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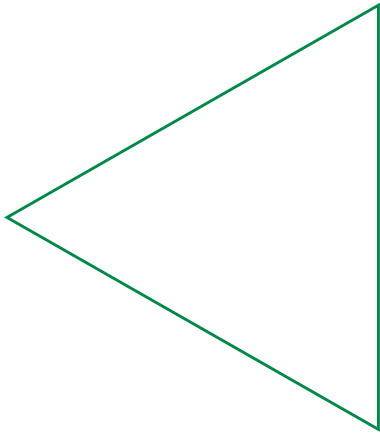
PEACE, PROSPERITY AND
REGIONAL INTEGRATION



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► *Background Report:*
**IGAD Regional Guidelines
on Rights Based Bilateral
Labour Agreements
(BLAs)**





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**IGAD Regional Guidelines
on Rights Based Bilateral
Labour Agreements
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Background Report: IGAD Regional Guidelines on Rights-Based Bilateral Labour Agreements (BLAs)

Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility

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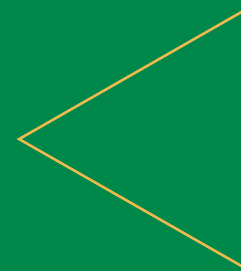
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► ABBREVIATIONS AND ACRONYMS

BLA	Bilateral Labour Agreement
CEACR	Committee of Experts on the Application of Conventions and Recommendations
COVID-19	Coronavirus disease (COVID-19), caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
EAC	East African Community
FESTU	Federation of Somali Trade Unions
FKE	Federation of Kenya Employers
FMPT	ILO Project on Free Movement of Persons and Transhumance in the IGAD Region
GCC	Gulf Cooperation Council
GCM	Global Compact for Safe, Orderly and Regular Migration
GDP	gross domestic product
GIZ	German Corporation for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)
GMPA	Global Migration Policy Associates
GNI	gross national income
HDI	Human Development Index (United Nations Development Programme)
IDPs	internally displaced persons
IGAD	Intergovernmental Authority on Development
IOM	International Organization for Migration
KNOMAD	Global Knowledge Partnership on Migration and Development
MOLPSHRD	Ministry of Labour, Public Service and Human Resource Development [South Sudan]
MOU	memorandum of understanding
PPP	purchasing power parity
REC	regional economic community
SEC	standard employment contract
TVET	technical and vocational education and training
UAERA	Uganda Association of External Recruitment Agencies
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs

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It is authored by Patrick Taran and Piyasiri Wickramasekara, assisted by Olga Kadysheva and Marubini Muswede of GMPA.

The research and preparation of this report were made possible through the generous sharing of knowledge, information and perspective by officials of ministries and agencies of the governments of Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda; by executives of the national employers' organizations and national trade union federations of these seven IGAD member countries; by representatives of civil society organizations and private recruitment agency associations; and by migrant workers. Officials of the IGAD Secretariat, the ILO, the International Organization for Migration, the EU Delegation to Djibouti and IGAD, and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) also contributed significantly. A full list of the 130 persons consulted in person is provided in an annex to this report.

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► FOREWORD

Migration for employment has for centuries been a feature of what today constitutes the IGAD region. While overshadowed in recent decades by forced internal displacement and refugee flight, millions of nationals of IGAD member countries are currently migrant workers in other IGAD countries, elsewhere in Africa, across the Middle East, in Europe and in North America – many having migrated with family members. Best estimates referred to in this report indicate that at least 1.5 million migrants from IGAD member countries were in the Middle East, including in Gulf Cooperation Council countries, in 2019.

However, as this report documents, many migrant workers from IGAD countries and their family members have faced exploitative conditions; abuse; violations of human rights, including labour rights; and poor working and living conditions in countries of residence and employment.

Multilateral instruments, such as international labour standards, together with bilateral labour agreements (BLAs) have long been recognized as complementary means of enhancing the protection of migrant workers and the governance of migration. The ILO and its supervisory bodies have emphasized the added value of BLAs to the extent they are in line with international labour standards. ILO supervisory bodies emphasize the role that BLAs can play to ensure that migrant workers benefit from protections in ILO Conventions and Recommendations.

Most IGAD member countries have ratified a number of relevant ILO Conventions, and most have engaged in BLAs with various destination countries to enhance employment opportunities abroad and to promote acceptable decent working conditions for their nationals abroad.

However, BLAs have not usually resulted in improving the protection of migrants' rights or decent working and living conditions, due in part to unequal negotiating power between origin and destination countries and lack of monitoring and implementation of agreements. This has led to different origin countries in IGAD being offered differing (and usually low) levels of protection and working conditions for migrant workers from some destination countries.

This highlights the need for assistance to IGAD Member States for effective development, negotiation and implementation of bilateral agreements for labour deployment consistent with full respect for and protection of migrant rights. African Union migration policy frameworks and the IGAD Regional Migration Policy Framework have called for a united approach on labour migration and on negotiating and implementing BLAs in line with international legal frameworks on human and labour rights of migrant workers.

IGAD Member States have made specific requests to the ILO and IGAD to support them in developing regional guidelines and a common position on BLAs. The joint FMPT Project mobilized the expertise of Global Migration Policy Associates (GMPA) to research and produce this technical Background Report to support the development of IGAD Regional Guidelines on Rights Based approach to BLAs. Together with the IGAD Regional Guidelines for a Rights-Based Approach to BLAs, this Background Report offers a comprehensive foundation for the elaboration of an IGAD common approach to negotiating and implementing BLAs. This study outlines key challenges, opportunities, good practices, and contextual factors on labour migration governance and designing, negotiation, implementation, monitoring and evaluation of BLAs in the IGAD Region.

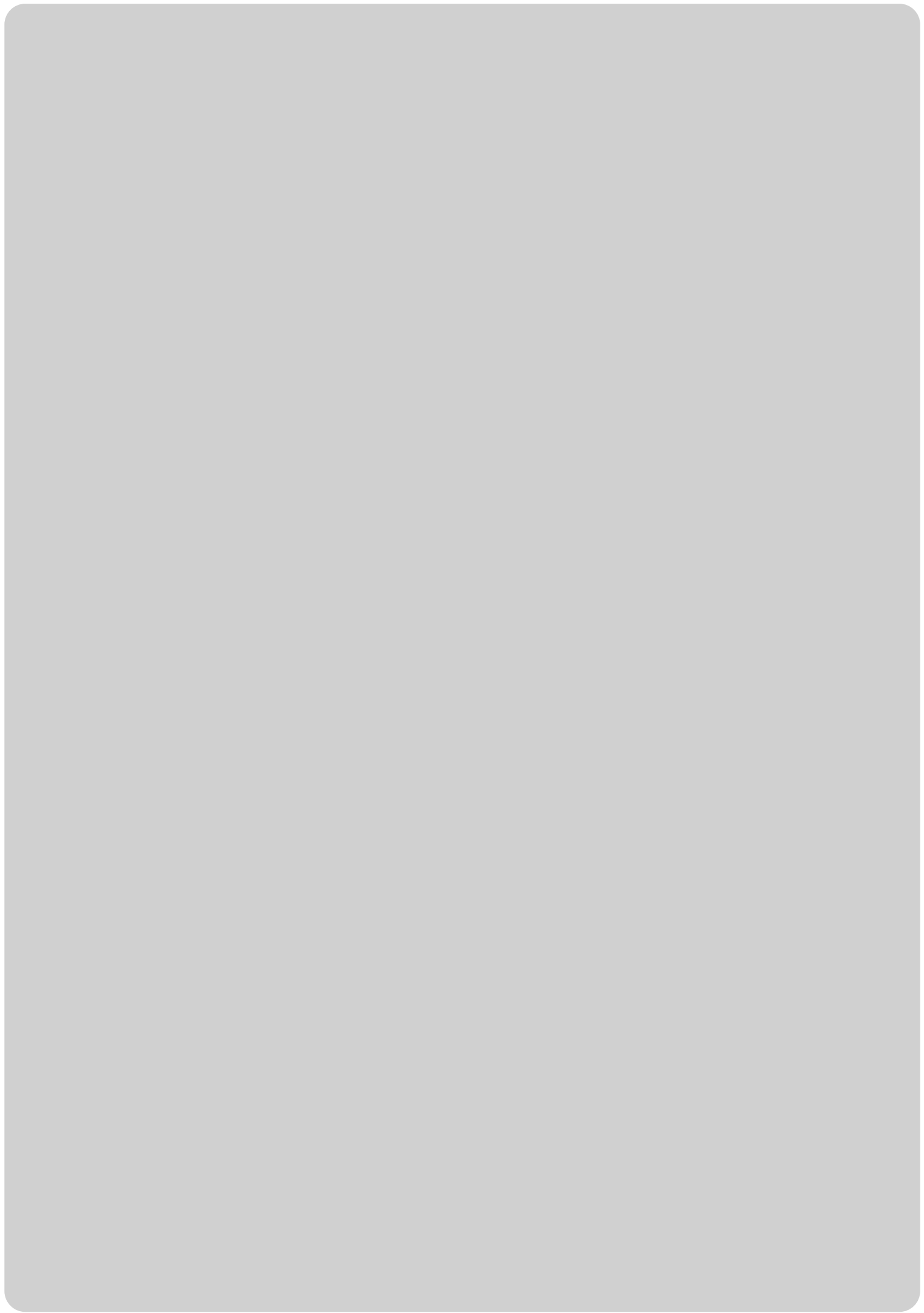
We hope that this report will serve as a solid foundation to agree, realize and implement a common approach on BLAs by IGAD Member States and tripartite constituencies.



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1

**Introduction:
Context and
background**

Development imperatives, regional integration and the need for labour and skills mobility have made migration an urgent challenge across Africa. The Revised African Union Migration Policy Framework, for example, highlights that “migration is a major issue in the 21st Century and therefore poses certain social, economic and political challenges for policymakers engaged in the management of migration for the betterment of the continent” (African Union Commission 2018, 16). Much of contemporary African migration is within the African Union and African regional economic communities (RECs). The Intergovernmental Authority on Development (IGAD) is an REC of eight Member States – Djibouti, Ethiopia, Eritrea (suspended since 2007), Kenya, Somalia, South Sudan, Sudan and Uganda – that have experienced significant migration. Governments in the IGAD region are increasingly aware of the opportunities and challenges associated with migration for employment.

Multilateral and bilateral agreements have been recognized as means of enhancing governance of migration for employment and protection of migrant workers (ILO 2016). Most IGAD Member countries have engaged in bilateral labour agreements (BLAs) with some destination countries, seeking to enhance employment opportunities abroad, regulate labour migration flows, and improve working conditions for their nationals abroad.

This technical background paper forms part of a broader study aimed at developing rights-based guidelines for BLAs for the IGAD region – an

initiative of the ILO Technical Cooperation Project on Free Movement of Persons and Transhumance (FMPT) in the IGAD Region. This report is partly based on a field mission to selected IGAD countries and on virtual consultations with two other countries to obtain first-hand information on their perspectives and practical experiences with BLAs.

The report starts with a brief analysis of the context, followed by a description of the objectives and methodology of the study in Chapter 2. Chapter 3 offers a normative framework for labour migration and BLAs. Chapter 4 then presents a profile of the IGAD countries and discusses the migration challenges faced by them. This is followed by an analysis of the specific challenges faced by the IGAD countries in relation to BLAs (Chapter 5). Chapter 6 provides an assessment of selected IGAD bilateral arrangements in relation to their core structures and good practice/provision criteria. It also reviews associated standard employment contracts for coverage and quality. Chapter 7 highlights emerging good practices in BLAs and lessons learnt. The final chapter presents overall conclusions and brief recommendations. This report provided background and the evidence base for adoption by the IGAD Ministerial Meeting in Djibouti October 2021 of the common approach “IGAD Guidelines for a Rights-Based Approach to BLAs.” The two complementary documents provide comprehensive guidance on BLAs for IGAD member States and tripartite constituencies.

► 1.1. MIGRATION CHALLENGES AND OPPORTUNITIES FOR IGAD

Regional integration facilitates mobilization of human resources, capital, material resources, technological capacities, and larger markets across groups of countries (ILO 2017a; Taran 2011). Much of contemporary African migration is within the African Union and RECs, although Africa has long experienced emigration to other regions, particularly to former European colonial countries – Belgium, France, Portugal, the United Kingdom of Great Britain and Northern Ireland, and others – and increasingly

over the last decade to the Middle East region. Eighty per cent of migration originating in West Africa goes to other member countries of the Economic Community of West African States, and on average, more than half of East African Community (EAC) emigrants are in another EAC country; while another 20 per cent are in an African country outside the EAC (Alper et al 2016). Free movement of persons is a functional reality for the three EAC member countries that also part of IGAD.

Most IGAD countries are at the same time origin, transit and destination countries for migrants and migrant workers. For example, Djibouti is a major transit point as well as a destination country for both skilled and low-skilled workers. Somalia and South Sudan attract foreign workers at all skill levels, especially skilled workers for infrastructure and for their respective telecommunications and petroleum sectors.

While several IGAD member countries have experienced strong economic growth in recent years, all have been struggling to create decent work opportunities for workers, including large numbers of young people entering the labour force each year (ILO 2020h). “A ‘vicious circle’ of limited access to education and adequate training, low wages and low-productivity jobs and lack of basic protections leave many youth and workers excluded from fully participating in economic growth and development” (ILO 2019a).

Labour and workforce demand in neighbouring countries or further abroad offer access to formal employment, higher wages and new skills, and thereby complementary opportunities for employment that domestic economies and labour markets are unable to provide. Women from some IGAD countries have found increasing opportunities for employment abroad due to rising demand for domestic workers and other forms of care work, especially in Middle East countries.

However, employment abroad is fraught with risks, notably of abuse and exploitation. Opportunities and demand for migrant workers from IGAD countries tend to be in agriculture, construction, domestic work, health and other care work, garment manufacturing and other

low-skilled services, sectors characterized by inadequate protections and the absence of regulations, monitoring and labour inspection. This is particularly the case in Middle East countries. Serious decent work deficits are experienced by migrant workers, especially women migrant workers employed in private households and those in irregular situations (ILO 2020h; Atong, Mayah, and Odigie 2018).

The drive for international migration in IGAD is integrally linked with national economic and social development, with employment, with education and training, and with regional integration. Ultimately, migration involves protecting rights as well as advancing the socio-economic conditions and welfare of all workers including migrant workers.

IGAD and its member countries are elaborating mechanisms to govern migration for employment. Kenya and Uganda have ratified international Conventions on migration governance. Ethiopia, Kenya and Uganda are revising national legislation to enhance protection of migrant workers (ILO 2020h). Ethiopia and Kenya are formulating national labour migration policy frameworks, while Djibouti, Sudan and Uganda have indicated intentions to do so. IGAD ambassadors endorsed a regional Protocol on Free Movement of Persons in February 2020 (IGAD 2020a; IGAD 2020b).

The Ministers of Labour of all EAC and IGAD countries have called for a united approach on labour migration, for effective labour migration policy development, and for drafting, negotiating and implementing BLAs “acting in line with international legal frameworks on human and labour rights of migrant workers” (Regional Ministerial Forum 2020).

► 1.2. IGAD AND BILATERAL LABOUR AGREEMENTS

Multilateral and bilateral agreements have long been recognized as means of enhancing governance of migration for employment and protection of migrant workers (ILO 2016; Wickramasekara 2015; African Union Commission 2019a). The ILO and its supervisory bodies have pointed to the

potential added value of BLAs to the extent they are in line with international labour standards. ILO supervisory bodies emphasize the role that bilateral agreements can play to ensure that migrant workers benefit from protections in ILO Conventions and related Recommendations (ILO 2016, para.163).

The revised African Union Migration Policy Framework for Africa recommended “the creation of accountable labour recruitment and admission systems, and the promotion of standardised bilateral labour agreements to ensure the protection of migrant workers and facilitation of remittance transfers” (African Union Commission 2018, 10–11.) The IGAD Regional Policy Framework on Migration called for “bilateral and multilateral efforts aimed at strengthening co-operation on regular labour migration and intended to reduce irregular migration and its inherent dangers” (IGAD Secretariat 2012, 28).

Most IGAD member countries have engaged in BLAs with some destination countries, seeking to enhance employment opportunities abroad and to regulate labour migration flows and improve working conditions for their nationals abroad.

Yet ILO research indicates that BLAs have not consistently resulted in improving migration governance and migrant protection (Wickramasekara 2015). The unequal negotiating power between origin and destination countries and poor follow up and implementation of agreements are major factors. This may lead to different origin countries being offered different levels of protection and working conditions for migrant workers by destination countries.

Several IGAD countries have at times adopted unilateral measures such as bans and restrictions on migration to countries where extensive abuses were reported. However, it appears that such bans result in more people migrating through irregular channels, often with recourse to migrant smuggling. Some migrants may end up becoming victims of trafficking and facing greater abuse and exploitation. Bans disproportionately impact certain groups of migrant workers, and therefore, impede equality of opportunity, particularly between men and women.

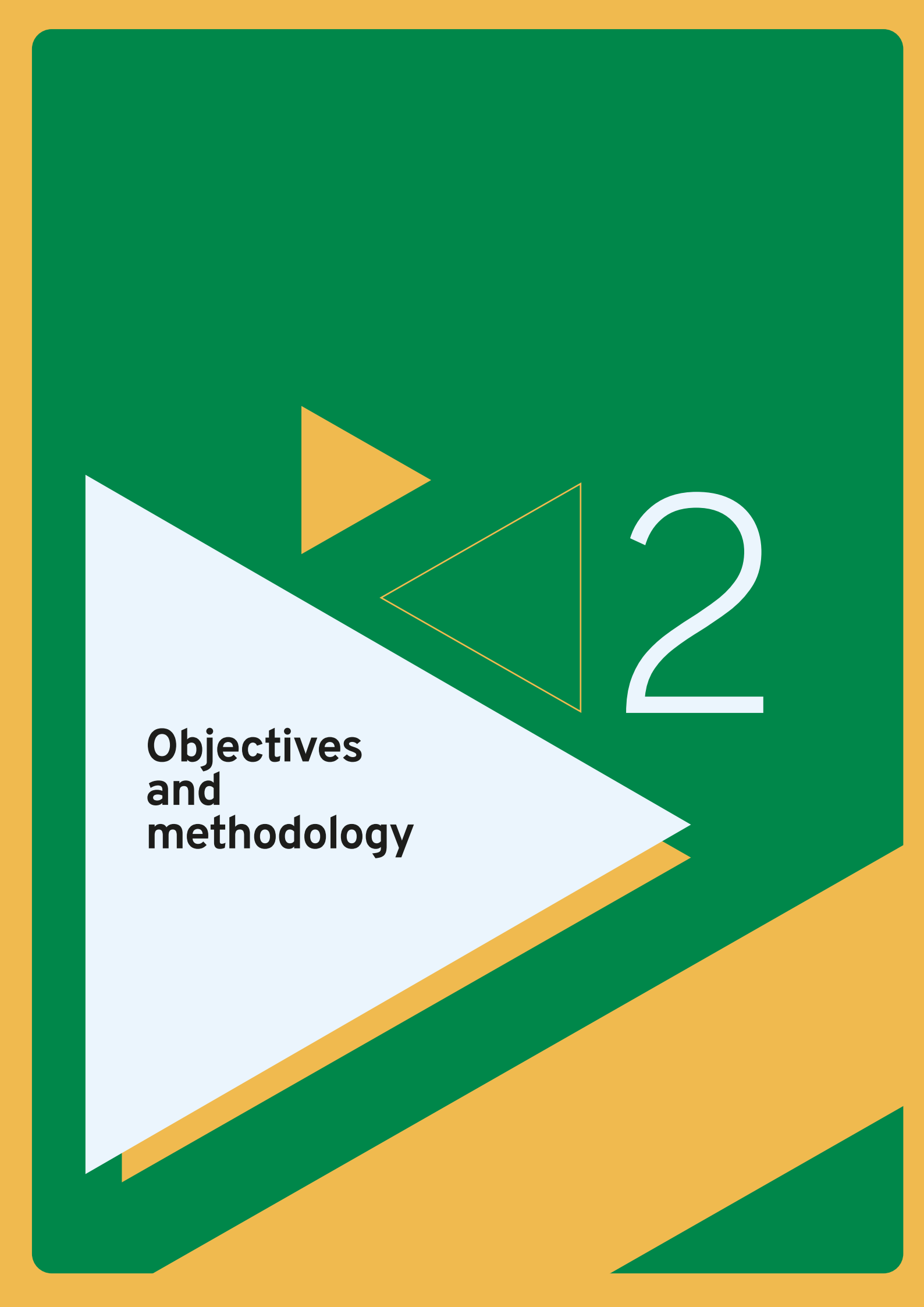
This highlights the need for assistance to IGAD member countries for effective development, negotiation and implementation of bilateral agreements for facilitating labour movements consistent with full respect for and protection of migrant rights.

Efforts have been made by the IGAD Secretariat and by the African Union to engage with Gulf Cooperation Council (GCC)/Middle East countries, as well as to convince African countries to devise a common approach. The Meeting of African Ambassadors of main countries of origin of African migrants in the Middle East and GCC on 29 October 2019 is an example of this approach. The meeting called for the development of a multilateral framework of consultation for this purpose. The summary conclusions of the meeting highlighted the need of organizing “a regional consultation on labour migration, for common position at the continental level and speak with one voice, to ensure the protection of African migrant workers” (African Union Commission 2019b, 14).

IGAD countries have made specific requests to the ILO to support IGAD and its Member States in developing regional guidelines and a common position on BLAs.¹ The ILO FMPT Project mobilized the services of Global Migration Policy Associates (GMPA) to develop a background study and draft regional guidelines on a rights-based approach to BLAs as a basis for developing a common IGAD common position on BLAs.

This technical background paper is produced to support IGAD member countries in their efforts to develop and implement BLAs for better governance of labour migration and to promote the protection of their migrant workers. Together with the complementary Guidelines for an IGAD Common Approach on Bilateral Labour Agreements (BLAs), this background report is intended to offer a comprehensive foundation for the elaboration of an IGAD common approach. The study outlines key challenges and issues, contextual factors in each IGAD country concerning migration policy and BLAs, stakeholder concerns, good practices on BLAs, and key issues for the sequel BLA Guidelines document.

1 Information provided by the ILO–IGAD FMPT project.



2

**Objectives
and
methodology**

This section highlights the main objectives of the study and methodology of data collection and analysis.

► 2.1. OBJECTIVES OF THE STUDY

This technical background paper was prepared as part of the work programme of the ILO technical cooperation project Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility, in collaboration with IGAD and funded by the European Union Emergency Trust Fund for Africa.

In this context, developing guidance for the IGAD region on rights-based BLAs to ensure that member countries are in a position to conclude agreements for better governance of labour migration and protection of migrant workers was identified as one of the key priority areas of intervention.

The specific objectives of this background study are to:

1. Identify key challenges and issues in developing and implementing BLAs in practice by IGAD member countries, and emerging good practices.
2. Assess region-specific and common features in the experience of IGAD countries with BLAs.
3. Identify factors relevant to the development of region-specific guidelines on rights-based BLAs for the IGAD region.
4. Contribute to the broader global knowledge on BLAs.

► 2.2. METHODOLOGY

The following methodological components were applied in preparation of this background report:

1. review of relevant literature on BLAs and the contextual situation;
2. review of statistics and qualitative information on IGAD countries; and
3. consultations and interviews with key stakeholders.

2.2.1. Review of relevant literature on bilateral labour agreements and related key issues ²

The first pillar of the methodology for gathering information for the ILO Background Study is a review of BLA-related literature. The GMPA team carried out an extensive survey of literature from the start of the project in November 2019, covering a wide range of relevant publications (books, publications, technical reports, reviews of BLA practice, journal articles and news/communications and media reports).

² This report uses the term “agreements” to refer to both bilateral labour agreements (BLAs) and bilateral memoranda of understanding (MOUs) in the following analysis.

More importantly, the background paper took note of the ILO's pioneering reviews of bilateral labour agreements in different regions and countries, which have produced a wealth of information. Particularly relevant documentation included assessments of existing BLAs highlighting challenges, protection and implementation gaps, and prevalence of good practices at the global level and in Africa as a whole, Southern Africa, North Africa, Asia and Bangladesh (see Annex III). These ILO studies have led to accumulated knowledge on BLAs, their content and their implementation in different regions, allowing analysis in a manner relevant to the particular context of the IGAD region.

The International Organization for Migration (IOM) published its Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community in 2016 (IOM 2016). It drew largely on the ILO's work, but its capacity for regional adaptation, however, is limited, as the publication deals mainly with general guidelines.

2.2.2. Review of statistics and qualitative information on IGAD countries

First, a comparative demographic and socioeconomic profile of the IGAD member countries was compiled drawing primarily upon the World Development Indicators database of the World Bank (see table 1).

Second, information sources on the migration and mobility patterns of IGAD citizens within the IGAD region and outside were assessed using national and secondary sources. The ILO-IGAD FMPT Project has produced country reports providing an assessment of labour migration and mobility governance for each IGAD member country (ILO 2020a; 2020b; 2020c; 2020d; 2020e; 2020f; 2020g), as well as a synthesis report based on the individual reports for the IGAD region as a whole (ILO 2020h). These reports provide a wealth of information on recent trends, policies and practices.

Third, qualitative information was collected and analysed on legislative and regulatory frameworks, regional and national migration policy frameworks (where available), and regional free movement protocols, among others.

Chapter 4 below draws upon all of these and a range of other sources, including publications of the World Bank and the African Development Bank, to elaborate briefs.

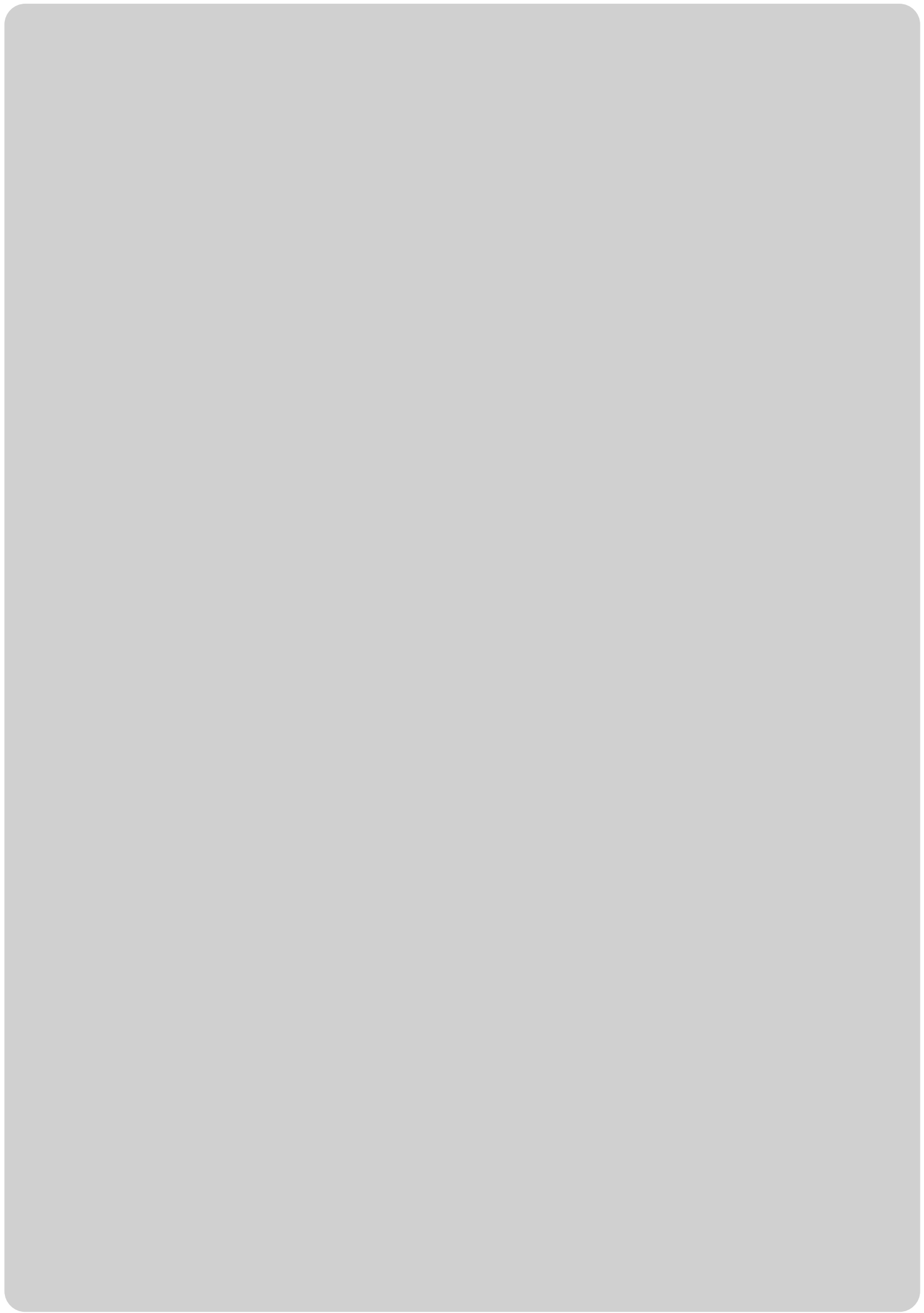
2.2.3. Consultations and interviews with key stakeholders

In five IGAD countries – Djibouti, Ethiopia, Kenya, Sudan and Uganda – the team met with:

- ▶ senior officials of Ministries of Labour and Social Affairs (with the Minister himself in Djibouti),
- ▶ senior officials of Ministries of Foreign Affairs;
- ▶ General Secretaries and/or senior officials of employers' organizations and trade union federations (except in Sudan); and
- ▶ executives of private recruitment agencies and/or their national associations (except in Ethiopia).

Virtual consultations were also held with the Ministry of Labour and Social Affairs, Ministry of Foreign Affairs, Ministry of Education, and the Federation of Somali Trade Unions in Somalia, and with the South Sudan Ministry of Labour, Ministry of Foreign Affairs, the Employers Association of South Sudan and the South Sudan Workers Trade Union Federation.

The experts also met IOM officials at a multi-stakeholder meeting in Kenya and with an IOM project officer at IOM premises in Kampala, Uganda, and with project/programme officers of the German Corporation for International Cooperation (GIZ) in Uganda and Sudan. A full list of the 130 persons consulted is provided in Annex I.



**Normative
framework
for labour
migration
and bilateral
labour
agreements**

3

► 3.1. NORMATIVE FRAMEWORK FOR LABOUR MIGRATION

International instruments provide a solid basis for elaboration of a rights-based approach to migration for promoting good governance of labour migration and protection of migrant workers, and thereby serve as a basis for the development of BLAs. The ratification of relevant international Conventions by both countries of origin and destination, the revision of national laws along those lines, and the enforcement of those laws assume importance in providing a much-needed normative foundation to such agreements and cannot be overemphasized. There is good practice in this respect from a number of agreements originating in Europe and Latin America. The preambles of agreements could make specific reference to such instruments and key principles, including the principles of equality of treatment and non-discrimination as a minimum.

The key instruments governing labour migration are listed below in summary form. These will be elaborated in the forthcoming BLA Guidelines document.

- Nine universal human rights instruments and associated protocols that apply to all persons, including migrant workers.
- Eight ILO fundamental Conventions enshrined in the 1999 ILO Declaration on Fundamental Principles and Rights at Work relating to forced labour, freedom of association, child labour and discrimination – applicable to all workers including migrant workers, without distinction of nationality, and regardless of migration status.
- Three international Conventions on migration for employment and rights of migrant workers: two ILO Conventions on migrant workers – the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) – and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;

- All other labour standards apply (with a few specific exceptions) to all workers in the workplace, including migrant workers regardless of their status. The Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189), Social Security (Minimum Standards) Convention, 1952 (No. 102), and Equality of Treatment (Social Security) Convention, 1962 (No. 118), and an array of conditions on work and occupational safety and health standards are especially relevant.

- Nonbinding normative frameworks, especially the ILO Multilateral Framework on Labour Migration (ILO 2006) and ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs (ILO 2019b).

Annex II provides information on the accession and ratification of United Nations (UN) human rights instruments and ILO fundamental Conventions by IGAD countries and Middle East countries of destination. Some IGAD States have ratified all eight ILO fundamental Conventions, while others have ratified most of them. The GCC countries, Jordan and Lebanon have ratified at least five of the eight Core Conventions. A number of IGAD Member States and Middle East countries of destination have also ratified UN human rights instruments relevant for migration, such as the:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- International Convention on the Elimination of Racial Discrimination, and
- Convention on the Elimination of All Forms of Discrimination Against Women.

However, only Uganda has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Ratification of

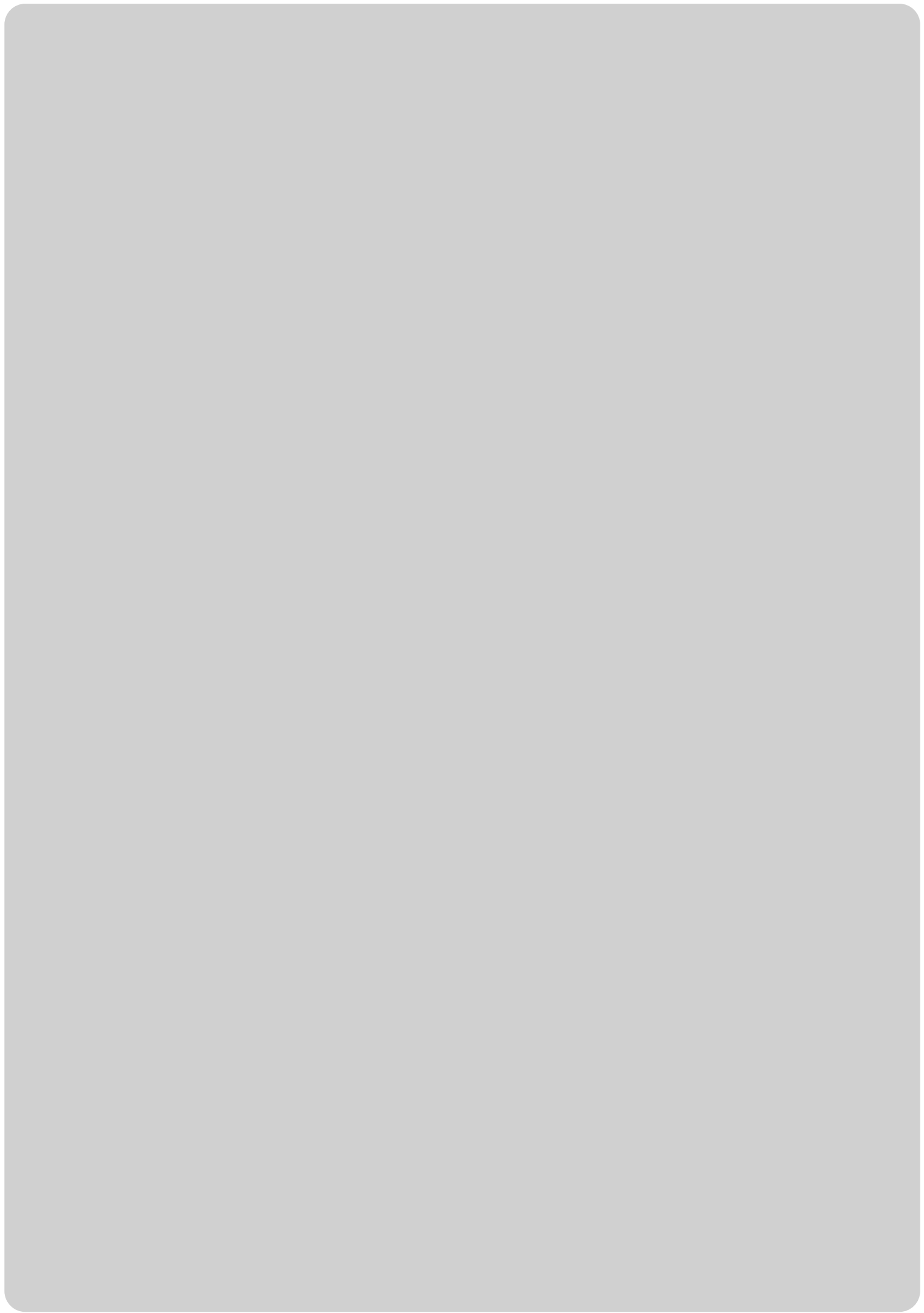
Conventions have to be followed by revising national legislation accordingly, ensuring enforcement of relevant laws and access to justice in case of violations.

► 3.2. RECOGNITION OF THE VALUE OF BILATERAL LABOUR AGREEMENTS

International Conventions and other instruments, especially those of the ILO, have long recognized the value of multilateral and bilateral labour agreements as a potentially good practice in the governance of labour migration flows between countries and of protection of migrant workers. Multilateral instruments are, however, in general preferable to bilateral agreements because the latter can be influenced by the relative and often very unequal bargaining power between the two parties (Wickramasekara 2015). Delegates to the High Level Meeting of African Ambassadors of Main Countries of Origin of African migrants in the Middle East and the GCC (on 29 October 2019) argued for a multilateral process or cooperation agreement for enhanced protection of migrant workers in the Middle East (African Union Commission 2019a). The EAC Common Market Protocol

with its provisions on free movement of persons and workers and rights to residence and establishment (ratified by all EAC Partner States) is a good example of a multilateral instrument. Many destination countries in other regions are, however, not willing to enter into binding multilateral instruments, and origin countries may only have the option of bilateral agreements.

The IGAD Regional Migration Policy Framework has recommended the establishment of bilateral and multilateral labour exchanges among IGAD member countries and with contiguous non-member countries of neighbouring RECs to employ or deploy temporary human resources with scarce or desirable skills under the banner of regional cooperation and harmonization of labour migration policies (IGAD Secretariat 2012).



**Overview of
IGAD region:
Migration,
contextual
factors
and policy
challenges**

4

► 4.1. MIGRATION, CONTEXTUAL FACTORS, GOVERNANCE CHALLENGES AND IGAD ENGAGEMENT

4.1.1. IGAD region migration overview

The IGAD region has long been characterized by both emigration and immigration:

- among what are today IGAD member countries;
- within and to the EAC – three EAC member countries (Kenya, South Sudan and Uganda) are also IGAD members;
- recently expanded migration/mobility to Middle East and Gulf countries;
- histories of emigration to Europe and North America, notably Kenyans and Ugandans to the United Kingdom since colonial times and Ethiopians to Europe and United States of America since the 1970s; and
- a long history of intra-Arab country migration from and to Sudan, while today's Djibouti has been an inter-regional mobility transit point for centuries.

The IGAD region is also characterized by forced migration, internal displacement and mixed migratory movements (ILO 2020h). It hosts more than 4 million refugees and asylum-seekers and more than 9 million internally displaced persons (as cited in ILO 2020h).

Migration for employment abroad and/or into the country is structurally significant for all IGAD countries. Most are dependent on employment abroad in contexts of high local unemployment, while remittances make measurable contributions to GDP as well as to the socio-economic welfare of families, communities and businesses “at home” for Ethiopia, Kenya, Sudan and Uganda. Employment abroad of a large portion of the Somali population, the consequence of decades of forced displacement and emigration, is even more central to national economic and social needs.

Similarly, all IGAD countries are dependent on foreign migrant workers to fill skilled jobs for which nationals are unavailable and for which domestic training is non-existent or inadequate. Djibouti, Somalia and South Sudan are especially reliant on migrant skills to sustain industrial, technological, transportation, commercial and infrastructure work, and in the case of South Sudan, its main petroleum extraction industry. Some 30 per cent of the workforce in Djibouti is foreign-born, albeit mostly people of the same ethnic groups as nationals from neighbouring countries.

About half of all migration originating in EAC member countries goes to and/or resides in other EAC member countries. A 2016 International Monetary Fund report showed a total of 1.1 million EAC nationals in other member countries (2013 data), out of a total of just over 2 million EAC countries' nationals abroad (Alper et al. 2016). EAC member countries nationals enjoy free movement and rights to residence and establishment across the Community as set out in the EAC Treaty and its Common Market Protocol of 2010.

Many migrants within the EAC as well as those in IGAD countries are employed in agriculture and informal activity, while significant numbers are found in industry and services in Djibouti and Kenya.

Migration of IGAD citizens to the Middle East region, including GCC countries, has been increasing over the last decade, with higher numbers from Ethiopia, Kenya, Somalia, Sudan and Uganda. While few IGAD country nationals other than Sudanese are recorded in United Nations Department of Economic and Social Affairs (UNDESA) International Migrant Stock estimates as being resident migrants in the Middle East, a compilation of estimates provided by government officials in IGAD countries along with data published in reports reviewed for this study allow an aggregate estimate of at least 1.5 million migrants from IGAD member countries in Middle East and Gulf countries in 2019. The actual number is likely considerable higher, at least up until March 2020.

Lack of decent employment options at home, demand for low-wage workers (regardless of their skills), demand for skilled workers in specific sectors abroad, and prospect of higher earnings elsewhere have driven this increase in migration from IGAD countries to the Middle East. As such, increased numbers of migrants in the Middle East reflect strong “market-driven” demand and recruitment.

4.1.2. Key socio-economic factors

The socio-economic profile of IGAD countries varies considerably, as shown by data in table 1, with key indicators provided below and summarized in the country briefs in section 4.2. Salient features across the region include the following:

- ▶ Djibouti and Kenya are lower middle-income economies while the others are classified as low-income economies.³
- ▶ IGAD economies are dominated by agriculture and growing urban informal economies, with low levels of industrialization and high levels of unemployment and underemployment.
- ▶ Annual population growth rates are high, ranging from 2.3 per cent (Kenya) to 3.9 per cent (South Sudan), with Djibouti moderately placed at 1.56 per cent.
- ▶ While most countries have achieved reductions in poverty, national poverty rates are all still above 21 per cent, and particularly high for South Sudan at 82 per cent in 2017 and estimated to be similarly high for Somalia.
- ▶ Youth bulge is a common feature, and youth unemployment is particularly high.
- ▶ Urban population growth is high in Ethiopia, Kenya and Uganda.
- ▶ All countries show a low level of human development, with the Human Development Index rank ranging from 147 (Kenya) to 186 (South Sudan) out of 189 countries.

- ▶ Personal remittances received are highest in amount for Kenya (US\$2.7 billion), South Sudan and Uganda. The share of remittances to GDP was high for South Sudan in 2019 at 34.4 per cent due to a precipitous drop in petroleum exports, while it is low for other countries.

4.1.3. Contextual challenges for migration governance

All IGAD countries face huge contextual challenges that affect migration:

- ▶ Unemployment, underemployment, and generalized decent work deficits, compelling many people to seek sustenance and employment in cities and/or abroad.
- ▶ High rural-to-urban migration but limited prospects for formal work in main urban centres, particularly Addis Ababa, Kampala, Khartoum, Mogadishu and Nairobi.
- ▶ Huge demands for humanitarian aid and support responses for large populations of internally displaced persons (IDPs) and refugees in nearly all IGAD countries.
- ▶ Needs for skills assessments and employment for refugees and IDPs, along with integration of refugees without viable voluntary repatriation options.
- ▶ Inadequacy of development efforts to provide employment for a rapidly growing youth population and large numbers of rural and conflict-displaced people.
- ▶ Need for technical and vocational education and training (TVET) across workforces, for both domestic and foreign employment.
- ▶ The ongoing narrow government and international focus on migration control, borders, and combating trafficking and smuggling.
- ▶ Inadequate or heretofore non-existent international support for building rights-based/decent work governance of migration for employment.

3 For the current 2020 fiscal year, low-income economies are defined as those with a gross national income (GNI) per capita of US\$1,025 or less in 2018. Lower middle-income economies are those with a GNI per capita between US\$1,026 and US\$3,995. Upper middle-income economies are those with a GNI per capita between US\$3,996 and US\$12,375. High-income economies are those with a GNI per capita of US\$12,376 or more. Source: [World Bank](#), “[World Bank Country and Lending Groups](#)”.

A main challenge for every country is to formulate and implement coherent, rights-development- and welfare-based legislation and policy on migration for employment. These should be linked to policy on employment, social protection, decent work/labour inspection, fundamental rights and skills development/TVET – as well as to regional integration and development.

Similarly, most IGAD countries still need to incorporate social partners in formal processes of elaborating and implementing migration policy, as per ILO Conventions, and in particular, in developing, implementing and monitoring BLAs. Somalia and South Sudan already have ample social partner participation in migration policy and administration. In virtually all IGAD countries, employers' organizations and national trade union federations are engaged on migration. EAC social partners participate actively at the REC level on migration through the East African Employers Organisation and the East African Trade Union Confederation. The recently established IGAD regional social partner organizations – the Horn of Africa Confederation of Trade Unions and the Confederation of IGAD Employers – should be incorporated as soon as possible into the IGAD regional consultative and policy processes on migration.

COVID-19 and latest challenges

Prior to the emergence of the COVID-19 global pandemic, nearly all IGAD countries were already facing overwhelming threats from a locust plague since 2019, with several countries declaring national emergencies in late 2019 or early 2020 over the region-wide invasion devastating food production and security.

Now COVID-19 continues to threaten fragile healthcare systems across the IGAD region. Since mid-March 2020 all international flights were cancelled, borders closed, entry restricted for all from seriously affected countries, and most countries remain in confinement. Despite the collapse of air travel, significant numbers of migrant workers from IGAD countries continue to be deported back to origin countries, often with no pay and unknown numbers among them infected with COVID-19. The massive loss of jobs, incomes and remittances has already had devastating impacts on families and communities whose sustenance depended on members working abroad. Without on-arrival testing and confinement of those who test positive (or rather would test positive if testing were available), returned migrant workers risk being vectors to communities in origin countries.

► Table 1. Socioeconomic profiles of IGAD Member Countries ¹

Characteristic/ indicator	Djibouti	Ethiopia	Kenya	Somalia	South Sudan	Sudan	Uganda
Population, total (millions)	0.96	109.2	51.4	15.01	11.0	41.8	42.7
Population growth (annual %)	1.56	2.6	2.3	2.8	3.9	2.4	3.7
Surface area (sq. km) (thousands)	23	1104	580	637.7	n.a.	n.a.	242
Population density (people per sq. km of land area)	41.2	109.2	90.3	23.9	n.a.	n.a.	213.1
Poverty headcount ratio at national poverty lines (% of population)	21.1 (2017)	23.5 (2015)	36.1 (2015)	n.a.	82.3 (2017)	n.a.	21.4 (2016)
Poverty headcount ratio at \$1.90 a day (2011 PPP) (% of population), 2017	17.1 (2017)	30.8 (2015)	36.8 (2015)	n.a.	n.a.	12.7 (2014)	41.7 (2016)

GNI per capita, Atlas method (current US\$)	3 190	790	1 620	n.a.	810	1 560	620
GNI per capita, PPP (current international \$)	..	2 010	3 440	n.a.	1 780	4 420	1 970
GDP per capita (at current US\$)	3 083	772	1 711	315	n.a.	977	643
Urban population as % of total population	78	21	27	45	20	35	24
Urban population growth (annual %)	1.72	4.8	4.1	4.1	2	3.2	6.2
GDP growth (annual %)	5.5	6.8	6.3	n.a.	-10.8 (2015)	-2.3	6.2
Exports of goods and services (% of GDP)	149	8	13	26	36.7 (2015)	10	20
Total debt service (% of exports of goods, services and primary income)	57.8 (2017)	20.8 (2017)	22.6	n.a.	n.a.	4.2	12.2
Migrant Stock – Male, 2019	60 654	637 963	522 321	27 184	441 677	441 677	836 620
Migrant Stock – Female, 2019	54 687	615 120	522 533	24 947	423 875	423 875	897 546
Migrant Stock – Total, 2019	115 341	1 253 083	1 044 854	52 131	865 552	865 552	1 734 166
Personal remittances, received (current US\$) (millions)	59	436	2 719		1267	425	1 230
Personal remittances received as % of GDP	2.9	0.5	3.0	n.a.	34.4 (2019)	0.8	4.5
Foreign direct investment, net inflows (balance of payments, current US\$) (millions)	265	3 360	1 626	409	60	1 136	1 337
Net official development assistance and official aid received (current US\$) (million)	177	4 930	2 488	1 873	1 577	963	1 441
HDI Rank 2018 (out of 189 countries) ²	171	173	147	n.a.	186	168	159

n.a. = not available; GNI = gross national income; PPP = purchasing power parity; HDI = Human Development Index (UNDP 2019).

¹ All figures are for 2018 unless otherwise indicated. ² Lower number means a higher human development level.

Sources: World Bank n.d.-g; UNDP 2019 (HDI rank); UNDESA 2019a (Migrant stock data).

4.1.4. Migration governance priorities for IGAD countries that have a bearing on bilateral labour agreements

Rights-based BLAs are key to extend rights and labour protections, decent work and decent living conditions to workers going abroad, especially given that countries of employment for many IGAD migrants – particularly in the GCC region – lack adequate labour standards and social protection, except for their own citizens. While migrant workers in most GCC countries are covered by labour laws, those laws/regulations are often far from fully compliant with relevant international labour standards; while implementation/enforcement of these laws/regulations is generally too poor to ensure decent work for migrant workers. Domestic workers are not generally covered by labour laws in most GCC countries, but there are separate laws/regulations applying to them in several countries, although with limited effectiveness and enforcement.

However, BLAs can be double-edged, as they can potentially enhance protection and decent work opportunities, but poorly considered BLAs impede domestic development and can send nationals off to face abuse and exploitation abroad with little protection. The elaboration and implementation of BLAs need to be within the context of a comprehensive national and regional approach to migration legislation, policy and practice. Law and policy should define standards of rights and welfare for nationals abroad; impede loss of talent needed for national and REC development; and ensure that employment, mobility, social protection and decent work contribute to the welfare of both IGAD and its individual member countries.

Priority actions for developing a coherent common approach on BLAs are essentially those of developing comprehensive “migration for employment” legislation, policy and administration, as follows:

- Ratification of the migration governance Conventions and domestication of their provisions in national legislation.
- Formulation – through a tripartite consultative process – of a comprehensive

framework on migration for employment integrated with national policies on employment, social protection and labour inspection.

- Establishing a specific mechanism for full tripartite consultation on migration for employment policy and implementation is essential in each IGAD country, and should be led by the ministry in charge of labour and social partners. Consultation and coordination are of course required with ministries and entities addressing Communication; Development; Economy and Finance; Foreign Affairs; Health; Interior/Home Affairs; and others, as well as national organizations of private recruitment agencies and migrant/returnee associations.
- Application of labour standards and laws – based on international labour standards – to all migrant workers, community or not, in regular or irregular situations, both in the country and to those abroad.
- Establishing or enhancing migrant access to and portability of social security, with attention to harmonization across the EAC and in IGAD with compatible standards.
- Prioritizing government attention to protection of migrants’ human rights and to decent work abroad – taking account of the limitations of extra-territorial jurisdiction.
- Building adequate TVET, both to ensure sufficient skills in the domestic workforce as well as to respond to demand abroad.
- Recognition of qualifications and experience, including harmonization of training and skills in both the EAC and IGAD RECs.
- Ensuring labour inspection has a specific mandate, competence and training on migrant workers, and that migrant workers are covered in employment country labour inspection.
- Addressing remittance, return and reintegration.
- Developing diaspora engagement policies and practices.

4.1.5. IGAD engagement

The IGAD community has committed to greater regional integration through the development of legal and policy frameworks, including a regional free movement regime. The IGAD Secretariat (2012; 2014) developed a Regional Migration Policy Framework in 2012 and adopted an IGAD Migration Action Plan to operationalize the policy framework in 2014.

A draft IGAD Free Movement Protocol was endorsed by the IGAD Committee of Ambassadors on 26 February 2020 and is pending adoption by the IGAD Heads of State and Government for subsequent ratification by Member States (IGAD, 2020a; 2020b). The IGAD Committee of Ambassadors endorsed the IGAD Protocol on Transhumance and its implementation roadmap on 27 February 2020 (ICAPLD 2020).

The Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa held in Nairobi on 20–21 January 2020 called for “A United Approach on Safe, Regular and Humane Labour Migration” in its title. The ministers’ communique coming out of that forum laid out agreed “Priority Actions for Effective Labour Migration Policy Development and Drafting, Negotiating and Implementing Bilateral Labour Migration Agreements” across all member countries of both the EAC and IGAD (Regional Ministerial Forum 2020). This background report and its related Guidelines document prepared under the ILO–IGAD FMPT Project are expected to provide support to the regional priorities identified by the Regional Ministerial Forum. They offer a foundation on which IGAD member countries can elaborate their common approach.

4.2. DIFFERENT COUNTRIES, DIFFERENT PROFILES

4.2.1. Djibouti

Migration situation

Djibouti is a unique country within the IGAD region; it is mainly a migration destination and migrant worker employment country. It has also been for decades a transit country for migrants moving to meet labour demand in Gulf and Middle East countries, and a significant trade and transit migration point between the Middle East and Africa for centuries. Djibouti is also a transit country for refugees and asylum-seekers originating in other Horn of Africa countries and those fleeing conflict in the Middle East, notably the Syrian Arab Republic, and has become a safe haven for refugees fleeing warfare in nearby Yemen. An IOM (2014) estimate indicated 100,000 migrants transit through Djibouti annually. According to the European Commission (2017), “Close to 40,000 people fleeing the Yemen conflict have taken refuge in Djibouti.”

With a small population estimated at 958,920 in 2018 (table 1) and no higher education or training institutions until 20 years ago, Djibouti is highly dependent on foreign skills and labour for its economic activities.

The number of foreigners resident in Djibouti range upwards from formal estimates of 115,341 in 2019 (UNDESA 2019a), to about 300,000 as conveyed by government officials interviewed for this study, with at least 150,000 in undocumented situations.⁴ The large majority of the “foreign” population comprises people originating in neighbouring countries and belonging to the same main ethnic groups comprising the Djibouti national population. There is a visible presence of European, Chinese, North American and other “expats” providing technical, professional, managerial, educational and other skills.

Government and social partner officials outlined exemplary efforts to recognize the large immigrant population, to include migrants in social protection, and to extend

⁴ GMPA team interviews with government officials and other stakeholders in Djibouti 9–10 March 2020.

labour inspection and decent work oversight to migrant workers – regardless of legal status. Migrant access to healthcare facilities is facilitated as a matter of public health policy; some 30 per cent of healthcare services use is by non-Djiboutian – a proportion corresponding to the higher estimates of their presence in the country. The national labour inspectorate takes up complaints on violations of the labour code, conditions of work, pay disputes, among others, from migrant workers, including those in undocumented situations.⁵ Nonetheless, serious difficulties are reported regarding access to healthcare, decent living conditions, and freedom of movement for both refugees and migrants transiting through the country.

Key socio-economic factors bearing on migration

While a small country with a still nascent domestic industry and little agriculture (only 4 per cent of the land is arable), Djibouti hosts the major port for Ethiopia, handling 95 per cent of the goods imported by its landlocked neighbour. It also hosts a major global maritime trans-shipment facility, military bases of China, France, Italy, Japan and the United States, as well as a US\$3.5 billion, Chinese-built free trade zone, the largest in Africa, inaugurated in July 2018 (Xinhua 2020).

The major port, the trans-shipment facilities, the military bases and the free trade zone, along with their respective financial contributions, drive significant local economic activity; they also drive important demand for migrant skills and labour in construction, maintenance, supply services, lodging, food and restaurant, etc. for the facilities and others transiting the bases. The military bases bring some US\$300 million annually to the country (Inside Arabia 2019), representing 10 per cent of the country's GDP.

The unemployment rate was 10.3 per cent in 2019 with a youth unemployment rate almost double at 20.8 per cent.⁶ However,

unemployment in formal activity may be much higher. The poverty rate (at US\$1.9 2011 PPP⁷) was 17.21 per cent in 2017 (table 1).

Few Djiboutians have emigrated, although some go abroad for higher education. The small number of educated and trained nationals are in high demand locally, while the country's relatively strong currency and economic situation make employment options elsewhere less attractive for Djiboutians at both higher and lower skills levels. Unsurprisingly, these very same attributes are attractive to natives of neighbouring countries.⁸

Migration issues for Djibouti

Major migration challenges for Djibouti include those common to all IGAD countries as noted in section 1.1. Particular issues are those of the large migrant share of the domestic population (up to 30 per cent, or 300,000 people, by estimates noted above⁹), decent work, health and social protection, training of migrant (and national) youth, and social participation.

A major constraint for employers and businesses, both foreign and domestic, is the high cost of obtaining work permits for foreigners, cited at €1,000 per worker regardless of skill level,¹⁰ which may act as an incentive to hire migrants in irregular situations to fill job offers.

The COVID-19 pandemic and closures of borders across the Middle East have reduced the numbers transiting through Djibouti since mid-March 2020. Large numbers of intending migrants are likely struggling to survive in place, as return to homelands is also restricted, Ethiopia having closed its borders in late March.

Key stakeholders for migration for employment governance and policy in Djibouti include the Ministry of Labour (in a lead role), the national employer and trade union federations, the social security administration, the national labour inspectorate, the national health service, the Ministry of Foreign Affairs

5 Interviews in Djibouti 9–10 March 2020.

6 ILO modelled estimates provided in World Bank World Development indicators database.

7 PPP = purchasing power parity.

8 Interview with Hikmat Daoud, President, National Confederation of Djiboutian Employers (CNED), 9 March 2020.

9 Interviews in Djibouti 9–10 March 2020.

10 Interview with Hikmat Daoud, CNED, 9 March 2020.

and International Cooperation and the national Parliament, as well as representatives of migrant worker and migrant community organizations. Other ministries and entities are also concerned, as noted earlier. A specific consultation/coordination body on migration for employment with tripartite participation is advisable.

BLAs

While Djibouti had engaged in three BLAs in past years, none appear to be currently given attention. There appears to be little urgency for engagement on BLAs for external employment, excepting where bilateral or other international agreements could enhance opportunities for Djiboutians to obtain skills training and higher education abroad to return to help fill the huge skills gaps in the country's workforce. Nonetheless, government officials indicated that Djibouti – the host country for the IGAD Secretariat – is favourably disposed to support a common IGAD approach on BLAs.¹¹

4.2.2. Ethiopia

Migration and mobility

Ethiopia experiences a complex migration situation, with many Ethiopian refugees, exiles, emigrants and migrant workers abroad; large populations of IDPs and significant refugee populations from neighbouring countries in Ethiopia; as well as important numbers of foreign migrant workers in country. Its population was estimated at nearly 115 million in 2020.

Ethiopia has experienced large-scale displacement, emigration and refugee departure since the 1970s, consequences of civil warfare, a decade-long war with Eritrea, severe repression under the Derg military regime, and continuing internal conflict. Hundreds of thousands of Ethiopians have gone to work in the Middle East, particularly to Saudi Arabia, over the last decade, many enticed to move without authorization and thereby exposed to poor conditions of work and rights violations.

Approximately 1.2 million international migrants were reported to be resident in Ethiopia in 2019, including refugees (UNDESA 2019b). The three main countries of origin are Eritrea (222,293), Somalia (477,774) and South Sudan (476,311).

UN data report that 871,747 Ethiopians were resident outside their country in 2019 (UNDESA 2019b). While small in contrast to the population in Ethiopia, figures for the Ethiopian diaspora run to more than 2 million when including children born abroad and their descendants.

There were 160,162 Ethiopian migrant workers in Saudi Arabia in 2019, according to UNDESA (2019b), but this seems to be an undercount, as in 2017 a half million Ethiopian workers were estimated to be in Saudi Arabia. Some 260,000 were deported or returned to Ethiopia from Saudi Arabia up to March 2019 while many remained and others continued arriving to jobs in Saudi Arabia (IOM 2019). Significant numbers were also reported in the United Arab Emirates and Yemen, as well as some in Qatar.

Sizeable migrant populations are also reported in Europe (150,888) and North America (273,980), 157,182 elsewhere in Africa and 78,258 in Israel (UNDESA 2019b). There is significant seasonal migration for agricultural labour in neighbouring Sudan, with estimates ranging from 80,000 to 300,000 persons who often travel in family groups to work together.¹²

Migration for employment and refugee movements are important for the Ethiopian economy and for the welfare of families and communities. Remittances in 2019 were estimated at US\$411 million.

Key socio-economic factors bearing on migration

Ethiopia is the second-most populous nation in Africa after Nigeria, with about 109 million people in 2018. Ethiopia remains a largely undeveloped country, but Governments have been investing in major measures seeking rapid economic development – emphasizing job creation and training. Ethiopia's economic growth rate averaged 9.9 per cent a year from 2007–08 to 2017–18. The poverty rate (share

¹¹ Interviews with government officials in Djibouti 9–10 March 2020.

¹² Estimates from European Commission (2018b) and a GMPA team interview in Khartoum with GIZ project staff working with that population in Sudan (March 2020).

of the population living below the national poverty line) declined from 30 per cent in 2011 to 24 per cent in 2016. Yet, it remains one of the poorest countries, with a per capita income of US\$790 in 2018 – close to that of South Sudan (World Bank n.d.-g).

Ethiopia's main development challenges are sustaining its high economic growth and reducing poverty, which both require sustained progress in job creation and improved governance. The Government seeks to reach lower middle-income status by 2025.

Main migration challenges for Ethiopia

Migration challenges for Ethiopia include those common to IGAD countries as noted in section 1.1. Particular concerns include:

- Unemployment, especially high youth unemployment, and a decent work deficit, compel Ethiopians to seek sustenance and employment abroad.
- High rural-to-urban migration with limited prospects for formal work in the main urban centre, Addis Ababa.
- Inadequacy of jobs-rich development efforts to provide employment for a rapidly growing youth population and large numbers of rural and conflict-displaced people.
- Ethiopian migrant workers facing abuses, lack of rights and a lack of decent work and living conditions in Middle East and Gulf countries, plus recent mass deportations of hundreds of thousands of Ethiopians from Saudi Arabia.
- Need for greatly expanded TVET skills training across workforce, for both domestic and foreign employment needs.
- The large IDP and refugee populations in country that need employment options, as well as integration for the many without viable possibilities of voluntary repatriation.

Immediate needs are twofold ¹³:

1. ratification and domestication of international standards on migration in national legislation; and
2. a comprehensive framework on migration for employment and related domestic policy on employment, social protection, labour inspection, among others.

Urgent needs for inter-institutional coordination, obtaining reliable data, tripartite participation, ratification of Conventions, and social protection have also been noted by the ILO (2020b).

Key stakeholder actors ¹⁴ are the

- Ministry of Labour and Social Affairs;
- Ethiopian Employers' Federation;
- Confederation of Ethiopian Trade Unions;
- Prime Minister's Office;
- Office of the Attorney-General;
- social security administration;
- national labour inspectorate;
- national health service;
- Ministry of Finance and Economic Cooperation;
- ministries of Education, Foreign Affairs, Health, Industry, and Women and Children's Affairs;
- national Parliament (namely the Committee(s) addressing labour, employment and migration); and
- representatives of migrant worker organizations.

Ethiopian social partners are well organized and engaged on migration for employment – and specifically on BLAs. Consultation and coordination are required with other highly concerned actors as noted earlier. A distinct, specific tripartite-led consultation and coordination body is needed to address the many specifics of migration for employment.

¹³ Authors' assessment from literature, stakeholder interviews in Ethiopia and the ILO (2020b) country report.

¹⁴ Authors' assessment compiled from stakeholder interviews, the ILO (2020b) country report and other literature.

BLAs

Specific executive measures have elaborated a framework for engaging in BLAs and to channel and regulate foreign employment, in particular the 2016 Proclamation on Overseas Employment. However, the team could not obtain data on the number or proportion of Ethiopians in the Middle East and Gulf countries deployed under BLAs. Most stakeholder actors interviewed expressed support for a common IGAD approach on BLAs.

4.2.3. Kenya

Migration and diaspora

UN migrant stock data for 2019 for Kenya count 1,044,854 foreign residents (UNDESA 2019b; see table 1), with about half being “persons of concern” to UNHCR. The actual number of immigrants in Kenya may approach 2 million; the numbers of Tanzanians and Ugandans are far higher than the few tens of thousands officially reported in Kenya.

Some 90 per cent of the immigrant/refugee population in Kenya is of combined EAC and IGAD origin. UN data show about 35 per cent coming from EAC member countries and some 55 per cent from other IGAD countries, the latter mainly refugees from Somalia, some of whom are in urban areas and involved in employment or other economic activity (UNDESA 2019b).

UN data show 525,437 Kenyans resident abroad in 2019, although none showing in Middle East/Gulf countries; while the commonly cited estimate for the Kenyan diaspora is 3 million – a figure cited but unchanged in literature since 2011 (Kenya 2014, 8). Kenya received US\$2.720 billion in remittances in 2018 (World Bank n.d.-g; see table 1). Kenyan emigration is a mix of lower-to high-skilled migrants; up to half of Kenyan emigrants/migrant workers are in other EAC countries.

Significant numbers of Kenyans continue emigrating to Europe and North America, UN data for 2019 show 194,891 Kenyans in Europe and 164,001 in North America, with 137,969 elsewhere in Africa, the largest numbers being in the United Republic of Tanzania and Uganda.

While no reliable data are found for the contemporary Middle East/Gulf presence of

Kenyans, a published estimate put the number at 100,000 in November 2014, with 40,000 Kenyan workers in Saudi Arabia alone – most in regular situations (Marchand, Reinold and Dias e Silva 2017, 20). UN migrant stock data for 2019 reports only 319 Kenyans in the UN Western Asia region comprising Middle East and Gulf countries, 233 in Turkey and 86 in Cyprus.

Key socio-economic factors bearing on migration

Kenya’s GDP growth has been over 5 per cent per annum on average over the last decade. Yet it faces major development challenges in the form of poverty, high unemployment, inadequate infrastructure and weak private sector investment:

- ▶ Four-fifths of workers are in the informal economy, and investment has been low in sectors with greater capacity to absorb labour. However, Kenya scores better than the other IGAD countries in the Human Development Index, ranking 147 out of 189 countries.
- ▶ The manufacturing share of GDP has remained at 9 per cent for more than a decade, but manufacturing value-added accounts for only 5 per cent of GDP (AfDB 2020). Tourism holds a significant place in Kenya’s economy and employment.
- ▶ The youth bulge generates a large supply of labour with lack of access to skills and formal employment options.
- ▶ Agriculture remains the backbone of the Kenyan economy, contributing 52 per cent of GDP, 56 per cent of employment, and 65 per cent of foreign exchange earnings in 2018 (AfDB 2020). The 2018/19 drought and the plague of locusts across the region since 2019 has affected growth and food security.
- ▶ The government Big Four Agenda of industrialization focuses on health, housing, agriculture, and manufacturing. It aims to enhance food security and transform agriculture into a market-oriented system. Special economic zones are intended to promote exports and import substitution (AfDB 2020). However, foreign investment-based, export-oriented industrialization of agriculture could displace significant numbers of the agrarian population.

Main migration issues and concerns ¹⁵

Challenges for Kenyan law and policy on migration for employment arise in both contextual factors and needs for governance responses. Concerns for all IGAD countries noted earlier apply to Kenya, notably high unemployment and underemployment, a largely informal economy, a youth bulge, high urban growth of over 4 per cent per annum, inability of development efforts to generate employment, and serious skills and TVET deficits.

Needs for governance responses particular to Kenya include implementation of EAC legislation, policy and practice; topical issues noted earlier; and coordination with the already existing diaspora policy. Kenya has ratified two crucial migration governance Conventions – the ILO Conventions Nos 97 and 143; all eight ILO fundamental Conventions; and three of the four ILO governance Conventions ¹⁶. These Conventions need to be domesticated in national legislation on migration governance, and the draft framework on labour migration/ migration for employment needs to be completed and implemented.

Key stakeholders ¹⁷ for migration for employment governance and policy include the Ministry of Labour and Social Protection as the lead entity; the National Employment Authority; the Federation of Kenya Employers; the Central Organization of Trade Unions, Kenya; as well as other administrations and ministries concerned, and the national Parliament (namely the Committees concerned with labour, employment and migration); as well as representatives of migrant worker and migrant community organizations. A dedicated tripartite-led coordination body on the specifics of migration for employment is imperative.

Kenyan social partners are well organized and engaged on migration for employment and specifically on BLAs, although they are excluded from any formal participation. ¹⁸ Both the employers' federation and the national trade union confederation are engaged in their respective EAC regional social partner bodies, and both have engaged in the recently established IGAD employer and trade union organizations.

BLAs

A large proportion of Kenyans in Middle East and Gulf countries were deployed under the country's several BLAs (see Chapter 5). However, several interviewees highlighted press and political scandals in years past resulting from return of the bodies of Kenyans who died abroad and situations of Kenyans being abused with little recourse for protection in the Middle East. Those situations prompted increased government attention to the protection of nationals abroad, including through stronger BLAs, and also gave impetus to the current effort to establish a national labour migration policy framework. Kenyan respondents universally concurred in supporting the notion of a common IGAD approach.

4.2.4. Somalia

Migration situation and trends

Migrant stock data show 52,131 international migrants residing in Somalia: 19,348 from Ethiopia; 7,051 from Yemen; 16,440 from "other South"; and 9,252 from "other North" ¹⁹ (UNDESA 2019b). However, more than 1 million Somalis are IDPs within the country.

¹⁵ Authors' assessment from literature, stakeholder interviews in Kenya and the ILO (2020c) country report.

¹⁶ The four governance Conventions are the:

- Labour Inspection Convention, 1947 (No. 81);
 - Employment Policy Convention, 1964 (No. 122);
 - Labour Inspection (Agriculture) Convention, 1969 (No. 129); and
 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).
- Kenya has ratified Conventions Nos 81, 129 and 144.

¹⁷ Authors' assessment from stakeholder interviews in Kenya, the ILO (2020c) country report, and other literature.

¹⁸ As per interviews in Nairobi with senior executives of both the employer and union federations.

¹⁹ UN statistical reporting uses the catch-all terms "other North" and "other South" to indicate where reported data show small numbers in each of a number of countries in either the geopolitical "North" of the world or the geopolitical "South".

Somalia has been a country of forced displacement over the last half century, with its people dispersed worldwide. UN data for 2019 shows 2,054,377 Somalians resident abroad (UNDESA 2019b) equivalent to 15 per cent of the population in the country. A large portion are in neighbouring IGAD countries: Ethiopia (477,774), Kenya (452,919), Djibouti (95,518) and Uganda (37,207). Elsewhere in Africa, the following numbers are estimated: 110,000 in Libya, 20,232 in Egypt, 11,520 in Algeria and 32,696 in South Africa. Europe and North America report 381,218 and 115,718, respectively.

Figures for the Middle East/Gulf region appear incomplete, except perhaps for Yemen with 279,856 Somalis. In contrast, none show for Lebanon, Oman and Saudi Arabia, while the following estimates are listed for other Middle Eastern countries: 9,591 in the United Arab Emirates, 3,354 in Kuwait, 2,942 in Turkey, 1,267 in Qatar and 1,079 in the Syrian Arab Republic.

These figures do not account for the large nomadic populations, whose transhumance areas extend across neighbouring regions of Djibouti, Ethiopia, Kenya and Somalia, with tens of thousands of people spending part of each year both on Somalia lands and elsewhere. However, nomadic movement is increasingly disrupted by border control, warfare, desertification and sometimes conflicts with sedentary populations.

Somalian emigration has mainly comprised compelled displacement of rural subsistence populations due to armed conflict, drought and desertification, as well as waves of professional, technical and business cadres and elites forced to leave by conflict and targeted violence since the time of the military dictatorship in the 1970s and 80s. Some are also compelled by absence of possibilities for sustenance. However, Somalia also now attracts foreign migrant workers – both high-skilled professionals (including for information and communication technology) and lower-skilled workers (for construction and other sectors).²⁰

Key socio-economic factors bearing on migration

Somalia reported a population of 15 million in 2018 with an annual population growth rate of 2.8 percent. The population is comprised in large part by nomadic and pastoralist peoples. Its economy remains mainly informal, non-monetary and subsistence. Agriculture is the main sector of activity, with about 40 per cent of GDP and 50 per cent of export earnings deriving from livestock. The World Bank estimated that about half of the population (51.6 per cent) lived below the poverty line and that per capita income was US\$435 in 2017, the lowest in IGAD.

“Absence of investment, low economic diversification, and a subsistence informal economy have hamstrung economic development. Low skills, low savings, high poverty, insecurity, institutional weaknesses, vulnerability to climate-related shocks, debt distress, and restrictions on borrowing” combine with ongoing conflict to disable development (AfDB 2020, 179). However, as functional government and stability have been restored, telecommunications and construction have emerged as important areas of investment and business activity, drawing foreign workers across skills levels.

Youth unemployment is estimated at 67 per cent in the context of a youth bulge – about 70 per cent of the Somali population are under the age of 30. (AfDB 2020, 179). This situation correlates with ongoing emigration to other African countries, the Middle East, Europe and elsewhere.

Remittance transfers are a major resource for the population, estimated at between US\$1.3–2 billion annually, possibly much more. Total Somalia GDP is estimated at US\$6 billion. Some 40 per cent of households in the country are estimated to receive remittances directly (Majid et al. 2020). But Somalia has been especially “hard hit” in the COVID-19 pandemic, notably by high fatality rates and loss of income among Somalians abroad. For example, Somalians have been prominent among “essential” workers exposed to the virus in the United Kingdom (Einashé 2020). “Already, according to an industry source, the volume of remittances has dropped by as much as 50 per cent in certain corridors” (Majid et al. 2020),

²⁰ As highlighted in virtual consultations with Somalian Government officials and the Federation of Somali Trade Unions (FESTU).

Main “migration” issues and concerns²¹

Government and trade union federation interviewees emphasized that their most crucial immediate challenge is to put in place regulation, policy and practical measures to attract, protect and integrate foreign workers and Somalians abroad across skills levels for the many jobs in the emerging new national economy, for which there are no trained Somalians available. They noted that ratification and domestication in national legislation of the core migration governance Conventions is under consideration. It should be accelerated, and ratification of the ILO governance Conventions should also be taken up. Interviewees registered the importance of and their interest in elaborating and implementing a comprehensive framework on migration for employment, in concert with developing domestic policy on employment, social protection and TVET.

Stakeholder actors²² on migration for employment governance include the Ministry of Labour and Social Affairs and the national employer and trade union organizations in leading roles, the Ministry of Foreign Affairs, the Ministry of Education, the Immigration and Naturalization Directorate, and the national Parliament, as well as representatives of migrant worker and migrant community organizations. Social security, labour inspection, health services and other entities also need to be consulted. In contrast to other IGAD countries, tripartite consultation on migration is well established and dynamic. The Somali trade union federation and the employer organization are actively engaged on national migration policy and practice, including in consultation with the Government on BLAs.²³

BLAs

Somalia interviewees noted that while the country had established three BLAs in 1982 and that they were temporarily revived in 2014–15, none were currently operational. A new BLA had just been agreed with Qatar in February, but then suspended due to the COVID-19 pandemic. Government and trade union interviewees emphasized that the

greater immediate concern is attracting skilled workers to rebuild the country and economy, and ensuring proper recognition and protection for these skilled workers. Nonetheless, ongoing interest in BLAs was noted, while support was clearly expressed for developing a common IGAD approach on BLAs.

4.2.5. South Sudan

Migration situation

South Sudan is a newly established country and State, with all of the challenges, difficulties and constraints that implies for governance, including for obtaining data and putting in place legislation, policy, institutions and practical action on migration.

The new country faces huge challenges – over 2.5 million refugees and migrants abroad, many in adjacent countries, and nearly 1 million refugees and migrants in the country. Data on South Sudanese migration remain highly approximate and unreliable. Actual numbers are greater than those recorded; many South Sudanese abroad were “from Sudan” when they emigrated. South Sudan is also a transit country for migrants en route to Northern Africa and beyond.

UN international migrant stock data for 2019 counts 865,552 international migrants in South Sudan (UNDESA 2019b), equivalent to 7.8 per cent of the total population (UNDESA 2019a). Eighty per cent of the reported immigrant/migrant population in South Sudan is from adjacent countries: Sudan (576,668), Uganda (149,303) and the Democratic Republic of the Congo (89,862), with several thousand from other countries in Africa, including Ethiopia and Kenya.

The UN data show 2,608,618 South Sudanese outside their country, with the large majority in EAC and IGAD countries (UNDESA 2019b): 476,311 in Ethiopia, 88,793 in Kenya, 773,512 in Sudan, and 1,100,096 in Uganda. Elsewhere in Africa, 92,018 are in the Democratic Republic of the Congo and 13,316 in Egypt, with a large number of the latter being women who emigrated for employment.

21 Authors’ assessment, from virtual interviews with stakeholders, literature and the ILO (2020d) country report.

22 Authors assessment compiled from virtual interviews with government and trade union officials.

23 As per virtual interviews with FESTU and Somalia Government officials.

A total of 22,078 South Sudanese are listed as being within the broad UN “Western Asia” region (Middle East and Gulf countries): 15,688 in United Arab Emirates, but only 2,078 in Qatar, 1,827 in Kuwait, 839 Bahrain, 549 in Yemen, 288 Jordan and 68 Lebanon, with none showing in Saudi Arabia, the Syrian Arab Republic or Turkey. This may be a significant undercount in view of the dearth of data on migrants/migrant workers in that region for other IGAD countries. Other indications of incomplete reported data are: only two South Sudanese reported in the entire region of West Africa; 40 in Western Europe; none in Southern Europe; and none in the United States. However, given the country’s recent establishment, government officials highlighted that many South Sudanese abroad may be counted as being from Sudan, or were previously counted as originating in Sudan.

Government officials highlighted their urgent need for expanded data collection on migration, particularly on South Sudanese abroad. They noted that, for example, thousands of South Sudanese arrived in the United States as refugees without passports or were registered as being from Sudan.

Key socio-economic factors bearing on migration

The main features of South Sudan’s socio-economic situation are as follows:

- ▶ The country has suffered a major decline in GDP resulting from recent civil warfare: GDP per capita in 2014 was US\$1,111 but fell to less than US\$200 in 2017 (World Bank n.d.-c).
- ▶ High dependence on petroleum resources. Following succession from Sudan, petroleum was the mainstay of the economy, with 80 per cent of GDP derived from oil (World Bank n.d.-c). But recent civil warfare hugely disrupted production and wrecked installations. Apart from oil, livelihoods are mainly in subsistence agriculture and pastoralist work.
- ▶ Serious humanitarian crises due to prolonged conflict: over 4 million South Sudanese people have been forcibly displaced, with about 1.5 million being

IDPs (OCHA 2019). A very large portion of the more than 2.6 million South Sudanese counted abroad originally fled as refugees.

- ▶ Poverty levels remain extremely high, with the poverty headcount ratio at 82.3 per cent in 2017 (table 1) with severe food insecurity and absence of basic services. This is due to more than three decades of conflict and economic mismanagement, which seriously undermined the productive capacity of the country. South Sudan has the lowest Human Development Index rank among IGAD countries at 186 (out of 189 countries).

Main migration issues and concerns ²⁴

Challenges for South Sudan law and policy on migration for employment arise in a number of contextual factors, including:

- ▶ an almost entirely rural subsistence economy;
- ▶ a still undeveloped private sector;
- ▶ the absence of formal employment outside the Government;
- ▶ huge dependency on humanitarian support;
- ▶ a fast-growing population (3.9 per cent per year) with its youth bulge;
- ▶ high urban growth at 4.1 per cent annually;
- ▶ few prospects for employment in urban centres, and
- ▶ the absence of skills and little TVET or professional training.

What is needed ²⁵

Government officials in the Ministry of Labour, Public Service and Human Resource Development (MOLPSHRD) recognize that ratification of international migration governance Conventions and their domestication in national legislation is a priority. They also expressed interest in exploring elaboration of a policy framework on migration for employment, noting that while labour migration is reported to be included

²⁴ Authors’ assessment from literature, the ILO (2020e) country report and other IGAD country situations.

²⁵ Authors’ assessment, drawn from stakeholder interviews, the ILO country report and other documentation.

as a component of a recently drafted national migration management policy, that policy was elaborated by the Ministry of Internal Affairs with IOM impetus but no involvement of social partners, no public disclosure and little consultation with the MOLPSHRD. A comprehensive migration for employment policy would need to be elaborated with the lead of tripartite partners and be harmonized with domestic policy on employment, social protection and vocational training. Pending also is integration in national law and policy of EAC legislation, policy and practice on migrants and workers, as well as of emerging IGAD instruments.

Key stakeholder actors ²⁶ for migration for employment governance and policy include the MOLPSHRD (identified as the lead entity); national employer and trade union organizations; the Ministry of Foreign Affairs; the Department of Migration under the Ministry of Internal Affairs; and the national Parliament, as well as migrant worker organizations. Consultation and coordination are expected with other ministries/national authorities. While extensive consultation takes place between the MOLPSHRD and national social partner organizations, a specific national tripartite consultation/coordination body is essential to competently and appropriately address migration for employment.

BLAs

As a country largely dependent on skilled and semi-skilled workers from neighbouring countries and elsewhere to construct and operate its infrastructure, petroleum extraction, some industries and various other economic activities, South Sudan has not yet engaged in developing BLAs. No BLAs exist, although labour is referred to in a broader “framework agreement” for cooperation with Sudan. Government officials nonetheless emphasized their interest in obtaining information and training on BLAs – as on all other aspects of migration for employment – and did not discount the importance of a common IGAD approach.

4.2.6. Sudan

Migration situation

Sudan presents a complex migration situation, with significant emigration, refugee flight, outbound migration for employment, incoming migration (including seasonal workers), ongoing refugee inflows, massive internal displacement, and rural-to-urban migration.

UN data for 2019 indicate 2,040,613 Sudanese residents outside their country (UNDESA 2019b), equivalent to 4.6 per cent of the population in Sudan, with a large part of this outward flow being migration for employment. Most migration from Sudan, including among refugees, reflects the economic activity outcomes of emigration far greater than is usually credited. Remittances to Sudan were US\$425 million in 2018 (World Bank n.d.-g; see table 1).

By region, the largest number of Sudanese abroad (738,051, or more than a third) were in the UN’s “Western Asia” region of the Middle East and Gulf countries, with nearly half a million in Saudi Arabia. Countries in that region hosting more than 5,000 Sudanese include: Bahrain (7,917); Jordan (5,570); Kuwait (48,204); Oman (19,155); Qatar (23,954); Saudi Arabia (469,324); the United Arab Emirates (131,254); and Yemen (26,942) (UNDESA 2019b). Large-scale Sudanese migration to that region reflects demand, recruitment and deployment since the 1960s of skilled and semi-skilled workers from Sudan – and other Arab countries – to Gulf countries (Castles and Miller 1998, 17).

Another third of Sudanese abroad are in four IGAD member countries, three of which are also EAC Members, mainly in South Sudan (576,668), but also in Ethiopia (42,651), Kenya (9,518) and Uganda (67,395). While many moved as forced migrants – that is, as refugees or asylum-seekers – most adults are today engaged in economic activity in their places of residence.

Elsewhere in Africa, UN data indicate 59,277 Sudanese residents in Egypt, 15,308 in Libya, 67,395 in the Central African Republic, 354,817 in Chad, 5,432 in the Democratic Republic of

26 Authors assessment compiled from interviews and documentation

the Congo, and 5,199 in South Africa – but only 1,298 in West Africa. In contrast, the total for Europe and North America is 120,599, and 20,690 in Australia in the year 2019.

Internal displacement was estimated at 2,072,000 at the end 2018 (IDMC n.d.), with tens of thousands of newly displaced in 2019, consequences of years of civil conflicts; military repression; warfare against ethnic groups, such as in Darfur; among others. The 2011 secession of South Sudan transformed 600,000 South Sudanese living in Sudan from IDPs into migrants.

UN data indicate 1,223,092 migrants resident in Sudan in 2019, including refugees, with nearly two-thirds being from South Sudan (UNDESA 2019b). Main migrant populations by origin include migrants from the Central African Republic (16,634); Chad (98,890); Egypt (16,533); Eritrea (193,001); Ethiopia (62,565); Nigeria (18,825); and South Sudan (773,512). In addition, agriculture in part of Sudan depends on significant seasonal and not-so-seasonal migration of agricultural workers from Ethiopia, with estimates ranging from 80,000 to 200–300,000.²⁷

Key socio-economic factors bearing on migration

The population of Sudan was estimated at 42 million in 2018, with an annual population growth rate of 2.6 per cent. Sudan is categorized as a low-income country by the World Bank. National estimates show that about half the population are below the poverty line, while extreme poverty rate was 12.7 per cent in 2014. Agriculture engages 80 per cent of the workforce. While about 63 per cent of Sudan's land is agricultural, only 15–20 per cent is under cultivation, offering large opportunities for agricultural expansion (AfDB 2020). Industrial development is low, despite Sudan's riches in minerals, petroleum and arable land. The labour force is considered low-skilled. Lack of regulatory frameworks and institutional capacity are also constraints.

Sudan experienced protracted conflict for more than three decades and conflicts and

displacement continue in the Darfur region and the states of South Kordofan and Blue Nile. The secession of South Sudan in 2011 led to multiple economic shocks, with the most important one being the loss of much of the oil revenue that had accounted for more than half of the Sudanese Government's revenue and 95 per cent of the country's exports (World Bank n.d.-d). This was compounded by sanctions imposed by the United States in 1997 that were lifted only in October 2017.

Main migration challenges for Sudan

include unemployment, cited at 14–15 per cent with 25 per cent youth unemployment (AfDB 2020, 182); a general decent work deficit; high rural-to-urban migration but with little formal work in Khartoum; exploitative seasonal migration with no regulatory oversight; need for TVET; as well as the legacy of the former “militia regime” to contain the population and control migration. That regime received enormous support from the European Union for migration policing, including setting up the Regional Operational Center in Khartoum “to allow the security forces of nine countries in the Horn of Africa to share intelligence about human trafficking and people smuggling networks.” (Wills 2019).

The primary need is twofold²⁸: (1) ratification of international Conventions on migration governance and their domestication in national legislation on migration; and (2) elaboration of a comprehensive framework on migration for employment and related domestic policy on employment, social protection, labour inspection, etc.

The key stakeholder-actors²⁹ on migration for employment (including oversight on BLAs), include the Ministry of Labour and Social Development, the national employer and trade union federations (expecting the latter to be democratically re-established), and other main labour/employment/development stakeholder institutions listed in section 4.1 above, including the national Parliament and representatives of migrant worker organizations.³⁰

²⁷ Estimates from the European Commission (2018b) and a GMPA team interview in Sudan with GIZ project staff (March 2020).

²⁸ Authors' assessment from literature, stakeholder interviews in Sudan and ILO (2020f) country report cited below.

²⁹ Authors' assessment from stakeholder interviews in Sudan, ILO (2020f) country report, and other literature.

³⁰ Additional information is found in ILO 2020f.

The transitional employers' organization is disposed to engage on national migration policy. The national Chambers of Commerce and private recruitment agencies support improved regulation of recruitment and more protection in the deployment of migrant workers. The national trade union federation was disbanded by the new regime; nobody is yet in place to re-establish a representative national union organization.

BLAs

Sudan's experience with BLAs goes back to the 1960s. As of early 2020, it had operational BLAs with more than a dozen countries in the Middle East and also with other IGAD countries (see Chapter 5). Its BLAs show a great deal of variety, covering including technical cooperation, supply of skilled labour, reciprocal arrangements, among others. Sudan excludes women from going abroad for domestic work. There appears to be space under the transitional Government to advance on BLAs. Sudan stakeholders expressed support for a common IGAD approach towards rights-based decent-work BLAs.

4.2.7. Uganda

Migration situation

Uganda has been a country of origin of migrant workers at all skills levels, although particularly low-skilled workers, since colonial times. Ugandans have emigrated to other African countries, Europe and in recent years, to the Middle East. Ugandans have migrated since colonial times and continue to emigrate to Europe, particularly to former colonial ruler the United Kingdom, and to North America. Reported Ugandan migrant stock in those regions remains higher than in the Middle East/Gulf area.

As many as half of the Ugandans abroad may be in other EAC countries, mainly Kenya and the United Republic of Tanzania. UN data for 2019 count 734,951 Ugandans as being resident elsewhere in the world, 580,330 elsewhere in Africa – particularly in other EAC countries; 99,502 in Europe; and 49,884 in North America. However, UN migrant stock data for 2019 report only 19 Ugandans in all of the UN's "Western Asia" region comprising Middle East and Gulf countries (UNDESA 2019b). By

contrast, a Ugandan Ministry of Foreign Affairs official gave an estimate of 150,000 Ugandans in the Middle East, mainly in Saudi Arabia, the United Arab Emirates and Qatar, and some in Afghanistan. The Uganda Association for External Recruitment Agencies (UAERA) put the number of Ugandan migrant workers in the Middle East at 140,000 in early 2019 (Mangula 2019). Remittances to Uganda were US\$1.23 billion in 2018 (World Bank n.d.-g).

UN data counts 1,734,166 international migrants resident in Uganda. Nearly 90 per cent of the foreign-born population originates in the EAC and/or in IGAD countries, with the vast majority originally arriving as refugees. Uganda's refugee population almost tripled since July 2016 and stands at around 1.35 million, making it the largest refugee host in Africa and the third-largest in the world (World Bank n.d.-f). The large majority of refugees have fled from secession and civil war in adjacent South Sudan, while other refugees reflect past and continuing conflicts in Burundi, the Democratic Republic of the Congo, Ethiopia and Rwanda. Uganda's open-door refugee policy is one of the most progressive in the world, and refugees enjoy access to social services, land and can move and work freely. But the massive influx of refugees has hugely strained host communities and service delivery.

Key socio-economic factors bearing on migration

Uganda's population was estimated at 42.7 million in 2018, and it has the second-highest population growth rate among the IGAD countries at 3.7 per cent per annum (table 1). Uganda's agriculture sector plays a crucial role in "providing 70% of the country's employment opportunities, contributing more than half of all exports, and about one-quarter of gross domestic product (GDP)" (World Bank 2018). Four-fifths of workers are own-account workers or contributing family workers. The industrial sector is nascent, and Uganda is expanding its service economy, but it experiences low productivity and low levels of job creation (AfDB 2020). The national poverty rate has generally fallen in the past two decades, reaching 21.4 per cent in 2017, and the extreme poverty rate was 41.7 per cent in 2016 (table 1).

Youth employment is another pressing issue. About 700,000 young people reach working age every year in Uganda, but the economy creates

only 75,000 new jobs annually. Employment in agriculture is largely subsistence in nature. This leads to a huge youth employment challenge that is aggravated by an education system that provides youth with only seven years of schooling on average, exacerbating huge challenges of developing a workforce equipped for employment at home or abroad (World Bank n.d.-f).

Main migration issues and concerns ³¹

arise in both contextual factors and crucial needs for governance responses on specific issues and topics. Context features include high unemployment and underemployment; limited job creation; a mainly rural subsistence and informal economy; urban growth being at 6 per cent annually, but with few prospects for formal employment in cities; a growing population (3.7 per cent per year) with its youth bulge; and serious deficits in skills and in professional and vocational training.

In addition, main concerns include human rights and decent work protection of Ugandans abroad; implementation of EAC legislation, policy and practice for immigrants to Uganda and for Ugandans abroad in the EAC; establishing and adopting IGAD instruments and approaches on free circulation and rights of residence and establishment; and forging a common approach on BLAs consistent with REC and international standards.

Essentially needed is the domestication of international standards on migration governance in national legislation and the elaboration and implementation of a comprehensive framework on migration for employment and related domestic policy on employment, social protection, labour inspection, etc. Uganda has ratified two crucial migration governance Conventions – the International Convention on the Protection of All Migrant Workers and Members of their Families and ILO Convention No. 143 – as well as all eight ILO fundamental Conventions and three of the four ILO governance Conventions, but lacks legislation fully domesticating these instruments.

Key stakeholder actors ³² for migration for employment governance include the Ministry of Gender, Labour and Social Development as the lead entity; the Federation of Ugandan Employers and the National Organisation of Trade Unions as social partners; the Ministry for East African Community Affairs; the Office of the Prime Minister; and the national Parliament, as well as representatives of migrant worker and migrant community organizations. Consultation would be expected with the national immigration service under the Ministry of Internal Affairs, given its role on migration, and with other concerned ministries. A tripartite-led consultation and coordination body is essential to address the many specifics of migration for employment, including policy and improved legislation. Ugandan employers' organizations, trade union organizations and private recruitment agencies are well organized and engaged on migration. ³³

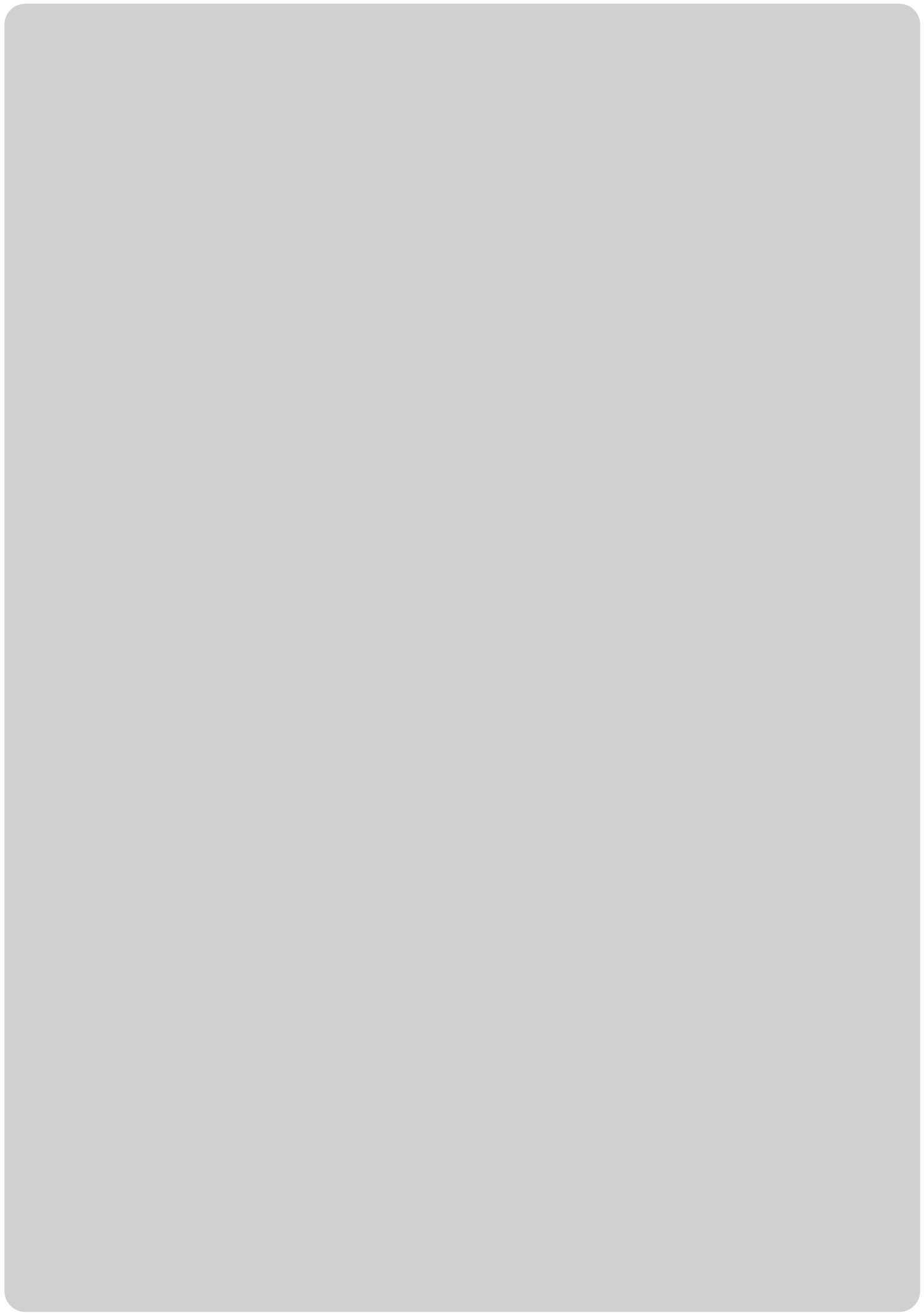
BLAs

Uganda currently has several BLAs (see Chapter 5). A large proportion of Ugandans in the Middle East were reported to have been deployed under BLAs. However, several interviewees referred to past public, press and political scandals resulting from abuses of Ugandan migrant workers and the repatriation of the bodies of Ugandan workers who died in the Middle East. Most actors interviewed supported the notion of a common IGAD approach to BLAs, and most were adamant about giving explicit attention in BLAs to decent work protection and human welfare for Ugandan workers.

³¹ Authors' assessment, compiled from literature, stakeholder interviews and the ILO (2020g) country report.

³² Authors assessment from stakeholder interviews in Uganda, the ILO (2020g) country report and other literature.

³³ As per interviews at national employer and union federations and the national association of external recruitment agencies.





5

**Summary of key
bilateral labour
agreement
challenges and
issues**

► 5.1. BILATERAL LABOUR AGREEMENTS AND MEMORANDA OF UNDERSTANDING SIGNED BY IGAD COUNTRIES

Most IGAD countries have signed bilateral agreements with some GCC countries and with Jordan. BLAs and MOUs signed by IGAD countries relate to several explicit or implicit policy objectives:

1. Reduce domestic unemployment pressures.
2. Obtain access to employment in destination countries.
3. Ensure protection of migrant workers' rights and welfare.
4. Address recruitment malpractices, high migration costs and debt burdens.
5. Reap development benefits of migration, including remittances.

► Table 2. Bilateral labour agreements and MOUs with Arab States (partial listing)

IGAD Member State	BLAs established with	Planned/In progress (as of February 2020)	Suspended or ended
Djibouti	Qatar, Egypt	Kuwait	Saudi Arabia (suspended)
Ethiopia	Jordan (2012), Kuwait (2009), Qatar, (2012), Saudi Arabia (2017), Sudan (2009), UAE (2018)	Bahrain, Lebanon, Oman,	
Kenya	Qatar (2012), Saudi Arabia (2016), UAE (2018)	Bahrain, Jordan, Kuwait, Oman	
Somalia	Oman, Qatar (2020), Saudi Arabia (originally 1982, updated 2014–15)		
South Sudan	Framework Agreement on the Status of Nationals with Sudan (2012)		
Sudan	Algeria, Djibouti, Egypt, Eritrea, Ethiopia (2009), Jordan, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, South Sudan (2012), Tunisia, UAE, Uganda, Viet Nam (2013), Yemen		
Uganda	Jordan (2016), Saudi Arabia (2017), UAE (2019).	Bahrain, Kuwait, Oman, Qatar	

UAE = United Arab Emirates.

Source: Field consultations; ILO 2020a–h.

Somalia and Sudan have had BLAs with certain Gulf countries going back to the 1970s and early 1980s. Five IGAD countries have or had agreements with Qatar, Saudi Arabia and/or Jordan and the United Arab Emirates. BLAs with a number of Middle East countries (including Bahrain, Kuwait, Lebanon and Oman) were under consideration by several IGAD countries as of February 2020. Ethiopia, Kenya and Uganda have had BLAs with Saudi Arabia specifically for domestic workers. Those accords had been suspended after reports of severe mistreatment; although they were reinstated by Ethiopia and Kenya after recent revisions to the BLAs.

Bilateral labour arrangements in the IGAD region have taken various forms, including:

- ▶ binding bilateral labour agreements (BLAs);
- ▶ non-binding memoranda of understanding (MOUs); and
- ▶ reciprocal arrangements.

IGAD countries Ethiopia, Kenya and Uganda have mostly entered into BLAs. Among countries of destination, Qatar and Saudi Arabia have generally opted for BLAs, whereas the United Arab Emirates preferred MOUs with the same countries. Sudan has a range of arrangements, including:

- ▶ reciprocal arrangements on skilled workers (with Ethiopia);
- ▶ for seasonal agricultural workers (also with Ethiopia);
- ▶ technical cooperation in labour and social issues (with Viet Nam);
- ▶ vocational training (with Eritrea);
- ▶ a framework agreement (with South Sudan); and
- ▶ BLAs.

Bilateral agreements have also been established between national trade union federations in Ethiopia and Kenya and the national union federation in Lebanon.

▶ 5.2. ESTABLISHING, NEGOTIATING, IMPLEMENTING, MONITORING AND EVALUATING BILATERAL LABOUR AGREEMENTS

5.2.1. Establishing bilateral labour agreements

The process of initiating, negotiating and overseeing implementation of BLAs varies considerably across IGAD countries. Officials interviewed noted that initiatives tended to come initially through inquiries from destination countries requiring migrant workers, although governments of several countries of origin, including Ethiopia and Kenya, have actively sought markets for the deployment of workers abroad. Other actors noted that there have been long histories of direct private sector arrangements made by recruitment agencies in destination countries with recruitment services in IGAD countries. Interviewers also heard mention of diaspora

involvement in encouraging and facilitating the recruitment abroad of compatriots.

In all countries, ministries of Labour have a key – if not the lead – agency role, in most cases with authority to initiate or propose BLAs. In all countries, ministries of Foreign Affairs are necessarily involved at the formal negotiations stages as well as in legal and diplomatic consideration of proposed or draft BLAs prior to approval, and they are also responsible for oversight of implementation through diplomatic consultation and observation in countries of employment. Several IGAD countries have labour attachés in employment countries, mainly Qatar and Saudi Arabia, but usually just one attaché dealing with many thousands, even tens of thousands of nationals in that country.

In Ethiopia and Sudan, the Attorney-General's office and the Ministry of Justice, respectively, review draft or proposed BLAs for conformity with national law and international legal obligations. In most countries, the national immigration services are consulted in establishing BLAs.

However, in all countries except Somalia, BLAs have been treated as confidential matters internal to the government entities directly involved. Social partners complained that they are neither consulted nor informed. In contrast, the Federation of Somalia Trade Unions emphasized that the Somali social partners are fully involved in developing BLAs, even being tele-consulted informally by government delegates at a recent negotiating session for a new agreement with a Gulf country. In other countries, union federation representatives emphasized that BLAs allowed conditions and risks for workers deployed abroad – whom the union federations considered their constituents – that are unacceptable under home country and international standards.

Employer organizations in nearly all IGAD countries expressed concerns about their non-involvement in BLAs. They also registered reservations about promoting BLAs that deploy skilled persons abroad while skills are lacking “at home” for employment and development.

Recruitment agency executives in several IGAD countries strongly complained that while BLAs impose substantial legal obligations and liabilities on private recruitment agencies, they have never seen the texts of the agreements or been informed directly of what those obligations and legal responsibilities include.

5.2.2. Content of bilateral labour agreements

The content of BLAs is covered in Chapter 6. This section presents a few remarks that come from stakeholder consultations.

Most of the IGAD country BLAs reviewed contained no reference to or mention of human rights or international labour standards. While this is common to many BLAs between Asian countries and GCC countries as well, the Nepal-Jordan BLA of 2017 and a number of North-South agreements feature such references explicitly in their preambles as overarching principles (Wickramasekara 2019c; IGAD 2021).³⁴

Nearly all IGAD BLAs specify that the application of employment contracts and treatment of migrant workers will be according to the laws and regulations in the destination country. While it is standard practice to apply national jurisdiction, this leads to protection risks in contexts characterized by low ratification of relevant international labour standards and observed poor practice in treatment of foreign workers. When certain categories of workers, such as agricultural workers and domestic workers, are excluded from national labour laws, the protection situation is more precarious.

Existing BLAs rarely contain any references to the role of labour inspection services in monitoring working and living conditions of workers. This is a major gap in the BLAs reviewed.

While some BLAs specify some provisions for complaints and grievance mechanisms, in actual implementation, workers have effectively little or no access to redress and justice.

34 Examples: a). Preamble of the Nepal-Jordan General Agreement, 2017: “Recognizing the international commitments of both parties on human rights and labour rights, in particular the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International instruments on the rights and welfare of labour.”

b) Preamble of the Spain and Colombia agreement (North-South), 2001: “Motivated by the objective that Colombian workers arriving in Spain should effectively enjoy the rights recognized in the international instruments to which both States are party; ... Conscious of the need to respect the rights, obligations and guarantees set forth in their national legislations and in the international agreements to which they are parties.”

Several IGAD country BLAs reviewed include a provision as stated purpose “to control the employer–worker employment relationship”. At face value, this focus on control counters the basic principle of the employment relationship being established by the partners directly through social dialogue in a context that respects fundamental rights of association and collective bargaining.

5.2.3. Negotiating bilateral labour agreements

Government representatives and other interlocutors in IGAD countries universally cited difficulties in proposing and negotiating satisfactory conditions and protections in BLAs due to the hugely different power relations between their countries and Middle East/GCC countries. In the generalized view among most IGAD country officials, the greater economic and political power of destination countries allowed them to adopt a more dominant position in negotiations, presenting in some cases, implicitly if not explicitly, “take it or leave it” proposals with little if any option for negotiation. For example, although one IGAD country was keen to specify a minimum wage for domestic workers, this option was vetoed by the destination country.

At the same time, interviewees expressed concern that all IGAD countries lose when neighbouring IGAD countries allow themselves to be played off in competition with each other for increased “market share” by agreeing to BLAs with lower levels of protection.

5.2.4. Implementing and monitoring bilateral labour agreements

Although IGAD–Middle East agreements generally mention options for revision or modification of the agreement following reviews by the Joint Committee, there is little evidence that this has ever been implemented. The GMPA team found no instances of reporting on implementation, nor any instances of evaluation of a BLA.

Perceptions of poor implementation and lack of monitoring were mentioned by several government stakeholders interviewed. They evoked several factors:

1. A lack of political will and sincerity to implement the agreement on the part of countries of destination – particularly with regard to the provisions calling for decent work and pay.
2. Destination country governments may be aware of abuses by employers, but avoid enforcing protections because employers include politically powerful enterprises and families who benefit from unprotected foreign labour.
3. Several interviewees noted a dilemma in their origin country governments between obtaining and maintaining overseas jobs versus reduction of opportunities should they complain about non-respect of BLA conditions and resulting abuses. Some comments intimated that “other actors” turn a blind eye to violations of BLA provisions to preserve current and future job opportunities for their nationals in destination countries.
4. Lack of competent staff in the government offices concerned to follow up on usually several BLAs with different countries.
5. Minimal presence or absence altogether of representation in employment countries. Even where labour attachés are present, one or two cover entire countries with thousands of their nationals to look after, and they usually have no authority to independently visit worksites, living quarters, etc.
6. Changes in the economic situation or other crises faced by destination countries, such as economic downturns. This came to the fore with the COVID-19 pandemic.
7. Inactive or non-operational Joint Committees, including delays in the appointment of committees by destination countries, and Joint Committee meetings not being held according to the agreement.

► 5.3. MAIN ISSUES IDENTIFIED IN CONSULTATIONS WITH IGAD COUNTRY STAKEHOLDERS

5.3.1. Treatment of migrant workers

The GMPA expert team consistently heard stories of abuse and exploitation of migrant workers deployed to work in Middle East countries. Interlocutors in Kenya and Uganda reported that there had been political scandals and protests in recent years after press reports about the bodies of migrant workers being repatriated from Gulf countries. The uproars led to government promises to give greater attention to the protections stipulated in BLAs.

An Ethiopian employer official spoke about the monitoring of young women returning from work in Gulf countries, some of them complaining of health problems. He reported that, upon medical examination, it was discovered that organs had been removed from some of the women returnees while in the country of employment, without either their knowledge or consent.³⁵

In all countries, contract substitution, non-payment or underpayment of wages, dangerous working conditions, absence of occupational safety and health protections, absence of health insurance and non-access to social security were all cited as commonplace problems for many migrant workers abroad, including those deployed under BLAs (see box 1).

Denial of or restrictions on freedom of association/union organizing rights for migrants in most Middle East countries was highlighted by IGAD country trade union federations. The situations in specific countries are more nuanced, as highlighted in section 5.4.3.

Absence of any monitoring, complaints mechanisms, labour inspection or access to justice were also cited as almost universal problems by interlocutors in IGAD countries.

Mention was also made of severe cultural differences and conflicts in expectations, which are apparently especially difficult for young women – often barely more than adolescents who have never been away from their home village – to cope with. Language barriers compound the difficulties; many workers going to low-skilled work or domestic service originate in rural areas of IGAD countries where English is unknown or barely spoken, let alone Arabic.

Information provided indicated that substantial pre-departure orientation – let alone specific skills training – is not systematically or generally provided in any IGAD country visited.

Interlocutors in most IGAD countries cited major problems of abuse suffered by women migrant workers in Gulf/Middle East countries, particularly in Saudi Arabia. Several noted that bans had been imposed at one time or another on the deployment of women for domestic work.

³⁵ Further investigation of this serious matter brought to the GMPA team's attention was beyond the mission scope and outside the competence of the GMPA team.

Box 1. Migrant worker case study: Danger to life versus dismissal and debt

A 22-year-old returned migrant worker in Kenya told of being recruited to Qatar to do cleaning work, and then being told upon arrival that his assignment was “high access cleaning” – a term the interviewer had never heard of. He explained: high access cleaning meant cleaning exterior windows 60 stories up on an 80-story tower under construction, suspended in a body harness supported only by a single rope. After the first day, he told the employer, “No way”; he was not trained for that work, safety was non-existent, and he would not risk his life. He asked to be transferred to another cleaning job, but the employer said, “No, you are dismissed. Your permit is cancelled. You go home and pay your own return ticket, and here is \$20 pay.” The migrant worker returned to Kenya less than a month after being deployed, with nothing except the debt for his return ticket. He said he had paid a relatively modest fee to a recruitment agency, but did not disclose whether he had to repay the outbound travel fare.

Source: Interview with GMPA team member in Nairobi, February 2020.

5.3.2. Deployment/ redeployment to conflict situations

In Sudan, the GMPA team was told of recent press reports that a considerable number of young men recruited for security work in the United Arab Emirates were calling home from Libya, apparently redeployed to “assignments” at or near combat locations in Libya.³⁶ In Kenya, the interviewers were told that some migrant workers recruited to Saudi Arabia and the United Arab Emirates for security and similar jobs had been re-assigned by the employing company to postings in Afghanistan. In these

cases, the recruitment agencies insisted that they had engaged due diligence in recruitment and contact compliance, but what followed was out of their knowledge or control.

In Uganda, an external recruitment agency executive explained that his speciality was recruiting young men for security and maintenance work at US military and other facilities in Afghanistan, Iraq and Somalia. He indicated that the recruitment requests and contracts came from the US State Department and said that the employing entity was diligent in monitoring recruitment, treatment and compliance with agreed contract terms and working conditions.

► 5.4. SPECIFIC CONCERNS AND CHALLENGES IDENTIFIED BY STAKEHOLDERS

The universal concern expressed by nearly all interviewees was abuse and exploitation suffered by migrants from their country in Middle East/Gulf countries. Those in the know also complained about the generalized lack of protections in existing BLAs.

Most of the following concerns articulated by stakeholders were recognized in the recent June 2020 GFMD Regional Consultations African Union and the Global Forum on Migration and Development *Thematic Note on Theme 4*, in particular in Focus No. 3: “Gaps in protection

³⁶ See also: Kaamil Ahmed, “Sudan Accused of Failing Men Who Say They Were Duped into Working in Libya”, in *The Guardian*, 31 January.

of migrants in labour agreements and in the informal economy,” including those of particular concern in COVID-19 contexts as well as “in more ordinary times” (GFMD 2020, 4).

The following subsections identify concerns raised, several of them by all or most of the interviewees. Each concern is followed by mention of international Conventions and/or guidelines that set standards relevant to establishing rights-based BLAs. As this listing shows, existing international Conventions – several widely ratified by both IGAD and Middle East countries – provide standards of treatment and protections relevant to all these areas of concern.

5.4.1. Recruitment and placement of migrant workers

Most interviewees mentioned problematic issues in the recruitment and placement of migrant workers:

1. Abuses, documented or perceived: Abuses by recruitment agencies, including provision of false or misleading information to recruits, charging excessive fees, and costs being charged to applicants, etc.
2. Concerns among recruitment agencies that they are being scapegoated for what happens in destination countries despite good faith efforts at due diligence. Recruitment agencies claim that many problems in destination countries are both beyond their control or knowledge. They also noted that they are being required to comply with terms and conditions in BLAs that were formulated without their involvement and that are not shared with them.
3. Contract substitution, said in Kenya to be “the biggest problem”: Migrant workers being obliged to take a contract upon arrival that is different from and with inferior conditions and pay than what they had signed prior to departure from the origin country.
4. Absence of pre-departure training and orientation to prepare migrant workers

for expected work situations or for how to navigate the social and cultural contexts of the employment country.

5. Particular concern was raised in several countries over recruitment of young women, often under age 21 and with limited formal education, no skills training and no pre-departure orientation, usually for domestic work.
6. Lack of a standard employment contract in some IGAD country BLAs. The GMPA team was able to obtain little information on the use of standard employment contracts by recruitment agencies and nothing about standard employment contract enforcement in destination countries.

The ILO Private Employment Agencies Convention, 1997 (No. 181), provides a comprehensive framework for regulating the operation of recruitment agencies including external recruitment agencies in:

- establishing the legal status of external recruitment agencies;
- national licensing and/or certification;
- non-discrimination by recruitment agencies in their services;
- data protection by recruitment agencies;
- reporting by external recruitment agencies on their activities at regular intervals;
- monitoring of compliance with regulations by labour inspection services or other competent public authorities;
- machinery and procedures involving representative employers’ and workers’ organizations to investigate complaints, alleged abuses and fraudulent practices concerning recruitment agencies; and
- in cases of non-compliance, adequate remedies, including penalties as appropriate.

Article 8 calls for government collaboration with other countries in consultation with representative organizations of employers and workers “to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private

employment agencies". However, none of the origin or destination countries considered in this report so far have ratified this Convention.

The ILO General Principles and Operational Guidelines for Fair Recruitment complement Convention No. 181 by providing operational guidance covering recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries within or across national borders, and concern all sectors of the economy. Consultation between social partners and government is expected in the implementation of guidelines.

Reference to or annexing a standard employment contract has become a good practice in BLAs, as discussed elsewhere in this report.

5.4.2. Decent work conditions and risks at work

Highlighted in all IGAD countries by nearly all interviewees were issues with:

- ▶ Conditions of work and lack of protection through or under labour standards at work, with treatment ranging from poor to substandard to abysmal for some migrant workers.
- ▶ Occupational safety and health, which generally receives little or no protection nor monitoring.
- ▶ Dangerous working environments in the Middle East, including temperature and dehydration issues.
- ▶ Numerous up-to-date international labour standards – that is, ILO Conventions – define minimum standards concerning protection, working conditions and occupational safety and health. These including the:
 - ▶ Plantations Convention, 1958 (No. 110);
 - ▶ Employment Injury Benefits Convention, 1964 (No. 121);
 - ▶ Nursing Personnel Convention, 1977 (No. 149);
 - ▶ Occupational Safety and Health Convention, 1981 (No. 155);

- ▶ Safety and Health in Construction Convention, 1988 (No. 167);

- ▶ Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172);

- ▶ Safety and Health in Mines Convention, 1995 (No. 176);

- ▶ Maternity Protection Convention, 2000 (No. 183);

- ▶ Safety and Health in Agriculture Convention, 2001 (No. 184); and

- ▶ Domestic Workers Convention, 2011 (No. 189), among others.

International standards for working time, rest time and vacation have also been established in ILO Conventions and Recommendations, including the:

- ▶ Reduction of Hours of Work Recommendation, 1962 (No. 116), on the 40-hour workweek;

- ▶ Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), which set a general standard that workers shall have a rest period of at least 24 consecutive hours every seven days;

- ▶ Holidays with Pay Convention (Revised), 1970 (No. 132), which establishes at least three working weeks of annual paid holiday for one year of service; and

- ▶ Night Work Convention, 1990 (No. 171), requiring measures for protection of night workers.

5.4.3. Denial of/absence of respect for fundamental rights at work

Regarding the denial or absence of respect for fundamental rights at work in destination countries, interviewees expressed the following concerns:

1. Forced labour conditions/situations were described in the abusive treatment, denial of pay and exploitative conditions reportedly faced by some migrant workers. Confiscation of identity and

travel documents including passports by the employer or the recruitment agency is a common practice leading to such situations. Although many agreements now contain provisions prohibiting such practices, they are hardly enforced.

2. Restricted or non-existent freedom of association and collective bargaining rights: Independent unions and union organizing are prohibited in several Gulf countries (Qatar, Saudi Arabia and the United Arab Emirates). Although trade unions are permitted in Bahrain, Kuwait and Oman, membership among migrant workers is limited in practice, and migrant worker participation in trade union structures can also be restricted. Among the GCC countries, only Kuwait has ratified ILO fundamental Conventions Nos. 87 and 98.
3. Discrimination, inequality of treatment formalized in many BLAs: Most IGAD country BLAs reviewed provided no specific provisions for non-discrimination, while at the same time containing provisions for migrant workers that are differentially inferior to those provided for national workers. Several BLAs include clauses of “equality of treatment with other migrant workers”, implicitly specifying differential treatment vis-à-vis national/GCC workers.
4. Harassment, violence, racism, xenophobia, most often evoked concerning abuse suffered by women working in domestic service in Gulf countries. The generalized poor treatment of African workers and incidents of public harassment by locals and brutality by police and other authorities were also mentioned. Outside GCC countries, these abuses were found in Jordan and Lebanon as well.
5. Gender-based discrimination and specific concerns emphasized on the abuse and exploitation of women migrants, especially in domestic work, resulting notably in BLAs deploying women to Saudi Arabia being suspended by three IGAD countries.

Eight fundamental Conventions identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work spell out the abolition of forced labour; ending child labour; non-discrimination and equality of treatment on basis of gender as well as race, ethnicity, national extraction, religion and other grounds; and freedom of association and collective bargaining as universal rights applying to all workers. Some IGAD States have ratified all eight fundamental Conventions, while others have ratified most of them. The GCC countries, Jordan and Lebanon have ratified at least five of the eight fundamental Conventions (see Annex I).

5.4.4. Remuneration, pay and remittances

Several interlocutors highlighted that pay for migrant workers in destination countries is generally substandard compared to nationals; that pay for African migrant workers is lower than it is for some migrant workers of other regions; that there are reported differences in pay levels among IGAD country nationals for similar work; and that migrant workers frequently experienced payment at lower rates and with higher costs and deductions than what was contractually agreed at departure – often due to contract substitution, as noted above.

Three ILO Conventions provide specific standards on payment of wages.³⁷ The Protection of Wages Convention, 1949 (No. 95), specifies that wages shall be paid in legal tender at regular intervals. In cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose. The Minimum Wage Fixing Convention, 1970 (No. 131), and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), also contain relevant standards for protection of migrant workers' pay.

The ILO fundamental Discrimination (Employment and Occupation) Convention, 1958 (No. 111), is particularly relevant, defining discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national

37 See the note on these instruments at: ILO, “International Labour Standards on Wages”.

extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Art. 1). The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families expanded the scope of discrimination by including nationality as a prohibited grounds in its Article 3 on non-discrimination. The ILO fundamental Equal Remuneration Convention, 1951 (No. 100), is also relevant in setting the principle of equal remuneration for men and women workers for work of equal value.

5.4.5. Absence of labour inspection for migrant workers and lack of labour inspection in bilateral labour agreements

Few BLAs even mention labour inspection. The proper implementation of BLA provisions as well as of national labour legislation depends on effective labour inspection. Two ILO priority governance Conventions – the Labour Inspection Convention, 1947 (No. 81), which was ratified by nearly all Middle East and GCC countries, and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) – lay out international standards for labour inspection in industry and commerce and in agriculture, respectively, including standards on national legislation, on the functions and organization of inspection, and on the powers and obligations of labour inspectors.

5.4.6. Social protection

Regarding social protection for migrant workers, interviewees expressed the following concerns:

1. Absent or minimal health protection and health-related rights, including lack of access to and coverage by any health insurance.
2. Absence of access to any other social security benefit in countries of employment.

3. Restricted portability³⁸ of contributions and benefits (for those who have any access).

The rights of all persons to the highest attainable standard of health are laid out in the Universal Declaration on Human Rights and the widely ratified International Covenant on Economic, Social and Cultural Rights.

The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), covers all nine branches of social security and sets minimum standards for each. The nine branches are: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivors’ benefits. The ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Maintenance of Social Security Rights Convention, 1982 (No. 157); and the Maintenance of Social Security Rights Recommendation, 1983 (No. 167), provide for reinforced social security protection and portability for migrant workers.

5.4.7. Supervision of living conditions

Regarding the living conditions of migrant workers, interviewees expressed the following concerns:

1. Housing, including conditions, adequate sleeping and personal space, etc.
2. Nutrition, including adequacy of diet, access to culturally appropriate food, etc.
3. Reports since outbreak of the global COVID-19 pandemic have highlighted terrible living conditions that have heightened virus exposure and infection rates for migrant workers in many countries. Measures by governments in numerous countries, such as sealing off migrant housing and neighbourhoods, have further worsened the health and living situations of many migrants.

Article 6(1)(a)(iii) of Convention No. 97 and Paragraph 2(i) of the Migrant Workers Recommendation, 1975 (No. 151) provide that equality of treatment should cover accommodation or housing. The ILO Committee

³⁸ Portability refers to the transfer of a person’s acquired social security coverage and benefits to his/her country of origin or another country upon departure from the country where the social security contributions were made.

of Experts on the Application of Conventions and Recommendations (CEACR) noted that these provisions on housing are relevant for seasonal and temporary workers and live-in domestic workers (ILO 2016, para. 416). The CEACR noted that the Workers' Housing Recommendation, 1961 (No. 115), is of particular relevance to temporary and seasonal migrant workers.

The ILO Maritime Labour Convention, 2006, as amended, lays out detailed standards for accommodation in Title 3, including specifications on sleeping space, minimum size of rooms according to the number of berths, lighting, ventilation, eating rooms, sanitary facilities, accessible hospital facilities, laundry and access to open air space for maritime workers, and "inspect[ion] to ensure initial and ongoing compliance with those standards" (Standard A3.1(1)(b)). The ILO has recommended these standards as a reference for companies concerned about decent housing for migrant workers in their international supply chains.

Article 15 of the ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, 1949,³⁹ spells out that: "Provision shall be made for the supervision by the competent authority or duly authorised bodies of the territory of immigration of the living and working conditions, including hygienic conditions, to which the migrants are subject." The Model Agreement recommends that origin and destination country authorities cooperate on this, and that labour inspection has a role, including for temporary workers. Article 19 specifies, "The treatment applied to migrants and the members of their families shall be the same as that applied to national workers in the same occupation as regards the supply of food." Article 20 urges authorities to ensure that migrants and their families have hygienic and suitable housing.

5.4.8. Dispute settlement and support mechanisms: Access to justice

Regarding dispute settlement and migrant worker access to justice, interviewees expressed the following concerns:

1. Arbitrary dismissal from employment with no appeal.
2. Non-existence of or absence of access to any meaningful grievance or complaint mechanism or resolution procedures.
3. Impossibility of utilizing existing local mechanisms that function only in the Arabic language.
4. Inadequate or non-existent home country consular presence and access to/by migrant workers: Few IGAD countries have labour attachés in migrant employment countries.

Access to justice is a fundamental principle of human rights, established in the Universal Declaration of Human Rights, Article 8. The CEACR notes, "Migrant workers, like all other workers, should enjoy the right to access justice and judicial remedies against abusive conditions, by having complaints considered by independent mechanisms" (ILO 2016, para. 488). The Committee of Experts adds: "Migrant workers should have effective access to legal aid, assistance and services, and to courts, where appropriate, without having to pay fees at a rate which impedes access to justice. They should also be given sufficient time to remain in the host country to pursue complaints and disputes brought to the attention of the competent authorities and obtain redress" (ILO 2016, para. 518). Rights to access to justice and to effective remedy are also evoked in article 7.1 of the African Charter on Human and Peoples' Rights, and article 9 of the Arab Charter on Human Rights.

The ILO Examination of Grievances Recommendation, 1967 (No. 130), establishes that, "Any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right: (a) to submit such grievance without suffering any prejudice whatsoever as a result; and (b) to have such grievance examined pursuant to an appropriate procedure" (Para. 2).

The ILO Termination of Employment Convention, 1982 (No. 158), applies to all employed persons, including migrant workers, and establishes the rights of workers to respond to allegations about their conduct or performance where these are the basis

³⁹ The ILO Model Agreement can be found as an annex of the Migration for Employment Recommendation (Revised), 1949 (No. 86).

for termination of employment. Workers are entitled to appeal against that termination to an impartial body such as a labour tribunal, an arbitration mechanism or a court.

5.4.9. Return/repatriation

Regarding return and repatriation, interviewees expressed the following concerns:

1. Return without pay and/or benefits earned while in employment country.
2. Lack of appropriate treatment of deaths, disability or serious injury or illness.
3. Deportation in cases of injury or illness; leaving it to home country authorities to arrange return of bodies in cases of death.
4. Common cases of dismissal coupled with deportation.
5. Arbitrary mass deportations.
6. Absence of provisions to address or to renegotiate mutually acceptable measures in major crises, whether a pandemic, conflict situations, disasters or economic collapse.

ILO Conventions Nos 97 and 143 on migration for employment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families include delineation of migrant worker rights, regardless of migration status, to outstanding remuneration, severance pay, compensation for holidays not taken, and reimbursement or transferability of social security contributions under certain conditions. In case of difficulties with any of these, migrants should enjoy equal treatment with national workers regarding access to courts and legal assistance. Furthermore, migrant workers are entitled to a reasonable period of time to remain in the country of employment to seek and obtain a remedy for outstanding remuneration and benefits. Migrant workers are entitled to retain and repatriate their personal belongings.

While States retain authority over the entry and stay of non-citizens in their territory, international law sets obligations not to deport, expel or otherwise remove a person

when they may face danger of persecution or risk of irreparable damage where they may be removed to. The serious harm or worse suffered by some migrant workers deported to IGAD countries since the start of the COVID-19 pandemic is a current case in point. The UN Treaty Body for the International Covenant on Civil and Political Rights (ratified by most Middle East countries referred to in this report) has stated:

[T]he article 2 obligation requiring that State parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable damage, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may be subsequently removed (United Nations Human Rights Committee 2004, para. 12).

5.4.10. Lack of skills recognition and skills training/upgrading

Several interviewees noted that some migrant workers deployed abroad ended up in jobs well below the level of skills they had obtained at home. A variant of this concern was non-recognition by employers and/or certification systems abroad of origin country TVET certificates and/or on-the-job acquired skills and qualifications. Another issue was absence of access by migrant workers to skills training or upgrading in employment countries.

Objective 18 of the Global Compact for Safe, Orderly and Regular Migration calls on states to “invest in skills development and facilitate recognition of skills, qualifications, and competences” (UN General Assembly 2018). An ILO (2018) “Skills for Migration and Employment” policy brief lays out model approaches and good practices, including bilateral or multilateral mutual recognition agreements (or MRAs).

► 5.5. CHANGING CONDITIONS STEMMING FROM THE COVID-19 PANDEMIC

The global situation has changed radically since March 2020. The global COVID-19 pandemic, its human and economic consequences, the deepening global recession and the collapse of oil prices have combined to diminish the prospects for BLAs in the near future. Global travel bans, “stay in place” lock-down confinement and work stoppages under the COVID-19 pandemic emergency have resulted in stopping or suspending deployments of migrants under BLAs or otherwise.

Deportations and returns of IGAD country migrant workers from Gulf countries and elsewhere have been taking place – despite travel bans and despite the urgent need for migrant workers in essential activities, including agriculture and healthcare. These returns present huge economic, social and health challenges for the returnees, their families and their home communities. Specific measures should be essential upon the return of migrants/migrant workers for public health and welfare reasons, including to: (1) reduce risks of COVID-19 transmission to home communities; (2) ensure isolation and treatment for any infected; and (3) organize support measures to mitigate the loss of foreign employment income that families and communities depend on for sustenance.

The World Bank (2020e) predicted a decline by 20 per cent in the global value of remittances in 2020, and as of mid-2020, some countries have already seen sharper declines of over 30 per cent since March. An immediate concern is allowing those abroad to “remain in place”, to be treated equitably, and to continue working or to return to work to a maximum extent.

Little new demand can be expected in the near future as the global recession deepens

and oil-dependent Gulf countries face the collapse of global oil prices (World Bank 2020a). When the demand for migrant labour re-emerges, it may be in a “buyer’s market”, with demand-side countries proposing more severe terms with less protection for rights and decent work, worsened working conditions, and lower offers of remuneration than previously. However, origin countries and their current and potential migrant workers will face desperate domestic economic and social pressures to take jobs wherever offered at any price – whatever the costs.

The COVID-19 pandemic and its consequent responses with inhumane impacts on migrant workers highlight the need for BLAs to address emergency situations. Such provisions need to designate responsibilities and parameters for ensuring safe work for workers who remain employed and for ensuring a basic livelihood, including safe and decent housing for migrant workers, particularly for those rendered unemployed but who cannot return home due to travel restrictions. It also shows the need for restrictions on deportations or forced removals when movement and return jeopardize public health and safety in countries of origin.

The African Union Labour Migration Advisory Committee (2020) issued a recommendation in April regarding BLAs in the context of COVID-19, in particular to “call on African governments in the post-COVID-19 era to carefully look at and renegotiate the different Labour Migration Agreements that they may have signed with the view of ensuring the enjoyment by migrant workers of adequate health and safety, social protection and portability, and other human and labour rights protections”.

6

**Assessment
of criteria for
rights-based
bilateral labour
agreements,
and application
to selected
agreements**

This chapter deals with the criteria for designing rights-based BLAs with some illustrative applications to selected agreements.

► 6.1. STRUCTURE OF BILATERAL LABOUR AGREEMENTS AND MEMORANDA OF UNDERSTANDING

6.1.1. ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons

The first pioneering guidelines on the design of a BLA was provided by the Model Agreement annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), accompanying the ILO Migration for Employment Convention (Revised), 1949 (No. 97). This Model Agreement was widely used in the 1950s and 1960s by European governments for developing BLAs (Bohning 1996; Wickramasekara 2015).

This Model Agreement still holds considerable relevance despite the emergence of many bilateral migration arrangements in recent decades that deviate from being fully-fledged BLAs. The Model Agreement can be used in two ways:

1. As a checklist of the comprehensiveness of a BLA – The ILO 1949 Model Agreement contains 29 articles corresponding to items to be dealt with in developing a bilateral agreement for migration.
2. As a tool to assess the quality of a bilateral agreement based on various provisions of the Model Agreement. The Model Agreement was meant to give effect to the provisions in ILO Convention No. 97 and the related Recommendation No. 86,

such as information exchange between governments, organization of recruitment and placement, employment contracts, equality of treatment, supervision of working and living conditions, and settlement of disputes.

Nevertheless, the Model Agreement was developed more than seven decades back in 1949, and some of its provisions may not appear that relevant in the changed global context. For example, recruitment and placement are now dominated by external recruitment agencies in contrast to the dominant role of public employment services at the time. Migration of women for employment was also not common at the time. There has also been a proliferation of agreements and MOUs for temporary labour migration – especially by low-skilled workers – compared to migration for settlement at the time. Most recent bilateral agreements, including those entered into by IGAD countries, pertain primarily to temporary migration of low-skilled workers.

6.1.2. Structures of selected IGAD agreements

What should be the minimum configuration of a BLA or MOU? This would partly depend on the specific context of a BLA – the categories of workers considered (male and female; skilled or low- and semi-skilled), types of occupations, and the nature of migration envisaged (permanent or temporary or seasonal), among other things.

A review of the structures of existing IGAD agreements (table 3) shows that the structure can differ widely based on the parties to the agreement and the category of workers involved. The Saudi Arabian domestic worker agreements are generally short, consisting of 10–13 articles only, and the attached standard employment contracts deal with the details of the employment contract and the obligations and rights of employers and workers. The Qatar and United Arab Emirates agreements run to 19 and 17 articles, respectively. The structure and content of agreements between Qatar and Asian and African countries or origin have hardly changed over the years. They also follow a similar structure, which may reflect the dominant influence of the country of destination in imposing its own agreement template. Similar considerations apply to Saudi Arabian domestic worker agreements with origin countries in Asia and the IGAD region. There are only minor variations in the structure and content of these agreements with different countries. The United Arab Emirates agreement with Uganda provides an elaborate structure, and the contents are more detailed than those of other agreements.

6.1.3 Proposed core elements of a bilateral labour agreement and application to selected IGAD agreements

Based on the ILO Model Agreement of 1949 and the BLA structure proposed in the ILO report *Core Elements of a Bilateral Agreement or a Memorandum of Understanding on Labour Migration* (Wickramasekara 2018a), a core structure of a BLA/MOU consisting of 24 articles has been proposed (see table 4). This list of articles can be modified according to the specific context of the parties negotiating an agreement.

Table 4 compares selected IGAD agreements in relation to the above core elements. In general, most agreements are comprehensive and contain the main components listed.

The article on social protection measures is often limited and relates only to health and injury benefits. There are no provisions for trade union rights or for support mechanisms from civil society in any of the agreements. Protection provisions for female workers are mentioned in only one agreement. There are no specific articles dealing with equality of treatment and non-discrimination, nor are there any dealing with the rights of migrant workers in the agreement structures.

The comparison of structures highlights the need for more comprehensiveness and for more logical structuring of the articles of the agreements. It would be better if the country of origin can propose an agreement template for BLA negotiations.

► 6.2. REVIEW OF SELECTED AGREEMENTS IN TERMS OF GOOD PRACTICE/PROVISION CRITERIA

6.2.1. Criteria for good provisions and practices in agreements

One has to go beyond the structure of an agreement to assess the quality and the rights-based approach of a BLA. The actual content of agreements and their implementation and outcomes would determine the quality of BLAs. The ILO's 2015 global review of BLAs and MOUs used a set of 18 good practice criteria produced in consultation with ILO migration experts and building on international instruments, particularly the ILO Multilateral Framework on Labour Migration, to better assess the quality of bilateral arrangements (Wickramasekara 2015).

These criteria were modified in a later study in the context of Bangladesh, which proposed 20 criteria of good provisions and practices grouped according to the major objectives of labour migration policy: governance, protection and development (Wickramasekara 2018b; 2018c). The criteria have been further modified for the current study, with 23 good provision/practice criteria proposed (see table 5). The criteria have been developed to assess the content or provisions of the agreements. However, implementation status and outcomes – whether what is in the agreement has been applied or implemented in practice and seen in the outcomes – cannot be determined through analysis of agreement texts. It is, therefore, crucial for the parties to a BLA to compile concrete information on follow up and actual outcomes. Regular monitoring reports, rapid assessments and periodic evaluations can help in this process.

6.2.2. Application of criteria with regard to selected agreements

Table 5 provides an illustrative exercise of reviewing a few selected agreements in terms of the defined good criteria. Some agreements are more detailed in the provisions relating to fair recruitment, employment contracts, and implementation and monitoring procedures. While there are increasing references in BLAs to fair and ethical recruitment and to the commitment to regulate the activities of recruiters, only a few agreements contain a provision to highlight the “employer pays principle” – that recruitment costs will be borne by the employer. Regarding employment contracts, most provisions are now being applied in bilateral agreements, at least in attached standard employment contracts (SECs). Recent agreements also contain a provision that workers would keep their travel and identity documents. However, the practice in most agreements is to include this provision in the SEC rather than in the main agreement text. It is more effective to include it in the main text. Wage payments into bank accounts are also now standard in bilateral instruments. Stakeholder consultations revealed that this is not always respected.

Given that a lack of effective implementation is a common feature of BLAs in all regions, the incorporation of concrete implementation procedures is crucial. The most common implementation provision is the establishment of a Joint Committee for monitoring and follow up of the agreements. However, assignment of focal points, elaboration of implementation plans, clear time frames for formation of committees and meetings, publicity and dissemination of the agreement, consultative processes with other stakeholders, and periodic evaluations are rarely found in these BLA texts. By contrast, article 13 of the MOU between Italy and Egypt concerning the implementation of the agreement on

cooperation on bilateral labour migration states, “The Contracting Parties undertake to disseminate, on their national territory, the provisions of the present Memorandum.”

The review of IGAD bilateral agreements with the Middle East further shows notable omissions with regard to normative foundations, gender considerations, trade union rights, access to support mechanisms from civil society, access to human resource development and skills recognition, and reintegration of returning workers. One agreement can be noted for specific references to cooperation in human resource development (the Ethiopia–United Arab

Emirates MOU on the employment of Ethiopian workers in the United Arab Emirates).

It is of course, not reasonable to expect existing BLAs to conform to all the good practice criteria put forward in table 5. But good agreements are likely to satisfy more than half of the criteria.

It is suggested that all concerned parties review their agreements in terms of these and any additional criteria for guidance, using information from actual implementation of the agreements to improve existing or new agreements.

► 6.3. MODEL OR STANDARD EMPLOYMENT CONTRACTS

6.3.1. Standard employment contracts

The requirement of a standard written contract formalizes the employment relationship between the worker and the employer and provides specific guidance on the work expected and the applicable terms and conditions of employment. It also helps employers to comply with legal requirements on the working conditions and entitlements of workers. The worker also understands his or her rights and obligations. There is no general accepted model or template for the employment contract, and different countries may adopt different formats.

A standard employment contract (SEC) is a crucial first step for protection of domestic workers in particular. This is because domestic workers are usually not covered by labour and employment legislation in many destination countries. As such, SECs are an essential tool for eliminating the negative aspects of informality in the domestic work sector and for ensuring opportunities for decent work.

6.3.2. Review of standard employment contracts

There are several model employment contracts for domestic workers that can guide countries for other employment besides domestic work. Especially useful guidance is found in the ILO Convention on Domestic Workers, 2011 (No. 189), and the related ILO Recommendation No. 201. Based on Holliday (forthcoming), key provisions for an SEC have been defined in table 6, which presents a review of selected SECs in terms of these key provisions.

It has now become standard practice for SECs to include the complete contact details of the employer and the worker. This is important because it is otherwise generally difficult to trace domestic workers when they work in private households.

What is more important is the job description. Many SECs do not provide information on the type of work to be performed. This is problematic because the worker may be asked to shoulder a heavier workload than normally expected. The UN Women model SEC provides a list of tasks that can be added to the SEC.

Wages determine the major tangible gain from migration to the workers. Most complaints of migrant workers relate to non-payment or deferred payment of wages, unlawful deductions, wages lower than the agreed upon salary, and non-payment for overtime. These issues should be squarely addressed in the SECs. Many SECs do not mention the minimum applicable wage, when wages are to be paid, any lawful deductions, or payment for overtime work. Some SECs mention a gratuity at the end of the year, and also a salary increment on renewal of the contract.

Working and rest time is a continuing problem for female domestic workers. The Saudi Arabia domestic worker contracts mention “continuous and undisturbed rest of at least nine (9) hours per day” without specifying hours of work. Excessive hours of work are a common issue experienced by female domestic workers employed in private households. Some SECs mention 48 hours per week or 8 hours per day for general workers. The Nepal–Jordan SEC clarifies specific working and rest times for domestic workers as follows: “8 hrs [working time] excluding food and rest breaks: sleeping hours not less than 8 hrs”. Weekly rest is standardized at one day per week in all agreements. But some SECs mention that the worker may get another day off if the employer wants the worker to forego the holiday.

Social protection is another area where SEC provisions deviate. The best social protection provision is in the Nepal–Jordan agreement, which provides life and accident insurance for the domestic worker to be paid for by the employer and providing a cover of not less than US\$10,000. Social security for general workers is covered under Jordanian national law. However, the Uganda–Saudi Arabia agreement on domestic workers expects Ugandan external recruitment agencies to obtain insurance under the employment contract, whereas it should be the responsibility of the employer.

Guarantee of privacy and provision of separate lockable accommodation is recognized as a standard requirement for female domestic workers to prevent sexual harassment and violence. However, many SECs do not provide for this.

There are different provisions regarding so-called “runaway” or “absconding” workers. There is no provision in the agreements to find out the causes for leaving the workplace, which could be due to persistent abuse. The provisions are mainly for protecting the employer. The recruitment agency is generally held responsible and must either replace or pay recruitment costs to the employer, in some cases if it happens within a specified period (first 3–6 months).

The right of workers to keep their passport and work permit documentation at all times is generally recognized, and SECs have a provision for that. However, it is better to include this provision in the main agreement and repeat it in the SEC, as noted above. According to stakeholder consultations, destination country employers do not respect this in the absence of strict enforcement.

Dispute resolution procedures and access to justice are major issues faced by domestic workers. Saudi Arabian agreements mention that the host country will “[e]ndeavour to establish [a] 24-hour hotline for domestic workers”. The term “endeavour” is vague, and there is no evidence that any such hotline has been implemented for workers from any of the IGAD countries.

The crucial issue is enforcement of the SECs by the destination country. There is little information available on this aspect. First, it is important that the recruitment agencies adopt the SEC and develop the employment contract based on that. Where agreements are not disseminated to recruitment agencies, this cannot be enforced. Joint verification of contracts by both the origin and destination country authorities is another important measure. The actual enforcement of the SEC depends on an effective labour inspection service in the country of destination. There is no information on whether the labour inspectors in destination countries are appraised of these bilateral agreements and the SECs. Moreover, domestic workers, especially migrant women workers in private households, are not covered by labour laws nor are private households covered by the labour inspection service. It is, therefore, imperative to share SECs with recruitment agencies in origin countries, and also include provisions for enforcement within the agreements.

► Table 3. Structures of selected bilateral agreements

Article No./ Title	Kenya and Qatar Agreement, 2012 ¹	Kenya and Saudi Arabia Agreement on Domestic Workers, 2016	Sudan and Ethiopia on Exchange of Manpower (Skilled), 2009	Uganda and UAE Agreement on Manpower and Domestic Worker Protocol, 2019	Uganda and Saudi Arabia Agreement on Domestic Workers, 2019
Intro	Preamble/ Introduction	Preamble/ Introduction	Preamble/ Introduction	Introduction	Preamble/ Introduction
1	Responsible parties	Purpose of the agreement	Scope	Objectives	Definitions
2	Applicable laws	Scope of cooperation	Facilitation	General provisions/ Definitions	Objective
3	Recruitment requests and processing	Implementing agencies	Competent authorities	Areas of cooperation	Areas of cooperation
4	Content of recruitment requests including employment contract	Areas of cooperation	Respect of Law	Employment contract	Responsibilities of the First Party
5	Responsibility of the Government of Kenya	Obligations of the Government of Kenya	Joint Committee	General responsibilities of both parties	Responsibilities of the Second Party
6	Repatriation at end of contract or when demand ends	Obligations of Saudi Arabia	Meetings	Responsibilities of the Government of the UAE	A Joint Technical Committee
7	Repatriation in case of threat to public security	Joint Technical Committee	Financial obligations	Responsibilities of the Government of Uganda	Settlement of disputes (Agreement)
8	Employer obligations re travel expenses	Dispute Settlement (Agreement)	Recruitment procedure	Training and orientation	Amendment
9	Individual work contract based on model contract	Amendment	Communication of information	Period and completion of employment	Entry into force
10	Work contract to include employer obligations re accommodation and medical treatment	Notices (Communications thru diplomatic channels)	Working conditions	Salary and remittance	Validity and duration

11	Arabic text of employment contract recognized, and no alterations	Duration	Transfer of income	Insurance	Annex: Standard employment contract
12	Employment contract to be ratified by two governments	Termination	Medical expenses	Repatriation of the remains of deceased workers	
13	Dispute resolution process	Entry into force	Settlement of disputes	Dispute resolution in employment	
14	Employment termination and condition for extension	Annex: Standard employment contract	Amendments	Joint Committee	
15	Transfer of savings		Entry into force	Effectivity, duration and suspension	
16	Establishment of Joint Committee and its functions			Amendment, revision and dispute resolution and	
17	Conditions for amendment of agreement			Attached: UAE Standard Unified Employment Contracts for domestic workers and for workers in the private sector	
18	Entry into force, validity and duration and renewal of agreement				
19	Annex: Model employment contract				

UAE = United Arab Emirates

¹ Agreement articles do not contain titles; topics ascertained from content of the articles.

Source: Compiled by Piyasiri Wickramasekara.

► Table 4. Structure of selected agreements in IGAD countries compared with defined core elements of a BLA/MOU ¹					
Article No.	Article title (based on core elements defined for the study)	Kenya–Qatar, 2012	Kenya–Saudi Arabia, 2016	Sudan–Ethiopia (skilled workers), 2009	Uganda–UAE, 2019
	Title	✓	✓	✓	✓
	Preamble	✓	✓	✓	✓
1	Purposes/ Objectives	–	✓	✓	✓
2	Definitions	–	–	–	✓
3	Exchange of information/ Methods of cooperation	✓	✓	✓	✓
4	Responsible parties or competent authorities	✓	✓	✓	✓
5	Applicable laws	✓	✓	✓	✓
6	Organization of recruitment, introduction and placing	✓	✓	✓	✓
7	Information and assistance to migrants	–	✓	–	–
8	Contract of employment with details	✓	✓	✓	✓
9	Standard employment contract attached.	✓	✓	–	✓
10	Equality of treatment and non-discrimination	–	–	–	Non-discrimination only
11	Wage protection measures	–	In the SEC	–	✓
12	Access to training and human resource development	–	–	–	✓
13	Supervision of working and living conditions	–	–	–	–

14	Transfer of funds/ remittances in line with destination country law	✓	✓	✓	✓
15	Social protection/ Social security provisions	–	–	✓	✓
16	Protection provisions for female workers	–	–	–	✓
17	Trade union rights and access to support mechanisms from civil society	–	–	–	–
18	Settlement of disputes and access to effective remedies (employer/ worker)	✓	–	–	✓
19	Return and Repatriation	✓	✓	–	✓
20	Reintegration on return	–	–	–	–
21	Joint Committee/ Working Group	✓	✓	✓	–
22	Concrete implementing, monitoring, and evaluation procedures	✓	✓	✓	✓
23	Language versions	✓	✓	–	✓
24	Effective date and termination clause (MOU)	✓	✓	✓	✓

✓ = Article is present in the bilateral instrument; – = Article is not present in the bilateral instrument;
 UAE = United Arab Emirates;

SEC = standard employment contract.

¹ The defined core elements of a BLA/MOU are derived from the ILO Model Agreement, 1949, serving as an annex to ILO Recommendation No. 86 and from Wickramasekara 2018a.

Source: Compiled by Piyasiri Wickramasekara.

► Table 5. Illustrative review of incidence of good provision/practice criteria in selected agreements

No.	Criteria of good practices and provisions (defined for the study)	Uganda–Saudi Arabia (domestic workers) 2017 ¹	Kenya–UAE MOU ²	Kenya–Qatar ³	Ethiopia–UAE MOU ⁴	Nepal–Jordan BLA 2017 ⁵
Governance						
G1	Evidence of normative foundations and respect for migrant workers' rights (based on international instruments) – usually in Preamble.	-	-	-	-	Satisfactory
G2	Exchange of relevant information between country of origin and country of destination.	Basic	-	Basic	Basic	Good
G3	Transparency: clear objectives and sharing of information with concerned stakeholders, and dissemination of the agreement.	-	-	-	-	-
G4	Defining clear responsibilities between parties – that is, between country of origin and country of destination, and also with other responsible actors.	Satisfactory	Satisfactory	-	Satisfactory	Satisfactory
G5	Concrete follow up, implementation, monitoring and evaluation procedures.	Basic	Basic	Basic	Basic	Satisfactory
G6	Fair recruitment principles: Commitment to effective regulation of private recruitment agencies on both sides; control of migration costs and aiming for zero recruitment costs on workers.	Satisfactory	Satisfactory	-	Good	Good
G7	Social dialogue and consultative processes.	-	-	-	-	-
Protection						
P1	Predeparture and post-arrival provision of relevant information and assistance to migrant workers, potential migrants and their families, and action against misleading propaganda.	Basic	Basic	-	Satisfactory	Good

P2	Specific reference to equal treatment and non discrimination of migrant workers on par with national workers.	–	–	–	–	Good
P3	Any reference to welfare and rights of migrant workers or their protection in the Preamble, Objectives or other text.	Satisfactory	Basic	–	Satisfactory	Good
P4	Address gender concerns: non-discriminatory treatment of women workers; prohibition of violence and harassment against women workers in workplaces; gendered impact assessments.	–	–	–	–	Good
P5	Measures for dealing with vulnerable migrant workers, particularly those not covered by labour laws in destination countries (such as, agriculture, domestic work/care work).	–	–	–	–	Satisfactory
P6	Concrete and enforceable provisions relating to employment contracts and working conditions, preferably with a binding standard employment contract.	Basic	Basic	Satisfactory	Satisfactory	Good
P7	Wage protection measures.	Basic (SEC)	Basic (SEC)	–	Satisfactory	Satisfactory
P8	Provision for supervision of working and living conditions and enforcement of regulations through adequate labour inspection services.	Basic	–	–	–	Satisfactory
P9	Prohibition of confiscation of travel and identity documents, and methods of enforcement.	Basic (SEC)	–	–	Basic	Satisfactory
P10	Social protection: insurance coverage and healthcare and injury benefits for migrant workers, including portability of benefits.	–	–	Satisfactory	Satisfactory	Satisfactory

P11	Trade union rights and access to support mechanisms from civil society.	-	-	-	-	Satisfactory (SEC)
P12	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice for migrant workers.	Basic	Satisfactory	Basic	Satisfactory	Satisfactory
Development						
D1	Provision for human resource development and skills improvement.	-	-	-	Satisfactory	Basic
D2	Provision for recognition of skills and qualifications and competencies in the destination country, and on return in the origin country.	-	-	-	Satisfactory	-
D3	Facilitation of transfer of savings and remittances at low cost.	-	Basic	Basic	Basic	Satisfactory
D4	Provision for return, reintegration and circulation.	-	-	-	-	-

Notes: The following qualitative classification has been adopted based on a review of the specific text of each provision. Basic = The provision is simply mentioned without elaboration; Satisfactory = The provision has been elaborated to include at least one desirable feature; Good = The provision covers several desirable features;

- = The feature is not present.

UAE = United Arab Emirates; SEC = the provision is included in the standard employment contract.

¹ Agreement on Domestic Workers Recruitment between the Ministry of Gender, Labour and Social Development in the Republic of Uganda and the Ministry of Labour and Social Development in the Kingdom of Saudi Arabia; ² Memorandum of Understanding on Labour Cooperation between the Government of the United Arab Emirates and the Government of the Republic of Kenya; ³ Agreement between the Government of the State of Qatar and the Government of the Republic of Kenya concerning the regulation of manpower employment in the State of Qatar; ⁴ 2012 Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of the United Arab Emirates on the employment of Ethiopian workers in the United Arab Emirates; ⁵ 2018 General agreement in the field of manpower between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal signed 18 October 2017.

Source: Compiled by Piyasiri Wickramasekara.

► Table 6. Review of standard employment contracts in select bilateral agreements

Key terms	Kenya–Saudi Arabia (domestic workers)	Uganda–Saudi Arabia (domestic workers)	Ethiopia–Qatar (general workers)	Nepal–Jordan (general workers)	Nepal–Jordan (domestic workers)
Name and address of worker/ employer	✓	✓	✓	✓	✓
Address of workplace/ Site of employment	✓	✓	✓	✓	✓
Recruitment agency in country of origin and country of destination signatories to contract	✓	✓		✓	✓
Duration of contract – years	2	2	1–2	2	2
Probation period – months	–	3	6	–	–
Privacy and separate accommodation	Suitable and sanitary living quarters.	Suitable and sanitary living quarters.	Free bachelor accommodation.	✓	✓
Type of work to be performed	No information. Work solely for employer's household.	No information. Work solely for employer's household.	No information.	Job description to be provided.	✓
Respective obligations of employers and workers spelled out	–	–	Worker obligations spelled out.	✓	Both worker and employer obligations spelled out
Remuneration: rate, regularity, method	✓: bank account	900 Saudi riyal per month; bank account	✓	✓	Minimum wage – US\$300 to be raised by 10% on renewal of contract
End of service gratuity	–	–	✓	–	✓
Overtime provisions	–	–	–	✓	–
Deductions from wages reservations	✓	✓	–	✓	–

Normal hours of work and rest	Continuous and undisturbed rest of at least 9 hours per day	Continuous and undisturbed rest of at least 9 hours per day	48 hrs work week	8 hrs/day or 48 hrs per week.	Work 8 hrs excluding food and rest breaks; sleeping hours not less than 8 hrs.
Weekly rest (24 hours)	One day	One day	One day	One day	One day
Annual leave and public holidays	30 days at end of 2 years – home visit with ticket paid	30 days at end of 2 years – home visit with ticket paid	3 weeks annually; 3 public holidays with pay; and 3 additional days' leave.	14 days annually, excluding public and religious holidays	14 days annually. Can be postponed to 2nd year.
Sick pay	For acceptable medical reasons – rest with pay.	For acceptable medical reasons – rest with pay.	Paid sick leave after 3-months' service.	14 days annual. Employer to pay health costs.	Covered by insurance
Maternity leave	–	–	n.a.	n.a.	–
Social security/ insurance; medical provisions	Repatriation of remains at employer expense.	Repatriation of remains at employer expense. Agreement art. 5: Ugandan recruitment agencies to obtain insurance for the employment contract.	Compensation for accident, injury, death.	Covered under national social security law; contribute to same.	Life and accident insurance for the worker by employer not less than \$10,000.
Occupational safety and health	Repatriation in case of serious injury – no compensation	Repatriation in case of serious injury – no compensation	–	–	–
Food, accommodation and clothing	✓	✓	Bachelor accommodation	–	✓
Environment free from abuse and violence	–	–	–	–	–
Right to join trade unions	–	–	–	Yes	–
Freedom of movement	–	–	–	–	–
Access to communications	Yes. At own expense	Yes. At own expense	–	.	Twice a month at employer expense; can keep mobile phone.

Right to keep passport and documentation	Yes	Yes	–	Yes. Employer to recognize.	Yes
Terms of termination	30 days' notice by employer and 60 days' notice by worker	30 days' notice by employer and 60 days' notice by worker	–	✓	–
Terms of repatriation	✓	✓	–	Yes. Settlement of all dues	–
Dispute resolution procedure	First, Ministry of Labour; next, higher authorities.	First, Ministry of Labour; next, higher authorities	–	Courts of Jordan sole jurisdiction on dispute settlement	✓
Runaway/absconding workers	Art. 13: If runs away without valid cause, Kenyan recruitment agency responsible for replacing or reimbursing cost.	Art. 14: If runs away without valid cause, Ugandan recruitment agency responsible for replacing or reimbursing cost.	n.a.	n.a.	If runaway within first 6 months without valid cause, the rec. agency shall reimburse the employer.

Notes: ✓ means that the provision is present in the agreement. Any qualifications to the basic provision are mentioned in the relevant cells above. – = provision not present; n.a. = not applicable.

Source: Compiled by Piyasiri Wickramasekara.



7

**Good practices,
lessons learned
and issues for the
IGAD Regional
Guidelines on
Bilateral Labour
Agreements**

► 7.1 EMERGING GOOD PRACTICES

a. Increasing references to migrant rights and migrant protection in bilateral agreements.

Compared to the previous generation of bilateral agreements, more recent agreements clearly refer to migrant rights and protection of migrant workers. Under the obligations of the country of destination, some agreements commit the destination country to “[e]nsure that the welfare and rights of workers employed in the [destination country] are promoted and protected”. There are occasional references to international and ILO instruments in a few agreements. In some draft agreements of an IGAD country reviewed by the team there were clear references to UN and ILO instruments in the Preamble: “Realizing further the importance of protection of labour and fundamental human rights of workers in [the destination country], as embodied in the basic instruments of the United Nations and the International Labour Organization”.

b. Incorporation of fair recruitment principles and regulation of recruitment agencies, including control of recruitment costs.

As highlighted in Section 6.2, recent agreements devote special attention to the issue of recruitment, including the regulation of recruitment according to the laws of both parties and the need to minimize recruitment costs for workers. The domestic worker agreements of Saudi Arabia make clear references to addressing recruitment issues and costs. The Kenya–United Arab Emirates agreement on labour cooperation highlights “principles of transparency, ethical recruitment, fairness and mutuality of benefits”, and strengthening regulations and their enforcement for fair and transparent

practices. There is a commitment to address issues of trafficking and forced labour through regulation of recruitment in some agreements. A few agreements stipulated that no recruitment costs will be levied on workers.

Another interesting development is the practice of SECs being countersigned by recruitment agencies in both the origin and destination countries. This practice embodies the principle of joint liability and makes recruitment agencies directly accountable for violations of the contract.

c. Role of BLAs recognized in national law.

While all IGAD origin countries increasingly recognize the value of BLAs, Ethiopia has explicitly formalized this in law through its Overseas Employment Proclamation No. 923/2016. The Preamble to the Proclamation states the need to “protect the rights, safety and dignity of Ethiopians who are willing to take-up overseas employment in pursuance of their qualifications and ability”, and that “it is believed that bilateral agreements with receiving countries may strengthen lawful overseas employment and could prevent human trafficking”. Article 12 of the Proclamation states: “Deployment of workers for overseas employment in accordance with this Proclamation shall be effected only if there is a bilateral agreement concluded between the Federal Democratic Republic of Ethiopian and the receiving country.” This measure is similar to one used by the Philippines, which has also made the existence of a BLA a necessary condition for sending workers to any destination country. The Proclamation also recognized the direct link between private employment services and protection of migrant workers, and strengthened the regulation of recruitment agencies through extensive provisions. The Proclamation requires the formulation of a standard model contract to be developed by the Ministry of Labour and Social Affairs to be used by recruitment agencies when sending workers overseas.

d. Endorsement of Draft Protocol on Free Movement of Persons in the IGAD Region by the IGAD Committee of Ambassadors

In a step towards formalizing one key component of regional economic and social integration, the IGAD Committee of Ambassadors – one of the four hierarchical policy organs of IGAD – endorsed the Draft IGAD Protocol on Free Movement of Persons in a special session in Khartoum on 26 February 2020 (IGAD 2020a; 2020b). The Committee, however, tasked the IGAD Secretariat to convene an Expert Meeting of IGAD Member States to reconsider the draft Implementation Roadmap in accordance with the Draft Protocol before submission to the IGAD Council of Ministers for endorsement (IGAD Secretariat 2020). Following the Council of Ministers endorsement, the draft Protocol will be taken up for adoption at the next Assembly of Heads of State and Government of the IGAD. When adopted by the Assembly, the Protocol will be open for signature, ratification or accession by Member States.

Once ratified by Member States, the Protocol will be implemented in phases. Phase one will focus on guaranteeing the right of entry and abolishing visa requirements for free movement of persons; followed by phase two dedicated to ensuring the right of movement of workers. Phase three will implement the right of residence in a member country, and in phase four the right of establishment will be implemented.

This recent endorsement of the Free Movement Protocol should offer some impetus for strengthening common IGAD approaches to labour migration with other regions, including the Middle East.

e. Active collaboration between technical, legal and political organs of IGAD governments in pursuing overseas employment for nationals and negotiating BLAs.

Field consultations in different IGAD countries highlighted the close collaboration and coordination between responsible government ministries in the development and negotiation of BLAs. It is generally the Ministry of Labour (or equivalent) that is regarded as the responsible technical unit for the initial drafting of the agreement. It is then reviewed by the legal division in either the Ministry of Justice (Sudan) or the legal division in the Ministry of Foreign Affairs (Ethiopia) and referred back to the Ministry of Labour for revisions. At some stage the Federal Attorney-General's office is also involved. The political process of negotiation will be led by relevant divisions in the Ministry of Foreign Affairs. The research team was impressed by the spirit of collaboration among the different ministries, particularly in Sudan. This serves to evolve a common and coordinated approach to various issues.

f. Commitment to rights-based BLAs by both Middle East countries and IGAD countries under the Global Compact for Safe, Orderly and Regular Migration (GCM).

The government-negotiated Global Compact for Safe, Orderly and Regular Migration (GCM) has made a strong case for rights based BLAs, drawing on ILO and international human rights standards under its Objective 5 “Enhance availability and flexibility of pathways for regular migration”:

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 (UN General Assembly 2018, para. 21a)

All Middle Eastern countries and IGAD countries have endorsed the GCM, and thereby committed to its 23 objectives and supporting actions. Although the GCM is a non-binding framework, IGAD countries can use it as a common reference point in their negotiations on BLAs.

g. Consultative processes with social partners

Involvement of employers' organizations and workers' organizations in the bilateral agreement cycle in the IGAD countries was only evidenced in Somalia and Sudan. Virtual consultations with the Federation of Somali Trade Unions (FESTU) highlighted that there was active consultation by government with trade unions in Somalia on the development of BLAs. Somali government officials affirmed active consultation also occurs with the national employers' organization. For example, it was reported that the Somali government negotiators had consulted (by telephone) with executives of both the national employer organization and FESTU on questions under discussion while BLA negotiations were actually underway with a GCC country. The GMPA team was informed that the Ministry of Labour and Social Development of the Transitional Government of Sudan would normally involve employers' organizations and workers' organizations in discussions on bilateral agreements. This was confirmed in the interview with the employers' federation. However, given the dissolution of the national trade union federation by the Transitional Government, it was not possible to verify this with a representative workers' organization. The best situation is involving all concerned stakeholders – social partners, representatives of recruitment agencies, migrant worker associations and concerned civil society organizations – in the BLA process in both origin and destination countries. As a minimum, this should be implemented in the country of origin.

h. Initiatives by trade unions and other stakeholders

Given the complex issues involved in migrant protection in Middle Eastern countries, emerging partnerships among social partners and non-government stakeholders are providing supportive approaches for protection of migrant workers.

Trade union initiatives

The research team was impressed by the concerns of the trade union movement regarding migrant protection. Among union federations the GMPA team met with, the Confederation of Ethiopian Trade Unions and the Central Organization of Trade Unions, Kenya, both cited particular examples of proactive support for migrant workers abroad, namely bilateral agreements between their organizations and the National Federation of Workers and Employees Trade Unions (FENASOL) of Lebanon. They also mentioned that union-to-union agreements were being elaborated with worker organizations in other countries in the Middle East. The existing agreements pledge mutual recognition of union affiliation in the other country, support for organizing national workers abroad, and support for the recently established domestic workers union in Lebanon. The agreements also call for joint trade union campaigns for raising awareness of migrant contributions, promoting ratification of international migrant worker instruments, producing rights-based standard employment contracts, and protecting migrant workers through measures that include setting up information centres for migrant workers.

Associations of recruitment agencies

The GMPA expert team was also informed of the signing of a bilateral MOU between a Kenyan association of private recruitment agencies and an association of Saudi recruitment agencies to monitor the recruitment and protection of Kenyan domestic workers. This MOU apparently facilitated the resumption of the migration of domestic workers from Kenya to Saudi Arabia following the previous ban due to abuses.

i. Development and strengthening of labour migration policies and legislation in IGAD countries

One important development is the ongoing effort in Kenya and Uganda for the development of national migration policy frameworks, national labour migration policies and national migration legislation. In Kenya, there are parallel efforts for developing a national labour migration policy and a national migration management bill. In Uganda, a draft national migration policy has been developed, and the authorities are planning to develop a sub-policy on labour migration. A national labour migration policy and a labour migration policy are under development in Ethiopia and Sudan, respectively. These efforts at national policies provide a good framework for elaborating bilateral labour migration agreements as well. An interesting development is that the ILO has been requested to provide leadership in finalizing the labour migration policy and legislation in Kenya. This will be a good entry point for the promotion of rights-based policies and for moving away from “migration management” approaches.

j. Intraregional and interregional dialogue on labour migration including BLAs.

African countries increasingly recognize the importance of multilateral regional and interregional dialogue on migration to the Middle East (ILO PAC 2019). The Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa held in Nairobi on 20–21 January 2020 agreed on the need for a harmonized regional strategy on negotiation of BLAs with the European Union and with GCC countries (Regional Ministerial Forum 2020). Objective 5 of the Ministerial Communique of that Forum stated: “Governments to enhance inter-state, intra and inter-regional cooperation for implementation of Joint Labour Migration Program”, and identified a need for technical assistance for engaging “regional tripartite mechanisms through a multi stakeholder approach on policy consultation and coordination on labour migration issues, and [to] facilitate consultation and technical cooperation with relevant regions of interest (intra-Africa, GCC, European Union, and others)” (Regional Ministerial Forum 2020, 7). The High Level Meeting of African Ambassadors of main countries of origin of African migrants in the Middle East and GCC highlighted the need of organizing “a regional consultation on labour migration, for common position at the continental level and speak with one voice, to ensure the protection of African migrant workers” (African Union Commission 2019b, 14). The ILO Policy Advisory Committee on Fair Migration to the Middle EAST (ILO PAC) stated: “Regional economic communities in Africa could also serve as platforms to develop minimum standards for bilateral labour agreements and MOUs to avoid a ‘race to the bottom’ and/or direct competition among origin countries in Africa” (ILO PAC 2019, 5). The Colombo Process of Asian labour-sending countries and the Abu Dhabi Dialogue of GCC and Asian countries are consultative processes that can provide useful models for African regional communities on these matters (ILO PAC 2019).

► 7.2. LESSONS LEARNED

There is evidence that some agreements have contributed to reinforcing discriminatory distinctions between foreign and national workers. The principle of equality of treatment enshrined in ILO instruments refers to treatment of migrant workers on par with national workers with regard to conditions of work. However, some agreements contain a provision that equality of treatment is in relation to other foreign workers, such as the following example: “Ensure that the welfare and rights of workers employed in the [destination country] ... are promoted and protected and that [origin country] workers enjoy no lesser rights, privileges, protection than foreign workers engaged in the same employment activities in the [destination country].” One draft agreement of an IGAD country with a GCC State contains the following provision: “Ensure that the employer shall accord the worker treatment no less favourable than that accorded to workers who are nationals of a third party State.” Through the inclusion of such terms, these agreements may have allowed for explicitly lower standards to be applied for migrants than those applied for national workers. In contrast, the Nepal–Jordan BLA contains a separate article (No. 13) on equality of treatment. Article 13(1) states: “The competent authority of GOJ [Government of Jordan] shall grant to Nepali migrant workers with respect to employment in which they are eligible to engage treatment no less favourable than that applicable to its own nationals in virtue of the provisions of the Jordanian Labour Law.”

A main challenge in approaching a common position on BLAs lies in different, even contending interests within IGAD countries concerning BLAs and migration. Overall, two sharp opposing views were perceived across the discourse and the reported positions of different groups of actors. While there was greater convergence on some issues across all the countries, the prevalent differences in views and perceptions between different institutions and interests were evident within countries.

The primary contention is essentially between “promotion” versus “protection” with social partners, ministries of Labour, and other social, labour and employment actors clearly

advocating for the primacy of rights protection and social welfare in BLAs and in migration law, policy and practice in general. In contrast, executive branch speakers in several countries clearly indicated that their priority – in the face of high unemployment and underdevelopment – was to increase job creation and raise remittances through increased deployment of nationals for employment overseas.

The other area of contention is between facilitating mobility versus ensuring strict control over the movement of people, particularly across borders, including across borders within the EAC and (even more so) within IGAD. This control approach manifests divergences and tensions vis-à-vis both the “promotion” and “protection” agendas. It is consequential to the generalized “control” over national migration agendas by ministries of Interior and their immigration and border control services – with training and support through IOM – in several countries visited by the team.

Nonetheless, nearly all interlocutors indicated support for the notion of there being at least dialogue among IGAD countries on BLAs. Most – including those who expressed reservations regarding a common approach – nonetheless agreed that discussion should go on; a Ministry of Foreign Affairs legal officer in Ethiopia suggested the organization of an ongoing Forum.

An underlying challenge for IGAD countries is the absence of comprehensive, standards-based national labour migration policies and legislation. This means there is no coherent framework on protection of rights and decent work for nationals abroad under which to establish and evaluate BLAs, nor is there a reference framework for ensuring that migrant worker deployment abroad is complementary to and mutually supportive of national objectives and policy on employment, decent work, social security, skills training, and overall economic development and social welfare. While Ethiopia and Kenya have made important steps towards developing a coherent approach and policy framework, there is still a large agenda before them, while other IGAD countries have a lot to catch up with.

► 7.3. POOR IMPLEMENTATION AND FOLLOW UP OF BILATERAL LABOUR AGREEMENTS ⁴⁰

In general, most research highlight that BLAs lack effective implementation (Wickramasekara 2015). Our observations confirm that this applies to the IGAD situation as well. Since BLAs provide broad frameworks only, they can be made concrete through effective follow up only.

Poor implementation is due to a number of factors:

- Lack of political will and sincerity to implement, especially on the part of countries of destination. Once agreements are signed, the political will to effectively implement them seems to be lacking. Given the superior bargaining power of destination countries, origin countries will find it difficult to pressure them for improvements. Destination countries may simply attempt to improve their public image internationally to convince others that they are committed to the protection of migrant workers, without serious intent.
- Origin countries may also lack the necessary political will, given the dilemma they face between promotion of overseas employment for more employment and remittances on the one hand, and protection of their nationals abroad on the other hand. Some origin countries may disregard complaints of violations of migrant rights to preserve existing labour markets in destination countries.
- Another factor for poor implementation is the “business as usual” policies of both parties to the agreement. While governments sign agreements, in practice it is the private sector (recruitment agencies and private employers in destination countries) that handle recruitment and employment of migrant workers in the destination country. Without tangible changes in policies and procedures after the signing of an agreement, it is not

possible to expect any improvement. For instance, origin countries do not attempt to improve registration procedures or change recruitment systems and practices following an agreement, instead leaving the process to the private sector intermediaries who are largely responsible for existing malpractices. Similarly, the destination country will maintain the status quo with regard to workplace protection and not enforce agreement conditions. A critical need for successful implementation is the introduction of an improved labour inspection system and intensified labour inspection programmes. This is rarely done.

- The main mechanism for implementation and follow up in BLAs is the establishment of a Joint Committee to monitor and modify an agreement as needed. While all agreements provide for the appointment of a Joint Committee, the effectiveness of these Committees is limited in practice. This is due to delays in their appointment, infrequent meetings, inactivity, lack of mandate to make major policy changes and limited budgets. Few agreements recognize the costs of implementation and provide for budget allocations accordingly. The research team did not come across any instances where the Joint Committee had undertaken revisions of BLAs following a review.
- Non-dissemination of agreements and non-involvement of concerned stakeholders – especially migrant workers and their employers, agencies recruiting and placing workers, and those responsible for supervision of working and living conditions (such as the labour inspection service in the destination country) – is another cause of poor follow up.
- Absence of provisions for systematic monitoring and periodic evaluation. Many agreements provide for automatic renewals after four or five years, which is

⁴⁰ This section draws upon training modules developed by Piyasiri Wickramasekara on implementation and follow up of BLAs and MOUs.

a major cause of poor implementation. However, in view of the cumbersome procedure of new negotiations for renewal of agreements or the creation of new agreements, both countries may prefer automatic renewals.

- Changes in the economic situation of destination countries, such as economic downturns and recession situations, can lead to non-implementation. Agreements signed by Qatar specifically mention

that the Qatar Government may take procedures to repatriate any number of migrant workers “when the needs for the employment come to an end”. The COVID-19 pandemic can be expected to slow down the emphasis on BLA implementation.

- Lack of capacity among concerned staff and the transfer of officials who had previously led the negotiation and adoption of agreements is another cause.

► 7.4. IMPLICATIONS FOR DEVELOPMENT OF THE GUIDELINES ON BILATERAL LABOUR AGREEMENTS

The main objective of the ILO-IGAD BLA project is to develop regional-specific guidelines on rights-based bilateral labour agreements for the IGAD region in the form of a practical guide. The guidelines are expected to be based both on the international rights framework and concrete country experiences in developing and implementing BLAs. Therefore, it is important to highlight the implications of the findings of the background study for the development of the regional guidelines.

- a. At the outset, it needs to be highlighted that the process of developing guidelines and promoting a common approach among IGAD member countries is necessarily a political as well as a technical process. It requires a process of engagement and building ownership by IGAD member country actors, in addition to and building upon appropriate technical preparation and inputs. While the GMPA team can prepare the technical document, it is expected that the ILO, IGAD and relevant national focal persons attend to defining the “political process” that would take up and follow the preparation of the initial technical document and the guidelines.
- b. Stakeholder consultations found varying support for a common regional approach to development of the guidelines. While some favoured the approach in principle, one senior official questioned whether it is realistic for IGAD countries to take up a common approach. This is because each country seems to be negotiating separately with the Middle Eastern countries in view of domestic employment challenges and pressures. Workers’ organizations were generally in support of a common approach and of more effective bargaining for protection of the rights of migrant workers.
- c. There is also a need to weigh and balance bilateral approaches with the multilateral approach inherent in a regional cooperation entity such as IGAD. IGAD has taken a step in elaborating a Protocol on Free Movement of Persons, recently endorsed by the Ambassadors of member countries (IGAD 2020a; IGAD 2020b). The EAC Common Market Protocol in effect since 2010 provides a high standard that is already binding on three of seven IGAD member countries – Kenya, South Sudan and Uganda.

While the movement of citizens of IGAD member countries to Middle East countries has been on a bilateral basis, actors in EAC countries can legitimately claim that their governments should require similar standards of protection and decent work for citizens going elsewhere as those already established vis-à-vis neighbouring countries.

- d. Low-skilled workers, especially domestic workers, deployed from all IGAD Countries to the Middle East region seem to experience common problems of abuse and exploitation, irrespective of whether a BLA/MOU has been signed or not. It is open to debate whether this issue can be addressed at the bilateral level, particularly because any resolution would require improving or extending national legislation in line with international labour standards and committing to their effective implementation and enforcement by destination countries. These are issues of domestic political disposition and action usually beyond the scope of BLA negotiation with foreign governments. An inclusive tripartite, multilateral forum for dialogue between IGAD and Middle Eastern countries may be more useful. The unequal bargaining power of destination countries will continue to be a challenge for all IGAD member countries. While the regional guidelines will be based on rights-based approaches, incorporating and negotiating these positions with GCC and other Middle East countries can be a formidable challenge. One can expect that destination countries will be reluctant to face a common position among IGAD Member States, as such an eventuality would constrain the ability of destination countries to pressure individual IGAD countries for the “best deals” – deals that are likely to include standards below what would be agreed to through a common approach. One can also expect that destination countries, especially GCC countries, might simply “not come to the table” to negotiate with a collective IGAD

group – even as both member countries of the European Union and GCC member countries set their own migration-related policies and international positions as regional blocs.

- e. The guidelines should explicitly address inclusion of gender concerns in the BLA process, and at the same time highlight gaps in existing bilateral agreements that emerged in the review of texts and in field consultations. Very few agreements contain any reference to gender. Even the dedicated domestic worker agreements of Saudi Arabia with Ethiopia, Kenya and Uganda, which mostly cover women domestic workers in private households, and the standard employment contracts attached to these agreements do not contain provisions addressing the specific risks or concerns faced by women workers. Contentious issues relate to non-discrimination on basis of gender, guarantee of privacy, prohibition of violence and sexual harassment, not limiting mobility during leave and rest periods, maternity protection and reproductive rights.
- f. The absence of adequate social protection provisions in BLAs is a major concern. Within an economic integration area that promotes free movement, social protection is generally assured to migrant workers through harmonized multilateral social security agreements. It is a different story dealing with Middle East countries outside the IGAD or EAC region. GCC countries have abolished comprehensive social security for migrant workers, including pension rights, since the late 1980s (although the GCC has established a comprehensive harmonized social security regime for GCC nationals across member countries). What remains for non-GCC migrants is only partial protection in the form of medical and injury benefits. Even this depends on specific country legislation and does not cover all migrants from IGAD countries.⁴¹ Private health insurance is often provided,

41 Following the onset of the COVID-19 pandemic, several GCC countries, including Qatar, Saudi Arabia and the United Arab Emirates, have made free COVID-19 testing and treatment available to all residents, including migrant workers and those in irregular status, according to the ILO Regional Office for Arab States.

in many cases by employers under existing arrangements reflected in some BLAs, but the extent of and variances in effective coverage and access to benefits and treatment require further review.

Regarding occupational safety and health issues, particularly in hazardous work in agriculture and construction, adequate provision must be made for injury and accident benefits and for compensation where needed. Some agreements make references to insurance schemes to be paid for by employers. One agreement even requires recruitment agencies of the origin country to provide insurance. While international instruments and recent initiatives highlight portability of benefits, temporary migrant workers hardly benefit from portability arrangements in the absence of pension rights. Origin countries should consider unilateral measures to address these gaps.

Jordan is a good practice example, as social security is provided to migrant workers, including domestic workers. The Nepal-Jordan agreement has specific provisions for this purpose, and in addition, migrant workers social security contributions can be reimbursed upon departure from Jordan.

It is important for GCC countries to recognize this crucial omission and adopt new legislation or revise legislation to offer more comprehensive social protection to migrant workers.

g. The guidelines should also be directed at destination countries where the implementation of the provisions of the agreement takes place. This would include governments, employers of migrant workers, trade unions and NGOs concerned with migrant welfare and protection.

h. Information and assistance to migrant workers are found to be limited, especially for those migrating from rural areas. These services do not generally take into account gender-specific concerns or target women migrant workers. These workers are at most risk in Middle Eastern countries without language skills or cultural awareness. This training and information provision cannot be left to recruitment agencies, who have vested interests in promoting migration.

i. Standard employment contracts (SECs) are important for all workers because concise bilateral agreements cannot cover all details in this regard. SECs are of special relevance for categories of workers not covered by the labour laws of destination countries, such as domestic workers. However, the contents of SECs need to be based on internationally accepted model contracts and their binding nature and enforcement require greater attention. At the same time, both parties to the agreement should ensure that recruitment agencies are fully briefed and that their employment contracts strictly follow the SECs.

▶ 7.5. PROPOSED STRUCTURE FOR THE IGAD REGIONAL GUIDELINES ON BILATERAL LABOUR AGREEMENTS

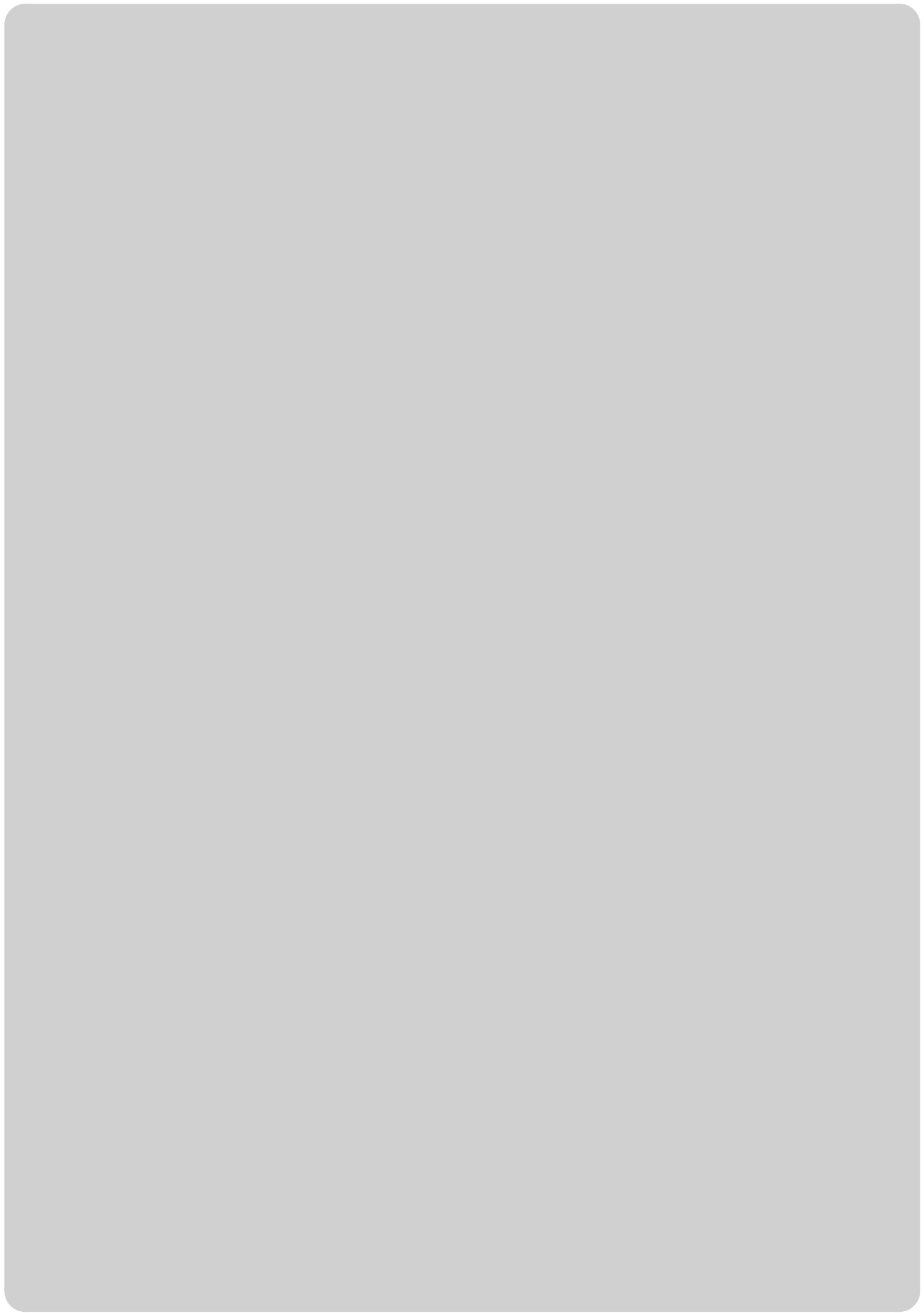
Based on the above considerations and the terms of reference provided, it is proposed that the IGAD regional guidelines on bilateral labour agreements be structured in the following manner.

1. Introduction;
2. Objectives, scope, and intended beneficiaries of the guidelines;
3. Normative foundations for rights-based migration governance applying to BLAs;
4. International guidance;
5. African Union and applicable regional economic community treaties, protocols (IGAD, EAC);
6. Guiding principles to be applied in the development of the guidelines and sources;
7. Proposed template for a BLA;
8. Elaboration of the core content areas to be covered in a comprehensive rights-based and gender-responsive BLA for IGAD member countries; Specific guidelines on each stage of the BLA process;
 - a. Preparatory stage;
 - b. Negotiation process;
 - c. Implementation and follow up;
 - d. Monitoring and evaluation.

9. Towards an IGAD-wide common approach to formulating BLAs and MOUs;

10. Annexes:

- ▶ Glossary of terms;
- ▶ Ratifications of international labour Conventions and UN human rights instruments;
- ▶ Core structure of a BLA/MOU;
- ▶ Criteria of good provisions and practices for BLAs and MOUs;
- ▶ Guidelines for rapid assessment of BLAs and MOUs;
- ▶ Structure of model standard employment contracts based on international labour standards;
- ▶ Baseline information needed for formulation of BLAs;
- ▶ Standard terms of reference and agenda for the Joint Committees/Joint Working Groups of BLAs.



8

Conclusions and recommendations

► 8.1. CONCLUSIONS

8.1.1. Overall policy context

IGAD countries represent origin, transit as well as destination countries of migrant workers, which should be reflected in policy. For some IGAD countries, including Ethiopia, Kenya, Sudan and Uganda, migration for employment abroad is crucial. Emigration and diaspora support are also vital for Somalia. These countries each have hundreds of thousands of nationals working abroad in other regions, including the Middle East.

For primarily emigration countries, the main concerns are promotion of overseas employment for their nationals and protection of their national workers abroad. The analysis in this report has illustrated the dilemma faced by origin countries in navigating the tension between these two objectives. This dilemma may affect the working of BLAs, as demonstrated by the lack of political will in both employment and origin countries to follow up on their implementation.

Attracting incoming migrant workers is highly important for Djibouti, Somalia and South Sudan, and currently appears to be higher priority – along with TVET and skills training – than seeking opportunities to deploy workers abroad. Among these countries, only Somalia was pursuing a new BLA as of February 2020; Djibouti has an ongoing agreement with Qatar, while South Sudan has no currently operational BLAs. Officials of these countries underscored their interest in attracting skills for development, as they have far fewer domestically available skills than needed for national and local businesses, for infrastructure development, and for economic development in key areas: Djibouti for its global commercial transshipment and major port facilities; Somalia for construction and its African telecommunications hub initiatives; and South Sudan for infrastructure and its major petroleum extraction industry. At the same time, these IGAD countries need to ensure that foreign migrant workers are protected and their rights guaranteed according to national laws and regional and international commitments.

A key issue concerns the absence of a longer-term vision and of comprehensive, coherent rights-based legislation and policy in IGAD countries on migration and on complementary employment policies and development policies.

Only two IGAD countries have ratified migrant-specific Conventions (Kenya and Uganda), but most have acceded to or ratified UN human rights Conventions and ILO fundamental Conventions. These must be reflected in national legislation, migration policy and practice.

The EAC binding regional framework for free movement and residence and establishment rights includes many aspects that would be useful guidance for IGAD as well, given that Kenya, South Sudan and Uganda enjoy membership in both RECs. The Committee of Ambassadors-endorsed draft IGAD Protocol on Free Movement has yet to be adopted by the IGAD Heads of State, and so it has not been finalized for Member ratification; the draft remains less comprehensive than the EAC framework in its Common Market Protocol in force since 2010.

It is matter of high priority to link IGAD efforts to draft common regional mobility frameworks, including the recently adopted Protocol on Transhumance, with their attempts to develop BLA frameworks.

Tension between rights-based labour migration and national security-driven agendas are apparent in most countries, inhibiting the primacy of labour/employment/development/human rights considerations in labour migration policies and in anchoring BLAs. A key issue is the lack of active social dialogue with employers' and workers' organizations and the lack of a tripartite-plus approach to policy/BLA development.

Currently, the global COVID-19 pandemic emergency has shifted activity, discourse and perspective on migration away from immediate attention on BLAs, and thus, from steps to articulate and promote a common approach on BLAs in the near future. Nonetheless, immediate collective attention

and advocacy by IGAD and its members on matters related to BLAs and their migrant workers abroad is more urgent than ever.

8.1.2. Lack of effective enforcement of bilateral labour agreements

The establishment, negotiation, implementation and monitoring of rights-based BLAs is a major challenge for a majority of IGAD countries.

In the absence of wide adherence to international labour standards and human rights protections for migrant workers in the Middle East, IGAD countries have increasingly relied on negotiating BLAs with several Middle East and Gulf countries.

The GMPA team field consultations confirmed that the experience of IGAD origin countries with BLAs is not very different from those of Asian countries. Weak content, inadequate follow up and implementation, and an absence of effective monitoring of agreements have generally resulted in BLAs falling short of expectations on improving governance and protection of migrant workers

Conditions set in many BLAs are to a large extent influenced by countries of employment. Some BLAs appear to have done little more than put a veneer of international agreements on existing arrangements that hardly change ongoing abusive and exploitative situations for migrant workers. This is due to large negotiating-power differences between economically and politically powerful States in the Middle East and the developing countries in IGAD. Field consultations revealed experiences of destination countries attempting to play IGAD countries against each other by offering different terms and conditions for migrant workers of different nationalities.

Most of these agreements have been introduced within the context of existing large-scale labour flows or the need to streamline such flows following bans and other restrictions by origin or destination countries. But new agreements do not seem to have changed the status quo because little change in recruitment procedures or protection in destination countries has taken place following these agreements.

Many existing agreements are vague in terms of their objectives, and without clear reference to protection of the rights of workers. Very few make any reference to international labour standards. BLAs with Saudi Arabia do, however, highlight an objective of protecting the rights of both workers and employers.

Lack of transparency in engaging with major stakeholders – migrants, recruitment agencies in both origin and destination countries, and employers in destination countries – in the development, negotiation and implementation of bilateral agreements is a major challenge. Copies of agreements are often not shared with these stakeholders, which means that these groups are not aware of the contents of agreements or their rights and obligations under the same. It contributes to poor monitoring and implementation of agreements, even on the part of origin countries. At the same time, there is no evidence that countries of destination have publicized these agreements and briefed employers, sponsors and workers on the provisions contained therein, similarly contributing to the lack of implementation and enforcement of even the minimal protection and other measures in these BLAs.

Most existing agreements leave out issues critical for governance of the migration and protection of workers. These include a lack of references to: applicable international instruments; gender-specific provisions; the kafala (sponsorship) system in Middle Eastern countries, which could lead to forced labour practices (ILO 2017b); provision for social dialogue in implementation and follow up; and concrete measures for workplace protection, such as intensified labour inspection services.

A few agreements reviewed have the provision that the destination country will ensure enforcement of the employment contract. But without any inclusion of accompanying concrete measures for the same, enforcement may remain on paper only. Therefore, agreements have not resulted in better protection or decent work for migrant workers. This is evident from public outcry in Kenya and Uganda in recent years on the treatment of migrant workers – including deaths – in the Middle East.

It is possible some agreements may have contributed to reinforcing discriminatory distinctions between foreign and national

workers, as noted previously. While the principle of equality of treatment enshrined in ILO instruments refers, among others, to treatment of migrant workers on par with national workers with regard to conditions of work, some IGAD agreements contain a provision that equality of treatment is to be in relation to other foreign workers.

The importance of standard employment contracts (SECs) as a binding attachment has been highlighted in this report. There are several models of SECs, especially for migrant domestic workers. But actual practice deviates from some of the recommended good practices.

The lack of reference to labour inspection in many BLAs is a particular concern given its main role in monitoring and enforcing labour standards as well as the relevant protections stipulated in BLAs. Similarly, enforcement of an SEC can be guaranteed only through effective labour inspection services. Most GCC countries have ratified the main ILO governance Convention on labour inspection (Convention No. 81), but this has rarely translated into workplace inspection regimes that reach workplaces where migrant workers are employed, and very few existing BLAs even mention labour inspection. Furthermore, female migrant workers employed in private households are not covered by labour inspection services, even where SECs apply. This is shown in the case of Saudi Arabian domestic worker BLAs with SECs that contain good provisions, as reports and testimony indicate that, in the absence of supervision, some private household employers continue to abuse and exploit female domestic workers.

The present study confirms the findings of previous research that BLAs alone cannot guarantee better governance and effective protection (Wickramasekara 2015). They work best when destination countries have good governance systems, including comprehensive labour standards ensuring decent work for all workers, related labour legislation, strong labour market institutions, robust labour inspection systems, and effective mechanisms for access to justice. At the same time, BLAs can be a means to give effect to or promote the principles set out in ratified ILO Conventions, which in any case have priority over such BLAs. BLAs likewise work better when migrant worker origin countries insist on conditions consistent with international standards;

when BLAs contain strong monitoring and enforcement provisions; and when countries of origin provide their own complementary monitoring through consular support and diplomatic representations.

Only through committing to uphold minimum common standards agreed to by IGAD countries can decent conditions be obtained in BLAs between any IGAD country and countries elsewhere. The study has also noted a number of emerging good practices – mostly in origin countries – that need to be reinforced.

8.1.3. The way forward

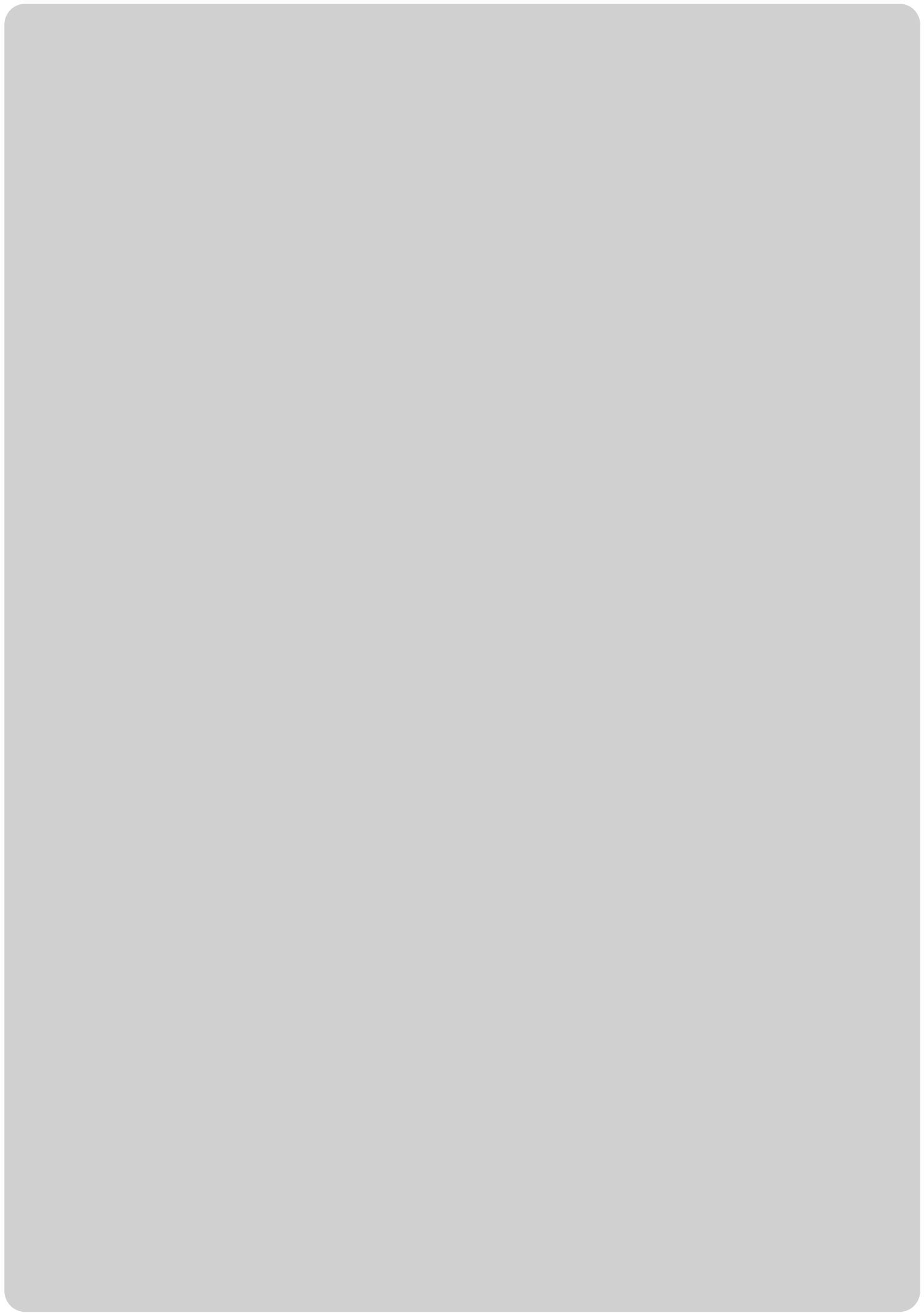
There is a clear case for the establishment and implementation of a common IGAD approach on rights-based migration policies and on BLAs, based on the expectations of international standards; the socio-economic and political context; the urgency of the situation due to COVID-19; and the expressed views of government representatives, social partners and other stakeholders. This would require convening a tripartite member country forum soon in order to elaborate the harmonized approach on labour migration policies and BLAs called for by the Regional Ministerial Forum in January 2020.

The way forward would also essentially include working at the continental African Union level to develop common approaches and to implement the African instruments on migration already in place. These are necessary prerequisites to ensure that IGAD and other African countries are in a better position to productively engage in multilateral consultation with Middle East countries as called for by the High Level Meeting of African Ambassadors of main countries of origin of African migrants in the Middle East and GCC on 29 October 2019.

8.2. RECOMMENDATIONS

Only some brief general recommendations are presented here. Detailed recommendations for developing adequate BLAs and for an IGAD common approach baseline are contained the comprehensive Guidelines document for which this report provides essential background:

1. Fully implement in all IGAD and EAC member countries a harmonized approach, strategies, and actions on labour migration policy and on BLAs “in line with international legal frameworks on human and labour rights of migrant workers” set out by the January 2020 Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa.
2. Establish the legal basis for migration and employment legislation, policies and practice in IGAD countries, particularly through ratification and domestication of the migration governance Conventions, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO Convention No. 97 on migration for employment and No. 143 on migrant workers, as well as ILO Convention No. 181 on private employment agencies and their regulation.
3. Articulate and adopt national policy frameworks on migration for employment as the context and framing for BLAs, which should be an important component of a coherent and comprehensive national approach.
4. Establish a commitment among IGAD Member States for a common approach among IGAD countries for setting minimum standards for BLAs for all IGAD countries, and engage in a dialogue and negotiation process towards this end.
5. Ensure that this dialogue on a common IGAD approach to BLAs is firmly anchored in the contextual concerns and normative guidance described in this background study.
6. Ensure that recruitment policies and practices are in accordance with the ILO General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs (ILO 2019).
7. Address both immediate and longer-term challenges simultaneously, namely insisting that human rights and ILO fundamental rights at work, development, employment, and social protection dimensions of migration for employment are central considerations at all times and stages.
8. Implement an integrated approach now: First, address immediately the pandemic crisis challenges – holding partner States to responsibilities for maintaining deployment, employment, equality of treatment, and protection-in-place of migrants in terms of existing BLAs and international norms, while simultaneously addressing the health, sustenance and welfare of returning migrants and their families. Second, forge ahead on elaborating comprehensive national migration law and policy frameworks. Third, build on these as well as this project work to consolidate national and regional common positions on BLAs for deployment abroad.
9. Fully implement the objectives and supporting actions of the Global Compact for Migration (GCM) by all Middle East and IGAD countries, including GCM action 21(a) on bilateral and multilateral mobility arrangements, which outlines a solid foundation for “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” (UN General Assembly 2018, Objective 21, action (a)).
10. Convene an IGAD member country forum with tripartite participation to elaborate the harmonized approach on BLAs and other aspects of migration for employment, as anticipated by the Regional Ministerial Forum communique.
11. Explore, in due time when IGAD countries have defined a harmonized approach, the development of an inclusive multilateral consultation with Middle East countries, including GCC Members, involving concerned government ministries, social partners and other relevant stakeholders.



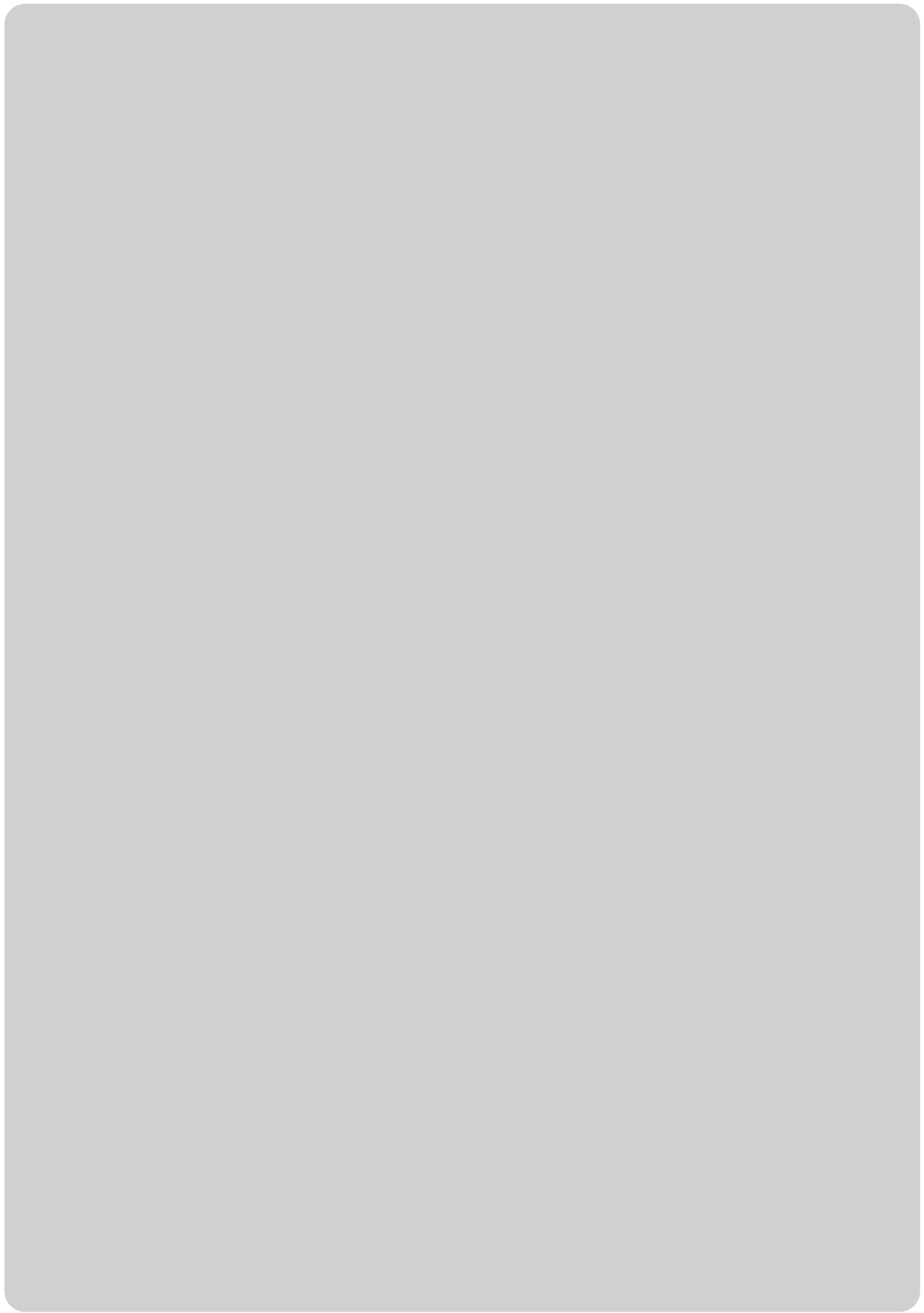


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Annexes

► ANNEX I. STAKEHOLDER RESPONDENTS INTERVIEWED

The table below presents a list of stakeholders interviewed during the field assessment mission to five IGAD member countries (22 February – 10 March 2020) and tele-consultations with stakeholders in two other IGAD countries (June 2020).

Name of person	Professional/position title	Institution
IGAD and European Union in Djibouti		
Fathia Alwan	Director for Social Development	IGAD
Charles Obila	Migration Officer	IGAD
Guedi Houssein	Employment officer	IGAD
Kajsa Petersson	Programme Officer, Cooperation Section	European Union Delegation to Djibouti and to IGAD
Djibouti		
S.E.M. Isman Ibrahim Robleh	Minister	Ministry of Labour and <i>Administrative Reform</i>
Ikram Awaleh Farah	Directrice du Travail et des relations professionnelles, coordinatrice	Ministry of Labour and <i>Administrative Reform</i>
Hana Farah Assoweh	Technical advisor to the Minister	Ministry of Labour and <i>Administrative Reform</i>
Abdi Farah Idleh	General Inspector	Inspection of Labour and of Social Laws (Inspection du Travail et des Lois Sociales)
Saher Abdillahi Issa	Department Head, Universal Health Insurance	National Social Security Fund (Caisse Nationale de Securite Sociale)
Andoukader Dini	Directeur General Adjoint	National Social Security Fund (Caisse Nationale de Securite Sociale)
Guelleh Idriss Omar	Directeur des affaires bilaterales	Ministry of Foreign Affairs
Said Yonis Waberu	Secrétaire General de l' UGTD	Union of Djibouti Workers
Aden Ahmed Migui	Member	Union of Djibouti Workers
Mahamoud Ismail Cheik Moussa	Member	Union of Djibouti Workers
Johara Mahamed Farah	Member	Union of Djibouti Workers

Mohamed Moussa Mohamed	Member	Union of Djibouti Workers
Hikmat Daoud	President (also, President of Confederation of IGAD Employers)	National Confederation of Djiboutian Employers (Confederation Nationale des Employeurs de Djibouti)
Said M. Del Wais	CEO and Chairman	Halt Group (recruitment agency)

Ethiopia

Ato Berhanu Abera	Director, General Overseas Employment Directorate General	Ministry of Labour and Social Affairs
Meselech Assefa	Director, Overseas Employment, Migrants, Protection, Monitoring and Support Directorate	Ministry of Labour and Social Affairs
Yidnekachew G/ Meskel Zewdu	Director, International Law Affairs Directorate	Ministry of Foreign Affairs
Dawit Mulugeta Dame	Manager, Innovative Jobs and Projects	Jobs Creation Commission, Office of the Prime Minister
Dawit Moges Alemu	President (also Vice-President of the Confederation of IGAD Employers)	Ethiopian Employers' Federation
Asmera Defa Bokore	Executive Director	Ethiopian Employers' Federation
Suid Mohammed	Programme Director	Ethiopian Employers' Federation
Fisehatsion Biadgilgin Woldekidan	Head, Social Affairs Department	Confederation of Ethiopian Trade Unions
Gebeyaw Nega	Senior Research Expert	Confederation of Ethiopian Trade Unions
Kassahun Follo	President (also President of the Confederation of Ethiopian Trade Unions)	Horn of Africa Confederation of Trade Unions
Ayalew Ahmed	Vice President	Confederation of Ethiopian Trade Unions

Kenya

Winnie Karingithi	Chief Economist	Ministry of Labour and Social Protection
Jacob Mathenge	Senior Labour Officer	Ministry of Labour and Social Protection
Shelmith Kiboi	Senior Foreign Services Officer, Diaspora and Consular Affairs Office	Ministry of Foreign Affairs
Abdullahi A. Nurow	Counsellor	Ministry of Foreign Affairs
Edith Okoki	Director General (Acting)	National Employment Authority
Festus Mutuse	Deputy Director, Strategy and Planning (Acting)	National Employment Authority
Teresa Wabuko	Programme Officer, Labour Migration	Central Organization of <i>Trade Unions, Kenya</i>

Stephen Obiro	Head of Communication and Advocacy	Federation of Kenya Employers
Leticia Muhandichi	Research Assistant	Federation of Kenya Employers
Margaret Mugwanja	Secretary General	Association of Skilled Migrant Agencies of Kenya
Peter Kamau	migrant worker returnee from Qatar	
Mark Connor	New Markets Expansion Officer	BURN Manufacturing Kenya
Gad Awuonda	Advocate; Consultant – Legislative Drafting and Public Policy Development	Legis Policy Associates

Meeting of Kenya Task Force for a National Labour Migration Policy

15 participants (several also met with individually as listed above)	Senior officials, department executives, and technical officers	Ministry of Labour and Social Protection; National Employment Authority; Association of Skilled Migrant Agencies of Kenya; ILO; IOM and independent experts
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Somalia

Mohamed Mohamed Hassan	Head of Labour	Ministry of Labour and Social Affairs
Suada Abdullahi Moalim	Director of Legal and Labor Relations	Ministry of Labour and Social Affairs
Hanildi Hussien Derow	Labour Migration Unit	Ministry of Labour and Social Affairs
Mohamed Mohamud Ismail	Senior Advisor	Ministry of Foreign Affairs
Hassan Ali Abdulle	Head of HR Unit	Minister of Education, Culture and Higher Education
Mohamed Abdiiaziz Nur	Director of Department	Minister of Education, Culture and Higher Education
Omar Faruk Osman	General Secretary	Federation of Somali Trade Unions
Ibrahim Abdulrazak Mohamed	Coordinator of Phase 2 ILO Programme	Federation of Somali Trade Unions

South Sudan

Allamana Zakaria	Deputy Director for Labour	Ministry of Labour, Public Service and Human Resource Development
James Lagu	Senior Inspector	Ministry of Labour, Public Service and Human Resource Development
David Buom	Ambassador	Ministry of Foreign Affairs and International Cooperation
Panchol Kurjuk	Director, Passports and Immigration Department, Immigration Directorate	Ministry of Interior

Bol Andrew Riak	President (also Vice-President of Confederation of IGAD Employers)	Employers Association of South Sudan
Sudan		
Awatif Mohamed Kamil	Director of Inspection and Wages Department	Ministry of Labour and Social Development
Aisha Yahia Khalil	Director, External use	Ministry of Labour and Social Development
Salwa Mohamed Abdalla	Director, External Relations	Ministry of Labour and Social Development
Khalid Alsir Mohammed Fageer	Officer, External Relations	Ministry of Labour and Social Development
Laila Awad Khatim	External Relations	Ministry of Labour and Social Development
Abadi Nureldin	Ambassador, Director of Sub-Regional Organizations Department	Ministry of Foreign Affairs
Asrar Ahmed Elsiddig	Deputy Head, Sub-Regional Organizations Department	Ministry of Foreign Affairs
Sawsan Hussein Mohamed Nour	Head of the International Law and Agreements Sector	Ministry of Justice
Elaib Mohamed Alnaseeh	Senior advisor, International Law and Agreements Sector	Ministry of Justice
Hajwa Bakheet Azrag	Senior advisor, International Law and Agreements Sector	Ministry of Justice
Major General Police: Abdalla Adam Ahmed	Director of Foreigners Affairs Department	Ministry of Interior, Department of Migration
Major General Police: Sabir Allahjabo	Director of Foreign Unit in Passport Department	Ministry of Interior, Department of Migration
Dean of Police: Ameer Abdulmoneim Mohamed	Director of the Department of Crimes and Immigration Control	Ministry of Interior, Department of Migration
Dean of Police: Mohamed El Motasim Akasha	Director, Executive Office	Ministry of Interior, Department of Migration
Police Captain: Mamoun Eltahir Ali Ahmed	Officer Manager, Foreigners Affairs Department	Ministry of Interior, Department of Migration
Dr. Abdulrahman Said Ahmed Zainalabdeen	Deputy General Secretary	Secretariat of Sudanese Working Abroad (government department)
Dr. Ismail Alzhari Barri	General Secretary	Supreme Council for Vocational Training and Apprenticeship

Abdelwali Mohamed	Deputy General Secretary	Supreme Council for Vocational Training and Apprenticeship
Hashim S.H. Mattar	President	Sudanese Business Federation
Hashim Salah Hassan Matar	President	Sudanese Businessmen and Employers Federation

Meeting with executives of National Chambers of Commerce and Industry and Private Recruitment Agencies:

Ibrahim Elsafi Al El Gaaley	President	Union of Chambers of Commerce
Alam Eldeen Al Fadil	Steering Committee Rapporteur	Union of Chambers of Commerce
Elfatih Abbas El Gourashi	Executive Manager	Sudanese Chambers of Industries Association
Ibrahim Mustafa Mohamed Ali	General Secretary	National Economic Services Chamber
Hydar Abdulwahab Awad	General Secretary	AMNA Trading Enterprises (recruitment agency)
Khalid Zain Elabdin Ishag	Executive Manager	AMNA trading Enterprises (recruitment agency)
Hassan Al Badeen	Director	Al-Badeen Travel (recruitment agency)

International organization representatives in Sudan:

Suzan Elsadig Addelslam	National Skills and Employability Officer	ILO Country Office for Ethiopia, Djibouti, Somalia, South Sudan and Sudan
Pierre Jaubert	Regional Coordinator, Better Migration Management, Sudan and Eritrea	GIZ
Osman Issa Hassan Siddieg	Seasonal Labour Migration (SLM) Technical Advisor	GIZ

Uganda

Raymond Wasukira	Senior Labour Officer	Ministry of Gender, Labour and Social Development
Hillary Talemwa	Labour Officer	Ministry of Gender, Labour and Social Development
Silver Godwin Mukeele	Labour Officer	Ministry of Gender, Labour and Social Development
Michael Abooki Karugaba	Ag. Head of Consular Services	Ministry of Foreign Affairs
Ronah N. Serwadda	Regional Integration Expert	Ministry of East African Community Affairs
Marcellino Bwesigye	Acting Commissioner, Inspection and Legal Service	Ministry of Internal Affairs
Harriet Mucunguzi	Principal Immigration officer	Department of Citizenship and Immigration, Ministry of Internal Affairs

Denis Okello	Senior Statistician	Department of Citizenship and Immigration, Ministry of Internal Affairs
Wilfred Odeny	Principal Policy Analyst	Department of Citizenship and Immigration, Ministry of Internal Affairs
Teddy Nalugo	Immigration officer	Department of Citizenship and Immigration, Ministry of Internal Affairs
Amanda Doris Nsemeire	Immigration officer	Department of Citizenship and Immigration, Ministry of Internal Affairs
Geoffrey Kayeyera Kabi	Employment Relations Officer	Federation of Uganda Employers
Patrick Ajuna	Policy and Research Officer	Federation of Uganda Employers
Dan Okanya	Head of Research and Policy	Federation of Uganda Employers
Henry Saaba	Membership Officer	Federation of Uganda Employers
Christopher Peter Werikhe	Secretary-General	National Organization of Trade Unions
Anthony Turyahebwa	Research and Education Officer	National Organization of Trade Unions
Baker Akatambira	Chairperson (also Managing Director of Axis Warriors Ltd)	Uganda Association of External Recruitment Agencies
Caroline Beinamaryo	Secretary General (also Managing Director of Cella Investments Ltd)	Uganda Association of External Recruitment Agencies
Enid Nambuya	Executive Director	Uganda Association of External Recruitment Agencies
Catherine Cheryl Akumu	Board Member (also Manager of a recruitment agency)	Uganda Association of External Recruitment Agencies
Vincent Kamugisha	General Manager	Rangers Security Ltd (recruitment agency)
International organization representatives in Uganda:		
Jesca Angida	National Programme Officer - Migration Management	IOM, Kampala
Harrieat Kerwegi	Chief Technical Advisor, Better Migration Management Programme II	GIZ

► ANNEX II. RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND ILO FUNDAMENTAL CONVENTIONS

UN universal human rights instrument	Ratified by		ILO Fundamental Conventions	Ratified by	
	IGAD countries	Middle East countries		IGAD countries	Middle East countries
1 International Covenant on Economic, Social and Cultural Rights	Djibouti, Ethiopia, Kenya, Somalia, Sudan	Bahrain, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia,	1 Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87)	Djibouti, Ethiopia, Uganda	Kuwait
2 International Covenant on Civil and Political Rights	Djibouti, Ethiopia, Kenya, Somalia, Sudan	Bahrain, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia	2 Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Uganda	Jordan, Kuwait, Lebanon
3 International Convention on the Elimination of Racial Discrimination	Djibouti, Ethiopia, Kenya, Somalia, Sudan	Bahrain, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia	3 Forced Labour Convention, 1930 (No. 29)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Oman, Saudi Arabia, UAE
4 Convention on the Elimination of All Forms of Discrimination Against Women	Djibouti, Ethiopia, Kenya, South Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE	4 Abolition of Forced Labour Convention, 1957 (No. 105)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Uganda	Bahrain, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, UAE
5 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Djibouti, Ethiopia, Kenya, Somalia, Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia	5 Minimum Age Convention, 1973 (No. 138)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE
6 Convention on the Rights of the Child	Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE	6 Worst Forms of Child Labour Convention, 1999 (No. 182)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE

7	International Convention on the Protection of All Migrant Workers and Members of their Families	Uganda	-	7	Equal Remuneration Convention, 1951 (No. 100)	Djibouti, Ethiopia, Kenya, South Sudan, Uganda	Jordan, Kuwait, Lebanon, Saudi Arabia, UAE
8	International Convention for the Protection of All Persons from Forced Disappearances	-	-	8	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Djibouti, Ethiopia, Kenya, South Sudan, Uganda	Bahrain, Jordan, Kuwait, Lebanon, Saudi Arabia, UAE
9	Convention on the Rights of Persons with Disabilities	Djibouti, Ethiopia, Kenya, Somalia, Uganda	Bahrain, Jordan, Kuwait, Qatar, Saudi Arabia, UAE				

- = no ratifications; UAE = United Arab Emirates

Source: Compiled by Piyasiri Wickramasekara based on ILO and UN Office of the High Commissioner for Human Rights websites.

► ANNEX III. ILO STUDIES ON BILATERAL LABOUR AGREEMENTS AND MOUS

- Wickramasekara, Piyasiri. 2006. *"Labour Migration in Asia: Role of Bilateral Agreements and MOUs"*, keynote presentation at the Japan Institute for Labour Policy and Training Workshop on International Migration and Labour Market in Asia, Tokyo, 17 February.

This presentation represented the first rights-based approach to analysis of bilateral labour agreements.

- Vasuprasat, Pracha. 2006. *Inter-state Cooperation on Labour Migration: Lessons Learned from MOUs between Thailand and Neighbouring Countries*. ILO.
- Bamu, Pamhidzai H. Unpublished. "An Analysis of SADC Migration Instruments in Light of ILO and UN Principles on Labour Migration", report prepared for the ILO and SADC. 2014.

These studies found only a limited number of good practices based on adherence to principles in ILO and UN migration instruments.

- ILO. Unpublished. "A Report on the MOUs and Agreements on Labour Migration between Bangladesh, and Countries of Destination, namely, Hong Kong SAR PRC, Iraq, Jordan, Libya, Malaysia, Qatar, Republic of Korea and the United Arab Emirates", report submitted to the Ministry of Expatriates Welfare and Overseas Employment, Bangladesh, 2014, restricted.

This pioneering study (carried out by Patrick Marega Castellan) reviewed eight bilateral agreements and MOUs concluded by the Government of Bangladesh. It used a rights-based approach and adopted two sets of criteria to assess the comprehensiveness and protection provisions of these agreements.

- Wickramasekara, Piyasiri. 2015. *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. ILO.

This 2015 report was the first comprehensive review on the issue based on a global analysis of agreements in different world regions. It formed part of the work under the ILO–KNOMAD Thematic Working Group 3 on Low-Skilled Migration. This review identified good practices relating to bilateral labour arrangements between countries on the basis of full text analysis of 146 agreements. Regional research covering Asia, Africa, Europe, and the Americas was supplemented by 15 case studies. This project included a review of 32 bilateral agreements in Africa.⁴²

- ILO. 2017. *Study on Bilateral Labour, Establishment and Social Security Agreements in North Africa*.

This study (conducted by the Center for Migration and Refugee Studies, Cairo) reviewed agreements of Egypt, Morocco, and Tunisia with destination countries. It drew upon the approach used in the 2015 ILO global review immediately above.

- ILO. 2016. *Review of the Effectiveness of the MOUs in Managing Labour Migration between Thailand and Neighbouring Countries*.

This study was a detailed review of the Thailand MOUs with Cambodia, the Lao People's Democratic Republic and Myanmar, and highlighted several weak features of the Thailand system.

⁴² See: Sara Monterisi, Africa: Comparative Analysis of the Mapped Bilateral Agreements Concluded by African Countries, draft report prepared for the ILO–KNOMAD Thematic Working Group on Low Skilled Migration, International Migration Programme, June 2014, unpublished.

- ▶ Wickramasekara, Piyasiri. 2016. *Review of the Government-to-Government Mechanism for the Employment of Bangladeshi Workers in the Malaysian Plantation Sector*. ILO.

This was the first systematic review of the Government-to-Government arrangement between Bangladesh and Malaysia for employment of Bangladeshi workers in the oil palm plantation sector. While acknowledging its good practices, the review found that the arrangement fell below expectations in the numbers of workers hired and their protection in the workplace.

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- ▶ ILO. 2017. *Addressing Governance Challenges in a Changing Labour Migration Landscape*, ILC.106/IV.

This contains a good analysis of bilateral labour agreements that draws upon ILO research and instruments.

The ILO provided detailed guidance material to the Government of Bangladesh in 2017–18 in three areas: core elements of BLAs, assessment criteria for BLAs, and good provisions and practices on BLAs based on a global review of agreements. These were developed by ILO consultant Piyasiri Wickramasekara into reports published by the ILO as listed below.

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- ▶ *Core Elements of a Bilateral Agreement or a Memorandum of Understanding on Labour Migration;*
 - ▶ *Assessment Guide for Bilateral Agreements and Memoranda of Understanding on Labour Migration with Special Focus on Bangladesh;*
 - ▶ *Good Practices and Provisions in Multilateral and Bilateral Labour Agreements and Memoranda of Understanding.*

The ILO and IOM Project “Towards Global Guidance on Developing and Implementing Bilateral Labour Migration Agreements: Unpacking Obstacles to Implementation in the African Region” produced the following three reports:

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- ▶ ILO and IOM. 2019. *“Bilateral Labour Migration Agreements in African Union Member States: Taking Stock and the Way Forward”*. (project brochure)
 - ▶ ILO and IOM. 2019. *Tool for the Assessment of Bilateral Labour Migration Agreements Pilot-tested in the African Region*.
 - ▶ The tool proposes detailed checklists for each step of the development and implementation cycle, and outlines data collection based on limited studies in the African region.
 - ▶ ILO and IOM. 2019c. *Preliminary Stocktaking Study: Development and Implementation of Bilateral Labour Migration Arrangements by African Union Member States*.

This report offers good coverage of the research carried out by the project.



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