deceived by unscrupulous recruitment agents and traffickers. Stereotyped labour roles for men and women lead to the concentration of female and male migrants in different sectors or occupations which bring specific and different risks and vulnerabilities. Women are typically concentrated in low-paid feminized jobs which are not or are only partially covered by labour laws and social protection provisions. Domestic and care work are performed within the private sphere of the home where abuse and poor labour practices are less visible and support of peers largely unavailable. Men are often concentrated in highly hazardous occupations such as construction or fishing, where their vulnerabilities are often unrecognized and unaddressed.
- ✓ *Being foreigners vis-à-vis nationals:* A key source of vulnerability of women migrant workers is that their jobs often lack labour and social protection. Additionally, women - because of gender discrimination in access to information, education and support networks - are less likely than men to be aware of the laws and regulations of the destination country and do not have effective means to seek legal redress in case of violation of their rights. As their male counterparts, women migrants frequently have to deal with difficult living and working conditions, increased health risks, lack of access to social services and various forms of abuse, but their situation of relative disadvantage in societies of origin and destination exacerbates their exposure to abuse. With xenophobia and discrimination

against migrant workers on the rise, especially in unstable and poor economic times, female migrants tend to be more vulnerable than the men;

- ✓ *Being dependent compared to autonomous migrants:* Strong dependency on a specific employer is one source of vulnerability for migrants, especially for female migrants, as their dependent status can be used by the employer or by co-workers, not only for general mistreatment, but also for sexual harassment. Migrant workers are sometimes not allowed to change employers or are required to have their visas sponsored by a national. The ‘one employer rule’ and the visa sponsorship (‘kafala’) system tend to put migrants almost totally under the control of the employer/ sponsor, which can show particularly challenging for women due to their relative weaker power positions. The specific situation of domestic workers brings this dependency situation to its extreme as the workers are sharing with the employer the work and living space, households typically fall outside the mandate of labour inspection and the lines between personal and employment relationships tends to become very blurred. Some employers foster dependency of a worker by isolating her, confiscating her passport, work or residency papers, limiting her contact to the outside world or evoking fear in her that any complaint will result in job loss and/or deportation. Finally, women might face specific barriers when their migration status is linked to consent of a male family member who “signs off” to their migration (and hence restrict their decision power) or when they migrate as accompanying family members and depend from their spouse/father for the renewal of their residence/work permits;
- ✓ *Being undocumented or irregular migrants:* Migrants can enter a country irregularly or they can fall into irregularity because they fail to comply with relevant requirements at destination, for example if they lose their regular job. In some cases, restrictive policies introduced by countries of origin on their mobility (e.g. age bars, consent from spouses, or even pregnancy test prior to departure), leave no or limited legal migration channel open to women and can push many of them into irregular paths, with higher risk of abuse. In some cases, national legislation at destination criminalizes any migrants who leave their job, arguably forcing them to stay in exploitative workplaces. Women can be more vulnerable than men to be undocumented or irregular migrants. Those who are in irregular situations in the destination country have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance.

6.2. Gender-responsive policy implementation in labour migration governance

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

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

After establishing rights-based, gender-responsive and evidence-based policy frameworks, it is necessary to establish systems to ensure their implementation including through sufficient financial resources, training and technical support.

- ✓ Increased and shared accountability in the protection of rights of women migrant workers. If labour migration policies address gender-responsive recruitment and pre-departure orientation, ministries mandated implement labour migration policies, alongside recruitment agencies and other relevant stakeholders, should share accountability for meeting the policy commitment. Investments should also be made in capacity development of these actors, for example gender-responsive approaches to training and information services.
- ✓ Establishing a dedicated gender unit within the ministry mandated to implement labour migration policies. This can provide sustained focus on the rights and needs of women migrant workers, to ensure that policy and practice prevent and respond to rights violations. Such a unit can fill evidence gaps, coordinate relevant stakeholder and ensure effective monitoring and review of policies from a gender perspective.
- ✓ Capacity strengthening. Duty bearers including recruitment agencies and employers must have the capacity to understand and implement gender responsive policies and practices. Recruitment agencies, employers and migrant women and their representatives, must be empowered with the practical skills to uphold and benefit from these commitments.
- ✓ Ratify and domesticate international labour migration instrument. The state should ratify relevant human rights treaties, such as the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families.
- ✓ Apply a human rights-based approach and principles of equality, non-discrimination, empowerment and autonomy of women for all measures regarding migration policies and frameworks, including in national development policies and other related plans for the implementation of the 2030 Agenda for Sustainable Development and the SDGs.
- ✓ Collection of sex-disaggregated data, will provide a more complete understanding of the characteristics of migrant workers, their status and the challenges that policy will need to address, hence assisting in the development of better policies and programmes.
- ✓ Review current regional agreements to foster regular and safe pathways for migration, through ensuring better coordination and coherence among the countries of origin, transit and destination regarding the matching of skills and employment opportunities, and the promotion of programmes that facilitate the regularization of the status of migrants in order to benefit from the social, economic, cultural and political contributions of migrant women.

7. Fair recruitment and Recruitment Agencies

Workers who are recruited across international borders are the most affected and can face multiple challenges in the recruitment process. Migrant workers, especially if they are in an irregular situation, might find themselves more exposed to fraudulent and unscrupulous labour and human rights violations and are at higher risk of being victims of forced labour than other workers.

There are various forms of unfairness in the recruitment process, which are not independent of each other and may partially overlap. The distinction between these forms, however, is useful for the better understanding of unfair recruitment practices. Forms of unfairness in recruitment include²⁰:

- **deceptive recruitment**, in which the worker is deliberately caused to believe something that is not true, such as the terms and conditions of employment and living conditions;
- **coercive recruitment**, in which the recruitment is imposed on the worker under the threat of penalty and to which the worker does not agree voluntarily, notably using violence or its threat, abduction, forced marriage, forced adoption or selling of the victim, confiscation of documents, and debt bondage;
- **abusive recruitment**, in which the position of vulnerability of the worker is abused, with such vulnerability possibly related to difficult socioeconomic situation, irregular migration status, lack of education, lack of information or economic reasons;
- **discriminatory recruitment**, in which equality of opportunity and treatment in recruitment is nullified or impaired, notably on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership in a workers' organization.
- **corrupt recruitment**, in which the recruiter or a third party influencing the recruitment acts dishonestly in return for money or personal gain, with such acts possibly including offering, promising, giving, requesting or accepting bribes, including bribes from workers or bribes to employers or government officials;
- **fake recruitment**, in which the private employment agency or the job advertised do not exist, or the job exists but what is depicted as the recruitment process that the worker goes through is unrelated to the job, and;
- **worker-fee-charging recruitment**, in which recruitment fees and related costs are borne by the worker.

7.1. What is fair recruitment

While there is no internationally agreed definition of the term 'fair recruitment,' it can generally be understood to mean recruitment carried out within the law, in line with international labour standards and with respect for human rights, without discrimination on the basis of gender, ethnicity, national or legal status. It should be at no cost to workers and should protect them from exploitative situations. This means that governments need to translate international standards into effective laws and regulations, and to implement them effectively. Segments of the population in particularly vulnerable situations, including women workers, migrant workers, domestic workers,

²⁰ ILO, 2021- Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa (upcoming publication)

workers in the informal economy and others, should be provided with additional protection against abuses.

Fair recruitment also entails due diligence in respect of human rights and access to dispute-resolution mechanisms and remedies where abuse is alleged to have occurred. Workers' and employers' organizations, by engaging in social dialogue and training, and raising awareness among their constituent members, can play a pivotal role in promoting fair recruitment practices.

7.2. Legislative framework on fair recruitment

In terms of recruitment and recruitment costs there are two ILO Conventions that are relevant, thus, Convention No.88, and No.181.

ILO Convention No. 88- Employment Service Convention, 1948

Each Member of the International Labour Organisation for which this Convention is in force shall maintain or ensure the maintenance of a free public employment service. The essential duty of the employment service shall be to ensure, in co-operation where necessary with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.

The provision of free recruitment and placement for workers and jobseekers is a central theme of ILO Employment Service Convention, 1948 (No. 88). The Convention provides general parameters for the regulation of the recruitment and employment of workers through public employment institutions. The growth of private labour intermediation, has also seen the evolution of ILO labour standards.

ILO Convention No. 181 - Private Employment Agencies Convention, 1997

The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice. Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

The ILO Private Employment Agencies Convention, 1997 (No. 181), specified its purpose as “to allow the operation of private employment agencies as well as the protection of the workers using their services” (Article 2(3)). The Convention guides Member States to establish clear policies, legislation and implementing mechanisms for effective registration and licensing of private employment agencies, reiterating the principle of no-fee charging of workers and jobseekers. Article 7 of Convention No. 181 stipulates, “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.”

Of a total 16 SADC Member States, only 6 have ratified Convention No.88 [Angola, Democratic Republic of the Congo, Madagascar, Mauritius, Mozambique, United Republic of Tanzania], and 1 Convention No.181 [Zambia].

7.3. ILO Guidelines on fair recruitment

In 2018, the ILO Governing Body approved the publication and dissemination of the definition of recruitment fees and related costs, adopted by a Tripartite Meeting of Experts. The ILO General Principles and Operational Guidelines for Fair Recruitment provides a definition of “recruitment fees or related costs”, as “any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection”. This comprehensive definition of recruitment fees, related costs, as well as illegitimate costs, should be read together with the General Principles and Operational Guidelines for Fair Recruitment. The definition reiterated that recruitment fees and related costs should not be borne by workers or jobseekers.

The 13 General principles under the ILO General Principles and Operational Guidelines for Fair Recruitment note that:

- i. Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
- ii. Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
- iii. Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
- iv. Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
- v. Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
- vi. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
- vii. No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
- viii. The terms and conditions of a worker’s employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable

collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.

- ix. Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.
- x. Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
- xi. Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
- xii. Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
- xiii. Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

7.4. Role of recruitment agencies

The modern recruitment landscape is constantly adapting in order to respond to rapidly changing labour market needs. In recent decades, it has been characterized by a rise in the prominence of private recruitment agencies. Recruitment agencies deal with the provision of services that facilitate recruitment, departure, arrival and employment of potential migrants. Some also participate in unregulated recruitment. This has seen the recruitment landscape today increasingly becoming more complex and involving a wide range of actors, both regulated and unregulated, and this has seen an increase in the number of violation of rights of workers. In a number of instances, recruitment is undertaken by public employment services (PES) and regulations may require that these are the only entities allowed to operate, as there is some level of protection of rights of workers. In many parts of the world, however, recruitment through private employment agencies (PrEAs) is on the rise, hence the need for governments to develop and institute regulations of their conduct and how they function.

The successful regulation and transparent management of recruitment of migrant workers effectively suppress irregular migration and at the same time reduce abusive conditions in labour migration. Recruitment of migrant workers is done by the employers or their representatives through public and private recruitment bodies.

While private recruitment agencies can play a positive role in matching labour supply and demand, there is growing concern about exploitative recruitment practices and unscrupulous employment agencies, informal labour intermediaries and other actors operating outside of the legal framework. These unfair recruiters tend to primarily target low-skilled workers and often place them at risk of

human trafficking and forced labour. Both national and migrant workers are at risk of facing abuses during the recruitment phase.

7.5. Due diligence check

The term, due diligence refers to 'an enterprise's ongoing process which aims to identify, prevent, mitigate, and account for how it addresses the adverse human rights impacts of its own activities or which may be directly linked to its operations, products or services by its business relationships. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed²¹.

Due diligence checklist²²

Recruitment	<ul style="list-style-type: none"> -Service providers and placement agencies (and the recruitment agencies they may utilise), should not charge workers any recruitment fees and related costs. - According to the international definition, recruitment fees and related costs should refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.
Employment Contract	<ul style="list-style-type: none"> -Service providers and placement agencies should provide workers with a written employment contract and offer of employment. - Employment contracts and offers of employment should be provided to workers before starting employment in order to avoid deception and misunderstandings regarding working and living conditions. - Where applicable, the employment contract should be translated into a language that the worker understands. - Service providers and placement agencies should hold information on all workers, including copies of passports, residency permits, medical insurance cards, employment contracts, and other vital data.
Passports & Identity Documents	<ul style="list-style-type: none"> - Workers should have full control over and access to their passports and similar documentation – including residency permits and personal bank cards – to ensure their mobility is not restricted. - If a worker's passport is retained for administrative purposes (e.g. renewal of residency permit), the document should be returned to the worker upon completion of the procedures.
Working Conditions	<ul style="list-style-type: none"> - All workers, including agency workers, should have a safe and healthy working environment, in accordance with the labour law. - No worker, including temporary and agency workers, should be paid below the minimum basic monthly wage. Wages shall be paid in full and on time.
Workers' Accommodation	All workers, including agency workers, should have adequate living conditions.

²¹ ILO, 2018. General principles and operational guidelines for fair recruitment

²² ILO, 2020. Promoting Fair Recruitment and Employment: A Guidance Tool for Hotels in Qatar - Checklist 1: Due Diligence of Service Providers and Placement Agencies

Equality and Non-Discrimination	Female workers, including agency workers, shall receive equal pay for equal work, and shall have equal access to training and promotion opportunities.
Change of Employment & Return to Origin Country	<ul style="list-style-type: none"> - Service providers and placement agencies shall ensure that all legal requirements related to termination of employment and change of employer are met. - Service providers and placement agencies shall ensure that all legal requirements related to termination of employment and change of employer are met.
Grievance Mechanisms	Service providers and placement agencies should have in place operational-level grievance mechanisms in order to ensure that workers are able to raise concerns and seek effective remedies, free of cost and without fear of retaliation.

8. The Role of Trade Unions in Labour Migration

Migrant workers, regardless of their status, are first of all workers. As such, they have rights, including freedom of association – the right to form or join a trade union. It is also important to remember that, unless specified otherwise, all standards adopted by the ILO apply to migrant workers. Trade unions are in the business of protecting all workers, not just their members. This is why trade unions fight for equality, for decent work for all, for social protection and against child labour or forced labour, although not all these workers will be union members. This is because trade unions care for society as a whole, and of course the higher their membership the higher their capacity to influence.

Trade unions have a key role by taking the lead in promoting a rights-based approach to labour migration. The ILO Manual for trade unionists points out several reasons for this commitment:

- Human rights are universal: “Migrant workers, regardless of their status, are first of all workers but above all human beings. As such, they have rights, including freedom of association – the right to form or join a trade union. Trade unions are in the business of protecting all workers, not just their members. This is why trade unions fight for equality, for decent work for all, for social protection and against child labour or forced labour, although not all these workers will be union members. This is because trade unions care for society as a whole.”
- Another reason is that for nationals, “protecting the rights of migrant workers is the best way to protect the rights of national workers and avoid attempts to place migrant and national workers in competition with each other, as this would only serve the interests of unscrupulous employers looking for cheap labour.”
- Existing unions can revitalize their membership by organizing migrants because these workers are also potential members for trade union organizations. “Labour market restructuring in the developed economies has meant that trade union membership and density have shrunk in many once highly unionized sectors. The average age of union members has risen.”

As a membership-based organization, trade unions are mandated to represent its members, protect their rights and interests, and provide services from field of education to social security. It is based on the power of the collective and solidarity whose sphere of engagements range from the workplace to the industry and to the society. It is the voice of the working people and a facilitator of integration. In the broad framework of labour relations, it is the counterpart of the employers and the State. It is an institution of collective bargaining and a partner in the various themes and processes of social dialogue. As a global structure, trade unions are political-social-and economic actor which represents its members in the global, regional and national levels. An elaboration of the movement would show that there are two main groupings of unions based on membership²³.

The trade union movement shares with the ILO standpoint of a rights-based approach to migration. It should push for a framework of labour laws and regulations that ensure migrant workers benefit from equal treatment and opportunities in respect to wages, working conditions, and benefits of collective agreements, membership in trade unions, and social security. The “decent work deficits”

²³ The Role of the Trade Union Movement in Migration and Development: A Contribution from the Building and Wood Workers International (BWI)

associated to many workplaces and industries that take in migrant workers highlights the further need to put human and trade union rights in the centre of the policy debates and initiatives.

The ILO-In search of Decent Work – Migrant workers' rights, noted that trade unions have four pillars that they have to look at when work on labour migration, these are:

- **Pillar 1:** Promoting a rights-based migration policy

As we have seen, in many countries, the legal and policy framework for labour migration has simply not kept up with rapid developments. Labour migration is not properly regulated, either by origin or destination countries.

- **Pillar 2:** Creating alliances with trade unions in other countries

There is a fundamental difference between the approach of trade unions and other organizations such as charities and rights groups to migrant workers. Trade union approaches are based on solidarity and collective bargaining. While solving the individual problems of migrant workers is important, in the long term it must be linked to a collective approach. When we talk about migrant workers, our main concern is primarily with their rights as workers. There are many examples of the ways in which trade unions from origin and destination countries work with each other to support and organize migrant workers. Trade unions are uniquely placed to do this and as a result, bilateral and multilateral agreements between trade unions from origin and destination countries are on the increase.

- **Pillar 3:** Educating and informing union members, especially shop stewards and officers- *Trade unions and their members in destination countries*

Trade unions need to ensure that they have the support of their own members when it comes to migrant worker policy and activity. National populations can find migrant workers threatening and xenophobia is a serious problem in many developed countries. Trade unions are well placed to work with their memberships to ensure that such tensions and attitudes do not emerge or take root. The Decent Work Agenda is a key tool in fighting any tendencies towards racism and xenophobia. The key lies in education, training and development

- **Pillar 4:** Reaching out to migrant workers

Migrant workers are not passive. By definition, they are amongst the most enterprising, and determined people – being willing to travel and work in a different country requires some boldness and even courage. Migrant workers must therefore be at the centre of trade union strategies about migrant labour. Trade unions must work to protect migrant workers through initiatives in both origin and destination countries. The principles of Decent Work and a rights-based approach should be fully integrated in all organizing, advocacy and campaigning activities.

9. Country level model information guide

Below is an information guide for workers wishing/intending to migrant for employment

Step 1: Preparation for migration

- ✓ Pre departure information (transport, national legislation)
- ✓ Guidance related to recruitment to avoid forced labour and trafficking situations
- ✓ Application for work and residence permit
- ✓ Passport and immigration office procedures
- ✓ Have adequate information on the laws of the country of destination

Step 2: Departure

- ✓ Checklist for required documents: e.g. work permit, visa, employment offer,
- ✓ Visit trade union in country of origin to obtain information about trade unions in country of destination
- ✓ Do background checks about the company you are going to work for (sometimes companies are listed for one thing and they do another thing)
- ✓ Make sure those who are near and dear to you know where you are going, keep their numbers in case of emergency

Step 3: Arrival

On arrival at the workplace:

- ✓ Insist on a written and signed contract; Contract of employment including information on working conditions, salary, food, lodging, accommodation, working time, leave arrangements, occupational safety and health, maternity leave, training opportunities, termination of employment, opportunities to change employer
- ✓ Do not surrender original copies of your travel documents;
- ✓ Inform people at home of where and who you are working for;
- ✓ Identify a local trade union office

Step 4: Stay and Employment

- ✓ Ensure you keep a professional relationship with your employer;
- ✓ Join a trade union of your choice;
- ✓ Remember to renew your work permit;
- ✓ Avoid hotspots of violence in the host country
- ✓ Be safe always, frequent reputable shops and malls, avoid buying things from the streets

Step 5: Return and reintegration to the state of origin

- ✓ Ensure that you keep all the documents showing that you were employed and collect all due monies before you leave;
- ✓ You have the right to collect any due salary including if you have been arrested and detained, and if you are about to be deported back to your home country;
- ✓ Plan your return as much as possible: Where will you stay? What will your income be?
- ✓ Seek assistance from your ministry of labour if you have left unclaimed benefits

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