



# **Tool for the Assessment of Bilateral Labour Migration Agreements Pilot-tested in the African region**

**ILO/IOM Project Towards Comprehensive  
Global Guidance on Developing and Implementing  
Bilateral Labour Migration Arrangements (BLMAs):  
Unpacking Key Obstacles to Implementation in the African Region**



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## Preface

International labour migration is a multifaceted process and its governance is equally complex. Bilateral labour migration agreements (BLMAs)<sup>1</sup> can contribute to effective interstate cooperation on labour migration and can potentially improve its governance. Most of the existing analyses of such agreements has been limited to examining the text of the agreements, without addressing implementation issues. This tool seeks therefore to contribute to better analysis of both the design of new and the implementation of bilateral labour migration agreements, and to provide practical guidance on how they could ensure effective functioning.

The present tool was developed in order to contribute to addressing the above-mentioned challenges under the Swedish-funded project “Towards comprehensive global guidance on developing and implementing bilateral labour migration arrangements: Unpacking key obstacles to implementation in the African region”, which was jointly implemented by the International Labour Organization (ILO) and the International Organization for Migration (IOM).

The tool was piloted in the Egypt-Italy migration corridor and has also been partially tested in the Southern African Development Community (SADC) region to assess labour migration agreements from Zimbabwe and Lesotho to South Africa

It should be noted that this tool is not intended for assessing policies, laws or other arrangements, which may have an impact on labour migration, such as taxation laws, trade agreements, visa agreements, etc.

The document is divided in three parts: the first one includes general aspects, common to all types of bilateral labour migration agreements; the second part focuses on the assessment methodology for the BLMAs, and the third part describes an adjusted assessment framework used in the SADC, reflecting the regional labour migration policy needs.

The methodology was discussed at expert workshops conducted in Geneva and Addis Ababa, with the participation of development practitioners from the United Nations system, experts and practitioners from governments and social partners from the African Union, some regional economic communities in Africa. The tool also draws on the rich experience of the ILO and the IOM in delivering technical assistance and policy advice on labour migration.

The tool should be further tested in other regions and with different types of BLMAs, including e.g. cross-border migration schemes, sector agreements, and mutual recognition agreements containing provisions for labour mobility. Based on additional testing, the tool will be further fine-tuned.

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<sup>1</sup> For the scope of this tool, the definition of “bilateral labour migration agreements” is defined in Chapter 3 of the 2017 ILS “Report IV - Addressing governance challenges in a changing labour migration landscape” report, (para. 68). It includes legally binding agreements (BLAs and other agreements) and MoUs. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_550269.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_550269.pdf)

## Acknowledgements

The present tool was developed, with funding from the Swedish Ministry of Justice, and under the guidance and continuous support of Michelle Leighton, Chief, ILO Labour Migration Branch and Marina Manke, Head, IOM Labour Mobility and Human Development Division.

The tool was prepared by Natalia Popova, labour economist (ILO), Francesco Panzica (ILO consultant), with contribution from Marius Olivier (IOM consultant) specifically for SADC region.

Ida Dalgaard Steffensen (IOM), Kenza Dimechkie (ILO), Katerine Landuyt (ILO), and Vassiliy Yuzhanin (IOM) provided contributions in the drafting process.

Piyasiri Wickramasekara (former ILO staff) provided a technical peer-review of the document.

Very helpful comments and suggestions on draft versions were received from (in alphabetical order): Sandra Berger, Ryszard Cholewinski, Samia Kazi-Aoul Chaillou, Michela Macchiavello, Fabiola Mieres, Henrik Moller, Gloria Moreno-Fontes, Shabarinath Nair, Mustafa Hakki Özel, Jason Theede and Katarina Tomolova-McDonald.

Special thanks go to Gianni Rosas, Director, ILO Office for Italy and San Marino and Eric Oechslin, Director, Decent Work Team Cairo Office for North Africa and ILO Country office for Egypt and Eritrea, for their collaboration in testing the tool in the Egypt-Italy migration corridor, IOM Regional Offices in Pretoria, South Africa, IOM Special Liaison Office in Addis Ababa, Ethiopia for organization of the expert workshop in Addis Ababa, as well as IOM Offices in Zimbabwe and Lesotho for their collaboration and support in assessment of the corridor to South Africa.

This document would have not been possible without the strong support of Manuela Tomei, Director, ILO Conditions of Work and Equality Department.

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## Abbreviations

ACTRAV	ILO Bureau for Workers' Activities
ASEAN	Association of Southeast Asian Nations
BLA	Bilateral labour agreement
BLMA	Bilateral labour migration agreement
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECOWAS	Economic Community of West African States
FGD	Focus group discussions
GCM	Global Compact for Safe, Orderly and Regular Migration
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Human Rights of All Migrant Workers and Members of their Families
ILO	International Labour Organisation
IOM	International Organization for Migration
MoFA	Ministry of Foreign Affairs
MPFA	African Common Position on Migration and Development and Migration Policy Framework
MoU	Memorandum of Understanding
MRA	Mutual recognition agreement
NGO	Non-governmental organization
PES	Public employment services
PrEAs	Private employment agencies
REC	Regional Economic Community
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SSS	Social Security System

# 1. Common features of bilateral labour migration agreements

## 1.1 Introduction and orientation for the user

The present tool was initially developed for the assessment of migration corridors in the Africa region. Further testing and adaptations are required for use in other contexts. It is intended to be a preliminary ILO-IOM contribution to the development of global guidance to govern labour migration through BLMAs and other types of agreements as a tangible step towards effective implementation of the GCM and targets 8.8 and 10.7 of the SDGs.

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

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

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

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

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

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

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

A glossary of relevant labour migration terms is included in Annex VI in order to facilitate understanding and the use of common terminology. Users are encouraged to adapt the templates provided in this tool (see Annexes II-V) to the specific needs of their BLMAs.

The present tool focuses on BLMAs, and there are many types of agreements (e.g. cross-border workers agreements, seasonal workers agreements, sector agreements, training agreements and mutual recognition agreements, covering labour migration), which could be assessed using the proposed tool. As the information and sources needed for the assessment might be different, however, appropriate adjustments should be introduced.

## 1.2 Types of bilateral labour migration agreements

Bilateral labour migration agreements is an overarching term used throughout this paper, to cover all types of agreements between two countries regulating labour migration. More specifically, as per the International Labour Conference 2017 Report on *Addressing governance challenges in changing labour migration landscape*<sup>2</sup>, this term is used to cover the following types of agreements:

- a. Bilateral labour agreements which create legally binding rights and obligations, governed by international law and are usually more specific and action-oriented;
- b. Memoranda of Understanding which are non-binding agreements, which set out a broad framework of cooperation to address common concerns;
- c. Other agreements can include specific bilateral agreements between government ministries or agencies in destination and origin countries, dealing with different aspects of labour migration.
- d. Framework agreements or cooperation agreements that include labour migration along with other migration topics such as irregular migration, readmission, and migration and development are also included in BLMAs.

There can be different types of BLMAs<sup>3</sup> as listed below:

- a. Seasonal workers agreements;
- b. Contract worker and project-linked worker agreements;
- c. Trainee agreements or other short-term training programmes;
- d. Cross-border worker agreements;
- e. Working holiday maker schemes;
- f. Sector-based schemes;

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<sup>2</sup> See International Labour Conference 2017 Report on *Addressing governance challenges in changing labour migration landscape*, para. 68: Addressing Governance Challenges in a Changing Labour Migration Landscape: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_550269.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_550269.pdf) (accessed 13 April 2019).

<sup>3</sup> See: ILC 2017 Para 68; Wickramasekara, P. 2015. *Bilateral agreements and memoranda of understanding on migration of low skilled workers: A review*, International Labour Organization (ILO). Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_385582.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf).



g. Skill-based schemes.<sup>4</sup>

A global review of bilateral labour migration agreements conducted in 2014, found that the large majority of the bilateral labour migration agreements in Africa, Europe and the Americas were legally binding BLAs while almost 70 per cent of those in Asia were MoUs. This preference could be explained by the fact that MoUs are easier to be negotiated and implemented, and do not require to be ratified.<sup>5</sup> In some cases, the formulation of MoUs can be very close to the ones of BLAs, and includes rights and obligations, this making them de facto binding.

If the agreement does not specify the type of the agreement, the first step in conducting the BLMA's assessment is to identify whether the agreement is a BLA, a MoU or another type of cooperation agreement as specified above.

To distinguish between BLAs and other binding agreements on one hand and MoUs on another, two main elements can be of help:

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1) <i>The procedure used to legitimate the document</i>	A MoU does not usually require ratification by a Parliament or equivalent legislative body, as it does not contain binding obligations for the parties involved and expenditures envisaged in the public budget;
2) <i>The language used in the document</i>	As BLAs and other agreements are legally binding, they tend to use specific terminology different from that of a MoU. <sup>6</sup>

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<sup>4</sup> Organisation for Economic Co-operation and Development (OECD): *Migration for employment: Bilateral agreements at a crossroads* (Paris, 2004).

<sup>5</sup> Ibid., page 32, table 3.1.

<sup>6</sup> See United Kingdom: *Treaties and memoranda of understanding: Guidance on practice and procedures* (London, Foreign and Commonwealth Office, 2014).

## 2. Assessment tool for the Bilateral Labour Migration Agreements

### 2.1 Reviewing the scope and contents of the BLMA

Worldwide, no single model of a BLMA has been adopted. However, the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons annexed to the Migration for Employment Recommendation (Revised), 1949 (No. 86)<sup>7</sup> can be used. The model agreement applies to all migrant workers in a regular situation (permanent and temporary), refugees and displaced persons.<sup>8</sup>

Ideally, a BLMA should contain the following elements:

- **Preamble.** This includes the legal and political context, the main scope of the BLMA and the competent authorities in each country that are responsible for implementation<sup>9</sup>;
- **Description of the labour migration aspects to be addressed.** This includes governance, protection and development aspects, as well as the organization of the recruitment of workers - usually through public employment services or private recruitment agencies;
- **Duration.** This can be established for an indefinite or for a defined period of time (e.g. 5 years). It can be automatically renewed for another term, unless the parties involved (or at least one of them) decide to end the BLMA, notifying the other party in writing through the relevant diplomatic channels. The parties may also terminate the BLMA by mutual consent in writing;
- **Amendments.** Procedures for the amendments might be detailed in the agreement. When necessary, the parties may agree, in writing, to amend the BLMA. Usually, an amendment comes into force following an exchange of written notifications by the parties, certifying the completion of their respective internal ratification procedures<sup>10</sup>;
- **Methods for cooperation and monitoring.** To follow up the execution of the BLMA, the parties can decide to establish a Joint Coordination or Monitoring Committee. The composition, functions and operational modalities can be detailed in the text of the BLMA;
- **Disputes settlement.** Usually BLMAs make provisions so that in case of difficulties in their interpretation or application, the solution may be found through mutual consultations via diplomatic channels. If no solution is found, the parties involved may wish to terminate the BLMA.

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<sup>6</sup> Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312424](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312424).

<sup>8</sup> See ILO Recommendation No. 86, Preamble, para. 1.2.

<sup>9</sup> Sometimes the competent authorities can be mentioned in other articles of the agreement.

<sup>10</sup> For multilateral treaties, the Vienna Convention on the Law of Treaties apply, while BLMAs could be modified at the request of one or both signatory parties.

## 2.2 Overview of international and regional standards and frameworks of particular relevance to BLMAs

### 2.2.1 International standards

The parties to a BLMA, while free to determine its terms and conditions, should refer to a range of widely accepted international standards and principles that provide a framework for a rights-based approach to labour migration and derive from international hard, customary and soft laws. International instruments provide a solid foundation for developing BLMAs to ensure good governance of labour migration and protection of migrant workers.<sup>11</sup> It is important to underline that principles included in the international conventions are binding upon the ratifying State independent from the provisions of BLMAs.

International labour standards provide importance guidance for designing and implementing bilateral labour migration agreements.

There are two specific ILO Conventions and related Recommendations on labour migration:

- The ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migration for Employment Recommendation (Revised), 1949 (No. 86) (with model agreement);
- The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) and the Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151).

Furthermore, the ILO has adopted non-binding guidance on labour migration and specific issues relevant to migrant workers. This includes:

- The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration<sup>12</sup> which includes a global compilation of good practices for a rights-based approach to labour migration aimed to assist governments, social partners and stakeholders in their efforts to regulate labour migration and protect migrant workers.

The ILO General principles and operational guidelines for fair recruitment<sup>13</sup>, the objective of which is to inform the current and future work of the ILO and of other organizations, national legislatures and the social partners in the area of promoting and ensuring fair recruitment. The guidelines are complemented by a definition of recruitment fees and related costs. These principles and guidelines are derived from a number of sources, including international human rights and labour standards and ILO policy instruments, the IOM International

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<sup>11</sup> A list of relevant Conventions is provided in Annex I.

<sup>12</sup> ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (Geneva, 2006) -. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_178672.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf).

<sup>13</sup> ILO: *General principles and operational guidelines for fair recruitment* (Geneva, 2006). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_536755.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_536755.pdf).

Recruitment Integrity System (IRIS)<sup>14</sup>, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)<sup>15</sup> among others.

It is important to note that IOM IRIS being a global initiative, which is designed to promote ethical international recruitment may serve as a good guidance for the role of the private sector and public regulators in the process of bilateral labour migration regulation and therefore in the BLMAs. Its benchmarks for ethical recruitment, and a voluntary certification scheme for ethical labour recruiters, as well as a compliance and monitoring system may serve as integral mechanisms for protection of migrant workers.

Other relevant instruments include the eight ILO core conventions on fundamental principles and rights at work pertaining to forced labour, freedom of association, child labour and non-discrimination (see glossary in Annex VI, under “convention”). Labour standards of particular relevance include the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Private Employment Agencies Convention, 1997 (No.181) and the Domestic Workers Convention, 2011 (No. 189), and their accompanying Recommendations, as well as the HIV and AIDS Recommendation, 2010 (No. 200) and the Decent Work and Employment for Peace and Resilience Recommendation, 2017 (No. 205).

The UN Human Rights instruments are of particular importance in the context of interstate cooperation and regulation of labour migration. Among them, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) of 1990 is the key. Apart from encompassing the standards provided in ILO C97 and 143 it further reinforces the human rights related standards for all migrant workers and members of their families. It provides for non-discrimination, equality in treatment, right to life, freedom from torture, cruel, inhumane and degrading treatment, slavery, compulsory labour, unlawful arrests, arbitrary detention, collective expulsion and other rights belonging to all humans.

State parties commit themselves to applying the Convention in their jurisdictions, and reporting on its application at regular intervals. The fact that Conventions referenced in a BLMA is certainly a good practice but is not required in order for them to be binding for all the state parties, or all states in case the norms are of a jus cogens nature, with respect to the migrant workers covered by a BLMA. Moreover, there is no requirement of reciprocity for the application of the protections set out in the above instruments. This means that a migrant worker does not have to be the national of a member State which has ratified the instruments, or which guarantees equal treatment to the subjects of the ratifying State, for the provisions to apply.

### 2.2.2 Regional frameworks in Africa<sup>16</sup>

The tool has been piloted in Africa, where there are a number of regional-level approaches that can have an impact on the movement of migrant workers, such as free trade agreements. Regional frameworks contain general principles that need to be further adapted to the

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<sup>14</sup> See: <https://iris.iom.int/iris-standard>.

<sup>15</sup> See details in Annex I to this methodology.

<sup>16</sup> While the focus of the project has been Africa, the designed assessment tool is applicable to other regions as well.

different conditions and needs of the Member States through the design of adequate BLMAs. RECs can potentially serve as platforms for regional level minimum standards for BLMAs.

### 1. Free trade agreements

The African Union has launched an ambitious programme to gradually build an effective, peaceful, socially and economically integrated African Community, known as Agenda 2063.<sup>17</sup> The programme gives urgent priority to the establishment of a continental free trade area. A first step was taken in this direction with the creation, in June 2015, of the Tripartite Free Trade Area between the Common Market for Eastern and Southern Africa (COMESA), the SADC and the East African Community (EAC). The Area encompasses 26 countries<sup>18</sup> and will become operational as soon as the treaty is ratified by at least 14 Member States.<sup>19</sup> The Tripartite Free Trade Area, to be effective, implies free movement of goods, capital and people, including workers.

### 2. Free movement of persons

All African RECs have recognized the importance of free movement, though these have been implemented to varying degrees, with ECOWAS and the EAC having made the most progress to date.

In order to have a coordinated and coherent approach from the RECs and Member States, the African Union approved on January 2018 a Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment<sup>20</sup>.

The Protocol gives guidance and provide a Roadmap for the progressive implementation of the free movement, throughout three phases:

- As a first phase, the Member States will implement the right of entry and the abolition of the visa requirements;
- During the second phase, the Member States will implement the right of residence;
- During the final phase, the process will be completed by the implementation of the right of establishment.

### **The SADC context<sup>21</sup>**

BLMAs have seen limited use in the SADC corridor. Involving South Africa as the country of destination, five comprehensive agreements were concluded under the previous political regime, primarily to provide labour for South African mines: these countries are Botswana,

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<sup>17</sup> See <http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>.

<sup>18</sup> The number of signatory countries increased to 27 with the inclusion of South Sudan.

<sup>19</sup> As of June 2018, the treaty has been ratified by 4 countries: Egypt, Kenya, South Africa and Uganda.

<sup>20</sup> Signed so far by 33 countries out of 55 Member States, see: <https://au.int/en/treaties/protocol-treaty-establishing-african-economic-community-relating-free-movement-persons>.

<sup>21</sup> The part concerning the SADC is more detailed since the present tool was tested there; it was also researched in detail given specific situation in the region.

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

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

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

There are also other considerations emanating from the extensive literature written on this subject, and largely shared by the interviewees during consultations. One of these considerations relates to the deferred pay arrangement contained in these agreements. Also, return and repatriation regulation is dealt not with a view to the reintegration of those affected in the countries of origin, but as a measure of removal of unwanted migrant workers. Furthermore, social security and related agreements, in particular portability issues, have received limited attention in the agreements. Finally, health and safety guarantees and protection are largely absent from the agreements.

The shortcomings of the bilateral agreements indicated above have prompted the Department of Labour in South Africa to argue that these agreements have become obsolete and should be "nullified" and replaced by MoUs. The reconsideration by South Africa of the value and appropriateness of the agreements is, according to the Department, also informed by the democratisation of South Africa in the early 1990s, bringing about a clear break with the past, also showcased by the fact that no new bilateral labour agreements has been concluded by South Africa.

The Department is of the view that broader-based MoUs with flexible provisions, on the basis of which concrete measures could be taken as the need arises, present a more acceptable solution than bilateral labour agreements. It is further of the view that labour migration as such should be left to be dealt with in terms of the South African immigration and visa regime, rather than through bilateral agreements.

Therefore, since 1994, increasing use has been made of MoUs or other cooperation agreements by South Africa. South Africa have concluded such agreements with Lesotho (first in 2006, and again in 2013), Mozambique and Zimbabwe (replacing preceding MoUs of 2004 and 2009). The focus of these agreements is on cooperation in the fields of employment and labour. Included areas of relevance to labour migration are often social security issues, including compensation in respect of occupational injuries and diseases and pension portability; occupational safety and health; and public employment services. In the case of the Zimbabwe-South Africa MoU labour migration management is also specifically indicated.

Furthermore, some of the bilateral agreements relating to the regulation of movement across borders (e.g., with Lesotho in 2007) have subsequently been subsumed in special permit regimes established by South Africa with Lesotho (2016) and Zimbabwe (2017). The primary focus of these permit types that have been issued to considerable numbers of Lesotho and Zimbabwean citizens irregularly in South Africa, was to regularise their stay in the country.

The tendency to conclude MoUs rather than bilateral labour agreements seems to be replicated by the practice of the other two corridor countries as well as several other SADC countries. For example, in the course of negotiations (2018) with Mauritius on the exchange of labour between the two countries, Mauritius indicated its willingness to conclude a MoU (supported by an accompanying Declaration of Intent), but not a bilateral labour agreement, as the appropriate instrument. According to the draft MoU on reciprocal cooperation, it refers to the respective national labour migration policies, the SADC regional framework, as well as regional and international instruments ratified by both countries. Limited provision is made concerning the position and protection of affected migrant workers, save for some reference to integration in host communities, and bilateral meetings to reflect on the welfare of migrant workers from both countries. Similarly, Zimbabwe has concluded MoUs with Malawi and Mozambique; re-negotiating a lapsed bilateral (labour) MoU with Namibia and considering the conclusion of MoUs with Botswana and Zambia are some of the priorities of the Zimbabwean government.

A Mauritius-Seychelles MoU of 2017 concerns the recruitment of Mauritian teachers and other professionals to meet the needs of the Seychelles labour market. In fact, sectoral (labour exchange) agreements have generally been concluded by individual Ministries in several SADC countries in order to procure much-needed skilled professionals.

And yet, even with the current preference for MoUs to regulate bilateral labour relations (including, where relevant, labour migration) in the studied SADC corridor, several concerns have been raised by the stakeholders. These concerns relate to the fact that these MoUs have a restricted scope from a labour migration perspective, as their overarching focus is on bilateral labour relations. Also, clearly stipulated obligations imposed on the parties are insufficient, as little is said in terms of concrete undertakings. Furthermore, there is limited reflection on measures protecting the rights and interests of migrant workers in these MoUs. Finally, stakeholders indicated several problems, which are experienced with implementing the MoUs.

There seems to be general consensus of the stakeholders consulted that the Assessment Framework attached in par 4.4 below provides a pliable and flexible frame of departure for the assessment, evaluation and development of comprehensive bilateral labour agreements.

Upon analysis of several recent migration policy and implementation frameworks adopted by the corridor countries, it is clear that cumulatively they address several key areas of labour migration concern. These areas among others relate to the following:

- a. The importance of the international and regional normative frameworks;
- b. Embedding migration policy and in particular labour migration policy in national legal and policy frameworks;
- c. Overarching principles, vision and objectives for labour migration;
- d. Governance, coordination and data management issues;
- e. Labour immigrants and emigration for employment;
- f. Bilateral agreements;
- g. Diaspora liaison and integration;
- h. Mainstreaming (labour) migration into national development;
- i. Treatment and protection of migrant workers to, within and from the countries concerned.

### **Other regional contexts**

- a. The COMESA<sup>22</sup> has a Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. Since the adoption of the Protocol in June 1998, in order to meet national implementation challenges, the regional economic community established the COMESA Model Law on Immigration to harmonize national laws and practices of member States;<sup>23</sup>
- b. The Economic Community of West African States (ECOWAS), launched in May 1979, has adopted a Protocol on Free Movement of Persons, Residence and Establishment. This stipulates the right of ECOWAS citizens to enter, reside and establish economic activities in the territory of other Member States, and offers a three-step roadmap of 5 years each to achieve freedom of movement of persons after 15 years. The first phase focused on the right of visa-free entry, the second phase dealt with the right of residency, and the third phase concerns the right of establishment in another Member State. The second phases is still under implementation. To facilitate the free movement of people in the ECOWAS region, an ECOWAS passport was introduced in December 2000. The implementation of the ECOWAS Common Approach on Migration, adopted in January 2008, has met some challenges, due, among other factors, to lack of coordination and cooperation mechanisms for its implementation, etc.

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<sup>22</sup> The Treaty establishing COMESA was signed on 5 November 1993 in Kampala, Uganda. The COMESA member States are: Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

<sup>23</sup> See: <https://www.uneca.org/pages/comesa-free-movement-persons>.



- c. The Intergovernmental Authority on Development (IGAD), established in 1986, is committed to achieving greater regional integration and improving labour migration governance through the development of appropriate legal and policy frameworks, including the establishment of a regional free movement regime. Accordingly, the Member States of the IGAD are currently finalising a Protocol on Free Movement of Persons and related implementation roadmap. The Protocol foresees three phases:
- i. Abolishment of visas by 2022;
  - ii. Free labour mobility by 2024, and
  - iii. Freedom of establishment and residence by 2025.

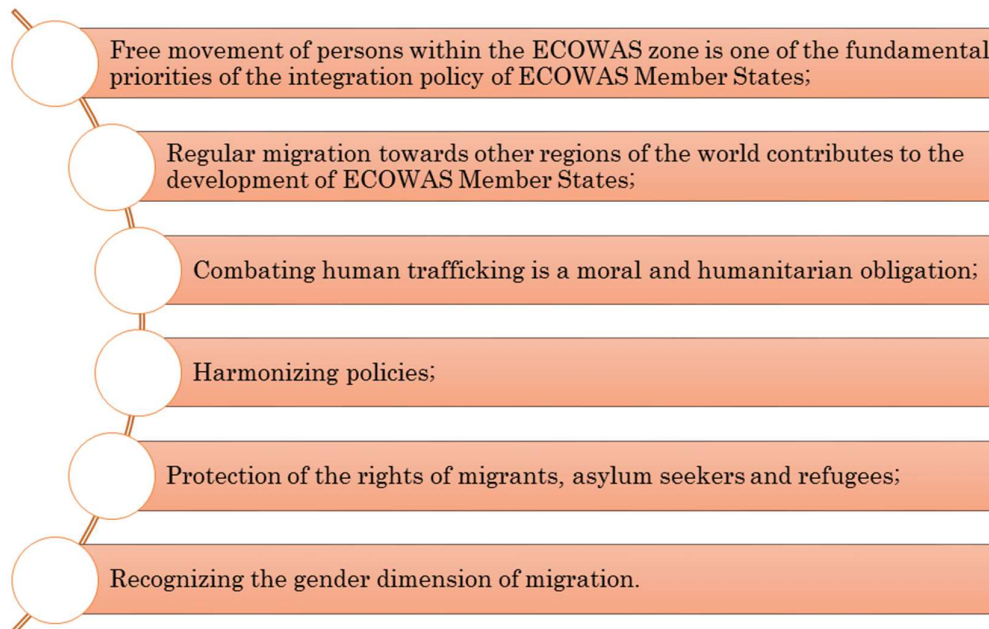
### **Common policy positions on migration**

The African Union adopted in 2006 the African Common Position on Migration and Development. The same year it also adopted the Migration Policy Framework for Africa (MPFA), revised and updated in 2016, and which aims to foster regular labour migration; meet labour supply and demand; promote enforcement of labour standards; and reduce recourse to irregular migration.

The MPFA emphasizes the need for Member States to adopt all appropriate measures to “maximize the contribution of skilled professionals in the Continent by facilitating mobility and deployment of professionals in a continental and regional framework”.

In January 2008, the ECOWAS Common Approach on Migration was adopted, which focuses on six principles:

According to international labour and human rights instruments, and recognized good practices rooted in these normative frameworks, the following issues should be covered within a comprehensive BLMA:



## Equality of treatment and conditions of work

BLMAs should establish the principle of equality of treatment between migrant workers and nationals with respect to employment by making specific reference to it.

Appending a standard employment contract to a BLMA can be a good practice to detail the specific rights of migrant workers in line with minimum standards and give substance to the principle of equality of treatment. These have been used in the context of agreements covering specific sectors such as domestic work, and can contain provisions on the minimum wage, where applicable; compensation for overtime work; allowable deductions; date of payment; issue of payment receipts into the migrant worker's bank account(s), etc. Including detailed and concrete provisions in the employment contract, if enforceable, can contribute to ensuring that migrant workers are accorded rights in line with the destination country's laws and international labour standards. In order to make the referral to national legislation effective, it is necessary to analyse the legal framework of the origin and destination countries in order to assess if a BLMA is ensuring adequate social protection for migrant workers and their families, other areas of workers' protection as well.

## Other specific protection issues

BLMAs, to be comprehensive tools for the protection of migrant workers' rights, should also address some of the following specific protection challenges:

- **Gender dimension.** The objective of gender equality and non-discrimination should be included in a BLMA. And yet, many gender-related concerns are still missing, even in dedicated domestic workers agreements. Women migrant workers find themselves more often than men migrant workers in vulnerable situations. They are more likely to find employment in the informal economy, where they may be exposed to lower wages than men, risk of exploitation and lack of social protection.<sup>24</sup> Often, they are engaged in sectors of employment that are excluded from the protection provided under national labour legislation, in which the gender dimension is mostly absent. In this context, a number of elements should also be emphasized. These include strengthening the empowerment of migrant women (by eliminating gender-based restrictions on formal employment and admission criteria) and promoting equal opportunities for migrating for employment, capitalizing on skills of both men and women migrants without gender bias. Ensuring access to complaints mechanisms, justice and services for women is also critical.

Guideline 4.5 of the ILO Multilateral Framework on Labour Migration calls on States to ensure that “labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process”.

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<sup>24</sup> See R. Napier-Moore: *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries* (Bangkok, ILO and UN Women, 2017). Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_555974.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_555974.pdf).

### **Box 1. ILO Convention No. 189**

The Domestic Workers Convention, 2011 (No. 189) provides that the terms of employment and the working conditions should be similar to those of other workers. Employment relations should result from formal documents (contracts, pay slips, time records, etc.). Further, Article 3 (2) calls:

“promote and realize the fundamental principles and rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.”

Other recommendations include:

#### **Working time:**

- Normal hours, weekly and daily rest, paid leave: towards equal treatment
- A minimum of 24 consecutive hours of weekly rest
- Stand-by hours: to be defined in national law

#### **Remuneration:**

- Inclusion of minimum wage coverage
- Established without discrimination based on sex
- In-kind payments: only limited and under strict conditions

#### **Social security and maternity protection:**

- Conditions not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity (progressive implementation in consultation with most representative employers’ and workers’ organizations)
- Simplified payment of social security contributions (including in the case of multiple employers)

#### **Non-discrimination and Health and safety at work:**

- Measures to ensure occupational safety and health (progressive implementation)
- Protection from harassment, abuse and violence

Source: Domestic Workers Convention, 2011 (No. 189) and Domestic Workers Recommendation, 2011 (No. 201)

- **Freedom of association.** The rights of migrant workers to establish and join workers’ organisations of their own choice should be guaranteed.
- **Fair recruitment.** Migrant worker should not bear the costs of recruitment and be subjected to unfair practices.
- **Settlement of disputes.** Clauses specifying access to mechanisms for registering grievances and resolving disputes between migrant workers and employers can be outlined.

- **Work for more than one employer.** Mechanisms for preventing abusive practices requiring migrant workers to perform work for another employer without prior agreement should be included in the BLMA. This is an issue that has attracted special attention for migrant domestic worker agreements in some regions. At the same time, mechanisms could be put in place to enable migrant workers to enjoy greater labour market mobility, such as allowing workers to change employers;
- **Remuneration.** The remuneration of the worker, including in-kind payments, should be clearly indicated in the employment contract. Any deductions for tax, social contributions and accommodation should also be clearly indicated and no derogation should be allowed. Payments should be made in a timely manner through the medium indicated in the contract (e.g. bank account, checks, etc.) and without undue delays. Control mechanisms should be foreseen and the fundamental principle of equal pay for work of equal value should be the basis of the remuneration offered.<sup>25</sup>
- **Withholding or confiscation of documents.** The withholding or confiscation of a migrant worker's passport, other identity documents or work permit by an employer constitutes a serious abuse, restricting migrant workers' ability to leave an employment relationship at their own will, and may therefore be explicitly prohibited in the BLMA;
- **Adequate food provision and housing quality.** Clauses to ensure that adequate food and housing is provided to migrant workers, in terms of hygiene and quality of the accommodation can be included in BLMAs and have been used in particular for domestic and agriculture workers. If the cost of food and accommodation is to be paid by the worker, a cost estimation should be detailed in the contract;
- **Social security and health-care benefits.** Provisions for the entitlement and portability of benefits vary widely. For instance, temporary migrant workers are rarely entitled to social security provisions other than injury compensation and health care. In some BLMAs, covering African countries, provisions or references may be found to indicate separate bilateral agreements on social security (Cape Verde-Portugal, Spain-Morocco, France-Tunisia) or to allude to the relevant national legislation of the destination country (Spain-Mauritania), while in other countries (Italy with Morocco, Egypt and Mauritius) the provisions are formulated in terms of equal treatment with national workers in the destination country.
- **Transfer of savings and remittances.** Some BLMAs contain provisions for migrant workers to be able to freely remit their savings home, subject to the laws and regulations of the destination country.
- **Return and reintegration.** Measures for the labour market reintegration of migrant workers should contribute to maximising the development benefits of migration.

### 2.3 Bilateral Labour Migration Agreement Cycle

In order to assess the degree of coherence between existing BLMAs and other national policy frameworks, it is necessary to collect information (available through quantitative and

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<sup>25</sup> Equal remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111); Domestic Workers Convention, 2011(No. 189).

qualitative analyses, desk and field research), on the relevant labour migration, employment and skills policies already in place at national level.

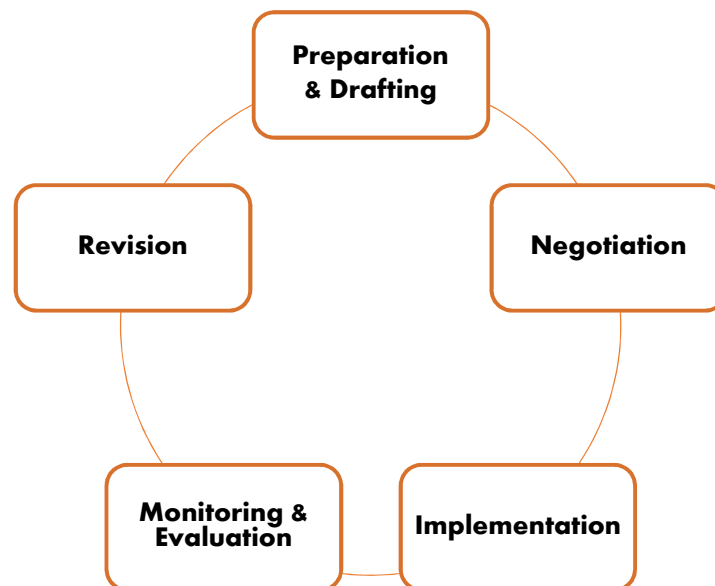
Aspects that need to be analysed include:

- a. level of coordination and information exchanges between the ministries and government institutions that cover migration (e.g. ministries of interior, foreign affairs, labour, trade, etc.);
- b. level of engagement of government sectors with various stakeholders in the migration process, including employers' and workers' organizations; and
- c. level of public confidence in migration issues.

For the above purposes, it would be useful to follow the reporting grid provided in Annex III.

The phases of the BLMA cycle are shown in Figure 2. While the negotiation of a BLMA is reserved to State institutions (Ministry of Foreign Affairs and main line ministries), the preparation, implementation, monitoring and evaluation (and in case of need, a revision of the BLMA) should involve other stakeholders.

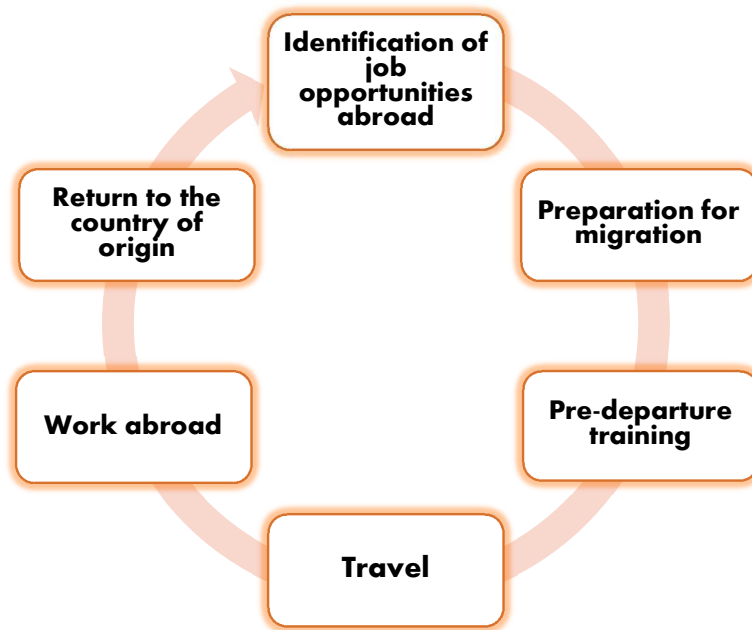
**Figure 2. BLMA cycle**



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

The BLMA cycle should ideally cover the entire labour migration cycle (see Figure 3 and Table 1 for more details). In reality, this is not always the case and the BLMA content could cover only selected stages in the labour migration cycle (e.g. recruitment, travel and work abroad).

**Figure 3. Indicative stages of the labour migration cycle for migrant workers**



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

**Table 1. Indicative provisions of BLMAs for each step of the labour migration cycle**

<b>Labour migration cycle</b>	<b>BLMA and accompanying measures</b>
<b>Identification of job opportunities abroad</b>	<ul style="list-style-type: none"> <li>• Selection process through PES or PrEAs</li> <li>• Preliminary skill matching (not a full assessment but preliminary correspondence to skills demanded)</li> </ul>
<b>Preparation for migration</b>	<ul style="list-style-type: none"> <li>• Documents (passport, diplomas, skills certificates)</li> <li>• Individual collection of information for the destination country</li> <li>• Visa</li> </ul>
<b>Pre-departure training</b>	<ul style="list-style-type: none"> <li>• Skill matching (through PES, PrEAs, etc.)</li> <li>• Pre-departure and cultural orientation training (delivered through PES, NGOs)</li> <li>• Occupation-related training, according to the BLMA requirements</li> </ul>
<b>Travel</b>	<ul style="list-style-type: none"> <li>• Might be organised by the employers from the destination country</li> </ul>
<b>Work abroad</b>	<ul style="list-style-type: none"> <li>• Registration in the destination country</li> <li>• Work permit</li> <li>• Recognition of skills</li> <li>• Post arrival training (if needed) and assistance</li> <li>• Rights at work</li> <li>• Social protection</li> <li>• Remittances and savings transfer</li> </ul>

<b>Return</b>	<ul style="list-style-type: none"> <li>• Recognition of skills acquired abroad</li> <li>• Labour market reintegration/retirement/inactivity/re-migration</li> </ul>
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Three contextual elements are key for understanding the BLMA process and its current status:

- **Political will.** This refers to the priorities of each of the parties at the time of negotiation of the BLMA. At times, one party's effective priorities may be beyond the scope of what is actually declared in the text of the BLMA. For example, a BLMA may be conceived within a broader strategy to limit irregular migration, rather than simply to facilitate the flows of migrant workers.
- **Economic context.** A BLMA may be signed with an indefinite duration. In the meantime, the economic conditions in both the origin and destination countries may change significantly, modifying the labour supply and demand dynamics. This may require modifications to the BLMA in order to take on board the new economic context. In some cases, this could also lead to closure of the agreement, and potentially a negotiation of a new one;
- **Political stability.** The political situation may evolve over time in one or both signatory countries, modifying the level of interest or priority given to labour migration issues. The assessment tool can assist in evaluating the level of relevance of the agreement within the current political environment.

## 2.4. Preliminary information on the BLMAs to be assessed

The checklist provided in Table 2 may be used to carry out BLMA content analyses.

**Table 2. Checklist for BLMA structure**

✓	Authorities in charge of developing the BLMA
✓	Type of labour migration covered by the BLMA (e.g. circular, permanent, seasonal, etc.)
✓	Inclusion of a standard model employment contract in the BLMA
✓	Specific groups of migrant workers covered (by gender)
✓	Specific groups of migrant workers covered (by profession)
✓	Specific groups of migrant workers covered (by skill level) Recruitment/selection procedures
✓	Involvement of the social partners in skill needs identification for the labour market
✓	Tripartite committees on labour migration on the implementation of the labour migration agreement
✓	Clauses for protection of migrant workers' rights, including principle of equality of treatment
✓	Provision of health care and other social benefits for migrant workers

✓	Information on working conditions of migrant workers (including wages, occupational safety and health, end-of-service treatment)
✓	Clauses on addressing irregular migration
✓	Clauses on skills recognition
✓	Clauses on pre-departure training/orientation
✓	Trade union rights and access to support mechanisms from civil society
✓	Transfer of savings and remittances
✓	Monitoring and evaluation mechanisms for BLMA implementation
✓	Access to social protection and portability of social security benefits
✓	Gender-specific or non-discrimination clauses

#### 2.4.1 Preparation and Drafting

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

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

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

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

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



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

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

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

In this phase, a preliminary draft of the agreement has to be prepared, bearing in mind the indications on structure and contents indicated in sections 2.1 and 2.2 of this tool.

The preparation phase of the BLMA may be assessed against the following checklist:

Indicators	Source of information
<input type="checkbox"/> Does gender disaggregated baseline information exist at the ministry of foreign affairs on challenges met by nationals working abroad?	Key stakeholders, reports of international organizations
<input type="checkbox"/> Does gender disaggregated baseline information exist at the ministry of labour on challenges met by nationals working abroad?	Ministry of labour, public/private employment agencies
<input type="checkbox"/> Have the social partners been involved in the preparation of negotiations?	Government sources may also provide this information, to be verified by workers' and employers' organizations
<input type="checkbox"/> Have NGOs operating in the field of labour migration been involved in this phase?	NGOs working on labour migration issues
<input type="checkbox"/> Have the social partners been involved in the preparation of negotiations? Is there a regular tripartite mechanism to consult with them on the agreement?	Key stakeholders from the ministry of labour; social partners and other key stakeholders
<input type="checkbox"/> Have specific BLMA information gathering/consultative meetings been organized,	Key stakeholders from the ministry of labour; social

inviting social partners and other public and private stakeholders?	partners and other relevant actors
<input type="checkbox"/> Have other relevant line ministries been involved in the BLMA preparation process?	Ministries of health, gender, youth, planning
<input type="checkbox"/> Have social security services provided information and technical advice to the BLMA negotiation team?	Social security institutions
<input type="checkbox"/> Has any gender responsive study been conducted on skills supply and demand in the domestic labour market, identifying skills oversupply and unfilled vacancies in order to assess the impact of labour migration?	Ministry of labour, social partners, national statistical office
<input type="checkbox"/> Does the migration related legislation provide necessary coverage in terms of labour and residence permissions?	Ministry of interior / immigration or migration authority / justice
<input type="checkbox"/> Does the legislation allow inclusion into various services, etc.?	Ministry of health, education, labour and social protection, other line ministries
<input type="checkbox"/> Have public employment services and private employment agencies provided information and technical advice to the BLMA negotiation team?	Private employment agencies and public employment services

### 2.4.2 Negotiation

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

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

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

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

- A decision-maker, ensuring a coherent implementation of the negotiation strategy, with a clear mandate to make decisions on behalf of the Government;

- Technical persons and experts in the key areas under negotiation, e.g. different ministries, including the ministry of foreign affairs, labour, migration, justice and other line ministries including education or health;
- Gender-balanced composition of the negotiating team. However, it should be noted that a gender balanced composition would not be sufficient to ensure a gender responsive BLMA. In order to ensure that gender concerns are taken into account in the negotiation process, the participation of gender advisers from the relevant ministries or outside should be considered.

The negotiation phase of the BLMA may be assessed against the following checklist:

Indicators	Source of information
<input type="checkbox"/> Was a lead ministry or unit designated to head the negotiations?	Signed copy of the BLMA and key stakeholders from the ministries of labour, foreign affairs and/or migration
<input type="checkbox"/> Was the negotiation process conducted directly by the two negotiating delegations or prepared through the exchange of written drafts?	Key stakeholders from the ministries of labour, foreign affairs and/or migration
<input type="checkbox"/> In case of written proposals, how have the different stakeholders been consulted before accepting it or how have they made counterproposals?	Key stakeholders from the ministries of labour, foreign affairs and/or migration
<input type="checkbox"/> Has the team referred to a model agreement, such as the ILO model agreement (Annex to ILO Recommendation No. 86)?	Key stakeholders from ministries of labour, foreign affairs, and/or migration

### 2.4.3 Implementation

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

#### a) Alignment with legislative framework

When new obligations are introduced into the legal framework of a country, party to an international agreement, it is necessary to assess whether the existing laws and regulations in the country are compatible with the new obligations and in line with any international instruments that it has ratified, or whether new laws or amendments may be necessary.

Usually, for BLMAs there is no need for new laws as they normally make reference to the existing legislation of the parties involved. If obligations in the BLMA conflict with existing legislation of one of the parties, or with relevant ratified international Conventions, legal amendments should be introduced.

## b) Responsibilities at federal, state/regional and local levels of government

While the capability to negotiate, sign and ratify international agreements is the responsibility of Government and Parliament, BLMA implementation should take into consideration the constitutional competences held by the various other levels of government, including the states of a federation (e.g. United States, Ethiopia, Germany), provinces (e.g. Canada) or other national subdivisions. For example, in Italy, the 20 regions have important responsibilities in labour market and vocational training which are the remit of the regions and not the central Government. In such cases, international norms must be implemented in domestic law in a way that respects the division of federal, provincial and regional powers.

## c) The role of social partners, civil society and public opinion in implementing BLMAs

The implementation of a BLMA is under the final responsibility of the public institutions identified in each agreement, but the involvement of other domestic actors is often necessary. The social partners and civil society organizations can be consulted in the preparation and negotiation phases of a BLMA, as well as in the implementation phase to ensure an effective operationalization of the agreements (see Paragraph 4.2 of ILO Recommendation No. 86).

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

Ministry of labour	for assistance to migrant workers (identification of job opportunities abroad, selection, pre-departure training, reintegration of returnees) and for ensuring visibility of the BLMA;
Ministry of migration (where existing) or the Ministry responsible for migration issues	for overall responsibility for the migration process, including return migration and relations with the diaspora;
Ministry of foreign affairs	for assistance to migrant through embassies and consular services, and for ensuring visibility of the BLMA;
Ministry of interior	through border control and residence permit services;
Ministry of education	for skills and qualifications recognition;
Ministry, department or other institution (including human rights or equality bodies) responsible for gender issues	should be involved and consulted in the entire BLMA process;
Social partners	A tripartite approach is recommended for the overall governance process of labour migration, including potential labour market impact and workers' rights issues. Worker organizations can play an important role in informing migrants about their rights. The ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) guarantees, without distinction, the freedom of association and right to organize of workers, including migrant workers irrespective of their legal status. ILO Convention No. 143

	<p>requires ratifying States to respect the basic human rights of all migrant workers, including the right to freedom of association. It also, together with ILO Convention No. 97, requires equality of treatment with regard to membership in trade unions. In destination countries, a growing number of unions are involved in promoting and protecting the rights of migrant workers, whether union members or not. The protection could be further enhanced by strengthened cooperation between workers' organizations in origin and destination countries. A good practice in this regard is the agreement reached in May 2013 between the Italian and the Moldovan and Ukrainian trade unions, following the ILO ACTRAV model.<sup>26</sup> Employers' organizations are also interested in being involved in BLMA implementation as a way for their members from the other signatory country to fill labour market shortages or to benefit from the skills of return migrant workers;</p>
<p>NGOs operating in the field of labour migration</p>	<p>NGOs can provide advice to potential migrant workers, promoting regular labour migration channels. In this context, they can also provide referrals to employment agencies and can use specific BLMA provisions to justify and facilitate their support. Some NGOs can also organize pre-departure training. In destination countries, NGOs can provide also various services to migrant workers, such as legal and practical assistance;</p>
<p>Private/public employment services</p>	<p>Public employment services and private employment agencies are among the main implementers of BLA/MoU provisions (e.g. in Morocco). Some of the services offered to migrant workers include:</p> <ul style="list-style-type: none"> <li>• providing advice on how to access international job opportunities;</li> <li>• helping jobseekers to identify skills and competences;</li> <li>• referring to training opportunities and employment promotion measures;</li> <li>• assisting foreign employers in the selection of potential migrant workers as part of the BLA;</li> <li>• delivering occupation-related training, if appropriate;</li> <li>• organizing pre-departure language training and cultural orientation.</li> </ul>
<p>Social security institutions</p>	<p>BLMAs can contain provisions for social security which require the participation of national social security institutions. Alternatively, access to social security can be covered in a</p>

<sup>26</sup> See: [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=61](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=61)

	separate bilateral or multilateral social security agreement <sup>27</sup> . In the case of short-term migration, the provision may be that the contribution to long-term benefits could also be maintained in the country of origin;
Diaspora organizations	BLMAs may contain provisions encouraging migrant workers to join diaspora communities, which can offer an extended protection through their networks, and may facilitate labour and social integration;
Diplomatic networks (embassies, consulates and missions)	An important role is played by counsellors and labour attachés, who not only assist migrant workers in the destination country but may also provide ministries of foreign affairs and labour with key feedback on issues that might require an amendment of the BLMA or of its implementation modalities. Access to consular services and consular protection can be provided, as appropriate.

The implementation phase of the BLMAs may be assessed against the following quantitative and qualitative indicators:

### Quantitative checklist

Indicators	Source of information
<input type="checkbox"/> How many migrants signed their employment contract before departure, by age and sex?	Ministry of Labour, PESs and PEAs
<input type="checkbox"/> How many migrants have participated in pre-employment and/or pre-departure training before migration, including on the BLA provisions, by age and sex?	Ministry of labour, public/private employment agencies; NGOs
<input type="checkbox"/> How many migrants faced “abuses” (e.g. retention of passport, contract substitution, different job than expected), by age and sex?	Ministry of labour, ministry of foreign affairs, ministry of interior, courts, NGOs
<input type="checkbox"/> How many migrants were victims of violence or harassment, by sex and age	Ministry of labour, ministry of interior, courts, NGOs, Ministry/Department/institution dealing with (gender) equality
<input type="checkbox"/> How many workers have migrated under the BLMA, by age and sex?	Statistical services, ministry of labour, interior, immigration and border authorities
<input type="checkbox"/> How many migrant workers have been able to receive compensation in case of occupational injury, by age and sex?	Ministries of labour and/or foreign affairs, courts, NGOs
<input type="checkbox"/> What is the percentage of migrants returning home, under the conditions defined in the BLMA by age and sex?	Ministries of labour and/or foreign affairs, interior,

<sup>27</sup> See as an example the social security agreements that the EU signed since the 1990’s with some Maghreb countries (Algeria, Morocco and Tunisia) containing provisions for the portability of benefits.

<input type="checkbox"/>	Is the return permanent or temporary, i.e. how many migrants decide to re-migrate?	immigration and border authorities Ministries of labour and/or foreign affairs, interior, immigration or border authorities
<input type="checkbox"/>	How many migrant workers have been able to transfer their social security benefits, by age and sex?	Social security institutes
<input type="checkbox"/>	Which is the average skill level of migrant workers (low, medium or high) by economic sector already present in the country, by age and sex?	BLMA, Ministries of labour and foreign affairs, national statistical office
<input type="checkbox"/>	How many migrants signed their employment contract before departure, by age and sex?	Ministry of labour, PESs and PEAs
<input type="checkbox"/>	How many migrants have participated in pre-employment and/or pre-departure training before migration, including on the BLA provisions, by age and sex?	Ministry of labour, public/private employment agencies; NGOs

### Qualitative checklist

	Indicators	Source of information
<input type="checkbox"/>	Which changes in the legislation have been adopted as a result new obligations, introduced by the BLMA?	Ministry of justice, key stakeholders from ministries of labour and foreign affairs, national gazette, proceedings of parliamentary discussions
<input type="checkbox"/>	Were any specific mechanisms put in place to ensure local authorities' involvement in implementation as relevant?	Ministry of labour, ministry of interior and local authorities
<input type="checkbox"/>	Which phases of the migration cycle (departure, stay in the destination country and return) have been included in the BLMA?	BLA, ministries of labour and foreign affairs, ministry of interior / migration / immigration authorities.
<input type="checkbox"/>	How have the general public and possible beneficiaries been made aware of the existence of the BLMA and its benefits? Have there been targeted measures for women migrant workers in this regard?	Media, focus groups, Ministries of labour and foreign affairs, the social partners, NGOs
<input type="checkbox"/>	Have migrant workers been allowed to join workers' organizations in the destination country?	Focus group discussion/ trade union interviews

<input type="checkbox"/>	Are there any specific provisions in the BLMA, covering women migrant workers?	BLMA, ministries of labour and foreign affairs
<input type="checkbox"/>	Which is the targeted skill level of migrant workers (low, medium or high) needed in the destination country?	BLMA, ministries of labour and foreign affairs
<input type="checkbox"/>	How have workers' and employers' organizations been involved in the implementation of the BLMA?	Interviews with workers' and employers' organizations
<input type="checkbox"/>	Which mechanism for skills matching of potential migrants is foreseen in the BLMA? How is it being ensured that the BLMA capitalized?	BLMA, ministries of labour and foreign affairs, ministry of education
<input type="checkbox"/>	Have mechanisms for the recognition of skills and/or diplomas of migrant workers been implemented in the destination country?	Focus group discussion, ministry of education
<input type="checkbox"/>	Have NGOs operating in the field of labour migration been involved in the implementation of the BLMA, and if so, how?	NGOs
<input type="checkbox"/>	What are the recruitment procedures for selecting the workers to migrate under the BLA provisions?	Ministry of labour, public and private employment agencies
<input type="checkbox"/>	What has been the role of the private employment agencies in the implementation of the BLMA?	Private employment agencies
<input type="checkbox"/>	What has been the role of the public employment services in the implementation of the BLMA?	Interview of public employment agencies
<input type="checkbox"/>	What recruitment fees or related costs are charged to migrant workers to benefit from the BLMA?	Focus group discussion, Ministry of labour, public and private employment Agencies
<input type="checkbox"/>	Does the BLA allow for the portability of social security benefits, in practice?	Social security institutes, focus group discussion
<input type="checkbox"/>	In what way have the diaspora organizations been involved?	Diaspora organization in the destination country

#### 2.4.4 Monitoring and evaluation

Monitoring should be considered as part of the implementation phase, but due to its specificities, it will be specifically analysed in this section. In most cases, BLAs incorporate provisions for the monitoring of their implementation. Mechanisms can include steering committees or joint monitoring groups. Committees can be tasked not only with monitoring but also with joint interpretation of text, proposal of amicable solutions to disputes and suggested amendments. Model terms of reference for the Joint Monitoring Committee of a BLMA is provided in Annex VII.

Besides joint monitoring, each participating country may wish to activate mechanisms to assess the state of implementation, collect information on challenges and use this information



to make proposals for amending BLMAs, as appropriate. One important aspect of BLMA monitoring that needs to be further developed is the possibility for migrant workers as well as the social partners and other relevant stakeholders to have access to dispute resolution and grievance mechanisms or other channels to alert competent national authorities regarding possible abuse and violations.

The monitoring and evaluation phase of BLMA may be assessed through the following checklist:

Indicators	Source of information
<input type="checkbox"/> Is a monitoring mechanism/body envisaged in the BLMA?	BLMA, ratification law
<input type="checkbox"/> What is the estimated frequency of meetings of the Joint Monitoring Committee?	BLMA, ratification law
<input type="checkbox"/> How many times has the Committee met since the BLMA entered into force?	Meeting reports, key stakeholders in the Ministries of Labour, Foreign Affairs and other relevant
<input type="checkbox"/> Has the Committee produced any interpretation of specific BLMA clauses?	Meeting reports, key stakeholders in the Ministries of Labour and Foreign Affairs and other relevant
<input type="checkbox"/> Are the country embassies (of both origin and destination) monitoring the implementation of the BLMA constantly (i.e. reporting to the competent Ministry)?	Key stakeholders in the Ministries of Foreign Affairs and Labour
<input type="checkbox"/> Is the information on the BLMA's implementation collected by key stakeholders (e.g. social partners, diaspora organizations, etc.) used for monitoring purposes?	Social partners, NGOs, key stakeholders in the Ministries of Labour and Foreign Affairs
<input type="checkbox"/> Has any internal or independent evaluation of the BLMAs been established? If so, who is involved?	Key stakeholders in the Ministries of Labour and Foreign Affairs as well as other relevant
<input type="checkbox"/> Are the outcomes of monitoring and evaluation activities used to propose adjustments or revisions to the BLMA?	Key stakeholders in the Ministries of Labour and Foreign Affairs as well as other relevant

### Main sources of information for the BLMA assessment

- a) Interviews with key stakeholders

The information to be collected for each phase is indicated at the end of each step. A compilation of questions to be used during the interviews is provided in Annex IV for the country of origin and in Annex V for the country of destination.

#### b) Focus group discussions with migrant workers

The BLMA tool can be used to collect qualitative information through a focus group discussion with migrant workers, based upon a series of questions. Templates with indicative questions for the focus groups are included in Annex II. It is suggested to use three types<sup>28</sup> of focus group discussion:

**Focus Group 1.** Discussion with return migrant workers in their origin country who have participated in the BLMA and are now back home;

**Focus Group 2.** Discussion with return migrant workers in their origin country who have NOT participated in the BLMA and are now back home;

**Focus Group 3.** Discussion with migrant workers in their destination country.

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

- *Composition:* from 6 to 8 migrant workers, if possible gender-balanced.<sup>29</sup> This number allows all participants to share information effectively. Focus group participants can be recruited through different channels, including public employment services and private employment agencies involved with the BLMA, workers' and employers' organizations and NGOs, embassies/consulates of the origin country can also assist in this regard;
- *Location:* a round-table format would be excellent to facilitate the discussion;
- *Duration:* maximum 90 minutes. This timing will balance the effectiveness of the participation with the pressure of daily duties;
- *Facilitation:* a moderator will animate discussions following the template questionnaires presented in Annex II. They will manage the time as well as stimulate and direct the discussion. There may also be a need to include an assistant moderator, to interpret if necessary and take notes;
- *Questions:* since participants will not have a chance to see the questions beforehand, there is a need to make sure they understand and can fully respond to the questions posed, which should be:
  - i. Short and to the point;
  - ii. Focused on one dimension each;

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<sup>28</sup> It may be challenging to distinguish these Focus Group 1 and Focus Group 2 in practice, as often BLAs set the framework for labour migration between the two countries, but do not necessarily provide for specific procedures.

<sup>29</sup> It is important to take into consideration social gender roles; in a given society, women may not voice their opinions freely in front of men and this should be taken into consideration when assembling the focus group.

- iii. Unambiguously worded;
- iv. Open-ended;
- v. Avoid closed (yes/no) questions;
- vi. Non-threatening or embarrassing.

There are three types of focus group questions:

- Engagement questions: introduce participants to each other and make them comfortable with the topic of discussion;
- Exploration questions: get to the heart of the discussion;
- Exit questions: check to see if anything was missed in the discussion.

#### c) Presentation of the assessment tool results

In order to facilitate the presentation of the assessment tool results in the different migration corridors, Annex III provides an indicative report outline. Given the different realities, needs and information available in each migration corridor, the structure of the document should be tailored accordingly.

### **A good practice grid to identify which aspects of the BLMA work well and what could be further improved**

A good practice is usually context-specific. In order to qualify for a good practice, some formal and content-related criteria need to be respected. Once made public, a good practice can be further validated through peer review by relevant stakeholders involved in the governance of labour migration.

The identification of criteria for good practices, to be applied to the selected migration corridor, draws on a set of criteria for comprehensiveness and scope, based on the ILO model agreement, annexed to ILO Recommendation No. 86, reflecting the general breadth of an agreement or the extent to which the agreement covers a broad range of topics and areas of concern (Wickramasekara, 2015). In addition, the criteria are based on good practices identified in the BLMA literature (Wickramasekara, 2015 and 2018c). The criteria also reflect key BLMA good practices policy documents, developed within intergovernmental processes (GFMD, n.d.), as well as ILO-specific approaches, such as the ILO good practice grid for policy coherence in labour migration, employment and education/training policies (Popova and Panzica, 2017), the International Programme on the Elimination of Child Labour (IPEC) compendium of good practices (ILO, 2014a) and the ILO technical assistance evaluation lessons learned and emerging good practices (ILO, 2014b), Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community (IOM 2016).

The detailed analyses provided above allowed for the design of a specific grid for the identification of BLMA good practices (see Table 3). This grid also considers that criteria need to be manageable and feasible, with concrete policy application, rather than being a theoretical exercise. Last but not least, good practices may evolve over time and across national contexts, which will require the adjustment of the grid, as appropriate.

### **Table 3. BLMA good practice grid**

<b>General information</b>	
Title	Bilateral Labour Migration Agreement (BLMA)
Countries involved	Signatories of the BLMA
Date of Agreement	When it has been signed
Duration	Is the BLMA still operational?
Stakeholders and partners	Who are the beneficiaries, users, institutions, partners, implementing agencies, and donors involved in the BLMA?
<b>Indicators of success</b>	<b>Dimensions to be analysed</b>
Type of good practice	Indicate what aspect of the BLMA shall be analysed for the scope of sharing it with other stakeholders: : 1) new migration corridors; 2) protection of migrant workers' rights in accordance with human rights and labour standards; 3) skills recognition; 4) access to social protection and social security portability; 5) other (to be specified)
Relevance	To what extent does a practice succeed in achieving its targeted results?
Validation	In which way and from whom has the practice been validated?
Sustainability	What makes the practice sustainable?
Replicability	Can a practice be potentially transferred and applied to different geographical areas, target groups, institutions and societies?
Participatory nature	Have migrant workers been involved? If so, how?
Gender sensitivity	How have gender considerations been addressed?
Non-discrimination	Is non-discrimination integrated throughout the analysed practice, with attention to groups of migrant workers who may be exposed to situations of vulnerability?

### 3. Key characteristics of the adjusted assessment framework, used in the SADC region

Limited use has been made of bilateral labour migration agreements in the SADC corridor assessed in this report (i.e. Lesotho-South Africa and Zimbabwe-South Africa). In fact, seeing an increasing use of Memoranda of Understanding (MoUs), often with minimalistic content, proved it necessary to develop and utilise a more flexible assessment framework. This framework should be used for bilateral labour agreements, MoUs, or any other bilateral agreement involving labour migration.

The core characteristics of the adjusted assessment framework typically mirror key elements contained in many good practice bilateral labour agreements around the world.

On one hand, the adjusted framework addresses key elements of the labour agreement cycle, i.e. firstly, the preparatory framework informing the negotiation and conclusion of bilateral agreements and, secondly, their implementation. However, a bilateral agreement would need to do more, as it should also address critically important components of the migration cycle. Also, it is necessary to consider other generic matters. These refer, in the first place, to the intention of the parties, i.e. whether they intend the arrangement to be binding and to be a labour migration agreement, a memorandum of understanding or a different kind of agreement. In the second instance, irrespective of the nature of the agreement, it is necessary to consider the impact of other relevant regulatory and operational agreements applicable to one or both of the parties – in particular bilateral or multilateral free movement, social security and free trade/trade in services agreements.

The adjusted assessment framework and its embedded questions should be able to assist labour migration stakeholders, in particular relevant government ministries, to have a benchmark against which labour migration could be successfully managed. The framework could be applied regardless of the mode of bilateral agreement selected – e.g. a bilateral agreement, a MoU, or any other type of agreement. It might even be of value if governments need to decide which agreement modality is the most suitable for the specific context. It is also capable of being applied/adjusted when governments consider the introduction of unilateral measures. The framework will help government and other stakeholders to consider and address key elements of both the labour agreement cycle, on the one hand, and the migration cycle relevant to migrant workers and their dependants, on the other.

## ANNEX I. List of relevant ILO and UN Conventions that have an impact on labour migration

### ***UN instruments***

There are nine core United Nations human rights instruments,<sup>30</sup> one of which is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

Migration is also a cross-cutting issue in the Sustainable Development Goals (SDGs) as defined in the 2030 Agenda for Sustainable Development, within which 11 of the 17 SDGs contain targets and indicators that are relevant to migration.

UN instruments	Key provisions to be considered for the assessment tool
<p>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</p>	<p><b>Articles 8-35:</b> Human rights of all migrant workers and members of their families (including freedom of movement, thought, and expression; right to fair trial; equality of treatment in relation to remuneration; right to participate in unions; same treatment with respect to social security; right to receive emergency medical care, right to transfer money).</p> <p><b>Articles 36-56:</b> Other rights of migrant workers and members of their families who are documented or in a regular situation (including right to information before departure; right to form associations and unions; right to participate in public affairs and elections; right to equality of treatment in relation to social and economic rights; protection of the unity of the family; right to transfer money; and equality of treatment in relation to employment and unemployment).</p> <p><b>Article 81:</b> More favourable rights or freedoms can be granted to migrant workers by virtue of the law or practice of a State party or any bilateral or multilateral treaty in force for the State party concerned.</p>

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<sup>30</sup> The other eight instruments are: International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities.

<p>Convention on the Elimination of All Forms of Discrimination against Women (General Recommendation No. 26 on women migrant workers) (1979)<sup>31</sup></p>	<p><b>Paragraph 23:</b> Common responsibilities of countries of origin and destination (including a comprehensive gender sensitive and rights-based policy; active involvement of women migrant workers and relevant NGOs; and research, data collection and analysis).</p> <p><b>Paragraph 24:</b> Responsibilities specific to countries of origin (including education, awareness-raising and training; regulation of recruitment; health services; safeguarding remittances; facilitating the right to return; and consular protection).</p> <p><b>Paragraph 26:</b> Responsibilities specific to countries of destination (including legal protections for the rights of women migrant workers; access to remedies; family reunification; training and awareness raising; access to services).</p> <p><b>Paragraph 27:</b> Bilateral and regional cooperation.</p>
<p>The International Covenant on Civil and Political Rights (ICCPR) (1966)</p>	<p>It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.</p> <p><b>Article 8:</b> The freedom from slavery and servitude.</p> <p><b>Article 9:</b> The right to liberty and security of the person and freedom from arbitrary arrest or detention.</p> <p><b>Article 26:</b> The right to equality before the law and equal protection.</p> <p><b>Article 27:</b> The right, for members of religious, ethnic or linguistic minorities, to enjoy their culture, practice their religion and use their language.</p>

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<sup>31</sup> It needs to be clarified here that this is a general recommendation of the CEDAW Committee tasked with monitoring the implementation of CEDAW by States parties.

<p>International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)</p>	<p>It commits participants to work toward the granting of economic, social and cultural rights, including labour rights and the right to health, the right to education and the right to an adequate standard of living.</p> <p><b>Article 3:</b> The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty.</p> <p><b>Article 6:</b> Everyone has the right to work, including the right to gain one's living at work that is freely chosen and accepted.</p> <p><b>Article 7:</b> Everyone has the right to just conditions of work; fair wages; ensuring a decent living for themselves and their family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.</p> <p><b>Article 8:</b> Everyone has the right to form and join trade unions and the right to strike.</p> <p><b>Article 9:</b> Everyone has the right to social security, including social insurance.</p> <p><b>Article 10:</b> Everyone has the right to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and housing, and to continuous improvement of living conditions.</p> <p><b>Article 11:</b> Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.</p>
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***Other UN instruments***

<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) of November 2000, supplementing the United Nations Convention against Transnational Organized Crime</p>	<p>The purposes of this Protocol (Article 2) are:</p> <ul style="list-style-type: none"> <li>(a) To prevent and combat trafficking in persons, paying particular attention to women and children;</li> <li>(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and</li> <li>(c) To promote cooperation among States Parties in order to meet those objectives.</li> </ul>
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***ILO migrant-specific Conventions and Recommendations***



ILO instruments	Key provisions to be considered for the assessment tool
<p>Migration for Employment Convention (Revised), 1949 (No. 97)</p>	<p><b>Article 2:</b> Maintain adequate and free service to assist migrants, including provision of accurate information.</p> <p><b>Article 4:</b> Measures to facilitate departure, journey and reception of migrant workers.</p> <p><b>Article 5:</b> Access to medical attention and good hygienic conditions.</p> <p><b>Article 6:</b> Equality of treatment in relation to working conditions, membership in trade unions, housing, employment taxes, social security, and access to justice.</p> <p><b>Article 7(2):</b> Service by public employment service free of charge.</p> <p><b>Article 9:</b> Permit transfer of remittances and savings.</p> <p><b>Article 10:</b> When large numbers of migrants, bilateral agreements for purpose of regulating matters of common concern.</p>
<p>Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)</p>	<p><b>Article 1:</b> Respect basic human rights of all migrant workers.</p> <p><b>Article 2-4:</b> Identify, address and share information on irregular movements of migrants for labour and abusive conditions.</p> <p><b>Article 8:</b> Right of residence and protection against redundancy.</p> <p><b>Article 9(1):</b> Equality treatment for migrant workers whose situation cannot be regularized with respect rights arising out of past employment with respect to remuneration, social security and other benefits.</p> <p><b>Article 13:</b> Facilitate family reunification, if possible.</p> <p><b>Article 10-14:</b> Equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights for migrant workers and their families; free choice of employment.</p> <p><b>Article 15:</b> Possibility of multilateral or bilateral agreements with a view to resolving problems arising out of application of Convention 143.</p>
<p>Migration for Employment Recommendation (Revised), 1949 (No. 86)</p>	<p><b>Paragraph 4(1):</b> States should facilitate the international distribution of labour in particular where there is a surplus.</p> <p><b>Paragraph 5:</b> Provision for free public information service.</p> <p><b>Paragraphs 10-12:</b> Facilitation of migration and settlement.</p>

	<p><b>Paragraphs 13-14:</b> Selection and recruitment practices.</p> <p><b>Paragraph 15:</b> Movement of members of the family.</p> <p><b>Paragraph 16:</b> Ensuring the same employment rights as nationals.</p> <p><b>Paragraph 18:</b> Removal and return of migrants and families.</p> <p><b>Paragraph 20:</b> Access to social security on return.</p> <p><b>Annex:</b> Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons.</p>
<p>Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151)</p>	<p><b>Paragraph 2:</b> Equality of opportunity and treatment in vocational training and employment, advancement, security of employment, remuneration for work of equal value, , condition of work, including OSH, social security, trade union membership, conditions of life.</p> <p><b>Paragraph 7:</b> Provide information on rights under national law and promote adaption of migrants to society.</p> <p><b>Paragraph 9:</b> Formulate and adopt social policy so that migrant workers and families can benefit from all advantages of nationals.</p> <p><b>Paragraphs 13-19:</b> Family reunification.</p> <p><b>Paragraphs 21-22:</b> Protection of occupational safety and health of migrant workers.</p> <p><b>Paragraphs 23-29:</b> Access to social services for migrants and families.</p> <p><b>Paragraphs 30-34:</b> Residence and removal in destination country.</p>
<p>Maintenance of Social Security Rights Convention, 1982 (No. 157)</p>	<p>Welfare protection/social security, relevant for migrant workers. The following Article is especially relevant to BLMA provisions: <b>Article 4(1):</b> Members may give effect to their obligations under the terms of Parts II to VI of this Convention by bilateral or multilateral instruments giving effect to these obligations, under conditions to be determined by mutual agreement between the Members concerned.</p>
<p>Maintenance of Social Security Rights Recommendation, 1983 (No. 167)</p>	<p>Welfare protection/social security, relevant for migrant workers.</p>

Equality of Treatment  
(Social Security)  
Convention, 1962  
(No. 118)

**Article 3:** Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.

**Article 4:** Equality of treatment as regards the grant of benefits shall be accorded without any condition of residence.

**Article 10:** The provisions of this Convention apply to refugees and stateless persons without any condition of reciprocity.

### ***The 8 ILO fundamental conventions***

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Forced Labour Convention, 1930 (No. 29) and related Protocol of 2014 (P 029)

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Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

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Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

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Equal Remuneration Convention, 1951 (No. 100)

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Abolition of Forced Labour Convention, 1957 (No. 105)

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Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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Minimum Age Convention, 1973 (No. 138)

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Worst Forms of Child Labour Convention, 1999 (No. 182)

### ***Other relevant ILO instruments***

In principle, all international labour standards, unless otherwise stated, are applicable to migrant workers. In the context of labour migration, the following additional instruments may be of particular interest:

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**Other relevant ILO  
instruments**

**Key provisions to be considered for the assessment tool**

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<p>Domestic Workers Convention, 2011 (No. 189)</p>	<p><b>Article 1:</b> It defines domestic work and domestic worker, to underscore that domestic workers are workers.</p> <p><b>Article 3:</b> Ensure the effective promotion of human rights of domestic workers; realizing the fundamental principles and rights at work; and ensuring domestic workers enjoy freedom of association.</p> <p><b>Article 5:</b> Protection from violence.</p> <p><b>Articles 6-7:</b> Fair terms of employment and decent working conditions.</p> <p><b>Article 8:</b> Migrant domestic workers to get written offer and contract pre-departure.</p> <p><b>Article 10:</b> Equality of treatment between domestic and other workers.</p> <p><b>Article 13:</b> Equal conditions in relation to social security.</p> <p><b>Article 15:</b> Addressing exploitative recruitment and employment.</p> <p><b>Articles 16-17:</b> Access to justice and complaints mechanisms.</p>
<p>Private Employment Agencies Convention, 1997 (No. 181)</p>	<p><b>Article 7(1):</b> Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.</p> <p><b>Article 8(2):</b> Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.</p> <p><b>Articles 10-12:</b> Provisions to regulate and prevent abuses of migrant workers through private employment agencies.</p>
<p>HIV and AIDS Recommendation, 2010 (No. 200)</p>	<p><b>Paragraphs 25-28:</b> Non-discrimination and protection of migrant workers against screening. These provisions also prohibit mandatory HIV testing/screening of workers, including migrant workers.</p> <p><b>Paragraph 46:</b> Members should cooperate, through bilateral or multilateral agreements, to give effect to this Recommendation.</p> <p><b>Paragraph 47:</b> Measures to ensure access to HIV prevention, treatment, and care and support services for migrant workers should be taken by countries of origin, of transit and of destination, and agreements should be concluded among the countries concerned, whenever appropriate.</p>

	<p><b>Paragraph 48:</b> International cooperation should include the systematic exchange of information on all measures taken to respond to the HIV pandemic.</p>
<p>Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)</p>	<p>Members, both countries of employment and countries of origin, should, when it is necessary, taking fully into account existing international labour Conventions and Recommendations on migrant workers, conclude bilateral and multilateral agreements covering issues such as right of entry and stay, the protection of rights resulting from employment, the promotion of education and training opportunities for migrant workers, social security, and assistance to workers and members of their families wishing to return to their country of origin.</p>

***UN non-binding agreements***

<p>Global Compact for Safe, Orderly and Regular Migration, 13 July 2018</p>	<p><b>Objective 5:</b> Enhance availability and flexibility of pathways for regular migration:</p> <ul style="list-style-type: none"> <li>a) Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders, drawing on relevant ILO standards, guidelines and principles, in compliance with international human rights and labour law;</li> <li>b) Facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements;</li> <li>c) Review and revise existing options and pathways for regular migration, with the private sector and other relevant stakeholders;</li> <li>d) Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply</li> <li>e) Promote effective skills matching in the national economy by involving local authorities and other relevant stakeholders, particularly the private sector and trade unions.</li> </ul>
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***Other Tools***

IRIS<sup>32</sup> is a social compliance scheme that is designed to promote ethical international recruitment. It works by defining and setting a benchmark for ethical recruitment (the IRIS Standard), and through establishing a voluntary certification scheme for ethical labour recruiters, and a compliance and monitoring mechanism.

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<sup>32</sup> See: <https://iris.iom.int/>.

## ANNEX II. Interview guidelines for focus group discussions

The composition of the focus groups may vary according to the typology of migrant workers to be interviewed; guidelines for -

### FOCUS GROUP 1

Target	Return migrant workers (gender-balanced)
Participants	Maximum of 8 persons
Requirements	Emigrated through the BLMA and returned to their origin country within the last 3 years
Objectives	<ul style="list-style-type: none"><li>• To collect information that may contribute to improving the effectiveness of the BLMA in terms of its design and implementation;</li><li>• To identify challenges and bottlenecks that hinder the achievement of BLMA objectives;</li><li>• To identify ways to improve the quality of the BLMA and improve labour migration governance at large.</li></ul>

#### Session 1 (15 minutes)

1. Brief introduction by the Moderator regarding the scope of the discussion and the structure of the session:
  - a. Brief outline of the BLMA from which participants may have benefitted;
  - b. The scope of the discussion is to have an honest exchange of opinions on some specific questions that will be introduced by the Moderator;
  - c. There are no “right” or “wrong” answers to any of the questions;
  - d. There will be a “round-robin approach”: each participant will intervene only once for each question unless there is a need for further clarification;
  - e. The discussion will be confidential and no name will be attached to any comments made.
2. Quick round of introductions: each participant will give their name and say where they come from.
3. Moderator asks if there are any questions before beginning the discussion.

#### Session 2 (15 minutes)

##### Opening questions:

- How many years did you spend in the destination country and when did you come back?
- How did you hear about the migration programme/migration opportunity to X country?
- What motivated you to emigrate under this programme?
- What type of work/job did you do while abroad?

#### Session 3 (60 minutes)

**Key questions:**

1. What do you think you gained from your time abroad?
2. What have been the main challenges?
3. Have there been equal opportunities for men and women to migrate abroad or benefit from the BLA/MoU? If so, please describe the opportunities.
4. How was your recruitment organized?
5. Did you pay any fees to labour recruiters or incur any other costs in order to go abroad?
6. Was the contract you signed before going to work abroad the same as the one you signed in the destination country, or different?
7. Did you stay in the same job throughout your stay there?
8. If you had a problem or disagreement with your employer, did you know where to go for help?
9. Do you think your job corresponded to your qualifications or level of skills?
10. Did you experience any issues with the authorities of the destination country?
11. Did you have any contact with trade unions or civil society organizations in the country?
12. Did you have health insurance?
13. Did you contribute to a pension scheme while abroad? Were you able to transfer your pension, back in your home country?
14. Did you benefit from any training (work skills or language)? Did you learn new skills on the job?
15. Did you ever feel discriminated against, and if so in what area? (There could be a follow-up question for female participants, asking them whether they faced any specific discriminatory behaviour as women migrant workers)
16. What did they do in cases of discrimination, violence or harassment at the workplace (or during the migration process), or violations of your rights. What complaints mechanisms did you use, and did you file a complaint?
17. Have you undergone any mandatory pregnancy or HIV testing? If so, were the results kept confidential? If no, do you know what happened to the results?
18. Did your experience abroad help you to obtain better job opportunities upon returning home?
  1. Did you receive support in reintegrating into your national labour market?

**Session 4 (15 minutes)****Exit questions:**

- Would you go back to X country again or another country? Under what conditions?
- Of all the things we discussed today, which do you think is the most important?
- How do you think the BLMA could be improved?

**Thank you so much for your time!**

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## FOCUS GROUP 2

Target	Return migrant workers (gender-balanced)
Participants	Maximum of 8 persons
Requirements	Did NOT emigrate through the BLMA and returned to their origin country within the last 3 years
Objective	To collect information that may contribute to improving the effectiveness of the BLMA in terms of its design and implementation, based on the views of individuals who have NOT emigrated through the BLMA but decided to emigrate through a different migration channel

### Session 1 (15 minutes)

- Brief introduction of the Moderator regarding the scope of the discussion and the structure of the session:
  1. The scope of the Focus Group is to have an honest exchange of opinions on some specific questions that will be introduced by the Moderator;
  2. There are no “right” or “wrong” answers to any of the questions;
  3. There will be a “round-robin approach”: each participant will intervene only once for each question unless there is a need for further clarification;
  4. The discussion will be confidential and no name will be attached to any comments made.
- 2. Quick round of introductions: each member of the group will give their name and say where they come from.
- 3. Moderator asks if there are any questions before beginning the discussion.

### Session 2 (15 minutes)

Opening questions:

- How many years did you spend in the destination country and when did you come back?
- How did you hear about the migration opportunity to X country?
- Why did you decide not to use the BLMA to emigrate?<sup>33</sup>

### Session 3 (60 minutes)

Key questions:

- Did you use public employment service or private employment agency for your migration?
- Were the migration procedures simple or complicated?
- Did you pay for the support received in the migration process?
- What do you think you gained from your time abroad?
- What were the main challenges?
- Did you know where to go in case problems arose?

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<sup>33</sup> This may be a difficult question to answer if there is no specific procedure to migrate under the BLA.

- Have there been equal opportunities for men and women to migrate abroad? If so, please describe the opportunities.
- How was your recruitment organized?
- What type of work/job did you do while abroad?
- Did you stay in the same job throughout your stay there? Where you allowed to change employer or what is easy to change employer?
- Did you know your rights as a migrant worker? How did you learn about them? Do you think those rights were respected? Please specify which rights these were.
- Were your skills recognized in the destination country?
- Did you experience any problems with your employers?
- Did you experience any issues with the authorities of the destination country?
- Were you able to join a trade union?
- Did you know where to go in case problems arose?
- Did you have health insurance?
- Were you entitled to contribute to pension benefits? If so, were you able to transfer your pension back to your home country?
- Were you able to learn new skills?
- Did your experience abroad help you to access employment opportunities and have a better life upon returning home?

#### **Session 4 (15 minutes)**

Exit questions:

- Would you go back to X country again? Under what conditions?
- Of all the things we discussed today, which do you think is the most important?

**Thank you so much for your time!**

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### INTERVIEW GUIDELINES for FOCUS GROUP 3

Target	Current migrant workers (gender-balanced)
Participants	Maximum of 8 persons
Requirements	Migrant workers, in their destination country
Objective	To contribute to improving the effectiveness of the BLMA in terms of its design and implementation, based on the views of individuals who have chosen to emigrate through it

#### Session 1 (15 minutes)

- Brief introduction by the Moderator regarding the scope of the discussion and the structure of the session:
  1. The scope of the discussion is to have an honest exchange of opinions on some specific questions that will be introduced by the Moderator;
  2. There are no “right” or “wrong” answers to any of the questions;
  3. There will be a “round-robin approach”: each participant will intervene only once for each question unless there is a need for further clarification;
  4. The discussion will be confidential and no name will be attached to any comments made.
- Quick round of introductions: each member of the group will give their name and say where they come from.
- Moderator asks if they have any questions before beginning the discussion.

#### Session 2 (15 minutes)

Opening questions:

- How long have you been working in X country? How long is your contract for?
- Why did you decide to use the BLMA to emigrate?<sup>34</sup>

#### Session 3 (60 minutes)

Questions:

- What do you think you gained from your migration under the BLMA, compared to other migrants who have chosen other migration channels?
- What have been the main challenges? (There could be a follow-up question for female participants, asking them whether they have faced any specific issues as female migrant workers)
- Have you remained in the same job throughout your stay here? If so, why and if not, was it easy to change employer.
- Have your contractual rights been protected, such as wage, working hours, social security, maternity protection, etc.?
- Have your human rights been respected?
- Have your skills been recognized in the destination country?
- Have you been able to learn new skills?
- Have you experienced any problems with your employers?

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<sup>34</sup> This may be a difficult question to answer if there is no specific procedure to migrate under the BLA.

- Have you experienced any issues with the authorities of the destination country?
- Have you been able to join a trade union or are you planning to do so?
- In case of problems, where would you go? Have you been able to get effective redress?
- Do you have health insurance?
- Are you entitled to a pension that you will eventually transfer to your home country when you return?
- What did they do in cases of discrimination, violence or harassment at the workplace (or during the migration process), or violations of your rights. What complaints mechanisms did you use, and did you file a complaint?
- Have you undergone any mandatory pregnancy or HIV testing? If so, were the results kept confidential? If no, do you know what happened to the results?

#### **Session 4 (15 minutes)**

Exit questions:

- Do you plan to go back home one day?
- If you decide to re-emigrate, will you use the BLMA or will you go abroad through a different channel?<sup>35</sup>
- How do you think the BLMA could be improved to be more helpful to migrant workers?
- Is there anything else you would like to add?

**Thank you so much for your time!**

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<sup>35</sup> This may be a difficult question to answer if there is no specific procedure to migrate under the BLMA.

## ANNEX III. Indicative migration corridor assessment report outline

(Report length: 50 pages maximum)

### **Summary**

### **Contents**

### **Abbreviations**

### **Introduction**

#### **Chapter 1. Assessment methodology**

It will be adapted to the realities, needs and information available in each migration corridor and includes a gender analyses.

#### **Chapter 2. Migration context and policy frameworks in the origin and destination countries of the targeted migration corridor**

This chapter will provide the employment and migration background, gender analysis and the policy development context in which the selected BLMA has been implemented.

- 2.1 Employment and migration context;
- 2.2 Laws and regulations (national, regional and international);
- 2.3 Institutional framework;
- 2.4 Policy framework;
- 2.5 Overview of the agreement (whether it is a BLA, MoU or other type of agreement, the overall objective of the agreement, who the target migration worker group is, etc.).

#### **Chapter 3. Analysis of the selected BLMA in all of its phases**

The analysis will be based on in-depth interviews with key stakeholders, data analysis and a review of the relevant literature and policy documentation, covering all stages of the BLMA cycle.

- 3.1 Preparation;
- 3.2 Negotiations;
- 3.3 Implementation;
- 3.4 Monitoring;
- 3.5 Evaluation (including possible revisions/updates).

#### **Chapter 4. Assessment of the BLMA through focus group discussions**

- 4.1 Key findings: return migrant workers who have benefited from the BLMA and returned to their origin country within the last 3 years;
- 4.2 Key findings: return migrant workers who have NOT benefited from the BLMA and returned to their origin country within the last 3 years;
- 4.3 Key findings: current migrant workers in their destination country.

#### **Chapter 5. Examples of BLA good practice and bottlenecks/challenges**

Based on the findings presented in Chapters 3 and 4, good practices and areas for further improvement will be identified.

#### **Chapter 6. Conclusions, policy implications and recommendations**

ANNEX IV. Assessment framework contents: Compendium of questions for interviews with stakeholders: country of origin<sup>36</sup>

Each interview grid will be built up using the questions indicated in the table below.

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
<b>General matters to be considered for a new agreement</b>									
Do the parties intend the agreement to be a labour migration agreement, a memorandum of understanding or a different kind of agreement?	✓	✓							
Has the impact of other relevant regulatory and operational agreements applicable to one or both of the parties been considered – in particular:									
(a) Other bilateral agreements (e.g., sectoral and other bilateral labour agreements; bilateral social security agreements; bilateral trade agreements; bilateral investment treaties) and	✓	✓							
(b) Multilateral agreements (e.g., international, continental and regional free trade, trade in services, free movement, human rights, labour and social security and regional integration instruments; higher order regional regulatory frameworks)?									
<b>General matters to be considered for an existing agreement</b>									

<sup>36</sup> Interview questions provided in Annexes IV and V are similar; however, Annex IV covers country of origin, while Annex V covers country of destination. All questions, listed in the two Annexes, are based on the pilots that took place in the Egypt-Italy corridor and in the SADC region.

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Is the BLMA currently being implemented?	✓	✓					✓	✓	
Does the BLMA include topics under the competence of your institution? <i>If yes, which topics and how are they regulated?</i>	✓	✓	✓	✓	✓	✓			
Do you cooperate with other institutions for the implementation of the BLMA? <i>If yes, which institutions?</i>	✓	✓							
Has any specific budget been attached to the BLMA? If yes, has it been sufficient for the intended purpose?	✓	✓							
Has the BLMA been coordinated with any national policies/strategies (e.g. migration, employment, training, etc.) <i>If yes, which particular ones? If not, why?</i>	✓		✓		✓		✓	✓	
Are there any supporting programmes to accompany the BLMA implementation? If yes, which programmes? How have they facilitated the implementation of the BLMA?	✓	✓	✓		✓				
Are there other BLAs under implementation with other countries that can be considered as a good practice and reference? <i>If yes, why? If not, why?</i>	✓	✓	✓	✓	✓	✓	✓	✓	
Is the recognition of skills part of the BLMA provisions? <i>If yes, how is it organized?</i>	✓		✓						
Has your institution been involved in the design of the BLA? <i>If yes, in what way?</i>			✓	✓			✓	✓	✓
Has your institution been involved in the negotiation of the BLMA? <i>If yes, in what way?</i>			✓	✓			✓	✓	✓
Has your institution been involved in the monitoring of the BLA? <i>If yes, in what way?</i>			✓	✓			✓	✓	✓

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Have the provisions of the BLMA been effective in addressing the needs of the country in protecting migrant workers? <i>If not, what is missing? If yes, why?</i>	✓	✓	✓				✓	✓	✓
Has your institution been involved in the monitoring of the BLMA? <i>If yes, in what way?</i>			✓	✓			✓	✓	✓
Are there any agreement with workers' organisation in the destination country for enhancing the protection of rights of migrant workers? <i>If yes, please provide details.</i>								✓	
What should be considered as a priority in a BLMA in the field of education and training of migrant workers?	✓		✓				✓	✓	
Is the portability of pension's rights part of the provisions of the BLMA? <i>If yes, has it been effectively implemented? If no, why not?</i>	✓			✓					
Which of the BLMA provisions have been really successful in terms of achieving the agreement's objectives and which ones have not, and why?	✓	✓			✓	✓	✓	✓	✓
Has your organization provided any services to migrant workers linked to the implementation of the BLA? <i>If yes, please explain which services have been provided.</i>						✓		✓	✓
<b>BLMA preparation</b>									
Has consideration been given to the nature, scope and focus of migration flows between the countries, with reference to matters such as who would typically migrate, the duration of migration, whether the migration is of a regular/irregular nature and unilateral or bilateral, whether workers migrate and if so for what purpose, the education and skills levels of persons who so migrate, as well as the gendered context of migration?	✓	✓			✓				



Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Is there a legal, policy and/or operational framework in place informing the management of bilateral labour migration and the sending and receiving of migrant workers?	✓	✓							
Are the legislative and administrative provisions and requirements regarding entry, employment, residence and return, and documentation known in the country of destination and have they been:									
(a) Shared between the parties?;	✓	✓							
(b) Made available to interested and selected candidates?; and									
(c) Are there any legal or practical obstacles for women (or certain other groups of the population) to migrate for employment into certain occupations or sectors, or generally?									
Is there a system of skills and qualifications recognition existing in the country of origin that can inform the movement of migrant workers to the country of destination in terms of the bilateral agreement?	✓		✓		✓	✓	✓	✓	
Have a gender-responsive stakeholder analysis and needs assessment been undertaken to identify interested and needed stakeholders and their needs and views?	✓	✓					✓	✓	
Is there any permanent tripartite committee on labour migration established and operational in your country? <i>If yes, please provide details.</i>	✓						✓	✓	

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Which institutions have been involved in the design of the BLMA?	✓	✓	✓	✓	✓	✓	✓	✓	✓
Has the BLMA been creating any imbalances in labour supply and demand in the domestic labour market? <i>If yes, what are the imbalances and how have they been addressed?</i>	✓	✓	✓		✓		✓	✓	✓
How has the BLMA contributed to promoting equal opportunities between men and women to migrate for employment?	✓	✓					✓	✓	✓
What analyses have been undertaken of skills supply and demand in the domestic labour market, identifying skills oversupply and unfilled vacancies in order to assess the potential impact of the BLMA?	✓						✓	✓	
<b>BLA negotiation</b>									
Has the negotiation process been conducted directly by the two negotiating delegations or prepared throughout the exchange of written drafts?	✓	✓							
Which authority has taken the lead in the negotiation process and the signature of the BLMA?	✓	✓							
In case of written proposals, how have the different stakeholders been consulted before accepting them or making counterproposals?	✓	✓	✓	✓	✓	✓	✓	✓	✓

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Which phases of the migration cycle (departure, stay in the destination country and return) have been covered in the BLMA?	✓	✓							
Has the negotiation team requested the other party to refer to any international instruments (e.g. UN or ILO Conventions) in the BLMA? <i>If yes, which instruments?</i>	✓	✓							
Have measures been adopted to guarantee the protection of the worker's human, labour and social security rights, and in particular equal treatment and protection against abuse?									
Has the team referred to a model agreement, such as the ILO model agreement annexed to the Migration for Employment Recommendation (Revised), 1949 (No. 86)?	✓	✓							
Has an employment contract containing clear terms and conditions that comply with both the labour, social security and other laws of the country of destination and international labour and social security standards been agreed upon and, where relevant, vetted/approved by one or more government and/or other indicated institutions in the country of destination and/or country of origin?	✓	✓							
Has a supportive regime been developed to ensure portability of social security and other benefits?	✓	✓		✓					

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Have measures been adopted to ease labour market integration, including recognition of skills and experience required, skills training opportunities, and job-placing services upon return?	✓	✓	✓		✓				
Have institutional partners with the necessary mandate in both countries been identified that should negotiate, conclude and implement the agreement, on the basis of consultation and cooperation – (a) Within the country of destination and origin respectively? (b) Between the two countries?	✓	✓		✓	✓				
Has provision been made for decent living and work conditions, including occupational safety and health agreements and access to basic services, such as needed health care?	✓	✓	✓						
<b>BLA implementation</b>									
Have the commencement date and duration of the agreement been confirmed?	✓	✓							
How has the information on the BLMA been disseminated, especially among the main beneficiaries, namely migrant workers?	✓	✓			✓	✓	✓	✓	✓
Has there been a need to adapt national legislation to comply with the obligations in the BLMA? <i>If yes, to what extent?</i>	✓	✓	✓	✓	✓				
How many migrants have been sent abroad using the provisions of the BLMA?	✓	✓			✓	✓		✓	✓

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
How many migrant workers have been able to receive compensation in case of occupational injury?	✓	✓			✓				
Do measures and institutions, known to the worker, and established by the country of origin exist to assist the worker with advice, support, physical and mental protection and complaints, grievance and dispute resolution?	✓	✓							
What kind of arrangement has been necessary to involve local authorities, holding decentralized power, in the recruitment process under the BLMA?	✓	✓							
What is the skills level of migrant workers targeted by the BLMA?	✓		✓		✓	✓	✓	✓	
What mechanism for the skills matching of migrant workers has been put in place under the BLMA? Has this ensured that the BLMA capitalizes on the skills of both men and women migrants	✓		✓		✓	✓	✓	✓	
Is there any provision for pre-employment and pre-departure training? If yes, how is it organized and what aspects does it focus on (e.g., occupation-specific training, language training and cultural orientation, etc.)? Are programmes specifically targeting women migrant workers	✓				✓	✓	✓	✓	✓
How many migrants (men and women) have been trained in preparation for labour migration under the BLMA provisions?	✓		✓		✓	✓		✓	
Is support given to the worker to freely use and inexpensively transmit earnings?	✓	✓							

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Is there clarity regarding recruitment, placement and travel cost, cooperation between and the rights and obligations of the various parties involved?	✓	✓							
Has the direct involvement of the government or other indicated intermediaries of the country of origin or/and destination in the recruitment, selection and placing of candidates been determined?	✓	✓			✓	✓			
Are measures in place to ensure that the selected candidates have complied with health, qualifications, security, insurance, language, documentary and other requirements imposed by the country of destination and if relevant the country of origin and that assistance that may be required is available?	✓	✓		✓	✓				
Is sufficient provision made for appropriate pre-departure sensitisation and equipment, as well as on-arrival induction of selected candidates? Are the specific and differentiated needs and concerns of women and men taken into account?	✓	✓			✓	✓			
Is assistance given to the worker to plan their return and reintegration?	✓	✓		✓					
<b>BLA monitoring</b>									
Does the BLMA have a monitoring mechanism? <i>If yes, what type?</i>	✓	✓							
If there is a BLMA Monitoring Committee, how many times has it met since the BLA entered into force?	✓	✓							

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
If there is a BLMA Monitoring Committee, has the Committee produced any interpretation of specific BLMA clauses? <i>If yes, please provide details.</i>	✓	✓							
Have your country's embassies been continuously monitoring the implementation of the BLMA and reporting to competent ministries?		✓							
Has BLMA implementation information collected by key stakeholders (e.g. social partners, Diaspora organizations, etc.) been used for monitoring purposes?	✓	✓							
Are the necessary operating systems and processes, backed by needed data exchange measures in place to implement the agreement?	✓	✓		✓	✓				
Is it agreed how often cross-border institutions shall meet to monitor and review implementation of the agreement?	✓	✓							
Does a mutually agreed framework exist to deal with disputes arising from the implementation and/or interpretation of the agreement?	✓	✓							
Does a legal and an operational institutional framework for fair and ethical recruitment, selection and placement of candidates exist?	✓	✓							

Questions	Min. Labour	MoFA	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Is the country of origin or country of destination, or both, able to monitor and supervise the operations of recruitment agencies operating within the framework of the bilateral agreement?	✓	✓			✓	✓			
Do the countries of origin and destination have laws, mechanisms and procedures in place, in particular in relation to documentation, to enable workers to enter, reside and work, and access services, in the country of destination?	✓	✓			✓				
<b>BLA evaluation</b>									
Has any internal or independent evaluation of the BLMAs been undertaken? <i>If yes, is it possible to share the results?</i>	✓	✓							
Are the outcomes of monitoring and evaluation activities used for the purpose of proposing adjustments or revisions to the BLMA? <i>If yes, please describe the process.</i>	✓	✓							
Are BLMA monitoring and evaluation reports available for public consultation?	✓	✓							
Which are the lessons learned from the BLMA and how can they be useful for the design of future agreements?	✓	✓	✓	✓	✓	✓	✓	✓	✓
Does baseline information exist in your organization on challenges/complaints met by nationals working abroad? <i>How is the information shared with other institutions?</i>	✓	✓	✓	✓	✓	✓		✓	



## ANNEX V. Assessment framework contents: Compendium of questions for interviews with stakeholders: country of destination

Each interview grid will be built up using the questions indicated in the table below.

Questions	Min. Labour	MoFA	Min. Interiors <small>37</small>	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
<b>General matters to be considered for a new agreement</b>										
Do the parties intend the agreement to be a labour migration agreement, a memorandum of understanding or a different kind of agreement?	✓	✓								
Has the impact of other relevant regulatory and operational agreements applicable to one or both of the parties been considered – in particular:										
(a) Other bilateral agreements (e.g., sectoral and other bilateral labour agreements; bilateral social security agreements; bilateral trade agreements; bilateral investment treaties)?; and	✓	✓								
(b) Multilateral agreements (e.g., international, continental and regional free trade, trade in services, free movement, human rights, labour and social security and regional integration instruments; higher order regional regulatory frameworks)?										
<b>General matters to be considered for an existing agreement</b>										

<sup>37</sup> The role of the Ministry of Interior is more active in the destination country since it is usually in charge of border control, visa entry and prevention of irregular migration.

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Is the BLMA currently being implemented?	✓	✓	✓	✓			✓	✓	✓	✓
Has any specific budget been attached to the BLMA? If yes, has it been enough for the intended purpose?	✓	✓		✓	✓	✓				
Are there other BLMAs with other countries that can be considered as a good practice and reference?	✓	✓	✓	✓				✓	✓	
Was your institution involved in the design, negotiation and monitoring of the BLMA? If yes, how?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
How were the provisions of the BLMA effective in addressing the needs of the labour market of your country in terms of labour supply?	✓			✓		✓		✓	✓	
What is the role of employers and recruitment agencies in relation to skills matching in your country?	✓			✓		✓	✓	✓		
How the protection of rights of migrant workers has been ensured, in particular for female workers?	✓	✓	✓			✓	✓	✓	✓	✓
Which of the provisions of the BLMA worked well and which did not, and why?	✓	✓	✓	✓		✓	✓	✓	✓	✓
Which measures have been adopted to prevent “brain drain” from the country of origin?	✓	✓		✓				✓	✓	
Are there any agreements with workers’ organizations in the country of origin for enhancing the protection of the rights of migrant workers?									✓	
<b>BLMA preparation</b>										

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Has consideration been given to the nature, scope and focus of migration flows between the countries, with reference to matters such as who would typically migrate, the duration of migration, whether the migration is of a regular/irregular nature and unilateral or bilateral, whether workers migrate and if so for what purpose, the education and skills levels of persons who so migrate, as well as the gendered context of migration?	✓	✓				✓				
Is there a legal, policy and/or operational framework in place informing the management of bilateral labour migration and the sending and receiving of migrant workers?	✓	✓								
Which institutions were involved in the design of the BLMA?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Is there a system of skills and qualifications recognition existing in the country of destination or origin that can inform the movement of migrant workers to the country of destination in terms of the bilateral agreement?	✓			✓		✓	✓	✓	✓	
Have a gender-responsive stakeholder analysis and needs assessment been undertaken to identify interested and needed stakeholders and their needs and views?	✓	✓				✓		✓	✓	
<b>BLMA negotiation</b>										

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Was the negotiation process conducted directly by the two negotiating delegations or prepared through the exchange of written drafts?	✓	✓								
Has an employment contract containing clear terms and conditions that comply with both the labour, social security and other laws of the country of destination and international labour and social security standards been agreed upon and, where relevant, vetted/approved by one or more government and/or other indicated institutions in the country of destination and/or country of origin?	✓	✓								
Has provision been made for decent living and work conditions, including occupational safety and health agreements and access to basic services, such as needed health care?	✓	✓		✓						
Have institutional partners with the necessary mandate in both countries been identified that should negotiate, conclude and implement the agreement, on the basis of consultation and cooperation –	✓	✓								
(a) Within the country of destination and origin respectively?; and										
(b) Between the two countries?										
In case of written proposals, how were the different stakeholders consulted before accepting them or making counterproposals?	✓	✓								

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
<b>BLMA implementation</b>										
Have the commencement date and duration of the agreement been confirmed?	✓	✓	✓							
Which changes were necessary to national legislation in order to comply with the obligations of the BLMA?	✓	✓	✓	✓						
Have permits of stay and work permits been issued rapidly? <i>Is there a fast-track system in place to issue them?</i>	✓		✓					✓	✓	
Are there any social integration programmes for migrant workers and their families, especially for newly arrived migrants that are regulated by the BLMA?	✓	✓	✓		✓				✓	✓
Is there any specific programme providing specific services or for the enhanced protection of women migrant workers?	✓	✓				✓			✓	✓
What kind of arrangement was necessary to involve local authorities holding decentralized power in the areas covered by BLMA?	✓	✓	✓			✓		✓	✓	
What procedures are available for recognizing the skills held by migrant workers (acquired through formal, informal or non-formal learning processes)?	✓	✓		✓		✓			✓	✓
What programmes exist for skills development (including to learn the language of the host country) that are available to foreign workers?	✓	✓		✓		✓			✓	✓

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Do measures and institutions, known to the worker, and established by (a) the country of destination and (b) the country of origin exist to assist the worker with advice, support, physical and mental protection and complaints, grievance and dispute resolution?	✓	✓	✓					✓	✓	✓
Has a supportive regime been developed to ensure portability of social security and other benefits?	✓	✓			✓					
Are the necessary operating systems and processes, backed by needed data exchange measures in place to implement the agreement?	✓	✓			✓	✓				
To what social security benefits are migrant workers entitled to during their stay in the country?	✓				✓			✓	✓	
Which procedures are in place in the country of origin to ensure portability of skills if/when a migrant worker may return to their country under the provisions of the BLMA?	✓	✓		✓		✓			✓	✓
What contract-related disputes between employers and employees may be activated by migrant workers?	✓	✓			✓			✓	✓	✓
Has the direct involvement of the government or other indicated intermediaries of the country of origin or/and destination in the recruitment, selection and placing of candidates been determined?	✓	✓				✓	✓			
Are migrant workers free to register in an existing worker organization or to create new ones?	✓								✓	✓

Questions	Min. Labour	MoFA	Min. Interiors 37	Min. Educ.	SSS	PES	PrEAs	Empl. Org.	Workers Org.	NGOs
Does a legal and an operational institutional framework for fair and ethical recruitment, selection and placement of candidates exist?	✓	✓								
Is there clarity regarding recruitment, placement and travel cost, cooperation between and the rights and obligations of the various parties involved?	✓	✓								
What procedures are followed at the conclusion of contracts for temporary and short-term migrants and what procedures exist for the supervision of contracts of employment	✓		✓			✓		✓	✓	
Is support given to the worker to freely use and inexpensively transmit earnings?	✓	✓								
Are measures in place to ensure that the selected candidates have complied with health, qualifications, security, insurance, language, documentary and other requirements imposed by the country of destination and if relevant the country of origin and that assistance that may be required is available?	✓	✓			✓	✓				
Is assistance given to the worker to plan their return and reintegration?	✓	✓	✓							
<b>BLMA monitoring</b>										
How many times has the Monitoring Committee of the BLMA met since the BLMA entered into force?	✓	✓								

<b>Questions</b>	<b>Min. Labour</b>	<b>MoFA</b>	<b>Min. Interiors</b> 37	<b>Min. Educ.</b>	<b>SSS</b>	<b>PES</b>	<b>PrEAs</b>	<b>Empl. Org.</b>	<b>Workers Org.</b>	<b>NGOs</b>
Have any internal or independent evaluations of the BLMA been undertaken? Are they available for consultation?	✓	✓								
What are the lessons learned from the BLMAs and how can they be useful for the design of future agreements?	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Is it agreed how often cross-border institutions shall meet to monitor and review implementation of the agreement?	✓	✓								
Does a mutually agreed framework exist to deal with disputes arising from the implementation and/or interpretation of the agreement?	✓	✓								
Is the country of origin or country of destination, or both, able to monitor and supervise the operations of recruitment agencies operating within the framework of the bilateral agreement?	✓	✓					✓	✓		
Do the countries of origin and destination have laws, mechanisms and procedures in place, in particular in relation to documentation, to enable workers to enter, reside and work, and access services, in the country of destination?	✓	✓					✓			



## ANNEX VI. Glossary of key terms<sup>38</sup>

TERM	DEFINITION
<b><i>bilateral labour agreement (BLMA) cycle</i></b>	<p>A BLMA cycle needs includes the following phases:</p> <ul style="list-style-type: none"> <li>• preparation;</li> <li>• negotiation, including signature and ratification;</li> <li>• implementation;</li> <li>• monitoring and evaluation.</li> </ul> <p>When necessary, a BLMA may be jointly modified.</p>
<b><i>bilateral labour migration agreement (BLMA)</i></b>	<p>Bilateral labour migration agreements are arrangements between two States. They 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.</p> <p>The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains in its Annex a Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons.</p>
<b><i>circular migration</i></b>	<p>Circular migration refers to temporary movements of a repetitive character across borders, either formally or informally and usually for work, involving the same migrants. While it can be distinguished from permanent migration (for settlement) and return migration (one-trip migration and return), there are nevertheless interfaces between them, with circular migration in some cases leading to permanent migration or final return. By definition, all circular migration is temporary migration.<sup>39</sup></p>
<b><i>compact</i></b>	<p>This term is most often applied to non-binding agreements among States or between nations on matters in which they have a common interest. (<a href="https://legaldictionary.thefreedictionary.com/compact">https://legaldictionary.thefreedictionary.com/compact</a>)</p> <p><i>An example:</i> the UN Global Compact, which aims to encourage businesses worldwide to mainstream 10 agreed principles in the areas of human rights, labour, environment and anti-corruption.</p> <p><a href="https://www.unglobalcompact.org">https://www.unglobalcompact.org</a></p>
<b><i>conventions and recommendations</i></b>	<p>Conventions are legally binding international treaties that may be ratified by member states</p> <p>In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation <b><i>and recommendation</i></b> supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.</p> <p><a href="https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm">https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm</a></p> <p><i>Examples of Conventions:</i> 1) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of December 1990; 2) the ILO's eight fundamental Conventions; available at:</p>

<sup>38</sup> For the purpose of this assessment tool, the following definitions provided in this glossary are used.

<sup>39</sup> See P. Wickramasekara: Circular migration: a triple win or a dead end? (Geneva, ILO, 2011).

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

*Examples of Recommendations;* 1) R086: Migration for Employment Recommendation (Revised), 1949 (No. 86); 2) R151: Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151)

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<b><i>country of destination</i></b>	<p>“A migrant’s country of destination is that to which they have changed their country of usual residence”. (United Nations, Department of Economic and Social Affairs, 1998)</p> <p>The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be; ICMW Art. 6</p>
<b><i>country of origin</i></b>	<p>“A person’s country of origin is that from which they originate, i.e. the country of his or her citizenship (or, in the case of stateless persons, the country of usual residence)”. (United Nations, Department of Economic and Social Affairs, 1998)</p> <p>The term "State of origin" means the State of which the person concerned is a national; ICMW Art. 6.</p>
<b><i>covenant</i></b>	<p>A covenant is a formal and solemn agreement. The most famous example is the Covenant of the League of Nations adopted in December 1924.</p> <p>As Treaties and Conventions, the Covenants also are binding for the signatory countries and create rights and obligations among the parties.</p> <p><i>Other examples:</i> 1) the International Covenant on Economic, Social and Cultural Rights adopted in December 1966. It commits participants to work toward the granting of economic, social and cultural rights, including labour rights and the right to health, the right to education and the right to an adequate standard of living; 2) the International Covenant on Civil and Political Rights of 16 December 1966, which entered into force in March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, the freedom of religion, the freedom of speech, the freedom of assembly, electoral rights and the rights to due process and a fair trial.</p>
<b><i>domestic work / worker</i></b>	<p>Domestic work is “work performed in or for a household or households.” (ILO Domestic Workers Convention, 2011 (No. 189), Article 1(a))</p> <p>A domestic worker is “any person engaged in domestic work within an employment relationship ... a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.” (ibid., Article 1(b) and (c))</p>
<b><i>highly skilled worker</i></b>	<p>ILO Statistics classifies two levels of highly skilled workers (level 3 and 4), in accordance with ISCO broad occupation groups. Highly skilled workers include managers (skill level 3 and 4) and professionals (skill level 4) and are broadly employed as legislators, senior officials, managers, professionals, technicians and associate professionals. “Professionals” are understood to increase the existing stock of knowledge; apply scientific or artistic concepts and theories; teach about the foregoing in a systematic manner; or engage in any combination of these activities.</p>
<b><i>gender mainstreaming</i></b>	<p>"Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming</p>

is to achieve gender equality." the United Nations Economic and Social Council (ECOSOC). Available at:  
<https://www.ilo.org/public/english/bureau/gender/newsite2002/about/defin.htm>

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**gender analysis** Collection and analysis of sex-disaggregated information. Men and women both perform different roles. This leads to women and men having different experience, knowledge, talents and needs. Gender analysis explores these differences so policies, programmes and projects can identify and meet the different needs of men and women.

UNESCO Gender Mainstreaming Implementation Framework-2003

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**ILO Fundamental Conventions** The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work:

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

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

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**ILO Multilateral Framework for Labour Migration** A set of non-binding principles and guidelines for a rights-based approach to labour migration, which were discussed and adopted by a 2005 ILO tripartite meeting of experts and approved for publication and dissemination by the ILO Governing Body in March 2006. Available at:

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_178672.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf)

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**informal employment** All jobs in informal sector enterprises, or "all persons who, during a given reference period, were employed ... in at least one informal sector unit ... irrespective of their status in employment and whether it was their main or secondary job" (*Resolution concerning statistics of employment in the informal sector*, Fifteenth Conference of Labour Statisticians, Geneva, 1993, para. 11 (1)).

All economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements" ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204 (Article 2(a)).

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**international migrant** An international migrant is a person who is living in a country other than their country of nationality. (United Nations: *International Migration Report 2017*)

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**international migration** "International migration is defined as people moving for various reasons to a country other than that of their usual residence, for a period of at least 12 months (long-term migration), so that the country of destination effectively becomes the new country of usual residence, or for a period of at least 3 months but less than a year (short-term migration)" (United Nations Statistics Division).

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**low-skilled worker** ILO Statistics classifies low-skilled workers (levels 0-2) as workers engaged in elementary occupations, in accordance with ISCO broad occupation groups. Low-skilled workers are employed in occupations that mainly "consist of simple

and routine tasks which require the use of hand-held tools and often some physical effort.” (ILO Bureau of Labour Statistics: *ISCO: Introduction to occupational classifications*)

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<b>memorandum of understanding (MoU)</b>	The term memorandum of understanding (MoU) is often used to denote a less formal international instrument than a typical treaty or international agreement. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. A MoU typically consists of a single instrument and is entered into among States and/or international organizations. For example, the United Nations usually concludes MoUs with Member States in order to organize its peacekeeping operations or to arrange United Nations conferences. (United Nations: <i>Treaty Handbook</i> , p. 68). Available at: <a href="https://treaties.un.org/doc/source/publications/thb/english.pdf">https://treaties.un.org/doc/source/publications/thb/english.pdf</a>
<b>migrant flow</b>	Migrant flow refers to the number of migrants entering or leaving a given country during a given period of time, usually one calendar year. (United Nations: <i>Handbook on Measuring International Migration through Population Censuses</i> (2017))
<b>migrant stock</b>	Migrant stock is a static measure of the number of persons that can be identified as international migrants at a given time. (ibid.)
<b>migrant worker/migrant for employment</b>	<p>Migrant for employment: “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” (ILO Migration for Employment Convention (Revised), 1949 (No. 97), Article 11; Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Article 11).</p> <p>“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” (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, Article 2(1)).</p>
<b>migration cycle</b>	<p>The process includes:</p> <ul style="list-style-type: none"><li>• preparation, including pre-departure training;</li><li>• movement/travel to the destination country;</li><li>• residence in the destination country, including any post-arrival training/activities;</li><li>• return to the country of origin.</li></ul>
<b>multilateral agreement</b>	A multilateral agreement is an agreement signed by three or more countries that becomes compulsory once ratified by the signatory parties, including treaties, conventions and compacts. Often the treaty itself specifies how many countries need to ratify it before it can enter into force. In the ILO context, Conventions enter into force after ratification by at least two parties.
<b>mutual recognition arrangement (MRA)</b>	<p>An MRA is an agreement between two or more countries to consider qualifications issued by one country as being valid in the others.</p> <p>In the ASEAN countries, MRAs exist for eight professional categories: engineers, nurses, surveying service providers, architects, accounting service providers, medical practitioners, dental practitioners and tourism professionals.</p> <p>In the EAC countries, MRAs exist for three professions (accountants, architects and engineers), while other professions, such as veterinary services, land surveyors, pharmacists and advocates, also appear interested in this skill mobility scheme.</p>

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**protocol**

A protocol is an additional legal instrument that complements and adds to a treaty. A protocol may be on any topic relevant to the original treaty and is used either to further address a specific element of the original treaty, address a new or emerging concern or add a procedure for the operation and enforcement of the treaty, such as adding an individual complaints procedure. A protocol is “optional” because it is not automatically binding on States that have already ratified the original treaty; States must independently ratify or accede to a protocol.

*Examples:* 1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) of November 2000, supplementing the United Nations Convention against Transnational Organized Crime; 2) the 2014 Protocol to the ILO Forced Labour Convention

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**ratification**

Ratification is the international act whereby a State indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all States, keeping all parties informed of the situation. The institution of ratification grants States the necessary time frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. (Vienna Convention on the Law of Treaties of 1969, Articles 2 (1) (b), 14 (1) and 16)

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**regional economic communities (RECs)**

Africa's RECs include the following eight sub-regional bodies, which are the building blocks established in the Treaty establishing the African Economic Community (Abuja Treaty) of 1991, which provides the overarching framework for continental economic integration:

- Common Market for Eastern and Southern Africa (COMESA);
- Intergovernmental Authority on Development (IGAD);
- East African Community (EAC);
- Economic Community of Central African States (ECCAS);
- Economic Community of West African States (ECOWAS);
- Southern African Development Community (SADC);
- Arab Maghreb Union (AMU);
- Community of Sahel-Saharan States (CEN-SAD).

(<http://www.un.org/en/africa/osaa/peace/recs.shtml>)

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**return migrants**

Return migrants are persons who have returned to their country of citizenship after being (short-term or long-term) international migrants in another country and who are intending to stay in their own country for at least one year. (United Nations Statistics Division, 1998)

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**seasonal workers**

A seasonal worker is “a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year” (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2(b))

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**temporary migrants**

Temporary immigrants are seasonal workers, international students, service providers, persons on international exchange, etc.” (ILO: *Addressing governance challenges in a changing labour migration landscape*, Report IV, International Labour Conference, 106<sup>th</sup> Session, Geneva, 2017, para. 21)

Migration of workers who enter a foreign country for a specified limited period of time before returning to the country of origin. (IOM Glossary on Migration 2011)

***trafficking in persons  
(including migrants)***

Trafficking in persons is “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol), Article 3(a))

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***treaty***

A treaty is the most common international agreement among States. While other international agreements may have as signatories also international organizations, a treaty is specific to agreements among States.

*Examples:* 1) Treaty establishing the European Economic Community (Treaty of Rome), signed on 25 March 1957 by Belgium, France, Italy, Luxembourg, the Netherlands and former West Germany; 2) Treaty establishing the Common Market for Eastern and Southern Africa, signed on 5 November 1993 in Kampala, Uganda; it entered into force on 8 December 1994; 3) Agreement establishing a Tripartite Free Trade Area between the COMESA, the SADC and the EAC, signed on 10 June 2015 at Sharm el-Sheikh, Egypt (United Nations Treaty Collection; available at: <https://treaties.un.org/>)

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## ANNEX VII. Model terms of reference for the Joint Monitoring Committee of a Bilateral Labour Migration Agreement

### Functions

- Ensure smooth implementation of the Bilateral Labour Migration Agreement (BLMA) through the correct interpretation of clauses that may present a wide range of options for action;
- Resolution of disputes between the parties;
- Monitor and evaluate the effectiveness of BLMA provisions and suggest amendments and improvements on the basis of lessons learned;
- Provide advice to contracting authorities for any necessary modifications and adaptation of the BLA.

### Objectives

- Monitor and review the implementation of the BLMA, using appropriate indicators and methodologies;
- Identify issues and agree joint solutions concerning the implementation of the BLMA;
- Collect and disseminate good practices for BLA implementation;
- Conduct interviews with the social partners, the international community (e.g. UN Agencies, EU) and civil society organizations in order to evaluate the implementation of the BLMA and collect suggestions for the improvement of bilateral cooperation in the field;
- Disseminate BLMA monitoring and evaluation reports.

### Membership and Chairperson

Membership is usually defined by the BLMA and should include senior representatives of each of the signing authorities. The Ministry of Labour should be included, even if it has not been the signing authority, given that the issue covered is employment and labour migration. The Committee may wish to expand its membership to include representatives of other line ministries and implementing agencies and social partners. Gender balance should be taken into account.

The Committee will be chaired, on an annual basis, by the highest-ranking member of the signatory authority of a given country. At the inception of the activity of the Committee, the Chairperson will be agreed to be from the origin or destination country, which will also host the meetings held over the following year. At the end of the year, the position of Chairperson will be taken over by the other country, which will also host the related meetings.

Any expenditure necessary for participation in the Joint Monitoring Committee will be covered by each country for its own representatives.

Any other expenditure linked to the organization of meetings will be covered by the country which is currently chairing the Committee.

## **Operational modalities**

Meetings will be normally held every six months. The Chairperson will send invitations to members detailing the venue, time and agenda of forthcoming meetings.

To reduce the financial burden, the Committee may wish to hold a videoconference instead of a physical meeting.

The minutes of each meeting, including those held by videoconference, should be circulated among members and endorsed.

## **Secretariat**

The country acting as Chairperson will also be responsible for providing secretarial support, including:

- assisting the Chairperson in the organization of meetings;
- circulating meeting invitations;
- organizing meetings in terms of venue, catering and interpretation;
- organizing videoconferences, as appropriate;
- drafting meeting minutes, including for videoconferences;
- keeping a record of endorsed minutes.



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