

# Bilateral Labour Migration Agreements in African Union Member States: taking stock and the way forward

*Based on research and tools jointly produced by the International Labour Office and the International Organization for Migration*

## Towards Global Guidance on Developing and Implementing Bilateral Labour Migration Agreements : Unpacking Obstacles to Implementation in the African Region

The joint ILO-IOM project built on the complementary strengths and experiences of the two organizations to develop regionally relevant analysis, guidance, and capacity development tools on bilateral labour migration agreements (BLMAs) in Africa. The project's objectives were to enhance the capacity of governments of the African Union and other stakeholders, including social partners, to develop and implement effective BLMAs, as well as to take steps towards developing comprehensive guidance on bilateral arrangements grounded in country experiences. In doing so, the project has contributed to labour migration governance objectives and targets embodied in the Global Compact on Safe, Orderly and Regular Migration, the Sustainable Development Goals, the African Union's Agenda 2063, and the AU Revised Migration Policy Framework for Africa.

### SETTING THE SCENE

In recent decades, labour migration dynamics in and from Africa have evolved rapidly. Underlying drivers, such as demographic pressures, labour market imbalances, and income differentials are expected to continue to drive labour migration across the region. At the same time, the development of new and more complex migration routes, together with a growing private recruitment sector, and rising demand from other regions for temporary migrant workers in poorly regulated sectors such as agriculture, construction, domestic work, and other service-sector jobs, represent some of the key challenges to labour migration governance.

Bilateral labour migration agreements (BLMAs) can provide concrete means to improve the governance of labour migration and strengthen the protection of migrant workers based on shared responsibility,

when they are solidly underpinned by international human rights and labour standards and effectively implemented. Yet, experiences with BLMAs have often fallen short of these expectations. Previous ILO and IOM research<sup>1</sup> indicate that the contents of BLMAs in Africa are often deficient, particularly in regard to provisions on gender, social dialogue, wage protection measures, and skills recognition, among others.



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<sup>1</sup> See Wickramasekara, P. (2015) Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review, International Labour Office, Geneva.; and IOM, (2016), Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community, Maputo, Mozambique.

BLMAs are not new in Africa, but have experienced a resurgence since the 1990s. These agreements vary widely in their objectives, scope, and level of formality, but recent agreements can be broadly categorized as follows: (1) broad framework cooperation agreements with European countries, covering a range of issues in addition to labour migration, including readmission, return, technical cooperation and development; (2) BLMAs either in the form of MOUs or BLAs, with Arab States to meet demand in low-skilled sectors such as domestic work and construction; and (3) BLMAs between African countries to fill specific skills gaps, such as in education and health, as well as in labour-intensive sectors such as mining, as in South Africa. Other forms of bilateral and multilateral cooperation in place in Africa can potentially impact the conditions of labour migration and employment abroad. These include international trade agreements, skills recognition frameworks, social security agreements, and trade union cooperation agreements.

Based on the assessment methodology described below, the ILO and IOM reviewed existing challenges and practices in selected countries in Africa, and developed regionally relevant recommendations for achieving better outcomes with BLMAs.

### Box 1.

#### What are bilateral labour migration agreements?

Bilateral labour migration agreements (BLMAs) refer to cooperation frameworks between countries of origin and destination to ensure that labour migration is regulated according to agreed principles and procedures.

The most frequently used formats in Africa are bilateral labour agreements (BLAs) and Memoranda of Understanding (MOUs), but they also include Framework Agreements and Cooperation Agreements, among others.

BLAs create legally binding rights and obligations governed by international law and describe in detail the specific responsibilities of, and actions to be taken by, each of the parties to accomplish their goals.

MOUs are usually non-binding frameworks which may be more general in content, referring to broad principles of cooperation, concepts of mutual understanding, goals, and plans shared by the parties.

Framework agreements may cover a broad range of migration topics in addition to labour migration, such as irregular migration, readmission, and development cooperation.



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## ASSESSMENT TOOL FOR BILATERAL LABOUR MIGRATION AGREEMENTS

The ILO and IOM have developed a BLMA assessment tool tested in two migration corridors in Africa, which can be further tested and adapted for use in other regions. The tool is intended for use by governments of origin and destination countries, as well as other stakeholders including employers' and workers' organizations, and experts from regional and international organizations. It guides users in core elements and issues to address in BLMA design and implementation, and in identifying existing gaps, challenges, and good practices to improve existing agreements. The tool can also provide guidance for preparing new BLMAs, as it provides practical checklists for each step of the development and implementation cycle, and ready-to-use data collection tools.

The assessment tool describes the various phases of the BLMA process:



**(1) Preparation and drafting:** Successful preparation of BLMAs requires data on labour market and migration dynamics from both countries of origin and destination. Quantitative and qualitative analyses of available and needed skills and workers, existing employment and migration laws and policies, and of gender issues affecting equal opportunities to labour market access are relevant to consider during preparations. Data for the preparatory analyses can be drawn from existing statistical and administrative data sources such as embassies and consular services abroad, labour force surveys, immigration and border authorities, as well as through public employment services and private recruitment agencies, social partners, and NGOs.

The contents of the BLMA should reflect the principles and protections contained in internationally recognised human rights instruments and relevant international labour standards. The [ILO Model Agreement](#), annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) can serve as a key reference for assessing the quality and comprehensiveness of the contents.

**(2) Negotiation:** The negotiation phase should be managed by a delegation consisting of high-level officials and technical experts with a mandate to negotiate on behalf of the State. The delegation should include representatives from several line ministries, including ministries of labour, foreign affairs, migration (where they exist), and other line ministries (e.g. ministries of justice, interior, education, health, youth, and gender). Negotiation may progress through direct meetings of the two parties' delegations or through exchange of drafts until a common understanding is reached. However, it is advisable that one or more face-to-face meetings take place between the two delegations, given the importance of the issue.

**(3) Implementation and accompanying measures:** Aligning the BLMA with new and/or existing legislative and regulatory frameworks will be key to its operationalization. Responsibilities for implementation at national, regional, and local levels should also be clearly delineated. While the ultimate responsibility for implementation of BLMAs lies with the State, social partners and civil society organisations can also play key roles in ensuring that the BLMA accurately reflect labour market needs and provides the necessary protection and support services to migrant workers.

**(4) Monitoring and evaluation:** BLMAs should include clear provisions for monitoring implementation of the agreement, such as through joint committees. In addition to monitoring, these committees can be tasked with joint interpretation of text, proposal of amicable solutions to disputes and suggested amendments. In parallel to joint monitoring committees, each country may draw on a network of government institutions such as embassies and consulates, including labour attachés, as well as social partners and civil society actors to monitor decent working conditions of migrant workers unilaterally.

Given the dynamic nature of labour markets and potential for changes in the wider context, to ensure that a BLMA remain relevant, there should be scope for making periodic revisions or updates to the agreement.

## PRELIMINARY RECOMMENDATIONS FOR MORE EFFECTIVE BLMA DEVELOPMENT AND IMPLEMENTATION

These initial findings and recommendations are drawn from assessments of two labour migration corridors, one intra-African and one Africa-Europe. They also reflect consultations with other labour migration stakeholders in Africa on country experiences in developing BLMAs.

- **Conduct a preliminary assessment to inform BLMA design.** A preliminary assessment allows each party to collect relevant labour market and migration data and reflect on how BLMAs contribute to overarching development objectives, as well as on how these agreements fit into broader policy areas of labour migration, employment, education and training. This assessment exercise can contribute to greater effectiveness and coherence of resulting BLMAs. [IOM Migration Profiles](#) can serve as a useful methodological tool for the analysis of national and regional migration trends, and [IOM Migration Governance Indicators](#) can improve understanding of the effectiveness of current migration policies and relevant institutional frameworks.
- **Align BLMAs with applicable international standards.** In formulating BLMAs, governments should be guided by the underlying principles of human rights and [ILO standards](#) relevant to migrant workers. These include not only the specific ILO migrant workers instruments, but also those relating to fundamental principles and rights at work, violence and harassment, wages and working time, employment, social security or occupational safety and health, as well as those applying specific categories or sectors such as domestic work, agriculture or construction. Together with the UN Convention on the Protection of the Rights of Migrant Workers and their Families ([ICPMW](#)), these instruments provide for a robust and comprehensive framework for the protection of the rights of migrant workers, including equality of treatment.

- **Address gender-specific issues within BLMAs.** In light of the increasing share of women migrant workers employed in the care sector, including domestic work, there is a pressing need to address gender-related issues in BLMAs. A number of African countries have sought to conclude BLMAs specific to domestic workers in order to address rights and protection which may not be covered under national legislation. While a positive step, such agreements are not in themselves guarantees of greater protection. Care should be taken to ensure that BLMAs do not reinforce existing gender inequalities and occupational segregation. Special attention is needed when negotiating and determining wages for occupations where migrant women predominate, to ensure that rates of remuneration are fixed on the basis of objective criteria, free from gender bias.
- **Integrate provisions for mutual skills and qualifications recognition.** Mechanisms for mutual skills and qualifications recognition facilitating portability of skills, either in bilateral or multi-lateral arrangements, are essential to ensuring that countries of origin and destination have a common understanding of skills requirements to fill vacancies to improve skills matching. Greater attention to skills recognition can also potentially reduce “deskilling” of migrant workers in destination countries, and allow them to better leverage skills and qualifications acquired abroad upon return or re-migration.



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- **Ensure effective inter-governmental coordination mechanisms are in place.** To ensure cross-sectoral policy coherence, strengthening existing or introducing cooperation and coordination mechanisms may be necessary. These mechanisms would enhance the inclusion of all relevant stakeholders in BLMA development, implementation and follow-up. This also accounts for coordination across ministries connected to BLMAs such as migration, labour, education, and social protection.
- **Operationalize mechanisms for regular monitoring.** Regular monitoring of labour market and migration contexts, as well as joint mechanisms to monitor implementation and make adjustments as needed can contribute to keeping arrangements relevant and operational. During the negotiation and drafting phases, detailed procedures for joint monitoring committees should be developed, which can include annexing terms of reference, defining cost-sharing arrangements, and establishing work plans and regular meeting schedules. In addition to bilateral monitoring, each Party can conduct individual assessments of agreements and then share the results.
- **Involve social partners in preparations, implementation, and monitoring of BLMAs.** Employers' and workers' organizations can assist in the preliminary identification of skills gaps and surpluses relevant for the design of BLMAs. Once agreements are concluded, they can also contribute to disseminating them and building public acceptance for their provisions, and monitoring working conditions. Trade unions can support linkages with migrant workers organisations, resource centres, human rights organizations and other concerned civil society groups to ensure their inclusion and engage in bilateral partnerships with trade unions in countries of origin or destination. [The ILO ACTRAV Model Trade Union Agreement on Migrant Workers' Rights](#) can be used as a template to formalize this type of cooperation.
- **Encourage transparency and access to information by publishing and widely disseminating BLMAs.** Once BLMAs are concluded, they should be disseminated widely to ensure that key stakeholders, including recruitment actors, social partners, and migrant workers themselves, are aware of their contents and implications. Providing easy access to concluded arrangements, for example through government websites, can also facilitate their use as reference points for other countries seeking to initiate bilateral negotiations to establish similar arrangements with a given country, and encourage greater transparency in negotiations.
- **Strengthen institutional and regulatory frameworks for fair and ethical recruitment.** Solid institutional and regulatory frameworks for fair and ethical recruitment and efficient placement of qualified candidates are key to instilling confidence in BLMA-facilitated recruitment channels among both employers and workers, which can also potentially reduce the use of unregulated recruitment channels. This may require capacity building of regulatory bodies, as well as both public employment services and private recruitment agencies. The [ILO General principles and operational guidelines for fair recruitment](#) as well as the [IOM's International Recruitment Integrity System \(IRIS\)](#) can assist countries, social partners, labour recruiters and other key stakeholders in developing effective labour recruitment policies and practices, based on internationally recognized human rights and labour standards.



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- **Continue to supplement BLMAs with accompanying measures to protect migrant workers abroad.** As has been found elsewhere, effective protection depends on multiple factors beyond the scope of BLMAs, including labour legislation and enforcement mechanisms. Whereas countries of origin may have limited capacity to modify labour legislation abroad, in parallel to concluding BLMAs, African countries of origin have initiated a number of unilateral measures to protect their workers. These include establishing welfare funds and emergency housing for migrant workers, extending social protection to their workers abroad, posting labour attachés in embassies of destination countries to monitor worker protection issues, and developing compulsory and gender responsive pre-departure orientation and training programmes for migrant workers.



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- **Utilize regional mechanisms to develop common positions on BLMAs.** Sub-regional and regional frameworks such as at the African Union, Regional Economic Communities, and Regional Consultative Processes, can serve as fora to share information and consult on BLMAs. Countries can also seek to develop common regional positions to ensure rights-based agreements on the basis of equality of treatment and opportunity among all workers, and to avoid unfair competition between neighbouring countries on the basis of lowering rights standards, wages or labour protections.

- **Build bridges with migrant rights' associations and civil society.** Migrant associations and rights protection civil society groups are also instrumental in providing support to migrant workers. They often have the trust of migrants, and can provide important information to governments on the actual conditions of migrant workers, their migration related challenges as well as disseminate information to migrants themselves. Diaspora organizations could also potentially be consulted during BLMA preparations and follow-up.
- **Ensure inclusion of BLMAs in global, regional and national development frameworks, and action plans, supported by the UN.** To build further basis for policy advice on labour migration, decent work and human mobility, BLMAs should be included into global, regional and national development frameworks and action plans supported by the UN. This can include mainstreaming BLMA-related work into United Nations Sustainable Development Cooperation Framework (UN-SDCF) and similar frameworks at national levels, and mapping relevant frameworks and institutions which could benefit from further support, such as regional economic community secretariats, regional consultative processes, and stakeholders such as NGOs and the private sector.

## AREAS FOR FURTHER WORK AND COOPERATION

### Building the knowledge base

Given the broad range of bilateral labour migration agreements and the variety of contexts to which they are applied, further research is needed to build a more representative knowledge base on current practices. Additional case studies are needed to monitor the implementation of BLMAs in other regions. Further case studies from Africa, including those concerning feminized flows and migrant women in specific categories of care occupations, are also needed to build a fuller picture and contribute to the development of global guidance. This includes assessing their impacts on the terms and conditions of employment and migrant workers' protection, including recruitment practices, as well as how they affect policy, legal, and regulatory frameworks at both national and regional levels.

## Technical assistance

Countries across the globe are increasingly approaching both ILO and IOM for assistance and support on BLMAs. Areas to strengthen assistance can include:

- ◇ Continued technical assistance to governments and stakeholders in drafting, negotiating, and implementing BLMAs, with particular attention to multi-stakeholder negotiation approaches, improving skills anticipation, matching and portability, social protection, fair and ethical recruitment practices, and attention to gender equality;
- ◇ Tailor technical assistance to strengthen monitoring and implementation mechanisms. This would include both building the knowledge base of effective enforcement practices and other practical measures to ensure the protection of migrant workers' rights, as well as capacity building for authorities and social partners involved in monitoring and implementation.
- ◇ Support to intragovernmental cooperation and "whole of society" approach to labour migration governance to ensure effectiveness and policy coherence, as well as further coherence on the intergovernmental level to maximize the effectiveness of the BLMAs;
- ◇ Capacity development on recruitment practices for public employment services and private recruitment agencies, as well as government institutions, including labour attachés involved in monitoring BLMA implementation. This can include the development, adaptation and dissemination of practical tools such as assessment-methodology and e-learning toolkit, as well as offering regular regional training courses;
- ◇ Facilitation greater social dialogue and strengthening social partner, migrant association and civil society capacity to participate more substantially in all BLMA phases;
- ◇ Assessment of existing bilateral and multilateral agreements on skills recognition and reintegration measures to identify good practices and policy lessons, to be used then for designing new BLMAs, or improving existing ones, and to identify good practices in relation to sustainable labour market reintegration;
- ◇ Elaboration of further capacity development tools and training, in addition to rolling out existing on-line and existing training courses on BLMAs. This can involve broadening access to training on BLMA development and implementation in regions with a strong interest, including by offering tailor-made trainings at national and regional levels and through existing projects.
- ◇ Capacity development for identification of occupational profiles for labour migration, along specific migration corridors, with the participation of the social partners, in order to design adequate and gender responsive pre-departure occupation-specific training and facilitate labour market integration of both men and women migrants in destination countries;
- ◇ Technical assistance on aligning occupational profiles to directives or frameworks from the RECs to ensure coherence and facilitate mobility. The assistance could also include development of bilateral arrangements with other members of the REC in order to make this mobility effective in terms of implementation;
- ◇ Development of capacity of the governments in migration-related data collection and analysis and use of best practices to inform labour migration policy development, such as Migration Governance Indicator and Migration Profiles. Such capacity development initiatives may further be elevated to bilateral and multilateral level to further inter-government cooperation on labour migration and development and implementation of BLMAs;
- ◇ Assistance to regional economic communities in developing common positions on BLMAs based on relevant international instruments to ensure that Member States are in a position to conclude rights-based arrangements on the basis of equality of treatment and opportunity among all workers;
- ◇ Building on initial findings in the framework of the joint ILO-IOM project, and existing expertise and experiences, develop comprehensive global policy guidance on BLMAs, based on the international and regional standards, interstate regional mobility agreements and the Global Compact for Migration. The UN Network on Migration can provide a platform for establishing a sustainable multi-stakeholder mechanism for providing enhanced and coherent guidance for governments and partners on BLMAs.

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