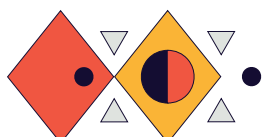




Technical Capacity-building MANUAL

Admission and Post-Admission Labour Migration Policies and Tools:
Guidance for main Countries of Destination in Southern Africa and the
Indian Ocean region



Prepared by Global Migration Policy Associates (GMPA)

Mr. Piyasiri Wickramasekara, Ms. Chandima Arambepola,

Mr. Patrick Taran and Ms. Olga Kadyшева

Copyright © International Labour Organization 2024

First published 2024

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

Wickramasekara, Piyasiri, Chandima Arambepola, Patrick Taran and Olga Kadysheva. Technical Capacity-building Manual. Admission and Post-Admission Labour Migration Policies and Tools: Guidance for main Countries of Destination in Southern Africa and the Indian Ocean region. International Labour Office, ILO, Pretoria, 2024.

ISBN: 9789220408391 (Print)

ISBN: 9789220408407 (web PDF)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns

Printed in South Africa

FOREWORD

Migration for employment has been for centuries a feature of the Southern Africa and Indian Ocean region. Today millions of nationals of the Southern African Development Community (SADC) member countries are migrant workers with a wide range of skills, in other SADC countries, as well as elsewhere in Africa, and other regions across the globe. Indian Ocean countries are home for tens of thousands of migrants from countries in the region as well as from South Asia, continental Africa, and Europe.

Migration of women and men workers has long been a major feature in the development of agriculture, manufacturing and mining as well as trade across Southern Africa and the Indian Ocean region. Today, demographic, technological and other changes portend increasing importance of skills and labour mobility in these regions to sustain economies, well-being of populations, and development.

It is, however, well-documented that many migrant workers and family members in and from Southern Africa and Indian Ocean countries have faced exploitative conditions, abuse, violations of human rights including labour rights, poor working and living conditions, as well as harassment and violence in countries of residence and employment. Governance of migration remains inadequate, even contradictory within and among countries, exemplified by inability to adopt workable regional free movement systems and conflicts between inclusive and exclusionary policy and practice.

International labour standards along with the core international human rights instruments, migrant-specific instruments, notably the International Convention on the protection of the rights of all migrant workers and their families and the two ILO Conventions, Migration for Employment, 1949 (No. 97) and Migrant Workers (Supplementary Provisions), 1975 (No. 143) have long been recognized as the foundation for ensuring good governance of migration and protection of migrant workers. Most SADC and IOC member countries have ratified all or nearly all of the 10 ILO fundamental Conventions and the four ILO Governance/Priority conventions, as well as most of the nine UN core Human Rights instruments.

The ILO Multilateral Framework on Labour Migration and the Global Compact for Safe, Orderly and Regular Migration both provide important policy and practical guidance for governments, social partners and other stakeholders. They are, furthermore, backed by institutional support from the ILO and partner UN agencies as well as the UN Network on Migration and the International Organization for Migration.

Increasing mobility of workers with a wide range of skills make imperative international cooperation and support for development and implementation of effective governance of labour migration across Southern Africa and the Indian Ocean. National legislation and policy must address evolving needs for skills and labour, ensure decent work for all workers, assure respect and protection of migrant rights, promote equal treatment and complementarity with native workers and populations, and address other concerns towards achieving social justice.

SADC and IOC Ministerial Meetings, African Union migration policy frameworks, the African Continental Free Trade Agreement with its Protocol on free movement, and SADC policies on

migration all call for a coherent and cooperative approach on skills and labour mobility and on establishing and implementing national migration laws, policies and practices in line with the international legal frameworks on human and labour rights.

SADC and its member countries and Indian Ocean countries have made specific requests to the ILO to support their efforts in developing frameworks, guidelines and effective approaches on effective governance of migration for employment in order to ensure the protection of all migrant workers.

The Southern African Migration Management (SAMM) Project funded by the European Union has engaged the international expertise of Global Migration Policy Associates (GMPA) to produce this technical manual based on

extensive research to support Southern African and Indian Ocean countries in developing and implementing effective policies of administration and governance of migration for employment.

This manual focuses on the issues, challenges and policies in destination countries of migrant workers, drawing upon relevant experiences from different regions. Guidance herein covers key challenges and issues, contextual factors, legal parameters, stakeholder concerns, good practices, and key substantive policy and practice approaches.

We commend this Manual for all Southern African and Indian Ocean countries and tripartite constituencies as a solid foundation to formulate and implement effective legislation, policy, institutions and practice in addressing employment-related migration.



PhD Gloria Moreno-Fontes Chammartin
Chief Technical Advisor
Southern Africa Migration Management project (SAMM)
International Labour Organisation (ILO)

TABLE OF CONTENTS

ACRONYMS	I
PREFACE	III
ACKNOWLEDGEMENTS	III

CHAPTER 1

INTRODUCTION AND OVERVIEW	1
1.1 Introduction	1
1.2 Objectives	2
1.3 Intended users of the manual	2
1.4 Socioeconomic profile of selected SADC destination countries	3
1.5 International Migration profile of SADC countries	4
1.6 Labour Migration policy objectives and frameworks in destination countries	8
1.7 Regional frameworks on labour mobility, integration and development	11
1.8 Labour Migration policies in SADC countries	13

CHAPTER 2

NORMATIVE FRAMEWORK; GOVERNANCE OF MIGRATION UNDER THE RULE OF LAW	19
2.1 Overview	19
2.2 International labour standards (ILS)	20
2.3 Migrant worker/labour migration governance specific Conventions	21
2.4 International jurisprudence on the protection of migrant workers	21
2.5 African normative standards especially relevant to migration	22
2.6 Instruments on refugees and asylum seekers	22
2.7 International Policy Frameworks	22
2.8 SADC instruments and policy frameworks regarding migration and mobility	24

CHAPTER 3

ADMISSION PROVISIONS AND POLICY TOOLS	25
3.1 Labour Shortage Lists (LSL)/Critical Occupation Lists (COL)	27
3.2 Labour Market Test (LMT) or Vacancy Test (VT)	31
3.3 Numerical Limits (NL) or Quotas	35
3.4 Points-Based Systems (PBS)	40
3.5 Employer Sponsorship Schemes (ESS)	45
3.6 Expression of Interest (EOI) Systems	50
3.7 Job Search Visa (JSV) Programmes	54
3.8 Work/Study Visa (WSV) Programmes	60
3.9 Low Skilled Admissions (LSA) and Temporary Migration (TM) Schemes	65
3.10 Bilateral Labour Migration Instruments (BLMIs)	69
3.11 Fair and Ethical Recruitment (FR)	75

CHAPTER 4

POST-ADMISSION PROVISIONS AND POLICY TOOLS.....	83
4.1 Ensuring decent work conditions including occupational safety and health	84
4.2 Fair Remuneration and Wage Protection.....	89
4.3 Labour inspection of working and living conditions	94
4.4 Freedom of Association and collective bargaining rights.....	99
4.5 Protection of Women Migrant Workers including against Violence and Harassment	105
4.6 Access to justice for migrant workers	112
4.7 Social protection/social security provisions and their portability	118
4.8 Employment mobility for migrant workers	125
4.9 Skill development and skills recognition for migrant workers	129
4.10 Family reunification for migrant workers	136
4.11 Regularization criteria and practices for migrant workers in irregular status.....	141
LIST OF REFERENCES	149
ANNEXES	161
Glossary of terms.....	161
Annex Table A1: Ratifications of UN human rights instruments by the SADC Member States.....	169
Annex Table A2: Sets of shortage methodology indicators	170
Annex Table A3: List of Known Bilateral migration instruments of the SADC*	171

TABLES

Table 1.1	Socioeconomic profile of six SADC selected destination countries, 2021	3
Table 1.2	Total Migrant Stock of Southern African Countries, 2000-2019.....	5
Table 1.3	Intra-Regional Migrant Stock of Southern African Countries, 1990-2019	5
Table 1.4	Intraregional Migration in SADC countries (UNDESA data for 2019)	6
Table 1.5	SADC 2020 Migrant Stock and Population by sex.....	7
Table 1.6	Objectives of national labour migration policies in main countries of destination	14
Table 1.7	Admission provisions and policy tools in SADC destination countries.....	16
Table 1.8	Post-Admission provisions or policy tools in SADC destination countries*	17
Table 2.1	SADC Instruments particularly relevant to labour migration and mobility	24
Table 3.1	Policy tools categorised.....	26
Table 3.2	Percentage of positive and negative LMT decisions of some EU Member States in 2019 and 2020 (in per cent of total decisions)	34
Table 3.3	Points Table for Point Based Systems (Maximum points) – Selected Countries	41
Table 3.4	UK Point Based System for Skilled Workers.....	42
Table 3.5	A comparative overview of the EOI systems in New Zealand, Australia, and Canada	53
Table 3.6	Student and post-study visas and work options in different countries.....	61
Table 3.7	Objectives of BLMIs	70
Table 3.8	Known African and SADC BLMIs by corridor	71
Table 3.9	Known African Union and SADC BLMIs by type of instrument	71
Table 4.1	Ratification of ILO Conventions No. 87 and 98 by SADC member states	101
Table 4.2	Good practices for skills recognition - OECD	134

CHARTS

Chart 1	Overqualification Rates in the European Union, 2021	44
Chart 2	Generic Model of Expression of Interest	51
Chart 3	Structure of the Canada EE system	54
Chart 4	Germany: Job Seeker Visa steps	59

LIST OF BOXES

Box 1.1	Definition of Migrant Workers	8
Box 1.2	How Immigrants Contribute to South Africa's Economy	10
Box 2.1	International and African Policy Frameworks relevant to migration for employment	22
Box 3.1	New Zealand – requirements for a job advertisement.....	32
Box 3.2	Seychelles - Quota System	37
Box 3.3	Switzerland and Quotas	38
Box 3.4	Australia: Skilled Employer Sponsored Regional (Provisional) visa (subclass 494): Employer Sponsored stream	47
Box 3.5	International students during COVID-19 pandemic	63
Box 3.6	Definition of recruitment fees and related costs	77
Box 3.7	ILO General Principles and Operational Guidelines for Fair Recruitment: Selected Principles	78
Box 4.1	Key principles of Convention on Protection of Wages, 1949 (No. 95).....	90
Box 4.2	Role of Labour Inspection.....	94
Box 4.3	ILO instruments concerning labour inspection	96
Box 4.4	Collective Bargaining	100
Box 4.5	The full agenda for policy and action on Freedom of Association: UN Special Rapporteur on the Human Rights of Migrants	102
Box 4.6	The Southern Africa Trade Union Coordination Council (SATUCC)	104
Box 4.7	Key international and regional instruments and global policy frameworks	106
Box 4.8	African legal instruments containing delineation of rights and guidelines on access to justice (in principle applicable to migrants in Africa)	114
Box 4.9	Basic principles of Grievance filing and procedures	114
Box 4.10	UN/International Human Rights Instruments: provisions regarding social protection.....	119
Box 4.11	ILO Standards Protecting the Rights of Migrants to Social Security	120
Box 4.12	SADC Guidelines on Portability of Social Security Benefits	122
Box 4.13	Provisions of ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs on employment mobility and return.....	126
Box 4.14	Trade Unions Manual highlights issues of skills recognition in Africa	131
Box 4.15	New Families in Barcelona Programme	139
Box 4.16	Ten key elements of humane and fair regularization programmes and mechanisms.....	145
Box A1	Statistical definitions of migrant workers	163

ACRONYMS AND ABBREVIATIONS

AU	African Union
AUC	African Union Commission
BLA	Bilateral Labour Agreement
BLMIs	Bilateral labour migration instruments
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CEMAC	Communauté économique et monétaire de l'Afrique centrale (Economic and Monetary Community of Central Africa)
CEN-SAD	Communauté des États Sahélo-Sahariens/Community of Sahel-Saharan States
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CoD	Country of destination
COMESA	Community of Eastern and Southern Africa
CoO	Country of origin
COVID-19	Coronavirus disease 2019
CSL	Critical Skills List (Republic of South Africa)
DEL	Department of Employment and Labour, Republic of South Africa
EAC	East African Community
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EOI	Expression of Interest
GCC	Gulf Cooperation Council
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	gross domestic product
GMPA	Global Migration Policy Associates
GNI	gross national income
GSP	Global Skills Partnerships
HDI	Human Development Index (United Nations Development Programme)
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IDPs	internally displaced persons
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization/ International Labour Office
IOC	Indian Ocean Commission consisting of five member countries: Comoros, Madagascar, Mauritius, Réunion (an overseas region of France), and Seychelles
IOM	International Organization for Migration
ISCED	International Standard Classification of Education



ISCO-08	ILO International Standard Classification of Occupations 2008
ITCILO	International Training Centre of the ILO
JC	Joint Committee
JLMP	Joint Labour Migration Governance for Development and Integration Programme
LMAC	AU Labour Migration Advisory Committee
LMIS	Labour Market Information System
LMT	Labour Market Test
MEICS	Ministry of Employment, Immigration and Civil Status, Employment Department, Republic of Seychelles
M&E	monitoring and evaluation
MLIREC	Ministry of Labour, Industrial Relations and Employment Creation, Republic of Seychelles
MLIRT	Ministry of Labour, Industrial Relations, Employment and Training, Government of Mauritius
MPAESS	Ministry of Public Administration, Employment, and Social Security, Republic of Angola
MOU	Memorandum of Understanding
MPFAPA	AU Migration Policy Framework for Africa and Plan of Action
NLMP	National Labour Migration Policy
OAU	Organisation of African Unity
OSH	occupational safety and health
PBS	Points Based System
PEA	Private Employment Agency
PES	Public Employment Service
PRA	Private Recruitment Agency
RBA	Rights-based approach
REC(s)	Regional Economic Community; Regional Economic Communities
RPL	Recognition of Prior Learning
SADC	Southern African Development Community
SATUCC	Southern Africa Trade Union Coordinating Council
SDG	Sustainable Development Goals
SEC	Standard Employment Contract
STC	AU Specialized Technical Committee on Social Development, Labour and Employment
TVET	Technical And Vocational Education and Training
UMA	Union du Maghreb Arab/Arab Maghreb Union
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNDOC	United Nations Office on Drugs and Crime
UNHCR	United Nations High Commissioner for Refugees
UN HRC	United Nations Human Rights Council
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
WPS	Wage Protection System
WTO	World Trade Organization



PREFACE

This manual has been developed by an expert team of Global Migration Policy Associates under the auspices of the Southern African Migration Management (SAMM) Project coordinated by the International Labour Organization (ILO). SAMM has an overall objective of improving migration governance and protection of migrant workers in the Southern African and Indian Ocean region guided by international human rights and labour standards as well as contributing to the realisation of, the 2030 Development Agenda (goals 8 and 10) and the UN Global Compact for Safe, Orderly and Regular Migration (GCM).

ACKNOWLEDGEMENTS

The Southern African Migration Management (SAMM) Project under the auspices of the International Labour Office (ILO), Pretoria, commissioned the development of the *“Technical Capacity-building manual on Admission and Post-Admission Labour Migration Policies and Tools: Guidance for main Countries of Destination in Southern Africa and the Indian Ocean region”* to the Global Migration Policy Associates (GMPA), Geneva. A GMPA expert team led by Piyasiri Wickramasekara undertook extensive research and prepared the manual.

The authors of the Manual are: Piyasiri Wickramasekara, Chandima Arambepola, Patrick Taran and Olga Kadyshcheva of GMPA.

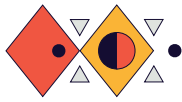
The Manual benefitted from suggestions and comments by Gloria Moreno-Fontes, Chief Technical Adviser of SAMM, on several drafts. Theodoor Sparreboom, Labour Migration Specialist, Decent Work Team, Pretoria provided valuable suggestions on the first draft, and also provided regular support.

The Team received useful advice and material from several leading international specialists in migration: Jonathan Chaloff and Thomas Liebig of the Organisation for Economic Cooperation and Development, Paris (OECD); Georges Lemaitre (retired OECD migration specialist); and Martin Ruhs, Migration Policy Centre (MPC), European University Institute (EUI) in Florence and Phil Martin, Professor Emeritus, University of California Davis.

Authors also wish to thank : ILO specialists Samia Kazi Aoul and Clara Van Panhuys for review of text on Social Security; Tiffani Critten, Ana Giudice and Anika Holterhof at UNODC for review of text on Access to Justice; and UNESCO colleagues - Konstantinos Tararas, Liana Petrucci, Mila Siskovic and Michela Zaghi - for some material and text adapted from sections of the *Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability*, (UNESCO, forthcoming).

The authors express their sincere thanks to the SAMM Project Team, especially to Gloria Moreno-Fontes, Chief Technical Advisor, for her continued support and guidance throughout.

The authors wish to thank Ms. Makungu Baloyi of the Pretoria Office for coordination of the publication, Lucia Rodrigues for her logistics assistance, and the designer Coenie Groenewald for making the Manual user-friendly.



CHAPTER

1



INTRODUCTION AND OVERVIEW

1.1 INTRODUCTION

Mobility of skills and labour are essential and key to regional integration and development, both within Regional Economic Communities (RECs), across the continental Africa space, and elsewhere.

The Southern African Development Community (SADC) is one among the nine Regional Economic Communities in Africa committed to regional integration and poverty eradication through economic development and ensuring peace and security. It comprises 16 Member States; Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

The objectives of SADC, as stated in Article 5 of the SADC Treaty (1992), are to: “Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through Regional Integration;” The SADC Vision 2050 identifies its first mission as: “Create a conducive environment to foster regional cooperation and integration and uphold free movement of goods, labour, capital, and services. To that effect, political stability, good governance, peace, and security shall be the cornerstone of national and regional undertakings” (SADC, 2020: 3).

The founding SADC Treaty called for freer movement of people and specifically workers in the region. Subsequent SADC Protocols including the Protocol on Facilitation of Movement of Persons and the SADC Protocol on Employment and Labour as well as the Strategic Plans of Action and an overarching Labour Migration Policy Framework spell out agreements and policy guidance among member governments on thematic areas, institutions and processes governing the mobility of workers across the Community along with the protection of their rights consistent with international normative standards.

1.2 OBJECTIVES

The overall objective of this manual is to provide technical guidance on international labour migration policies and practices applicable to admission and post-admission policies and practices in SADC¹ countries of destination.

Its specific objectives are to:

- ▶ Briefly review the current situation of labour migration trends, admission and postadmission policies and practices of SADC countries with special focus on selected destination countries.
- ▶ Review effective labour migration governance policies and tools focussing on labour admission and post-admission policies that can assist countries in the SADC region employing migrant workers by drawing upon subregional, regional and international instruments and good practices.
- ▶ Serve as a user-friendly manual on labour admission and post-admission policies to be used by policy makers and practitioners.
- ▶ Act as a training manual for capacity building of government officials and other stakeholders in labour migration governance in the region and beyond.

1.3 INTENDED USERS OF THE MANUAL

Given the primary purposes of improving migration governance and protection of migrant workers in the SADC region, intended users include:

- ▶ Governments of SADC and Indian Ocean Commission (IOC) member states, with particular reference to Ministries of Labour/Employment, Ministries of Foreign Affairs, Ministries dealing with Immigration and Residence, Social Protection Institutions and Technical and Vocational Education and Training (TVET) institutions.
- ▶ Trade unions/worker organisations and employer organizations, particularly their officials/members addressing migration and mobility in the SADC region.
- ▶ The SADC Secretariat and its governance and advisory bodies
- ▶ The regional social partner bodies: SATUCC - Southern Africa Trade Union Coordinating Council and the SADC Private Sector Forum
- ▶ Governments, national and regional social partner organizations dealing with migration issues in all African countries and other RECs.
- ▶ Potentially employed, migrant workers, migrant entrepreneurs and returned migrant workers and their organizations.
- ▶ Concerned civil society organizations in SADC and IOC countries.
- ▶ ILO and other international organizations, particularly partners (IOM, UNODC, UNHCR) of the SAMM project.
- ▶ African Union, UN and other international organisations, including concerned regional structures.
- ▶ Research and academic institutions and experts.

1. <https://www.sadc.int/about-sadc/overview/sadc-vision/>

1.4 SOCIOECONOMIC PROFILE OF SELECTED SADC DESTINATION COUNTRIES

The main countries of destination in Southern Africa dealt with in this manual are Angola, Botswana, Mauritius, Namibia, South Africa and Seychelles. Like most SADC countries, they are countries of origin as well as transit at the same time. Their migration profiles cannot be discussed in isolation of the economic and labour market context of the countries themselves. Table 1.1 highlights the main features of the socioeconomic profile of the countries for 2021 based on some indicators.

The Republic of South Africa is the dominant economy and main country of destination in the SADC region in terms of various indicators. While Angola and South Africa respectively had populations of 34 million and 59 million in 2021, other countries had less than three million. But Mauritius has the highest population density in Africa given its small land area. In terms of income levels, it is only Angola that belongs to the lower middle-income group of countries while Seychelles is the only high-income country according to the World Bank classification. Mauritius and Seychelles also rank among high human development countries. Female unemployment rates are especially high in Mauritius and South Africa.

Table 1.1: Socioeconomic profile of six SADC selected destination countries, 2021

Indicators	Angola	Botswana	Mauritius	Namibia	South Africa	Seychelles
Land area (sq. km) 1000s	1,245	566	2	823	1,213	0.46
Population, total million	34.5	2.6	1.3	2.5	59.4	0.99
Population, female Mn	17.5	1.3	0.64	1.3	30.5	0.47
Population, male - million	17.0	1.3	0.62	1.2	28.9	0.52
Population, female (% of total population)	50.6	50.6	50.7	51.7	51.3	47.3
Population growth (annual %)	3.2	1.6	0.0	1.2	1.0	0.8
Population density (people per sq. km)	26.8	4.5	623.0	..	48.5	214.0
GDP per capita (current US\$)	1,954	6,805	9,106	4,866	7,055	14,653
GDP per capita growth (annual %)	-2.1	9.6	3.7	1.0	3.9	7.0
Income group - World Bank *	Lower Middle Income	Upper Middle Income	Upper Middle Income	Upper Middle Income	Upper Middle Income	Upper High Income
UNDP HDI Rank 2020 (out of 191 countries)	149	110	62	134	102	69
Unemployment**, female (% of female labour force)	9.1	25.8	11.3	20.6	35.7	..
Unemployment, male (% of male labour force) **	8.0	23.7	4.9	22.7	31.8	..
Unemployment, total (% of total labour force) **	8.5	24.7	7.4	21.7	33.6	..
Unemployment, youth female (% of female labour force ages 15-24) **	18.8	43.3	32.9	41.7	69.2	..
Unemployment, youth male (% of male labour force ages 15-24) **	18.2	39.5	19.7	39.4	59.8	..

Indicators	Angola	Botswana	Mauritius	Namibia	South Africa	Seychelles
Unemployment, youth total (% of total labour force ages 15-24) **	18.5	41.2	25.3	40.4	64.2	..
Personal remittances, paid (current US\$) - million	445	237	720	90	1,066	..
Personal remittances, received (current US\$)	13	58	273	47	927	..
Foreign direct investment, FDI net (BoP, current US\$ Mn	3,298	- 108	-3,598	-632	- 41	160
FDI net inflows (% of GDP)	-6.5	0.3	2.2	3.3	9.9	10.8
Net official development assistance and official aid received (US\$ million)	111	79	335	180	1,203	16 (2017)

Source: World Bank World Development Indicators, online version. Accessed 15 February 2023.

*Based on 2022 gross national income (GNI) per capita, calculated using the World Bank Atlas method. The groups are low income, \$1,085 or less; lower middle income, \$1,086 to \$4,255; upper middle income, \$4,256 to \$13,205; and high income, \$13,206 or more; ** Modelled ILO estimates

Source: World Development Indicators online database (World Bank)

1.5 INTERNATIONAL MIGRATION PROFILE OF SADC COUNTRIES

The main source of data available on international migration for SADC countries is the periodic UN migrant stock estimates from 1990 to 2020. There are large discrepancies between these data and those reported by the African Union Commission and the Joint Labour Migration Programme (AU-JLMP 2021), and national authorities (Crush, et al., 2022). UNDESA data do not distinguish between migration for employment and other purposes. Migrants as defined include all migrant workers and their families, refugees and asylum seekers. Another major issue with migration data is that it is difficult to obtain systematic annual data on inflows and outflows of migrant workers for any of the countries. Work permit data are regularly updated by Botswana. The latest work permit figures published by South Africa, however, are for 2015 (Crush & Williams, 2022a). ILO global estimates of migrant workers cannot be disaggregated to the subregional or country levels, either.

Data included draws upon compilations of UNDESA data by the ILO SAMM stocktaking study which covered the period up to 2019 (Crush et al., 2022)². While the GMPA Team analysed comparable data for 2020, the 2019 stock data was thought to be more representative than the 2020 data because of the changes brought about by the pandemic which affected migratory movements in various ways (Table 1.2). According to UNDESA data, the stock of migrants in Southern Africa has grown fast between 2010 and 2019. The growth is mostly due to increases in Angola, DRC, South Africa and Tanzania (Crush, J., et al., 2022). The total stock decreased from 7.9 million in 2019 to 6.4 million in 2020 probably due to the pandemic impact. While there were declines in most countries, the decline of the stock of migrants in South Africa is particularly striking – a fall from 4.2 Mn to 2.9 Mn according to UNDESA data.



**MIGRANTS DECLINE
IN SOUTH AFRICA
FROM 4,200,000 IN 2019
TO 2,900,000 IN 2020**

2. This data has not been disaggregated by gender by the above authors.

Table 1.2: Total Migrant Stock of Southern African Countries, 2000-2019

Country	Total Migrant Stock (number)					Share of women in total migrant stock %				
	2000	2005	2010	2015	2019	2000	2005	2010	2015	2019
Angola	46,108	61,329	332,126	632,178	669,479	49.3	50.7	51.7	51.8	49.0
Botswana	74,934	84,614	94,614	103,268	110,596	41.5	41.9	43.1	43.1	43.1
Comoros	13,799	13,209	12,618	12,555	12,504	52.8	52.4	52.0	51.6	51.6
DRC	744,387	622,869	588,950	824,492	963,833	51.0	51.5	51.7	51.4	51.9
Eswatini	34,084	33,392	32,637	32,352	32,310	47.4	48.0	48.6	48.6	48.7
Lesotho	6,167	6,290	6,414	6,572	6,928	45.9	45.9	45.9	45.9	45.9
Madagascar	23,541	26,058	28,905	32,075	34,934	43.6	43.4	43.2	43.0	43.0
Malawi	232,620	221,661	217,722	232,803	247,652	52.1	52.2	52.3	52.4	52.4
Mauritius	15,543	19,647	24,836	28,585	28,849	63.3	54.5	46.9	44.6	44.6
Mozambique	195,702	264,679	306,471	321,794	334,665	47.3	51.7	51.7	51.7	51.7
Namibia	135,547	107,347	103,826	101,618	107,561	46.0	46.3	46.3	46.1	46.1
Seychelles	6,574	8,997	11,420	12,791	12,926	41.6	35.3	31.7	30.0	30.0
South Africa	1,016,963	1,351,031	2,114,801	3,816,695	4,224,256	40.3	42.1	42.2	44.4	44.4
Tanzania	949,600	771,153	309,847	384,567	509,166	49.3	36.9	50.1	50.4	50.6
Zambia	343,703	252,895	149,962	132,107	170,249	49.1	49.1	49.4	49.5	49.4
Zimbabwe	410,109	402,226	398,307	400,482	411,257	43.0	43.0	43.0	43.7	43.2
Total	4,251,381	4,249,402	4,735,466	7,076,949	7,879,184	46.6	44.5	46.2	46.9	46.7

Source: Extracted from UNDESA (2019), International Migrant Stock 2019 (POP/DB/MIG/Stock/Rev.2019).

An important issue is intra-SADC migration – migration within the SADC region. Again, data included is based on UNDESA stock data (Table 1.3). The total number of intra-SADC migrants have increased from 2.3 Mn to 3.6 Mn between 2000 and 2019. South Africa now accounts for the largest share of intra-SADC migrants accounting for about 60% in 2019 – an increase from 31% compared to 1995.

Table 1.3: Intra-Regional Migrant Stock of Southern African Countries, 1990-2019

Country	2000	2005	2010	2015	2019
Angola	21,704	29,474	37,241	85,008	100,140
Botswana	39,422	62,587	70,306	76,730	82,169
Comoros	10,755	10,295	9,835	9,796	9,755
DRC	325,733	262,085	260,002	185,205	179,065
Eswatini	25,972	24,461	23,821	23,331	23,394
Lesotho	2,855	2,911	2,968	3,040	3,199
Madagascar	8,050	8,910	9,876	10,953	11,932
Malawi	165,609	157,810	155,009	153,189	165,951
Mauritius	928	1,728	2,628	3,023	3,050
Mozambique	154,376	208,794	241,768	257,852	269,161
Namibia	91,651	72,631	70,367	68,906	72,978
Seychelles	1,400	1,419	1,439	1,610	1,625
South Africa	655,570	880,073	1,378,650	1,906,942	2,137,519
Tanzania	183,782	210,067	112,596	94,636	110,956
Zambia	319,092	203,177	100,771	87,782	113,621
Zimbabwe	338,200	300,516	274,468	275,965	283,387
Total	2,345,069	2,436,938	2,751,745	3,243,968	3,567,902

Source:
UNDESA data compiled
by Crush et al., 2022

Table 1.4 highlights migration stocks within SADC countries. It reveals several features.

- ▶ Every country in the region is both an origin and destination country. The available data point to the SADC's mixture of migration patterns - people are on the move for different reasons – work, cross border trade, seeking livelihoods and fleeing conflict and poverty. Women account for nearly half of the migrant stock, especially for work and cross-border trade. These patterns, therefore, illustrate a far more complex picture of migration as SADC countries are characterized by being destination, origin and transit countries simultaneously. Angola in particular has seen a 'return' of Portuguese citizens for employment and residence, thus reversing the trend of being primarily an origin country. The data yet again emphasizes the importance of developing and applying region-wide policies that are cohesive and rights based. The COVID-19 pandemic caused a major disruption to the existing migration flows and mobility patterns with border closures, business shutdowns and the health crisis. It is encouraging that normalcy has been restored in most SADC countries since then.
- ▶ Botswana, Namibia, Seychelles, and South Africa are the most important SADC net destination countries in terms of migrants as a percentage of their total population.
- ▶ The data also show the small share of SADC migrants (less than 4%) as a share of population in each country. But all these countries may host migrants from non-SADC countries – from Community of Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS) and East Africa. Thus, the share of migrants in the total population is consistently higher than the SADC share (Table 1.4). For example, Seychelles' share of SADC migrants is only 1.7% while the share of total migrants is 12.7% in 2019. In South Africa, the total migrant share is almost double that of SADC migrants. Angola, Mauritius and Tanzania record lower shares of SADC migrants among total migrants. Botswana and Namibia, however, have a much higher share of SADC migrants.

Table 1.4: Intraregional Migration in SADC countries (UNDESA data for 2019).

Country Col. A	Total international migrant stock (Col. B)	Within SADC Migrant stock as COO (Col. C)	Within SADC Migrant stock as COD (Col. D)	Within SADC net migrant stock (Col. E) = D-C	Total Population of country (Col. F)	Total Migrants as % of Population B/F	SADC Migrants as % of Population D/F	SADC migrants as % of total migrants D/B
Angola	669,479	358,473	100,140	-258,333	32,886,270	2	0.3	15
Botswana	110,596	79,136	82,169	3,033	2,351,630	4.7	3.5	74.3
Comoros	12,504	12,806	9,755	-3,051	869,600	1.4	1.1	78
DRC	963,833	295,509	179,065	-116,444	89,561,400	1.1	0.2	18.6
Eswatini	32,310	93,536	23,394	-70,142	1,160,160	3	2	72.4
Lesotho	6,928	339,943	3,199	-336,744	2,142,250	0.3	0.2	46.2
Madagascar	34,934	14,027	11,932	-2,095	27,691,020	0.1	0	34.2
Malawi	247,652	298,831	165,951	-132,880	19,129,960	1.3	0.9	67
Mauritius	28,849	15,956	3,050	-12,906	1,265,740	2.3	0.2	10.6
Mozambique	334,665	921,513	269,161	-652,352	31,255,440	1.1	0.9	80.4
Namibia	107,561	187,691	72,978	-114,713	2,540,920	4.2	2.9	67.8
Seychelles	12,926	18,686	1,625	-17,061	98,460	13.1	1.7	12.6
South Africa	4,224,256	89,226	2,137,519	2,048,293	59,308,690	7.1	3.6	50.6
Tanzania	509,166	42,139	110,956	68,817	59,734,210	0.9	0.2	21.8
Zambia	170,249	192,970	113,621	-79,349	18,383,960	0.9	0.6	66.7
Zimbabwe	411,257	607,420	283,387	-324,033	14,862,930	2.8	1.9	68.9
Total	7,877,165	3,567,902	3,567,902		363,242,640	2.2	1.0	45.3

Source: Modified table with additional columns based on processed data made available by SAMM based on UNDESA Migrant Stock data.

The available data on the role of gender in migration is limited. Table 1.5 summarises the share of female migrants in the total migrant stock and population of SADC countries.

- ▶ For the SADC region as a whole, the share of male migrants in the total migrant stock exceeds that of females though not by a large margin – 53.6% and 46.4% respectively.
- ▶ In several SADC countries, women migrants form almost half of the total migrant stock.
- ▶ In all primarily destination countries except Angola, the share of female migrants in the total migrant stock is lower ranging from 30% in Seychelles to 46% in Namibia. The high proportion of the migrant stock in Seychelles is probably related to its admission policies. South Africa records a 43% share of women migrants.
- ▶ As a proportion of the total population, migrants account for only 1.8% of the SADC population with male and female shares at 1.9% and 1.6% respectively. The highest share of the population is in Seychelles at 13.3% (with women share at 8.2% only) followed by South Africa, Botswana and Namibia (4.8%, 4.7% and 4.3% respectively).

Table 1.5: SADC 2020 Migrant Stock and Population by sex

Country	Migrant stock 2020			Population 2020			Share of Migrant stock %		Migrant stock as % of population*		
	Total	Male	Female	Total	Male	Female	% Male	% Female	Total	Male	Female
Angola	656,434	331,401	325,033	32,866,268	16,260,870	16,605,398	50.5	49.5	2.0	2.0	2.0
Botswana	110,268	62,817	47,451	2,351,625	1,139,099	1,212,526	57.0	43.0	4.7	5.5	3.9
Comoros	12,496	6,044	6,452	869,595	438,653	430,942	48.4	51.6	1.4	1.4	1.5
Democratic Rep. of the Congo	952,871	459,052	493,819	89,561,404	44,710,172	44,851,232	48.2	51.8	1.1	1.0	1.1
Eswatini	32,858	16,921	15,937	1,160,164	570,236	589,928	51.5	48.5	2.8	3	2.7
Lesotho	12,060	6,537	5,523	2,142,252	1,056,950	1,085,302	54.2	45.8	0.6	0.6	0.5
Madagascar	35,563	20,262	15,301	27,691,019	13,814,619	13,876,400	57.0	43.0	0.1	0.1	0.1
Malawi	191,362	93,612	97,750	19,129,955	9,434,037	9,695,918	48.9	51.1	1.0	1.0	1.0
Mauritius*	28,893	16,003	12,890	1,271,767	627,480	644,287	55.4	44.6	2.3	2.6	2.0
Mozambique	338,850	165,490	173,360	31,255,435	15,188,235	16,067,200	48.8	51.2	1.1	1.1	1.1
Namibia	109,391	59,024	50,367	2,540,916	1,231,683	1,309,233	54.0	46.0	4.3	4.8	3.8
Seychelles	13,050	9,136	3,914	98,340	50,439	47,901	70.0	30.0	13.3	18.1	8.2
South Africa	2,860,495	1,627,294	1,233,201	59,308,690	29,216,012	30,092,678	56.9	43.1	4.8	5.6	4.1
United Rep. of Tanzania	426,017	213,007	213,010	59,734,213	29,851,108	29,883,105	50.0	50.0	0.7	0.7	0.7
Zambia	187,955	97,556	90,399	18,383,956	9,103,006	9,280,950	51.9	48.1	1.0	1.1	1.0
Zimbabwe	416,141	236,561	179,580	14,862,927	7,092,010	7,770,917	56.8	43.2	2.8	3.3	2.3
SADC	6,384,704	3,420,717	2,963,987	363,228,526	179,784,609	183,443,917	53.6	46.4	1.8	1.9	1.6

Source: Compiled based on UNDESA (2020). Migrant Stock 2020. The percentages (last three columns) refer to migrant stock as share of total, male and female populations.

There is very limited information on the profile of women migrant workers in the SADC region. A considerable number may be itinerant traders who cross borders. They also work in agriculture, fishing, food processing, domestic work, caregiving, and other services (SAMM, undated).³

3. More information can be found in Section 4.5: Protection of Women Migrant Workers including against Violence and Harassment

1.6 LABOUR MIGRATION POLICY OBJECTIVES AND FRAMEWORKS IN DESTINATION COUNTRIES

Labour migration policies cover both immigration of foreign workers (admission and post-admission policies) and emigration of national workers. For example, the national labour migration policies of Namibia, South Africa and Seychelles deal with both immigrant and emigrant workers (MLIREC, 2019a; DEL, 2022; MEICS, 2019).

Box 1.1: Definition of Migrant Workers

Box 1.1 highlights the definition of migrant workers – those engaging in migration for employment – according to ILO and ICRMW definitions.

► ILO Migration for Employment, 1949 (No. 97): Article 11

For the purpose of this Convention the term “migrant for employment” means a person who migrates 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 for employment.

The definition excludes:

- (a) frontier workers;
- (b) short-term entry of members of the liberal professions and artistes; and
- (c) seamen.

► The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)- Article 2 (1)

The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

This definition is broader since it also includes those who have been engaged in economic activity. Moreover, the definition explicitly includes frontier workers, seasonal workers, sea farers, itinerant workers, migrants employed for a specific project and self-employed workers. A major feature of the ICRMW is that the protection of rights is extended to families

It is also important to note that migrant workers are usually concentrated at both ends of the skills spectrum ranging from low skills to high skills. Thus, it is important to ensure that labour migration policies take into account labour market needs at all skill levels (low skilled, medium and highly skilled) through objective labour market analysis and identification of sectoral, occupational and regional labour shortages. Moreover, it is important to consider that migrants usually record higher labour force participation rates compared to the non-migrant economically active population.

1.6.1 Criteria of good governance in labour migration policy

The ILO flagship publication of 2010 – “*International labour migration: A rights based approach*” has outlined the major elements in a rights based approach to labour migration policies by both origin and destination countries. It enumerated policies for governance and regulation of labour migration in both origin and destination countries and proposed critical criteria for good governance of labour migration (ILO, 2010):⁴

- ▶ Consistency with international norms and rule of law
- ▶ Policy coherence
- ▶ Transparency: clear rules & procedures
- ▶ Inclusive and participatory – consultative & consensus oriented
- ▶ Gender sensitive
- ▶ Legitimacy and accountability
- ▶ Evidence based

1.6.2 Objectives of labour migration policies in countries employing migrant workers

Labour migration admission and post-admission policies should take into consideration labour market needs at the sectoral, occupational and regional levels and be developed within the framework of overall employment and labour migration policies. The major objectives of labour migration policies in destination countries are (ILO, 2010):

- ▶ ensuring a positive impact of labour migration on economic growth and sustainable development, as well as in national competitiveness and productivity;
- ▶ safeguarding the protection of labour rights of both national and migrant workers including equality of treatment in working and living conditions so as to create a level playing field for all employers preventing ‘social dumping’ and a ‘race to the bottom’.
- ▶ combating xenophobia, racism, discrimination and hate speech against women and men migrant workers;
- ▶ supporting industries that have strategic importance and might be lost if skilled personnel are unavailable or if the industry is relocated abroad;
- ▶ compensating for workforces that are shrinking due to population ageing;
- ▶ filling low-wage and low-skilled jobs in sectors such as in agriculture, construction, domestic work and health care for which native workers are unavailable or unwilling to join;
- ▶ meeting temporary demands for workers during periods of economic expansion or for seasonal needs in agriculture, construction and hospitality, among others;
- ▶ building a global workforce by attracting and retaining skills in demand and by training foreign workers for branches or subsidiaries abroad through skills transfer.

In the light of these objectives, countries in SADC or other regions may decide to open doors to migrant workers, but the administration of such admission or post-admission policies can take different forms depending on the specific migration regime. Most countries elsewhere have followed selective admission policies focussing on skilled workers both for short- and medium-term needs, but also on longer term considerations for their contribution to growth of

4. More recently, the ILO Labour Migration Branch has developed a practical guide on developing labour migration policies (ILO, 2021d): “*Practical guide on developing labour migration policies*, International Labour Organization, Geneva”. It does not clearly spell out objectives of policies of labour migration of origin and destination countries and has proposed a lengthy list of underlying policy principles. This guide, moreover, does not refer to the above ILO flagship monograph of 2010.

the economy and capacity to integrate (ILO, 2010). The determination of actual numbers to be admitted and the ceilings to be attached if needed are decisions which require further efforts. Labour market information systems and estimation of labour shortages have to be undertaken for this purpose.

At the same time, it is very important to promote public consensus on the identification of labour shortages and employer needs for migrant workers in destination countries. An important component of this is documenting contributions of migrant workers to countries where they reside and work. Political leaders have a responsibility to inform and educate the public on the contributions and impacts of labour migration. They can inform the public why migrants are needed and how they are contributing to growth and development of countries employing migrants. The OECD-ILO Project on 'Assessing the economic contribution of labour migration in developing countries as countries of destination' is a good practice example of documenting the role of migrant workers in host societies. South Africa was one of the study countries, and the report 'How Immigrants Contribute to South Africa's Economy' (OECD and ILO, 2018) is a pioneering study on recognizing migrant workers' contributions to the economies of countries of destination (Box 1.2).

Box 1.2: How Immigrants Contribute to South Africa's Economy

The OECD-ILO 2018 study found that immigrants contribute considerably to South Africa's economy and that immigration does not reduce employment for native workers. Some groups of immigrants are likely to increase employment opportunities for the native-born. Based on the sectoral distribution and education of workers in 2010, the contribution of immigrants to GDP was estimated at about 9%, and the study determined that immigrant workers can lift the South African income per capita up by up to 5%.

Moreover, the study mentioned that immigrants also have a positive net impact on the government's fiscal balance. In 2011, the per-capita net fiscal contribution of immigrants ranged between 17% and 27% of the GDP. The contribution of native-born individuals was negative at -8% of the GDP in 2011.

The study also made several recommendations to improve their contribution to the economy.

- ▶ Adapting migration policies to labour market needs;
- ▶ Fighting discrimination especially against low skilled workers;
- ▶ Investing in immigrant integration.

OECD-ILO, 2018a.

The draft National Labour Migration Policy of South Africa recognizes the importance of this issue:

Given that labour migration to South Africa, whether skilled or low-skilled is a long-term dynamic, it is important to ensure that the South African population, and South African workers in particular, are well informed about what motivates the strategic choices made by the South African government on labour migration issues and educated to the rights and responsibilities of both nationals and non-nationals (DEL, 2022: 40).

However, recent attacks on migrant workers and their establishments in South Africa by unruly elements demonstrate that there is still limited public awareness on the issue and the need for the government to seriously deal with them (see Section 4.6 for more details).

1.6.3 Role of social dialogue in labour migration policies

While governments are mainly responsible for creating the enabling environment through the formulation, enactment and enforcement of effective laws, policies and programmes, these processes are likely to be more credible and effective when it is based upon widespread consultation among tripartite partners (Ministry of Labour and Employment and representative Workers and Employers' Organisations) and involving the following labour/employment institutions⁵:

- ▶ Labour inspection service;
- ▶ Labour market observatory;
- ▶ Social security institute;
- ▶ Public employment service;
- ▶ Vocational training institute;
- ▶ Working conditions and occupational safety and health service;
- ▶ Anti-discrimination and labour market integration agencies;
- ▶ Freedom of Association and collective bargaining bodies.
- ▶ Recognition of skills and qualifications institutions.

Thus, social dialogue is essential to establish support for a country's approach to governing labour migration. In countries employing migrants, addressing business and employer needs in policy formulation will encourage compliance by private sector employers. Consultation with worker organizations contributes to effective protection of both migrant and native workers and to the prevention of conflicts within the workplace. At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to groups at risk, such as those who are trafficked and/or are in an irregular status.

1.7 REGIONAL FRAMEWORKS ON LABOUR MOBILITY, INTEGRATION AND DEVELOPMENT

Labour Mobility for Regional Integration and Development

Freer movement of persons with rights to residence and establishment of employment or entrepreneurial activity is a major pillar for ensuring availability of skills and labour where needed to spur investment and economic development by mobilizing the full breadth and diversity of professional and technical competencies as well as labour power across Regional Economic Communities.

Regional mobility has become a formal and legally regulated pillar of development across several regions since the 1950s. Free movement across a growing European integration space was a primary component of building the European Economic Community succeeded by the European Union. In the 1970s, regional free movement for development systems were established in Central, East and West Africa, among the Andean region countries of South America, and with more limited scope in the Caribbean Community.

Thirteen regional integration processes worldwide –seven in Africa- involving more than 100 countries have in place free- or liberalized-circulation regimes and ten of them are operational. Migration in terms of freer circulation is –or is potentially—a key engine of development and integration for each of these RECs as it has been for the EU: Andean Pact (South America); CARICOM–Caribbean Community; CEMAC–Communauté économique et monétaire de l'Afrique centrale; ECCAS –Economic Community of Central African States; EAC –East Africa Community; ECOWAS

5. See Glossary of Terms in the Annex for definition of Labour/employment institutions.

–Economic Community of West African States; EEU – Eurasian Economic Union; EU – European Union; GCC –Gulf Cooperation Council; IGAD –Inter-Governmental Authority on Development; and SICA –Sistema de la Integración Centroamericana/Central American Integration System; as well as COMESA and SADC ⁶.

52 to over 70 per cent of migration originating in Africa, Asia, Eurasia, Europe and Latin-America Caribbean respectively remains within those regions; 89% of migrants residing in Sub-Saharan Africa in 2019 were born in that same region ⁷. The proportion within some African RECs is similarly high: more than 80 per cent of migrants originating in West Africa reside in other member countries of the Economic Community of West African States (ECOWAS) and 65% of migrants originating in Southern Africa live in the SADC region (AU-ILO-IOM-ECA 2015).

As highlighted by the African Union Treaty Establishing the African Economic Community ratified by 50 AU Member States and its Protocol Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol), free movement of persons is recognized as a key pillar of economic integration and development for the entire Africa region. It is likewise a core element of the Africa 2063 objectives and strategy.

Both ECOWAS with its five Protocols on free movement and rights to residence and to establishment of employment, businesses and commerce, and East Africa (with its Common Market Protocol) represent increasingly operational African models of integration for development with free movement of people –workers in particular- complementing free movement of goods, services, capital and technology.

Intra-regional labour mobility and associated benefits represent a vital livelihood strategy for many Africans. It is also a major factor in developing intra-REC trade and spurring local production of goods and services. Itinerant ‘cross border’ traders - migrant workers by definition- who circulate among countries carry out 30-40% of intra-regional trade in SADC, with an average annual value of informal cross border trade estimated at US\$ 17.6 billion per year in the REC.⁸ However, many policy makers and observers miss the crucial labour and skills mobility-economic development interdependency in regional integration.

Facilitating labour mobility in SADC and ensuring rights protection

Dependency on foreign skills and labour of Botswana, Mauritius, Namibia, Seychelles, and South Africa is set to increase over the next decade as their fertility rates decline below population replacement rate, their workforces age and decline while their population of older persons increases. As well, the youth bulges in some other SADC states are not going to continue for long.

The founding Treaty of SADC called for ‘progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the region’, while four SADC Protocols including the SADC Protocol on Facilitation of Movement of Persons (2005), the SADC Protocol on Employment and Labour (2023), and several SADC strategic policy frameworks and action plans such as the SADC Labour Migration Action Plan, and the one on industrial development, reiterate the imperative of facilitation of movement across SADC. The COMESA Protocol on Free Movement of Persons, Services, Labour and the Right of Establishment and Residence and the complementary COMESA Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements pursue similar objectives and concern a number of countries which are members of both COMESA and SADC.⁹

6. See ILO (2017a) ILC Report for a comprehensive discussion of regional economic communities.

7. UNDESA, Population Facts, September 2019 | No. 2019/4.

https://www.un.org/en/development/desa/population/migration/publications/populationfacts/docs/MigrationStock2019_PopFacts_2019-04.pdf

8. UNWOMEN (undated), Unleashing the Potential of Women Informal Cross Border Traders to Transform Intra-African Trade.

<https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/en/factsheetafricanwomentradersen.pdf>

9. Democratic Republic of Congo, Eswatini, Mauritius, Seychelles, Zambia, & Zimbabwe.

Facilitated free movement in SADC - as well as across COMESA and IOC - is an integration tool for development imperative for migration law, policy and practice for member countries. A key step is domesticating the framework Protocols long in place in COMESA and SADC and incorporating their provisions as core elements of their national migration/labour migration policies.

The SADC Protocol on the Facilitation of Movement of Persons was signed in August 2005, and its overall objective is the progressive elimination of obstacles to the free movement of capital and labour, goods and services in the SADC region. Currently only six of the 16 SADC Member States have ratified it: Botswana, Eswatini, Lesotho, Mozambique, South Africa and Zambia. This falls short of the two thirds of Member States required for the Protocol to enter into force. It is noteworthy that two major primary destination countries – Botswana and South Africa – have ratified it.

In contrast to developments in other African RECs, resistance to ratifying the SADC facilitation of movement Protocol, and now the AU protocol, appears to have solidified in several countries. Resulting further restrictions on movement and control over work forces add to constraints on productivity, goods and services production and thus on development.

Development of admission measures in all SADC countries should be seen as transitional means to implement the respective SADC and COMESA Protocols, as well as towards the gradual, phased implementation of the AU protocol to the continental free trade agreement. Ultimately, the latter will not happen and is unlikely to spur development until free movement of goods, services, labour, skills, capital, technology and African knowledge are all in place.

Increasingly flexible admissions along with rights protections and integration measures facilitating mobility across SADC should be formulated as a transitional means to implement the respective SADC and COMESA Protocols, as well as the gradual implementation of the AU free trade agreement and its free movement protocol.

1.8 LABOUR MIGRATION POLICIES IN SADC COUNTRIES

1.8.1 National Labour Migration Policies

The SADC Labour Migration Policy Framework and its Action Plan (2020-2025) provide 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 2016-2019 Action Plan on Migration proposed that all SADC Member States would have a National Labour Migration Policy in place as one of the outcomes. The latest SADC Labour Migration Action Plan (2020-2025) Output 1.2.3 states the need to: “Develop comprehensive national labour migration policies that are rights based and gender sensitive” (SADC, 2021). National policies should be harmonized with regional community framework to promote free movement, and labour and skills mobility within the community. Up to now, only four Member States (Lesotho, Namibia, Seychelles and Zimbabwe) have developed comprehensive national labour migration policies. South Africa, Eswatini and Malawi have developed a draft NLMP and are reviewing them prior to adoption.

Table 1.6 summarises the objectives, and key areas of NLMPs for Namibia, Seychelles and South Africa.

Table 1.6: Objectives of national labour migration policies in main countries of destination

Namibia *	Seychelles **	Draft South Africa ***
<ul style="list-style-type: none"> ▶ Optimise the developmental impact of migration to and migration from Namibia; ▶ Effective border control, and sound management of migration flows; ▶ Informed well-regulated legal mandate and dedicated policy context, aligned to relevant international and regional standards; ▶ To employ immigrant labour to provide and transfer critical skills; ▶ To regulate the selection and recruitment of migrant workers; ▶ Include and make efficient use of Namibian diaspora to support development and impart skills. 	<ul style="list-style-type: none"> ▶ To ensure that effective institutions, procedures, and regulations are in place to govern labour migration; ▶ To protect the rights of migrant workers and uphold high standards of working conditions for all; ▶ To ensure that the right mix of skills is available; ▶ To promote fair and effective recruitment practices for all workers. 	<ul style="list-style-type: none"> ▶ Document current challenges on the basis of evidence; ▶ Adopt guiding principles rooted in South Africa's core values and international commitments; ▶ Identify national strategic priorities at the intersection of national interests and guiding principles; ▶ Propose sustainable intervention methods and monitoring and implementation mechanisms.

Sources: *MLIREC (2019a); ** MEICS (2019); ***DEL (2022)

Several points can be noted.

- ▶ All of the examples provided above are comprehensive labour migration policies covering both emigration and immigration. The NLMP of Seychelles highlights both the need for a right mix of skills, but also the need to protect migrant workers and ensure fair recruitment. Namibia's labour migration policy puts more emphasis on governance of migration and developmental benefits to Namibia. The South African objectives focus more on the overall frameworks. All are backed by national, regional and international instruments and policy frameworks adhered by the countries. They all aim for better governance of labour migration and protection of migrant workers.
- ▶ There is commitment to rights-based labour migration policies. For instance, the Namibia labour migration policy states as a policy objective: "g) To extend rights-based protection to migrant workers, as well as to victims of human trafficking, refugees and asylum seekers in the form of, among others, labour and social protection, and access to justice" (MLIREC, 2019a). In the case of Seychelles, "The NLMP takes a rights-based approach to migration, emphasizing the protection of the rights of all workers employed in the Seychelles under the principle of equality of treatment, in compliance with its national labour legislation and its international obligations and commitments".

The South Africa draft NLMP states:

The NLMP follows a rights-based approach to the protection of all workers employed in South Africa and the protection of South African workers abroad as defined in South Africa's international obligations, regional and SADC commitments, as well as obligations under its Constitution and national labour legislation which is guided by the principle of equality of treatment, in addition to other legal and policy frameworks (DEL, 2022: 12).

- ▶ Both Namibia and Seychelles emphasise skill development and skill transfers to the local labour force.
- ▶ Diaspora engagement efforts are common to all three NLMPs.
- ▶ Fair recruitment plays an important role in all three policies reviewed. All three NLMPs refer to the ILO Principles and Operational Guidelines on Fair Recruitment (2016) as a framework guiding its recruitment policy.
- ▶ Two of the policies are accompanied by an implementation or action plan. The Namibia implementation plan for 2020-21 to 2024-25 is quite detailed (MLIREC, 2019b).

While these NLMPs contain good policies, the main issue is their effective implementation. As Crush et al. (2022) point out:

While the development of a National Labour Migration Policy is an important achievement, implementation thereof will be a significant challenge since it may in many cases also require amendments to other policies and laws, in particular, labour, immigration, social security and education (pertaining to recognition of skills and qualifications) policies and laws." (Crush, J., et al., 2022: 144).

As the largest destination country in Southern Africa, the Republic of South Africa bears a greater responsibility in ensuring good governance of labour migration and mobility and protection of migrant workers in both the formal and informal economy. While its strong anti-discrimination policies have been recognised for promoting migrant integration (MIPEX, 2020), gaps in enforcement and shortfalls in access to health and education as well as family reunification can marginalise migrant populations. South African attitudes towards migrants, especially African migrants from neighbouring countries, have hardened among the public as witnessed by racist and xenophobic attacks on them since 2008 and repeated in 2015 and 2017.

1.8.2 Admission provisions and policy tools in SADC

While OECD countries have a long history of experimenting with different admission tools, there is no standard set of tools applicable to all countries. They need to be adapted to the needs of countries based on their specific conditions and changing economic situations.

Data is not available for a comprehensive mapping of admission tools in SADC destination countries. The following tentative observations can be made regarding the profile of SADC countries in regard to admission and post-admission policies (Table 1.7).

- ▶ In general, ministries of labour and employment act as the responsible ministry for migrant admissions except in South Africa where the Ministry of Home Affairs is the lead ministry.
- ▶ Immigration legislation determines the employment of foreign nationals. In South Africa, it is supplemented by the Employment Services Act.
- ▶ The major tools used as indicated in Table 1.7 are shortage lists, work permits, labour market tests, quotas, employer sponsorship, skill transfer conditions and bilateral labour migration instruments.

Table 1.7: Admission provisions and policy tools in SADC destination countries

Tool	Countries Applying
Labour Shortage Lists (LSL) or Critical Occupation Lists (COL)	Mauritius; Namibia; Seychelles; South Africa (Critical Skills List.)
Work permits	Angola; Botswana; Mauritius; Namibia; Seychelles; South Africa.
Numerical limits or Quotas	Angola (Capped at 30% of workforce); Seychelles (most sectors); South Africa (considering).
Employer Sponsorship Schemes (ESS) & employer tied visas	All five countries; Angola; Botswana (only residence permit tied); Mauritius; Seychelles (for those not self-employed); South Africa (temporary work visas tied to employer); others can change employers.
Job search visas (JSV)	South Africa allows job search visas for critical skills.
Labour Market Tests (LMT) or Vacancy Tests (VT)	Botswana, Mauritius (only for work permits – not for occupation permits); Namibia: for work permit issue and renewal; Seychelles, South Africa (Except for Critical Skills List).
Localization and skill transfer policy	Available information incomplete: used in Angola; Namibia; Seychelles; South Africa.
Bilateral labour migration instruments (BLMI)	Angola (with Namibia); Botswana (with South Africa); Mauritius (with Seychelles and several others); Seychelles (China, Cuba, India, Kenya, Mauritius, Nigeria, Sri Lanka); South Africa (initially for mining and now for general labour cooperation) Botswana, Eswatini, Lesotho, Malawi and Mozambique, Zambia, and Zimbabwe.
Points-based Systems (PBS)	No major SADC countries of destination have them in place.
Expression of Interest (EOI) Systems	No major SADC countries of destination have them in place.
Job Search Visa (JSV) Programmes	n/a
Work/Study Visa (WSV) Programmes	n/a
Low-skilled Admissions (LSA) and Temporary Migration (TM) Schemes	There are no clear policies or pathways for admission of low skilled workers. Temporary migration schemes are popular for the admission of skilled workers.
Fair and Ethical Recruitment (FR) policies	National laws regulate hiring of migrant workers - Botswana, Namibia, Seychelles and South Africa. The Seychelles NLMP refers to fair recruitment.

Source: SAMM Migration Policy Reviews; ILO, 2021b; National labour Migration Policies cited above)

None of the countries use points-based systems or expression of interest systems. There are no clear policies or pathways for admission of low and semi-skilled workers although the draft South Africa National Labour Migration Policy mentions: “allowing for safe, orderly and regular migration for employment of highly, semi- and low- skilled workers to and from South Africa, in pursuit of the country’s national priorities” (DEL, 2022: 22).

There is limited information on postadmission policies of SADC destination countries to compile a similar table. The SAMM Migration Policy Reviews have touched upon some aspects only - fair recruitment, skill recognition, and social protection. Table 1.8 summarises available information.

Table 1.8: Post-Admission provisions or policy tools in SADC destination countries*

Tool	SADC Destination Countries Applying
Ensuring decent working conditions including occupational safety and health	Mauritius (Migration and Development Policy; Special Migrant Workers Unit monitors); Namibia (Labour Migration Action Plan and DWCP); Seychelles (DWCP); South Africa (draft NLMP).
Fair remuneration and wage protection	Botswana (Employment Act of 2010); Mauritius (National minimum wage applied to migrant workers); Seychelles (Employment Act amended regulations, 2016).
Labour inspection of working and living conditions	Mauritius (Special Migrant Workers Unit (SMWU) within MOL to carry out labour inspection); Namibia; Seychelles (NLMP); South Africa (NLMP).
Freedom of association and collective bargaining rights	All have ratified ILO C.87 and C.98; Angola (to join unions-not hold office); Botswana -Freedom of Assembly and Association (Constitution); Mauritius (Employment Relations Act 2008 guarantees FOA); Namibia (Labour Act of 2007); Seychelles (NLMP).
Non-discrimination and Equality of treatment	Botswana (Constitution); Mauritius (Constitution; Equal Opportunities Act (EOA) of 2008); Workers Rights Act, 2019); Namibia (Constitution and Labour /Act 2007); Seychelles (NLMP); South Africa (NLMP).
Protection of women migrant workers including against violence and harassment	While special problems of women migrant workers recognized, no specific measures found in most countries; Seychelles (NLMP).
Access to justice	Namibia (Labour Migration Action Plan, 2019); Seychelles (NLMP).
Social protection and social security provisions and portability	Angola (migrants covered under basic, compulsory and complementary (to regular workers; informal workers covered); Botswana (mostly for citizens; limited benefits for permanent residents; public housing and schooling for temporary residents); Mauritius (health care free; can contribute to national social insurance and national pension scheme (except workers in export oriented zones) and National Savings Fund); Namibia (Depends on immigration status – mostly for citizens and permanent residents; limited benefits for migrants); Seychelles (gaps recognised and NLMP to address); South Africa (permanent residents covered; temporary residents limited benefits; undocumented excluded; NLMP lists detailed provisions to extend social protection migrant workers).

Tool	SADC Destination Countries Applying
Employment mobility	Most countries have employer-tied visas with limited internal mobility for workers; Seychelles (NLMP proposes reducing mobility constraints on migrant workers).
Skills development, skills transfer and skills recognition	Angola (skill recognition bodies in place); Botswana (emphasis on skilled migrants and transfer of skills; Skill recognition in line with SADC QF); Mauritius (National Qualifications Framework of Mauritius aligned with SADCQF); Seychelles (no ref. to skill dev of migrant workers; skill development of national workers emphasized in policy; Seychelles Qualifications Authority Act in 2005; skill recognition procedures in place under SADCQF); South Africa (emphasis on critical skills and transfer of skills).
Family reunification	No information for most countries; Seychelles (only for skilled workers); South Africa (migrants under Critical Skills allowed to bring in families).
Regularization Programmes	No comprehensive regularization, but amnesties; South Africa has granted special dispensation programmes to undocumented Zimbabwe and Lesotho nationals for a limited period.

Source: Incomplete information obtained from National Labour Migration policies (Namibia, South Africa and Seychelles; SAMM - National Migration Policy Reviews; IOM Migration Governance Index -Angola, Mauritius, Namibia; GCM voluntary national review for Mauritius). These refer to provisions in law and policy only and implementation may be different; gaps in social protection noted in many countries





CHAPTER

2



NORMATIVE FRAMEWORK; GOVERNANCE OF MIGRATION UNDER THE RULE OF LAW

2.1 OVERVIEW

All aspects of labour migration, as with all areas of social relations, economic activity, and welfare of peoples, among others, must be governed under the rule of law consistent with international labour standards to obtain inclusive and sustainable societies, development, and welfare of all members of society.

Governance concerning migration can be understood as the interdependent set of legal norms, policies, institutions and practices to administer, regulate, and mediate activity and relations within defined political-social entities, whether States, administrative regions, cities, or corporate bodies.¹⁰ Migration governance must be responsive to the heterogeneity and complexity of international migration as well as refugee and migrant situations, while always recognizing that the ultimate aim of governance must be to promote human well-being for all. At multiple jurisdictional and territorial levels, governance functions to regulate economic, social and political organization; provide for infrastructure; stimulate and regulate economic activity; ensure social protection, health, education, food, housing, transportation, utilities and services for concerned populations; uphold decent work; ensure public safety and order; mediate conflicting interests; provide for justice; and conduct relationships with and defend interests vis à vis external entities.

10. *Governance of Migration. A Context Note.* GMPA, 2017.

International law provides both general human rights and rights at work - labour rights for the protection of all migrant workers and members of their families. Under customary international law, States are also accountable for the protection of universal human rights and fundamental rights at work of migrant workers.

2.2 INTERNATIONAL LABOUR STANDARDS (ILS)

International labour standards (ILS) are a distinct, complementary set of universal human rights, recognizing specific rights and protections in the context of the world of work. Core international labour standards coincide with principles and provisions in the Universal Declaration of Human Rights and the other core human rights conventions. Since 1919, the International Labour Organization (ILO), a UN specialized, tripartite body working with governments, employers (private sector) and representative worker organizations, has elaborated, maintained and supervised a comprehensive set of international standards as ILO Conventions and Recommendations. The ILO has adopted fundamental principles and 'rights at work' and other norms to achieve decent and productive work for women and men in conditions of freedom, equity, security and dignity. ILS cover all aspects of the employment relationship and conditions of work, including occupational safety and health, social security, non-discrimination, labour inspection, and maternity protection as well as specific conditions pertaining to sectors such as agriculture, construction, mining, chemicals, maritime seafaring and other areas. International labour standards applying to topical areas in chapter 4 are discussed in the respective modules.

International labour standards are applicable to all workers, including migrants and refugees, regardless of their status, except for a very few exemptions noted in a few instruments. The 1998 ILO Declaration on Fundamental Principles and Rights at Work commits all 187 Member States to respect, implement and promote principles and rights in ten Conventions across five broad categories, whether or not they have ratified the respective Conventions:

Abolition of Forced Labour

- ▶ Forced Labour Convention, 1930 (No. 29)
- ▶ Abolition of Forced Labour Convention, 1957 (No. 105)

Elimination of Child Labour

- ▶ Minimum Age Convention, 1973 (No. 138)
- ▶ Worst Forms of Child Labour Convention, 1999 (No. 182)

Freedom of Association and Collective Bargaining Rights

- ▶ Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- ▶ Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Equality and Non-discrimination in Employment and Occupation

- ▶ Equal Remuneration Convention, 1951 (No. 100)
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Occupational Safety and Health

- ▶ Occupational Safety and Health Convention, 1981 (No. 155)
- ▶ Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

Also, especially relevant to governance of migration and decent work for all migrants are the four **ILO Priority Governance conventions**, one ratified by all and two others widely ratified by SADC Member States:

- ▶ Labour Inspection Convention, 1947 (No. 81)

- ▶ Employment Policy Convention, 1964 (No. 122)
- ▶ Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- ▶ Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

2.3 MIGRANT WORKER/LABOUR MIGRATION GOVERNANCE SPECIFIC CONVENTIONS

Three international instruments were established to specifically recognize the human rights to which migrant workers and their family members are entitled. They have been referred to as an international charter for the protection of migrant workers and members of their families:

- ▶ the *ILO Migration for Employment Convention (Revised)*, 1949 (No. 97);
- ▶ the *ILO 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), 1990.

These instruments lay out a comprehensive agenda for the development of national labour migration policies and practice. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) establishes that migrant workers are more than labour or economic entities; they are social entities with families. The three Conventions together provide a firm, specific and comprehensive normative foundation for the development and implementation of legislation in host countries of residence and employment, transit countries and countries of origin. They cover virtually all migrants and are applicable to refugees and asylum-seekers accorded legal resident status. Worldwide, 96 countries, including 29 across Africa –more than half the AU membership- ratified one or more of these three instruments.

2.4 INTERNATIONAL JURISPRUDENCE ON THE PROTECTION OF MIGRANT WORKERS

All treaty bodies of the United Nations human rights conventions have issued findings and interpretations on the applicability of their main provisions to all migrants in such widely ratified instruments. The treaty bodies also refer to migrants in irregular or unauthorised situations. *General Comments* concerning protection of migrants under the respective instruments have been issued by the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on Human Rights (CHR) as well as the Committee on the rights of Migrant Workers (CMW). Treatment of migrants and non-citizens is a main topic in the report presented by many Governments in the periodic review of convention implementation in most of the UN Treaty Bodies. In the Human Rights Council, States are often subject to questions on the treatment of migrants and foreigners aimed at assessing their compliance with international instruments, notably through the Universal Periodic Review (UPR).

Similarly, treatment of migrant workers is frequently featured in the examination of government reports on the implementation of ILO Conventions by the ILO Supervisory Committee of Experts on the Application of Conventions and Recommendations (CEACR) as well as by the ILO Committee on Freedom of Association.

2.5 AFRICAN NORMATIVE STANDARDS ESPECIALLY RELEVANT TO MIGRATION

The **African Convention on Human and Peoples Rights** (also known as the Banjul Charter) ratified by 54 out of 55 AU Member States (including all SADC states), defines and commits to upholding peoples collective and individual human rights for all persons in African countries, including all migrants.

The **AU Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment** (AU Free Movement Protocol) lays out the continental legal regime for freedom of movement, and attendant rights of residence and establishment with the protections for persons concerned under the rule of law. The Treaty is now signed and ratified by 52 AU Member States – including nearly all SADC members, while the Protocol has 32 signatories to date. Once engaged in an employment relationship or otherwise working or self-employed, all persons including refugees, settled refugees, asylum seekers and Stateless Persons are subject to the purview of international labour standards and protection of decent work.

2.6 INSTRUMENTS ON REFUGEES AND ASYLUM SEEKERS

The right to seek asylum was articulated in Article 14(1) of the Universal Declaration of Human Rights (1948), which affirms that: *'Everyone has the right to seek and to enjoy in other countries asylum from persecution'*. The two core global instruments elaborating this right and the corresponding States obligation of non-refoulement are the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol. These instruments defined who is a refugee, the rights of refugees and the legal obligations of Member States ratifying the Convention. Africa also has its continental instrument, the OAU Convention on Refugees.

While the principle of *'non-refoulement'* is the cornerstone of international and African refugee law, the 1951 Convention and 1967 Protocol and the OAU refugee convention also refer to facilitating access to work/employment for refugees. Most refugees in Africa, including in SADC countries, are of working age or are children who will be reach working age in coming years.

2.7 INTERNATIONAL POLICY FRAMEWORKS

Several “non-binding” internationally agreed policy frameworks provide key guidance to the application and implementation of international conventions and/or further recommendations towards the effective rights-based governance of migration. Box 2.1 features relevant international and African policy frameworks.

Box 2.1: International and African Policy Frameworks relevant to migration for employment

International Labour Organization-ILO:

- ▶ ILO 2018 Guidelines Concerning Statistics of International Labour Migration;
- ▶ ILO/World Bank 2018 Guidelines on Measuring Recruitment Costs;
- ▶ 2017 International Labour Conference Resolution and Conclusions on Fair and Effective Labour Migration Governance and its Follow-up Plan of Action;

- ▶ ILO 2016 Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market;
- ▶ ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs (ILO 2016, ILO 2019a);
- ▶ ILO 2014 Fair Migration Agenda;
- ▶ ILO 2006 Multilateral framework on labour migration;
- ▶ 2004 International Labour Conference Resolution and Conclusions Concerning a Fair Deal for Migrant Workers in a Global Economy and its Follow-up Plan of Action.

United Nations and Intergovernmental

- ▶ United Nations **2030 Agenda for Sustainable Development**, 2015
- ▶ **New Urban Agenda** (emphasis on migration, migrants and refugees relevant for cities), 2015
- ▶ **Global Compact for Safe, Orderly and Regular Migration**, 2018

African Union-AU

- ▶ **AU Migration Policy Framework for Africa**, 2006
- ▶ 2018 revised AU **Migration Policy Framework for Africa and Plan of Action** (2018 – 2030).

Sources: Global and Continental Policy Frameworks Guiding Labour Migration and Labour Mobility in Africa (ILO; 2019b); GMPA research.



2.8 SADC INSTRUMENTS AND POLICY FRAMEWORKS REGARDING MIGRATION AND MOBILITY

As summarized in table 2.1 below, the SADC Treaty and subsequent SADC Protocols, Strategic Plans and Labour Migration Policy Framework lay out the policy guidance and foundations for labour mobility and the free movement of people (specifically workers), as well as the governance of labour migration including the rights-based protection consistent with international human rights and labour standards referred to above. They will be referred to as relevant in the discussion of admission and post-admission policies in Chapters 3 and 4.

Table 2.1: SADC Instruments particularly relevant to labour migration and mobility

SADC Instruments	Context
SADC Treaty (1992)	Progressive elimination of obstacles to the free movement of capital, labour, goods and services, and of the people of the region.
SADC Protocol on Education and Training (1997) – In force	Relaxation and eventual elimination of immigration formalities to facilitate freer movement of students and teachers within the region.
SADC Protocol on Facilitation of Movement of Persons (2005) – Not yet in force	Overall objective is progressive elimination of obstacles to the movement of persons and to facilitate entry, temporary and permanent residence and establishment of citizens of State Parties.
SADC Protocol on Employment and Labour (2023)–Not yet in force	Article 19 on Labour Migration and Migrant Workers provides for institutions, frameworks and processes to promote mobility and protect rights of migrant workers in line with international norms.
SADC Labour Migration Policy Framework (2014)	Policy framework promotes sound management of intra-regional labour migration.
SADC Revised Regional Indicative Strategic Development Plan (RISDP) (2015-2020)	The RISDP includes targeted outputs on: (1) SADC Labour Migration Policy Framework approved and implemented and (2) Social Protection portability developed and operationalised.
SADC Industrialization Strategy and roadmap (2015-2063)	Member States facilitate movement of factors of production- capital, skills and labour- within the SADC region and expedite implementation of Protocol on Facilitation of Movement of Persons.

Source: SAMM



CHAPTER

3



ADMISSION PROVISIONS AND POLICY TOOLS

This chapter focuses on policies and tools used by destination countries for the admission of migrant workers at different skill levels. As highlighted above, many countries have traditionally favoured admission of skilled workers who are believed to be better candidates for long term growth and development and also for integration in host societies. Therefore, a number of tools discussed relate to the implementation of skill selective policies as in Australia, Canada and New Zealand. The European Union has also moved in this direction with its Blue Card offers.¹¹ Countries may prepare shortage lists of skills or select migrants on the basis of points awarded to their qualification and experiences. The review undertaken highlights the following trends.

All industrialized destination countries have experimented with demand driven selections (selection by employers according to labour market needs) or supply driven selections where foreign candidates apply for selection and admission by destination governments based on pre-determined criteria. The points-based system is an example of the latter. Migrants admitted through skill verification and other criteria have to find jobs in the host country on their own. In practice, countries have combined both demand driven and supply driven criteria and mostly use hybrid systems.

11. While generally not selected on employment criteria, family reason admissions bring in significant numbers of foreigners who are or will be in the labour market; many arrive with skills and or acquire skills in demand 'post arrival'. 37% of overall migration admissions across the OECD were for family reasons in 2020. In several EU countries that proportion was over 50% for third country national admissions. See Family Migration at: <https://www.migrationdataportal.org/ar/themes/familienmigration>

Table 3.1: Policy tools categorised

Demand driven	Supply driven	Hybrid Systems
<ul style="list-style-type: none"> ▶ Labour shortage lists/ Critical occupation lists ▶ Labour market tests (LMTs) ▶ Employer Sponsorship Schemes ▶ Low skilled admission and temporary migration schemes 	<ul style="list-style-type: none"> ▶ Numerical Limits /Quotas ▶ Point Based Schemes for migrant admission (PBS). ▶ Job search visa programmes ▶ Work/study visa programmes 	<ul style="list-style-type: none"> ▶ Expression of Interest (EOI) Systems ▶ Bilateral labour migration instruments ▶ Fair recruitment

Compiled by Piyasiri Wickramasekara

For example, a points- based system may be subject to a quota or numerical limit. Labour market tests can be combined with employer selection systems. Potential migrants arriving on job search visas usually have to find an employer within a short period of time. Currently popular Expression of Interest systems use a two step-procedure to place migrants with skills in a pool and select those with the highest points. Such systems award high points to a confirmed job offer from an employer, thereby combining elements of employer sponsorship as well. These workers can also obtain permanent residency in the host country within a specified period of time.

Following a review of immigration policies of 10 OECD countries between 2000-2012, Czaika and Parsons (2016) concluded that points-based systems produce the best outcomes in terms of skill flows. This general conclusion needs to be treated with caution, however, given that the aims of these policy tools differ (Czaika and Parsons, 2016: 23). There is considerable evidence from different destination countries that PBSs may lead to poor labour market outcomes for migrant workers due mostly to problems of qualification and skill recognition.

Recent research has also shown that **employer-driven selection systems** and use of wage thresholds discriminate against women migrant workers given observed wage gaps according to gender. There is also evidence that employers have a bias in giving preference to candidates from Western countries.

Based on a review of immigration policies in five major destination countries (Canada, Australia, the United States, the European Union's Blue Card and the United Kingdom), Boucher highlights their implications for the 'gender and ethnicity diversity of skilled immigration policies' (Boucher, 2020: 2). Boucher argues that employer-determined skill definition models as in Australia and Canada contribute to different gender and ethnicity outcomes than when government-driven skill tests are applied. The use of wage thresholds in the EU Blue Card Directive and the previous UK Tier 2 system have been found to be discriminatory negatively affecting women applicants from third countries given the gender pay gaps in the EU (Boucher, 2020).



While destination countries have access to several tools for admission of skilled workers, there are fewer options for low and semi-skilled worker admission. This is mostly due to the popular public perceptions or misconceptions that while skilled workers are good for the economy, low skilled workers bring down wages and cannot integrate well in the host country. They may be admitted subject to various restrictions regarding labour mobility, duration of contracts and without family reunification options. Their screening and hiring may be arranged through private employment agencies. Countries usually enter into bilateral labour migration instruments for admission of temporary workers with lower skills for seasonal work or medium-term contracts as in the Gulf Cooperation Council countries. Given the poor implementation of BLMLs, low skilled workers run the risk of abuse and exploitation (Wickramasekara, 2015). At the same time, the hiring of skilled workers under temporary programmes is increasing in popularity in traditional settler countries such as Australia and Canada.

Another trend observed is that governments increasingly rely on elements of employer-based selections. The existence of a job offer carries weight in selection systems. This is mostly due to the observed poor labour market and integration outcomes of those admitted purely on the basis of points-based systems.

The systems also determine the rights of migrant workers. Both skilled and lower skilled workers admitted under temporary migration schemes have their work and stay visas tied to the employers who wield undue bargaining power as a result. Some of the skilled workers may have the option of applying for longer residence. Low skilled workers on fixed term contracts are expected to leave the country at the end of their jobs.

Whatever the mix of policy tools used, transparency, simple procedures and speedy processing are observed as good practices across countries. Frequent change of criteria and raising points for admission observed in some countries can cause obvious hardships to those who based their decisions on existing systems.

The following sections of the chapter discuss the operation of various policy tools such as shortage lists, point based systems, and quotas among others following a common format covering definitions, examples, advantages and disadvantages, and good practices.

3.1 LABOUR SHORTAGE LISTS (LSL)/CRITICAL OCCUPATION LISTS (COL)

3.1.1 Definition of Labour shortage lists/Critical occupation lists

Many countries compile labour shortage lists to decide on the admission of migrant workers. “Catalogues of occupations difficult to cover” are also called ‘Occupation in-Demand Lists’, ‘Skill Shortage Lists’ or ‘Critical Skills/Occupations Lists’. They consist of a list of skills or occupations for which demand cannot be met locally in countries of destination. Aspiring migrant workers with skills/occupations on these lists are often given preferential treatment during visa or work permit applications to help fill this demand. Labour market information systems, including regular needs assessments, coupled with labour migration statistics and trends, provide the most up-to-date information on the occupations and skills to be included in such lists. It is important to include not only highly-skilled occupations, but to also allow for semi-skilled and low-skilled occupations (e.g., jobs in the agricultural sector, construction, domestic sector, among others). If these are not included in shortage lists, demand for these jobs could attract migrants in an irregular situation to the informal economy.

The purpose of Skills Shortage Lists is to identify the occupations and sectors that face labour shortages. These assessments can be carried out at various levels: national, regional, municipality levels or sector-wise. They can also cater to immediate, medium term or long term skill needs.

Examples of these are:

- ▶ the Spanish hard-to-fill-jobs catalogue (Catalogo de Ocupaciones de Dificil Cobertura) which deals with labour shortages in particular occupations. It is prepared for each province on a quarterly basis and can be the basis for applications to hire foreign workers.¹²
- ▶ the Australian Skilled Occupation List (SOL) and
- ▶ the New Zealand Long-term Skill Shortage List (LTSSL) (which is now replaced by a Green List) reflecting demand over the medium term and longer term.

3.1.2 Methods and procedures

Labour shortage or critical occupations lists are based on forecasts of occupations and human resource requirements. The US Bureau of Labour Statistics carries out regular occupational forecasts which inform skill needs programmes. Australia and New Zealand also base skill assessments on occupational changes.

The compilation of labour shortage lists uses mixed methods including labour market indicators using analysis of vacancy rates and durations, turnover, labour demand and supply, unemployment rates by occupations and sectors, availability of local workers, and consultations with social partners and industry.

The labour shortage lists should ideally be prepared by government agencies like the public employment services (PES) at national and regional levels involving, or in close consultation with, the most representative employers and trade unions' organizations. In the UK, it is carried out by an independent advisory committee - the Migration Advisory Committee. In South Africa, the preparation of the Critical Skills List (CSL) by the Department of Home Affairs¹³ (DHA, 2022) draws upon the cooperation of a large number of key stakeholders including the Department of Higher Education and Training (DHET) and Sector Education and Training Authorities (SETAs). The DHET prepares the list of Occupations in High Demand (DNA Economics, 2020).

These lists have to be regularly revised to remain up to date and relevant, preferably half-yearly, and should include all types of skills in demand (skilled, medium-skilled and low-skilled). Immediate shortage lists have to be frequently updated, if possible quarterly. Austria publishes nation-wide shortage occupations and regional shortage occupations annually.

3.1.3 Objectives of labour shortage lists

- ▶ To guide temporary worker admissions. Examples are Spain's hard to fill vacancies list, Immediate Shortage List of New Zealand, and Denmark's Positive List.
- ▶ To meet medium to long term demand. Traditional settler countries such as Australia, Canada, and New Zealand have long followed policies to admit skilled workers with pathways to permanent residence and citizenship.
- ▶ To serve broader labour market needs of the economy.
- ▶ To guide education and training policy in the medium and longer term by promoting training of local workers in shortage occupations.

12. <https://www.sepe.es/HomeSepe/en/empresas/informacion-para-empresas/profesiones-de-dificil-cobertura/profesiones-mas-de-mandadas.html>

13. <http://www.dha.gov.za/images/PDFs/47182-2-8-CriticalSkillsDHA.pdf>

3.1.4 Why are LSL or COL a tripartite issue?

Ministries of Labour are responsible for employment policies and have an interest in giving priority to local workers. Labour shortage lists convince the public that migration is under control and only important skills (high, medium and low) missing locally are admitted.

Employers benefit from clear identifications of labour shortage areas where they can engage foreign workers. In some cases, employers are exempted from labour market testing or labour certifications as in the Critical Occupations List of South Africa. Trade unions have an interest in preventing admission of large numbers of foreign workers which can bring down wages and working conditions for all workers. They also do not like to see displacements of local workers.

Labour shortage lists satisfy the requirements of all parties confining the hiring of foreign workers to shortage occupations.

3.1.5 Advantages and disadvantages

Advantages

- ▶ The lists are more consistent and less subject to discretionary interpretations than individual labour market tests carried out by different agencies.
- ▶ Lists are transparent and reflect demand conditions and can be revised in the light of changing economic conditions.
- ▶ They can be linked with other short term and long-term socioeconomic development policy objectives of governments. For instance, they can be linked with technical and vocational education and training programmes for workforce planning. Australia's SOL and New Zealand's lists of occupations in long term demand can act as signals for education and training policies. For example, South Africa's DHA states:
- ▶ "South Africa's Critical Skills Work Visa will enable the Department and the government to achieve the objectives of programmes such as National Development Plan (NDP), Industrial Policy Action Plan (IPAP) and New Growth Plan (NGP).¹⁴
- ▶ International students can also plan their education and training in the light of longer-term shortage lists and identify job prospects. (OECD, 2014).
- ▶ Many countries use shortage lists in combination with other tools such as labour market tests, Point Based Systems and Express Entry systems (Australia, Canada and New Zealand).

Disadvantages

- ▶ There is no hard and fast definition of a skills shortage. Countries and institutions within a country may use different methods to measure shortages. For instance, the UK Migration Advisory Committee (MAC) uses multiple indicators to judge the existence of labour shortages (Annex Table A2).
- ▶ They may not reflect changing shortages unless renewed frequently. They may also lead to underinvestment in local training systems when some occupations are treated as shortages in the long term.
- ▶ The lists can be influenced by some stakeholders who may want to retain or modify some occupations in the lists. One is that employers are pretty adept at drawing up job descriptions that make jobs fall under shortage lists¹⁵. The UK MAC represents an independent body which can obviate this issue.
- ▶ As OECD (2014) points out, lists can be targeted by potential migrants or migration agents looking for the simplest means of access". One example cited is Australia's inclusion of the hairdressing occupation demanding low requirements within the shortage list which led to a high number of applications.

14. <http://www.dha.gov.za/index.php/immigration-services/scarc-skill-s-work-permits>

15. Personal communication from Georges Lemaitre, former OECD technical specialist.

- ▶ Even if persons enter on shortage list occupations, they do not necessarily have to stay in those jobs and indeed, may leave for other jobs after arrival, so that any protection for domestic workers is at best temporary.
- ▶ Such lists may not have an actual impact on labour migration inflows. According to the OECD (2014), Denmark's Positive List accounted for less than two per cent of admissions. In countries like Australia and New Zealand, however, most admissions are conducted under shortage lists.

3.1.6 Examples of good practice

- ▶ Consultation with social partners and industry on a regular basis. In most EU Member States, "social partners are key stakeholders in the process of determining lists of shortage occupations" (EMN, 2015). This is the case in Austria, Sweden, Spain, Greece, Belgium, Croatia, France, Hungary, Ireland, Latvia and the Netherlands. According to the EMN (2015), "Their knowledge of the labour market and future skills needs make them a prime interlocutor within national consultations processes" (p.23). In Austria, social partners have a central role in formulating the list through a dedicated bipartite committee and are consulted through surveys and interviews and through representative bodies. The UK MAC incorporates views of the industry and other stakeholders in the final determination of shortage lists.
- ▶ Effective coordination between immigration, education and training authorities for determination of shortage lists. South Africa is a good example as cited above.
- ▶ Inclusion of multiple criteria. South Africa: Occupations added to the CSL must fulfil three conditions: i) involve high-level qualifications and advanced skills sets; ii) require a long period for the regular supply of South Africans who can perform these jobs; and iii) occupations that are currently experiencing severe shortage of trained professionals and this situation is likely to continue for some time (Crush & Williams, 2022a: 21). Employers, however, are critical of these criteria because they would like to see semi-skilled and low-skilled workers included as well.¹⁶

3.1.7 Key messages and the way forward

Key messages

- ▶ Labour shortage lists enable countries to critically assess their skills shortages in the medium to longer term.
- ▶ They also help in convincing the public that migration is 'managed' in the best interest of the country.
- ▶ They also enable prospective employers and migrant workers to obtain transparent and up to date information on their options.
- ▶ Frequent and drastic changes in such lists cause confusion and hardships to all involved.

Way forward

- ▶ It is important to monitor and periodically assess the performance and labour market impacts of such lists and linked visas.
- ▶ Concurrently the situation of rights of migrant workers and their families brought in under such schemes need scrutiny to ensure equal treatment and non-discrimination.
- ▶ At the regional level, the planned SADC Labour Market Observatory (LMO) - a network of national and regional institutions, which integrates critical information on labour markets – envisages the development of a regional Labour Market Information System (LMIS) which covers labour market, skills, and labour migration indicators and can serve to determine labour market needs.¹⁷ It can importantly contribute to

16. Communication from the SAMM project.

17. <https://www.sammproject.org>

the preparation of a regional skills shortage list and facilitation of skills mobility in line with identified labour shortages.

3.2. LABOUR MARKET TEST (LMT) OR VACANCY TEST (VT)

3.2.1 Definition of a Labour Market Test

The main purpose of a Labour Market (LMT) or Vacancy Test is to ensure that the admission of migrant workers does not displace local workers or adversely affect their working conditions by assessing whether local workers are available for the same job. It has been used from the early 1950s in developed countries (OECD, 2014: 171). The test prevents employers from hiring foreign workers when there are local workers who can perform the same job.

3.2.2 Methods and procedures

The first step is for the employer to submit a job vacancy request to the concerned authority - Ministry of Labour, Public Employment Services (PES) or other. In the European Union, LMTs apply only to the engagement of third country nationals because of the right of free mobility of labour within the community.

The second step is assessment of the availability of local workers for the job. In the European Union, local workers would include nationals, EU nationals and legally staying third country nationals. This can be assessed through advertisements by the employer or the public employment service or both. EURES, the European cooperation network of employment services, designed to facilitate the free movement of workers - may also provide wider publicity at the EU level.

- ▶ Different channels for the advertisements: e.g., newspapers, public media, online job portals, and social networks,
- ▶ Duration of advertisements – In the EU member states, this can range between 3 days to 35 days (EMN, 2021). In Canada, the requirement is a minimum of four weeks. Too short a time may not provide adequate opportunity to local job seekers to respond and raises questions about the genuineness of the efforts.
- ▶ The PES may check unemployment registers for the availability of suitable candidates and refer them to employers.

Employer assessment option. In some countries, the employer is given full responsibility to furnish proof that the job was duly advertised and that either there were no applicants or local workers who were offered the job have refused it (Böhning, 1996). There are several safeguards imposed by authorities.

- ▶ Employment conditions and job descriptions cannot be inflated. The job offer should be reasonable in providing comparable wages and working conditions for a similar job for a local worker. The median or average market wage offered for the specific occupation should be in line with the average wage (OECD, 2014). The USA labour certifications are meant for this purpose. In Canada, the wage offered is reviewed and compared to the prevailing wage paid to Canadians in similar jobs.
- ▶ Another option is to require an employer to raise the remuneration offered to attract local workers.

Some countries specify the required content of advertisements (Box 3.1). Often, employers are required to pay for job advertisements themselves.

Box 3.1: New Zealand – requirements for a job advertisement

The advertisement should specify the job description, the minimum and maximum pay, the location, minimum hours of work, estimated actual earnings if the job pays by piece, commission or there are other rates or bonuses, the minimum skills, experience and qualifications for the role.

Source: <https://www.immigration.govt.nz/employ-migrants/new-employer-accreditation-and-work-visa/passing-the-job-check>

Linking with labour shortage lists and across skills categories. The United States uses them extensively across categories, with some listed occupations exempted. Norway uses LMTs when its quota for highly skilled workers is exhausted.

Exemptions. Countries may exempt some categories of workers from LMTs depending on national priorities and the labour market situation. For example, highly skilled workers, or categories with specific shortages such as health workers, and IT specialists may be exempted. New Zealand exempts positions in the skill shortage list or the new Green List. Australia exempts workers coming under its international trade obligations (ITOs) such as WTO. The previous Tier 2 Visa of the UK required a Resident Labour Market Test, but exemptions were given for shortage occupations, and selected research positions.

Approving authority. In Germany, the LMT is part of the visa process, and it is the visa agency who asks the PES for approval. In South Africa, the Ministry of Home Affairs and the Ministry of Labour jointly oversee the process.

3.2.3 Objectives of LMTs

- ▶ Protect local workers by giving them an opportunity to apply for the advertised jobs.
- ▶ Prevent large scale inflows of foreign workers that can lead to displacing local workers.
- ▶ Adaptability. LMTs can be combined with shortage lists and quotas and skills transfer schemes for this purpose.

3.2.4. Examples from SADC/International levels

Most SADC destination countries carry out labour market tests although specific requirements vary. For example:

- ▶ In Angola, provision of proof that advertising has been carried out to check if local resident workers can be found is a requirement for applications for companies in the oil and gas sector, as well as some other business sectors.¹⁸

18. <https://newlandchase.com/countries/angola/>;

19. <https://www.globalization-partners.com/globalpedia/botswana-employer-of-record/work-visas/#content>

- ▶ In Botswana, the requirements are more exacting with priority to be given to citizens with proof of job advertisements first exclusively for Botswana citizens for at least 14 days within the previous six months¹⁹. for individual professional work permits and some other categories
- ▶ Mauritius requires submission of copies of original press advertisements which have appeared in two leading newspapers and the outcome of the selection exercise must also be submitted (MLIRT, 2016).
- ▶ In the case of Seychelles, employers are obliged to test the local labour market by advertising to determine if there are Seychellois to fill the vacant positions for Job Categories 2 and 3 (domestic workers) (Crush and Williams, 2022b). Seychelles requires labour market testing through three days of local advertisement of the post to determine whether local workers are available to occupy the position before the position can be approved for a foreign worker (MEICS, 2019). This is considered an unduly short period during which national workers may not really have the opportunity to apply for the job. The Seychelles NLMP considers extending obligatory labour market testing for a period of one month and applying such tests to most positions with the exception of a limited list of essential occupations.
- ▶ In South Africa, the Department of Labour and Employment is responsible for carrying out labour market tests to support the Department of Home Affairs (MOHA) in processing work visa applications (DEL, 2022).

Labour market tests (LMTs) are implemented and applied in most of the EU Member States (EMN, 2021). The European Migration Network defines labour market tests as a: “Mechanism that aims to ensure that migrant workers are only admitted after employers have unsuccessfully searched for national workers, EU citizens (in EU Member States this also includes EEA workers) or legally residing third-country nationals with access to the labour market according to national legislation” (EMN, 2018: 231). Of EU Member States performing the LMT, 10 of them check for the availability of workers in other Member States, while seven of them do not (EMN, 2021).

3.2.5 Advantages and disadvantages

Advantages

- ▶ Transparent to employers and workers
- ▶ Clear message to employers that the first priority is employing local workers.
- ▶ Serves to prevent exploitation of foreign workers by specifying same wages and working conditions.
- ▶ Employers can get the skills specified and avoid individualized LMTs.
- ▶ Leads to good selection of migrant workers.
- ▶ Within a REC, preference can be given to REC workers. In the EU, Community Preference means that eligible local workers will be given the choice to apply first.

Disadvantages

- ▶ It requires good and efficient administrative machinery to be effective. Generally, they could result in long processing times. This means that employers incur additional costs in terms of processing resources and delays.
- ▶ The efficiency of Public Employment Services differs among countries. This can affect the efficiency of LMTs resulting in problems for employers.
- ▶ Since there are no standardized testing procedures, LMTs may involve discretionary control by officials involved. They may apply it differently at the centre or in different regions. This would lead to issues with uneven quality assurance processes and fairness of assessments for similar applications. Determining comparable average or median market wages for occupations is often not straightforward,
- ▶ There can be conflicting interpretations between a PES and employers on the availability, suitability, or willingness of local candidates to fill vacancies (OECD, 2014). When the employers maintain that the local

workers are not suitable or local workers assigned may not be interested, the LMT requirement may turn out to be just an additional bureaucratic procedure.²⁰

- ▶ It is possible that the employers may inflate the job description because of their preference for migrant workers. “A toothless or token LMT cannot counteract such risks” (OECD, 2014). Some countries impose additional requirements to counteract such strategies. France has cited too specific job descriptions that will limit the possibility to be filled by a jobseeker as a reason for rejection of employer applications.
- ▶ Trade union involvement in the LMT procedures may lead to assessments not made on objective grounds but on ‘simple protection grounds’ for local workers (Ruhs, 2014).
- ▶ If rejection rates of LMTs are low as in many EU member states (EMN, 2021), the role of the LMT is nominal. At the same time, high rejection rates as in the Netherlands can act as a major disincentive for employment of migrant workers in times of acute labour shortages (Table 3.2).
- ▶ Protection afforded to local workers may be low in practice. Ruhs reviewed protection issues under LMTs and concluded: “... efforts to effectively protect local workers’ preferential access to the national labour market have been beset with considerable problems in a wide range of different national contexts and countries. The key policy problem is that many employers, especially but not only those operating in low-waged labour markets, have a clear preference for migrant over local workers. How to evaluate and respond to this preference remains the key challenge in the making and implementation of national labour immigration policies” (Ruhs, 2014: 78).

Table 3.2: Percentage of positive and negative LMT decisions of some EU Member States in 2019 and 2020 (in per cent of total decisions)

	2019		2020	
	positive	negative	positive	negative
Bulgaria	100	0	100	0
Cyprus	75	25	74	26
Estonia	98.8	1.2	98.3	1.7
Finland	70	30	80	20
Lithuania	100	0	100	0
Luxembourg	91.3	8.7	83.3	16.7
Netherlands	47	41	53	44
Slovakia	84	16	82	18

Source: (EMN, 2021)

20. Personal communication by Georges Lemaitre, former OECD migration specialist

3.2.6 Key messages and the way forward

Key messages

- ▶ Labour market tests are now a standard mechanism used by countries to convince the public that the interests of local job seekers are taken into account. It aims to protect local migrant workers from displacement by foreign workers.
- ▶ In practice, there is no standard testing mechanism which can lead to discretionary approaches by officials and public employment services.
- ▶ Employers can also manipulate job descriptions if their preference is for foreign workers.
- ▶ Combining it with shortage lists would be a more effective way to protect local workers.

Way forward and role of tripartite partners

- ▶ SADC destination countries need to undertake an evaluation of the outcomes of labour market testing and adapt it to new developments.
- ▶ If acceptance rates or rejection rates are high, there is a need to review the systems being implemented.

What action is needed from ministries of labour, workers and employers' organizations?

- ▶ Ministries of Labour should monitor and undertake periodic evaluation of implementation of LMTs and assess the protection status of workers admitted.
- ▶ Social partners need to make their own assessment of the LMTs. If employers feel that the LMTs greatly limit their choice, they have to take it up with the Government.
- ▶ Trade unions should monitor whether local workers are given fair chances in the jobs advertised. At the same time, they should assess whether the hired migrant workers are given inferior wages and working conditions because of observed employer preference for foreign workers.

3.3 NUMERICAL LIMITS (NL) OR QUOTAS

3.3.1 Introduction and definition of Quotas or Numerical Limits

Numerical limits on the admission of migrant workers can be imposed in several ways: i) a quota - predetermined number or ratio of foreign workers as a share of total employment in the sector or by the employer; ii) a target; or a ceiling or a cap for the numbers of migrant workers to be admitted to a country. The main objective is to control the access of foreign workers to the local labour market and protect employment opportunities for local workers.

It is a tripartite issue because all three parties – governments, employers and workers – have a stake in determining the number of migrant workers to be admitted by a country. Governments have to demonstrate to the public that they manage migration in a way that benefits the country. Employers need migrant workers for skills not available locally or where local workers are not willing to work in the defined sectors. Trade unions are concerned about social dumping and may want to prevent a decline in wages and working conditions of local workers through immigration. At the same time, they want to protect migrant workers from exploitation.

3.3.2 Objectives of numerical limits

Governments use numerical limits including quotas for several purposes (Böhning, 1996; ILO, IOE & BAGM, 2021; OECD, 2014)

- ▶ Safeguard labour market employment opportunities for local workers by controlling the numbers admitted by business enterprises. Mauritius imposes a ratio of 1:3 where an organization must hire three local workers for each foreign employee it employs.

- ▶ Support national and regional economic development agendas. Higher quotas of skilled workers for less developed regions may serve to develop those regions. For instance, Australia has quotas by States to ensure decentralization of admissions and more equitable distribution of migrant skills.
- ▶ They can help convince the public that migration is under control by highlighting numerical limits to immigrant numbers allowed.

3.3.3 Scope

Numerical limits including quotas can be applied at several levels. Normally the limits are imposed annually and may be periodically (usually twice a year) reviewed.

- ▶ For the country as a whole. Employers will be given access on a first come, first served basis until the quota is filled or the target is achieved. For example, in the US H1B visa for speciality occupations created in 1990, the annual statutory cap represents 65,000 visas, with 20,000 additional visas for foreign professionals who graduate with a master's degree or doctorate from a U.S. institution of higher learning.
- ▶ By region or local administrative areas. Quotas/numerical limits on the number of migrant workers to be admitted are practiced in many countries: e.g., Italy and in Switzerland where the allocations are made on the basis of regions or cantons.
- ▶ By economic sector. Employers may lobby for new or higher quotas for economic sectors where they find it difficult to recruit workers. Quotas can be applied to specific sectors such as agriculture, manufacturing, tourism, among others. The allocation could reflect the importance of each sector in the economy and the availability of local workers. Seychelles has defined limited quotas for several sectors such as agriculture, construction and fishing, among others.
- ▶ Specific occupations. Shortages may be reflected in specific occupations due to lack of local skills. Some professions may lobby for lower admissions to safeguard their incomes and earnings.
- ▶ By origin country or nationality. Sometimes the quotas may be defined for individual countries or nationalities. For example, the Korean Employment Permit System (EPS) imposes quotas for each country under the MOUs it has signed. Italy also defines quotas for some countries.

3.3.4 Examples of the practice

Quotas are widely practiced in the European Union and in traditional settler countries such as Australia, Canada and New Zealand (EMN, 2014; OECD, 2014). Australia has used quotas and ceilings for a long time in combination with its points-based schemes. For example, Australia had a total ceiling of 76,000 for the skilled stream during 2021-22 which has been increased to 142,400 places in 2022-23. Switzerland has had a long history of quota systems, but since 2002 they have been applied to third country nationals only when it signed the free movement of persons treaty with the European Union (Lin, 2022). For example, the maximum quota for third country nationals in 2023 is: 4,500 residence permits, and 4,000 short-term residence permits.²¹ USA has ceilings for different types of admissions including skilled workers (H1B) capped at 65,000 (and 85,000 with the advanced degree allocation).

Many temporary and seasonal worker programmes have established caps such as the Canada seasonal worker programme, the New Zealand RSE, and the EPS of the Republic of Korea.

In the SADC region, Mauritius, Seychelles (Box 3.2), and a few other countries use quotas, too. (Crush & Williams, 2022a; 2022b).

21. <https://www.zh.ch/en/wirtschaft-arbeit/erwerbstaetigkeit-auslaender/kontingente.html>

Box 3.2: Seychelles - Quota System

Seychelles introduced the quota system in 2014 for tourism, construction, agriculture, fishing and financial services sectors: the Quota limit is defined as an allowable percentage of their overall workforce.

Three Categories of Quotas – 1, 2 and 3. Category 1 can get workers without a labour market test. Other categories need labour market tests.

In 2018, the quota system was amended for certain sectors, such as construction, and was modified from a percentage quota to a fixed number. For the construction sector, the quota of migrant workers allowed is based on the class categories rather than percentages. The quota of foreign workers per contractor has been defined as follows: Class 1 - 300; Class 2- 150; Class 3 - 75; and class 4 - 50. (Crush & Williams, 2022b)

The 2019 National Labour Migration Policy's Action Plan states the need to establish sector, occupational or industry-wide quotas for migrant workers based on close labour market monitoring rather than quotas for individual employers.

South Africa's draft labour migration policy (DEL, 2022) mentions "Imposing quotas to limit the number of foreigners with a view to protect employment opportunities for South African workers" among the six priorities in migrant admissions. South Africa used a quota permit previously based on the critical skill list of 2009. In 2011, the Quota Work Permit and Exceptional Skills Permit were amalgamated to create the new permit/visa valid for up to 5 years. (Crush & Williams, 2022a). It is now considering the reintroduction of quotas and revising legislation for that purpose as informed by supporting labour market evidence, providing exemptions where needed and to be periodically reviewed (DEL, 2022; BusinessTech, 2022).

3.3.5 Advantages and disadvantages of quotas/numerical limits

Advantages of Quotas

- ▶ Transparency. Bohning (1996) concluded: "The strongest point in their favour is that they provide a clear frame for planners, administrators, employers and, indeed, for the public at large" (p.33).
- ▶ They are a means of convincing the public that migration is under control; The numbers or percentages are limits that can be adjusted. Migrant intakes can be reduced or stopped when the targets have been attained.
- ▶ Reduces path dependency or undue dependency on foreign workers; if employers are able to bring in foreign workers without limit, they may not attempt to hire local workers. They serve as a constant reminder to employers that they have to give priority to local recruitment.
- ▶ Provides for consultations with social partners to determine quotas or limits. Clear examples are decision making on quotas in Canada and Ireland.
- ▶ Numerical limits can be combined with shortage lists, labour market tests (Seychelles) and points-based systems (Australia).

Disadvantages

Chaloff (2014: 12) has described quotas as “One of the bluntest instruments for managing migration”. There are several disadvantages associated with quotas.

- ▶ Difficult to define an accepted methodology for setting limits. Economic forecasting of demand and supply projections of human resource requirements are not reliable as they are easily superseded by unanticipated developments in product and labour markets.
- ▶ Lack of flexibility. These systems lead to a high level of regulation and bureaucracy, and employers criticize them for lack of flexibility to respond to changing labour market or business conditions. Delays in approval can mean that some sectors no longer need the workers initially demanded. This may lead to unfilled quotas. (OSCE, ILO, & IOM, 2007).
- ▶ Not suitable for the admission of some categories. The latter represent “specified-employment workers or other groups of salaried, own-account or self-employed workers who move in reaction to employers’ requests (inside or outside transnational enterprises)” (Böhning, 1996). Employers’ requests for such workers are highly individualized compared to production line or seasonal workers. “Project-tied migration is also difficult to force into the strait-jacket of quotas” (Böhning, 1996: 39). When most low skilled workers cross borders informally as in Southern Africa, it is again difficult to define quotas.
- ▶ Quotas are subject to political pressure. Some employers or big business may influence administrators for more favourable quotas.
- ▶ They can lead to backlogs or waiting lists. When supply exceeds demand or the quota limit, there is oversubscription. This requires procedures at the discretion of administrators which may result in inefficiency.
- ▶ Rigid quotas well below employer needs can result in irregular flow and employment of migrants under irregular situations which is undesirable.

Box 3.3 shows the experience of the quota systems in Switzerland.

Box 3.3: Switzerland and Quotas

With a massive inflow of migrant workers in the early 1960s, Switzerland launched an enterprise-based quota system. In 1970, this was replaced by an overall quota for the country as a whole, which was divided into allocations by type of employment and regions, i.e., cantons. Three types of permits were issued under quotas:

- ▶ One-year permits for skilled and highly skilled workers (subject to labour market test and renewable);
- ▶ Seasonal permits for specified sectors (construction, hotel and catering industry and agriculture).
- ▶ Short-stay permits (for skilled health care personnel, project tied low skilled construction workers; trainees)

This immigration quota system was continued until 2002 when it signed the Schengen Agreement. Thereafter, quotas were sharply reduced and applied to third country nationals and only EU/EEA citizens posted in Switzerland (not under local contracts). For third-country nationals, the number of available B and L work permit quotas in 2022 were: 4,500 and 4,000 respectively. For posted EU/EEA nationals, the quotas were 500 B residence permits and 3,000 L short-term residence permits.

A review has found that the immigration quota system operational during 1970-2002 served to slow down the growth of the foreign population in Switzerland which was one objective. But it had no impact on local unemployment or improvement of skills of local workers. This impact adversely affected the productivity of the Swiss economy (Lin, 2022: 2).

3.3.6 Examples of good practice from different regions

The Employment Permit System of the Republic of Korea is a good example of allocation of country-based quotas based on signed bilateral MOUs with each country (Cho et al., 2018). In normal years (excluding crisis years), the maximum quota for all 16 countries has averaged about 80,000 workers which implies a limited quota for each country for low and semi-skilled workers for small and medium enterprises. It is a Government to Government recruitment system to avoid malpractices associated with private recruitment agencies. Wages are much higher than in GCC or Southeast Asian countries, and workers are subject to labour laws of the Republic of Korea. The system has worked well, and the government provides incentives for return at the end of the contract.

The Recognised Employer Scheme of New Zealand with Pacific Island countries is another quota programme for seasonal workers in horticulture in New Zealand. Close government monitoring of the programme and integration of development objectives into the seasonal worker programme are innovative features. The total quota for all Pacific Island countries has been increased from about 8,000 to 19,000 or so. The RSE Scheme has been described as “One of the most effective development interventions for which rigorous evaluations are available” (Winters, 2016).

Their relevance for the SADC destination countries

Most SADC destination countries already use variants of quota systems. Seychelles for instance, has made several changes to the system. It has also tied quotas to labour market tests. It is a rigid system with small quotas and stringent conditions on local transfer of skills. The Presidential Decree No. 43/17 of 6 March 2017 of Angola introduced a maximum quota of 30 per cent of foreign employees for companies.²² In the case of Mauritius, companies planning to employ a large number of foreign workers or workers in skilled positions should first obtain a Permission in Principle (PIP)/ Quota from the Ministry of Labour, Industrial Relations and Employment. A PIP defines the number of foreign workers a company is authorized to employ, the positions and the countries of recruitment. In general, the ratio of one foreign worker for three local workers is applied in determining a quota although exceptions are made in case of scarcity areas and where justified.²³

South Africa is again thinking of using quotas as it is concerned with rising local unemployment. The strategy is to use the 2022 draft National Labour Migration Policy and Employment Services Amendment Bill to introduce quotas on the total number of documented foreign nationals with work visas in major economic sectors such as agriculture, hospitality and tourism, construction, among others. Restrictions on business visa system will also be adopted in defining a list of sectors where foreign nationals cannot be allocated business visas and amendments to the Small Business Act to limit foreign nationals establishing small, medium and micro-enterprises (SMMes) and trading in some sectors of the economy (BusinessTech, 2022).

A quota may apply in respect of a sector of the economy, an occupational category or a geographical area. The Minister will establish a quota in a sector after consultation with the Employment Services Board and after considering public comments.²⁴

22. Report of the UN Special Rapporteur on the human rights of migrants on his mission to Angola, A/HRC/35/25/Add.1, 25 April 2017.

23. https://workpermit.mu/eworkpermit_wkp/upload/cms/pdf/WP%20GUIDELINES%20UPDATED%20FEB2014.pdf

24. Statement by the Employment and Labour Minister, Thulas Nxesi

<https://www.sanews.gov.za/south-africa/national-labour-migration-policy-released-public-comment>

3.3.7 Key messages and the way forward

Key messages

- ▶ The biggest advantage of numerical limits is the transparency so that employers, migrant workers and policy makers know what to expect. It enables channelling migrant workers in line with labour market needs of sectors and occupations.
- ▶ The success will depend on careful monitoring of the labour market, including trends in local unemployment, vacancy rates, business needs and challenges, and demographic trends so that quotas may be modified as needed.
- ▶ Regular consultation among tripartite partners is also essential to ensure flexibility with changing economic conditions.

Way forward

- ▶ Gradual replacement of quotas by market determined approaches will lead to greater efficiency.
- ▶ Regular monitoring and periodic evaluation of numerical limits must be made to ensure that no adverse impacts on relevant economic sectors are made.

What action is needed from Ministry of Labour, workers and employers' organizations?

- ▶ Effective cooperation and consultation on setting, monitoring and revising numerical limits.
- ▶ Aligning policies to SADC policies and frameworks.
- ▶ Cooperation to ensure protection of migrant workers and promotion of non-discrimination and equal treatment.

3.4 POINTS-BASED SYSTEMS (PBS)

3.4.1 Definition of Points-Based Systems

Points-based systems (PBSs) are mainly used for admission of skilled migrant workers considered essential for growth and development of the host country economies and to successful labour market integration and settlement of those admitted. These systems focus on criteria considered essential for labour market success and may include other factors such as adaptability and social integration. The common criteria for award of points are proficiency in local language/s, educational and professional qualifications, skills, age, work experience, presence of a job offer, and salary offered (OECD, 2014; Papademetriou and Hooper, 2019; Tani, 2014, 2018). Applicants have to reach a minimum pass mark or threshold to be considered along with other criteria such as health and character requirements. The points system is thus a merit-based system that aims to select 'the best and the brightest' from among the candidates.

Some countries award additional bonus points based on several other factors: close family ties, jobs in rural areas or away from major cities, skills obtained locally, skills in shortage occupations, and also partner qualifications. Thus, the criteria focus on labour market integration and settlement preparedness.

3.4.2 Examples of the incidence of the policy/practice

As the OECD (2014) noted: "For decades, the PBS was the main tool of discretionary migration control and remains so in Australia, Canada and New Zealand", but they have modified it with changing conditions. Other countries have also adopted variants of the system, the UK being the most recent following Brexit.

Table 3.3 shows an illustration of points awarded in three countries.

Table 3.3: Points Table for Point Based Systems (Maximum points) – Selected Countries

Criteria	Canada	Australia	New Zealand
	Points	Points	Points
Language proficiency	28	20	
Education	25	20	70
Study in host country		5	
Age (below 45 years)	12	30	30*
Skilled occupation	0	20	50
Work experience	15	20	50
Within host country		20	
Outside host country		15	
Professional year in host country		5	
Sponsorship for job	10	10	10
With job offer or working in host country		10	50
Working in area of absolute skills shortage			15
Partner qualifications/job offer		10	20
Regional study or work		5	10
Work outside			30
Receive pay higher than threshold			20
Community language skills		5	
Adaptability	10		
Total	100	165	265
Minimum Pass mark	67	65	100
EOI score for selection			180 +

Source: From country immigration sites. Not strictly comparable because of different points systems used; May not include all the bonus points. * Age below 55 years.

Sources: Australia: Points table for Skilled Independent visa (subclass 189)²⁵; Canada: Federal Skilled Worker Program (Express Entry)²⁶; New Zealand: Points Indicator for Skilled Migrant Expression of Interest.²⁷

25. <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-independent-189/points-table>

26. <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers/six-selection-factors-federal-skilled-workers.html>

27. The original hyperlink has been removed by the Government of New Zealand when the points system for skilled visa category was changed. The information provided in Table 3.3 applies to the situation in August 2023. Details on the current points system in New Zealand can be found at:

<https://www.immigration.govt.nz/new-zealand-visas/preparing-a-visa-application/living-in-new-zealand-permanently/new-zealand-skilled-residence-pathways/changes-to-the-skilled-migrant-category-resident-visa>

UK PBS: The UK has finally moved to a PBS system from 1 January 2021 following its departure from the European Union (BREXIT) in its drive towards ‘a high wage, high-skill, high productivity economy’ (Home Office, 2020).

Special features:

- ▶ The system is open to both EU and non-EU nationals on the same basis.
- ▶ A job offer, a job at appropriate skill level and English language proficiency are mandatory (Table 3.4).
- ▶ It is an employer-led system since a prior job offer is mandatory.
- ▶ Another special feature is that all applicants are able to trade characteristics, such as their qualifications, job in a shortage occupation identified by MAC, and a doctoral degree in a relevant subject against a lower salary to get the required number of points.
- ▶ There are different salary rules for workers in specified health or education jobs, and for ‘new entrants’ at the start of their careers.

All international students, as well as all skilled workers wanting to work or become permanent residents in the UK, will now have to achieve 70 points in the points-based system. The government statement reads as follows: “Students also will be covered by the points-based system. They can achieve the required points if they can demonstrate that they have an offer from an approved educational institution, speak English, and are able to support themselves during their studies in the UK” (Home Office, 2020).

Table 3.4: UK Point Based System for Skilled Workers

Characteristics	Tradeable	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum) – £23,039	Yes	0
Salary of £23,040 – £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20

A total of 70 points is required to be eligible to apply; some characteristics are tradeable as indicated above.

Source: MAC - Migration Advisory Committee, UK; Home Office UK, 2020.

PBS systems are rarely found in Africa. The White Paper on International Migration of South Africa proposed that the attraction of migrants with skills, investment and business interests should be linked to a points-based system. “.. the advantage of a points-based system is that it is transparent and can be used strategically and flexibly in response to changing situations and needs” (DHA, 2017: 46). However, there was no follow up and the 2022 draft National Labour Migration Policy (DEL, 2022) has made no reference to a PBS. As the Employers’ Guide on migration in Africa’ explains:

The points-based system is not used in Africa. One main reason is that points-based systems require frequent tweaking in order to be successful. ... Given the general slow pace of change in immigration legislation in the region, the concern is that immigration law policy under a points-based system will not accurately or adequately reflect current labour needs (ILO, IOE, & BAGM, 2021: 33).

3.4.3 Advantages and disadvantages

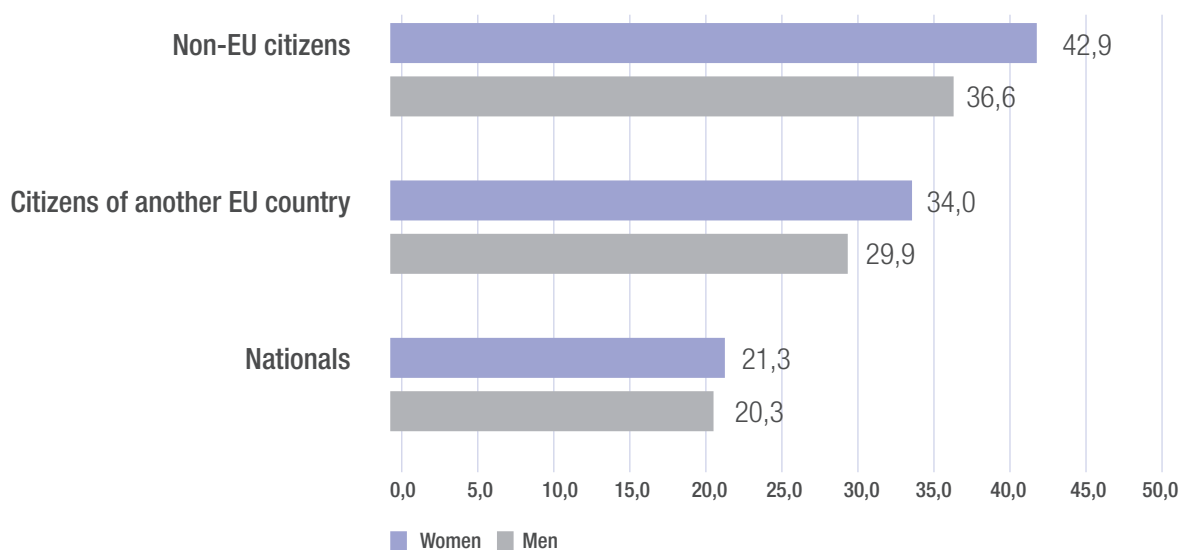
Advantages

- ▶ A points-based system can be calibrated to the needs and objectives of the host country.
- ▶ Since the public in the destination country generally favour selective immigrant policies, public support can be ensured. It is more acceptable to the public since they are convinced that the government would select migrants keeping in mind national economic priorities (Tani, 2014).
- ▶ The PBS can be combined with other systems. The traditional immigration countries of Australia, Canada and New Zealand use it as part of the expression of interest system (section 3.6). The UK has also combined it with the shortage occupation list prepared by the MAC.

Disadvantages

- ▶ There is considerable research to show that migrant workers selected under the PBS system may not succeed in the labour markets in destination countries. This is due to employers discounting their qualifications and work experience. Employers increasingly call for host country qualifications and work experience. This is ironical because migrants have been admitted through a comprehensive screening process regarding their qualifications and experience.
- ▶ The lack of recognition of skills leads to overqualification, brain waste and deskilling when qualified migrants work below their qualifications. Eurostat data has shown consistently higher rates of overqualification for migrant workers (third country nationals), especially migrant women compared to native workers. Non-EU women citizens registered a 42.9% overqualification rate, almost double that of native EU women. Even citizens of other EU countries experience high overqualifications rates²⁸ (Chart 1).

28. The over-qualification rate is calculated as the share of employed persons with a tertiary level of education employed in a low- or medium-skilled occupation.. EUROSTAT: The over-qualification rate is the proportion of employed persons with a tertiary level of education attainment (international standard classification of education (ISCED) levels 5–8) employed in a low- or medium-skilled occupation (international standard classification of occupations (ISCO) major groups 4–9). <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230309-3#:~:text=In%20the%20EU%20in%202021,pp%20more%20than%20in%202020>

Chart 1: Overqualification Rates in the European Union, 2021

Source: Eurostat²⁹

- ▶ PBS could also lead to gender bias against women migrants. Criteria such as wage thresholds discriminate against the selection of women migrant workers given the gendered wage disparities.
- ▶ A PBS may not be able to respond quickly to skill shortages in the host country. This is because the system requires long processing times.
- ▶ PBSs may lead to oversubscription by applicants which results in administrative burdens and backlogs (OECD, 2014). Another problem in Canada was that the number of applicants exceeded the number allowed in each year. At the worst point, applicants for the Federal Skilled Workers programme were waiting up to eight years for a decision. Businesses complained that superb applicants were languishing behind merely decent ones (Economist, 2016).

Challenges and problem areas that need attention (for both admission and post-admission phases)

The division of responsibility between immigration departments attracting foreign talent and employment departments ensuring its efficient usage in the labour market may generate discrepancies if carried out independently from each other. This presents a cost for the migrants, who may spend additional time working in jobs for which they are over-qualified before their skills are properly utilized and rewarded; and for the host country's society (Tani, 2018).

Implications for origin countries that have invested in human resources is an issue ignored in these unilateral policies. The skill selective immigration policies of developed countries act as a drain on human resources and scarce skills of origin countries. No destination country considers these negative externalities, and there is no discussion of compensation for such unilateral flows of persons educated and trained at the expense of developing countries. They contribute to brain drain, and eventually to brain waste of these human resources. In this sense, the winners are destination countries and their employers.

29. <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/DDN-20230309-3#:~:text=In%20the%20EU%20in%202021,pp%20more%20than%20in%202020>

3.4.5 Key messages and the way forward

Key messages

- ▶ Points-based schemes have been popular in traditional settler countries although they have been reformed largely through expressions of interest and other methods.
- ▶ These skill selective schemes impose a heavy burden on origin country human resources, for which they may not receive any reparation in the form of remittances or direct compensation.
- ▶ The labour market outcomes have been largely mixed, with no support from immigration and employment authorities after admission.
- ▶ There is now no pure PBS but hybrid systems combining demand driven and human capital approaches (OECD, 2014; Papademetriou and Hooper, 2019).

Way forward

- ▶ Major destination countries should take a comprehensive view of their unilateral skill selective policies such as PBS to cover the impact of such policies on origin countries. Some form of reparation to origin countries who lose their 'best and the brightest' should be considered.
- ▶ Skill partnerships where destination country governments and employers invest in training of migrant workers in their origin countries can compensate the uneven distribution of gains in skilled migration to some extent (Section 4.8). But they need to be upscaled with the participation of major destination countries.
- ▶ Combining PBS with other measures such as employer sponsorship and expression of interest systems should be promoted.

What action is needed from MoL, workers and employers' organizations?

- ▶ Government agencies involved in labour market integration should review the barriers to qualification recognition of migrant workers under PBS and work in collaboration with employers to facilitate their absorption into the labour market with a specific focus on gender issues.
- ▶ Employers and professional council should address obstacles facing migrant workers admitted under PBS in qualification recognition through mutual recognition agreements and provide bridging programmes, mentoring and internships for their labour market integration.
- ▶ Trade union organizations can lobby with the government and employer organizations to address labour market discrimination against those admitted under PBS and measures for the recognition of qualifications and work experience obtained overseas.

3.5 EMPLOYER SPONSORSHIP SCHEMES (ESS)

3.5.1 Definition of Employer Sponsorship Schemes

Employer sponsorship schemes (ESS) can be described as a mechanism through which employers directly offer jobs or hire migrant workers. It is described as a demand-driven system because employers sponsor workers to meet their short or long-term employment demands for workers. This is different from systems where the government selects workers based on points-based systems.

Employer sponsorship schemes have to operate within government set regulatory frameworks. In countries like New Zealand, only accredited employers can directly hire migrant workers from overseas. The criteria for accreditation are usually based on employers' past annual recruitment records, whether they have a good resource and training infrastructure system, their past compliance with employment and immigration laws, and demonstrated efforts to

employ and train local workers. New Zealand has introduced comprehensive checklists for employer accreditation.³⁰

Employer sponsorship schemes (ESS) can be used both for hiring of skilled and low skilled workers or admission under temporary or permanent migration streams. ILO instruments specify the principle of equal treatment whether in temporary or permanent status. Migrant workers should have the freedom to change jobs or the employer maximum after two years of work. (See Section 4.7 Employment mobility for migrant workers).

3.5.2 Advantages and disadvantages

Advantages

- ▶ The ESS system reflects the actual demand for workers in line with labour market needs of employers.
- ▶ Employers can meet the demand for workers within a short time without going through bureaucratic procedures.
- ▶ Employers also have a more reliable workforce because employment is tied to them, and workers cannot switch jobs.
- ▶ Governments can use the Employer Sponsorship mechanism to channel migrants to desired areas according to economic benefits (Sumption, 2019).
- ▶ ESS can be and often are combined with other admission methods – PBS and EOI schemes. A confirmed job offer carries more weight in EOI schemes as in Australia, Canada and New Zealand.
- ▶ Workers also benefit in several ways (Papademetriou & Sumption, 2011). First, they can choose between employers and types of work, and migrate into new jobs with limited paperwork. Some may get better working conditions based on the employer and government regulations. It also minimizes the risk of overqualification and brain waste because they are placed in jobs commensurate with their skills and qualifications.

Disadvantages

- ▶ Employer sponsorship schemes can reduce the employment mobility of workers given employer-tied visas. Generally, both the residence and the work permit may be linked to the job in employer tied visas. This could, in turn, lead to labour exploitation of workers as witnessed in Australian and Canadian temporary work programmes (Boucher, 2019; Wright, Knox, & Constantin, 2021). The recent review of the Australian migration system by the new Labour Government (Commonwealth of Australia, 2023) found serious problems with the employer-sponsored temporary migration programmes and argued for mobility for temporary visa holders in the labour market. It stated:

Employer sponsorship, although enabling a temporary migrant to be employed on- arrival, has created the opportunity for exploitation in the labour market because it stifles the ability and willingness of an employee to report non-compliance with labour standards or to move to another employer (Commonwealth of Australia, 2023: 4).

- ▶ In Canada, research has shown that temporary workers may tolerate poor working conditions (low pay, excessive working hours, and unsafe working environment) because the employer has a large say in their transition to permanent residence and therefore, good relations with the employer is considered crucial (Crossman, Feng, Hou, & Picot, 2020; Papademetriou & Sumption, 2011; Sumption, 2019). In Australia, workers with temporary sponsored skilled visas can lose their residency rights – and thereby prospects for transition to permanent residency or citizenship – if they lose the job and cannot find another sponsor within 60 days. This situation can lead to ‘hyper dependence’ on the employer which reduces migrant workers’ bargaining power and willingness to seek redress in case of rights violations (Wright & Constantin, 2021).

30. <https://www.immigration.govt.nz/assist-migrants-and-students/other-industry-partners/accredited-employer-work-visa-resources>

- ▶ Employers can manipulate the system to continue accessing cheaper migrant labour (Papademetriou & Sumption, 2011)
- ▶ Sumption (2019) has argued that the system favours large firms because the administrative burden of compliance with official requirements is difficult for smaller firms. For example, under Tier 2 (general) – the previous employer-sponsored work-permit route in the UK, smaller firms had only a small share of sponsored workers.
- ▶ In temporary migration schemes for low skilled workers in Southeast Asia and the Middle East, sponsorship often leads to abuse and exploitation of both women and men migrant workers. An extreme case of sponsorship is the kafala system in Middle East countries. Female domestic migrant workers hired under the sponsorship of private household employers are seriously affected because labour laws do not extend to them in most countries.

3.5.3 Examples including ESS good practices

Most destination countries have used or are currently using the ESS system: Australia, Canada, New Zealand, Norway, Spain and Sweden, among others. The US employment-based immigration has been implemented largely through employer sponsorship systems. For example, the H1B visa scheme for skilled workers is employer-sponsored (Papademetriou & Sumption, 2011). Most temporary worker programmes for low skilled workers in Asia and the GCC states also operate through the employer-selection system. Given the large numbers involved and issues of screening, employers may hire them through the mediation of private recruitment agencies. The Korean Employment Permit System uses state managed recruitment where employers choose workers through a roster of qualified applicants. It is also the common system adopted for seasonal worker employment in Canada, Germany, New Zealand and UK, among others.

For skilled workers, the selection mechanism can consist of two steps: first, employers recruit them through temporary work visas (e.g., H1B in the USA), and second, employers sponsor them for permanent residency visas.

Employer-led systems may provide temporary or permanent work authorization.

Box 3.4: Australia: Skilled Employer Sponsored Regional (Provisional) visa (subclass 494): Employer Sponsored stream

Subclass 494 visa enables regional employers to address identified labour shortages within their region by sponsoring skilled workers where employers cannot find an appropriately skilled Australian worker. With this type of visa, migrant workers can travel to and from Australia for 5 years.

- ▶ It allows workers to live, work and study only in designated regional areas of Australia for 5 years
- ▶ If eligible, they can apply for permanent residence after 3 years.

Requirements

- ▶ meet minimum requirements and be nominated to work in an occupation on the relevant skilled occupation list
- ▶ have at least 3 years relevant work experience in the nominated occupation
- ▶ have a relevant skills assessment, unless an exemption applies
- ▶ work only for the designated sponsor or associated entity, unless an exemption applies

- ▶ be under 45 years of age
- ▶ meet minimum standards of English language proficiency

Stay - 5 years; Cost - from AUD 4,240

Processing times:

25 of applications: 87.25 Days

50 of applications: 8 Months

75 of applications: 12 Months

90 of applications: 15 Months

Source: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-employer-sponsored-regional-494/employer-sponsored-stream>



Countries with long established points-based systems (Australia and Canada) have combined them with some form of employer-sponsorship. They have expanded the share of migrant workers entering through employer-selected routes. The objective is to ensure the smooth integration of admitted workers into employment without long delays.

Another way of recognizing employer demand and sponsorship is to award bonus points for a confirmed job offer in admission under temporary and permanent visas (Papademetriou & Sumption, 2011: 5).

ESS relevance for SADC destination countries

Most SADC countries use employer selection systems but with strict controls or combined with shortage lists.

Monitoring of working conditions and compliance with labour laws is very important, especially for temporary workers.

Labour inspection systems should be effectively enforced. While South African MOUs on labour cooperation with some SADC countries (Lesotho, Namibia and Zimbabwe) refer to 'inspections and enforcement services' as one of the areas of cooperation, there is no information on their effective application in practice.

3.1.4 Key messages and the way forward

Key messages

- ▶ Employer sponsorship is still the most common form of admission in temporary migration schemes for low skilled workers such as in the GCC countries and in Asia. However, employer-tied visas can give rise to various rights violations which are often not thoroughly addressed by destination countries.
- ▶ Under skilled admission programmes in several countries, the linking of employer sponsorship schemes to the transition to permanent residence could result in exploitative conditions for concerned migrant workers.
- ▶ Traditional immigration countries have modified employer sponsorship of skilled workers with expression of interest systems involving a two-step procedure or hybrid selection systems. Under this, employer sponsorship or job offer is a key criterion influencing selection and transition to permanent residence.

Way forward

- ▶ Most SADC countries use employer selection systems but with strict controls or combined with shortage lists. It is important to combine elements of both demand driven migration with points-based systems. But the administrative burden of making frequent adjustments and fine tuning of such systems is difficult in SADC main countries of destination due to poor labour migration statistics or data systems and lack of administrative capacity.
- ▶ Monitoring and follow up of conditions of migrant workers admitted under employer sponsorship schemes is a priority for SADC countries. Effective labour inspection systems should be considered a priority in this context.

What action is needed from ministries of labour, workers and employers' organizations?

Governments have a responsibility to ensure the protection of migrant workers hired through employer sponsorship schemes. They should ensure effective labour inspection systems. Recommendations of employers should not be the sole or major criterion when granting permanent residency to migrant workers.

Employers' organizations should promote among their members fair recruitment practices and adherence to national and international guidelines in the treatment of migrant workers.

Trade union organizations and civil society should monitor and report on violations of rights and exploitation of migrant workers hired under the Employer Sponsorship Schemes.

3.6 EXPRESSION OF INTEREST (EOI) SYSTEMS

3.6.1 Definition of Expressions of Interest Systems

The EOI system was designed to minimize the time required for the selection of skilled migrant workers who meet the objectives of the destination country: high likelihood of achieving economic success and good integration and meeting long-term socioeconomic and demographic objectives (Desiderio & Hooper, 2016). EOIs are a response to the problems of point-based systems where migrants have experienced adverse labour market outcomes and brain waste due to various barriers in the host country. EOI is a hybrid system combining both demand driven and supply driven aspects. Interested migrants are pre-selected into a pool and then invited to apply for visas.

While the Expression of Interest system has been described by the OECD as “the most recent innovation in skilled labour migration management” (OECD, 2019a), it had been introduced as far back as 2004 in New Zealand. Australia adopted it in 2012 and Canada introduced it as “Express Entry” from January 2015 (Desiderio & Hooper, 2016; OECD, 2019a, 2019b).

The EOI system goes under different names in different countries: New Zealand applies it under its ‘Skilled Migrant Category’ (its permanent economic migration programme) while Australia covers it under ‘SkillSelect Programme’ and Canada uses the ‘Express Entry system’ (OECD, 2019b; 2019d).

3.6.2 Steps and procedures

The EOI is a two-step process for the selection of skilled migrants from abroad or from those inside the country on a temporary basis. “EOI is not a migration programme itself but a tool to improve migration management under existing programmes” (OECD, 2019b: 3).

a. Pre-selection into a pool

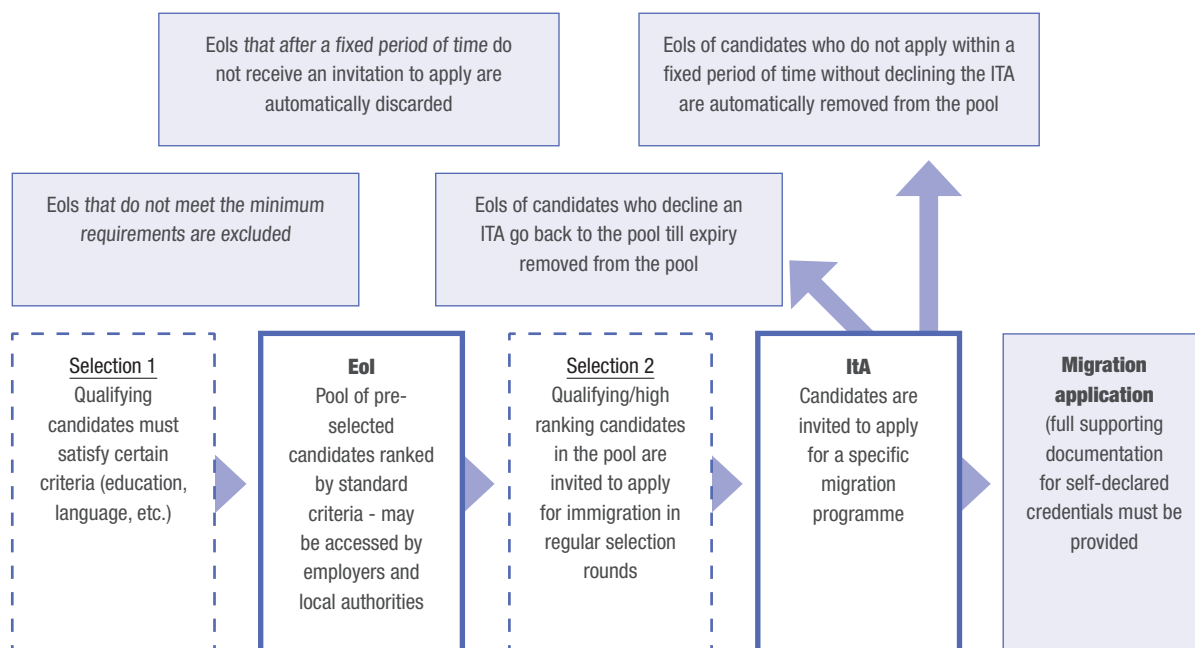
During the first stage, interested candidates are expected to electronically file an expression of interest in selected migration programmes providing required information. Candidates have to meet minimum eligibility criteria relating to language, education, competencies, age, among others, and be subject to a pre-screening by the government. Following that step, an applicant’s profile is placed in a pool and ranked according to a PBS where it can be accessed by prospective employers.

b. Final Selection from the pool

During the second stage, immigration authorities select the highest ranking candidates who are invited to apply for visas subject to admission targets set by the government. Having a job offer from an employer improves the chances of selection as separate points are awarded for that.

Chart 2 explains the stages of EOI as highlighted by the OECD (2019b).



Chart 2: Generic Model of Expression of Interest

Source: OECD Secretariat

Reproduced from OECD (2019). The Expression of Interest Model: What Lessons for Migration Management in the EU and elsewhere? *Migration Policy Debates*, No. 18, March 2019, p.2

3.6.3 Advantages and disadvantages

Advantages

- ▶ The system can be used for multiple selection whether migrants are abroad or already in the country on temporary visas. For example, third country nationals already inside the EU or workers on temporary visas in Canada can apply for the programme. A single EOI pool can serve at the same time long-term economic and demographic goals and immediate demands of employers. It can also cater to several migration streams and selection purposes
- ▶ It can serve more than one economic immigration programme using the same pool - labour migration and business migration as in Australia and New Zealand. Canada uses the *Express Entry programme* to admit candidates in managerial, professional, and technical and trade occupations.
- ▶ Different stakeholders can play an active role during the selection process: employers, workers' organizations, applicants themselves and local authorities as appropriate.
- ▶ It reduces backlogs of applications for visas (which has been a perennial issue with PBS) since only the highest ranking candidates are invited to apply. The system allows prioritization in the case of oversupply using the ranking system. The EOI method thus marks a shift away from the less agile 'first-come, first-served' method of processing applications, a method that has resulted in endless backlogs and significant mismatches between newcomers' skills and the needs of local labour markets (Desiderio & Hooper, 2016). Immigration, Refugees and Citizenship Canada (IRCC) can process 80% of complete Express Entry applications in six months – 50% faster than before (OECD, 2019b).
- ▶ Avoids brain waste situations. Overqualification, brain waste and deskilling have been associated with supply driven immigration systems such as PBS. Most migrants invited to apply already have job offers or are likely to find employment in a short time due to intensive prior screening.

- ▶ Employers and provinces/territories have a greater role in immigrant selection. The scores given to employer job offer means the active involvement of employers.

Disadvantages

- ▶ The administrative and infrastructure requirements for successful implementation of an EOI system are demanding. There should be a standard framework for assessment and ranking of candidates and their credentials, efficient administrative structure, automated management systems (OECD, 2019b).
- ▶ The system requires close monitoring for making needed adjustments quickly. The administrative burden can be high.
- ▶ The system can work best within a homogenous system such as a country. In a complex group of countries such as the European Union, divergent immigration policies of member states make it difficult to use an EOI system efficiently.
- ▶ The system also provides limited incentives for top ranked applicants to attempt for a higher points score because the overall difference in likelihood of receiving an invitation to apply (ITA) and processing times by points score is small as the Australian case reveals (OECD, 2019b).

3.6.4 Examples of good practice

The best applications of the system are found in Australia, Canada, and New Zealand. Table 3.5 highlights the main features of the programmes applied in these countries. These countries also tailor the EOI to serve regional and local interests. The Australian programme is implemented at state, territorial, or regional government level who can nominate workers for their specific labour market needs. New Zealand provides premium points to applicants intending to stay outside the major cities. The system is decentralized in Canada where provinces and territories and employers get involved in selecting migrant workers for their specific requirements.

- ▶ OECD (2019b) describes the EOI as the most modern migration policy tool. While it cannot be copied in every country, many of the key principles which underlie the functioning of EOI systems – two-step selection case management, multiple stakeholders and programmes, pre-certification for a pool- can be picked up by policymaking for skilled migration in widely different countries and contexts. (OECD, 2019b: 10).

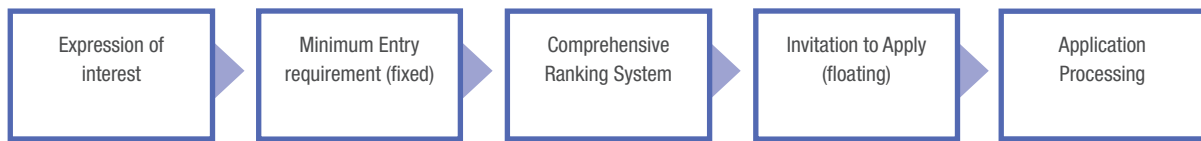


Table 3.5: A comparative overview of the EOI systems in New Zealand, Australia, and Canada

	Migration streams served	Electronic or Paper ?	Pre-selection criteria (pool admission)		Candidates may update their profile	Expiration of profile (months)	Selection criteria (ITA issuance)	Months to apply after ITA
New Zealand	Skilled Migrant	E/ P	Meet requirements for: occupational profile; qualifications; age; Language	and score 100 points on “hybrid” human capital and demand factors PBS	N	6	Score ≥ 160 points on the PBS (same PBS as for pre-selection)	4
	Investment 2	E/ P		and score 100 points on a PBS	N	6		4
Australia	General Skilled Migrant (visa subclasses: 189; 190; 489P)	E	Meet requirements for: occupational profile; skills assessment; age; and language	and score 65 points on “classic” human capital factor PBS	Y	24	189/489: rank highest in pre-selection PBS 190/489: State or Territory nomination	2
	Business Talent (visa subclass 132)	E	Meet requirements for: assets/capital; age; language		Y	24	Sponsorship by State/Territory or Austrade	2
	Business Innovation and Investment (visa subclass 188P)	E	Meet requirements for: ▶ assets / business history; age; language	and score 65 on a PBS (points for human capital and business factors)	Y	24	Sponsorship by State / Territory or Austrade	2
Canada	Federal Skilled Worker Program (FSWP); Canadian Experience Class (CEC); Federal Skilled Trades Program (FSTP)	E	Meet requirements for: ▶ eligibility for at least one stream* (includes Language and educational credentials assessment) *CEC and FSTP = list of requirements; FSWP “hybrid” human capital and demand factor PBS		Y	12	Rank highest (above floating cut-off score) on the common CRS Or nomination by Provinces or Territories	2

Source: MAC - Migration Advisory Committee, UK; Home Office UK, 2020.

- ▶ The Canada Express Entry is the most elaborate selection system in the OECD (OECD, 2019a). Compared to systems in Australia and New Zealand, the Canadian system has a unique feature in the allocation of points along a continuum under the Comprehensive Ranking System, going up to a maximum of 1,200 points. This allows for more fine tuning and better selection of migrant workers than in other countries (OECD, 2019d). Another innovative feature of the ranking system used are points allocated for “interactions” of skills. An example is that foreign work experience is granted points only if the candidate has a good knowledge of one of the national languages as well (OECD, 2019d). A key factor is the regular revision, tweaking and updating of the selection criteria and other features based on policy research and review of previous and ongoing systems.

Chart 3: Structure of the Canada EE system

Source: reproduced from OECD, 2019d.

- ▶ Canada: Express Entry Employer Liaison Network (ELN)

Another good practice in Canada is the government measure to facilitate the engagement of the private sector by introducing the Express Entry Employer Liaison Network (ELN) officers throughout to provide information, collect feedback on its implementation, and support (Desiderio & Hooper, 2016). It helps employers navigate the Express Entry system providing them with useful and up-to-date information on permanent economic immigration programmes and policies related to Express Entry. Its goal is to increase employer awareness and use of the Express Entry system, as well as to facilitate matches between employers in Canada (outside of Quebec) and skilled labour overseas.

3.6.5 Key messages and the way forward

Key messages

- ▶ The EOI system has now been established as ‘a flexible, efficient and versatile tool to manage migration’ (OECD, 2019b: 10).
- ▶ It can be adapted to serve a range of migration programmes in different contexts.
- ▶ At the same time, it is a tool which considers only the self-interest of countries of destination without any regard to the impact of attracting the best and the brightest from developing origin countries.

Way forward

- ▶ The OECD (2019b) has identified areas where EOI adoption has distinct advantages (OECD, 2019b)
 - to manage admissions where supply exceeds planned targets or administrative capacity.
 - to encourage employer involvement in migrant selection programmes management.
 - to direct candidates to apply for select immigration programmes or regions.
- ▶ Are SADC countries ready for EOI systems?

For most SADC destination countries admitting a small number of migrant workers (e.g., Mauritius and Seychelles), the efforts involved may not be worth it. South Africa with its large inflows of skilled workers could consider a modest and incremental approach as suggested for the EU.

3.7 JOB SEARCH VISA (JSV) PROGRAMMES

3.7.1 Definition of Job Search Visa Programmes

Job search or job seeker visa programmes are generally offered by destination countries to facilitate skilled workers to explore the job market and secure employment within a stipulated time.

While this type of programme is not very common and remains largely under-studied, countries in the European Union as well as Australia have adopted it as a ‘bridging visa’ aimed at recent graduates from higher education institutes (HEIs) in particular to allow them time and opportunities to seek work in the labour market. Notably, regional

migration hubs such as the United Arab Emirates (UAE) also have adopted this type of visa programme.

Similar to a points-based systems, a job search visa programme can be used to promote the migration of a specific skills group and can be useful when domestic labour shortages persist in specific skills categories, or the economy is aiming to strengthen a specific industrial sector.

Job seeker visa programmes are beneficial within a region such as SADC as they can facilitate transparency and help collect more accurate data on labour demand and supply in particular sub-sectors of the economy.

Such programmes should ideally be constructed through a consultative process as government entities must work closely with employers to identify gaps in the labour market as well as consult with workers' associations on access to decent work including wages and social protection for all workers.

3.7.2 Scope

Despite the universality of the term, job search visas are not necessarily aimed or made accessible to any prospective migrant worker. Rather, States tend to be selective and set eligibility criteria on who could use such visa programmes. Some of the common criteria used to determine access are explained below.

Type of educational/skills qualification. States tend to set out clearly who is allowed to use this type of visa. Generally, they are aimed at graduates with a bachelor's or post-graduate degree. The UAE's newly introduced job seeker scheme specifically targets applicants who meet the criteria of the top three levels of skills determined by the Ministry of Human Resources and Emiratization (Abdulla, 2022).

Recognition of qualifications. Countries in the European Union use the job search visa option to allow non-EU graduates of HEIs to seek and secure employment, with the exception of graduates of certain countries such as Australia and the UK who do not require a visa to search for work. The degree programme and the qualification gained must be recognized in the country of destination. For example, in Germany, if the degree or the programme studied is in its database of accreditation, the degree must be formally assessed by the relevant authority in Germany. This also applies to professionals such as doctors, nurses, and architects whose licenses must be compatible (Burmman, et al., 2018).

Duration. The duration of the visa can vary from 60 days to 120 days (i.e., in the UAE) or in the case of Germany, 06 months. Graduates of a German HEI or a German vocational training qualification, however, are granted 18 months and 12 months respectively, to find a job (Burmman, et al., 2018).

Cost. Securing this type of visa may also be dependent on the financial capacity of the applicant. For instance, the cost of the visa can be attached to the duration of the visa. The applicant may have to provide evidence of sufficient funds to cover the living costs for the duration of the visa. In addition, they may also be required to secure health insurance in the pre-admission phase in order to be considered for the visa programme.

3.7.3 Objectives

The primary objective is to attract suitable candidates for work in specific sectors and/or with specific skills demanded in the labour market of the destination country. As a bridging visa, a job search visa programme allows countries to retain graduates from HEIs that can contribute to the economic and social development overall. It further provides time for both employers and prospective employees to search for suitable candidates and workplaces respectively.

3.7.4 Advantages and disadvantages

Advantages

- **Ability to attract/retain skilled workers.** By promoting work search visas, the destination country signals that the job market has attractive employment opportunities for those with the desired skills. By facilitating the migration of aspiring workers to meet with prospective employers and explore the options available,

countries can also prevent the loss of workers to neighbouring competitors.

- ▶ **Transparent and more accountable processes.** With the prospect to meet potential employers and the opportunities to have educational and skills qualifications verified in the country of destination, the process of searching and securing work will be more transparent. Accountability on the part of the employer is also higher as the processes remain more visible. This can also reduce people using alternative options such as tourist visas to enter a country and search for work, enabling a capture of relevant data on people on the move in search of work.
- ▶ **Promotes migration via regular channels.** By promoting the opportunity to travel to the destination country of choice and the time to find suitable work, the chances of migrant workers using irregular channels to enter a country can be reduced. The corruption and possible exploitation migrant workers experience in seeking work via intermediaries thus, can be reduced as well.
- ▶ **Prevents migrant workers from becoming irregular.** Existing laws linking the work visa to a specific job or employer can become void when the worker's employment is terminated prematurely or otherwise. The use of the job-search visa in such instances, offers these workers a reprieve and adequate time to seek out potential new employers without falling into illegality/irregular status in the destination country.
- ▶ **Simplifies labour migration pathways.** The multiple pathways made available for workers to migrate once a job is secured, can be further simplified by the use of the job search visa. This allows the aspiring migrant worker time as well as the choice to select a job that suits his/her experience and capacity and skills. The complexities embedded into meeting different criteria for different job types can be reduced.

Disadvantages

- ▶ **Cost burden to migrant workers.** In this scenario, time is provided for the individual to seek jobs and secure employment in the given time period. However, until such time, the individual will have to incur considerable expenses in terms of living, health and any other costs. Although evidence is scarce, securing work may not always be successful either; migrants may experience racial/ethnic discrimination in accessing work.
- ▶ **Saturation of the job market.** Unless well-managed and coordinated with the relevant stakeholders, job search visas can lead to a saturation of the job market. As the supply overwhelms the demand for labour, it can have ripple effects on specific sectors of employment and will impact wages and decent working conditions.
- ▶ **Preference for specific skills.** Since job-search visas are generally used to attract workers with particular skills, these may not benefit all types of workers and may lead to discriminatory practices being adopted by countries to exclude certain types of lower-skilled workers.
- ▶ **Lack of support.** With the lack of access to seek support from public funds and the health services, among others, migrants are expected to manage on their own during this period. This may also entail not receiving any support from state entities to seek for and secure employment. The duration of the job seeker visa cannot be extended. Therefore, the onus is on the migrant to find a job and an employer during the given time period.
- ▶ **Applicability.** Job-search visas are most suited to countries that are generally seeking to attract workers and are not suited for countries that are considered as origin or transit countries.

3.7.5 Examples of good practice from SADC, AU or international levels

Applicants for a crucial skills visa (CSV) in South Africa did not require a prior job offer until 2022. They were generally required to have work experience in the professional field for a minimum of 5 years. With the release of the 2022 critical skills visa list, the Government changed the regulations and made the availability of a job offer a requirement for the CSV.

‘Make it in Germany’ job seeker visa programme issues residence permits up to six months to find employment. The following infographic issued by the government is a good example of the detailed steps required (chart 4 below).

The German D-visa is considered the job-seeker visa aimed at third-country nationals. While the number of visas issued remains relatively small, data points to an increase in the number of D-visas issued to non-EU nationals (Mayer, 2018). This confirms that such individuals have been successful in securing employment during the stipulated time period. The pre-conditions to secure a D-visa include possessing an accredited and recognized degree from a German university or elsewhere, evidence of adequate funds (calculated at 947 euros per month) to cover the individual’s living expenses for the time period and health insurance coverage. Notably, evidence of language proficiency is not required. Once employment is secured, this pathway enables the migrants to secure a residence permit. The residence permit for jobseekers cannot be extended. After a residence permit has expired, one may only re-apply for the same visa once he/she has spent the same duration abroad that was spent in Germany while seeking employment.

Countries like **Australia** have also traditionally relied on the international students at HEIs to provide a steady inflow of labour to the market. According to available evidence, while international students are mostly able to secure employment within a six-month period, the labour outcomes were poorer when compared with those recruited offshore. The international students earned less, had less job satisfaction and had a lesser capacity to utilize their formal qualifications (Hawthorne, 2010). This is attributed to Australia shifting from a supply-driven model to a demand-driven model where, sponsorship (by a particular state or employer) becomes the predominant means of securing permanent residency (Hawthorne, 2010). Even though a minority are unable to secure employment that reflects their qualifications and their field of study (Buddelmeyer, et al., 2013), some were able to secure permanent residency as well.

Portugal also introduced a job seeker visa from October 2022 for foreign nationals looking for work in the country. It is a single-entry visa, valid for 120 days and extendable for an additional 60 days. They can convert it to a residence permit if they find work within the 180-day period. Those who do not succeed in this 6-month period can reapply for another Job Seekers visa one year after expiry of the original visa .

3.7.6 Key messages and the way forward

Key messages

- ▶ Job seeker visas are a common tool used by some countries to target potential workers with specific skills and qualifications. It is therefore, mostly seen as a demand-driven policy tool adopted by destination countries. Several sub-sectors in the economy can be either opened up for foreign talent or restricted via these job-seeker visas.
- ▶ The conditions used by countries to determine who can access such a visa can vary on the basis of the duration of the visa, the evidence that needs to be provided in order to qualify, as well as the cost of the visa and the accreditation of an individual’s qualifications and skills.
- ▶ The ability to transfer the visa to a less temporary status upon securing employment is a possibility built into the visa programme.
- ▶ Such visa schemes can be beneficial to the country as the process of seeking work through the overuse of alternative visa pathways can be minimized and migrants seeking work would not be violating the conditions of their visas if alternative options are used. Such programmes also provide more transparency and accountability to the recruitment process and help streamline multiple visa processes.

Way forward

- ▶ In line with the SADC’s stated commitment to ease mobility restrictions, destination countries in particular can consider how the job seeker visa programmes can benefit their economies as well as streamline their visa processes.

- ▶ Conducting a series of consultations/discussions with tripartite partners will help identify the applicability of a job-search visa scheme
- ▶ Destination countries can carry out an assessment/mapping to identify difficult-to-fill jobs in the economy and assess the possibility to allow potential employees to use a job seeker visa to enter the country and seek work.



Chart 4: Germany: Job Seeker Visa steps



At a Glance: Job Search Opportunity Card

Visa and entry procedure for immigrants from third countries subject to visa obligation.
General entitlement requirements (Section 5 of the Residence Act [AufenthG]): passport, proof of financial means, no existing reason for expulsion.

CHECK THE REQUIREMENTS

Step
1

- Qualifications:
 1. Qualification obtained in Germany or full equivalence of qualification obtained abroad, or
 2. State-recognised higher education or vocational qualification abroad (for vocational qualifications: at least two years training period): Apply for information from the Central Office for Foreign Education (ZAB), or
 3. Professional qualification positively recognised by the BIBB from a German Chamber of Commerce Abroad (AHK) of category A: ask the AHK about the requirements.
- For cases 2 and 3 additionally:
 - A score of at least six points in the points system.
 - Proof of language skills: German at a minimum level of A1 or English at a minimum level of B2.
- For all cases:
 - Secure financial means: blocked account with at least €1,027 per month (as of 2024) or Declaration of Commitment.

MAKE AN APPOINTMENT AT THE GERMAN EMBASSY

- Prepare the required documents: e.g. passport, proof of qualification and (if applicable) recognition notice, proof of financial means, proof of German language skills, proof of the criteria of the points system, visa application form.

i Please consider: on their websites, the German embassies and consulates provide information about possible waiting times for appointments and any additional documents that may be required.

Step
2

APPLY FOR A VISA IN THE COUNTRY OF RESIDENCE

Step
3

- Bring documents in their entirety.
- Fees: €75 (in local currency).
- i Please consider:** processing times may strongly vary depending on the mission abroad and processing workload. Please find further information on the website of the competent embassy.

ENTER GERMANY

- Issuance of the opportunity card in the form of a visa.
- Book flight / plan journey to Germany.
- i Please consider:** in order for an entry visa to be issued, proof of valid health insurance coverage must be presented. After entering Germany, new health insurance must be taken out.

Step
4

APPLY FOR A RESIDENCE PERMIT IN GERMANY AFTER SUCCESSFUL JOB SEARCH

Step
5

- Register your home address in Germany at the Residents' Registration Office.
- Book an appointment at the competent foreigners authority.
- Ask the foreigners authority for a list of the required documents and start the preparation.
- **After successful job search:** switch from the opportunity card to a residence permit for the purpose of employment or apply for the extension of the opportunity card.
- Fees may add up to €100 (Sections 45 ff. of the Residence Ordinance [AufenthV]).
- i Please consider:** the application for the respective residence permit must be submitted before the opportunity card expires.

This overview is a simplified representation of the visa procedure. The steps described are solely for the purpose of clarifying the application procedure for residence permits. Further details on the visa application procedure and information on important points of contact can be found at www.make-it-in-germany.com.

Source: Federal Ministry of Economics and Climate Action, Germany³²

32. https://www.make-it-in-germany.com/fileadmin/1_Rebrush_2022/a_Fachkraefte/PDF-Dateien/3_Visum_u_Aufenthalt/Visagrafik_EN/2023_Jan_Miig_Visum_Arbeitsplatzsuche_EN.pdf

3.8 WORK/STUDY VISA (WSV) PROGRAMMES

3.8.1 Definition of Work/Study Visa Programmes

Work/study visas (WSV) programmes are a common pathway seen across several countries of the global North and South that enable youth in particular, to pursue – mostly - their tertiary level education in a foreign country. In some cases, they are described as Study and Work or Post-Study Work visas.

A work/study visa is provided for a specific period which usually indicates the duration of the academic programme. Many such visas allow the holder, the student, to work a specific number of hours each week or month. In most countries, students who have successfully completed the programme are then provided a bridging period when they can apply for jobs in the labour market. The promotion of such schemes, therefore, allows such countries to respond to labour shortages in key sectors in their countries. Studies have also indicated that countries offering opportunities to work during and after the study programme, are considered an important selection criterion by international students (OECD, 2022).

Obtaining a visa to study under these programmes involves coordination across several entities including the higher education institution (HEI), the student, his/her family, intermediaries as well as government agencies in both the destination and origin country. Depending on the regulations, this can be deemed as a tripartite concern, since most students would also be working, either part-time or with very few imposed restrictions. International students pay significantly higher fees than home students and therefore, such work/study programmes are a major stream of revenue to public universities and the governments.

3.8.2 Scope

Several approaches are adopted to determine the scope of (WSV) programmes.

- ▶ Which programmes and at what level are available? Data from countries in the OECD indicates that international students constitute 7 percent of undergraduate, 17 percent of master's and 26 percent of all PhD students registered in 2020 (OECD, 2022). Noticeably, international students tend to be over-represented in the sciences compared to social sciences (OECD, 2022). This can become advantageous to both the student and the government in the longer-term especially in responding to labour market shortages.
- ▶ Admission criteria. The admission criteria for the specific academic programme include minimum educational and language qualifications. These may vary on the basis of the programme and the academic level. Competency in a specified language – assessed via an internationally recognized examination - may also be a key criterion for meeting the minimum requirements for the visa.
- ▶ Tighter restrictions at postgraduate level for certain courses. Countries may also enforce additional restrictions on academic institutions especially at the post-graduate level on national security. For example, screening of student applicants for a select number of programmes at the post-graduate level are conducted by the government in the United Kingdom on the basis of national security.
- ▶ Different tuition fee/preferential treatment. The fee-paying structure is differentiated on the basis of how a student is classified. Students can be classified as being a resident of the country, as part of a larger economic region (i.e., European Union) or as being an international student (from the rest of the world). Generally, if a student is deemed an international student, he/she will pay at the highest fee category. The Institute of International Education (IIE) reported that international students contributed \$44 billion to US HEIs in 2019 (Yao and Mwangi, 2022).
- ▶ Working hours. Whether students are allowed to work whilst studying for an academic programme also varies across countries. For example, countries like the United Kingdom and Singapore permit only a specific number of hours of work per week (20 hours) and ease these restrictions over the holidays whereas countries like Estonia, Lithuania and Sweden place no such restrictions (OECD, 2022). In addition, in some

countries like Singapore, students can only work if they are registered at a government-approved HEI and are not part of an exchange programme (Ministry of Manpower, 2022).

- Employer sponsorship to switch visa post-graduation. Most countries allow matriculated students an extended period to seek employment. If work is secured, in most cases, the employer must sponsor the work visa on behalf of the international applicant. Notably, certain government-sponsored scholarships are tied to a bond which stipulates that the graduate must 'serve' the country of sponsorship through employment in the sector.

3.8.3 Objectives

The main objective of WSV programmes is to attract international students and retain them to meet local labour shortages after obtaining qualifications. It is part of the global strategy to attract talent. Attracting qualified students also has a reputational advantage for HEIs.

HEIs have their own objective in promoting their stature in terms of attracting international students and also to generate revenue for their work including research by charging much higher fees for international students. International students bring billions of dollars to higher educational institutions in Australia, Canada, the UK and the USA.

The following table provides some key features of work-study programmes in selected countries.

Table 3.6: Student and post-study visas and work options in different countries

Country	Number of work hours allowed on student visa	Type and duration of post-study work visa
Canada	Unlimited hours for those with permission to live off-campus	8-36 months- (varies on basis of qualification); apply for a post-graduation work permit
Australia	Unlimited (until 30 June 2023)	Eligible to apply for a Temporary Graduate Work Visa; 2-4 years (varies depending on qualification gained)
France	964 hours per year	Temporary residence permit (12 months); duration may be lengthier for some nationalities
Japan	28 hours a week during sessions; 8 hours a day during holidays	Can apply for a designated activities visa; 360 days
United Arab Emirates	15 hours per week during sessions; 40 hours a week during summer	5-year long-term visa to search and secure employment. Must possess 3.75 GPA

Source: Compiled from information in International Consultants for Education and Fairs – ICEF-Monitor³³

33. International Consultants for Education and Fairs – ICEF-Monitor (2022). Summing up international student work rights in 14 top study destinations.

Accessed from <https://monitor.icef.com/2022/11/summing-up-international-student-work-rights-in-13-top-study-destinations/>

3.8.4 Advantages and challenges

Advantages

- ▶ **One strategy in the global competition for talent.** For destination countries facing ageing of populations and labour shortages, the study–work option provides an entry point into obtaining skilled workers locally trained. As Trevena (2019: 5) points out: “...international students are a valuable resource: they are young, an ‘adjunct workforce in waiting’, and, unlike highly skilled migrants recruited from abroad, face no regulatory barriers, plus are familiar (at least to some extent) with the host country’s culture, language and institutions”. Most destination countries offer this option to attract highly qualified students and later absorb them into the local labour market since foreign qualification recognition issues do not arise.
- ▶ **Qualifications recognised in the host country.** For the host country, a major advantage is that there is a pool of graduates who possess the necessary qualifications that are locally recognised. This makes it relatively easier for the graduates to seek work and for employers to recruit the workers with the right skills. Employers can screen locally acquired qualifications better. Similarly, the burden of training or reskilling is in this case, not borne by the employer but the student as they generally invest in securing these qualifications. Points-based systems in Australia, Canada and New Zealand accord bonus points for educational qualifications obtained in the host country in ranking candidates for permanent visas.
- ▶ **Raising the stature of HEIs and ensuring a steady stream of students and revenue to HEIs.** A strong international student cohort also helps promote diversity and representation in the HEIs and attract students to academic courses that has less uptake among the local students. With a differentiated fee structure, HEIs are able to diversify their revenue stream by attracting high-calibre international students.
- ▶ **Can be linked to mismatch and gaps in skills in the labour market.** A key concern is that any existent skills gap can be addressed to some degree by linking the programmes on offer with the job market vacancies. Since international students prefer countries that allow access to their respective job markets, this route is an attractive means of responding to persistent shortages in skilled sectors.

Issues and challenges

- ▶ **Global competition.** Attracting and retaining international students is challenging because the international educational sector is highly competitive. This means that a large number of countries and universities are trying to attract the same pool of students. Unless the programmes and the incentives attached are attractive and competitive, HEIs and governments that wish to adopt the work-study visa programmes may encounter difficulties.
- ▶ **Complex bureaucratic processes.** The monitoring of the students’ progress and ensuring that students follow the regulations regarding regulated work hours, becomes a rather complex responsibility; this generally involves ‘policing’ of the students’ attendance records by the university and his/her academic supervisor and reporting of same to a designated government agency. Self-reporting mechanisms in place in some countries may also have their inherent problems.
- ▶ **Employer attitudes.** Employers may also exhibit some biases in employing international students. As Liu-Farrer and Shire (2021) point out:

While obtaining the same educational credentials as native students, foreign graduates are disadvantaged because the employment systems of the host countries operate according to the logic of national labour markets, entailing institutionally and culturally specific skill expectations as well as formation processes. Consequently, foreign graduates either fail to enter the market, or are placed in lower or niche categories in a differentiated labour market (Liu-Farrer and Shire, 2021: 1).

This may also indicate other underlying concerns about racial/ethnic discrimination faced especially by third country nationals in accessing work and the burden placed on employers to ensure they meet the requirements to sponsor an employer’s work visa. Concerns have been raised in countries like the UK that

despite increasing numbers of international students, the gaps in the labour market persist. An international comparison of the UK post study work visa option with nine other countries has shown that its work options compared poorly with those of its competitors (Trevena, 2019). It concluded:

... an attractive post-study work offer in itself is not sufficient to ensure longer-term retention. This must be supported by a number of other policy measures, such as language, employability and labour market integration support; availability of satisfactory employment; affordable housing and healthcare; and an overall welcoming attitude towards migrants in the host country (Trevena, 2019: 5).

- ▶ **Risk of exploitation by unscrupulous employers.** Employers can easily exploit international students during their employment denying them decent wages and working conditions. This can be due to their desperate need to earn money to pay for their tuition and living costs, and their ignorance of applicable laws. The caps on working time added to the vulnerabilities of students who wish to work longer hours.³⁴
- ▶ **International students encountered many difficulties during the COVID-19 pandemic.** Neither the HEIs nor the Governments were prepared to support them during the crisis. Many students lost their temporary employment due to business shutdowns and also had to incur heavy expenses in returning to their countries. Box 3.5 summarizes the developments they faced. An extreme case is when the Australian Prime Minister denied any state support to international students who faced difficulties and asked them to return home.³⁵

Box 3.5: International students during COVID-19 pandemic

The COVID-19 pandemic and the resultant lockdowns imposed to varying degrees in different country-contexts, shed light on the precarity faced by international students. Two issues were at stake. The sudden closure of universities including residential accommodation which are used by international students. This meant that students had to return home. But where national borders were closed, students were unable to access adequate support for their financial and mental wellbeing.

Research from Australia shows how international students who had worked as part of their study-work visas, were denied access to federal financial support during the pandemic, if they had experienced job losses. While the government extended the number of hours international students could work in the health, disability and aged-care sectors (Nguyen and Balakrishnan, 2021), the loss of jobs increased their vulnerability to be exploited in seeking new forms of work during the pandemic (Coffey et al, 2020).

34. <https://www.theage.com.au/national/victoria/employers-still-exploiting-international-students-say-advocates-and-lawyers-20230322-p5cuar.html>

35. <https://www.abc.net.au/news/2020-04-03/coronavirus-pm-tells-international-students-time-to-go-to-home/12119568>

3.8.5 Examples of good practice

The **SADC Protocol on Education and Training (SADC, 1997)** sets out many of the common conditions to be met by all SADC countries to promote students' mobility in the region. The Protocol recognises the importance of the treatment of all students equally and that gaps in human resource development can only be addressed through integrated and coordinated efforts of the region. The principles of equitable treatment of all member states and reducing duplication of costs and efforts by streamlining the courses and programmes on offer are important steps as well as ensuring that 5 percent of the admission slots are allocated to students from SADC member states. Importantly, the Protocol also seeks to eliminate 'immigration formalities' that may deter the movement of students as well as academics.

The **European Higher Education Area (EHEA)** is an ongoing process whereby member states of the European Union seek to remove barriers to access education at all levels within the EU. The process begun in the 1990s continues to evolve with the latest including the roll-out of a qualifications framework as well as quality assurance and recognition of its degrees (Bergan, 2019) including to pilot a Joint European Degree label³⁶. Some of these practices can be considered in the context of the SADC especially in meeting the principles set out in the SADC Protocol on Education and Training (SADC, 1997).

The recommendations for the UK highlighted by the Scottish Government study (Trevena, 2019) for improving its global competitiveness for attracting and retaining international students has broader relevance to most countries.

- ▶ Make post-study work offer more competitive by simplifying application procedures, and adjusting programme length and work entitlement, and providing an option for applying to the programme after leaving the host country;
- ▶ Implement additional measures for longer term retention of international students: "language and employability support; integration programmes; provision of information and advice on conditions of stay, employment opportunities, and life in the UK; creating opportunities for establishing professional networks" (Trevena, 2019: 5);
- ▶ Arrange for systematic monitoring and evaluation of the programme and its implementation.

WSV's relevance for SADC destination countries

Countries in the SADC region are working towards the realization of the principles of the Protocol on Education and Training. As such, mobility and access to tertiary level education in other countries are eased including a similar fee structure being instituted. However, students are still required to apply for a specific visa type and meet other pre-admission requirements set by the destination countries. The number of working hours is limited and reflects the common practices adopted by most OECD countries.

Among the SADC countries, South Africa attracts over fifty percent of the total international student population in the SADC region. It also allows such students to work a stipulated number of hours each week (20 hours) and also seek employment post-graduation.

However, ambiguity about visa regulations and the criteria to be met before a study visa is granted can deter students (Lee, Paulidor and Mpaga, 2017). Meeting the principles of the Protocol, therefore, requires more concerted effort and coordination not just across the countries but between the different agencies operating in-country as well.

36. The European commission launched a pilot project for a potential future Joint European degree label within the framework of the Erasmus+ programme. <https://www.euchems.eu/newsletters/joint-european-degree-label/>

3.8.6 Key messages and the way forward

Key messages

- ▶ Work-study visa programmes require that national immigration laws provide flexible options for students to be admitted to national universities and post study work options. To be competitive, international HEIs and governments must provide an attractive ‘package’ to attract international students as this is a highly competitive sector.
- ▶ Work-study programmes, however, require close coordination between the HEIs and the government agencies to prevent exploitation of the system. This may add additional burdens on the HEIs to monitor the students’ activities including attendance of lectures.
- ▶ The programmes have to be accompanied by other admission programmes for skilled workers to address labour shortages comprehensively.
- ▶ Monitoring and evaluation of these programmes is crucial to assess whether objectives are met and to prevent misuse and abuse by intermediaries.

Way forward

- ▶ Implement additional measures for longer term retention of international students as noted above including support for language, integration, provision of information and advice on conditions of stay and employment opportunities.
- ▶ Country-level progress towards specific milestones stated in the SADC Protocol on Education and Training (in force), including easing immigration regulations for mobility of students, must be evaluated in view of the stipulated timeframe of twenty years (by 2017).
- ▶ Evaluate the success of the work-study programmes in terms of the Protocol’s principles of addressing human resource development (HRD) gaps in the region.

3.9 LOW SKILLED ADMISSIONS (LSA) AND TEMPORARY MIGRATION (TM) SCHEMES

3.9.1 Definition of Low-Skilled Admissions and Temporary Migration Schemes

The common trend among most destination countries is to admit low and semi-skilled migrant workers mainly through temporary migration programmes. These schemes have been adopted in all regions to recruit to sectors ranging from agriculture, construction, manufacturing, fisheries, services including domestic and care work,. These are generally jobs local workers are unavailable for or unwilling to take for reasons such as low pay and/or for being “3-D” – difficult, dangerous and degrading work.

Seasonal worker programmes in Australia, Canada, New Zealand, Germany and the UK are examples. The GCC temporary migration programmes for low skilled workers have existed for decades with liberal entry but with limited rights as well. Unlike in permanent migration programmes, temporary low skilled workers have to return at the end of their contracts usually issued for a period of several months or 1-3 years and are rarely given an opportunity to apply for permanent residence. There can be circular or repeat migration opportunities offered to these workers after the end of the first contract.

Concerns on ensuring decent working conditions and wages in such programmes have to be addressed by governments in collaboration with representatives of employer- and worker-organizations. A key issue is that these sectors employing temporary migrant workers often offer low-paying and non-desirable jobs less attractive for national workers.

ILO migrant workers instruments (C-97 and C-143) have not distinguished between permanent and temporary migration because migration for employment was mostly on a permanent basis at the time they were developed. Yet all labour standards apply to migrant workers in the workplace irrespective of status or type of contract. This includes comparable wages, decent work hours, occupational safety and health measures, access to leave and holidays, social protection, and the freedom to join and hold office in trade unions and participation in collective bargaining. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), supplemented by Recommendation No. 151 also details the access to limited rights for migrant workers in irregular status. The ICRMW has clearly laid down applicable rights for all migrant workers including those in undocumented status.

The ILO Multilateral Framework on Labour Migration (ILO, 2006) guideline 5.5. states: “ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 [relating to all human and labour rights] of this Framework”. Guideline 9.7 adds “ensuring that restrictions on the rights of temporary migrant workers do not exceed relevant international standards”.

3.9.2 Scope

Low-skilled migration programmes generally target sub-sectors of the economy that may be characterized by low wages, unsafe working conditions and limited protection. While the temporary nature is a key feature of these programmes, countries have devised a range of means for controlling the admission of such workers.

- ▶ The **definition of skills** is largely determined by the destination country and therefore, is subject to variation and change by country and over time. Notably, lower-skills can also be essential skills – a term used to highlight the demand for labour in specific sub-sectors as observed during the pandemic. In the case of New Zealand, migrant workers are required for essential work which are lower-skilled in nature and include routine tasks such as herding and milking cows (Collins and Bayliss, 2020). Similarly, Japan shifted jobs in sectors such as eldercare, hotels, and construction from the unskilled to skilled categories, indicating that the definition of skills can be modified by policy makers (Oishi, 2021).
- ▶ **Different schemes:** Countries adopt guest worker programmes, seasonal worker programmes as well as sector-specific programmes to recruit foreign workers on temporary contracts. Countries like Australia, New Zealand and the UK, among others, have launched working holidaymaker schemes where the youth in general, can travel whilst also engaging in work that is generally considered lower-skilled. Such schemes, however, are also not open to all nationalities.
- ▶ **Bound by time and job.** The schemes are bound by a strict time limit, even though the jobs are not necessarily time-bound and require a steady flow of workers (Triandafyllidou, 2022). GCC countries tend to offer mostly two-year contracts for semi-skilled workers with no opportunity to switch the type of work or at times, the employer. Similarly, the UK seasonal worker pilot programmes aim to fill jobs mainly in horticulture by migrant workers. The duration of employment is limited to six months and workers cannot switch employment (Sumption and Fajth, 2022).
- ▶ **Few pathways to permanent status in host countries.** These temporary schemes are not necessarily linked to schemes to secure permanent residency. Destination countries have a tendency to limit the access to permanent residency to higher-skilled and academically qualified individuals. This is because of the public opposition to permanent admission of low skilled workers. Therefore, migrant workers on temporary visas will find it more challenging to be regularized and access services that are available to other foreign high-skilled workers. However, traditional settler countries like Australia and Canada may admit skilled workers also under temporary programmes with the option to transition to permanent status after some years and meeting strict criteria.

3.9.3 Objectives

The objective to implement or engage in temporary migration schemes can vary for destination and origin countries.

For destination countries, responding to labour shortages in specific sectors is a main concern. With rising incomes, national workers may shun 3D jobs such as in agriculture, construction and domestic work creating labour shortages in these sectors. Employment of foreign workers would be a major option. It also serves as a flexible option to engage workers according to labour market needs. TM programmes also are used to provide training and apprenticeships. Moreover, temporary admissions are consistent with public attitudes to low skilled workers, and return migration is built-in. Migrant social integration efforts may be minimal for such programmes. In addition, addressing irregular/undocumented migration as well as geo-political concerns are important (ILO, 2022a).

For origin countries, temporary migration schemes allow means for migration of low skilled workers who are shunned by major destination countries. Origin countries have a surplus of low skilled workers, and temporary migration programmes provide them migration opportunities. They can help in poverty alleviation, ensuring a steady flow of foreign remittances and improving job opportunities overseas. Origin countries also favour TM programmes as a means of minimising brain drain since they ensure the return of skilled workers.

3.9.4. Advantages and disadvantages

Advantages

- ▶ **Regularized means of attracting workers.** Temporary migration schemes aimed at lower-skilled workers will help streamline the cross-border migration of workers. By identifying the specific sector and the number of opportunities available, countries can facilitate the migration of workers into desired sectors. It has been argued that the absence of regulated low-skilled worker programmes has led to a surge in the number of asylum applications filed in South Africa (Carciotto, 2018) as well as a rise in undocumented migrants. This is partly because low skilled persons from neighbouring countries must find alternative means of securing employment in South Africa.
- ▶ **Complementarity.** Such programmes enable destination countries to fill vacancies in lower-skilled categories of work. At the same time, origin countries which have a surplus of such workers welcome the opportunity for employment overseas. This offers a balance as the demand and supply ends can be managed via BLIMs in particular.
- ▶ **Built-in return migration.** The cyclical nature of labour migration which is increasingly seen as a norm in south-south migration is strengthened through these schemes. These schemes allow for workers to be employed for a stipulated period, return home intermittently or permanently and re-migrate if required.

Disadvantages

- ▶ In all regions, **low skilled temporary workers can be easily subjected to abuse and labour exploitation.** This is because temporary workers have contracts tied to the specific employer and cannot change their jobs. Examples are temporary low skilled migrant workers in GCC countries, Jordan and Lebanon as well as in Malaysia and Singapore. The COVID-19 pandemic highlighted the precarious nature of their migration situation in most of these countries.
- ▶ The unequal power balance with employers, employer-friendly policies of destination countries and the threat of deportation has been found to be very effective in keeping temporary workers from reporting abuse and exploitation (ILO, 2022a). Mexican and Latin American workers hired under the Canadian Seasonal Worker Programme rarely complain because their employment the following year is based on the employer's recommendation. Even after 20 years of work, they do not gain any rights for permanent settlement. If the country of destination does not accord the same rights to protection as for its domestic workforce, migrant workers will experience lower wages and poor working conditions – as evidenced in the UK's pilot of the seasonal worker programmes (Home office – UK, 2021). The US H2A visa for temporary or seasonal

agricultural workers and H2B visa for temporary or seasonal workers in fields other than agriculture are issued for one year and renewable up to 3 years. The first one has no cap but the second one is capped at 66,000 per year. In 2021, USA issued 257,898 and 95,053 visas for each respectively. A main drawback is that there is poor supervision of the schemes leading to widespread protection abuses, especially because workers are tied to particular employers.³⁷

“While temporary and circular labour migration schemes are viewed as a flexible means of filling short-term labour and skills gaps, careful consideration needs to be given to their formulation, implementation and monitoring, in collaboration with ministries of labour and workers’ and employers’ organizations, to ensure that they fulfil the specific purpose for which they were designed, are not used to fill long-term or permanent jobs, and that workers who migrate under such schemes are not unfairly disadvantaged in terms of equality of treatment in respect of trade union rights, wages, working conditions and social protection.”

Source: ILO (2017a). Addressing governance challenges in a changing labour migration landscape, Report 6, Office report for the General Discussion on Labour Migration, 106th International Labour Conference, International Labour Office, Geneva (p.28).

- ▶ Yeates and Wintour (2021) state the union perspective: “Trade unions express concern that temporary forms of migration are becoming a permanent feature of the labour market and that employers are hiring workers on temporary contracts for what in effect are permanent posts, often without adequate consideration or investment in skills development or vocational training to meet domestic labour shortages” (p.63).
- ▶ Family reunification options are rarely given to low skilled workers employed under temporary migration programmes.

3.9.5 Examples of good practice

- ▶ The **Recognized Employer Scheme of New Zealand**, a programme for seasonal workers, stipulates that employers must comply with labour and immigration laws; employment under this scheme is closely monitored by the host government and regularly evaluated.³⁸ The scheme also has built-in development objectives (see 3.3.6).
- ▶ **The EPS of the Republic of Korea.** The Republic of South Korea has signed MOUs with 16 origin countries in Asia under its Employment Permit System. Low skilled workers can access work in pre-identified sectors in the economy for 3-4 years.³⁹ As a state managed temporary migration programme, all migrant workers enjoy protection under Korean labour laws and are also entitled to social protection. The Happy Return Programme imparts training for reintegration back at home. Migrants can change employment up to three times for valid reasons. Recognized workers with good performance are allowed to extend the contracts three times.
- ▶ **Migrant Resource Centres (MRCs)** often serve as ‘one stop shops’ for migrant workers to access critical information on migrating for work, obtain counselling services, and lodge complaints. They can be set up by governments (as in the case of India), trade unions, NGOs or other concerned stakeholders. MRCs

37. <https://www.gao.gov/products/gao-15-154>; <https://sgp.fas.org/crs/homesec/R44849.pdf>

38. <https://www.immigration.govt.nz/employ-migrants/scheme/emp/recognised-seasonal-employer-rse-scheme>

39. Agriculture, Construction, Manufacturing, Services and Fishing

operate in both origin and destination Asian countries, allowing migrants to receive assistance at both ends of the migration process. Their non-bureaucratic nature, welcoming atmosphere, support in migrant's own languages, and extended opening hours attract temporary low skilled migrant workers to access services. A very useful function is lodging complaints and settlement of grievances. For instance, MRCs operated by the Malaysian Trade Union Council have supported migrant workers in settling claims against employers. In the ASEAN ILO has supported MRCs operated by government, trade union, and CSO partners in six countries.

- ▶ **The German Fair Mobility Project** ("Faire Mobilität") has the objective of assisting in the enforcement of fair wages and working conditions for migrant workers on the German labour market. It is an example of free information and advisory services provided to temporary migrant workers (EU mobile workers from Central and Eastern European countries) in their own language on all relevant issues. Union representatives and service centre staff work with local institutions to inform and advise on all questions of social and labour law as needed (ILO, 2022a).

3.9.6 Key messages and the way forward

Key messages

- ▶ Temporary migration schemes are frequently used by destination countries to attract lower-skilled workers to specific sub-sectors in the economy.
- ▶ It is important to promote fair recruitment practices in line with ILO recruitment guidelines since temporary workers hired under private employment agencies encounter several malpractices such as excessive recruitment fees, contract substitution and high debt burdens (ILO, 2019a).
- ▶ Destination countries should intensify labour inspection to monitor working and living conditions of migrant workers employed under temporary programmes.
- ▶ Both countries of origin and employment should engage actively in monitoring the protection of migrant workers in temporary situations under labour laws consistent with international labour standards, using bilateral labour mobility instruments where applicable.
- ▶ By definition, such schemes seek to attract workers on a temporary basis and therefore, permanent settlement routes are generally difficult to access. If the labour demands are structural in nature, such workers should be given regular status and access to naturalization options.

Way forward

- ▶ It is important to review the operation of temporary migration programmes for low skilled workers to assess how they can be made to work better and effectively protect migrant workers.
- ▶ It is important for countries to identify essential services where temporary workers predominate and provide them pathways to permanency.
- ▶ Given the proliferation of informal cross border movements by traders, mostly women and low skilled persons looking for work within the SADC region, SADC member states should devise innovative methods to facilitate their mobility and ensure their protection, not treating them as persons/workers in irregular status.

3.10 BILATERAL LABOUR MIGRATION INSTRUMENTS (BLMIS)

3.10.1. Introduction – definition of BLMIs

In international labour migration, it is generally difficult to achieve multilateral agreements. As a result, there has been a proliferation of bilateral labour migration instruments (BLMIs) in the form of agreements or MOUs in most regions.

BLMIs mostly cover low skilled worker migration and are particularly popular in Africa and Asia.

BLMIs refer to legally binding bilateral labour migration agreements (BLMAs), non-binding MOUs and other forms of bilateral labour arrangements.

- ▶ **Bilateral Labour Migration Agreements (BLMAs)** are formal treaties to regulate the movement of workers between two States (State of origin of workers and the State of destination of workers). They are legally binding instruments which describe in detail the specific responsibilities of each of the parties and the actions to be taken by them with a view to accomplishing their goals. The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains in its Annex a Model Agreement on Temporary and Permanent Migration for Employment which has influenced the content of bilateral labour agreements in different countries (Wickramasekara, 2015).
- ▶ **Memorandum of Understanding (MOU)**: “an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification” (United Nations, 2012). Thus, an MOU is a softer, often non-binding option, generally providing a broad framework through which to address common concerns.

3.10.2 Scope of BLMIs

The scope varies with the format of BLMIs. The very first SADC agreements were on hiring workers for the South African mining industry. They have been followed up by more general agreements and MOUs covering labour mobility or cooperation on labour matters (IOM, 2021; Monterisi, 2014). The European agreements with African origin countries have been of broader scope in the form of framework agreements covering legal mobility, curbing irregular migration, readmission of nationals, and migration and development. BLMIs with GCC countries generally cover migration for employment, protection of workers and monitoring mechanisms (IGAD-ILO, 2021).

3.10.3 Objectives

Based on comprehensive reviews of text of BLMIs in different regions, the main objectives of origin and destination countries in entering into BLMIs can be summarised as shown in Table 3.7 (Wickramasekara, 2015, 2021). The objective of better governance of labour migration processes is common to both groups of countries.

Table 3.7: Objectives of BLMIs

Origin countries	Destination countries
Better governance of migration flows	Better governance of migration flows
Reduce domestic employment pressures	Address labour market needs of employers and industrial sectors
Ensure continued access to labour markets of destination countries	Streamline and regulate labour flows
Earn foreign exchange through greater worker remittances	Minimize irregular migration
Ensure protection of migrant workers' rights and welfare	Promoting economic /cultural / political ties and exchanges
	Multiple objectives in South-North agreements: promote mobility-curb irregular migration and promote migration-development linkages

3.10.4 Examples of the practice from SADC/International levels

There have been several studies of BLMIs in the African context (Bamu, 2014; ILO-IGAD, 2021; ILO, 2019c; Monterisi, 2014; Wickramasekara, 2021). The profile of known African BLMIs and SADC is shown in Tables 3.8 and 3.9.

Table 3.8: Known African and SADC BLMIs by corridor ⁴⁰

African Union			SADC region		
Corridors	No of BLMIs	Percent	Corridors	No of BLMIs	Percent
Intra-African	31	30.4	Intra-SADC region	15	68.2
Africa- Europe	34	33.3	Other Africa	1	4.5
Africa – GCC States	23	23.7	SADC-Europe	5	22.7
Africa - Jordan	11	10.8			
Africa-Asia	2	2.0	SADC-Asia	1	4.5
Total	102	100.0		22	100

Analysis of the nature of these African instruments shows that the majority of them (69) are Bilateral Labour Migration Agreements (BLMAs) followed by MOUs (28). Bilateral Framework Agreements with EU countries represent multiple objectives linking issues of regular migration and mobility pathways, readmission, control of irregular migration and development. The available incomplete information on SADC BLMIs shows (Annex A6) that SADC has 22 BLMIs signed at various stages (including superseded agreements). For SADC, 68 of BLMIs are among SADC countries and 23 are with Europe. Only one BLMI each was recorded with other countries in Africa and Asia. We could not find any known BLMI with GCC countries although they may exist. ⁴¹

Table 3.9: Known African Union and SADC BLMIs by type of instrument

African Union			SADC region	
Type of BLMI	No of BLMIs	Percent	No of BLMIs	Percent
Agreement	52	51.0	11	50.0
Framework Agreement	13	12.7		
Cooperation Agreement	4	3.9		
Memorandum of Understanding (MOU)	29	28.4	10	45.5
Other	4	3.9	1	4.5
Total	102	100	22	100

Source: Africa BLMI database. (Wickramasekara, 2021); SADC – Annex Table A3

40. Note: The list may contain superseded agreements as well. It may be incomplete because information on BLMIs, especially intra-African instruments outside of IGAD and SADC regions, are not readily available. Source: Database on African Bilateral Labour Migration Instruments (BLMIs) compiled by Piyasiri Wickramasekara for the ILO-JLMP Project on AU Guidelines on BLAs, updated October 2021.15; Annex Table A3.

41. The compiled list of BLMIs in SADC is incomplete and most probably an underestimate. It is important for SAMM to build up a comprehensive database of BLMIs.

3.10.6 Advantages and disadvantages

Advantages

- ▶ International instruments consider BLMAs as a good practice, and ILO Convention 97 accompanied by Recommendation 86 provide a solid foundation of principles and good practices to develop them. The Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, annexed to the ILO Recommendation, 1949 (No.86) includes 29 Articles to be considered when formulating and applying BLMAs (ILO, 2016a).⁴²
- ▶ BLMs highlight the principle of shared responsibility between origin and destination countries and can confer benefits to both source and destination countries when they are implemented well.
- ▶ They lead to better governance of labour migration through regulation of recruitment, streamlining migration flows and providing legal migration avenues.
- ▶ A priority for origin countries is protection of the rights of their migrant workers under the BLMs.
- ▶ They can lead to better selection of workers and matching of skills by regulating the actions of private recruiters.
- ▶ BLMs can address specific labour market needs such as for domestic workers, health workers, IT workers or general low skilled workers.

Disadvantages

- ▶ Multilateral and regional frameworks and agreements to govern migration are generally preferable because BLMs can be affected by unequal power relations of the parties (Wickramasekara, 2015).
- ▶ In general, there is poor implementation of BLMs. Since BLMs are mostly imposed on already existing labour migration flows, there is no change to existing recruitment systems, sponsorship practices, or workplace protection mechanisms.
- ▶ In practice, the BLAs/MOUs are often driven by political will and relative bargaining power of the two parties. Interests of CODs predominate, and their employer-friendly policies mean that protection mechanisms are not effectively enforced.
- ▶ There is a limited role for social dialogue because they are primarily designed and implemented by governments with no participation from other concerned stakeholders.

3.10.7 Challenges

- ▶ Reluctance of destination countries to sign BLAs since they are binding agreements. They prefer to sign MOUs. Some countries (e.g., Australia, Singapore) refrain from signing any BLMs and follow unilateral policies.
- ▶ Application of rights-based approaches to contents and inclusion of issues critical for governance and protection have proved difficult to negotiate in practice.
- ▶ Incorporating gender responsive approaches. Very few BLMs contain any references to gender related issues (Wickramasekara, 2015).
- ▶ Getting broad-based consultative processes with all stakeholders in drafting, negotiating and implementing and follow up of agreements. Often, there is no social partner and civil society involvement in their design, implementation or monitoring.

42. Articles 14 and 18 apply only to those migrating for permanent employment.

- ▶ Absence of any credible enforcement mechanisms for implementation and follow up, dispute resolution or access to justice.

3.10.8 Examples of good practice from SADC/AU or international levels

Reference to guidance from relevant international instruments as needed

New guidelines and guidance frameworks on BLMIs. The first pioneering guidelines on the design of a BLMI were provided by the Model Agreement Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86). This Model Agreement was widely used in the 1950s and 1960s by European governments for developing BLAs, and still holds considerable relevance (Wickramasekara, 2015).

It is an encouraging development that several guidance frameworks for promoting rights-based BLMIs are currently being developed at regional and international levels.

- ▶ African Union (AU) Guidelines on Developing Bilateral Labour Agreements (BLAs) ⁴³, April 2022: They apply to all 55 Member States of the African Union and cover intra-Africa and interregional BLMIs. They have been developed based on tripartite and stakeholder consultations (African Union, 2021).
- ▶ IGAD Regional Guidelines on Rights Based Bilateral Labour Agreements ⁴⁴ adopted by all IGAD Member States at the Ministerial Conference on Labour, Employment and Labour Migration in IGAD Region on 21 October 2021 in Djibouti (IGAD, 2022.) The primary focus of the Guidelines is on IGAD-Middle East labour migration (IGAD-ILO, 2021; IGAD, 2022).
- ▶ UN Network on Migration (UNNM): Guidance on Bilateral Labour Migration Agreements ⁴⁵, February 2022 (UNNM, 2022). This was developed by the UNNM Thematic Working Group 3 led by ILO and IOM. Its scope is mentioned as global.

BLMIs formalized in law. Ethiopia has explicitly formalized the role of BLMIs in law through its Overseas Employment Proclamation No. 923/2016 ⁴⁶. Article 12 of the Proclamation states: “Deployment of workers for overseas employment in accordance with this Proclamation shall be effected only if there is a bilateral agreement concluded between the Federal Democratic Republic of Ethiopia and the receiving country.” The 2013 Overseas Employment and Migrants Act of Bangladesh contains a separate article on bilateral agreements on migration (Art. 25) which highlights that the prime criterion in entering into such instruments is the “protection of the rights, safety and human dignity of all migrant workers within the country or while overseas”.

Inter-ministerial committees on BLMAs. The Ministry of Labour and Social Protection, Government of Kenya, has established an inter-ministerial Bilateral Labour Agreements Committee to address the gaps in development and implementation of BLMIs. Its members comprise the Ministry of Foreign Affairs, Ministry of Interior and Coordination of National Government, Office of the Attorney General and the Ministry of Labour. The Committee has a wide range of functions covering the entire BLMI process. The Philippines Department of Labour previously established a Committee on Bilateral Agreement Matters in 2010.

43. https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-GUIDELINES_ON_DEVELOPING_BILATERAL_LABOUR_AGREEMENTS_BLA-ENGLISH_0.pdf

44. <https://igad.int/download/igad-regional-guidelines-on-rights-based-bilateral-labour-agreements-blas/>

45. https://migrationnetwork.un.org/system/files/resources_files/220426_BLM_Guidance_CLI.pdf

46. <https://chilot.files.wordpress.com/2017/04/proclamation-no-923-2016-ethiopia-s-overseas-employment-proclamation.pdf>

3.10.9 Their relevance for the SADC destination countries

- ▶ The SADC GCM Review in 2022 (SADC, 2022) highlighted Objective 6 of the GCM: “*Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work*”. Member states noted that this objective was immensely relevant in the region as labour migration is a key phenomenon, and a majority of the member states reported the establishment of bilateral agreements and engagements between countries.
- ▶ The SADC Labour migration action plan 2020-25 (SADC, 2021: 16) lists Output 1.3 as “Bilateral cooperation on labour migration strengthened”. It noted that bilateral cooperation in the form of BLAs and MOUs already formed part of the overarching framework of instruments which are used to govern labour migration between countries in the region. But it highlighted that some existing bilateral agreements are outdated and need to be reviewed to ensure that fundamental labour rights are respected. The main activities are: 1.3.1 Review and conclude BLAs and MoUs to ensure that the rights of migrant workers are sufficiently guaranteed; 1.3.2 Develop Model provisions on BLAs and MoUs to facilitate harmonization of standards in the region.

3.10.10 Key messages and the way forward

Key messages

- ▶ BLMIs have become popular instruments in the absence of regional or multilateral frameworks for governing labour migration.
- ▶ They are a tool for better governance and protection of migrant workers if designed and implemented effectively.
- ▶ In practice, BLMIs suffer from poor implementation due to lack of political will of both parties and poor enforcement mainly by destination countries (e.g., lack of involvement of labour market institutions and monitoring by relevant labour protection stakeholders).
- ▶ Origin countries should supplement BLMIs through other protection measures including unilateral measures.

Way forward

- ▶ Multilateral agreements should take precedence over bilateral labour migration arrangements in the SADC context. There is a tendency for increasing use of bilateral labour migration arrangements within the SADC region while regional integration and free movement as envisaged in the SADC Protocol would benefit more from multilateral labour migration and mobility arrangements. A multilateral approach would accord the same conditions to all parties unlike in a bilateral instrument affected by power dynamics of the two parties. Ideally BLMIs should be a stepping stone to broader regional mobility arrangements as seen in the SADC Protocol on Free Movement. A good practice example is the European Economic Community which has moved towards free movement of persons and mobility of labour.
- ▶ Systematic review and negotiation for revision of existing BLMIs, launching new BLMIs and ensuring their effective implementation.
- ▶ Dissemination of BLMIs to concerned stakeholders. It is important to improve the transparency of BLMIs in both origin and destination countries by disseminating them widely and especially sharing them with concerned stakeholders – social partners, private employment agencies and migrant and civil society organizations. Among destination countries, Jordan and Qatar offer good practice in this regard by publishing copies of all BLMIs on the Ministry of Labour websites. The SADC Secretariat can establish a repository of BLMIs and related texts, update it regularly, and ensure that it is transparently shared.
- ▶ Cooperation among social partners in the two countries. Bilateral cooperation among non-government actors is crucial given the complex protection challenges faced by migrant workers.

What action is needed from ministries of labour, workers and employers' organizations?

- ▶ Social partners should lobby for their involvement in drafting, negotiation and implementation and monitoring and evaluation of BLMs. Ministries of Labour should recognize their role and establish an advisory or steering committee with their participation.
- ▶ Social partner participation could play a useful role in monitoring the implementation and follow up of agreements. They can also carry out independent evaluation of selected agreements/MOUs.
- ▶ Trade unions, migrant associations and civil society should provide support mechanisms to their migrant workers in countries of destination to address gaps in protection mechanisms of BLMs. Bilateral agreements and MOUs on protection of migrant workers can be entered into by trade unions, and NGOs in origin and destination countries.

3.11. FAIR AND ETHICAL RECRUITMENT (FR)

3.11.1 Introduction and definition of fair and ethical recruitment of migrant workers

Fair recruitment of migrant workers is intertwined with questions around migration, decent work and gender equality. Cross-border recruitment can heighten a worker's vulnerability to discrimination and exploitation if fair recruitment guidelines are not followed (ILO, 2021b). The emphasis is on how adherence to fair recruitment policies have a far-reaching effect on both migrant workers' and citizens' access to decent work. It can also lead to reducing the high costs incurred by migrant workers in attempting to secure work: high costs are generally associated with opaque processes in recruiting foreign labour (ILO- KNOMAD, 2019).

Ensuring the migrant workers' rights are protected starts before they assume a job with a specific employer or in a sub-sector in the economy. A lot of attention is paid to the pre-departure phase of recruitment, when potential employers work directly or through intermediaries, to seek out workers. The recruitment processes can integrate the components of BLA/MLA agreements. Recruitment includes multiple actors spanning the countries of origin and destination, the employer, employee and the intermediaries and social partners.

3.11.2 International Frameworks, Principles and Guidelines on Fair Recruitment

The commitment of countries to establish a national regulatory framework for the recruitment and employment is demonstrated by its ratification and domestication of relevant international labour standards. In terms of recruitment costs there are three relevant ILO Conventions: No.88 (ratified by 5 SADC Member States), No.97 (ratified by 5 SADC Member States) and No.181 (ratified by 2 SADC Member States).

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.

Annex I and II of the **ILO Migration for Employment Convention (Revised), 1949 (No.97)** contains two Annexes addressing migrant workers specifically. Annex I deals with Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited Otherwise Than Under Government-Sponsored Arrangements for Group Transfer, and Annex II, with Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited Under Government-Sponsored Arrangements for Group Transfer.

The **ILO Private Employment Agencies Convention, 1997 (No. 181)**, is a key instrument as this offers a framework for regulating the operation of PEAs. This includes how to establish the legal status of PEAs, national certification/licensing, data protection and regular reporting as well as how to ensure compliance via regular labour inspection etc. It also calls for collaboration with other countries as well as employer and employee representatives to address the stated commitments.



The **UN Guiding Principles on Business and Human Rights** (United Nations, 2011) also focuses on businesses (i.e., employers). The obligations are to respect of human rights, identify, prevent, mitigate, and avoid repeating harm to people and provide remedy to those who have been negatively impacted. The focus on rights captures the recruitment process as well as post-admission protection of rights.

Objective 6 of the **Global Compact for Safe, Orderly and Regular Migration** (GCM) is the facilitation of fair and ethical recruitment and safeguarding of conditions that ensure decent work. Among the actions to be taken are working to improve regulations related to PEAs so that they are compliant with international guidelines and best practices as well as prohibiting recruiters from charging recruitment fees from the workers; establishment of partnerships with the relevant stakeholders including migrant workers' organisations and trade unions; improve the processes so that employees can change the employer and change their working conditions.

ILO's General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs

There are several guidelines that have been developed to guide fair recruitment policies. The leading one is the ILO's General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs (ILO 2019a). The aim is to prevent migrant workers from experiencing fraudulent practices in the recruitment and placement process and secondly, to reduce the cost of migration. The Guidelines define what is meant by recruitment fees and related costs (see Box 3.6). A major concern is that workers are not burdened with the cost of recruitment. The guidelines identify fair recruitment as a tripartite concern. The International Recruitment Integrity System (IRIS) of the IOM (2020), explicitly mentions the freedom of movement and the importance of access to remedial actions for migrant workers in its definition of ethical recruitment, among other aspects.

Box 3.6: Definition of recruitment fees and related costs

In 2019, the definition of recruitment fees and related costs was adopted by a Tripartite Meeting of Experts, held in Geneva, and was to be read in conjunction with the 2016 General Principles and Operational Guidelines for Fair Recruitment.

Recruitment Fees may be one-time or recurring and cover recruiting, referral and placement services. They include:

- ▶ payments for recruitment services offered by labour recruiters (public or private);
- ▶ payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- ▶ payments made in the case of direct recruitment by the employer; payments required to recover recruitment fees from workers.

Related Costs are expenses integral to recruitment and placement within or across national borders (national or international recruitment):

- ▶ Medical costs: payments for medical examinations, tests or vaccinations;
- ▶ Insurance costs: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds;
- ▶ Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;
- ▶ Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- ▶ Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively;
- ▶ Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation;
- ▶ Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

Box 3.7: ILO General Principles and Operational Guidelines for Fair Recruitment: Selected Principles

- ▶ **Recruitment should take place in a way that respects, protects and fulfills 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.
- ▶ **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.
- ▶ 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.
- ▶ **No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.**
- ▶ **Workers' agreements** to the terms and conditions of recruitment and employment **should be voluntary and free from deception or coercion.**
- ▶ **Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.**
- ▶ **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.**
- ▶ 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.

Source: ILO, 2019a.

3.11.3 Key criteria and actors

- ▶ **Adherence to normative frameworks.** In order for recruitment to be fair and transparent, it should be guided by a rights-based approach that respects existing international instruments and commitments to the protection of rights of migrant workers. A major commitment among these is the right to freedom of association and collective bargaining and equality of treatment and non-discrimination. The reference to these specific rights underscores the importance of facilitating/allowing migrant workers to join existing trade unions and for trade unions to include migrant workers in their collective bargaining agreements.

- ▶ **Responsibility of the Countries of origin and destination.** The origin and destination countries both have particular roles to play. Destination countries must ensure that labour market tests or any other acceptable means is used to ensure that an existing workforce is not displaced. A key concern here is that cheap labour from elsewhere may add pressure on the wages of the existing workforce. Oversight, through regulation of the recruitment process, especially the private entities/actors that may act as intermediaries in the recruitment of migrant labour by the origin country is essential. Taking action against those who abuse the system or use fraudulent means to circumvent the system will reduce the exploitation of prospective migrant workers. This also means that both governments must also pay closer attention to groups of migrant workers, who on the basis of gender, age, migration status or the nature of their work, may be at risk of being exploited.
- ▶ **Responsibility of the Employer.** Discussions around forced labour and modern slavery, both at the national and international level have created an increasing focus on fair recruitment practices by businesses (IOE, 2021). In the post-Brexit United Kingdom, the recruitment of seasonal farm workers has been subcontracted by employers to recruitment intermediaries, resulting in debt-induced migration (Dugan, 2022). The recruitment of healthcare workers by the UK National Health Service has also raised concerns, as the workers are bound to the recruiting intermediary via stringent regulations (Das, 2022). These examples highlight the complex nature of the recruitment chain where the employer's role can be subcontracted to intermediaries.
- ▶ **Explicit role for Trade Unions.** Trade unions can play a major role in shaping recruitment processes as well as highlighting instances of abuse/exploitation of migrant workers (ILO, 2021a). Some states in the United States and provinces in Canada allow trade union representatives to lodge complaints on behalf of migrant workers who may be fearful of retribution; they can monitor and provide oversight on how migrant workers are treated and experience labour conditions, and they can provide the necessary services to migrant workers to ensure their rights are protected.
- ▶ **Role of intermediaries and recruitment agencies.** The presence of recruiters and unregulated 'agents' at the community level who scout and 'recruit' migrant workers on behalf of a recruitment agency is common in origin countries. The lack of oversight and the non-willingness to regulate such actors is a serious concern. Similarly, as noted in labour recruitment processes, the presence of subcontractors or employment agencies can make the recruitment process more difficult to navigate for migrant workers.
- ▶ **Who bears the recruitment cost of migration?** Some of the common challenges are how recruitment costs are defined by different entities involved in the process. In this regard, the ILO guidelines provide clarity. A corresponding question is who should bear the cost. Hidden costs in the recruitment process can also complicate the calculation. For example, language competency tests are used by recruiters to exploit migrant health workers, holding them accountable for the payment of language test fees (Das, 2022).

3.11.4. Examples of fair recruitment policy/practice in SADC/African Union levels

Several NLMPs in the SADC region explicitly mention the importance of adhering to fair recruitment. The Employment Services Act (No. 4 of 2014) of South Africa has several provisions guiding the activities of private recruitment agencies (ILO, 2021b). The Draft National Migration Policy for South Africa (DEL, 2022), section 5.3.5 concerns Preventing fraudulent and unethical recruitment and regulating intermediaries with the aim of regulating recruitment practices. The main concerns highlighted include how to regulate international recruitment agencies with a presence in South Africa as well as regulating those with an online presence - an emerging concern in other country contexts as well. The NLMPs are also drawing from existing commitments made at the AU and SADC levels to work towards strengthening fair recruitment. Some of these are mentioned below.

Seychelles is committed to fair recruitment. The National Labour Migration Policy of Seychelles (MEICS, 2019) states:

“The Government seeks to ensure fair and effective recruitment for all workers, which responds to labour market needs and does not displace local workers or undermine working conditions... The

Government recognizes its responsibility to protect the rights of all workers from fraudulent and abusive recruitment practices, and to promote recruitment in respect of human rights and labour legislation. The Government is committed to ensuring that workers and employers have access to grievance measures in cases of abusive or fraudulent recruitment practices (MEICS, 2019: 20).

The 2018 AU Revised Migration Policy Framework and Plan of Action (2018-2030) (African Union Commission, 2018) calls for the creation of transparent and accountable labour recruitment systems and national labour migration policies. Aligning national laws, policies and regulations pertaining to labour migration, monitoring the process and ensuring compliance to recruitment principles and promoting professionalism within the recruitment industry are among some of the other actions highlighted.

3.11.3 Main advantages and challenges in achieving fair recruitment

Advantages

- ▶ **Protecting human rights of workers.** Governance of labour migration, as advocated and promoted by multiple international and regional instruments, must be based on a rights-based, normative framework. Fair recruitment is based on these same principles especially in ensuring that migrants' rights as workers are protected but also that they do not experience abuse/exploitation in the process of securing such work. Fair recruitment supports origin and destination countries to meet their stated commitments regarding protecting the rights of migrant workers by promoting transparency so that migrant workers, the employers and the trade union representatives are all aware of how these fundamental rights are protected.
- ▶ **Fair recruitment is an integral part of fair migration.** Fair recruitment binds the pre- and post-admission phases of migration for employment. The recruitment process can facilitate the flow of information to the migrant workers, the collection of data on migrant workers and also set minimum standards in terms of meeting decent work conditions. Destination countries can use the recruitment process to regulate which sectors require labour and ensure that its own workforce is not disadvantaged.
- ▶ **Fair and ethical recruitment is critical in order to prevent forced labour, reduce labour migration costs and improve development outcomes** for migrant workers and their families, as well as countries of origin and destination. The high economic and social costs incurred by migrants have been recognized as serious impediments to realizing sustainable development outcomes from international migration. (ILO-KNOMAD, 2019). As such, the emphasis placed on fair recruitment stems from its far-reaching impacts on all actors involved in this process. At the core is ensuring that migrant workers are treated fairly in the recruitment, employment and return phases. By making the systems for recruitment more transparent and accountable, the incidence of forced labour and trafficking can be minimised. By stipulating the labour conditions, the benefits of labour migration can trickle down to multiple stakeholders, central among whom is the family of the migrant worker. By reducing corruption and debt-bondage, the financial and non-financial benefits can be improved.

Challenges and problem areas that need attention

- ▶ **Workers in an irregular status.** Cross-border migration can be mired in fraudulent recruitment practices. Migrants in irregular status in particular may be highly vulnerable to being exploited. In contexts where the visa or leave to remain is tied to an employer, migrant workers must - at any cost - secure such sponsorship. As has been noted in many studies conducted among migrant domestic workers, these practices heighten their vulnerability to be exploited. The lack of awareness on their rights, the fear of being deported and the lack of or limited access to justice can further complicate the situation for this specific category of migrant workers (ILO, 2021a). The ILO Fair Recruitment Report for Africa (ILO, 2021b) has highlighted the issues faced by undocumented workers in South Africa in this respect.
- ▶ **Operations of unscrupulous private employment agencies.** In the absence of stringent oversight and

regulation of the recruitment industry, PEAs can become highly exploitative. At times, human traffickers and travel agencies can also pose as ‘recruiters’ and get aspiring migrant workers to pay high amounts to secure work. This results in migrants finding themselves in particularly vulnerable situations, often indebted and exposed to forced and bonded labour (ILO, 2021a).

- ▶ **Gendered inequalities.** Women can be more vulnerable to exploitation as a result of the type of work they are mostly engaged in (i.e., domestic work, unskilled work in the informal economy). Existing gender norms that accord them a secondary status also make them more vulnerable as male family members as well as recruitment intermediaries and PEAs can control the access to information. This is seen widely in the case of domestic workers, who remain unaware of their rights and lack access to information about the working and living conditions they would experience as workers. Gender-specific mobility restrictions used by origin countries to ban or restrict women from migrating for work can also have a spillover effect on fair recruitment. Since such restrictions do not respond to the demand for such labour or the reasons why women seek to migrate overseas, this leads to the ‘promotion’ of irregular migration channels being facilitated by intermediaries (ILO, 2021a).
- ▶ **Recruitment of workers to the informal economy.** SADC region experiences high rates of cross-border migration for employment in the informal economy. Given the central role assigned to employers in ensuring that fair recruitment practices are observed, regulating the informal economy in terms of fair recruitment practices is challenging. The presence of migrant workers in the informal sector requires a more nuanced approach that highlights the particularities of the informal economy and the nature of employment (ILO, 2021a).

3.11.4 Examples of good practice from SADC/AU or international levels

There have been numerous industry-led initiatives to promote fair recruitment and to eliminate the recruitment fees and costs paid by workers across global supply chains. A few are highlighted here, to indicate how fair recruitment principles can be operationalised.

- ▶ **Changes to law:** In Tunisia, the ‘Law on the organisation of the exercise of the activities of placement of Tunisians abroad by private agencies’ (i.e., Recruitment Law), was approved by the Government in May 2019. This has strengthened the authority of the Tunisian government to take actions against recruitment agencies that do not comply with the stated standards and to impose sanctions on them. Consequently, this has resulted in a number of unregulated recruitment agencies filing claims for registration (ILO, 2021b).⁴⁷
- ▶ **Use of BLMLs to regulate recruitment of health workers.** The governments of the UK and Kenya signed a bilateral agreement addressing recruitment, employment conditions and regulation of recruitment with regard to recruitment and employment of Kenyan health workers.⁴⁸ Notably, this agreement also made provisions to set up a Joint Committee ‘to oversee its implementation and interpretation. The BLA has been complemented by another agreement between the two countries to establish a special route for unemployed Kenyan health workers and managers to seek employment in the NHS. This agreement recognises the Code of Practice established by the World Health Organization to ensure that recruitment of experienced health workers do not adversely impact the origin country’s health care system.
- ▶ **Engaging subcontractors and recruitment agencies:** A pilot project implemented involving a subcontractor for the construction sector in Qatar and a private recruitment agency in Bangladesh focussed on providing the necessary training and tools to the two parties on how they could work towards meeting fair recruitment

47. ILO (2021b). *Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa.*

48. *Bilateral agreement between the Government of the Republic of Kenya and the Government of the United Kingdom of Great Britain and Northern Ireland for collaboration on healthcare workforce*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032369/UK-kenya-health-bilateral-agreement.pdf

guidelines. This included amending the service agreement between the two parties, the establishment of a grievance mechanism and a communication system to share information during the recruitment process and pre-departure trainings geared towards making workers aware of their rights. The evaluation indicated a 92 percent drop in recruitment fees being charged from the migrant workers since the pilot was launched; 93 percent reported not being in debt (ILO, 2021e).

- ▶ Facilitating sharing of information: Access to information can help migrant workers make informed decisions regarding employment and migration. A main challenge, however, is accessing information about recruitment agencies. The Migrant Recruitment Advisor is a digital platform established and operating in Bahrain, Hong Kong (China), Kenya, Nepal, Sri Lanka, the Philippines and Indonesia at present. It collates information regarding recruitment agencies and allows migrant workers to share comments and provide reviews of recruitment agencies and also use the platform to learn of their rights. Such a platform enables the workers to be more engaged and provide the necessary information to shape other migrant workers' experiences of recruitment.

3.11.5 Key messages and the way forward

Key messages

- ▶ Fair recruitment is an integral part of fair labour migration policies. It is critical in order to prevent forced labour, reduce labour migration costs and improve development outcomes for migrant workers and their families.
- ▶ Fair recruitment can only be realised if all the stakeholders involved in the employment of migrant workers - destination and origin countries, employers, recruitment agencies and intermediaries - proactively operationalise fair recruitment principles and practices to support migrant workers.
- ▶ There is the need to reduce the costs of labour migration, in particular the cost of recruitment, as these costs pose serious barriers to realising sustainable development outcomes (as underscored in the Addis Ababa Action Agenda of the Third International Conference on Financing for Development). Ideally, workers should not be charged any recruitment or placement fees as highlighted in ILO recruitment guidelines.
- ▶ Laws and policies and their enforcement can often fall short of ensuring fair recruitment of migrant workers within the region.

Way forward

- ▶ Establishing an appropriate regulatory framework for private employment services in both countries of origin and destination is required. This can be drawn from the ILO Convention on Private Employment Agencies (No. 181) and the ILO General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs (ILO 2019a).
- ▶ Consider setting up a system to collect reliable and up-to-date disaggregated data on recruitment costs of all employees (not only low-skilled jobs, as workers for such jobs are the most impacted by relatively high recruitment costs) in countries of destination.





CHAPTER

4



POST-ADMISSION PROVISIONS AND POLICY TOOLS

Unlike admission policies and tools, there is clear-cut guidance on post-admission policies and tools. International and regional normative instruments highlighted in Chapter 2 provide clear guidance for the formulation of policies and practices using rights-based approaches to all migrant workers whether on temporary or permanent basis. The cardinal principles of these normative instruments are equality of treatment on par with national workers and non-discrimination. Article 4 (1) of the African Union Free Movement Protocol states:

States Parties shall not discriminate against nationals of another Member State entering, residing or established in their territory, on the basis of their nationality, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status as provided by Article 2 of the African Charter on Human and Peoples Rights (African Union, 2018a: 7).

The Strategic Objective 2 of the SADC Labour Migration Action Plan (LMAP) for the period 2020-2025 (SADC, 2021) is: “To protect migrant workers’ rights and improve advocacy and awareness of their contribution to development and regional integration”.

This Chapter discusses a range of policies and tools relevant to better governance of labour migration and protection of migrant workers in countries of destination. Decent working and living conditions, wage protection, employment mobility, skills development and recognition, social protection and portability of social security rights, and freedom of association are major themes covered. Each theme starts with a definition and examples, why it is considered important, challenges in implementation and good practice examples.

4.1 ENSURING DECENT WORK CONDITIONS INCLUDING OCCUPATIONAL SAFETY AND HEALTH

4.1.1 Introduction – definition of decent working conditions including occupational safety and health

The key tools for achieving decent work for migrant workers are international labour standards domesticated in national law and regulations, implemented at work places, and supervised by labour inspection.

The ILO Declaration on Fundamental Principles and Rights at Work (1998) requires all ILO member countries, thus all SADC member States, to respect the provisions of the ten Fundamental ILO Conventions whether ratified or not. Occupational safety and health were incorporated among the Fundamental Principles and Rights at Work in 2022 with Fundamental Conventions C-155 Occupational Safety and Health Convention, 1981 and C-187 Promotional Framework for Occupational Safety and Health Convention, 2006.

Application, supervision and enforcement of ILO Conventions are the main tools to realize decent work for all workers including migrants. Numerous up-to-date ILO Conventions define minimum standards for decent working conditions and occupational safety and health across the wide range and complexity of sectors, workplace conditions and materials extant across all SADC member countries:

- ▶ C013 - White Lead (Painting) Convention, 1921 (No. 13)
- ▶ C045 - Underground Work (Women) Convention, 1935 (No. 45)
- ▶ C062 - Safety Provisions (Building) Convention, 1937 (No. 62)
- ▶ C110 - Plantations Convention, 1958 (No. 110)
- ▶ P110 - Protocol of 1982 to the Plantations Convention, 1958
- ▶ C115 - Radiation Protection Convention, 1960 (No. 115)
- ▶ C119 - Guarding of Machinery Convention, 1963 (No. 119)
- ▶ C120 - Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
- ▶ C121 - Employment Injury Benefits Convention, 1964 (No. 121);
- ▶ C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965
- ▶ R125 - Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965
- ▶ C127 - Maximum Weight Convention, 1967 (No. 127)
- ▶ C136 - Benzene Convention, 1971 (No. 136)
- ▶ C139 - Occupational Cancer Convention, 1974 (No. 139)
- ▶ C148 - Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
- ▶ C149 - Nursing Personnel Convention, 1977 (No. 149);
- ▶ C155 - Occupational Safety and Health Convention, 1981 (No. 155)
- ▶ R164 - Occupational Safety and Health Recommendation, 1981 (No. 164)
- ▶ P155 - Protocol of 2002 to the Occupational Safety and Health Convention, 1981
- ▶ C161 - Occupational Health Services Convention, 1985 (No. 161)
- ▶ R171 - Occupational Health Services Recommendation, 1985 (No. 171)
- ▶ C162 - Asbestos Convention, 1986 (No. 162)
- ▶ R172 - Asbestos Recommendation, 1986 (No. 172)

- ▶ C167 - Safety and Health in Construction Convention, 1988 (No. 167)
- ▶ R175 - Safety and Health in Construction Recommendation, 1988 (No. 175)
- ▶ C170 - Chemicals Convention, 1990 (No. 170)
- ▶ C172 - Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
- ▶ C174 - Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
- ▶ C176 - Safety and Health in Mines Convention, 1995 (No. 176)
- ▶ R183 - Safety and Health in Mines Recommendation, 1995 (No. 183)
- ▶ C183 - Maternity Protection Convention, 2000 (No. 183)
- ▶ C184 - Safety and Health in Agriculture Convention, 2001 (No. 184)
- ▶ R192 - Safety and Health in Agriculture Recommendation, 2001 (No. 192)
- ▶ C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- ▶ R197 - Promotional Framework for Occupational Safety and Health Recommendation, 2006
- ▶ C189 - Domestic Workers Convention, 2011 (No. 189).

International standards for maximum working time, night work, rest time and vacation include:

- ▶ Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), which set a general standard that workers shall have a rest period of at least 24 consecutive hours every seven days.
- ▶ Reduction of Hours of Work Recommendation, 1962 (No. 116), on the 40-hour workweek.
- ▶ Holidays with Pay Convention (Revised), 1970 (No. 132), which establishes at least three working weeks of annual paid holiday for one year of service; and
- ▶ Night Work Convention, 1990 (No. 171), requiring measures for protection of night workers.

Whether or not (yet) ratified, the above instruments provide the minimal standards that must be incorporated in national law and regulations, respected at workplaces, and supervised by labour inspection to uphold decent work for all workers explicitly inclusive of migrant workers.

All SADC member States committed to the 2030 Sustainable Development Agenda with its Goal 8 'Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all'. At the same time, all members endorsed the 2018 Global Compact for Safe, Orderly and Regular Migration (GCM) with its Objective 6: facilitation of fair and ethical recruitment and safeguarding of conditions that ensure decent work. As noted in GCM paragraph 22: "We commit to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination."

4.1.2 Challenges in realization of decent work and OSH for migrant workers

Challenges and impediments to upholding decent work, safety and health for migrant workers include:

- ▶ Structural economic dependence on low-wage unprotected workers
- ▶ Threats of closure of businesses and risk of loss of economic activity in sectors dependent on cheap,

unprotected labour if costs increase for safety equipment and health protection measures.

- ▶ Disposition of some employers and investors to seek viability and competitive advantage by ignoring, undermining and or resisting the rules.

In this context impediments to realization of decent work include:

- ▶ Absence or inadequacy of legislated legal standards on conditions of work, OSH, maximum work-time, etc. explicitly applicable to all migrant workers.
- ▶ Lack of ratification and domestication of relevant international labour standards.
- ▶ Lack of government attention to and assertive positions on decent work and OSH regulation and supervision, and on migrant worker coverage in regulations and enforcement.
- ▶ Inattention or resistance by employers and their organizations to the adoption, implementation and supervision of decent work standards, including particularly to migrant workers.
- ▶ Absence or weakness of supervision and enforcement of decent work regulatory standards.
- ▶ Denial of or restrictions on freedom of association and collective bargaining rights, effectively thwarting worker advocacy and support for obtaining decent work and workplace safety and health.
- ▶ Corruption among licensing, regulatory, supervisory, and or enforcement authorities and institutions that undermines or counters realization of decent work, safety and health standards.

While several African countries have experienced strong economic growth in recent years, most struggle to create decent work opportunities for adult workers and large numbers of new workers entering the labour force. A vicious circle of low levels of industrialization and 'jobs-poor growth' coupled with limited access to education and training, low wages and low-productivity jobs, and lack of basic protections leave many youth and older workers excluded from decent work employment and thus from economic well-being and social participation. For some, migration for survival and employment abroad may be the only viable option.⁴⁹

In Africa and elsewhere, migrants often lack access to decent work or, sometimes, to any work. Some employers perceive migrants as a source of cheap, flexible and expendable labour, and exploit them for the physical labour in so-called '3D' jobs. For example, recent studies have shown that migrant workers, especially from neighbouring African countries have poor access to decent work, face discrimination in the workplace, and have limited access to formal employment.⁵⁰ Employment precarity is characteristic of the labour market engagement of many immigrants in South Africa, especially in sectors with a large share of migrants (DEL, 2022).

Migrants often are the last to be hired and the first to be fired and used as a cyclical buffer during times of economic crisis or downturns; this was evidenced during the COVID-19 pandemic. Migrant workers were however retained in high risk essential work in health, transportation and services, albeit often without adequate OSH protections (Taran and Kadyshcheva, 2022).

Occupational health and safety risks are more pronounced for migrant and refugee workers due to their concentration in higher risk sectors, particularly construction and agriculture and in informal and/or unregulated workplaces. Studies around the world demonstrated that migrant workers are exposed to greater risks and more likely to suffer from injury, disease and fatal accidents than native workers (Brian, 2021).

These issues are common across SADC countries. The Foreword by the Minister of Employment and Labour, TW

49. *Background Report: IGAD Regional Guidelines on Rights-Based Bilateral Labour Agreements (BLAs)*. Patrick Taran and Piyasiri Wickramasekara, ILO-IGAD, 2021.

50. <https://www.mondaq.com/southafrica/employee-rights-labour-relations/897264/migrant-workers-under-south-african-employment-law>

Nxesi MP in the Draft National Migration Policy for South Africa (February 2022) noted:

The South African economy started changing dramatically in the 1990s with major restructuring in its mining sector, a decrease in agriculture and rapid growth of services. With a largely young population and apartheid's legacy of discriminatory education and skills distribution, combined with a slower than expected growth rate, the South African labour market was unable to create enough decent employment for all and it currently faces record-high rates of unemployment, particularly among the youth. (DEL, 2022)

The challenges to realizing decent work for migrant workers in Southern Africa –and elsewhere- are largely structural and systemic. The region's generally low-wage high-unemployment economies require cheap food and goods to allow large portions of populations to survive. Cheap food can only be produced on the basis of very low labour costs, all the more so as costs of other inputs - seeds, breeding stock, fertilizer, pesticides, machinery and equipment –and transportation as well-- continue to rise. Other sectors including construction and services can only remain viable with labour provided very low remuneration and poor working conditions –often well below minimum national standards where they exist. Migrants compelled to leave conditions of no work at all and/or situations of armed conflict in origin countries provide needed cheap labour. Their exposure to indecent work is exacerbated when migrants' abilities to complain and to organize to collectively defend rights and decent work are impeded, all the more so when they are left in undocumented/irregular situations.

4.1.3 Key policy and action lines

Government with tripartite cooperation:

- ▶ Bring national law, labour code and regulations on decent work conditions and rights and responsibilities of workers/employees and employers into conformity with international labour standards and applicable to and enforced for all migrant workers.
- ▶ Ensure that national codes, standards and regulations on occupational safety and health are consistent with international OSH standards, including on hazardous materials, chemicals, air quality, safety protection, etc., notably in agriculture, construction and health sector-specific.
- ▶ Conduct public information targeted to migrants as well as employers on decent work standards, rights at work and access to complaints mechanisms.
- ▶ Reinforce occupational health and safety protection and prevention measures in sectors at risk re COVID-19 exposure.
- ▶ Provide OSH and other communications in language and form that migrants understand.
- ▶ Ensure complementarity between decent work law, policy and practice and promotion of full, productive and freely chosen employment for all workers including migrants, notably in employment policies; transition from informal to formal employment; training policy, etc.

Employers and their organizations:

- ▶ Develop employer engagement and capacity for providing decent work conditions, protections etc. at all workplaces, with explicit equal treatment inclusion of migrant workers/employees;
- ▶ Support ratification and domestication of international conventions and labour standards advancing decent work for migrant workers;
- ▶ Include provisions for decent work for migrant workers in collective bargaining.
- ▶ Provide on-the-job training for employees in safety, health protection, etc.

- ▶ Include migrant entrepreneurs in employers organizations and encourage development of complementary migrant employer associations.
- ▶ Collaborate with the Southern Africa employers federation and with the regional Business Africa employer organization to advance application of decent work standards to all migrant workers across the region.

Trade unions:

- ▶ Organize migrant workers and arranging their membership in trade unions;
- ▶ Develop union capacity to participate effectively in advancing decent work legislation and policy inclusive of migrant workers;
- ▶ Advocate for ratification and domestication of international conventions and labour standards advance decent work for migrant workers;
- ▶ Monitor working conditions of migrant workers and protecting their rights;
- ▶ Include protection of and decent work for migrant workers in collective bargaining;
- ▶ Ensure that union services, advocacy and representation include migrants;
- ▶ Offer pre-departure and/or post arrival training on conditions of employment, social security, rights, application of international labour standards, etc.;
- ▶ Ensure migrant workers have employment contracts upholding decent work;
- ▶ Establish focussed programmes to advance decent work for women migrant workers;
- ▶ Collaborate with Southern Africa Trade Union Coordinating Council – SATUCC - on regionalization of decent work including for migrant workers.

Social dialogue is essential to the development of sound decent work legislation, policy and practice. Structures and regular mechanisms on migration and employment policies need to engage involvement of employers' and workers' organizations to obtain regulation and policies supported by the economic actors.

4.1.4 Law and practice examples on decent work and OSH relevant for migrants

South Africa enacted four key pieces of legislation enhancing OSH protection and supervision: Occupational Health and Safety Act (OHSA) of 1993⁵¹; the Compensation for Occupational Injuries and Diseases Act (COIDA)⁵² administered by Department of Employment and Labour; the Mine Health and Safety Act (MHSA) of 1996⁵³ administered by the Department of Mineral Resources and Energy (DMR); and the Occupational Diseases in Mines and Works Act (ODMWA)⁵⁴ administered by the Department of Health. However, these Acts tended to exclude or limit coverage for domestic workers, informal workers, independent workers and self-employed persons –among whom migrants are prevalent. Nonetheless, the COIDA and ODMWA grant eligibility to current and former migrant workers in the sector for financial compensation for occupational injuries and diseases (Mpedi and Nyenti, 2013). The Department of

51. Occupational Health and Safety Act (Act No. 85 of 1993). Government Gazette No. 14918: 337 2 July; South Africa. State President's Office. 1993. Occupational Health and Safety Amendment Act, 1993 (Act No. 181 of 1993). Government Gazette No. 15369: 342 29 December.

52. Compensation for Occupational Injuries and Diseases Act (Act No. 130 of 1993). Government Gazette No. 15158: 340 6 October; South Africa. Office of the President. 1997. The Compensation for Occupational Injuries and Diseases Amendment Act (Act No. 61 of 1997). Government Gazette No. 18430: 1517 14 November.

53. This law was amended in 1997, 2002, 2003 and 2008. South Africa. President's Office. 1996. Mine Health and Safety Act (Act No. 29 of 1996). Government Gazette No. 17242: 372 14 June.

54. Occupational Diseases in Mines and Works Amendment Act (Act No. 60 of 2002) Government Gazette No. 24283: 451 22 January.

Employment and Labour implements COIDA through a Compensation Fund; the Rand Mutual Assurance Company was designated in ODMWA to provide occupational injury and disease compensation insurance for the mining industry (Crush and Williams, 2021a).

All SADC countries have committed to develop a **National Labour Migration Policy (NLMP)** and several have developed NLMPs, and some are drafting NLMPs (see 1.8.1). The South African draft NLMP refers to international Conventions and protocols, national legislation, and global, regional and national frameworks. While focussed on regulating migration for employment at all skills levels “in the best interest of South African society and economy”, it makes explicit reference to fostering decent conditions of work for all workers, national and foreign, in South Africa and abroad (Crush and Williams, 2022a).

ILO Decent Work Country Programmes (DWCPs) are the main vehicle for delivery of ILO support to countries. DWCPs have two basic objectives. They promote decent work as a key component of national development strategies. At the same time, they organise ILO knowledge, instruments, advocacy and cooperation at the service of tripartite constituents in a results-based framework to advance the Decent Work Agenda. Tripartism and social dialogue are central to the planning and implementation of a coherent and integrated ILO programme of assistance to constituents in member States⁵⁵. Several DWCPs in the Southern Africa region have given specific attention to decent work concerns regarding migrant workers.

4.2 FAIR REMUNERATION AND WAGE PROTECTION

4.2.1 Introduction and Definition of Fair Remuneration and Wage Protection

Migrant workers are at risk of non-payment of wages, deferred payments, arbitrary deductions from wages, non-payment of overtime work hours, withholding of wages or reduction of wages. Similarly, underpayment is also common where migrant workers' wages do not meet the stipulated minimum wages of a sector/industry or a country. In most countries in the GCC, one of the main complaints lodged by migrant workers with their respective embassies is related to wages (i.e., non-payment, under payment or delayed payments etc) (Jureidini, 2017). For lower skilled workers in particular, not receiving a decent wage and/or wage theft can be common occurrences.

Lower skilled workers, including domestic workers, tend to be placed outside of wage protection mechanisms (ILO MAG, 2021). Therefore, it is important that origin and destination countries as well as employers work together to introduce and implement mechanisms to ensure that migrant workers have adequate protection in this regard. A key ILO instrument in relation to wage protection is the Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949. Ninety-nine countries have ratified this Convention, including nine of the 16 member states of SADC. Amongst those that have not ratified them, are several key SADC destination countries including South Africa, Angola and the Seychelles.

The importance of such protections has been underscored during the COVID-19 pandemic, when migrant workers had to return home, or their employment contracts were prematurely terminated. Apart from the non-payment of wages, workers also experienced a reduction in their wages in contravention of their employment contracts, unlawful deductions for the provision of protective equipment as well as the enforcement of unpaid leave without the consent of the worker (ILO, 2020b).

Systems/mechanisms to ensure wage protection are also closely linked to the social protection systems in place in the destination country as well as the strength of the BLMAAs that underpin regular migration, which would provide more bargaining power to the origin country to negotiate stronger protections. In addition to these, access to legal aid and recourse are also available in many destination countries. Language barriers, reluctance to lodge complaints, the duration taken to resolve such disputes make such mechanisms difficult to access. For workers in an irregular or

55. <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/program/dwcp/lang--en/index.htm>

undocumented status, access is further complicated (ILO, 2020b). Lack of information on how to seek support, fear of job loss as well as consequences on immigration status are also commonly cited as reasons not to recover unpaid wages (Farbenblum and Berg, 2018).

Decent wages are a key feature in decent work and a major factor why individuals seek to work elsewhere as well as the amount of remittances that they can transfer back home. Therefore, sending and receiving countries have a major role to play to ensure migrant workers' rights in this regard are protected. As seen during the COVID-19 pandemic, trade unions and associations can also play a significant role in negotiating/representing the interests of migrant workers with the employers as well as the respective government.

International normative framework

The ILO Guidance note on wage protection (ILO, 2023) contains detailed information on the normative framework of wage protection. The principal instrument is the Protection of Wages Convention C-95 (1949).

Box 4.1 shows the key principles that encompass wage protection.

Box 4.1: Key principles of Convention on Protection of Wages, 1949 (No. 95)

- ▶ Workers shall be free to dispose of their wages as they choose.
- ▶ Wages shall be paid in legal tender.
- ▶ In cases of partial payment in kind, the value should be fair and reasonable.
- ▶ No unlawful deductions are permitted (right to receive wages in full).
- ▶ In cases of employer insolvency, wages shall enjoy a priority in the distribution of liquidated assets.
- ▶ Regular payment of wages, including full and swift final settlement of all wages within a reasonable time, upon termination of employment.

4.2.2. Scope

There are several aspects to be considered in guaranteeing protection of wages for migrant workers (ILO, 2023).

- ▶ **What constitutes wages?** According to the ILO Convention No. 95, wages are understood as 'remuneration or earnings'. This means that overtime payments as well as end-of-service benefits such as gratuity payments are also included in the understanding of wages. The interpretation is also country-specific as some national laws also recognise bonuses and wage supplements as part of wages (ILO, 2020b).
- ▶ **Legality of deductions.** Clear guidance must be provided regarding what deductions are allowed. In the Convention 95, some guidance in this regard is provided. Accordingly, deductions can only be implemented in accordance with the national law, collective agreements or arbitration awards. Individual agreements between employer and employee to reduce the wages would not be within this scope (ILO, 2020b).
- ▶ **Adherence to fair recruitment principles.** Protection of migrant workers' rights begins in the pre-departure phase. Both destination and origin countries should seek to include fair recruitment principles in the BLAs to ensure that migrant workers have the necessary information regarding employment and the protection of their rights. A major concern is that recruitment costs are sometimes deducted from the wages

which may remain unreported by the migrant worker. Adherence to fair recruitment principles can respond to this by specifying the allowed costs and who should bear those costs.

- ▶ **Bankruptcy or solvency of the employer.** When an employer files for bankruptcy/solvency, Article 11 of the ILO Convention 95 states that such employees must be considered as privileged creditors in relation to any unpaid wages (ILO, 2021c). This ensures that workers must receive their due wages before other creditors are allowed to make claims (ILO, 2020b). Further guidance in this regard is also available in the Protection of Workers Wage Claims (Employer's Insolvency) Convention, 1992 (No. 173).
- ▶ **Unprecedented situation.** Notably, the ILO also has issued advice on how countries must respond when workers have to leave an employer and the country in-haste or due to an emergency. In such instances, it is advised that the State rather than the employer assumes responsibility for the continued payment of the due wages and 'and that any claims in respect of existing wage debts are promptly settled' (ILO, 2021).
- ▶ **Principles of non-discrimination and equality of treatment.** The protection of wages of workers falls broadly under the umbrella of the principles of non-discrimination and equality of treatment. Payment for work of equal value is a fundamental ILO principle. Wage discrimination by nationality and gender are common in many temporary work programmes, especially in GCC countries. Countries are therefore bound to facilitate access to dispute resolution mechanisms, either through labour tribunals, special ombudsmen or legal redress for migrant workers. The challenge lies in ensuring that migrant workers in an irregular status also have equal access to these services.

4.2.3. Benefits and Challenges

Benefits

- ▶ Receiving a living wage and decent pay in decent working conditions is a universal expectation of employment. A primary reason many workers migrate is to earn a living, all too often impossible in places of origin. Providing comprehensive protection of wages for workers is important to ensure that their employment remains secure, and their rights are respected.
- ▶ Mechanisms to ensure that wages are fair and protected also ensures that employers are accountable to their workers and decent work conditions are met.
- ▶ Comprehensive wage protection and fair remuneration measures also enable labour markets to be competitive and attract as well as retain workers.

Challenges

- ▶ Whilst measures can be adopted and systems introduced to ensure that employers comply with minimum wages standards, **ensuring compliance** is challenging. For example, reviews of the GCC's Wage Protection System indicate that whilst large and medium companies are usually compliant, small enterprises lag behind. However, evidence from Australia points to how even large-scale enterprises can fall foul of compliance especially because migrant workers are afraid to come forward and lodge complaints. Compliance becomes more complicated when most economic activity occurs in the informal sector.
- ▶ The accompanying concern is regarding who bears the **administrative burden of enforcement**. Such enforcement requires close coordination across multiple government actors which may include the Immigration officials as well. The responsibility of each entity, therefore, must be clarified and adequate funding allocated for enforcement to take effect
- ▶ The **supervision of households employing live-in migrant domestic workers** is another challenge. Domestic legislation in relation to how employers and workplaces of domestic workers are viewed can become obstacles to effectively monitor this workplace. In such contexts, the burden of reporting lies with the domestic worker.

- ▶ **COVID-19 and wage theft issue:** One of the biggest lessons learned from the COVID-19 pandemic has been the importance of ensuring that workers receive their wages in full. Instances where Trade Unions as well as origin countries were able to successfully negotiate terms for due wages to be paid have been noted. These experiences have underscored the importance of using the principles of equality of treatment and non-discrimination to guide the treatment of migrant workers in the destination countries.
- ▶ **Supporting migrants in an irregular status:** Irregular migrant workers will seek to remain invisible. This increases their vulnerability to abuse and exploitation. The fear of coming forward and lodging a complaint is also complicated by the fear of being detained and deported. How destination countries treat such migrant workers will determine their access to protection.

4.2.4 Examples of practices and good practices from SADC/AU or international levels

Introducing minimum wages for different work sectors have been used to ensure that workers are not underpaid and exploited. Countries in the GCC as well as the OECD have introduced such minimum wage legislation. Examples include Israel and Kenya and South Africa for domestic workers and Ireland for au pairs (Farbenblum and Berg, 2021). However, the interpretation of these regulations can still impact workers. In the United Kingdom for example, the exemption granted to Au Pairs – because they live in the household and are treated as part of the family – was seen to impact their wellbeing as well as becoming a loophole in employing live-in domestic workers (Hill, 2021).

Even when minimum wages are introduced, non-discrimination on the basis of nationality must be legislated. Countries like Kenya, Chad Republic, Georgia, Kazakhstan and Timor-Leste and Venezuela have introduced such legislation (ILO, 2014).

Fear of retaliation is identified as a reason for migrant workers' reluctance to come forward. In some states in the United States, Australia and some provinces in Canada, third parties (understood as trade union representatives, among others) can lodge a complaint on behalf of the worker (Farbenblum and Berg, 2021). Some have also introduced digital platforms. For example, Australia's anonymous online platform is accessible in 16 languages. Similarly, Qatar has also established an online platform for workers employed in the private sector and domestic work to anonymously lodge complaints (Farbenblum and Berg, 2021).

In France, if the Labour Inspector finds a migrant worker is undocumented or detained, a process to initiate wage recovery can be activated by coordinating with the French Office for Immigration and Integration. Recovered wages are then transferred to the worker, even in situations where the worker has left France (Farbenblum and Berg, 2021).

In the GCC countries, a mechanism commonly known as the Wage Protection Systems (WPS) has been in operation for several years. Initially introduced in 2009 in the UAE, the WPS has been now adopted by Kuwait, Qatar, Saudi Arabia, Oman and Bahrain (Jureidini, 2017). The system requires employers to use an electronic salary transfer system to use financial institutions including currency exchange centres, to make wage payments to their respective employees (ILO MAG, 2021). A key drawback of the system is the lack of oversight since employers can manipulate the calculation of wages.

The importance of reviewing systems such as the WPS was highlighted by the UAE when the centrality of the WPS was further expanded to ensure that employers comply with the system. Through the updates introduced in 2016, penalties for non-compliance have been introduced on an incremental basis. The government will also not engage with employers who have not registered with the WPS and has strengthened the penalties for non-compliance. Companies employing over 100 workers, for instance, are specifically targeted: where payments are delayed for over 16 days, the company is banned from applying for work visas; delays over a month will result in legal action being instituted and delays over 60 days will result in additional fines being imposed which are to be calculated on a per worker basis (Jureidini, 2017). Stipulation of a minimum wage for migrant workers employed in lower-skilled categories of work can also help ensure that workers are not underpaid and exploited. Kuwait, for example, has introduced a minimum wage of 198 US dollars (Kuwait Dinar 60) for migrant domestic workers.

The origin country also has a responsibility to ensure that wage protection is a core principle. To this end, Nepal has

instituted minimum wages for its domestic workers who wish to work overseas as has other sending countries including India, Ethiopia, Indonesia and the Philippines (ILO, 2014). Such stipulations, however, can only be implemented if they become a part of BLAs. The Philippines, for example, use BLAs effectively by negotiating minimum wages for its citizens employed overseas and sets additional standards that need to be met by the destination country.

Responses during extenuating circumstances such as the COVID-19 pandemic highlighted the importance of coordination between the origin and destination country. In response to wage claims, Saudi Arabia agreed to appoint a labour attaché to its embassy in the Philippines whose main task would be to receive wage claims of repatriated migrant workers (Farbenblum and Berg, 2021)

Their relevance for the SADC destination countries

Under Article 19 of the SADC's Protocol on Employment and Labour, specific guidance is provided to member states on the treatment of migrant workers. A key concern is that all non-nationals are accorded with fundamental rights and especially those related to labour/employment and social protection rights (SADC, 2014). The Strategic Objectives 1 and 2 of the SADC's Labour Migration Action Plan (2020-2025), broadly addresses wage protection. Objective 1 (to strengthen labour migration policies and regulatory systems for better labour migration governance), specifically addresses ratification of conventions and the implementation of the SADC Protocol on Employment and Labour and the review and updating of BLAs. Objective 2 seeks 'To protect migrant workers' rights and improve advocacy and awareness of their contribution to development and regional integration' (SADC, 2021). As such, two key outputs identified are relevant: 1) Core labour standards and those relating to labour migration ratified and implemented, through responsive legislation and practice and 2). Fair and ethical recruitment initiatives implemented, when operationalised, will address wage protection.

In the Seychelles' NLMP, the principles of equal treatment and non-discrimination are applied. Section 4 refers to the protection of the rights of migrant workers including their wages. Actions proposed include those responding to the vulnerabilities and violations migrant workers encounter as well as introducing an enforcement and grievance mechanism to support them. As such the NLMP, through outcome 4.2.1.1. also refers to 'Existing regulations for the protection of workers in particular concerning the respect of equal treatment and non-discrimination principles in terms of working conditions are enforced, and access to decent living conditions, taking into account the specificities of migrant workers, including gender differences'.

4.2.5 Key messages and the way forward

Key messages

- ▶ Ensuring that workers' wages are protected requires a clear understanding/definition of what constitutes wages. It is important to note that such definitions would vary by country and region.
- ▶ The existing labour laws or the national laws must clearly stipulate these parameters as well as the conditions in which employers are allowed to make deductions from the worker's due wages.
- ▶ Wage protection is also closely linked to ensuring fair recruitment principles are implemented as well as the use of BLAs to operationalise means to protect the workers.
- ▶ Providing comprehensive protection enables labour markets and employers to attract and retain workers in the long term.
- ▶ While wage protection systems are easy to devise, enforcement is a key issue as seen in the GCC countries and others.

Way forward

- ▶ Develop and implement a decent wage system which guarantees equal pay for work of equal value for both national and migrant workers including those in an irregular status.

- ▶ Destination countries should monitor and use the labour inspection system to enforce wage protection for all workers.
- ▶ Bring domestic workers under labour law where they are not covered so that they also benefit from these systems.

4.3 LABOUR INSPECTION OF WORKING AND LIVING CONDITIONS

4.3.1 Overview and Definitions of Labour Inspection

Labour Inspection is the legally enforceable means of supervising workplace compliance with national and international labour standards including on occupational safety and health applying to all workers at all workplaces. Labour Inspection is established under and guided by one of the most widely ratified technical Conventions of the ILO, Convention No. 81 on Labour Inspection. It requires a specialized unit of government supervision, the Labour Inspectorate, usually lodged within and as a core function of the Ministry concerned with labour and employment. It involves periodic supervisory inspections to workplaces, reaching or potentially reaching all collective workplaces. As the Global Code of Integrity for Labour Inspection of the International Association of Labour Inspectors - IALI puts it: *The role of the modern Inspectorate is to ensure social peace and social justice by preventing unfair work practices, work-related accidents or occupational illnesses, and by working in collaboration with employer and worker organisations* (IALI, 2008).

As the ILO webpage on labour inspection elaborates:

“Labour inspection is a public function and is at the core of effective labour law with wide powers and functions, including enforcement and sanctions that should be sufficiently dissuasive to deter violations of labour legislation while also providing corrective, developmental and technical advice, guidance, prevention tools and promoting workplace best practices. These functions should be regulated and balanced as part of a comprehensive compliance strategy in order to ensure decent working conditions and a safe working environment. Promoting and enforcing decent working conditions, safety and health standards and respect for fundamental principles and rights at work are at the core of labour inspection activities”.⁵⁶

Supervision of labour standards is a concern as fundamental as adoption of international labour standards in national law and their application: the key measure of labour standards implementation is supervision; the only effective means to uphold respect and compliance is inspection and, where necessary, ensuing enforcement measures. For workers and their unions, labour inspection is the main and only formal mechanism for upholding decent work conditions and treatment at the workplace.

Box 4.2: Role of Labour Inspection

At a time of globalization and increased competition, rapid technological change and new production methods, protecting workers remains a vital task. It is a difficult task – and sometimes a shamefully dangerous one. The preconditions for worker protection and respect for decent work are: good labour legislation which respects international standards; strong, independent, representative trade unions

⁵⁶ ILO Webpage. Labour inspection systems, policies and methods.

<https://www.ilo.org/global/topics/labour-administration-inspection/areasofwork/policies-and-methods/lang--en/index.htm>

which enjoy the basic rights to organize and negotiate; and effective labour inspection, provided with the means needed and conducted by inspectors who are trained, suitably qualified and free of undue outside influence.

Unfortunately, labour inspection is neglected by many governments and flouted by unscrupulous employers, even when it is not sacrificed outright under privatization. The ILO General Survey on labour Inspection presented to the International Labour Conference in 2006 concluded, “The labour inspection system has the potential to play an even greater role than it has hitherto, in ensuring the protection of both men and women workers in all sectors and at all levels; in ensuring compliance at national level with national labour laws; and, ultimately, in assisting and strengthening the international supervisory system.”

Adapted from: ILO. The global challenges of labour inspection. Labour Education 2005/3-4 No.140-141



4.3.2. Normative Framework

The global reference is ILO Convention C-81 on Labour Inspection, along with C-129 on labour inspection in agriculture, both of which are ILO priority governance conventions. C-81 is the standard of reference for labour inspection systems worldwide and counts with 149 ratifications, one of the highest number for ILO Conventions. All SADC Member States have ratified C-81; C-129 is ratified by Botswana, Madagascar, Malawi, Zambia, and Zimbabwe. The ILO lists several Conventions and Recommendations regarding labour inspection, including inspection as a part of labour administration, inspection pertaining to occupational safety and health and concerns specific sectors, namely agriculture, fishing, maritime, mining and transport work.

ILO Convention No. 81 identifies basic missions for labour inspectors: ensuring that labour legislation is applied; advising employers and workers on the most effective means of achieving that aim; and drawing the authorities' attention to abuses or shortcomings not covered by the law. Both “Conditions of work and the protection of workers while engaged in their work” are to be covered by labour inspection. Occupational safety and health as well as preventing forced labour or child labour are crucial issues for inspectors: they are also concerned with matters ranging from working time to pay, maternity protection, weekly rest times, leave, equality and diversity in the workplace. Labour Inspectorates need to be knowledgeable about freedom of association, collective bargaining rights and trade union rights in general, including the protection of trade unionists against abuse and discrimination. Article 18 stipulates “adequate penalties ... for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.”

Box 4.3: ILO instruments concerning labour inspection

Conventions

- ▶ C81 Labour Inspection Convention , 1947
- ▶ P81 Protocol of 1995 to the Labour Inspection Convention , 1947
- ▶ C129 Labour Inspection (Agriculture) Convention , 1969
- ▶ C150 Labour Administration Convention , 1978
- ▶ C155 Occupational Safety and Health Convention , 1981
- ▶ P155 Protocol of 2002 to the Occupational Safety and Health Convention , 1981
- ▶ C178 Labour Inspection (Seafarers) Convention , 1996
- ▶ C187 Promotional Framework for Occupational Safety and Health Convention , 2006
- ▶ C188 Work in Fishing Convention , 2007

Recommendations

- ▶ R81 Labour Inspection Recommendation , 1947
- ▶ R82 Labour Inspection (Mining and Transport) Recommendation , 1947
- ▶ R133 Labour Inspection (Agriculture) Recommendation , 1969
- ▶ R158 Labour Administration Recommendation , 1978
- ▶ R164 Occupational Safety and Health Recommendation , 1981
- ▶ R185 Labour Inspection (Seafarers) Recommendation , 1996
- ▶ R197 Promotional Framework for Occupational Safety and Health Recommendation , 2006
- ▶ R199 Work in Fishing Recommendation , 2007

Source: Resource guide on labour inspection ILO webpage: <https://www.ilo.org/inform/online-information-resources/resource-guides/labour-inspection/lang--en/index.htm>

4.3.3. Main Challenges for labour inspection and upholding labour standards

Foreign/migrant workers are evidently more often subject to substandard conditions and abusive treatment in employment. Even in industrialized countries with presumably more rigorous standards and inspection, data shows higher workplace accident and death rates for migrant workers than for national cohorts; for example, in Western Europe the rates for foreign workers were double those for nationals.

Upholding labour standards for foreign workers presents distinct challenges that require particular attention and specific approaches. Both the types of jobs and the treatment of migrant workers are often distinct from that for national workers (Faraday, 2022). On the one hand, the perceived ‘vulnerability’ and lack of familiarity of migrant workers—particularly those in irregular status—are often associated with their employment in substandard conditions and in activity, locations or workplaces where standards and/or their enforcement is weak or non-existent. On the other hand, precisely because of foreign, immigrant and sometimes ethnic minority status, migrants often have lesser or little knowledge of legal standards, do not adequately understand the host country language(s), and may have little formal training or education. Migrant workers are also often poorly or not at all organized into representative trade union organizations that would provide collective support for their protection and defence in cases of abuse.

Labour standards remain relatively weak and their enforcement concerning migrant workers is generally weaker across SADC countries, with notable exceptions such as Mauritius. Where labour standards are enacted, application to and enforcement for foreign migrant workers and or/in sectors and workplaces where migrants are employed is far from adequate if existent at all. Migrants in irregular situations may be excluded not only from coverage of labour law but also from labour inspection supervision.

In effect, some employers are tacitly allowed by deliberate inattention to employ migrant workers in indecent working conditions, particularly migrants in irregular situations. Absence of labour inspection allows for forced labour-like conditions for migrant workers. In Southern Africa, this is said to occur in some places in farming, informalized mining, construction and domestic work, among other sectors.

Common problems impeding effective supervision of labour standards, decent work and OSH for migrant workers include labour administration mandates that restrict the scope of rights enforcement; exclusion of coverage of work-sites or sectors where migrants may be prevalent, restrictions on addressing workers in irregular situations, lack of requisite expertise and training to deal with foreign workers; absence of language competence or interpretation to engage with workers not fluent in local/national language, etc. There are also problems of inappropriate or corrupt occurrences –where for example employers get word of an impending inspection visit with time enough to send away workers subject or witnesses to substandard or illegal conditions and situations. Or where immigration authorities are called in during an inspection to remove undocumented foreigners -who would be likely victims of, witnesses to and potential testimony on violations of workplace standards before labour inspectors do their rounds.

4.3.5 Law, Policy and Action steps

- ▶ **Ratification of C-129** (needed in 10 SADC Member States)
- ▶ **Review of national laws, regulations, and practices in terms of their compliance** with the provisions of ILO Conventions C.81 and C. 129 irrespective of whether countries have ratified them or not..
- ▶ Ensure that legislation and operational regulations explicitly **mandate inspection of worksites where migrants may be present/prevalent** and include review of migrant workers' contracts, conditions, wages, etc as covered in national legislation, on equal terms with nationals, regardless of status.
- ▶ **Enhance labour inspection capacity and competence** to inspect worksites where migrant workers are engaged/employed.
- ▶ **Establish specialized units or teams** to inform, inspect and investigate regarding migrant workers' conditions, treatment, etc at work in accord with national and international labour standards.
- ▶ Expand **specialized training for inspectors** and administrative personnel concerned.
- ▶ **Provide for language capacity** by inspector competence and/or accompanying interpreters to be able to engage with and obtain testimony from all workers at work-sites inspected.
- ▶ Identify and give particular **attention to sectors where migrants are employed** and risks of poor conditions, lack of OSH protection, low or non-payment may be commonplace –such as agriculture, construction, forestry and mining.
- ▶ Ensure strict **firewalling** separation of labour inspection functions from any immigration enforcement activity.

The ILO produced especially relevant and useful *Guidelines on general principles of labour inspection*, (ILO, 2022d) adopted by a Meeting of Experts on 16 December 2021 and published in 2022. The *Guidelines* provide detailed technical guidance on principles and provisions in Conventions Nos 81 and 129 to address current and emerging trends in labour inspection and promote modern and effective labour inspection policies and practices. The Guidelines comprise: (1) scope and functions of the labour inspection system; (2) structure and organization; (3) policy, planning and monitoring; (4) labour inspectors' status and careers; (5) powers and methods of inspection; and (6) enforcement measures.

4.3.6 Examples of law, policy and practice

Mauritius: *Special Migrant Unit*, Ministry of Labour, Human Resource Development and Training.⁵⁷

A specialized inspection team for migrant workers was set up in 2001 directly under the Ministry concerned to provide services and support labour law protection for migrant workers. Its work continues unabated to this day, with three main areas of responsibility:

- ▶ Vetting of contracts, including development of *Models of Contract of employment*.⁵⁸
- ▶ Inspection at workplaces
- ▶ Investigation as well as informing companies regarding conditions of work for migrant workers, including regarding lodging and living conditions particularly when employer-provided.

Among numerous activities, the unit distributes brochures in English, Chinese and Hindi to migrants and employers to disseminate information on the Mauritian Legislation and regulations on employment and labour standards which equally apply to migrant workers and about services provided by various Ministries and departments. Two interpreters (one Chinese and one Indian) are employed to help facilitate communication between the Officers and the Chinese and Indian workers.

The work the special unit once described as a ‘flying squad’ not only has upheld decent working and living conditions for many if not most of the more than 20,000 migrant workers in Mauritius, the majority from China and India. Its existence, experience and competence also served to defuse what could have been a significant diplomatic crisis some years ago when several thousand Chinese workers walked off their jobs after deaths at work of several Chinese workers and marched to the Chinese Embassy to demand resolution of serious collective grievances with support from their ‘own’ government for safe and decent working conditions. The special migrant unit, having previously won the trust of migrants and employers for its serious and competent work, was able to engage negotiations, validate migrant concerns, and obtain agreements from the several parties concerned including employers as well as both governments to address and resolve the workers’ grievances while avoiding a situation that could have spiralled ‘out of control’ if not immediately addressed competently.

New USA policy to protect migrant workers who are victims of labour violations.⁵⁹ The US Department of Homeland Security established in January 2023 a process to protect from deportation migrant workers who witness, expose, or are victims of workplace labour violations. “Workers are often afraid to report violations of law by exploitative employers or to cooperate in employment and labour standards investigations because they fear removal or other immigration-related retaliation by an abusive employer,” the agency said. “Agencies tasked with enforcing labor and employment laws depend on the cooperation of these workers in their investigations.” New guidelines create a “streamlined and expedited” process and a centralized location where requests can be submitted and allows migrant workers in unauthorized status to apply for “deferred action,” meaning protection from deportation when taking part in an investigation of workplace labour violations. Approval of requests allows migrant workers cooperating with a labour investigation to stay in the country for two years and to apply for authorization to work during that time. Labour and immigration groups applauded the policy as a way to protect migrant workers from employers who might use their immigrant status or lack thereof to retaliate against them for exposing wage or workplace violations. Stuart Appelbaum, President of the (USA national) Retail, Wholesale and Department Store Union, stated: “Immigrant workers are critical to the success of our economy, yet they are among those who suffer the most exploitation and abuse at work, and then suffer further from intimidation and retaliation when they stand up for their rights.”

57. See “Special Migrant Workers Unit” on Labour and Industrial Relations webpage of the Mauritius Ministry of Labour, Human Resource Development and Training at: <https://labour.govmu.org/Pages/Labour-and-Industrial-Relations.aspx>

58. <https://labour.govmu.org/Pages/Contract-Models.aspx>

59. Summarized from PBS News Hour report “DHS announces policy that protects migrant workers in labor investigations” by Rebecca Santana, Associated Press. January 13, 2023. <https://www.pbs.org/newshour/politics/dhs-announces-policy-that-protects-migrant-workers-in-labor-investigations>

4.3.4. Key Messages

- ▶ Labour inspection for workplaces employing migrants is the main if not only way to assure decent working terms and conditions and uphold labour rights for migrant workers.
- ▶ It has to reach all workplaces where migrants are employed –thus it must have the mandate, the authority, the competence, the resources and the capacity to do so.
- ▶ Governments have the primary role and responsibility, namely empowering, maintaining, supporting and defending an effective labour inspection system and administration, ensuring provision of adequate resources to cover all sectors and localities, to periodically reach or potentially reach all workplaces, and to address specifically treatment of migrant workers vis a vis labour standards.
- ▶ Tripartite consultation and cooperation on labour inspection is essential in setting labour standards and labour inspection legislation, ensuring adequate appropriations for the inspectorate, social partner cooperation with inspections at workplaces, inclusion of supervision in collective bargaining and agreements, and mechanisms for tripartite communication and consultation between social partners and the inspectorate.
- ▶ Labour inspection needs also to supervise compliance with standards and minimum decent conditions specific to migrant workers, such as for decent housing and access to adequate nutrition.
- ▶ Reaching migrant workers requires language abilities to talk directly with migrant workers, either by inspectors or on-site interpreters.
- ▶ Labour inspection supervising application of labour and OSH standards in protection of migrant workers must remain separate and firewalled from immigration enforcement.

4.4 FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING RIGHTS

4.4.1 Introduction and definition of thematic area

Rights to Freedom of Association, to organize into unions, and to engage in collective bargaining are among the most fundamental of human rights for all persons, including for all migrant workers. They are enshrined in core human rights conventions in international labour standards, notably the fundamental ILO conventions on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and on Right to Organise and Collective Bargaining Convention, 1949 (No. 98). All 16 SADC member States have ratified both these Conventions –as well as most core human rights conventions also delineating universal rights to freedom of association.

As highlighted in the Report of the Special Rapporteur on the human rights of migrants *Right to freedom of association of migrants and their defenders* (OHCHR, 2020), the right to freedom of association is essential for migrants to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. Participation in and representation by trade unions and civil society organizations along with rights to a collective voice at work are key means through which migrant workers including those in irregular situations, as all other workers, secure and defend their labour and employment rights and obtain decent working conditions and remuneration.

Given the interconnected nature of human rights, restrictions on migrants and their defenders' freedom of association further hinder migrants' enjoyment of other rights. Encouraging migrants to organize enables their engaging directly with and having positive impacts in the communities and countries in which they reside and work.

Box 4.4: Collective Bargaining

Closely linked to freedom of association is the issue of collective bargaining. Collective bargaining is a fundamental right that is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Collective bargaining is a key means through which employers and their organizations and trade unions can establish fair wages and working conditions and ensure equal opportunities between women and men. It also provides the basis for sound labour relations. Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment. The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces. Enhancing the inclusiveness of collective bargaining and collective agreements is a key means for reducing inequality and extending labour protection.

Source: Freedom of Association and Collective Bargaining. ILO webpage. See at: <https://www.ilo.org/global/topics/dw4sd/themes/freedom-of-association/lang--en/index.htm>

Governments along with social partners are primary duty bearers in ensuring that these rights are respected for all workers regardless of situation or status. That means deliberate attention to enabling realization of these rights inclusive of migrant workers.

However, in Southern African countries, as elsewhere, the exercise of migrant workers' rights to freedom of association, to join unions and to participate in and enjoy benefits of collective bargaining with employers are often made difficult by conditions they face and/or by deliberate efforts to restrict or prevent exercise of those rights. In a few SADC member countries, the exercise of those rights and the freedoms to form and join unions are severely repressed.

4.4.2 Normative framework

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), guarantees the right of workers and employers to establish and join organizations of their own choosing without previous authorization. Right to Organise and Collective Bargaining Convention, 1949 (No. 98), protects workers and employers who exercise the right to organize, forbids interference in the activities of workers' and employers' organizations, and promotes voluntary collective bargaining. Both ILO C87 and C98 have been ratified by all SADC Member States (see Table 4.1).

These two conventions are among the 10 Fundamental ILO Core Conventions enshrined in the ILO Declaration on Fundamental Principles and Rights at Work (2022b) applicable to all workers without distinction of nationality and regardless of migration status. All ILO member States have an obligation arising from the fact of membership to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, Protocol and Recommendations, regardless of whether or not ratified (ILO, 2021a).

Table 4.1: Ratification of ILO Conventions No. 87 and 98 by SADC member states

Convention	SADC Member State year ratified
ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	Angola (2001), Botswana (1997), Comoros (1978), Democratic Republic of the Congo (2001), eSwatini (1978), Lesotho (1966), Madagascar (1960), Malawi (1999), Mauritius (2005), Mozambique (1996), Namibia (1995), Seychelles (1978), South Africa (1996), United Republic of Tanzania (2000), Zambia (1996), Zimbabwe (2003).
ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	Angola (1976), Botswana (1997), Comoros (1978), Democratic Republic of the Congo (1969), eSwatini (1978), Lesotho (1966), Madagascar (1998), Malawi (1965), Mauritius (1969), Mozambique (1996), Namibia (1995), Seychelles (1999), South Africa (1996), United Republic of Tanzania (1962), Zambia (1996), Zimbabwe (1998).

Freedom of association rights are at the core of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), ratified respectively by 13 and 14 SADC member States. These rights are also stated in other Human Rights Conventions widely ratified across SADC: International Convention on the Rights of the Child (Article 15) and Convention on the Elimination of All Forms of Discrimination Against Women (Article 7). They also feature in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 26 and 40); the Convention on the Rights of Persons with Disabilities (Article 29); and the 1951 Convention Relating to the Status of Refugees (Article 15).

Freedom of Association rights are at the core of the **African Charter on Human and Peoples' Rights** (article 10), ratified by 54 out of 55 member States of the African Union, as well as the **African Charter on Democracy, Elections and Governance** (Articles 12(3), 27(2) and 28) and the **African Charter on the Rights and Welfare of the Child** (Article 8). The *Guidelines on Freedom of Association and Assembly in Africa* produced by the African Commission on Human and Peoples Rights are particularly relevant for governments and social partners in Southern Africa.

The rights and standards in these international and African instruments feature in the Constitutions of most SADC member States, in many cases explicitly referring to all persons in the country.

4.4.3 Challenges

Challenges to and restrictions on exercise of freedom of association and collective bargaining rights by workers, in particular migrant workers, remain widespread across Southern Africa. Some of these are manifested in one form or another officially and/or by private actors in Southern African countries.

Key contemporary challenges of particular concern for migrant workers include:

- ▶ Legal restrictions on existence, registration, membership in and activity of trade unions and other worker organizations.
- ▶ Explicit restrictions on participation in unions and union activities by foreign workers and/or by immigration status, such as those under temporary regimes or those in irregular situations.
- ▶ Repressive measures taken against union members and/or activities, in particular against organizing and engaging in job actions such as pickets, demonstrations and/or strikes.
- ▶ Harassment by authorities and/or by certain employers of union organizers and/or union members, in particular targeting migrant workers engaged in union activity or those seeking to join worker organizations.
- ▶ Direct and indirect measures taken to thwart union organizing including at specific workplaces, such as by intimidating workers; openly discouraging joining unions; preventing, thwarting or preventing recognition of votes for unionisation/certification of unions; etc.

- ▶ Use of immigration enforcement activity to target, intimidate and remove/deport migrant workers engaged in unionising activity –regardless of their status.
- ▶ Violence against trade union members, their premises, and their activities, up to and including assassination of trade union/worker organization members.

4.4.4 Responses

Key and essential response lines are putting in place legislation and regulations, government policy, social dialogue and public communication respecting freedom of association and collective bargaining rights and including all migrants in protection and realization of those rights:

- ▶ Ensure that national legislation has domesticated the ILO fundamental conventions on Freedom of Association-Collective Bargaining and implementing regulations are enacted and enforced.
- ▶ Ensure that freedom of association and collective bargaining rights are explicated in law, regulations, supervision and enforcement.
- ▶ Support and facilitate worker-employer collective bargaining throughout the economy/country inclusive of migrant workers and migrant employers.
- ▶ Respect fully union and workers –including migrant workers– rights to engage in peaceful manifestations, such as picket lines, demonstrations, and member agreed strikes.
- ▶ Prevent and discourage any official or unofficial intimidation or repression of unions and worker union activity by any and all authorities.
- ▶ Ensure that immigration enforcement strictly avoids serving or being used as means of intimidating or removing migrant worker organisers and union members regardless of immigration status.
- ▶ Strengthen national social dialogue mechanisms and ensure that migration, treatment of migrant workers –and entrepreneurs- and protection of their rights is a permanent and regular item on tripartite and social partner dialogue and cooperation agendas.

Box 4.5: The full agenda for policy and action on Freedom of Association: UN Special Rapporteur on the Human Rights of Migrants

Recommendations of the Special Rapporteur, based on extensive global research and consultation:

- ▶ Recognize in domestic laws migrants' right to freedom of association and encourage them to self-organize, regardless of their migration status;
- ▶ Establish laws, policies and practices that are supportive of trade union membership for migrants;
- ▶ Extend labour protection in national laws to migrant workers, including domestic workers, to ensure equal protection under the law. Migrant workers should enjoy treatment no less favourable than that applicable to nationals, including with regard to freedom of association;
- ▶ Take positive measures, including affirmative action, to ensure that migrants with specific vulnerabilities are able to effectively exercise their right to freedom of association;
- ▶ Ensure policy coherence by conducting a review of all national policies that are relevant to the right to freedom of association of migrants and revising those that could adversely affect

migrants' exercise of this right;

- ▶ Ensure the accessibility of legal protection and effective judicial or other appropriate remedies to address any violation of migrants' right to freedom of association regardless of their migration status;
- ▶ Establish in law the right for migrant workers, including those without documentation, who are victims of retaliation for their collective organizing to remain in the country of destination while they settle their dispute, and enforce robust penalties for employers who retaliate against migrant workers who organize;
- ▶ Address any threats, intimidation, harassment and use of violence by either public or private actors as reprisals and retaliation against migrants who exercise their right to freedom of association;
- ▶ Provide accessible information for migrants, including in countries of origin prior to their departure, on their right to freedom of association, and provide assistance services for migrants with vulnerabilities, including migrant women and domestic migrant workers, to ensure that they can better understand their right to freedom of association and navigate relevant processes and procedures more effectively;
- ▶ Strengthen civil space and create an enabling environment for civil society organizations, including those working on migration and migrants' rights issues. While the formation of an association with legal personality may require certain formalities, rules on association should facilitate the registration, work and funding of civil society organizations, the process should be simple, practical and free from undue State restrictions and interference. Registration procedures should also be accessible to migrants, including those in an irregular situation;
- ▶ Provide accessible information for migrants on existing migrant associations and civil society organizations that can provide them with advice or assistance;
- ▶ Ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants;
- ▶ Guarantee that administrative and law enforcement officials are adequately trained with regard to the respect of the right of migrants, including those in an irregular situation, to freedom of association, particularly in relation to their specific protection needs;
- ▶ Ensure that migrants' visa or residence permits are not linked to individual employers and that a migrant's authorization to remain in the country of destination is not tied to his or her employer's good will, as a means to safeguard migrant workers' right to freedom of association;
- ▶ Ensure migrants' work visa or permits are issued with no effective restrictions on the migrant workers' right to freedom of association, including to form and join trade unions;
- ▶ Ensure that all legislation concerning smuggling and trafficking has humanitarian exemptions applicable to persons and organizations that conduct humanitarian assistance or provide aid to migrants without criminal intent;
- ▶ Limit immigration detention to the shortest possible period of time when it is resorted to as an exceptional measure, while ensuring that migrants held in detention have open and confidential access to visitors and telephone calls and that sufficient private spaces are available within detention facilities.

Source: OHCHR (2020). Right to freedom of association of migrants and their defenders. Report of the UN Special Rapporteur on the human rights of migrants, Geneva.

4.4.5 Examples of good law and practice in Southern Africa

- ▶ Ratification by all SADC member countries of ILO fundamental Conventions C-87 and C-98 on freedom of association and rights to collective bargaining.
- ▶ Strong national union federations and employer organizations in most SADC member countries, notably Botswana, Mauritius, Namibia, South Africa, Zambia, Zimbabwe among others.
- ▶ Engagement of national union federations, national sectoral unions and many local unions with migrant workers and on migration issues, notably organizing and including migrant workers in union membership, services and other activities.
- ▶ Social partner and tripartite dialogue on migration concerns including protection of all migrant workers and respect for freedom of association and collective bargaining rights in most SADC countries (with a few glaring exceptions).
- ▶ Dynamic regional worker union and employer federations, actively engaged on migration, including on social dialogue concerning migration concerns.
- ▶ Exemplary engagement of the Southern Africa Trade Union Coordinating Council -SATUCC on migration issues including advancing freedom of association and collective bargaining rights for migrant workers in SADC countries, in cooperation with national trade union organizations.

Box 4.6: The Southern Africa Trade Union Coordination Council (SATUCC)

SATUCC is the regional trade union organization representing all major trade union federations in the Southern African Development Community (SADC). Set up in 1983 to strengthen solidarity amongst trade unions and give voice to labour issues at the regional level, SATUCC has 22 affiliates with a combined membership of 5 million working men and women in 14 of 16 SADC member states. Its overall aim is *To unite working people and the poor and voiceless in the struggle to free southern Africa from exploitation, injustice and oppression through providing a dynamic, inclusive and sustainable platform to influence regional policy in favour of the working populations and the poor.*

Its objectives include iteration of specific concerns regarding migrant workers:

- ▶ To advance and actively support the cause of vulnerable sectors in southern Africa – women, **migrants**, elderly, children, unemployed, workers in the informal economy, etc.
- ▶ To be involved in the development process with particular emphasis on rural development and assistance to **migrant workers**.

Source: SATUCC website About Us page at: <https://satucc.org/about-us/>

4.5 PROTECTION OF WOMEN MIGRANT WORKERS INCLUDING AGAINST VIOLENCE AND HARASSMENT⁶⁰

4.5.1. Overview and framing the challenges

Nearly half of all international migrants today are women and girls, 48% worldwide in 2020⁶¹ and 47% across Southern Africa. Nearly all women migrants in Southern Africa fit the 1990 International Convention definition of a migrant worker (see Box 1.1). Several hundred thousand women are international commercial workers conducting ‘circular trade’ around the SADC region, but not changing their country of established residence, thus migrant workers by definition, but not counted as international migrants in the UN data on international migrant stock.

As migrants and mobile workers, women contribute to economic and social development of their countries of origin and of destination and to the welfare and sustenance of their families and communities. However, they also face specific, differentiated risks, challenges and needs from male counterparts which can prevent full and equal participation in social, political and economic life and heighten risks of exploitation, harassment, violence and abuse.

Women migrants are in demand, but often mainly for jobs that are considered ‘women’s work’, and usually in unregulated sectors, such as agriculture, domestic work, health and aged-care, and services. Such jobs are usually poorly remunerated, often ‘informal’, and offer few if any employment benefits and protections. Poor outcomes in employment have far-reaching social and economic impacts on the family, households and local communities in the countries of origin.

As SATUCC (2022) observed: “Since almost half of all migrant workers in the SADC region are women, labour migration policies should be gender-responsive and evidence-based”. This makes adopting gender responsive approaches to legislation, policy and practice imperative in all aspects of life and governance regarding women migrants.

The international normative framework recognizes all women and girls as rights holders and as actors with agency in their own right. The framing of gender and migration in terms of defence and realization of rights, of equality of treatment, opportunity and outcomes, and of participation in all matters and decisions concerning migrant women are fundamental underpinnings for law, policy and practice.



60. This module draws upon a chapter in *Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability*. UNESCO-ECCAR-GMPA (forthcoming) prepared by Patrick Taran and Olga Kadyshcheva, and initial draft and edits by Chandima Arambepola.

61. *International Migration Highlights 2020*, UN Department of Social Affairs (DESA).

4.5.2 Normative Framework

Box 4.7 enumerates key international and regional instruments and global policy frameworks.

Box 4.7: Key international and regional instruments and global policy frameworks

Key International Instruments on gender of particular relevance for migrant and refugee women

- ▶ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979
- ▶ International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, 1990
- ▶ ILO C100 - Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100).
- ▶ ILO C189 - Domestic Workers Convention, 2011 (No. 189)
- ▶ ILO C190 - Violence and Harassment Convention, 2019 (No. 190) and R206 - Violence and Harassment Recommendation, 2019 (No. 206)

African Instruments

- ▶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('Maputo Protocol'), 2003
- ▶ Charter of the Fundamental Social Rights in SADC (2003)

Main international policy frameworks

- ▶ Beijing Declaration and Platform for Action, Fourth World Conference on Women, 1995
- ▶ The 2030 Agenda for Sustainable Development, 2015
- ▶ Global Compact on Safe, Regular and Orderly Migration, 2018

The *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979* is the comprehensive elaboration of universal human rights applicable to all women and the agenda to guarantee the enjoyment of those rights by all women. Article 2 emphasizes, *States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women*. It is ratified by every State in SADC.

International Convention on the Protection of the Rights of all Migrant Workers and members of their families, 1990 provides a comprehensive definition of economic, social, cultural, and civil rights –including labour rights- of all migrant workers and family members, without discrimination between women and men.

General comment No. 1 (2011) of the treaty body Committee on Rights of Migrant Workers elaborated on application of the ICRMW to ensure protection and decent work for migrant domestic workers.

ILO C100 -Equal Remuneration Convention, 1951 (No. 100), requires application to all workers of the principle of equal remuneration for men and women for work of equal value. Remuneration is broadly defined to include ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, in cash or in kind, arising out of the worker's employment.

ILO C189 - Domestic Workers Convention, 2011 (No. 189), affirms that nationals and non-nationals are treated the same. Migrant domestic workers' rights are addressed in Article 8 while Article 6 on decent living conditions including for live-in workers, Article 9 on the right to decide whether to reside with the employer and Article 11 on remuneration, among others, provide protections inclusive of migrant domestic workers.

ILO C190 -Violence and Harassment Convention, 2019 (No. 190) is the first international treaty to recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. It requires putting in place necessary laws and policy measures to prevent and address violence and harassment in employment and all workplaces.

ILO R206 -Violence and Harassment Recommendation, 2019 (No. 206) accompanies C-190, detailing specific measures and policy to end and prevent violence and harassment in employment and workplaces. As noted by the UN Secretary General, "the recommendation requires members to take legislative or other measures to protect all migrant workers, in particular women migrant workers, regardless of migration status, in origin, transit and destination countries, from violence and harassment in the world of work".⁶²

The **Report of the UN Secretary-General Violence against women migrant workers** (2019), further remarks that "The *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law."

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 'one of the world's most comprehensive and progressive women's human rights instruments' provides the broadest agenda of rights and State obligations to uphold those rights for all women in Africa. Now ratified by nearly all AU (and SADC) member States

Charter of the Fundamental Social Rights in SADC (2003) Article 6 specifies that member states must create an environment that encourages 'gender equity, equal treatment and opportunities for men and women...'

The 1995 Fourth World Conference on Women **Beijing Declaration and Platform for Action for Equality, Development and Peace**, incorporated historic commitments to women's rights and empowerment, to gender equality, and to implement the CEDAW Convention. Those commitments included specific references to migrant women and remain central to attainment of equality, sustainability, development and peace.

2020 Agenda for Sustainable Development: Goal 5. To achieve gender equality and empower all women and girls, it elaborates how countries can work towards the elimination of all forms of discrimination, violence they experience in both public and private sphere as well as harmful practices. Importantly, 5.4 seeks to 'Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate' and 5.5. to 'Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life'.

Among the objectives of the **Global Compact for Safe, Orderly and Regular Migration** is to 'develop gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women, girls and boys, which may include assistance, health care, psychological and other counselling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation" and to 'empower migrant women by eliminating gender-based discriminatory restrictions on formal employment, ensuring the right to freedom of association, and facilitating access to relevant basic services, as measures to promote their leadership and guarantee their full, free and equal participation in society and the economy".

62. *Violence against women migrant workers: Report of the Secretary-General* Doc. A/74/235: page 18-19.
<https://undocs.org/Home/Mobile?FinalSymbol=A%2F74%2F235>

4.5.3. Specific challenges for migrant and refugee women and girls across SADC

The General Recommendation (No. 26) on Women Migrant Workers (2008) of CEDAW highlights that migration is not gender neutral and that women face particular risks and challenges across many areas: discrimination in employment and denial of rights at work; harassment, and sexual, domestic and gender-based violence; health risks and inequality of access to healthcare; in maternity and in respect for sexual and reproductive health rights, maintaining the highest attainable standard of mental health; and social marginalisation and exclusion. Access to services, to administrative procedures and to justice is often highly gendered. These risks and challenges are exacerbated for migrant women and girls in unauthorized or undocumented situations.

Discrimination in employment. Women migrant workers encounter multiple forms of discrimination. They face additional hazards compared to men because of gender-insensitive environments that do not allow mobility for women, and that give them little access to relevant information about their rights and entitlements. Gendered notions of appropriate work for women result in job opportunities that reflect familial and service functions ascribed to women or that are in the informal sector. (CEDAW GR 26, para. 13). They may also earn lower wages than men, or experience non-payment of wages, payments that are delayed until departure, or transfer of wages into accounts that are inaccessible to them. When they are heavily burdened by debt from recruitment fees, women migrant workers may not be able to leave abusive situations since they have no other way to repay those debts. (GR 26, para. 15)



Harassment, and sexual, domestic and gender-based violence. Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide. Women migrant workers who migrate as spouses of male migrant workers or along with family members face an added risk of domestic violence from their spouses or relatives if they come from a culture that values the submissive role of the women in the family. (GR 26, para. 20). Harassment and gender-based violence (GBV) are constant risks for women generally – at work, in the community, on the street and even in the home. These risks of harassment and violence are accentuated for migrant women and women of colour. Harassment and violence inevitably affect morale and mental health of women as well as discourage and intimidate participation.

Health inequality and access. As women have health needs different from those of men, this aspect requires special attention including access to sexual and reproductive health services. They may also suffer from a lack of arrangements for their safety at work, or provisions for safe travel between the worksite and their place of accommodation (GR 26, para. 17).

Social marginalisation and exclusion. Migrant women may only be able to access marginal substandard housing in ‘poor’ neighbourhoods as a result of lack of economic means. This may exacerbate problems of accessing health and education services as well as concerns regarding public safety and transportation.

Police protection, emergency services and access to justice. Lack of interpretation between migrant and local language often makes it difficult to access effective police and medical emergency intervention in case of accidents, incidents of violence – notably GBV or domestic violence. Equally important is cultural and gender sensitivity on the part of police and emergency service personnel as well as those in administrative roles in provision of social services, legal assistance, health care, school enrolment, and so on.

Southern Africa: women migrant workers in ‘cross border’ trade. According to UN Women *Facts and Figures* ⁶³ official sources reported an average value of informal cross border trade in the SADC Region of US\$ 17.6 billion per year, with that informal trade accounting for 30–40% of total intra-SADC trade. Seventy percent of informal cross border traders are women. However, they remain largely invisible and continue to experience, violence, harassment etc (UN Women). They also face lack of access to credit facilities, transport services, information on trade rules and Protocols, child care facilities in cross border/regional market places etc.

Participation: Migrant women organising. Government and other actors should provide encouragement and appropriate support to migrant women self- and community organising. Similarly, it is crucial that unions, civil society and community organisations welcome and include migrant women. Migrant/refugee women organising is a key means to defend their rights, advocate for inclusion and equality of treatment, address local and migrant issues, enable empowerment of migrant women, and obtain involvement in legislation, policy and practice concerning their lives and communities. ⁶⁴

63. *Unleashing the Potential of Women Informal Cross Border Traders to Transform Intra-African Trade.* UNWOMEN. <https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/en/factsheetafricanwomentradersen.pdf>

64. See UNU article: *How Migrant Women are Leading Locally in France, Spain, and Beyond*

4.5.4 Examples of law, policy and practice on gender and women migrant workers

Southern Africa

The **COMESA Social Charter** adopted in 2014 sets out minimum labour standards to be maintained by the Member States—including 7 SADC members, thus providing an overall framework applicable in at least part of the SADC region, and a model for the rest. Among these labour standards are equitable working and living conditions; specification of minimum standards with regard to rest days, leave and health and safety standards, and the stipulation of conditions of employment in the national law for all workers and the space for collective agreements. The emphasis on all workers, can be interpreted to include equally women as well as men migrant workers regardless of migration status and formality or not of employment.

South Africa through legislation (and its ratification of ILO Convention 189) stipulated minimum wages, maximum working hours and overtime hours, leave entitlement and daily and weekly rest days for domestic workers. However, a lacuna is lack of specificity in the legislation regarding applicability to migrant domestic workers in irregular situations.

Other regions

2017 General Agreement in the Field of Manpower Between the Government of the Hashemite Kingdom of Jordan and The Government of Nepal: It is one of the few agreements to have a gender focus. One of the objectives is to: “Create mutual understanding between two governments to protect the rights of all workers, with special consideration to the specific vulnerabilities of female migrant workers” (Art.1c). Another unique feature is article 15 on the Protection of Female Workers. This Article provides for: addressing specific vulnerabilities of female workers and their protection; prohibition of conditions of forced labour, unlawful holding of passports, restriction of movement and communication with their families and the embassy/consulate; provision of mechanisms to justice; appropriate privacy to female workers including separate room; and provision of all necessary medical care by the employer.

Barcelona, Spain. The Association of Sub-Saharan Women Immigrants (ADIS) is a meeting and mobilizing point for African migrant women in Barcelona to enable their participation in city and own-community affairs and work on rights issues, including improving migrant women’s health. ADIS exemplifies immigrant and migrant women organising around gendered aspects of their lives and social participation.⁶⁵

Esch-sur-Alzette, Luxembourg established a **Municipal Action Plan for Equality of Women and Men** 2012-2016 and expanded measures to promote gender equality inclusive of migrants and refugees, for equality of girls and boys, equality in sports, professional equality, gender pedagogy, fight against stereotypes, and others. The sequel was inclusion of gender equality considerations in the *Plan Communal d’Integration* (Municipal Integration Plan) 2017-2020.⁶⁶ *Equality of opportunity between men and women, integration, and non-discrimination* are transversal policies and shared responsibilities: the Equal Opportunity office coordinates these policies and linkages among policy commitments, officials, and the municipal administration.⁶⁷

Lausanne, Switzerland addressed workplace harassment with a **kit on sexual harassment** at work distributed to all businesses in Lausanne. It implemented a strategy to combat street harassment, taking into account that migrants are often targets of harassment – and in some cases perpetrators.⁶⁸ The city has a confidential **online reporting and counselling service** for victims and witnesses of street harassment.

65. Video excerpt from presentation by ADIS founder Bombo Ndir at: <https://vimeo.com/109793366>

66. Esch-sur-Alzette Municipal Integration Plan 2017-2020 (in French) at: <https://administration.esch.lu/wp-content/uploads/sites/2/2018/11/Plan-Communal-Int%C3%A9gration-1.pdf>

67. Equality of opportunity (Egalité des chances) webpage at: <https://administration.esch.lu/egalite-des-chances/>
Webpage on city strategy to combat street harassment at: www.lausanne.ch/harcelement

4.5.5 Key policy and practice responses

- ▶ At the country-level, identify how international treaties applicable to women migrants can be integrated in national-level legislation. Where required, ensure ratification and domestication in national legislation, regulations and policy of the key conventions listed above which provides the framework necessary to that provide for respecting, protecting and fulfilling women migrants' right and inclusion.
- ▶ Engage in tripartite discussions to consider how the rights and equality for migrant women and girls can be integrated and implemented through policies and practices of all government units and local governments. A key consideration is to review roles and responsibilities of employers/businesses and unions to realise these commitments.
- ▶ Apply international labour standards. Ensure that labour standards on conditions of work and occupational safety and health as well as labour inspection are applied nationwide with specific, gender appropriate measures addressing women migrants and provide for adequate labour inspection in workplaces and sectors especially where women migrants are employed.
- ▶ Establish/strengthen a whole-of-government approach in cooperation with social partners and civil society, entailing comprehensive planning, designation of roles, responsibilities and actions among actors, and multi-year operational planning and implementation.
- ▶ At the country-level, assess the gaps in service delivery for accessible, appropriate, quality health care and services for all migrant women and girls. This includes considering access to both preventative and curative care as well as pregnancy and childbirth care and sexual and reproductive health. Pay particular attention to assessing the needs and provision of care and support to migrant and refugee women and girls at particular risk: notably victims of domestic violence and gender-based harassment and violence.
- ▶ Provide for full and equal access to, participation in and portability of social security (see module 4.9 on social protection)
- ▶ Ensure that policing, emergency services, law enforcement and access to justice for migrant women are responsive, by providing for interpretation and translation into a language migrant women can understand; gender and cultural sensitivity, including respectful behaviour; appropriate responses with appropriate personnel in instances of domestic abuse and prohibiting detention of migrant women and girls who have experienced sexual or gender-based violence, who have infants or small children, and/or are pregnant and firewalling women's access to services, protection and justice from immigration enforcement.
- ▶ Inclusion, integration and participation. Facilitate self-organisation and active involvement of women migrants in community and civil society organisations and in trade unions or business associations, as well as in policy formulation, implementation, monitoring and evaluation.
- ▶ Collect quantitative and qualitative data on migrants disaggregated by gender, as a necessary basis for informed policy and programmatic interventions.
- ▶ Ensure that all bilateral labour migration instruments, especially domestic worker agreements, are assessed for gender responsiveness, and they are effectively monitored and followed up. There should be gender representation in joint committees and monitoring bodies of BLMIs.

4.6 ACCESS TO JUSTICE FOR MIGRANT WORKERS⁶⁹

4.6.1. Overview and definition of access to justice for migrant workers

Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. This includes the right to be recognised before the law and to fair consideration in labour, civil and administrative hearings and/or to a fair trial in judicial proceedings, including equal access to courts and equality before the law. For migrant workers, access to justice is important because it enables redress to grievances through institutions they are a part of –notably unions and workplaces– as well as administrative and judicial mechanisms. However, they require guidance, support and advocacy as they may be less familiar of the grievance mechanisms, may not be fluent in local official language(s), and often can be intimidated by a variety of factors, including threats of dismissal and/or violence as well as potential deportation, especially if their immigration permit is tied to their employer/job or if they are in irregular immigration status.

Many countries have a distinct body of labour law, legal rules to regulate the relationships between workers, employers, trade unions, employers' associations and the state. Mechanisms for supervising and enforcing labour law, from formal mechanisms and procedures for mediation, arbitration and/or adjudication of disputes including grievances unresolved at the workplace, violations cited by labour inspection, union claims can also be country-specific.

The UN Special Rapporteur on the Human Rights of Migrants:

Effective access to justice means that everyone, without discrimination, has the right to access the system provided for conflict resolution and the restoration of rights. Access to justice has a dual role, as a fundamental right inherent to every person and as a principle that establishes obligations for States, particularly to ensure that anyone can approach the courts to seek protection of their rights. States, under international human rights law, have an obligation to guarantee the human rights of all individuals under their jurisdiction, regardless of their nationality or migration status, including the right to access to justice and due process... (R)ights and key elements that make up effective access to justice, (include) such as the right to legal aid and representation, the right to information and an interpreter, the right to consular assistance, the competent authority to which access is provided, as well as remedies and redress. These guarantees of due process are applicable to all migrants.

United Nations, 2018, p.3

69. This module draws upon a chapter in *Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability*, UNESCO-ECCAR-GMPA (forthcoming) prepared by Patrick A. Taran with contributions and edits by Chandima Arambepola.

Ensuring migrant workers have access to justice entails two processes. Firstly, their access to judicial, civil, labour, and administrative mechanisms, processes and institutions must be enabled. Secondly, awareness raising of available services and how to access these services in appropriate manners, e.g., in a language migrants understand, must be facilitated. Unions and employer organisations have particular responsibility to engage on access to justice for migrant workers. Whilst Unions promote and defend migrant worker rights, employers' organisations should support member employers to have in place adequate and accessible mechanisms and procedures for filing and fairly adjudicating grievances in accordance with labour and other applicable laws.

Non-judicial pathways and non-governmental stakeholders who provide relief, compensation and protection are also important. Informal justice mechanisms include alternative dispute resolution mechanisms as well as mediation by a neutral third party and are not necessarily based on statutory law. Examples include workplace and corporate grievance mechanisms as well as similar mechanisms established by international organisations. However, these must not be considered an alternative to formal legal and juridical mechanisms.

4.6.2 Access to justice: Legal Framework

Universal rights to justice and access to justice can be found in all international human rights instruments: Article 8 of the 1948 Universal Declaration on Human Rights (UDHR), makes explicit commitment to the protection of access to justice. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) refers to the right to an effective remedy for all the rights in the Covenant for all individuals and Article 14 calls for procedural fairness in the determination of any criminal charge. This Covenant lays out other articles critical to access to justice, notably prohibition of torture, right to liberty and security, deprivation of liberty, no punishment without law, and equality before the law.

Article 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reiterates universal rights to equality before courts and tribunals and “a fair and public hearing by a competent, independent and impartial tribunal established by law” apply for all migrant workers and members of their families – in effect for all migrants.

The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, the only existing UN instrument that focuses exclusively on the right to legal aid, specify in Principle 10, that “special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, [...] stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.”

“The UN Global Compact for Safe, Orderly and Regular Migration (2018) commits States to provide for access to justice in paras 15, 18 (b), 19(d), 23 (c), 26 (c, h) and 29 (d), and in particular in para 23(g) it calls for ensuring that “migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing.”



Box 4.8 provides a listing of major African legal instruments relating to access to justice including for migrants.

Box 4.8: African legal instruments containing delineation of rights and guidelines on access to justice (in principle applicable to migrants in Africa)

- ▶ African Charter on Human and Peoples' Rights
- ▶ Convention Governing the Specific Aspects of Refugee Problems in Africa
- ▶ African Charter on the Rights and Welfare of the Child
- ▶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- ▶ African Youth Charter

Access to justice at work and in employment

Workers have rights and entitlements that are established in laws, employment contracts, collective agreements and workplace rules, as well as in custom and practice. When there are grievances, either collective or individual, workplace grievance procedures are generally the first line of access, to see remedial action. Grievances could relate to addressing infringements of existing rights and entitlements, non-respect for and violations of decent work conditions and treatment, safety and health issues, wages and pay, denial of rest time or holidays, bullying and harassment, and other issues. Migrant worker living conditions are in many cases also covered by labour-related legal standards and or employer engagement –such as housing, nutrition and adequate leisure time.

Box 4.9: Basic principles of Grievance filing and procedures

The ILO Examination of Grievances Recommendation, 1967 (No. 130) establishes the following general principles:

- ▶ Every worker should have the right to submit a grievance without suffering any prejudice whatsoever as a result.
- ▶ Any grievances submitted should be examined via an effective procedure which is open to all workers.

These principles arise from the most basic rights of the worker as a member of society. However, enabling workers to ensure that their rights are respected – and related grievances effectively resolved – is also beneficial for employers and the economy.

Source: Grievance Handling. ILO Fact Sheet No. 5

4.6.3 Specific challenges for migrants in access to justice

- ▶ All migrants are entitled to access the justice system on the basis of equality with other residents and on the basis of international and regional legal instruments, as seen above. Ensuring this is applicable in everyday reality, however, is a major and complex task for government and other actors. Lack of awareness/knowledge on how and where to access grievance mechanisms have been noted amongst lower-skilled and undocumented migrants (Migrant Forum in Asia, n.d.) Women migrant workers in general tend to have more limited access to information about their rights and are less likely than men migrant workers to bring cases or complaints to court or workplace grievances to labour standards adjudication mechanisms.
- ▶ **Language barriers.** Even though migrants have the right to have an interpreter during legal proceedings, the lack of such interpreters makes it more difficult.
- ▶ **Intentional and unintentional administrative barriers:** these include, *among others*, lack of specialised knowledge and training of authorities; lack of accessible legal assistance and other legal support; excessive duration and cost of legal proceedings; unnecessary and complex bureaucracy and lack of coordination between departments.
- ▶ **Absence of resources or other support** to make and file complaints or claims or of legal representation when migrants are defendants in legal or administrative proceedings, notably unavailability of free legal assistance, legal advice, and/or legal representation for those who need it. As the UN Special Rapporteur has highlighted, absence of free legal aid is an important constraint on migrants' access to justice, including particularly for migrant women.⁷⁰
- ▶ **Mistrust vis-à-vis the justice system and law enforcement.** There is a general mistrust of law enforcement officials because of fear of experiencing violence, punitive actions etc resulting in under-reporting of such violations.
- ▶ **Compounded barriers for migrants in irregular situations and for victims of trafficking:** Migrant workers who lack legal recognition under law as a result of unauthorized immigration status, whether from overstay, unauthorised entry, unauthorized employment or other reasons, may be denied legal standing to access administrative and judicial procedures. Filing a complaint risks expulsion procedures and denial to legal aid and support.
- ▶ **Lack of firewalls** on sharing personal data and immigration status between police and justice mechanisms and immigration enforcement agencies. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) urged caution in any cooperation between authorities responsible for labour inspections and immigration authorities, to impede diverting resources needed for inspection of conditions of work and to avoid deterring migrant workers from making complaints (ILO, 2016a).
- ▶ **Lack of coordination with and support from consulates of the origin country:** in the case of arrest, charges and proceedings in criminal cases, the authorities must inform the migrant workers' consulate as per consular representation obligations of the Vienna Convention on Consular Relations (1963)⁷¹. Such procedures may not always be followed. Similarly, there may be a lack of engagement, support, and advocacy from consular authorities on behalf of the migrant workers, thereby increasing the vulnerabilities experienced by the migrant worker.

70. Report of the Special Rapporteur on the Human Rights of Migrants, 2018, UN General Assembly.

71. Text at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

4.6.4 Examples of law, policy and practice

Holding employers of domestic workers accountable – the case of Singapore. The presence of large numbers of foreign female domestic workers in Singapore has received much attention. Notably, while female domestic workers' rights are not comprehensively protected either via the employment or immigration laws, the Penal Code has been amended in 1998 to afford protection to these workers from abusive employers. While the number of complaints against employers filed with the civil authorities declined over the years, the number of complaints filed in Courts increased. Of late, the Courts have expanded jurisdiction to consider psychological as well as physical abuse, determining that 'psychological distress of abuse can be as acute and permanent as physical harm'. In the absence of comprehensive protection under labour laws, the criminal justice system can set precedents to support categories of workers at risk such as domestic workers. However, in order to access the courts, domestic workers generally need supportive non-state actors to act as intermediaries when, as often the case, abused workers are afraid of reprisals by both the State and the employer.⁷²

Migrant Worker Assistance Centres in Thailand. To strengthen the access to a government complaints mechanism for migrant workers, Migrant Workers Assistance Centres (MWACs) were established via a Resolution of the national government Cabinet in 2016. The aim is to 'to protect and promote the rights of migrant workers by facilitating access to the complaints mechanism' (ILO, 2020d). The services offered include counselling and any information related to working conditions, shelter services to migrant workers awaiting a decision on a legal complaint, case referrals and coordination with other relevant agencies. Within a short period, these Centres have been able to assist migrant workers with referrals and information related to their work. An evaluation of the project concluded that migrant workers' access to the MWACs were high, and a significant number of complaints had been processed/referred through the Centres.

Provision of legal support for migrants by the Centre for Immigration, Asylum and International Cooperation (CIAC – Centro Immigrazione, Asilo e Cittadinanza) in cooperation with the city of **Parma, Italy**.⁷³ Among CIAC services for welcoming and integration of migrants is a network of legal help desks where lawyers assist migrants and refugees with accessing justice in requests for legal protection, residence permits, regularisation, family reunification, and social protection. CIAC provides foreigners access to national and local legislation, to meeting with jurists, and assists them to help themselves in using the law to access justice.

Several **law schools in France offer free legal advice and other support for migrants**, refugees and asylum seekers' *access to justice* in immigration related procedures and assist community associations to provide legal support and engagement in legal cases concerning migrants and migration issues. For example, the **University of Paris Sciences Po** *migrations programme* has a teaching team that train candidate lawyers on migration legal issues as well as supporting local associations to build their competence and capacity on legal issues and representation.⁷⁴

European Courts of Human Rights Case 21884/15, 2017). In *Chowdury and Others v. Greece* (21884/15, 30 March 2017), the European Courts of Human Rights held that migrants of an irregular status working without wages and compelled to live in sub-standard living and forced to work under the supervision of armed guards amounted to forced labour. Notably, their irregular status was recognised by the courts as increasing the fear of deportation if they were to report their conditions (International Commission of Jurists, 2021, p 40).

72. Yeoh Goh Wee, 2020.

73. <https://ciaconlus.org/en/who-we-are>

74. <https://www.sciencespo.fr/ecole-de-droit/fr/content/programme-migrations.html>



4.6.5 Key policy and practice responses

As explained previously, since labour laws and access to justice mechanisms are country-specific, SADC member states must consider how these mechanisms can be strengthened at the country-level. Some of the key law, policy and practice responses include:

- ▶ **Review existing juridical and non-juridical mechanisms at the country-level in terms of migrant workers' equal and effective access to the existing procedures and mechanisms, including tribunals.** This could include assessing the existing non-formal mechanisms in operation and the roles of the tripartite stakeholders. It will help ensure the right to effective remedy.
- ▶ **Training of relevant actors/stakeholders on facilitating access to justice:** Even where the existing mechanisms facilitate access, it is important that law enforcement officials including police, lawyers and other legal aid providers and other relevant stakeholders understand how to extend support to migrant workers and how to adopt appropriate gendered responses. A key aim should be to protect the migrant workers' identity and status being shared with immigration enforcement in civil, administrative and labour instances to encourage migrant workers to pursue their claims without the fear of deportation/expulsion.
- ▶ **Guarantee migrants' equal and effective access to judicial procedures and mechanisms, including tribunals.** Ensure all migrants' recognition before local law and authorities; provide mechanisms for legal representation including for migrants in detention in local facilities
- ▶ **Consider how existing** community structures, unions and organised peer groups where migrants can report discrimination, work/employment grievances, or other rights violations can be strengthened with funding, capacity building and improving reporting and coordination with grievance handling mechanisms.
- ▶ **Ensure access to support services** during the course of pursuing legal/labour justice proceedings and obtaining remedy. This includes access to consular support, interpretation services, shelter/housing, legal aid and counselling, non-retribution by the employer and protection from deportation.
- ▶ **Ensure that migrants and refugees have interpretation for court or administrative proceedings and translation of documents and information about their rights** in a language they are competent with.
- ▶ As needed, **provide affordable or free legal aid, including legal assistance, advice and representation**, to ensure that all migrants have legal support and are ensured due process in judicial matters, including by community-based legal information centres, etc.
- ▶ **Firewall migrant identity and status from immigration enforcement** in civil, administrative and labour instances to encourage trust in and cooperation with judicial mechanisms and procedures by migrant (and other) individuals and communities.
- ▶ **Facilitate contacting consular representatives** of the country of citizenship of any foreign national arrested, charged or put into adversarial or criminal proceedings.

4.7 SOCIAL PROTECTION/SOCIAL SECURITY PROVISIONS AND THEIR PORTABILITY⁷⁵

4.7.1 Definition of social protection/social security provisions and their portability

The terms social security and social protection are often used interchangeably. According to the ILO:

“Social security is the protection that a society provides to individuals and family households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner”.⁷⁶

Effective social security systems are instrumental in supporting sustainable economic development and decent living conditions for all. Through providing income security, reducing poverty and inequality and advancing social inclusion, social security improves employability and productivity for migrants, for economies and for all of society.

The *Universal Declaration of Human Rights* (1948) articulated social security as a basic human right for ‘everyone as member of society’ stating that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his(her) control”.

The 1952 ILO Social Security (Minimum Standards) Convention No. 102 is the milestone in setting the nine key areas of social security -medical care; sickness; unemployment; old-age; employment injury; family; maternity; invalidity; and survivors’ benefit. It also set minimum standards for level and duration of benefits, qualifying period and personal coverage. Migrant access to and international portability of social security contributions and benefits were elaborated in subsequent ILO Conventions. Portability is understood as the transfer internationally of accrued social security contributions and benefits including maintenance of a participant’s/beneficiary’s acquired rights and rights in the course of acquisition as well as payments of benefits abroad.

The ILO global guide on “Extending Social Protection to Migrant Workers, Refugees, and their Families” (ILO, 2021f) has highlighted the relevance of international instruments, the various barriers to achieving social protection for migrant workers and their families. It states: “Extending social protection to all, including migrant workers and their families, is key to ensuring income security for all, reducing poverty and inequality, achieving decent working conditions and reducing vulnerability and social exclusion”(ILO, 2021f: 26).

However, ensuring access of immigrants, migrants and refugees social protection and its portability raises particular challenges as social security rights are usually tied in national systems to periods of employment, contributions, or residency. Migrants – particularly those in precarious temporary or seasonal regimes – face distinct and greater risks of exclusion from social protection access. Migrants often face difficulties in obtaining social security enrolment and coverage as well as restrictions on international portability of their social security contributions and benefits (ILO, 2021f).

This is despite the fact that the economic contribution migrants bring to host societies is substantial. Immigrants and migrant workers employed in destination countries tend to pay more into contributory social security systems and overall social protection in the form of taxes than governments spend on their and their family members’ social protection, health and education (OECD, 2021).

The COVID-19 pandemic and its resultant impact on migrant workers highlighted the critical importance of protection

75. This module is adapted from a chapter in *Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability*. UNESCO-ECCAR-GMPA (forthcoming) prepared by Patrick A. Taran and reviewed by ILO social security specialists and an initial draft and edits prepared by Chandima Arambepola.

76. Facts on Social Security, ILO (n.d.).

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf, p. 1

for migrant workers from the loss of wages/income as well as from unemployment, sickness and social exclusion. The loss of employment and, for many, expulsion and repatriation accentuated the importance of portability of social security contributions and accrued benefits –as well as their wages.

4.7.2 International Normative Standards on Social Security/Social Protection

Box 4.10 lists international human rights instruments that contain provisions relating to social protection.

Box 4.10: UN/International Human Rights Instruments: provisions regarding social protection

Universal Declaration of Human Rights, 1948 guarantees the right to social security and recognizes the right of everyone to a standard of living adequate for the health and wellbeing of himself and of his family, including ... medical care and necessary social services, and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control. Motherhood and childhood are entitled to special assistance.

Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965 recognizes States parties duty to prohibit and eliminate racial discrimination in social security and social services.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 recognizes the right of everyone to social security, of working mothers “to adequate social security benefits,” and requires States parties to undertake special measures of protection and assistance for children.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 obligates States parties to eliminate discrimination against women in employment and to ensure equal rights between men and women regarding social security. Also, to provide social benefits during maternity leave and to ensure women in rural areas benefit from social security programmes.

Convention on the Rights of the Child (CRC), 1989 recognizes for every child the right to benefit from social security, including social insurance and the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW), 1990 stipulates migrant workers and family members enjoy in the State of employment the same treatment granted to nationals to the extent they fulfil requirements provided for by legislation and applicable bilateral and multilateral treaties. Where legislation does not allow a benefit, States shall consider reimbursing migrants the amount of their contributions on the basis of treatment of nationals in similar circumstances. Migrant workers in a regular situation shall enjoy equality of treatment with nationals of the State of employment in respect of unemployment benefits.

Convention on Rights of Persons with Disabilities (CRPD), 2006 recognizes the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination.

Source: Drawn from OHCHR and the right to social security: <https://www.ohchr.org/en/social-security> 5

Box 4.11 summarises the major ILO instruments relating to social security of migrant workers.

Box 4.11: ILO Standards Protecting the Rights of Migrants to Social Security

Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes worldwide-agreed minimum standards for all nine branches of social security: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit. Minimum objectives are set on percentages of population covered by social security, minimum benefits levels and conditions for and period of entitlement. The principles and approaches in C-102 are applicable for all migrant workers and family members.

The Equality of Treatment (Social Security) Convention, 1962 (No. 118) provides for the right to equality of treatment with regard to all nine branches of social security. For each of the nine branches that it accepts, a State party to the Convention undertakes to grant within its territory to nationals of any other State that has ratified the Convention equality of treatment with its own nationals. It also allows for exclusion of non-nationals in cases where benefits or parts of benefits are payable wholly out of public funds. The Convention provides for the maintenance of acquired rights and the export of benefits.

The Maintenance of Social Security Rights Convention, 1982 (No. 157) and **Recommendation (No. 167)** institute an international system for maintenance of acquired rights and rights in course of acquisition for workers transferring residence from one country to another, and effective provision of benefits abroad when they return to their country of origin. The Convention provides for bilateral or multilateral social security agreements; the Recommendation contains a model for such agreements.

Social Protection Floors Recommendation, 2012 (No. 202) provides guidance in building comprehensive social security systems and extending social security coverage by establishment of national floors of social protection accessible to all in need. It aims at ensuring that all members of society enjoy at least a basic level of social security throughout their lives. It calls for inclusion of all residents and all children in a country, subject to existing international obligations.

The **Migration for Employment Convention (revised) 1949, (No. 97)** provides for equality of treatment between regular migrant workers and nationals in the area of social security, subject to certain limitations, while the **ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)** stipulates that migrant workers in irregular situations shall have the same rights as regular migrant workers concerning social security benefits arising out of past employment. The wording 'past employment' is understood to include periods of formal and unrecognized or unauthorized employment.

Equal treatment of foreign and national workers in terms of social security coverage is common ground in nearly all ILO standards, both in instruments dealing generally with social security, such as the Social Security (Minimum Standards) Convention of 1952 (No. 102) and in those that explicitly cover the related rights of migrant workers and their protection. 'The principal objective of ILO Conventions in this field is international coordination regarding elimination of any obstacle in the way of the application of national laws. The effect of national rules is modified only insofar as it is necessary to guarantee to migrant workers complete and continuous protection on the basis of effective equality' (OSCE, ILO, and IOM, 2007).

4.7.3. Specific challenges for migrants in access to and portability of social security

Migrants in both regular and irregular situations face difficulties and impediments to participation in social security systems since many of them are employed in the informal economy or are present in the country in an irregular situation. In addition, they can also face restrictions and sometimes denial regarding the transfer of social security contributions and earned benefits when they have participated in the country of employment social security systems to home or other countries. Migrants in irregular situations are especially susceptible to being denied social protection benefits due to their legal status, whether it be undocumented or unauthorized.

The principles of territoriality and nationality pose barriers to migrants' ability to receive social security coverage. Due to the territoriality principle, benefits and coverage are limited to the physical territory of the nation and do not extend to nationals who work outside of their country. The nationality principle prevents foreigners from receiving coverage of benefit entitlements; yet virtually no country in Europe completely excludes foreign nationals from their social security systems.

Another barrier to migrants' social security access is the lack of bilateral or multilateral social security agreements. Such agreements ensure that migrants are able to conserve social security rights that they have obtained in their country of employment upon returning to their country of origin.

Overlapping barriers and challenges for migrants in accessing their social protection rights include legal restrictions, such as national legislative restrictions, non-applicability of social protection for migrants with irregular status and/or in informal economy, and lack of effective implementation and enforcement of social security laws and regulations. Additionally, practical barriers compound the lack of realization of social security rights, such as due to absence of social protection programmes and schemes, lack of availability and dissemination of information and knowledge – including in languages migrants and refugees speak; complex administrative procedures, language barriers in both oral and written communication; as well as direct and indirect discrimination.

4.7.4 Social protection by agreements and by unilateral measures: coverage and portability

The two major categories of issues of social security for non-national migrants are access to coverage –enrollment in social security schemes- and portability, the ability to transfer accumulated contributions and benefits to the country of origin or on to another country of residence/employment.

Ratifying social security Conventions and following through with their application, so as to include migrants in national social security systems and adopt multilateral and bilateral social security agreements, is a crucial step to permitting access and portability to social security benefits earned by migrant workers as well as their families (OSCE, ILO and IOM, 2007). Multilateral agreements have less potential for discrimination than bilateral social security agreements, as they are based on common regulations and standards, whereas bilateral social security agreements can differentiate between migrants of different nationalities. Additionally, multilateral social security agreements have an administrative advantage as their standards are universal for all countries involved.

Social security portability is a major issue for persons who may work for months or years contributing to social security schemes and then return to the country of origin or move on to another country or countries for periodic postings. Even if a migrant is legally eligible to contribute to and receive benefits in a country of residence or employment, he/she may not be entitled to withdraw or transfer accumulated contributions and/or benefits eligible for the country of origin or a subsequent country of employment and/or residence. Portability is generally a matter of national legislation along with bilateral or multilateral treaty arrangements such as bilateral social security agreements between countries or, elsewhere in Africa such as the ECOWAS Convention on Social Security.

Box 4.12: SADC Guidelines on Portability of Social Security Benefits

The Southern African Development Community (SADC) Ministers of Employment and Labour and Social Partners adopted the Guidelines on Portability of Social Security Benefits in March 2020. The Guidelines form an integral part of the SADC Labour Migration Action Plan (LMAP) (2020- 2025), also adopted by Member States in March 2020. The Guidelines urges Member States to consider them in multilateral and bilateral cooperation. Five Member States have volunteered to pilot implementation of the Guidelines (Eswatini, Lesotho, Malawi, South Africa and Zimbabwe).

The Guidelines are a good practice example of SADC to assist Member States to create a favourable system of policies and regulations that enable workers in SADC to accumulate and access social security benefits across different countries in the region. They recognise the importance of workers' mobility between borders, without losing their acquired social security benefits or entitlements.

The Guidelines include provisions on non-discrimination and ensuring equality of treatment of nationals and migrant workers under the social security legislation of the Member States. They also provide for mutual administrative assistance for effective coordination and cooperation between SADC Member States on enhancing access and portability of social security (SAMM undated, Social security portability of benefits for migrant workers).

ILO is providing technical support to the pilot countries in the implementation of the Guidelines and carrying out assessment of social protection systems in different states. It has also produced guides for migrant workers and employers on the SADC Guidelines on the Portability of social security benefits.

However, implementation of portability has been slow due to inadequate available services and arrangements (Mpedi, 2022).



Private pension schemes and some insurances generally offer very limited portability options - if at all—for the international transfer of accumulated contributions and/or benefit payouts. At best, they can only provide for the portability of the contributions paid to that scheme and thus do not and cannot ensure portability in general/for other schemes. Private insurance by definition is not based on social protection solidarity, nor principles of inter-generational or financial solidarity, and they inevitably exclude the most at-risk migrants who have little or no access to private schemes and anyway cannot afford to pay into such schemes due to low wage, no wage, or otherwise precarious situations.

4.7.5 Key policy and practice responses

Options for extending social security protection comprise the following:

- ▶ Self-evaluation. Assessing the extent and conditionalities of coverage available and potentially available under existing mechanisms, both public and private.
- ▶ Access to existing coverage. Measuring the actual extent of access locally by migrants and refugees to existing coverage (e.g., by sample surveys, correlating migration data with social security enrolment, etc.). Assess whether, where and to what extent resident migrants in irregular situations have access to social protection measures and mechanisms.
- ▶ Identify and bridging gaps. Identifying measures by which migrants including those in irregular situations can be enrolled or otherwise incorporated into existing social protection mechanisms, firstly to the extent possible in public mechanisms. In absence or inadequacy of public mechanisms, and/or in complementarity to them, through local, cooperative and/or private mechanisms (e.g., public or private insurance, employer/company plans, union systems, health care/medical cooperatives, etc.).
- ▶ Simplified procedures. Encouraging social security administrations to simplify procedures to accommodate resident as well as short-term migrants.
- ▶ Unilateral measures. Exploring local options to formulate and implement potential unilateral measures.
- ▶ Including /ensuring participation of migrant workers in policy making, implementation and monitoring including through representative organizations of workers.
- ▶ Advocacy. Engaging in advocacy with national social security administrations to do all of the above and to expand inter-country bilateral and multilateral agreements and cooperation on social security access and portability.
- ▶ Communication. Publicizing available options and how to access them in languages and through ways that migrants and refugees can understand.

At SADC level

- ▶ Expand negotiation towards compatibility and coordination among national social security systems, particularly on access to and portability of social protection among SADC members by nationals of member countries.
- ▶ Review models of other African RECs and MERCOSUR towards building an integrated SADC social protection system.
- ▶ While a SADC Code on Social Security and SADC Guidelines on the Portability of Social Security Benefits already exist, their implementation is weak. Mpedi (2022) has argued that “the SADC as a regional organisation needs to adopt a binding regional instrument that will facilitate the payment of social security benefits abroad” along with binding pertinent bilateral and multilateral social security arrangements by SADC members. As highlighted by ECOWAS, MERCOSUR, and the EU, a binding Convention is far more compelling for effective application as well as coordination of access to and portability of social security as rights as well as benefits for all member nationals of the REC/member countries.

4.7.6 Examples of law, policy, and practice measures

Unilateral and other measures in numerous countries including in SADC to extend social security to migrant workers on their territories and/or to nationals employed in foreign countries include:⁷⁷

- ▶ Use of compulsory or voluntary insurance to extend coverage to nationals in employment situations abroad.
- ▶ Establishing equality of treatment for national and migrant workers as regards coverage of and entitlement to social security benefits.
- ▶ Allowing migrants to enrol in national systems regardless of whether reciprocal agreements or other arrangements exist with the migrants' countries of origin.
- ▶ Waiving long qualifying periods in favour of migrant workers.
- ▶ Crediting periods of insurance completed in another country for the purpose of giving migrant workers immediate access to benefits.
- ▶ Providing for medical coverage of family members who remained in the home country.
- ▶ Allowing payment of retroactive contributions for returning migrants for periods abroad.
- ▶ Developing options for extending voluntary coverage for nationals working abroad, for example allowing them to make contributions to the national system while employed abroad.

REC models of social security coordination and cooperation

ECOWAS General Convention on Social Security, drafted in 1993 largely based on ILO Conventions was adopted by ECOWAS Ministers of Labour and of Social Affairs in December 2012 and by the Authority of Heads of State as a **Supplementary Act to the Revised ECOWAS Treaty** in 2013, therefore enacted into force without a separate ratification process.⁷⁸ The Convention establishes common social security principles for and operational coordination among the 14 member countries of the regional economic community, based on principles of equal treatment between nationals of all member countries. It is applicable to the key branches of social security and covers, in practice, migrant workers employed in the formal sector of ECOWAS Member States, members of their families and their survivors in a Member State. The Convention guarantees the portability of social security rights of migrant workers, the accumulation of acquired rights through totalling periods of employment or contribution, and the payment of benefits abroad.

SADC Code on Social Security of 2007 and **SADC Cross-Border Portability of Social Security Benefits Policy Framework** adopted in May 2016 by the respective Ministers of Labour and Employment and Social Partners recognize and establish mechanisms for equality of treatment as well as maintenance of acquired social security rights and rights in course of acquisition for nationals of member countries. The SADC Employment and Labour Sector adopted in 2020 with tripartite engagement the **SADC Guidelines on Portability of Social Security Benefits** to ensure that workers moving within the Region maintain social security rights and benefits acquired under the jurisdiction of different Member States, including pension, occupational injury and sickness benefits.⁷⁹ The guidelines facilitate mutual administrative assistance between social security authorities in two or more countries, in the context of the diversity of national social security systems across the REC. The guidelines address: migrant

77. See *Extending Social Protection to Migrant Workers in Southern Africa*. SASPEN-Southern African Social Security Experts Network Brief No. 1/2015.

78. See *Social Protection for Migrant Workers and their families in ECOWAS States: the ECOWAS General Convention on Social Security*. ILO & ECOWAS. 2019.

https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_714335.pdf

79. See: *SADC Employers and Labour Sector Adopt Guidelines on Portability of Social Security Benefits*. SADC Secretariat. 18 December 2020.

<https://www.sadc.int/latest-news/sadc-employers-and-labour-sector-adopt-guidelines-portability-social-security-benefits>

worker equality of treatment with nationals in social protection; allowance for variation of benefits according to what is permitted by law in the country of employment; exclusion of accessing benefits from two or multiple schemes at the same time; guidance and facilitation of cross-border/inter-country portability and access to contributions, benefits and payments; specific conditionalities and circumstances for application and calculation of benefits.

4.8 EMPLOYMENT MOBILITY FOR MIGRANT WORKERS

4.8.1 Introduction and definition of employment mobility for migrant workers

Mobility of migrant workers can refer to occupational (ability to change jobs), geographical (ability to change the location of work) or cross border mobility (ability to move across borders). Internal employment mobility refers to the first two. Occupational mobility can be horizontal or lateral (within a broad class of similar jobs) or vertical (from one job to a better or worse job). Internal labour market mobility in relation to migrant workers has been defined as “the ability of workers to terminate employment, switch to a different employer, renew their work permit or leave the destination country without the approval of their employer” (ILO, 2017b: 2). Migrant workers in a destination country often experience limited job mobility, particularly in the initial stages, due to admission conditions. This especially applies to low and semi-skilled workers on temporary or fixed term contracts. When workers are admitted to a country with the work permit tied to a particular employer, given occupation or branch of activity or a position in a given enterprise, their internal mobility is constrained (ILO, 2016a). This is often the case in temporary migrant worker programmes in Asia and the Middle East.

4.8.2 Guidance from relevant international instruments

The key international Conventions that outline labour standards with respect to internal labour market mobility are the: ILO core Conventions, (particularly the ILO Forced Labour Convention, 1930 (No. 29); and its Protocol (P.029) of 2014 and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)), and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Article 14 of Convention No. 143 allows for certain restrictions to the principle of equality of treatment with regard to access to employment. General restrictions on the free choice of employment may be authorized for a certain period not exceeding two years. But restrictions on the right to geographical mobility are not acceptable. Restrictions on permanent access to limited categories of employment or functions, where this is necessary in the interests of the State, are also permitted (ILO, 2016a).

In the Bali Declaration, adopted at the 16th ILO Asia and the Pacific Regional Meeting, constituents identified as one of the priorities for national policy and action the enhancement of labour migration policies based on relevant international labour standards, including the need to “redress employer–worker relationships that impede workers’ freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin” (ILO, 2016b).

The 2019 ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, - a nonbinding instrument – recognizes the freedom of workers to change employment or leave a country without the employers’ permission under its General Principles and obligations of employers (Box 4.13). It also prohibits confiscation of travel, contract and identity documents by employers.

Box 4.13: Provisions of ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs on employment mobility and return

III. General Principles (p.14)

11. 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.

12. 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.

B. Responsibilities of Enterprises and Public Employment Services (p.20)

18. Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.

18.1. Enterprises and public employment services should not interfere with workers' free and complete access to their own passports, identity documents and residency papers, including their employment contracts, paying careful attention to the situation of migrant workers.

Employers (p.22)

31. Employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin.

31.1 Employers' permission should not be required for migrant workers to terminate or change employment, or to leave the country if the worker so desires, taking into account any contractual obligations that may apply.

ILO (2019a). *General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs*, Fundamental Principles and Rights at Work Branch & Labour Migration Branch, International Labour Office, Geneva.

4.8.3 Examples of the incidence of the policy/practice in SADC/African Union/ International levels

Temporary migration systems often tie residence visas and work permits to the employer. For instance, low skilled workers in Malaysia and Singapore or workers hired under the Employment Permit System in the Republic of Korea have their work permits tied to a particular employer. An ILO report (Kouba and Baruah, 2017) provides a detailed list of provisions on employment mobility in different countries. If they leave or change the job without the permission of the employer, they can become irregular and lose the residency status as well. This applies to temporary visa regimes of Australia and Canada as well (Strauss & McGrath, 2017; Wright, Knox, & Constantin, 2021).

An extreme form of limited internal labour mobility arises under the 'kafala' or sponsorship system of the Middle East. The employer is also the sponsor who has the responsibility to manage the worker's immigration status and employment status (ILO, 2017b; ILO ROAS, 2021). This can lead to forced labour situations because the worker falls into irregular status if the employer terminates his employment or does not renew his residence visa. Australian

employer sponsored temporary visa schemes permit workers to work only for their sponsor and in the specific job category identified. They can lose their residency rights and prospects of permanent residency or citizenship if their sponsorship is terminated, and if they cannot find another sponsor within 60 days, leading to a high level of precariousness and dependence on employers. Tying the visa holders to the employer increases their susceptibility to mistreatment, which they may be willing to tolerate given the provision for sponsorship of certain occupations to serve as a pathway to permanent residency. Similar conditions have been found in the UK following Brexit (Sumption, 2019).

4.8.4 Why is promotion of internal labour mobility important for all parties?

Benefits arising from improved internal labour market mobility (ILO, 2017a, 2017b; ILO ROAS, 2021).

- ▶ Improving internal labour market mobility benefits workers who can secure more remunerative work opportunities, and also acquire a broader range of skills and experience.
- ▶ It benefits employers from better skills-matching, access to workers with local work experience, and reduction in costs of recruitment and training. This would encourage employers to offer higher wages and better working conditions to attract and retain talent.
- ▶ Minimizes worker exploitation and forced labour situations. Workers are unwilling to report rights violations due to fear of losing their immigration status. Improved mobility also may reduce malpractices such as free visa trading and 'labour hoarding' (ILO, 2017a).
- ▶ Improved mobility leading to better wages would also help localization or nationalization of the workforce objectives of most governments. It would also discourage displacement of national workers for employing less expensive migrant workers.

Challenges and problem areas that need attention (for both admission and post-admission phases)

- ▶ Given the lack of coordination between immigration ministries issuing residence permits and labour ministries dealing with work permits, it may be difficult to reform sponsorship systems. In some countries, it is the immigration ministry which decides on both matters.
- ▶ Increasing resort to temporary migration regimes on the part of traditional settler countries. Australia, Canada and New Zealand, have vastly expanded temporary admission systems with employer sponsorship and restricted mobility and rights for migrant workers. Employers may prefer the use of sponsored visas which works to their advantage.
- ▶ Identity and travel document retention by employers: Gap between law and practice. Confiscation/retention of identity documents is considered an indicator of coercion and forced labour, contrary to the ILO Forced Labour Convention, 1930 (No. 29). Some countries allow employers to keep passports for safe-keeping with the worker's consent (e.g., Malaysia; most GCC countries). However, due to the inherent power imbalance between workers and employers, migrant workers may be forced to give written consent and hand over passports to employers. In practice, it is very difficult to enforce the applicable regulations.

4.8.5 Examples of good practice

- Incremental reforms of the kafala (sponsorship) system and worker mobility⁸⁰

Bahrain flexi-permit – Bahrain's Labour Market Regulatory Authority launched the flexi-permit in July 2017 as an initiative that allows migrant workers in irregular status to regularize their status by sponsoring themselves and working legally for multiple employers. The main reasons for its introduction were reduction of hiring costs for businesses and raising revenues for the Government through discouraging the free visa black market. The flexi-permit has allowed workers whose work permit has been terminated or expired to remain without a sponsor, but at a cost of US\$5,821 for two years (2,189 Bahrain dinars). However, critics have pointed out the high cost of the scheme, which has made it accessible mostly to skilled workers, and non-coverage of such workers by labour law (Migrant-Rights.org, 2018). On 5 October 2022, the Flexi-Permit programme was officially terminated due to opposition from elected officials, some business interests, and the low number of Flexi-Permit holders.⁸¹

Saudi Arabia reforms – Saudi Arabia announced reforms in 2016 that allow workers to change employers under certain circumstances: e.g., if the employer has failed to renew the worker's residence permit or if wages have not been paid for three consecutive months. But it does not apply to domestic workers.

Developments in **Qatar** towards dismantling some features of the sponsorship system – Qatar has announced sweeping reforms to its labour market, with a view to dismantling major features of the kafala (sponsorship) system. Workers in Qatar had previously required a no-objection certificate from their employer to transfer to a new employer. A Ministerial Decree by the Minister of Interior was signed, removing exit permit requirements for all workers, except military personnel. Together, these are essential steps towards the ending of kafala in the country. Their actual implementation, however, needs to be monitored.

The elimination of the no-objection certificate requirement will allow workers to freely change employers following an initial probationary period stipulated in the contract. If they change employers during this period, the new employer will need to reimburse recruitment costs to the original employer.

- Examples from other regions⁸²

Republic of Korea: Migrant workers can change employer up to three times during their initial three-year contract, and two additional times if the employment period is extended. Reasons considered valid for such requests are employer failure to renew employment contracts, business closures, labour rights violations, non-respect of employment contracts, or violations of applicable regulations.

Germany and **Sweden** provide free access to the labour market, provided the foreign worker has resided in the country for at least two years. (Kouba & Baruah, 2019)

Their relevance for the SADC destination countries

Work permit systems in many SADC destination countries are under employer sponsorship and thus, tie visas to employers. The renewal of visas is also generally the responsibility of the employers. Residence permits are dependent on the availability of employment or work permit.

The National Labour Market Policy of Seychelles is the only among available NLMPs which deals with the issue of internal mobility of workers. It correctly observes: "Tying migrants to a single employer also severely limits migrants' labour mobility in the country, which can constrain the dynamic nature of the labour market. It can put local workers at a competitive disadvantage, as migrant workers are perceived as a more secure workforce given that they cannot change employers" (Ministry of Employment, 2019: 37). It also noted that the failure of employers to renew the work permit (Gainful Occupation Permit) puts them into irregular status and the risk of deportation. Similarly, withholding of migrant workers' passports is a common practice among employers in some sectors. Because of these, the NLMP has recommended modification of the GOP law provisions MEICS (2019: 40).

80. This draws upon ILO (2019). *Labour mobility between Asia and the Arab States: Background Paper*, Bangkok.

81. <https://www.migrant-rights.org/2022/10/bahrain-ends-its-flexi-permit-program-and-announces-labour-reforms/>

82. This draws upon information contained in Kouba and Baruah, 2019.

4.8.6 Key messages and the way forward

Key messages

- ▶ Internal labour market mobility benefits all parties.
- ▶ Temporary migration programmes tie both skilled and low skilled workers to specific employers which leads to undue dependence on employers and constraints in mobility. This applies to most regions.
- ▶ Fair recruitment is closely tied to the issue of mobility because of excessive fees paid by migrant workers and sometimes to recruitment agents. Workers do not want to risk premature termination of their jobs by complaining on rights violations.
- ▶ There is limited research on the issue of internal labour market mobility and its implications.

Way forward

The ILO recruitment guidelines provide recommendations on improving labour market mobility of workers. The ILO White Paper (ILO, 2017b) has also made some recommendations in the context of the kafala system which have wider applicability to employer tied visas under temporary migration schemes.

- ▶ A migrant worker's entry, residence and work permit should not be tied to a specific employer; the responsibility for renewing them should be given to the worker to reduce employer dependence.
- ▶ Provide options for temporary migrant workers to change employers or terminate their contracts with appropriate notice and for justifiable reasons without losing valid immigration resident status; work visa and residence visa link should be removed.
- ▶ Migrant workers should not get the approval of the employers to exit the country at the end of their contracts.
- ▶ Implement credible procedures to stop the retention of travel and identity documents by employers.
- ▶ Provide pathways to permanent residency not conditional on employer approval.
- ▶ Regularly monitor the situation of temporary migrant workers to prevent abuse and exploitation.

What action is needed from MoL, workers and employers' organizations?

- ▶ MOL to review laws and regulations and revise them to promote internal labour market mobility. The NLMP of Seychelles has outlined steps for this purpose.
- ▶ Governments of all destination countries should develop concrete measures for preventing retention of identity, travel and work contract documents by employers or recruiters.
- ▶ Trade unions can monitor rights violations including retention of ID documents and lobby the government for corrective actions.

4.9 SKILL DEVELOPMENT AND SKILLS RECOGNITION FOR MIGRANT WORKERS

4.9.1 Introduction

Skills of migrant workers are an important issue for all stakeholders.

Among other things, migrant workers need technical skills to perform their assigned work, soft skills, language skills, predeparture and post-arrival orientation, financial literacy and OSH (occupational health and safety) training. They should have opportunities for training in specific skills, on the job training, upgrading their skills, reskilling for emerging jobs and access to continuous and lifelong learning. At the same time, migrant workers can participate in skills transfer programmes ensuring the transmission of specific skills to national workers.



The Global Compact for Migration encourages States to:

Cooperate with the private sector and employers to make available easily accessible and gender-responsive remote or online skills development and matching programmes to migrants at all skills levels, including early and occupation-specific language training, on-the-job training and access to advanced training programmes, to enhance their employability in sectors with demand for labour based on the industry's knowledge of labour market dynamics, especially to promote the economic empowerment of women (UN General Assembly, 2018: 26).

At the same time, it is crucial that the skills of migrant workers – whether acquired formally or informally – be recognized by employers so that they can benefit from the migration process and contribute to both countries of origin and destination. Skills recognition can be defined as the evaluation and recognition of credentials and skills earned outside the country of employment (in the case of migrants), or country of origin (in case of returning migrants).

4.9.2 Relevant international and regional instruments and their ratification

Two international instruments with special focus on skill development exist: the ILO Human Resource Development Convention, 1975 (No. 142) and the ILO Human Resource Development Recommendation, 2004 (No. 195). Article VI (12) of the HRD Recommendation states: “Special provisions should be designed to ensure recognition and certification of skills and qualifications for migrant workers”. The HRD Convention has been ratified by only six countries in Africa (Burkina Faso, CAR, Guinea, Kenya, Niger and Tanzania). Thus, only Tanzania in the SADC region has ratified ILO C.142.

UNESCO has developed both regional and global Conventions promoting access to fair assessment and recognition

of educational qualifications by designated authorities in each Member State. The UNESCO Global Convention on the Recognition of Qualifications concerning Higher Education is the first United Nations higher education treaty with a global scope. The UNESCO Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States adopted in December 2014 came into force in 2019. Mauritius, Seychelles and South Africa – all SADC destination countries – have ratified the Convention.

The emphasis of Objective 18 of the GCM reads: “Invest in skills development and facilitate mutual recognition of skills, qualifications and competences”, which is elaborated in paragraph 34 as follows:

We commit to invest in innovative solutions that facilitate mutual recognition of skills, qualifications and competences of migrant workers at all skills levels, and promote demand driven skills development to optimize the employability of migrants in formal labour markets in countries of destination and in countries of origin upon return, as well as to ensure decent work in labour migration (UN General Assembly, 2018, p. 25).

The Resolution on fair and effective labour migration governance adopted at the 2017 ILO International Labour Conference (ILC) recommended that the ILO should provide active and effective support for skills development and recognition to constituents (ILO, 2017e).

Box 4.14 highlights concerns of African trade unions regarding non-recognition of skills.

Box 4.14: Trade Unions Manual highlights issues of skills recognition in Africa

A major concern in most of Africa, and more specifically within its Regional Economic Communities (RECs), is the non-recognition, non-compatibility and non-comparability of skills, qualifications and experience across national borders. These elements are contributing factors to wasted potential, reduced productivity and the inability of employers to obtain needed competences. Accompanying the weak or non-implementation of free movement rights and mechanisms, the lack of skills portability is one of the main impediments to good governance of labour mobility (movement of workers between jobs, sectors or occupations; within or between States).

Source: ILO (2021a). Trade Unions Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance in Africa, International Labour Organization, Geneva. P. 141

4.9.3 Benefits of skill development and recognition

For migrant workers, better skills can lead to better protection. The Migrant Workers and Overseas Filipinos Act of 1995 of the Philippines⁸³ states: “The State recognizes that the ultimate protection to all migrant workers is the possession of skills”. Skilled workers are more aware of their rights and options and usually work for more reputed employers. Migrant workers can access decent work options with improved skills leading to better wages, working and living conditions.

Skills are also very important for career progression or upward mobility of migrant workers, especially in the context of changing technology.

83. <https://www.refworld.org/legal/legislation/natlegbod/1995/en/74132>

For origin countries, skills of migrant workers play an important role in development. Returning migrant workers and diaspora populations transfer technology and skills for home country development. At the same time, equipping workers with improved skills would lead to higher overseas employment opportunities.

In destination countries, migrants, at all skills levels, broaden the pool of available skills and enable more effective matching of migrant skills to labour market needs. Migrant skills contribute to the promotion of productivity and competitiveness of their economies.

Recognition of migrant worker skills enables optimisation of benefits of migration for all parties – migrant workers themselves, employers, origin countries and destination countries. It avoids situations of brain waste, deskilling and overqualification. Gender responsive policies are needed to deal with recognition issues of women migrant workers. Skill recognition, especially recognition of prior learning, will improve the earnings and social recognition of low-skilled migrants who are vulnerable and at risk of exploitation.

Skills recognition options improve the portability of migrant workers' skills across jobs and borders.

4.9.4 Challenges and problem areas that need attention

- ▶ Migrant workers, especially women migrants, face various challenges in accessing quality training and decent jobs. They may have limited access to training and skill development at home and during employment overseas. Origin country governments may not invest adequate resources in skilling migrant workers including in pre-departure training.
- ▶ In the case of temporary, low-skilled workers, destination countries expect the origin countries to undertake the main responsibility for skills training. Employers in CoDs may be reluctant to invest in human resource development and skills recognition for temporary workers, and workers may have access to on-the-job training only. Female domestic workers in private households are rarely provided access to skills improvement programmes.
- ▶ For most migrant workers, there is no access to continuous training or lifelong learning although work environments are changing due to advances in technology.
- ▶ Migrant workers are unable to even access available skills training opportunities due to lack of information. There is limited access to information and guidance for migrant workers during pre-migration or post-migration.
- ▶ Non-recognition of skills and qualifications in destination countries: This is a major challenge faced especially by skilled migrant workers. The IMRF Declaration 2022 stated: "The lack of mutual recognition of skills and qualifications of migrants limits their potential, the benefits they can gain from their labour as well as their contributions to sustainable development, and leaves migrants vulnerable to exploitation" (IMRF, 2022). Non-recognition of migrant skills thus results in a triple loss: migrants waste their investment in skills development, origin countries lose their human resources and destination countries cannot benefit from the full potential of migrants.
- ▶ Harmonization of skills recognition processes at regional level with diverse education and training systems continues to be a serious challenge given diverse systems. As the OECD noted: "The possibility to have foreign qualifications recognised now exists almost everywhere in the OECD. However, in many member countries the process can be a long one and, involving many actors, can be off-putting in its lack of transparency" (OECD, 2017: 11).

The ILO Trade Union Manual on Migration in Africa states:

A major concern in most of Africa, and more specifically within its Regional Economic Communities (RECs), is the non-recognition, non-compatibility and non-comparability of skills, qualifications and experience across national borders. These elements are contributing factors to wasted potential, reduced productivity and the inability of employers to obtain needed competences. Accompanying the weak or non-implementation of free movement rights and mechanisms, the lack of skills portability is one of the main impediments to good governance of labour mobility (movement of workers between jobs, sectors or occupations; within or between States) (ILO, 2021a)..

4.9.5 Examples of good practice from different regions

- ▶ **Recognition of prior learning (RPL)** is a process by which regulatory bodies and training institutions assess acquired skills, often gained outside of the classroom, against a given set of standards, competencies or learning outcomes (ILO, 2018a). It supports the portability of skills of migrant workers and promotes their social inclusion. They allow for non-traditional pathways to formal employment for women or men, either migrants or nationals who acquired their skills through non-formal or informal learning. They also offer opportunities for further training and/or apprenticeships by identifying skills gaps.
- ▶ **BLAs/ MOUs and training workers in the country of origin.** Another good practice observed in some bilateral labour migration agreements/MOUs is cooperation between the CoO and CoD to provide skills required by employers prior to migration, and at no cost to the workers. Italy has promoted such initiatives with Albania, Egypt, and Sri Lanka through bilateral labour agreements. A recent ILO (2020a) study has reviewed skills modules in BLAs, and cost sharing arrangements for the same.
- ▶ **Regional qualification frameworks.** RQFs concluded in the context of regional economic communities encourage the development of mutually acceptable standards and criteria for licensing and certification and provide recommendations on mutual recognition across member countries. These facilitate the mobility of labour and skills. Examples are: European Union – European Qualifications Framework (EQF); ASEAN Qualifications Reference Framework (AQRf); Pacific Qualifications Framework (PQF); Caribbean Community – CARICOMQF; Southern African Development Community – SADCQF; and Gulf Cooperation Council – GCCQF.
- ▶ The **SADC Qualifications Framework (SADCQF)** is a regional mechanism for comparability and recognition of full qualifications, based on a set of agreed principles, practices, procedures and standardised terminology to meet its five objectives:
 - a. Providing a mechanism for comparability and recognition of qualifications in SADC.
 - b. Facilitating mutual recognition of qualifications in all member states.
 - c. Harmonising qualifications wherever possible.
 - d. Promoting the transfer of credits within and among member states and even beyond.
 - e. Creating SADC regional standards where appropriate.

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 main purpose of the SADCQF is to promote mobility, and as such, it plays a key role in setting the regional reference point for comparing qualifications obtained in SADC. Some challenges for SADCQF have been noted (Castel-Branco and Mavimbela, 2022; Werquin & Panzica, 2019). The former noted least success in regard to creating SADC regional standards where appropriate. All member states have not adopted comparable national qualification frameworks, and there is need for strengthening national accreditation systems. According to SADC, the lack of capacity to implement the SADCQF is the main weakness of the framework, and it has called for appropriate financial resources.

- Lessons for skill recognition systems – OECD. OECD (2017) has compiled a list of lessons which are tantamount to good practices in skills recognition for migrant workers (Table 4.2).

Table 4.2: Good practices for skills recognition - OECD

Lessons	Lessons/Good practices
Lesson 1	Establish a right to the assessment of foreign qualifications
Lesson 2	Make sure that recognition procedures are quick and provide opportunities to assess foreign qualifications prior to arrival
Lesson 3	Facilitate information and application through one-stop-shops for the assessment and recognition of foreign qualifications
Lesson 4	Strengthen systems for the Recognition of Prior Learning and ensure effective access for immigrants
Lesson 5	Link partial recognition to bridging courses
Lesson 6	Ensure that regulatory bodies treat immigrants fairly
Lesson 7	Engage employers and other relevant non-governmental stakeholders
Lesson 8	Establish partnerships and networks for the transnational exchange of expertise and good practice in the area of recognition
Lesson 9	Expand bilateral and multilateral agreements on the assessment and recognition of foreign qualifications
Lesson 10	Make sure that costs do not represent a barrier

Source: OECD (2017). *Making Integration Work: Assessment and Recognition of Foreign Qualifications*, OECD Publishing, Paris.

- **UNESCO Qualifications Passport (UQP) for refugees and vulnerable migrants.** Acknowledging the challenges faced by vulnerable migrants and refugees in having skills recognized, UNESCO developed the Qualifications Passport to serve as a standardized document (UNESCO, 2019). UQP summarizes and presents available information on the applicant's educational level, work experience and language proficiency. It also includes information on prospective progress and contact information on authorities and agencies which could assist in the job-seeking process and application. Thus, it provides important information relevant for applications for employment and internships, as well as qualification courses and admission to studies. for refugees and vulnerable migrants.
- **Sri Lanka Skills Passport.** In 2017, the Employers Federation of Ceylon together with the Tertiary and Vocational Education Commission and ILO implemented a pilot project to introduce Skills Passport among returnee migrant workers. This is a document that records the knowledge, skills and competencies of a worker. It can serve workers as a "gateway" to finding a job, accessing further training for reskilling and upskilling. The digitalized form of the Passport includes a bio page of a worker, skills competencies, work

experience (local and foreign), languages and extracurricular activities of workers. The data in the Passport databases will be verified and upgraded by Federation members and the Commission. Cabinet approval was given in June 2020 to launch the Passport as a national initiative to all workers seeking employment within Sri Lanka as well as abroad. All occupations that can be tested and certified with a National Vocational Qualification from the Commission are eligible for a Passport, including domestic workers who have to qualify for a National Vocational Qualification before proceeding for overseas jobs. Initially, the Passport will be given to the 100-150 returnee migrant workers who were involved in the pilot project.

- ▶ **SWADES Skill Card India.** As a result of the impact of COVID-19, over two million Indians have returned through the government repatriation programme, Vande Bharat Mission. Since many returning migrant workers have lost their jobs, the Government of India has introduced the Skilled Workers Arrival Database for Employment Support to identify and record their skills profile. Such a database will help employers – both national and foreign – to recruit workers based on their skill profiles and the needs of these employers. This will also help support the reintegration of the returnees into the domestic labour market.
- ▶ **Skills partnerships.** The Global Compact for Migration Objective 18 (paragraph 34e) calls for building “global skills partnerships amongst countries that strengthen training capacities of national authorities and relevant stakeholders”. This requires collaboration between public and private sectors, and origin and destination countries. At the global level, ILO, IOM, UNESCO, the International Organisation for Employers and the International Trade Union Confederation launched a Global Skills Partnership in December 2018 (ILO, 2018c). It aims to mobilize technical expertise of these organizations toward supporting governments, employers, workers and their organizations, educational institutions and training providers, and other stakeholders to develop and recognize migrant workers’ skills, with a focus on women and youth. Particular attention will go to low- and medium-skilled migrants, with support from skills partnerships at local, national, subregional and regional levels (ILO, IOM and UNESCO, 2018).
- ▶ **ILO SkillUp Programme in Central African, West-African and Sahel regions.** Given that the highest incidence of low- and semi-skilled migration in Africa is found in the Central African, West-African and Sahel regions, the ILO SKILL-UP Programme launched several pilot projects for skills partnerships at country- and corridor-level.
 - a. Recognition and validation of prior learning for priority occupations: Mauritania and Senegal agreed on a five-year joint action plan to develop common occupational, competency and assessment standards in the priority occupations they will identify.
 - b. Harmonization of certification and standards: Nigeria, Ghana and Togo have agreed to collaborate on the harmonization of certifications and standards to facilitate the portability of skills between the three countries. This will facilitate employers in hiring migrant workers and promote better integration of migrant workers in the workforce.

4.9.6 Key messages and way forward

Key messages

- ▶ In the case of recognition systems of migrant workers, close cooperation of stakeholders and institutions from both (all) countries involved is an important step.

The ILO Centenary Declaration in 2019 identified the promotion of the acquisition of skills, competencies and qualifications for all workers throughout working life as a joint responsibility of governments and social partners (ILO, 2019d).

- ▶ Strengthen skills anticipation systems to formulate migration policies that meet skills demand
- ▶ Ensure that both men and women migrant workers benefit from the skills development initiative, and women are not just provided working opportunities in gendered occupations

- ▶ Increase bilateral or multilateral recognition of qualifications and skills
- ▶ Origin countries should cover pre-departure orientation of migrant workers for employment in the destination country as well as vocational training for selected jobs. It is important that all this training should be adapted to the specific needs of women migrant workers as well and ensure equality of access to training by women migrant workers.

Way forward

- ▶ Promote SADC Regional Qualification Framework and align national qualification framework to the SADCQF (SADC, 2017).
- ▶ Employers in SADC countries should adopt RPL and adjust positions and pay scales accordingly.
- ▶ Review access of migrant women to qualification recognition and RPL and adopt required measures to improve their access.

What action is needed from MoL, workers and employers' organizations?

Special attention should be paid to stakeholder support and cooperation in case of recognition of skills of migrant workers. Much can be done in the country of origin to secure better labour market outcomes for migrant workers through skills recognition. (ILO, 2017: 22).

Efforts to improve certification of migrant workers and to increase skills recognition (e.g., through bilateral agreements) can facilitate labour mobility, particularly for semi-skilled and skilled workers.

4.10 FAMILY REUNIFICATION FOR MIGRANT WORKERS⁸⁶

4.10.1 Introduction and definition of family reunification

Family reunification refers to the process where migrants and/or refugees are able to reunite with their family members in the host country. While there is no single international instrument that directly refers to the process of reunification, the International Convention on the Rights of Migrant Workers and their Family Members broadly refers to family reunification. In Article 44 (2) it is stated that the parties must 'facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children'.

However, for many, migration imposes family separation and disintegration, loss of presence of family members who remain in homelands often due to restrictions by the country of employment of migrant workers, and tragically for some, permanent loss of family members due to death or disappearance. Even when the core family moves and arrives together – or can reassemble promptly – maintaining family integrity, family functioning and child rearing are fraught with stresses, tensions and threats. Support for family life as well as for family unity and reunification for migrant workers is thus both necessary and crucial.

Attention to family and children of migrant origin is necessarily a high priority for governance of migration. Family reunification processes are generally State-managed and fall within the purview of the country's immigration laws. Therefore, multiple factors come into play in determining the parameters of what constitutes family reunification and who is eligible and what criteria migrants need to fulfil in order to qualify to reunite with family members. Restrictive policies related to reunification are increasingly leading to the fragmentation of migrant families and highlight how the process of migration can have unequal outcomes for specific groups of migrants (UNDESA, 2022).

⁸⁶ This module is adapted from a chapter in *Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability*. UNESCO-ECCAR-GMPA (forthcoming) prepared by Patrick Taran, and incorporating text by Chandima Arambepola.

4.10.2 Criteria adopted by countries in deciding on family reunification

- ▶ **Definition of family.** Who constitutes family members can vary on the basis of the country (UNHCR, 2001). Article 4 of the ICRMW defines family members as: 'persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned'. However, the UNHCR (2001) points out the importance of applying a broader understanding of family to constitute the migrant's children, spouse/partner and any other dependents. Applying a culturally sensitive lens to determining who is considered family members is urged in this instance.
- ▶ **Principle of dependency.** When the definition of family is narrow or not clearly defined, the principle of dependency can be applied. This implies any person who is dependent on the migrant worker for financial or care, can be considered for family reunification. In particular, this could include adult children with disabilities and/or the worker's parents or siblings (UNHCR, 2001).
- ▶ **Income as a criterion.** Family reunification can also be determined on the income level of the migrant worker. For example, in Singapore, a migrant worker must earn a fixed monthly salary of 6000 Singapore dollars in order to bring their dependents (Ministry of Manpower, 2022). In the UK, British citizens or those with an Indefinite Leave to Remain status, must meet a minimum income threshold to support their spouse/partner to join them.
- ▶ **Visa status.** Migrants may also face restrictions because of the type of visa they have been granted. For example, migrant workers on temporary visas may be disallowed from reuniting with family. Similarly, visas granted to different skills levels and sectors may also act as an exclusionary criterion, preventing in most instances, low- and semi- skilled workers in agriculture and construction, and migrant domestic workers from bringing their families to live with them.
- ▶ **Language proficiency.** Countries also insist on proficiency of the language of the destination country as a criterion for family members who intend to join. The ability to communicate in the native language is seen as a key consideration in the capacity of migrant populations to successfully integrate into the host society. However, the use of language tests in the pre-admission phase has been criticised for being used as a measure to limit migration (Tracy, 2017).

4.10.3. International and regional instruments and agendas regarding family reunification in migration contexts

- ▶ The **ICRMW** establishes in Article 44(2) an explicit obligation to facilitate family reunification for migrant workers' families and Article 50(1) specifies that "the State of employment shall favourably consider granting family members of that migrant worker residing in that State on the basis of family reunion an authorization to stay".
- ▶ Article 13 of the **ILO Convention 143 on Migrant Workers** (Supplementary provisions), 1975 upholds family reunification in the case of regularly admitted migrant workers.
- ▶ The **General Recommendation 21** of Committee on the Elimination of Discrimination Against Women interpreted Article 15 (4) on Equality in marriage and family relations of the CEDAW Convention to strengthen rights to international family reunification in its wording: "States parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile".
- ▶ The Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (**AU Free Movement Protocol**) Article 14 states that "A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants".

The **2030 Agenda for Sustainable Development** attaches great importance to the role of families as development actors and commits States to “provide children and youth with a nurturing environment for the full realization of their rights and capabilities” through “cohesive communities and families.”

The **Global Compact for Safe, Orderly and Regular Migration** (GCM) commits States to facilitating family reunification for migrants in paragraph 21 on “Equality in marriage and family relations.”

Article 8 the European Convention on Human Rights regarding the right to respect for family life has been broadly interpreted to include aspects of family reunification (Council of Europe, 2020). The AU Revised Migration Policy Framework for Africa and the Plan of Action (2017-2027) urges family reunification policy in two of its strategies, that of ensuring the socioeconomic wellbeing of migrants (iv) and in the integration and reintegration process (vi) (African Union, 2018b).

4.10.4 Benefits of family reunification

Social integration. Facilitating family reunification improves overall wellbeing of migrant workers (and their family members); they are able to focus on their work whilst also meeting their responsibilities to their family members. Keeping families together makes social integration of migrants in the country of employment smoother and easier. It is also in line with the best interests of children of migrant workers to be with their families.

Improved employment and labour market outcomes. OECD research indicates that family unity/reunification has two positive effects: allowing migrants to stay in employment, and secondly, facilitating spouses to also access employment (OECD, 2019c). In Germany facing large labour and skills shortages, the spouses/partners of migrant workers are considered a significant pool of workers. Their incorporation in employment is aided when grandparents can join migrant/immigrant families with young children, thus sharing care responsibilities allowing both parents to work.

Reduces irregular migration. Placing restrictions to prevent family reunification naturally gives rise to family members seeking to join their families anyway. This can increase the incidence of irregular immigration or visit visa overstays.

4.10.5 Specific challenges for families in migration situations

Generally, some rules and conditions at national level impede unity and reunification in international migration. A major factor is the prevalence of migration policies driven by interest in obtaining the competitive benefits of labour without people – benefits such as a cheap, flexible workforce that can be removed when not needed, or when keeping them too long raises expectations (e.g., by union organising and increased opportunities to demand respect for rights and social protection).

Complex bureaucracy. Depending on the criteria being used to manage family reunification, the destination country may require a very complex bureaucratic structure to process the applications seeking family reunification. The stricter the regulations, the more complex the system in place. For instance, delays were a common experience during the COVID-19 lockdowns: even when the family members had gained permission, reunions were delayed due to border closures. In most EU countries, the criteria for family renunciation are being made more restrictive which adds to administrative burdens. High income thresholds result in arbitrary separation of families.

Migration policies and practices can lead to the separation of families upon arrival during border controls, while in detention or during deportation. Separating a family by deporting or removing a family member from a State party's territory, or otherwise refusing to allow a family member to enter or remain in the territory, may amount to arbitrary or unlawful interference with family life.

High cost. The burden of proof lies with the family of the applicant and therefore, the costs can be very high depending on the country and the conditionalities in place regarding the types of services family members can access once they are reunited. This largely creates an environment of suspicion and undermines the state's commitments made under specific regional/international instruments. It could also lead to violations of human rights

Negative public perception and xenophobia. Family reunification policies can be politically unpopular. Economic and social ills can be easily blamed on migrant communities and their families resulting in such communities being unjustly targeted and experiencing xenophobia. Similarly, the anti-Muslim perceptions, especially in the past two decades have had far-reaching implications for migrants identifying as Muslim. Islamophobia has led to countries adopting restrictive regulations in relation to family reunification (Rytter and Pedersen, 2014; Abrams, 2017).

Gendered impacts. Evidence points to how family reunification processes may result in women encountering challenges or experiencing discrimination (Bragg and Wong, 2016). For example, Senegalese women were found to be less likely to reunite with their spouses living in Europe because of their caregiver roles, especially being responsible for the care of the elders, in the absence of the male spouse (Baizán, et al., 2014). However, the reasons to remain have also been associated with integration requirements that women with poorer educational outcomes may find difficult to meet. In addition, the continued dependency on the male sponsor is also seen as detrimental to women who may encounter domestic violence but remain tied to the spouse because of the immigration regulations (Morris, 2015). Meeting the income and housing pre-conditions in order to apply for family reunification also have a disproportionate impact on women whose income sources may not be stable and housing arrangements are more informal and shared.

4.10.6 Examples of law, policy and practice including good practices

- New Families Programme in Barcelona, Spain .As explained in Box 4.15, this is an innovative programme by the city to support family reunification for non-EU foreign nationals.

Box 4.15: New Families in Barcelona Programme

Barcelona, Spain supports families applying for **family reunification** through the New Families in Barcelona program, which provides orientation and support to families before, during and after the process of family reunification. In the absence of a national-level programme, the city uses its local budget to offer refugee and migrant families comprehensive and personalised guidance on the legal, practical and psychological aspects of the family reunification process. While family reunification procedures and their approval or rejection are dependent on the national **Government Sub-Delegation in Barcelona**, the city programme “New Families in Barcelona” supports all non-EU foreign nationals living in Barcelona who wish to reunify their family members: children, spouse, partner, parents.

The service is provided by professionals in each city district and includes: personalised orientation and social support to families; legal advice; orientation and support to reunified children and youths to enable access to the school system and leisure activities; and group support through organised activities. The “New Families” programme gets in touch with individuals who receive an **adequate housing report**, one of the prerequisites for processing family reunification. Upon arrival, support is provided to the reunified families and follow-up of the reunification process is also ensured.

See: Local Inclusion of Migrants and Refugees. A Gateway to Existing Ideas, Resources and Capacities for Cities across the world. <https://www.oecd.org/regional/Local-inclusion-Migrants-and-Refugees.pdf> <https://ajuntament.barcelona.cat/novaciutadania/en/family-reunification-support>



- ▶ **USA:** evidence indicates that approximately 70 percent of visas are reserved for family reunification and thus, ‘fuels nearly two-thirds of the total permanent legal immigration to the country (Lee and Voigt, 2020, 438).
- ▶ In **Brazil**, less restrictive criteria regarding income and accommodation/housing and language stipulations in the pre-admission phase facilitate obtaining family reunification certificates of residency (Solano, G. and T. Huddleston 2020).
- ▶ **Parenthood in Sweden** (Föräldraskap i Sverige) is a parental course aimed at newly arrived parents.⁸⁷ City districts in Stockholm and elsewhere also have organised migrant father support groups in collaboration with the Swedish NGO MÄN.⁸⁸
- ▶ In **Portugal**, the regulations governing family reunification are the broadest in the European Union including two critical aspects: a minimum duration of stay in Portugal is not required in order for a residency permit holder or refugee to apply for family reunification. Secondly, the regulations provide a broad definition of family: in addition to spouse/partner and children under age 18 of the applicant, siblings over the age of 18 years under custody of/dependent on the applicant are considered as well as parents of the resident or spouse if they are considered dependents (Oliveira, Cancela and Fonseca, 2013).

87. Parenthood in Sweden information at: <https://socialtstod.stockholm/familj-och-barn/stod-till-foraldrar/>

88. Information on local NGO MÄN is available at: <https://mfj.se/om-maen/man>

4.10.7 Key measures for ensuring family reunification

In accordance with international and national obligations, family members of migrant workers as well as refugees should be guaranteed first of all the right to family unity and reunification if not arriving together. They also are entitled to the same access to education, health and social services, and inclusion in cultural life as nationals. In particular, States have the obligation under international law to provide the children of migrant workers with access to the local school system and enable their integration through local language classes as well as classes in the mother language and culture.

- ▶ **Advocate public declarations, policy agendas and administrative guidelines** on rights to and support for:
 - family unity and family reunification;
 - family integrity;
 - conducive conditions for family life;
 - respect for diverse forms and compositions of family.
- ▶ **Enforce law and practice** in conformity with international and African law regarding family:
 - rights to full family unity for migrant workers in regular situations;
 - measures for family integrity for all migrants from REC member countries;
 - access to health services and schooling for all without impediments or intimidation.
- ▶ **Implement proactive social and welfare policy** to address:
 - family unity, integrity and reunification;
 - rights and access of migrant children to parental care, health, schooling, social protection and socialization support, as well as to adequate nutrition and decent housing;
 - support to single parents and their children; and
 - access for migrant and refugee youth to VTET training and employment entry.
- ▶ **Ensure competent and effective service delivery** by family, child, youth, and health services.
- ▶ **Collect quantitative and qualitative disaggregated data on migrant and refugee families**, as a basis for policy formulation and programmatic interventions across government.

4.11 REGULARIZATION CRITERIA AND PRACTICES FOR MIGRANT WORKERS IN IRREGULAR STATUS

4.11.1 Definition of regularization criteria and practices for migrant workers in irregular status

The phenomenon of irregular migration has emerged as a major policy issue affecting the governance of international migration in major destination countries including in Africa. While workers in an irregular situation or undocumented status fill a demonstrated labour market need in most sectors of the economy, they are often exploited and suffer serious violations of their rights given their precarious status. They cannot even access public services for which they are eligible due to fear of deportation.

One of the options to deal with large numbers of workers in an irregular status is through programmes of regularization providing them legal status. 'Regularization' refers to any process or procedure by which the relevant government authority in a host country allows persons (usually non-nationals) in an irregular situation to stay lawfully in the country by granting them a legal and regular residence status (Baldwin-Edwards and Kraler, 2009; OSCE, 2021;

PICUM, 2022). In other words, an undocumented migrant worker can be regularized by the host state by granting him the right to legal status to stay and work in the country. In achieving safe, orderly and regular migration as advocated by the Global Compact for Migration, regularization in all forms plays a major role.

4.11.2 Objectives, process and procedures

Objectives of Regularization programmes include :

- ▶ Reducing irregular migration.
- ▶ Protection of migrant workers.
- ▶ Bringing informal and undeclared work into formal sectors.
- ▶ Providing access of employers to a legal workforce and creating a level playing field.
- ▶ Formally recognizing the contribution of workers in irregular status to the host economy. The recent pandemic highlighted the crucial role of undocumented workers in the food industry, transport, healthcare and other sectors.
- ▶ Humanitarian considerations in view of the plight of undocumented workers and their families, improving the social situation of immigrants.

There are two types of regularization programmes:

1. **Large scale one-off regularization programmes of limited duration.** This option takes into account the presence of a large population of workers in irregular status and their families which make migration governance difficult. The authorities announce and implement a time bound large scale regularization programme based on eligibility criteria, publicity, involvement of other stakeholders such as employers and trade unions, among others. They can be accompanied by prior amnesties. Some GCC countries have resorted to this option occasionally. Applicants need to show evidence of employment, stay in the country for a specified period, and no criminal record. Those successful receive a temporary work permit and residence status, which can be renewed upon certain conditions.
2. **Permanent or continuous regularization or adjustment mechanisms** – these are ongoing regularization mechanisms which grant regular status to selected migrant workers on a case-by-case basis on economic (earned adjustment) or humanitarian grounds. Migrant workers with irregular status may be said to earn a right of legal status if they satisfy certain criteria – not violated any laws other than those relating to unauthorised or clandestine entry, and made an effort to integrate, for example, by learning the local language, and made economic and fiscal contributions to the economy for a number of years. It also allows an option for migrant workers to get access to regularization on a continuing basis without having to wait for periodic amnesties. The Global Compact for Migration makes no reference to major regularization programmes but advocates case by case regularization.

4.11.3 Advantages and issues and challenges

Advantages and benefits of regularisation measures

- ▶ **Improved protection for migrant workers and their families.** Workers' labour and social rights are recognized and can be legally upheld and enforced. Families benefit from not having to live in fear of authorities and of deportation. Migrant workers and family members are able to obtain social services without fear of intimidation or risk of detention. This reduces the situations of risk and exclusion faced by workers in irregular status in destination countries.
- ▶ More effective responses to emergency situations and providing access to health care for all including those in irregular status. The COVID-19 Pandemic produced important lessons in this regard (UNNM, 2021).

- ▶ **Reducing numbers of migrant workers in irregular status.** It is a credible and pragmatic option when destination countries in Europe and elsewhere find that it is not possible to enforce the return of migrants in irregular status for various reasons. Hinterberger (2019) cited that Member States of the EU issued 516,115 return decisions in 2017, but only about 188,905 migrants voluntarily returned or were deported to their respective countries of origin. He estimates that about 300,000 migrants per year will remain in the EU who cannot be returned. Therefore, a regularization programme makes good sense. As the OECD (2018b: 186) observed: “it is, at some point in time, the only way to address the cumulative effects of labour migration policies’ failure to respond to locally unmet labour market needs”.
- ▶ Regularisation results in a number of **benefits for the governments**. It brings additional tax revenue for the government and reduces the administrative burden on the government for policing workplaces for the presence of workers in irregular status.
- ▶ **Employers gain access to a legal workforce.** Employers can avoid sanctions and penalties by employing workers in regular status. It also enables a more level playing field between enterprises since some can no longer rely on cheap undocumented workers, thereby reducing undeclared work.

Issues and Challenges

- ▶ A common argument is that it creates a moral hazard by encouraging greater irregular migration into the countries by persons in anticipation of being regularised eventually (OECD, 2018b).
- ▶ Fairness. Critics point out that regularisation rewards those who did not follow the legal route. But these workers are long-staying migrants who have contributed substantially to the economy with poor compensation and access to facilities. Moreover, workers fall into irregular status for various reasons, often not through their own fault. A business may go bankrupt and the regularly admitted workers can lose their jobs and residence status.
- ▶ It is not a permanent solution to long term structural labour shortages. OECD (2018b) highlights that when there is a structural long-term need for migrant labour, they cannot be addressed with temporary visas. The result would be “a vicious circle of recurrent, ever-larger regularisation programmes over time”. The experience of several countries (e.g., Italy, Spain) is that short duration work permits have led regularised migrant workers to fall into irregularity after a few years. This is due to ill-conceived programmes which are not monitored well and do not provide access to permanent pathways to meet long term labour market needs.
- ▶ Getting public support for a regularization programme may be difficult because the public may want to be convinced that migration is under control.
- ▶ Administrative challenges for the government: instituting the programme and overseeing it to the final stage places heavy burdens on the state apparatus. This can be lessened by delegating some responsibilities to employers, workers and NGOs.
- ▶ Increasingly, countries have become more restrictive and shied away from mass regularization programmes. The Return Directive of the European Union frowned upon mass regularizations but supported the regular status for those who could not be returned due to valid reasons. In practice, only 40% of return decisions by member states are enforced (Hinterberger, 2019).

4.11.4 Examples of the policy/practice

- ▶ Over the period 1996-2007, data from 43 regularization programmes in the **European Union Member States** reported a total of about 4.7 million applicants in 17 countries. Out of them, about 3.2 million were granted legal status (Baldwin-Edwards and Kraler, 2009).
- ▶ A recent study by the OSCE (2021) identified 27 programmes in 13 countries across the **OSCE region** (consisting of 57 European States) during the period between 2006–2020. A major regularization programme was carried out in Kazakhstan in 2006, under which about 165,000 migrant workers from the Commonwealth of Independent States (CIS) countries had their status regularized - the only large-scale regularization programme identified in the CIS region. In Europe, Austria, Belgium, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Turkey and the United Kingdom undertook a series of targeted time-bound programmes related to regularization (OSCE, 2021).
- ▶ The **USA regularization programme of 1986**. The USA carried out a major regularization programme in 1986 which has not been repeated. Many destination countries outside Europe provide amnesties for workers in irregular status to leave but they are rarely accompanied by regularization programmes (e.g., Middle East - Saudi Arabia, UAE; ASEAN – Malaysia, Singapore, Thailand; Africa – e.g., South Africa).
- ▶ **Regularization of Venezuelan nationals in Colombia**. With the sudden arrival of large numbers from Venezuela, 56 per cent of Venezuelans in Colombia were found to be undocumented in 2020. The Government of Colombia launched a regularization programme for Venezuelan nationals in 2021 which led to the more than one million Venezuelans documented as of March 2023, making it the largest regularization programme to date. This programme provides a temporary residence permit valid for 10 years, and they can apply for an indefinite residence permit after five years of residence. The permit allows them to access the local labour market and engage in economic activities (Morales, 2023).
- ▶ **EU expansion and regularization of status**. Europe has experienced two large indirect regularization episodes through the enlargement of the European Union in 2004 and 2007. All citizens of new member states who were in irregular status (work or residence) in other member states, shifted to legal status with full socio-economic and labour rights. These have reduced the incidence of irregular migration within the EU (Spencer & Triandafyllidou, 2020).
- ▶ **Limited regularizations under the recent COVID-19 pandemic**. During the pandemic, there were renewed calls for regularization schemes in some countries, and the UN has called on countries to explore “various models of regularization pathways for migrants in irregular situations” (cited in Caritas Europa, 2021). The pandemic highlighted the essential contributions of undocumented migrant workers in certain sectors such as agriculture, food industry, education, health, cleaning, domestic and care work (Caritas Europa, 2021). Countries including Italy, Luxembourg and Portugal regularized and extended visas of essential workers in the informal economy to minimize the COVID impact.
- ▶ **Pilot programmes for regularisation in Canada**. The Department of Immigration, Refugees and Citizenship Canada (IRCC) has launched several pilot programmes to transition immigrants in Canada to permanent status.
 - Guardian Angels Program or Temporary Health Care Workers Public Policy in 2020 provided special pathways for refugee claimants who were then already providing direct patient care in the health sector at the height of the COVID-19 pandemic, between December 2020 and August 2021.
 - Out-of-Status Construction Workers Program extended through to January 2021

The temporary public policy for Out-of-Status Construction Workers in Toronto is another pathway to permanent residency launched in 2020 and extended through to January 2021 for a maximum of permanent residence for 500 applicants and their family members. Eligible applicants may apply for a temporary resident permit and an open work permit to remain and continue working in Canada while their permanent resident application is processed and finalized.

-One-time Temporary Resident-to-Permanent Resident (TR-to-PR) pathway open to accept 90,000 temporary workers and international graduates already in Canada launched in 2021.

- ▶ Operation Papyrus in Geneva, Switzerland (February 2017 - December 2018). This programme aimed to initiate a process of regularization of undocumented migrants in Geneva and to address economic sectors affected by undeclared work and unfair remuneration. The programme had 3 components: 1) regularizing undocumented migrant workers resident for several years; 2) Monitoring compliance with working conditions, wage obligations, and social security; and 3) an integration system (including job exchange in the domestic work sector and an information campaign for employers) (ILO, 2021c). Eligibility criteria included, among others: five years of uninterrupted residency for families with school-age children (10 years for those without school-age children), language competence, employment and financial independence. 2,390 people including 437 families- obtained a one or two-year renewable residence permits (Caritas Europa, 2017). An evaluation of the programme by the authorities in 2019 found that the project overall produced positive results for those involved, the local labour market and social security.
- ▶ PICUM (2022) has highlighted ten key elements for a fair regularization programme (Box 4.16). Accessibility, simple procedures, transparency, issue of temporary permits and final longer-term residence permits, and support are among them.

Box 4.16: Ten key elements of humane and fair regularization programmes and mechanisms

- ▶ Undocumented people themselves can apply, including children.
- ▶ Civil society, including migrant and refugee-led associations, are involved in the design, implementation and evaluation of the scheme.
- ▶ Decisions are based on clear, objective criteria.
- ▶ Reasons for refusal are documented and argued and can be appealed.
- ▶ Decisions are made in an independent and impartial way and are informed by experts relevant to the criteria assessed.
- ▶ The procedure is accessible in practice.
- ▶ Procedural safeguards are in place.
- ▶ A temporary status that gives access to services, justice and the labour market is issued during the application process.
- ▶ The resulting residence permit is secure and long-term, gives access to services and the labour market, counts towards settlement and citizenship, and does not depend on anyone else.
- ▶ The regularization measure prevents irregular stay and work and is accompanied by support measures.

Source: Reproduced from PICUM (2022). Regularization mechanisms and programmes: Why they matter and how to design them, Platform for International Cooperation on Undocumented Migrants. Brussels.

Their relevance for the SADC destination countries

The issue of irregular migration, protection of migrant workers in irregular status and regularisation options are highly relevant in the Southern Africa context. This is due to the informal nature of a large share of cross border movements with cross border traders, especially women migrants, who come for short periods and leave. Official circles may regard these movements as irregular. There could be a substantial number of workers in irregular status in Angola, Botswana, and particularly South Africa from neighbouring countries. The public have not been briefed or informed of their contributions to the economies. This may lead to xenophobic attacks like in South Africa. It is important to recognize workers who have been in the country for a substantial period of time and regularize their status.

South Africa has established special permit regimes with Lesotho (2016-2018) and Zimbabwe (2017-2021) for hundreds of thousands of migrants to regularize their status for fixed periods and prevent deportation but the results in terms of integration and socio- economic terms were reportedly mixed (cited in ILO, 2021c).

At the SADC level also, governance of migration requires some guidelines on regularization of status – whether through one-off regularizations or continuous adjustment mechanisms as in the EU. In the longer run, the movement towards free mobility may lead to the regularization of SADC migrant workers throughout the community.



4.11.5 Key messages and the way forward

Key messages

- ▶ A credible response to irregular migration should recognize that international migration is primarily a labour market issue since more than 90 per cent of global migrants are migrant workers and their families.
- ▶ The need for a comprehensive approach has been recognised by most analysts. Regularization must be adopted along with other measures to address irregular migration (Council of Europe, 2007; Caritas Europa, 2021; UNNM, 2021; Wickramasekara, 2013). According to Caritas Europa: “Regularisation of undocumented migrants should be seen in the broader context of expanding regular migration pathways and addressing informal economies and exploitation”⁸⁹. The complementary and additional measures consist of: providing avenues for regular labour migration in line with labour market needs; sanctions and penalties on employers relying on workers in irregular status; address root causes of irregular movements; modify outdated migration and asylum laws; reduce costs of legal migration; improve enforcement measures with due regard for human rights and dignity of migrants; preventive action on the risks of irregular migration; and bilateral and regional cooperation with origin countries for return and readmission.
- ▶ Base policies to deal with irregular migration and treatment of workers in irregular status on internationally accepted norms and instruments including universal human rights instruments, core labour Conventions and other relevant labour standards as reflected in the ILO Multilateral Framework on Labour Migration; Countries in the region should ratify relevant Conventions, and implement their provisions through legislative reforms, and other means.
- ▶ Provide for amnesties and regularizations to deal with large numbers of migrants in irregular status due to policy failures supplemented by continuing permanent adjustment mechanisms (earned right to regularization) for workers satisfying specified criteria.
- ▶ Address root causes such as poverty and lack of development in origin countries, and illegal employment and undeclared work in destination countries which act as magnets for attracting migrants in irregular status.
- ▶ A whole-of-society approach involving all major stakeholders – governments, employers, trade unions, NGOs and migrant associations – is required in framing or improving policies and legislation.
- ▶ Effective sanctions, penalties and legal action against errant employers, human smugglers and traffickers in persons.

Way forward

There are several current initiatives which provide some directions.

- ▶ The UN Special Rapporteur on Human Rights of Migrants has issued a report on how to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants (Morales, 2023). Stakeholders have provided inputs for his consideration. This is a timely initiative which can provide rights-based guidance to UN member states on regularization measures and protection of migrant rights.
- ▶ Initiatives by a major destination country – Canada. The Prime Minister of Canada has directed the Minister of Immigration, Refugees and Citizenship Canada (IRCC) to “build on existing pilot programs to further explore ways of regularizing status for undocumented workers who are contributing to Canadian communities.” (cited in Alboim, et al. 2023). The Migrant Rights Network of Canada made a major case for regularization of undocumented migration population in its October update (Migrant Right Network, 2022b). The IRCC can

89. <https://www.caritas.eu/demystifying-the-regularisation/>

build on lessons learnt in recent pilot programmes at regularization. Alboim et al. (2023) have proposed two options in this regard: a) a regularization programme to enable eligible foreign nationals residing in Canada without status to obtain permanent residency status; and b) status transition for temporary workers to attain permanent resident status. The programme should be guided by “simplicity, accessibility to ensure uptake, a stable ongoing mechanism with adaptable content rather than a single time-limited initiative, and respect for the integrity of Canada’s managed immigration system”(Alboim, et al: 1).

- ▶ A broader approach to regularization on the part of the European Union advocated. The European Union should be more flexible in its approach to regularisation moving beyond the Return Directive. For instance, Hinterberger (2019) has argued for an EU Regularization Directive that would complement the existing EU return policy. This makes the process more transparent and also could contribute to a reduction in the number of irregularly staying migrants than under present policies. Given the limited progress with increasing legal avenues for migration, such a directive would help in absorbing already existing third country nationals into formal employment.

What action is needed from MoL, workers and employers’ organizations?

Ministries of Labour should collect updated statistics on the incidence of irregular migration and document their contributions and issues they face. Social partners and concerned civil society organizations including migrant organizations should lobby governments for regularisation of status of migrant workers and their families in irregular status. In many regularization programmes, social partners and civil society have played an important role helping migrants and their families to understand the process and prepare related documentation.





LIST OF REFERENCES

- Abdulla, N. (4 October 2022). New UAE job exploration visa explained: How it is different from regular tourist visa. Accessed from <https://www.khaleejtimes.com/visa-and-immigration-in-uae/new-uae-job-exploration-visa-explained-how-it-is-different-from-regular-tourist-visa>
- Abrams, K. (2017). "Family Reunification and the Security State", *Immigration and Nationality Law Review*, 38, 3-36.
- ACHPR (2010). Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights. <https://achpr.au.int/sites/default/files/files/2021-08/achprinstrguidedraftescrightseng.pdf>
- African Union (2018a). Protocol to the treaty establishing the African Economic Community relating to free movement of persons, right of residence and right of establishment, Adopted by the thirtieth ordinary session of the Assembly, held in Addis Ababa, Ethiopia on 29 January 2018.
- African Union (2018b). The Revised Migration Policy Framework for Africa and Plan of Action (2018 – 2027), African Union Commission, Addis Ababa.
- African Union (2021). AU Guidelines on developing bilateral labour agreements (BLAs), Approved by the Fourth ordinary session of the Specialised Technical Committee on Social Development, Labour and Employment (STC-SDLE-4), 04-08 April 2022, Addis Ababa, Ethiopia. https://au.int/sites/default/files/newsevents/workingdocuments/41106-wd-GUIDELINES_ON_DEVELOPING_BILATERAL_LABOUR_AGREEMENTS_BLAs-ENGLISH_0.pdf
- AU-JLMP (2021). Report on Labour Migration Statistics in Africa -Third Edition, Jointly published by the African Union Commission and Joint Labour Migration Programme (JLMP) partners (ILO, IOM, UNECA), Addis Ababa.

https://au.int/sites/default/files/documents/41182-doc-254_261-EN06.pdf

- AU-ILO-IOM-ECA (2015). Programme Brief: Labour Migration Governance for Integration and Development in Africa. A Bold New Initiative. African Union, International Labour Organization, International Organization for Migration & UN Economic Commission for Africa. Addis Ababa. 2015.
- Alboim, N., et al. (2023). Out of the shadows: A proposal for the regularization of migrants without status in Canada, Policy Brief, No. 12, Canada Excellence Research Chair (CERC) in Migration and Integration, Toronto Metropolitan University, February 2023
- Amadi, V. and P. Lenaghan (2020). "Advancing Regional Integration through the Free Movement of Persons in the Southern African Development Community (SADC)." *Speculum Juris* 51 34(1): 52-67.
- Baizan, P., Beauchemin, C., and Gonzalez-Ferrer, A., et al. (2014). "An Origin and Destination Perspective on Family Reunification: The Case of Senegalese Couples." *European Journal of Population*, 21 January 2014.
- Baldwin-Edwards, M. and A. Kraler (2009). REGINE: Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union, International Centre for Migration Policy Development (ICMPD), Vienna, Austria. https://ec.europa.eu/migrant-integration/library-document/regularisations-europe-study-practices-area-regularisation-illegally-staying-third_en
- Bamu, P. H. (2014). An analysis of SADC migration instruments in light of ILO and UN principles on labour migration: Final Report, Report prepared for the International Labour Organization, ILO DWT for Eastern and Southern Africa and ILO Country Office, Pretoria.
- Bergan, S. (2019). The European Higher Education Area: A road to the future or at way's end? *Tuning Journal for Higher Education*. 6(2). 23-49.
- Bohning, W. R. (1996). *Employing foreign workers: A manual on policies and procedures of special interest to middle-and low-income countries*. Geneva: International Labour Office.
- Boucher, A. K. (2019). Measuring migrant worker rights violations in practice: The example of temporary skilled visas in Australia. *Journal of Industrial Relations*, 61(2), 277-301.
- Boucher, A. K. (2020). How 'skill' definition affects the diversity of skilled immigration policies. *Journal of Ethnic and Migration Studies: Special Issue: Discrimination in Migration and Citizenship*, 46(12), 2533-2550.
- Bradley, A. (2019). International Law's Racism Problem. *OpinioJuris*. <http://opiniojuris.org/2019/09/04/international-laws-racism-problem/>
- Bragg, B and Wong, L.L (2016) "Cancelled Dreams: Family Reunification and Shifting Canadian Immigration Policy", *Journal of Immigrant & Refugee Studies*. 14(1). 46-65.
- Brian, T., 2021. Occupational Fatalities among International Migrant Workers: A Global Review of Data Sources. International Organization for Migration (IOM). Geneva. <https://publications.iom.int/books/occupational-fatalities-among-international-migrant-workers>
- Buddelmeyer, H., van de Ven, J and Zakirova, R. (2013). Graduate Employment Outcomes for International Students, Melbourne Institute of Applied Economic and Social Research. Accessible from https://melbourneinstitute.unimelb.edu.au/assets/documents/sprs-reports/1-12_Final_Report.pdf
- Burmann, M. et al. (2018). Highly Skilled Labour Migration in Europe, ifo DICE Report, ISSN 2511-7823, ifo Institut - Leibniz-Institut für Wirtschaftsforschung an der Universität München, München, Vol. 16 (1), pp. 42-52.
- Business and Human Rights Resource Centre (n.d). Inhospitable: How hotels in Qatar & the UAE are failing migrant workers. Accessed from <https://www.business-humanrights.org/es/from-us/briefings/inhospitable-how-hotels-in-qatar-the-uae-are-failing-migrant-workers/>

- BusinessTech. (2022). New quotas to limit hiring of foreigners in South Africa: minister. BusinessTech.
- Carciotto, S. (2018). The Regularization of Zimbabwean Migrants: A Case of Permanent Temporariness, Blog, African Human Mobility Review. <https://sihma.org.za/Blog-on-the-move/the-regularization-of-zimbabwean-migrants-a-case-of-permanent-temporariness>
- Caritas Europa (2021). Demystifying the regularisation of undocumented migrants, Caritas Europe, Brussels. <https://www.caritas.eu/demystifying-the-regularisation/>.
- Castel-Branco, E. and L. Mavimbela (2022). Southern African Development Community Regional Qualification Framework: Review of implementation and way forward, SADC Secretariat, Gaborone, 23 May 2022. https://www.sadc.int/sites/default/files/2022-07/SADCQF_review%20implem%20report_FINAL3%2023052022_Secretariat_EN.pdf
- Chaloff, J. (2014). Evidence-based regulation of labour migration in OECD countries: setting quotas, selection criteria, and shortage lists. *Migration Letters*, 11(1), 11-22.
- Coffey J, Cook J, Farrugia D, Threadgold S, Burke PJ. Intersecting marginalities: International students' struggles for "survival" in COVID-19. *Gender Work Organ.* 2021;28:1337–1351. <https://doi.org/10.1111/gwao.12610>
- Collins, F.L and Bayliss, T. (2020). The good migrant: Everyday nationalism and temporary migration management on New Zealand dairy farms. *Political Geography*, 80 (2020) 102193
- Council of Europe (2007). Regularisation programmes for irregular migrants: Report of the Committee on Migration, Refugees and Population, Parliamentary Assembly, Council of Europe, 6 July 2007
- Council of Europe (2020). Family reunification for refugee and migrant children. Standards and promising practice, Strasbourg Cedex. <https://rm.coe.int/family-reunification-for-refugee-and-migrant-children-standards-and-pr/16809e8320>
- Crossman , E, Feng H., & Picot, G. (2020). Two-step Immigration Selection: A Review of Benefits and Potential Challenges *Economic Insights*, 111.
- Crush, J., et al. (2022). Stocktaking of Work on Labour Migration in the Southern African Region, Study carried out for the South Africa Migration Management Project, ILO, Pretoria. <https://www.sammproject.org/wp-content/uploads/download-manager-files/Eng-SAMMS01-Labour-Migration-FINAL-REPORT.pdf>
- Crush, J. and Williams, V. (2022a). South Africa: Labour Migration Review, Report prepared for the Southern African Migration Management Project (SAMM), ILO, Pretoria.
- Crush, J. and Williams, V. (2022b). Seychelles: Labour Migration Review, Report prepared for the Southern African Migration Management Project (SAMM), ILO, Pretoria.
- Czaika, M. and C. R. Parsons (2016). The Gravity of High-Skilled Migration Policies, KNOMAD Working Paper 13, Knowledge Partnership on Migration and Development (KNOMAD), The World Bank, March 2016.
- Das, S (2022). Overseas nurses in the UK forced to pay out thousands if they want to quit jobs, *The Guardian*, 17 March 2022. Accessed from <https://www.theguardian.com/society/2022/mar/27/overseas-nurses-in-the-uk-forced-to-pay-out-thousands-if-they-want-to-quit-jobs>
- Desiderio, M. V. and Hooper, K. (2016). The Canadian Expression of Interest System: A Model to Manage Skilled Migration to the European Union?, Reports, March 2016, Migration Policy Institute, Washington DC <https://www.migrationpolicy.org/research/canadian-expression-interest-system-model-manage-skilled-migration-european-union>
- DEL (2022). Draft national labour migration policy for South Africa, Department of Employment and Labour, Republic of South Africa, Pretoria, February 2022. <https://www.dhet.gov.za/SiteAssets/Latest%20News/November%202020/A%20Technical%20Report%20for%20the%202020%20Critical%20Skills%20List.pdf>

- DHA (2022). Critical Skills List, Government Gazette, STAATSKOERANT, 2 Augustus 2022 Vol. 686 2 August 2022 No. 47182, Department of Home Affairs
https://www.gov.za/sites/default/files/gcis_document/202208/47182gon2334.pdf
- DNA Economics (2020). A Technical Report for the 2020 Critical Skills List, Produced for the Department of Higher Education and Training (DHET) as part of the Labour Market Intelligence (LMI) research programme.
<https://www.dhet.gov.za/SiteAssets/Latest%20News/November%202020/A%20Technical%20Report%20for%20the%202020%20Critical%20Skills%20List.pdf>
- Dugan, E (2022). 'I'm ashamed': working in UK leaves fruit pickers from Indonesia in debt.
<https://www.theguardian.com/uk-news/2022/dec/02/im-ashamed-working-in-uk-leaves-fruit-pickers-from-indonesia-in-debt>
- Economist, The (2016). What's the point?, The Economist, London, 7 July 2016.
<https://www.economist.com/international/2016/07/07/whats-the-point>
- EMN (2014). The application of quotas in EU Member States as a measure for managing labour migration from third countries, EMN Inform, European Migration Network.
- EMN (2015). Determining labour shortages and the need for labour migration from third countries in the EU: Synthesis Report for the EMN Focussed Study 2015, European Migration Network, Brussels.
https://migrant-integration.ec.europa.eu/library-document/emn-inform-determining-labour-shortages-and-need-migration-labour-third-countries_en
- EMN (2018). Asylum and Migration Glossary 6.0, A tool for better comparability, produced by the European Migration Network (EMN), May 2018
- EMN. (2021). Summary of European Migration Network Ad-Hoc Query No. 2021.17: Labour Market Test. European Migration Network, Brussels,
https://home-affairs.ec.europa.eu/document/download/5a962e72-c6fb-41d9-90cf-6a5dbf4ccd8f_hr
- Faraday, F. (2022). The Empowerment of Migrant Workers in a Precarious Situation: The Role of Labor Inspection. KNOMAD Policy Brief No. 18, by. July 2022.
- Farbenblum, B and Berg, L. (2017). Wage theft in Australia. Findings of the National Temporary Migrant Work Survey. Accessed from:
https://opus.lib.uts.edu.au/bitstream/10453/120396/1/Wage%20theft%20in%20Australia%20Report_final_web.pdf
- Gächter, A. (2022). Migrant workers and discrimination: realities, threats, and remedies. Revista Tecnológica - Espol, 34(1), 92-112. <http://www.rte.espol.edu.ec/index.php/tecnologica/article/view/907>
- Hawthorne, L. (2010). How Valuable is "Two-Step Migration"? Labor Market Outcomes for International Student Migrants to Australia. Asian and Pacific Migration Journal, 19(1).
- Hill, E. (2021). Not so equal: Is excluding au pairs from the minimum wage still the right thing to do?, Blog, Low Pay Commission, London. <https://minimumwage.blog.gov.uk/2021/12/13/not-so-equal-is-excluding-au-pairs-from-the-minimum-wage-still-the-right-thing-to-do/>
- Hinterberger, K.F. (2019). An EU Regularization Directive. An effective solution to the enforcement deficit in returning irregularly staying migrants. Maastricht Journal of European and Comparative Law, 26(6), 736-769. doi:10.1177/1023263x19866541
- Home Office UK (2020). The UK's points-based immigration system: policy statement, Policy paper, Home Office United Kingdom, London, 19 February 2020. <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>
- Home Office UK (2021). Seasonal workers' pilot review 2019, A joint Home Office and Defra review of the performance of the pilot in the first year of operation, London. IALI (2008). Global Code of Integrity for Labour

Inspection. IALI (International Association of Labour Inspectors).

<http://www.iali-aiit.org/ws/media-library/db57835ad18744c2adeb4142d499bfda/global-code-of-integrity---english.pdf>

ICLS (2018). Guidelines concerning statistics of international labour migration, ICLS/20/2018/Guidelines, 20th International Conference of Labour Statisticians, Geneva, 10-19 October 2018. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648922.pdf

IGAD-ILO (2021). Background Report: IGAD Regional Guidelines on Rights-Based Bilateral Labour Agreements (BLAs), IGAD (Intergovernmental Authority on Development) and ILO (International Labour Organization), Djibouti. https://igad.int/download/igad-regional-guidelines-on-rights-based-bilateral-labour-agreements-blas/?ind=1664517669631&filename=IGAD-ILO_FMPT-BLA-BackgroundReport_r8.pdf&wpdmdl=12922&refresh=6370ff0c8a8031668349708

IGAD (2021). IGAD Regional Guidelines on Rights Based Bilateral Labour Agreements (BLAs), Intergovernmental Authority on Development, Djibouti. https://igad.int/download/igad-regional-guidelines-on-rights-based-bilateral-labour-agreements-blas/?ind=1664516914837&filename=IGAD-ILO_FMPT-BLA-GuidelinesReport_r3.pdf&wpdmdl=12922&refresh=63d644a6d49f91674986662

ILO (2010). International labour migration: A rights based approach. Geneva, International Labour Office. <https://core.ac.uk/download/pdf/5129325.pdf>

ILO (2014). Minimum wage systems. International Labour Office: Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf

ILO. (2016a). Promoting fair migration: General Survey concerning the migrant workers instruments. <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/r3-1b.htm>

ILO (2016b). The Bali Declaration, Adopted at the 16th Asia and the Pacific Regional Meeting in Bali, Indonesia, on 9 December 2016, International Labour Office, Geneva.

ILO (2017a). Addressing governance challenges in a changing labour migration landscape, Report 6, Office report for the General Discussion on Labour Migration, 106th International Labour Conference, International Labour Office, Geneva.

ILO (2017b). Employer-migrant worker relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration, White paper, International Labour Organization, Regional Office for Arab States. - Beirut: ILO, February 2017.

ILO (2017d). World Social Protection Report 2017–19: Universal social protection to achieve the Sustainable Development Goals, International Labour Office – Geneva: ILO.

ILO (2017e). Resolution concerning fair and effective labour migration governance, Adopted by the 106th International Labour Conference, International Labour Office, Geneva.

ILO (2018a). Skills for migration and employment. SKILLS FOR EMPLOYMENT Policy Brief, International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_651238.pdf

ILO (2018c). Global Skills Partnership on Migration, ILO, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_821274.pdf

ILO (2019a). General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs, Fundamental Principles and Rights at Work Branch & Labour Migration Branch, International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

- ILO (2019b). Global and Continental Policy Frameworks Guiding Labour Migration And Labour Mobility in Africa, ILO, Geneva.
https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_673552.pdf
- ILO (2019c). Preliminary Stocktaking Study: Development and Implementation of Bilateral Labour Migration Arrangements by African Union Member States, Labour Migration Branch, ILO, Geneva.
- ILO (2019d). ILO Centenary Declaration for the Future of Work, Adopted at the International Labour Conference, ILO, June 2019.
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711674.pdf
- ILO (2019e). Abidjan Declaration - Advancing Social Justice: Shaping the future of work in Africa. 14th African Regional Meeting, Abidjan, Côte d'Ivoire, 3–6 December 2019. https://www.ilo.org/global/meetings-and-events/regional-meetings/africa/arm-14/reports-and-documents/WCMS_731646/lang--en/index.htm
- ILO (2020a). Social protection (social security) interventions: What works and why? Lessons learned from a synthesis review, 2012–2018. International Labour Office – Geneva: ILO, 2020.
- ILO (2020b). Protection of workers' wage claims in enterprise insolvency, Fact Sheet, Conditions of Work and Equality Department, ILO, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_745455.pdf
- ILO (2020c). Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers. ILO: Bangkok
- ILO (2021a). Trade Unions Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance in Africa, International Labour Organization, Geneva
- ILO (2021b). Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa. International Labour Office, Geneva: ILO, 2021.
- ILO (2021c). Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium, International Labour Organization, Geneva
https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_832915.pdf
- ILO (2021d). Practical guide on developing labour migration policies, International Labour Organization, Geneva.
https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_832194.pdf
- ILO (2021e). Piloting fair recruitment from Bangladesh to Qatar in the construction sector, ILO Brief, Geneva. Accessed from
https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_778830.pdf
- ILO (2021f). Extending Social Protection to Migrant Workers, Refugees, and their Families: Guide for Policymakers and Practitioners, International Labour Organization, Geneva https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf
- ILO (2022a). Temporary labour migration: Unpacking complexities. Synthesis Report. International Labour Organization: Geneva.
- ILO (2022b). ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022).
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf

- ILO (2022c). Fair recruitment and access to justice for migrant workers: Discussion paper, ILO Fair Recruitment Initiative, International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_850615.pdf.
- ILO (2022d). Guidelines on General Principles of Labour Inspection. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf
- ILO (2023). Guidance note: Wage protection for migrant workers, International Labour Organization, Geneva. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_878658.pdf
- ILO-ACTRAV (2005). The global challenges of labour inspection. Labour Education 2005/3-4 No. 140-141. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/publication/wcms_108666.pdf
- ILO, IOE & BAGM (2021). Employers' Organizations Guide on Fostering Labour Migration Governance in Africa, International Labour Organization, International organization of Employers, and the Business Advisory Group on Migration, Geneva. https://www.ilo.org/africa/information-resources/publications/WCMS_853224/lang-en/index.htm
- ILO- KNOMAD (2019). Statistics for SDG indicator 10.7.1. Draft Guidelines for their Collection. October 2019. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_670175.pdf
- ILO MAG. (2021). COVID-19 Pandemic: Wage protection of migrant workers in the Arab States, ILO Migration Advisory Group (Arab States), Regional Office for Arab States, Beirut, February 2021. https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/briefingnote/wcms_803052.pdf
- ILO ROAS (2021). Thematic Brief: Promoting internal labour market mobility in the Arab States, Prepared for the Africa – Arab States Interregional Tripartite Meeting on Labour Migration, 15-16 November 2021, ILO Regional Office for Arab States, Beirut https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_831918.pdf
- ILO-IOM-OHCHR (2001). International Migration, Racism, Discrimination and Xenophobia, A discussion paper prepared by: International Labour Office (ILO) International Organization for Migration (IOM) Office of the United Nations High Commissioner for Human Rights (OHCHR), Geneva. <https://www2.ohchr.org/english/issues/migration/taskforce/docs/wcar.pdf>
- ILO, IOM and UNESCO. (2018). Global Skills Partnership on Migration: Key messages from partners, International Labour Organization, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_653993.pdf
- IOE (2021). An employer's guide to fair recruitment. International Organisation of Employers (IOE), International Organization of Employers, Geneva. <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156233&token=c8033ba3a6f02383ba1f7b7e1df69a2cd63806c3>
- IOE (2021). Addressing Skills Development to Improve Access to Foreign Skills, International Organization for Employers (IOE), Geneva
- IOM (2021). Bilateral Labour Migration Agreements (BLMAs): Rapid Assessment of the Southern Corridor (Ethiopia - Kenya - Tanzania - South Africa), IOM Regional Office for the East and Horn of Africa, Addis Ababa.
- Jureidini, R. (2017). Wage Protection Systems and Programmes in the GCC. Gulf Labour Markets and Migration, European University Institute (EUI) and Gulf Research Center (GRC), European University Institute, Florence.

- Kouba, S. and N. Baruah (2019). Access to the labour market for admitted migrant workers in Asia and related corridors, ILO Regional Office for Asia and the Pacific, Bangkok.
- Lee, J.J., Paulidor, K. & Mpaga, Y.A. (2018) Sliding doors: strategic ambiguity in study visas to South Africa, *Studies in Higher Education*, 43:11, 1979-1992,
- Lee, C and Voigt, T.H (2020). DNA Testing for Family Reunification and the Limits of Biological Truth. *Science, Technology, & Human Values*. 45(3) 430-454
- Lin, Q. (2022). Immigration Quotas and Anti-Immigration Attitudes: An Evaluation of Swiss Migration Policy, Working Paper, The Graduate Institute, Geneva.
- Mayer, M (2018). Skilled worker migration to Germany from third countries 2017, Fact Sheet, Bertelsmann Stiftung, Gütersloh
- MEICS (2019). Seychelles National Labour Migration Policy, Ministry of Employment, Immigration and Civil Status, Employment Department, Victoria, Mahe, Seychelles, April 2019.
<http://www.mofbe.gov.sc/wp-content/uploads/2021/09/Labour-Migration-Policy.pdf>
- Migrant Forum in Asia (undated). Challenges on Access to Justice for migrants, Written Contribution of Migrant Forum in Asia to the Special Rapporteur on the Human Rights of Migrants on the issue of Access to Justice and Remedies for Migrants, Migrant Forum in Asia, Manila.
https://mfasia.org/migrantforumasia/wp-content/uploads/2018/05/Access-to-justice-is_MFA.pdf
- Migrant Rights Network (2022). Policy Brief: Regularization in Canada, Migrant Rights Network October 2022 Update. <https://migrantrights.ca/wp-content/uploads/2022/07/MRN-Brief-Regularization-July-2022.pdf>
- MLIREC (2019a). Namibia: National labour migration policy, Ministry of Labour, Industrial Relations and Employment Creation (MLIREC), Republic of Namibia, Windhoek.
- MLIREC (2019b). Namibia National labour migration policy: Implementation plan, 2020/21- 2024/25, Ministry of Labour, Industrial Relations and Employment Creation (MLIREC), Republic of Namibia, Windhoek
- MLIRT (2016). Guidelines for Work Permit Application, Ministry of Labour, Industrial Relations, Employment and Training (MLIRT), Government of Mauritius, Port Louis, June 2016.
- Migrant-Rights.org.** (2018). "One year since launch: Has Bahrain's Flexi-Permit lived up to its hype?". <https://www.migrant-rights.org/2018/08/one-year-since-launch-has-bahrains-flexi-permit-lived-up-to-its-hype/>
- Ministry of Manpower – Singapore (2022). Eligibility for dependent's pass. Accessed from <https://www.mom.gov.sg/passes-and-permits/dependants-pass/eligibility>
- Monterisi, S. (2014). Africa: Comparative analysis of the mapped bilateral agreements concluded by African countries, Draft report prepared for the ILO-KNOMAD Thematic Working Group on Low Skilled Migration, International Migration programme, Geneva, June 2014.
- Morales, F. G. (2023). How to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants, A/HRC/53/26, Report of the Special Rapporteur on the human rights of migrants, Human Rights Council, Geneva.
- Mpedi, L G and Nyenti, M. 2013. Portability of Social Security in Mining Sector: Challenges Experienced by Former Mineworkers in Accessing Social Security Benefits in Selected Southern African Countries (A Scoping Study), Southern Africa Trust, Johannesburg.
- Mpedi, L. G. (2022). "Financial Services and Arrangements to Facilitate the (Ex)Portability of Social Security Benefits in the Southern African Development Community." *Potchefstroom Electronic Law Journal (PELJ)*, Volume 25, No. 1.

- OECD. (2014). Chapter 3: Managing labour migration: Smart policies to support economic growth. In OECD (Ed.), *International Migration Outlook 2014*: OECD Publishing, Paris, pp.133-231. https://doi.org/10.1787/migr_outlook-2014-6-en.
- OECD (2017). *Making Integration Work: Assessment and Recognition of Foreign Qualifications*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264278271-en>.
- OECD. (2018a). *Recruiting Immigrant Workers: Australia 2018*: OECD Publishing, Paris, <https://doi.org/10.1787/9789264288287-en>
- OECD (2018b). Chapter 4. Addressing the illegal employment of foreign workers, *International Migration Outlook 2018*, OECD Publishing, Paris. https://doi.org/10.1787/migr_outlook-2018-7-en
- OECD (2019a). *Building an EU Talent Pool : A New Approach to Migration Management for Europe*, OECD Publishing, Paris. <https://doi.org/10.1787/6ea982a0-en>.
- OECD (2019b). *The Expression of Interest Model: What Lessons for Migration Management in the EU and elsewhere?* Migration Policy Debates, No. 18, March 2019, OECD Publishing, Paris. https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/03/the-expression-of-interest-model_ef749a18/4fc7639a-en.pdf
- OECD (2019c). "Family ties: How family reunification can impact migrant integration", in *International Migration Outlook 2019*, OECD Publishing, Paris.
- OECD (2019d). *Recruiting Immigrant Workers: Canada*, OECD Publishing, Paris. <https://doi.org/10.1787/4abab00d-en>
- OECD (2021). *The fiscal impact of immigration in OECD countries since the mid-2000s*. By Ana Damas de Matos in: *International Migration Outlook 2021*. OECD
- OECD (2022). *International Migration Outlook 2022*. OECD Publishing: Paris
- OECD/EU (2018). *Settling In 2018: Indicators of Immigrant Integration*, , OECD Publishing, Paris/European Union, Brussels, <https://doi.org/10.1787/9789264307216-en>
- OHCHR (2020). *Right to freedom of association of migrants and their defenders*. Report of the Special Rapporteur on the human rights of migrants, Geneva. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4442-right-freedom-association-migrants-and-their-defenders-report>
- Oishi, N. (2021). "Skilled or unskilled?: The reconfiguration of migration policies in Japan." *Journal of Ethnic and Migration Studies*, 47(10): 2252-2269.
- Oliveira, C.R. Cancela, J and Fonseca, V (2013). *Family reunification in Portugal: the law in practice*. ISBN: 978-989-685-051-7.
- OSCE (2021). *Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations*, Office for Democratic Institutions and Human Rights, Organization for Cooperation and Security in Europe. <https://www.osce.org/files/f/documents/b/3/494251.pdf>
- OSCE, ILO, & IOM. (2007). *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination (Mediterranean Edition)*. Vienna: Organization for Security and Co-operation in Europe (OSCE); International Organization for Migration (IOM); International Labour Office (ILO). https://publications.iom.int/system/files/pdf/osce_iom_ilo_medhandbook_en.pdf
- Papademetriou, D. G. and M. Sumption (2011). *Rethinking Points Systems and Employer-Selected Immigration*, Washington, DC: Migration Policy Institute.
- Papademetriou, D. G. and K. Hooper (2019). *Competing approaches to selecting economic immigrants: Points-Based vs. Demand-Driven Systems*, Washington, DC: Migration Policy Institute.

- PICUM (2022). Regularisation mechanisms and programmes: Why they matter and how to design them, Platform for International Cooperation on Undocumented Migrants. Brussels
https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_EN.pdf
- Ruhs, Martin. (2014). Immigration and 'labour market tests': Who should be protected against whom", COMPAS Communications, COMPAS, School of Anthropology, University of Oxford.
- SADC (1997). Protocol on Education and Training, Adopted at Blantyre, Malawi, on 8 September 1997, Southern African Development Community,
https://tis.sadc.int/files/5213/2680/2090/20060623_protocol_education_training.pdf
- SADC (2014). Protocol on Employment and Labour, SADC/MJ/3/2014/905/, Southern African Development Community, Gaborone, August 2014. <https://www.tralac.org/documents/resources/sadc/1198-sadc-protocol-on-employment-and-labour-5-august-2014/file.html>
- SADC (2017). Southern African Development Community Qualifications Recognition Manual: SADC-QR Manual guidelines for recognition of qualifications, SADC Secretariat, Gabarone.
https://www.sadc.int/sites/default/files/2022-07/SADC_Qualifications_Reognition_Manual_Final.pdf
- SADC (2020). Southern African Development Community (SADC) Vision 2050, Southern African Development Community (SADC) Secretariat, Gaborone.
- SADC (2021). SADC Labour Migration Action Plan (2020-2025), SADC/ELS/M&SP/2020/7, Adopted by SADC in January 2021, Southern African Development Community, Gaborone.
- SADC (2022). Key Outcomes and Recommendations. Regional review meeting on progress of implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM) In Southern Africa, 28-29th April 2022, Bingu International Convention Centre, Lilongwe, Malawi, SADC Secretariat.
<https://migrationnetwork.un.org/system/files/docs/SADC%20-%20GCM%20Regional%20Review%20-%20Final%20Outcomes%20Document.pdf>
- SAMM (undated). Gender-responsive and evidence-based labour migration policies, Southern African Migration Management Project, ILO.
https://www.sammproject.org/wp-content/uploads/download-manager-files/A4_ILO-2030-GCM-GenderResponsiveLabourMigrationPolicies.pdf
- SATUCC (2022I). Information Guide for Trade Union Organisations in the SADC Region, Southern Africa Trade Union Coordination Council (SATUCC), Gabarone
<https://learning.sammproject.org/wp-content/uploads/download-manager-files/SATUCC-Labour-Migration-Information-Guide-Oct22.pdf>
- Spencer, S., & Triandafyllidou, A/ (Eds.). (2020). Migrants with Irregular Status in Europe: Evolving Conceptual and Policy Challenges: Springer International Publishing
- Solano, G. and T. Huddleston (2020). MIPEX - Migrant Integration Policy Index 2020, Migration Policy Group, Brussels.
- Strauss, K., & McGrath, S.. (2017). Temporary migration, precarious employment and unfree labour relations: Exploring the 'continuum of exploitation' in Canada's Temporary Foreign Worker Program. *Geoforum*, 78, 199-208. doi: <https://doi.org/10.1016/j.geoforum.2016.01.008>
- Sumption, M. (2019). "Is employer sponsorship a good way to manage labour migration? Implications for post-Brexit migration policies." *National Institute Economic Review*, May 2019, 248.
- Sumption, M and Fajth, Z. (2022). Work visas and migrant workers in the UK. Migration Observatory briefing, COMPAS, University of Oxford. Accessed from
<https://migrationobservatory.ox.ac.uk/resources/briefings/work-visas-and-migrant-workers-in-the-uk/>

- Tani, M. (2014). Using a point system for selecting immigrants. IZA World of Labor 2014.
- Tani, M. (2018). Using a points system for selecting immigrants. ifo DICE Report 1, 2018 March.
- Taran, P. and Kadyshcheva, O. (2022). COVID-19, Migrants, Refugees, Mobile Workers: Global Assessment and Action Agenda. Revista Tecnológica - Espol, 34(1), 28-57. <http://www.rte.espol.edu.ec/index.php/tecnologica/article/view/889>
- Taran, P. and Kadyshcheva, O. Handbook on Cities Welcoming Migrants and Refugees: Rights, Inclusion, Integration, Sustainability. UNESCO-ECCAR-GMPA. Paris, Forthcoming.
- Tracy, R (2017). 'Language testing in the context of migration' in: J. Beacco, H. Krumm, D. Little and P. Thalgot (eds). The Linguistic Integration of Adult Migrants. De Gruyter. Berlin
- Trevena, P. (2019). Post Study Work Visa Options: An International Comparative Review, Social Research, Scottish Government, Edinburgh. <https://www.gov.scot/publications/post-study-work-visa-options-international-comparative-review>
- Triandafyllidou, Anna (2022) Temporary migration: category of analysis or category of practice? Journal of Ethnic and Migration Studies, 48:16, 3847-3859,
- UNDESA (2020). United Nations, Department of Economic and Social Affairs, Population Division (2020). International Migrant Stock 2020. (United Nations database, POP/DB/MIG/Stock/Rev.2020).
- UNDESA (2019). United Nations, Department of Economic and Social Affairs, Population Division (2020). International Migrant Stock 2019. (United Nations database, POP/DB/MIG/Stock/Rev.2019).
- UN General Assembly (2018). Global Compact for Safe, Orderly and Regular Migration – Intergovernmentally Negotiated and Agreed Outcome, Available at: https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf
- UNHCR (2001). Protecting the family: Challenges in Implementing Policy. Background Note for the agenda item, Family reunification in the context of resettlement and integration. Annual Tripartite Consultations on Resettlement. Geneva, 20-21 June 2001
- UNESCO (2019). UNESCO Qualifications Passport for Refugees and Vulnerable Migrants, Paris. <https://unesdoc.unesco.org/ark:/48223/pf0000374690>
- UNNM (2021). GUIDANCE NOTE: Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability, United Nations Network on Migration, Geneva, July 2021
- UNNM (2022). Guidance on Bilateral Labour Migration Agreements, United Nations Network on Migration, Geneva, February 2022. https://migrationnetwork.un.org/system/files/resources_files/220426_BLM_Guidance_CLI.pdf
- United Nations (2011). Guiding Principles on Business and Human Rights. United Nations, New York. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
- United Nations (2012a). Treaty Handbook, Revised edition, Treaty Section of the Office of Legal Affairs, United Nations, New York. <https://treaties.un.org/doc/source/publications/THB/English.pdf>
- UNDP, UNICEF and UN WOMEN UNDP (2013). Informal Justice Systems: Charting a Course for Human Rights based Engagement, New York.
- Wickramasekara, P. (2013). Much ado about nothing: Reflections on irregular migration, Paper presented at the International Conference on Sri Lankans on the Move, Colombo, Sri Lanka, Organised by the National Science Foundation (NSF), Sri Lanka, January 23 – 25, 2013,

- Wickramasekara, P. (2015). Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review, Labour Migration Branch, International Labour Office, Geneva: ILO. http://www.ilo.org/global/topics/labour-migration/publications/WCMS_385582/lang--en/index.htm
- Wickramasekara, P. (2021). Thematic brief on Bilateral Labour Migration Instruments – Africa and Arab States, background document for the ILO-AU Africa – Arab States Tripartite Interregional Meeting on Labour Migration, 15-16 November 2021, . https://www.ilo.org/africa/technical-cooperation/fairway/WCMS_831911/lang--en/index.htm
- Werquin, P. and F. Panzica (2019). Migrant workers' skills portability in africa at regional economic community and continental level guidance towards an African qualifications framework?, International Labour Organization, Geneva.
- Winters, A. (2016). New Zealand's Recognised Seasonal Employer Scheme: An Object Lesson in Policy Making - But for Whom?, Toronto, Geneva and Brighton: ILEAP, CUTS International Geneva and CARIS. <https://www.gov.uk/research-for-development-outputs/new-zealand-s-recognised-seasonal-employer-scheme-an-object-lesson-in-policy-making-but-for-whom-migrating-out-of-poverty-rpc-working-paper-no-34>
- Wright, Chris F, Knox, A., & Constantin, A. (2021). Using or abusing? Scrutinising employer demand for temporary sponsored skilled migrants in the Australian hospitality industry. *Economic and Industrial Democracy*, 42(4), 937-959. <https://doi.org/10.1177/0143831X18823693>
- Yao, C. W. and C. Mwangi (2022). "Yellow Peril and cash cows: The social positioning of Asian international students in the USA." *Higher Education* 84: 1027–1044.
- Yeates, N. and N. Wintour (2021). Temporary labour migration: Two studies on workers' perspectives and actions, International Labour Office, Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_816182.pdf
- Yeoh, B.S.A., Goh, C. and Wee, K (2020). Social protection for migrant domestic workers in Singapore: International Conventions, the law and civil society action. *American Behavioral Scientist*. 64(6). 841-858



ANNEXES: GLOSSARY OF TERMS

1. RELATING TO MIGRATION FOR EMPLOYMENT AND BILATERAL LABOUR MIGRATION INSTRUMENTS

► Bilateral Labour Agreements (BLAs)

Bilateral Labour Agreements (BLAs) are formal treaties to regulate the flow of workers between two States (State of origin of workers and the State of destination of workers). They are legally binding instruments which describe in detail the specific responsibilities of each of the parties and the actions to be taken by them with a view to accomplishing their goals. The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains in its Annex a Model Agreement on Temporary and Permanent Migration for Employment which has influenced bilateral labour agreements in different countries.

► Bilateral Labour Migration Instruments (BLMIs)

Bilateral Labour Migration instruments is a broad term which can encompass a range of types of agreements and arrangements with provisions on recruitment, movement, employment of persons with varying degrees of obligations on the parties, from binding treaties to non-binding understandings to specifications of technical arrangements. This term is preferred because it covers both legally binding bilateral labour agreements (BLAs), non-binding memoranda of understanding (MOUs) and other forms of bilateral labour arrangements.

Another term 'Bilateral Labour Migration Agreements' (BLMAs) has been used in recent ILO documents and the UNNM Guidance on BLMAs (UNNM, 2022). However, we do not recommend its use because it is contradictory to use legally binding 'Bilateral Labour Migration Agreement' to cover non-binding forms such as MOUs and other arrangements.

► **Labour/employment institutions**

Agencies, institutions and other entities that are responsible for establishing transforming policies, laws, and regulations in mechanisms and services (Ministry of Labour), or directly delivering services and using mechanisms (public employment services, vocational training institutes, etc.) for ensuring an optimum labour market situation or an enabling environment/outcome for national and migrant workers (e.g. facilitating skills recognition, labour mobility, jobs and skills matching, providing social protection and benefits, equipping workers with the necessary qualifications in demand in the labour market, improving their working conditions, etc.). Given the importance of private employment agencies (PEAs) in the recruitment and placing of national and migrant workers, ILO's work also considers the role they play together with public agencies in realizing these objectives.

► **Memorandum of Understanding (MOU):**

"A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification" (United Nations 2012).

An MOU is a softer, often non-binding option, generally providing a broad framework through which to address common concerns (United Nations, 2012). Since MOUs are not legally binding, there is no international requirement to publish them. MOUs also usually come into force and effect upon signature.

► **Migration for Employment**

ILO Convention No 97 is titled "Migration for Employment Convention (Revised), 1949 (No. 97) and contains in Article 11 a definition: "1. For the purpose of this Convention the term migrant for employment means a person who migrates 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 for employment." It was intended to cover all regular migration/migrants for employment; several provisions in the Convention refer to immigrants as well as migrants for employment. The migration for employment convention includes provisions on non-discrimination and treatment no less favourable than that applied to own nationals on a range of specified rights and other matters.

ILO has used this term interchangeably with the term 'Labour Migration', but both terms are found in normative instruments although they have not been defined. For example, the ILO Multilateral Framework on Labour Migration (ILO, 2006) can be cited. The Fair Recruitment Guidelines – which are grounded in ILO standards, also state that "Governments should ensure that bilateral and/or multilateral agreements on labour migration".

► **Migrant worker**

The ILO Convention on Migration for Employment, 1949 (No.97) defines a migrant worker as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990, provides a broader definition in its Article 2.

"The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". The ICRMW definition explicitly includes self-employed, frontier (cross border), itinerant, off-shore, seafarers (notably in fishing), seasonal, temporary, project-tied, and specified-employment categories, the latter including persons with "professional, commercial, technical or other highly specialized skills. The ICRMW also explicitly incorporates the protection of rights of family members of migrant workers.

The ICRMW defines migrant workers in an irregular situation as follow: "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”.

The ILO Convention 189 incorporates domestic work and international domestic workers in the broad legal definition of migrant worker(s).

Box A1: Statistical definitions of migrant workers

The Guidelines concerning statistics of international labour migration adopted by the 20th International Conference of Labour Statisticians, Geneva, October 2018, provide useful definitions for measurement of international labour migration and migrant workers.

In statistical terms, labour migration 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:

- ▶ international migrant workers; measures the current labour attachment of international migrants in a country, irrespective of the initial purpose of migration, and of others who are not usual residents of the country but have current labour attachment in the country of measurement.
- ▶ for-work international migrants; measure the movements of persons from one country to another for the purpose of undertaking or seeking work. It includes usual residents and not usual residents, who entered the country of measurement during a specific reference period for the purpose of undertaking or seeking employment and whose intention was documented or declared at the time of entry to the country.
- ▶ return international migrant workers: defined as all current residents of the country who were previously international migrant workers in another country or countries. It includes both usual and not usual residents who worked abroad.

Categories of international migrant workers:

- ▶ **long-term international migrant workers**, that is, international migrant workers whose duration of stay in the country of labour attachment has been one year or more (12 months or more).
- ▶ **short-term international migrant workers**, that is, international migrant workers whose cumulative duration of stay in the country of labour attachment has been of limited duration, i.e., less than 12 months;
- ▶ **seasonal international migrant workers**, whose work by its character is dependent on seasonal conditions and is performed during only a part of the year.
- ▶ Similar considerations for separate identification may also apply to **frontier workers and itinerant workers**.

Permanent and temporary international migrant workers on the basis of nature of intended stay in the country of labour attachment at the time of entry, as follows:

- ▶ permanent international migrants, that is, international migrants with the intention of settling for a lifetime in the country of labour attachment or country of destination. For practical purposes, in the case of employees with labour contracts, permanent international migrants may be defined on the basis of the duration of the labour contract, such as those with labour contracts with a duration of 5 years or more.
- ▶ temporary international migrants, that is, 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. The time restriction may be voluntary on the part of the worker or due to the needs of the employing organization. For practical purposes, in the case of employees with labour contracts, temporary international migrants may be defined on the basis of the duration of the labour contract.

More details can be found in ICLS (2018).

▶ **Rights-based approach (RBA)**

A rights-based approach to migration is founded on international standards, application of the rule of law, and use of rights language recognising the rights and dignity of migrant workers as human beings and their respect as workers. This approach treats migrant workers as human beings with human rights including rights at work – not ‘commodities’. Annex 2 provides a proposed listing of terminology consistent with a rights-based approach.

International instruments recognizing migrant rights are the essential foundation of a rights-based approach. Non-discrimination and equality of treatment on par with national workers are core principles in international instruments concerning migrant workers.⁹⁰ The RBA requires gender responsive action and attention to groups and individuals at risk who need specific attention and support.

The RBA upholds the accountability of duty-bearers: States, government at all levels, employers, and host society. States are bound to respect, promote and realize human and labour rights of migrant workers irrespective of their legal status or nationality or gender. It also calls for empowerment of rights-holders – migrant workers and family members – through knowledge of their rights and their effective and inclusive participation.

90. ILO (2006). “Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration” provides a synthesis of this approach drawing upon international instruments and international good practices.



2. TERMS RELATING TO SKILLS

These definitions have been reproduced from the following sources.

- a. ILO (2022d). Glossary of Skills and Labour Migration, International Labour Office, Geneva. https://www.ilo.org/global/topics/labour-migration/WCMS_830770/lang--en/index.htm
- b. UNESCO (2022). TVETipedia Glossary, UNESCO-UNEVOC International Centre for Technical and Vocational Education and Training, Bonn. <https://unevoc.unesco.org/home/TVETipedia+Glossary/lang=en/filt=all/id=100>.

► Basic skills

The fundamental knowledge (i.e., declarative and procedural) as well as operational aspects of knowledge needed for learning, work and life. Within the curriculum, literacy and numeracy are normally considered as foundational, essential or basic skills. The term can include a range of skills that individuals need to live successfully in contemporary society.

► 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 poor 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.

► Competence/y

The proven or demonstrated individual capacity to use know-how, skills, qualifications or knowledge in order to meet the usual, and changing, occupational situations and requirements. The fundamental knowledge (i.e., declarative and procedural) as well as operational aspects of knowledge needed for learning, work and life. Within the curriculum, literacy and numeracy are normally considered as foundational, essential or basic skills. The term can include a range of skills that individuals need to live successfully in contemporary society.

The proven or demonstrated individual capacity to use know-how, skills, qualifications or knowledge in order to meet the usual, and changing, occupational situations and requirements.

► 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 use 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.

► Highly skilled worker

According to ISCO – 08, the occupations are divided in four groups based upon the skills level required. Levels 3 & 4 are required high level of skills:

Skills level 3 - Typically involve the performance of complex technical and practical tasks that require an extensive body of factual, technical and procedural knowledge in a specialized field. They include shop managers, medical laboratory technicians, legal secretaries, commercial sales representatives, diagnostic medical radiographers, computer support technicians, broadcasting and recording technicians.

Skills level 4 - Typically involve the performance of tasks that require complex problem-solving decision-making and creativity based upon an extensive body of theoretical and factual knowledge in a specialized field. They include sales and marketing managers, civil engineers, school teachers, medical practitioners, musicians, computer system analysts.

According to ISCED 2013, based on the level of education attainment, highly skilled workers are those on:

Level 5 – Short-cycle tertiary education

Level 6 – Bachelor's or equivalent level

Level 7 – Master's or equivalent level

Level 8 – Doctoral or equivalent level

► **Low-skilled worker**

The International Standard Classification of Occupations classifies low-skilled work as mainly consisting of “simple and routine tasks which require the use of hand-held tools and often some physical effort”. It includes office cleaners; freight holders; garden labourers, kitchen assistants (ISCO-08). By extension, a low-skilled worker could be defined as a person who undertakes low-skilled work.

According to the International Standard Classification of Education - ISCED 2013, based on the level of education attainment, low-skilled workers are those on:

Level 2 Lower secondary level of education

Level 1 Primary level of education

► **Medium-skilled worker**

The International Standard Classification of Occupations classifies workers at a medium skill level (level 2) as “skilled manual workers”. Skilled-manual work is characterized by routine and repetitive tasks in cognitive and production activities. Medium-skilled workers include workers in occupations such as skilled agriculture and fishery, clerical work, craft and related trades and plant, machine operators and assemblers. (ISCO-08)

According to International Standard Classification of Education - ISCED 2013, based on the level of education attainment, medium-skilled workers are those on:

Level 4 Post-secondary, non-tertiary education

Level 3 Upper secondary level of education

► **Overqualification**

For tertiary-educated workers, being overqualified means having a tertiary qualification while working in a job needing upper secondary or lower levels of educational attainment. According to EUROSTAT, the over-qualification rate is calculated for employed persons with a tertiary level of education attainment (international standard classification of education (ISCED) levels 5–8) and the rate shows what proportion of these people are employed in a low- or medium-skilled occupation (international standard classification of occupations (ISCO) major groups 4–9).

► **Recognition of skills and qualifications**

The recognition of qualifications and skills covers two main areas: academic and professional. Academic recognition allows for the continuation of studies at the appropriate level, as well as facilitating access to

an appropriate job. Professional recognition provides the opportunity to practice professional skills acquired abroad.

Professional recognition covers both regulated and non-regulated professions. Regulated professions are usually governed by legal acts requiring registration, certification or licensing. Non-regulated professions do not imply any specific process, as the employer assesses qualifications and professional competency.

Source: ILO.2020. The role of social partners in skills development, recognition and matching for migrant workers - A contribution to the Global Skills Partnership. (p. 17) CI

► **Skills mismatch**

Skill mismatch refers to a situation in which a person in employment, during the reference period, occupied a job whose skills requirements did not correspond to the skills they possess. Skill mismatch may refer to mismatch of overall skills or to types of skills. The mismatch by type of skills includes: (a) mismatch of job-specific/technical skills; (b) mismatch of basic skills; (c) mismatch of transferable skills. A person in employment may experience: – Over-skilling, which occurs when the level and/or types of skills of the person in employment exceeds those required to perform their job. – Under-skilling, which occurs when the level and/or types of skills of the person in employment is lower than those required to perform their job

Source: Report 3: Report of the Conference, Twentieth International Conference of Labour Statisticians, Geneva, 10-19 October 2018, ICLS/20/2018/3 (Geneva). Page

► **Skill level**

Skill level is defined as a function of the complexity and range of tasks and duties to be performed in an occupation. Skill level is measured operationally by considering one or more of:

- the nature of the work performed in an occupation in relation to the characteristic tasks and duties defined for each ISCO-08 skill level;
- the level of formal education defined in terms of the International Standard Classification of Education (ISCED-97) (UNESCO, 1997) required for competent performance of the tasks and duties involved; and
- the amount of informal on-the-job training and/or previous experience in a related occupation required for competent performance of these tasks and duties.

Source: ILO ISCO.

► **Critical Skills**

Skills that are in absolute or relative demand, requiring qualified and experienced people to fill specific roles or professions, occupations, or specializations in the labour market. In South Africa, the Department of Home Affairs consults with the Department of Labour and the Department of Trade, Industry and Competition to identify areas of need and draw up the critical skills list. The current critical skills list was published on 2 February 2022. There are 101 occupations on the South African critical skills list ranging from engineering and IT to education to business process outsourcing.

► **Qualification**

The official confirmation, usually in the form of a document certifying the successful completion of an educational programme or of a stage of a programme. Qualifications can be obtained through: i) successful completion of a full programme; ii) successful completion of a stage of a programme (intermediate qualifications); or iii) validation of acquired knowledge, skills and competencies, independent of participation in such programmes. This may also be referred to as a 'credential'.

► **Soft skills**

A set of intangible personal qualities, traits, attributes, habits and attitudes that can be used in many different types of jobs. Source: UNESCO-UNEVOC TVETipedia Glossary.

Examples of soft skills include empathy, leadership, sense of responsibility, integrity, self-esteem, self-management, motivation, flexibility, sociability, time management and making decisions. The term is also used in contrast to 'hard' skills that are considered as more technical, highly specific in nature and particular to an occupation, and that can be (generally) taught more easily than soft skills.

Annex Table A1: Ratifications of UN human rights instruments by the SADC Member States

Ratification of UN human rights instruments by the SADC Member States										
AU member States	ICERD	ICCPR	ICESR	CEDAW	CAT	CRC	ICRMW	CPED	CRPD	Total
Angola	2019	1992(a)	1992(a)	1986(a)	2019	1990			2014(a)	7
Botswana	1974 (a)	2000		1996(a)	2000	1995(a)			2021 (a)	6
Comoros	2004			1994(a)	2017	1993			2016	5
Democratic Republic of the Congo	1976(a)	1976(a)	1976(a)	1986	1996(a)	1990			2015(a)	7
Eswatini	1969 (a)	2004(a)	2004(a)	2004(a)	2004(a)	1995			2012	7
Lesotho	2005	1992(a)	1992(a)	1995	2001(a)	1992	2005	2013	2008(a)	9
Madagascar	2015	1971	1971	1989	2005	1991	2015	-	2015	9
Malawi	1996 (a)	1993(a)	1993(a)	1987(a)	1996(a)	1991(a)		2017(a)	2009	8
Mauritius	1972(a)	1973(a)	1973(a)	1984(a)	1992(a)	1990(a)			2010	7
Mozambique	2013	1993(a)		1997(a)	1999(a)	1994	2013		2012	7
Namibia	1982(a)	1994(a)	1994(a)	1992(a)	1993(a)	1990			2007	7
Seychelles	1978(a)	1992(a)	1992(a)	1992(a)	2001	1990(a)	1994	2017(a)	2009	9
South Africa	1998	1998	2015	1995	1998	1995			2007	7
Tanzania	1972 (a)	1976(a)	1976(a)	1985	-	1991			2009	7
Zambia	1972	1984	1984(a)	1985	1998(a)			2011	2010	7
Zimbabwe	1991 (a)		1991(a)	1991(a)					2013(a)	4
Total ratifications	16	14	13	16	15	14	4	5	16	

Source: OECD (2017). OHCHR (N.d.). United Nations Human Rights Treaty Bodies. Accessed from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CERD&Lang=en

ICERD	International Convention on the Elimination of All forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic and Social and Cultural Rights
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CPED	International Convention for the Protection of All Persons from Enforced Disappearances
CRPD	Convention on the Rights of Persons with Disabilities

Annex Table A2: Sets of shortage methodology indicators

Indicator set	Description
Employer-based indicators	Employer-based indicators are derived from surveys that ask employers direct questions about their demand for workers and their ability to recruit. Rising vacancy rates may suggest that employers are finding it hard to fill jobs. This data provides a valuable employer perspective however is limited by only providing what employers choose to report.
Price-based indicators	In the case of a labour shortage, market pressure should increase wages, helping to raise supply and reduce demand, thus restoring labour market equilibrium. On this basis, rising wages within an occupation can be considered to provide an indication of shortage.
Volume-based indicators	Increases in employment or increases in average hours worked may indicate rising demand and greater utilization of the existing workforce, which could indicate shortage. Low or falling unemployment among people previously employed in, or seeking work in, an occupation may also indicate shortage (conversely high unemployment amongst people seeking work in a particular occupation is an indicator that an occupation is not in shortage).
Indicators of imbalance	Indicators of imbalance focus directly on the vacancy levels within an occupation. A high vacancy/unemployment ratio within an occupation suggests that employers are having particular difficulty filling vacancies given the supply of workers available. Similarly, an increase in the average vacancy duration also indicates that employers are finding it more difficult to fill vacancies.

Source: MAC UK (2017). Assessing labour market shortages: A methodology update, Migration Advisory Committee, London, January 2017.



Annex Table A3: List of Known Bilateral migration instruments of the SADC*

No.	Country of Origin	Country of Destination	Title of instrument	Date of signing
1	Mauritius	Seychelles, Republic of	Memorandum of Understanding between the Government of the Republic of Seychelles represented by the Ministry of Education and Human Resource Development and the Government of Republic of Mauritius represented by the Ministry of Labour, Industrial Relations, Employment and Training on recruitment of teachers and other specialists in the education sector from Mauritius	28/10/2017
2	Bangladesh	Seychelles, Republic of	Agreement on labour cooperation between the Government of the Republic of Seychelles and the Government of the People's Republic of Bangladesh, 21 October 2019	21/10/2019
3	France	Mauritius	Bilateral Agreement on Circular Migration	23/09/2008
4	Swaziland	South Africa, Republic of,	Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland relating to the establishment of an office for a Swaziland government Labour Representative in the Republic of South Africa, certain Swaziland citizens in the Republic of South Africa, the movement of such persons across the common border and the movement of certain South African citizens across the common border, and addendum thereto	22/08/1975
5	Zimbabwe	South Africa, Republic of,	Memorandum of Understanding between the Government of the Republic of Zimbabwe and the Government of the Republic of South Africa on cooperation in the fields of employment and labour, 27 August 2009	27/08/2009
6	Mozambique (Portugal)	South Africa, Republic of,	Agreement between the Government of the Republic of South Africa and the Government of the Republic of Portugal regulating the employment of Portuguese workers from the Province of Mozambique on certain mines in the Republic of South Africa, Lisbon, 13th October 1964. Date of Entry into Force: 1st January 1965, Amended by exchange of Notes: 24th February, 1971 and 11th May, 1971.	01/01/1965 and amended in 1971
7	Republic of Botswana		Agreement between the Government of the Republic of South Africa and the Government of the Republic of Botswana relating to the Establishment of an office for a Botswana Government Labour Representative in the Republic of South Africa, Botswana citizens in the Republic of South Africa and the Movement of such persons across the International Border, Pretoria Gaborone, 24 December 1973; Date of entry in force: 24 December 1973	24/12/1973
8	South Africa, Republic of,	Netherlands	Memorandum of understanding between the Government of the Republic of South Africa and the Government of the Kingdom of the Netherlands on technical cooperation in migration matters, 7 December 2010	07/12/2010
9	South Africa, Republic of,	Germany	Memorandum of understanding between the Government of the Republic of South Africa and the Government of the Federal Republic of Germany concerning direct co-operation in the field of labour and labour related matters, DONE at Pretoria on 2 February 1995 in two originals in the English and German Languages.	02/02/1995
10	South Africa, Republic of,	European Union	Financing agreement between the European Community and the Government of the Republic of South Africa concerning labour market skills development programme, 1997	1997
11	Namibia, Republic of,	South Africa, Republic of,	Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Republic of Namibia on cooperation in the field of labour, 20-10-2008	20/10/2008
12	Mozambique, Republic of,	South Africa, Republic of,	Co-operation agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa in the fields of migratory labour, job creation, training, studies and research, employment statistics, social dialogue and social security, 17 January 2003	17/01/2003
13	Lesotho, Kingdom of,	South Africa, Republic of,	Memorandum of understanding between the Government of the Republic of South Africa through its Department of Labour and the Government of the Kingdom of Lesotho through its Ministry of Employment and Labour on cooperation in the field of labour, 30 October 2006	30/10/2006

No.	Country of Origin	Country of Destination	Title of instrument	Date of signing
14	Lesotho, Kingdom of,	South Africa, Republic of,	Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho relating to the Establishment of an Office for a Lesotho government Labour Representative in the Republic of South Africa, Lesotho Citizens in the Republic of South Africa and the Movement of such Persons across the International border, Place and date of signature: Pretoria and Maseru, 24 August 1973; Date of entry in force: 24 August 1973	24/08/1973
15	Democratic Republic of the Congo	South Africa, Republic of,	Memorandum of Understanding between the Government of the Democratic Republic of the Congo and the Government of the Republic of South Africa on co-operation in immigration and population matters, 30 November 2004	30/11/2004
16	South Africa, Republic of,	Russian Federation	Joint statement on social and labour co-operation between the Minister of Manpower of the Republic of South Africa and the Deputy Minister of Labour of the Russian Federation	14/03/1994
17	Zimbabwe, Republic of,	South Africa, Republic of,	The Memorandum of understanding between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe on Cooperation and Mutual Assistance on Immigration Matters, 4 May 2009	04/05/2009
18	Zimbabwe, Republic of,	South Africa, Republic of,	Memorandum of understanding between the Government of the Republic of South Africa and the Government of the Republic of Zimbabwe in the fields of employment and labour	ct-04
19	Tanzania, United Republic of,	South Africa, Republic of,	Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of South Africa on cooperation in areas of migration matters, 5 April 2007	05/04/2007
20	Swaziland, Kingdom of	South Africa, Republic of,	Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Swaziland on the establishment of a Joint Bilateral Commission for cooperation, 20-12-2004	20/12/2004
21	Zimbabwe, Republic of	Mozambique, Republic of,	Memorandum of understanding between the Republic of Zimbabwe and the Republic of Mozambique on co-operation on the fields of labour and employment 2015	2015
22	Mozambique, Republic of,	South Africa, Republic of,	Co-operation agreement between the Government of the Republic Of Mozambique and the Government of the Republic of South Africa in the fields of migratory labour, job creation, training, studies and research, employment statistics, social dialogue and social security, 2002	2002

* This list may include superseded instruments and also inactive instruments. The list is tentative and needs to be updated by the ILO.

Source: Compiled by Piyasiri Wickramasekara



