PEACE, PROSPERITY AND
REGIONAL INTEGRATION

IGAD Regional Guidelines on Rights Based Bilateral Labour Agreements

(BLAs)

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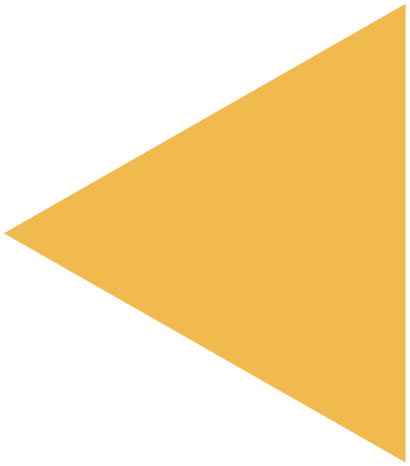
International Labour Organization



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ABBREVIATIONS AND ACRONYMS

AOB	any other business
BLA	bilateral labour agreement
CEDAW	Convention on Elimination of all Forms of Discrimination against Women
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
COD	country of destination
COO	country of origin
COVID-19	coronavirus disease 2019, caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
DOLE	Department of Labor and Employment [Philippines]
EAC	East African Community
EPS	Employment Permit System [Republic of Korea]
G-to-G	government-to-government
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
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IGAD	Intergovernmental Authority on Development
ITCILO	International Training Centre of the ILO
JC	Joint Committee
MOU	memorandum of understanding
OSH	occupational safety and health
PRA	private recruitment agency
SEC	Standard Employment Contract
UAE	United Arab Emirates
UAERA	Uganda Association of External Recruitment Agencies
UN	United Nations

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It is authored by Piyasiri Wickramasekara and Patrick Taran of GMPA.

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FOREWORD

Migration for Employment from IGAD Member States to other regions has increased exponentially in recent years. Structural drivers of labour migration, including a lack of decent employment opportunities at home, demand for workers in specific sectors abroad, combined with lowering costs of transportation, greater access to information and a booming of private recruitment agencies are some of the factors contributing to the increase in outflow of migrant workers from the region.

In this regard, the Arab States have emerged as important destinations for workers from the IGAD region particularly in sectors such as domestic work, construction and low skilled service jobs. These are however, sectors characterized by poor working conditions and weak government oversight characterized by increased risk of exploitation and abuse, which ultimately reduce the development returns on migration.

Several governments in the IGAD region are increasingly aware of these challenges, and sought to conclude bilateral labour agreements (BLAs) with major destination countries to better regulate labour migration flows and improve working conditions for their nationals abroad. Yet, recent ILO research indicates that BLAs have been underutilized to advance the protection of migrant workers' rights. In some cases, BLAs are not well negotiated or do not align with international instruments, agreements can actually weaken protection embodied in international standards and national laws, or lead to differential treatment according to migrant workers' nationality. This may be a reflection of the unequal negotiating power between origin and destination countries. Countries of origin may in effect find themselves in competition with each other, leading to a "race to the bottom," exerting downward pressure on wages and working conditions for migrant workers.

IGAD is convinced that cooperation and the adoption of a harmonized approach among IGAD Member States can potentially reduce the risk of fragmentation, competition and enable member states to gain better positions in negotiating BLAs. To this effect, the IGAD secretariat with the technical support of the ILO has developed a Regional Guideline on Bilateral Labour Agreements based on the experiences of the IGAD Member States. The document has gone through a series of technical review, validation and adopted by the Ministers of Labour and Employment of the IGAD Member States on 21 October 2021.

The IGAD Regional Guidelines on Rights Based Bilateral Labour Agreements provide specific guidance on the content and process of BLA design, negotiation, implementation, monitoring and evaluation. However, a document of such nature can only make a difference if the guidance provided in the document is well taken note of and translated into practice on a day today basis. In this regard, I call upon all experts of IGAD Member States and other stakeholders to use the guideline as a key reference document in the designing and reviewing of their BLAs with countries of destination. The IGAD secretariat remains committed to support Member States in translating the guidance into practice.

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1

Introduction:

1.1. BACKGROUND AND CONTEXT

Development challenges, regional integration and needs for labour and skills mobility have made migration an urgent challenge across Africa. The Intergovernmental Authority on Development (IGAD) comprising eight Member States – Djibouti, Ethiopia, Eritrea (suspended since 2007), Kenya, Somalia, South Sudan, Sudan, and Uganda – is a regional community whose member countries have experienced significant migration. Three East African Community (EAC) Partner States are also IGAD Members: Kenya, South Sudan and Uganda.

Labour and workforce demand in neighbouring countries or further abroad can offer access to formal employment, higher wages and new skills, while often compensating for lack of decent work in domestic economies and labour markets. Yet employment abroad is also fraught with risks, notably of abuse and exploitation of migrant workers. Demand for migrant workers from IGAD countries tends to be in agriculture, construction, domestic work, health and other care work, garment manufacturing and other low-skilled services – sectors often characterized by poor protection and limited enforcement, monitoring and labour inspection. This is particularly the case in Middle East countries, particularly Gulf Cooperation Council (GCC) countries. Serious decent work deficits are experienced by migrant workers from IGAD countries, particularly women migrant workers employed in private households and migrants in irregular situations.

Governments in the IGAD region are increasingly aware of these challenges, and Member States, notably Ethiopia, Kenya, Somalia and Uganda, have begun enacting or revising relevant national legislation. Multilateral and bilateral agreements have been recognized as a means of enhancing governance of migration for employment and protection of migrant workers. Most IGAD countries have engaged in bilateral labour agreements (BLAs) with various destination countries, seeking to enhance employment opportunities abroad, regulate labour migration flows, and improve rights protection and working conditions for their nationals abroad. However, concerns have arisen over lack of rights protection and over abuse and exploitation of migrant workers from IGAD countries deployed under existing BLAs and MOUs – and especially when no BLAs and MOUs cover them.

The challenges related to BLAs are also widely acknowledged by IGAD member countries and other countries, as well as by social partners in East Africa. This was highlighted at the Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa in Nairobi in January 2020, at which the Ministers of Labour of all EAC and IGAD countries called for a united approach on labour migration to better ensure 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)

That ministerial commitment is consistent with IGAD's own Regional Policy Framework on Migration calling for "bilateral and multilateral efforts aimed at strengthening co-operation on regular labour migration and intended to reduce irregular migration and its inherent dangers". The ministerial commitment also concurs with the African Union's Migration Policy Framework for Africa recommendations, including "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, 4–5).

In this context, guidance for the region on rights-based BLAs to ensure that all IGAD Member States are in a position to conclude agreements for better governance of labour migration and protection of migrant workers is required. The Guidelines for a Common IGAD Approach to Bilateral Labour Agreements (hereafter referred to as the "Guidelines") were prepared as part of the work programme of the ILO–IGAD technical cooperation project Free Movement of Persons and Transhumance in the IGAD Region: Improving Opportunities for Regular Labour Mobility, conducted in collaboration with IGAD and funded by the European Union Emergency Trust Fund for Africa. These Guidelines are expected to form the basis for the development of an IGAD-wide common position on BLAs.

The ILO–IOM project Towards Comprehensive Global Guidance on Developing and Implementing Bilateral Labour Migration Arrangements: Unpacking Key Obstacles to Implementation in the Africa Region has also made a recommendation to "[u]tilize regional mechanisms to develop common standards for BLMAs [bilateral labour migration agreements]" (ILO and IOM 2019b, 100). It added that "countries within regional blocs can also move towards developing common regional positions to ensure rights-based agreements on the basis of equality of treatment and opportunity among all workers, and to avoid unfair competition between neighbouring countries" (ILO and IOM 2019b, 100).

1.2. SIGNIFICANCE OF MIGRATION FOR EMPLOYMENT FOR IGAD COUNTRIES

All IGAD countries are both countries of origin of migrant workers as well as destinations for migrant workers from other countries. Most place emphasis on employment of nationals abroad given contexts of high local unemployment; while remittances make measurable contributions to both gross domestic product (GDP) and the socio-economic welfare of families, communities and businesses in Ethiopia, Kenya, Sudan, Uganda and, especially, Somalia, where 40 per cent of households receive remittances (IGAD and ILO 2021).

At the same time, all IGAD countries are dependent on migrant workers to fill skilled jobs for which there is a lack of qualified nationals, 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 South Sudan, its main petroleum extraction industry.

Many migrants in IGAD countries originate from neighbouring IGAD Member States; a large proportion of the region's migrants are employed in agriculture and in informal activities, though significant numbers are found in industry and services in Djibouti and Kenya (IGAD and ILO 2021).

About half of all migration originating in EAC countries goes to and resides in other EAC countries, and as noted above, three of these countries – Kenya, South Sudan and Uganda – are also IGAD Members. EAC 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. An IGAD Protocol on free movement is being finalized for eventual ratification by Member States.

Migration of IGAD citizens to the Middle East, including to GCC countries, has been increasing over the last decade, with large numbers coming from Ethiopia, Kenya, Somalia, Sudan and Uganda. While few nationals of IGAD countries (other than Sudan) are recorded in the United Nations Department of Economic and Social Affairs' International Migrant Stock estimates for the "Western Asia/Middle East" region, a compilation of estimates provided by government officials in IGAD countries, along with published data, allow an aggregate estimate of at least 1.5 million migrants from IGAD countries in Middle East and Gulf States in 2019. The actual number was likely higher prior to March 2020 [1] (IGAD and ILO 2021).

Increasing numbers of migrants from the IGAD region in the Middle East reflect strong "market-driven" demand for recruitment of both low-skilled and skilled workers in certain sectors. On the side of the origin country, lack of decent employment options at home and prospect of higher earnings abroad provide for a ready supply of labour and skills.

1 The numbers have radically changed since March 2020 with the onset of the global COVID-19 pandemic, which has been accompanied by mass dismissals of migrant workers and large-scale forced or voluntary returns of migrants to origin countries from countries of residence.

1.3. KEY SOCIO-ECONOMIC FACTORS THAT IMPACT LABOUR MIGRATION AND BILATERAL LABOUR AGREEMENTS IN THE SUBREGION

The socio-economic profile of IGAD countries varies considerably, as shown in country briefs in the background report accompanying these Guidelines (IGAD and ILO 2021). Salient features that concern migration and influence migration policy include:

- IGAD economies are dominated by agriculture and growing urban informal economies, with low levels of industrialization and high unemployment and underemployment.
- Annual population growth rates remain high in IGAD countries, except for Djibouti.
- Youth bulge – a rapidly growing young population – is a common feature, and youth unemployment is particularly high.
- Urban population growth is high in Ethiopia, Kenya, Sudan and Uganda.
- While most countries have achieved reductions in poverty, the national poverty rates up to 2019 remained above 21 per cent and were especially high for Somalia and South Sudan. Current trends indicate that these rates are rising in the time of COVID-19.
- The inadequacy of development efforts that have not provided employment for rapidly growing youth populations and large numbers of rural-to-urban migrants and conflict-displaced people.
- The above factors, together with demand for locally unavailable skills and labour in certain sectors, have contributed to regular and irregular flows of women and men migrants within the IGAD region and beyond to other African countries and the Middle East.
- Personal remittances received annually are highest for Kenya (US$2.7 billion), South Sudan and Uganda. The share of remittances to GDP remains relatively low for some IGAD countries, but it is particularly high for Somalia, estimated at over 30 per cent, and South Sudan at 34.4 per cent in 2019 due to a precipitous drop in petroleum exports.

1.4. KEY GOVERNANCE AND POLICY CHALLENGES ON MIGRATION AND BILATERAL LABOUR AGREEMENTS

The following are key governance challenges faced by IGAD Member States with regard to migration and BLAs:

a. **Formulating and implementing legislation and policy on migration for employment that takes into account the rights and welfare of migrant workers:** The focus on protection of rights of migrant workers is crucial in developing BLAs with Middle East countries. The difference in bargaining power between IGAD countries and Middle East countries, especially GCC countries, constrains the development of rights-based BLAs and their implementation.

b. **Mainstreaming migration laws and practice with other national policies on development, employment, social protection, decent work, and skills development:** Ethiopia's Proclamation on Overseas Employment (No. 923/2016) is a good initiative in this respect. The Proclamation requires a BLA as a necessary condition for sending workers to a destination country and provides for the regulation of private recruitment agencies (PRAs). There are ongoing efforts in the IGAD region for the development of national migration policy frameworks, national labour migration policies, and national migration legislation as envisaged in the IGAD Migration Policy Framework. In Kenya, there are parallel efforts to developing national labour migration policy as well as a national migration management bill. In Uganda, a draft national migration policy has been developed by the Ministry of the Interior, and the authorities are planning to develop a sub-policy on labour migration. National labour migration policy and 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.

c. **Coordinating migration policies with regional integration and development:** The role of BLAs among IGAD countries needs to be considered within the context of growing regional integration and free movement of persons and labour. Currently there are a few bilateral agreements among IGAD countries (such as, Sudan with Ethiopia; Djibouti and South Sudan). When free movement of labour becomes operational at a later stage, such bilateral agreements would no longer be needed nor would they be legally appropriate.

d. **Including social partners in formal processes of elaborating and implementing labour migration policy, and particularly, in developing, implementing and monitoring BLAs:** In Somalia, the team was informed that social partners participate fully in labour policy and administration, including on migration. The representative employers' organizations and national trade union federations are engaged on migration in all IGAD counties. However, employers' and workers' organizations in several IGAD countries reported that they are not consulted in the development or implementation of BLAs, and even copies or drafts of agreements are not shared with them.

2

Objectives and methodology

2.1. OBJECTIVES

The specific objectives of these Guidelines for a Rights-based IGAD Common Approach to Bilateral Labour Agreements are to:

- Provide practical guidelines for IGAD countries in developing and implementing BLAs;
- Articulate the elements for a common IGAD framework on BLAs;
- Support realization of the recommendations of the IGAD and African Union Migration Policy Frameworks; and
- Contribute to the broader global knowledge on BLAs based on rights-based approaches.

2.2. INTENDED USERS OF THE GUIDE

The intended users of this guide include the following:

- governments of the IGAD region – both central and local;
- in particular, ministries of Labour and institutions and agencies dealing with labour migration and employment;
- IGAD Secretariat and related organs, including governing and executive bodies;
- employers' and workers' organizations in the IGAD region;
- migrant worker associations, migrant workers and their families;
- enterprises and employers, including small- and medium-sized enterprises in origin and destination countries;
- private recruitment agencies (PRAs); [2]
- civil society organizations;
- international and regional organizations, and other regional economic communities; and
- development agencies and organizations in the IGAD region and beyond.

2 IGAD member countries, regional instruments and BLAs generally use the term "(private) recruitment agency" to refer to entities usually involved in recruitment for employment abroad while the ILO uses the more broadly defined term "private employment agency" inclusive of agencies engaged in recruitment for employment abroad. See: ILO, *Guide to Private Employment Agencies – Regulation, Monitoring and Enforcement* (2007).

2.3. METHODOLOGY OF DEVELOPING THE GUIDELINES

The elaboration of the Guidelines was based on several inter-related methodological approaches:

Review and analysis of literature on BLAs

These covered a wide range of relevant publications: books, technical reports, reviews of BLA practice, journal articles and news/communications and media reports, in particular those covering IGAD and Member States and the situations of migrants from IGAD countries in destination countries. Especially relevant were ILO assessments of existing BLAs that highlighted challenges and protection and implementation gaps, as well as identified good practices at a global level and in Southern Africa, North Africa, and Asia, particularly in Bangladesh and Nepal. These ILO studies offer accumulated knowledge on BLAs and their content and implementation in different regions relevant to the particular context of the IGAD region (Annex XIII). This literature is further elaborated in the Background Report, with emphasis on IGAD-specific reports and analysis (IGAD and ILO 2021).

Review and analysis of a database of BLAs, legislation and policy

The Guidelines are based on a review of text, provisions and related good practices in over 200 BLAs and MOUs in different regions of the world (Wickramasekara 2015; 2018c). The experts reviewed in particular some 25 BLAs of the six IGAD Member States that have or have had such agreements, mainly with countries in the Middle East/GCC region. At the same time, qualitative information was collected and analysed on legislative and regulatory frameworks, regional and national migration policy frameworks (where available), and regional free movement protocols.

Stakeholder interviews in all IGAD countries

Development of these Guidelines has been a consultative process with government and social partner stakeholders and ILO and IGAD partners. During a fact-finding mission to IGAD Member States (Djibouti, Ethiopia, Kenya, Sudan and Uganda), consultations were held with:

- senior officials of ministries of Labour and Social Affairs (with the Minister himself in Djibouti) and ministries of Foreign Affairs in all countries;
- senior legal officers of a Ministry of Justice and a senior advisor to a Prime Minister's office:
- General Secretaries and/or senior executives of employers' organizations in all five countries visited and of trade union federations except in Sudan;
- executives of associations of external recruitment agencies and/or private recruitment agencies (except in Ethiopia);
- officials of national immigration directorates (under Ministries of Interior) in several countries;
- senior executives of national social security, labour inspection and/or technical and vocational training institutions in one or more countries.

Virtual consultations were held with senior officials of the Ministry of Labour and Social Affairs, Ministry of Foreign Affairs, Ministry of Education, and the Federation of Somali Trade Unions in Somalia, and in South Sudan with senior officials of the Ministry of Labour, Ministry of Foreign Affairs, Employers Association of South Sudan, and the Directorate of Nationality, Passports and Immigration (Ministry of Interior). These consultations were held virtually due to travel restrictions related to containing the spread of COVID-19. A mission to selected countries of destination in the Middle East was cancelled for the same reason.

Interview consultations were held with officials of the IGAD Secretariat and with the European Union delegation in Djibouti, with an International Organization for Migration (IOM) project officer in Uganda, and with German Corporation for International Cooperation (GIZ) project officers in Sudan and Uganda.

A full list of the 130 persons consulted is found in annex to the Background Report accompanying this document.

3

Guiding principles to be applied in the development of bilateral labour agreements

3.1. GUIDING PRINCIPLES

The priorities for ILO action identified in the 2017 International Labour Conference resolution concerning fair and effective labour migration governance sum up several essential guiding principles for bilateral labour agreements.

> "*Bilateral and multilateral agreements.* Foster tripartite platforms to bring representatives of governments of countries of origin, transit and destination together with social partners, at various levels, to exchange good practices on the design, content, negotiation, implementation, monitoring and evaluation of bilateral and multilateral agreements that are gender-sensitive, in accordance with ILO standards, based on social dialogue, and address the needs of labour markets in countries of origin and destination, as appropriate, and the protection of migrant workers" (ILO 2017a, para. 17(i)).

The Global Compact for Safe, Orderly and Regular Migration (GCM) also provides clear guidance on rights-based BLAs in its Objective 5, calling for: "Develop[ing] 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 International Labour Organization (ILO) standards, guidelines and principles, in compliance with international human rights and labour law." All IGAD countries have committed to respect this guidance in endorsing the GCM.

With the above in mind and based on the analysis in the Background Report (IGAD and ILO 2021), the following is a list of guiding principles that should be applied when developing, negotiating, implementing, monitoring and evaluating BLAs.

Rights-based

BLAs should be rights-based and address promotion of the protection and welfare of migrant workers in general, and in particular those within and from the IGAD region. All IGAD countries deploying migrant workers – in order to prevent abuse and exploitation, and irrespective of whether a BLA/MOU has been signed or not – should promote and protect the rights of migrant workers as a major priority. The principles of equality of treatment and non-discrimination should apply to all migrant workers in regular situations on par with national workers. All migrant workers, including those in irregular situations, are entitled to full coverage of international labour standards regarding working conditions and occupational safety and health, as well as certain social security rights, access to training and retraining, and skills recognition. 3

All agreements, policies and programmes should be rights-based in the sense of respecting the human and labour rights of women and men migrant workers and their families in line with the international and regional instruments highlighted in Chapter 4.

Gender-sensitive and gender-responsive

All agreements, policies and programmes should be gender-sensitive and gender-responsive. Gender-sensitive means recognizing the different factors and risks facing women and men, including their differential access to and control over resources, benefits and rights protections. Gender-responsiveness goes beyond diagnosis and awareness of gender disparities to articulate policies, actions and initiatives to address and redress gender-based inequalities and ensure equitable outcomes.

Given that women and men migrant workers may experience different issues and problems throughout the migration experience, inclusion of gender issues in all aspects of BLAs is of high priority. The IGAD 2012 Migration Policy

3 The ILO General Survey of migrant worker instruments of 2016 contains a detailed discussion of the basic human rights of migrant workers in an irregular situation (ILO 2016b).

Framework called upon Member States to "[m]ainstream gender throughout migration management policies and strategies of IGAD and its individual Member States" (IGAD Secretariat 2012, 23), and the 2014 IGAD migration Action Plan has "[m]ainstreaming of gender in migration policies" as action area 14 under Strategic Priority 4: "Effective migration governance for peaceful, prosperous and integrated IGAD region" (IGAD Secretariat 2014, 35).

Covering all stages of the BLA process

The content, negotiation and implementation of BLAs should address each and every stage of the BLA process: preparations; development and drafting; negotiation and adoption; implementation and follow up – especially enforcement of protection and decent work; and monitoring and evaluation.

Social partner and multi-stakeholder participation

Involvement of employers' and workers' organizations and relevant civil society organizations in the development, negotiation and implementation of bilateral agreements is generally accepted to ensure broad-based representation (ILO 2016b; 2017a). Consultation with representative organizations of workers and employers on matters pertaining to migrant workers is stipulated in the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143); the Migration for Employment Recommendation (Revised), 1949 (No. 86); and regarding ILO Conventions and Recommendations more generally in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

In designing and implementing BLAs, multi-stakeholder cooperation should be promoted to ensure success by involving central government and local governments, social partners (representative employers' and workers' organizations), relevant civil society entities, migrant workers, returned migrant workers, migrant workers' associations, PRAs, and other concerned agencies.

Shared responsibility between origin and destination countries

BLAs should reflect the principle of shared responsibility between countries of origin and destination. This is particularly because the jurisdiction of origin country laws does not extend beyond their borders to destination countries. Protection of working and living conditions of migrant workers is primarily the responsibility of the destination country. The Global Compact for Migration (GCM) highlights "Shared Responsibilities" among the guiding principles of its overall vision (UN General Assembly 2018). It is essential that country of destination (COD) responsibilities be formally recognized in BLAs to ensure respect by employers and government, as well as enforceability. Country of origin (COO) responsibilities may be referred in provisions for pre-departure training, employment contracts, recruitment regulation and consular representation.

Knowledge-based

GCM Objective 1 calls upon States to "[c]ollect and utilize accurate and disaggregated data as a basis for evidence-based policies" (UN General Assembly 2018, 6). Development of bilateral agreements should be based on solid evidence generated through information on a range of relevant issues. These pertain to the following, among others: labour market needs of the COD for different categories of workers; profile of migrant workers by age, sex, skills, and occupations; working and living conditions abroad; existing legal and social protection frameworks; complaints and dispute resolution procedures and redress mechanisms; migratory status abroad; profile of returned migrant workers, including reasons for return, return preparedness and geographic distribution. In all data collection exercises it is important to respect the privacy of the workers and the confidentiality of the data gathered.

3.2. SOURCES FOR PRINCIPLES

A brief overview list of the main sources for the principles above is provided below. These sources are elaborated on in the following sections.

- United Nations (UN)/international human rights Conventions;
- ILO Conventions and Recommendations;
- African Union, EAC and IGAD instruments on human rights and migration;
- The ILO Multilateral Framework on Labour Migration and the ILO General Principles and Operational Guidelines for Fair Recruitment;
- Global development and migration frameworks: UN 2030 Agenda for Sustainable Development; Global Compact for Safe, Orderly and Regular Migration (2018);
- Stakeholder perspectives in IGAD Member States;
- Studies of BLAs and related practices and reviews of the implementation of BLAs, especially by the ILO (see Background Report (IGAD and ILO 2021) and reference list).

4

Normative foundations for rights-based migration governance applicable to bilateral labour agreements

Binding international legal instruments in several categories provide a solid basis for elaborating a rights-based approach to migration, and therefore for BLAs. Box 1 summarizes international human rights Conventions and international labour standards/ILO Conventions that provide the foundation for legislation and policy on migration under the rule of law.

Box 1. Normative foundations of bilateral labour agreements

Three international Conventions on migration for employment and rights of migrant workers:

- ILO Migration for Employment (Revised) Convention, 1949 (No. 97), and its associated Recommendation No. 86;
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), and its associated Recommendation No. 151.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990

Of particular note is the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, found as an Annex to Recommendation No. 86, which can be used a point of reference for developing BLAs.

Nine universal human rights instruments and associated Protocols which apply to all persons including migrant workers. These include the:

- Convention on Elimination of all Forms of Discrimination against Women (CEDAW), and its General Recommendation No. 26;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights, and
- ICRMW referred to above.

Eight ILO fundamental Conventions, reaffirmed in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, are applicable to all workers – including migrant workers – without distinction of nationality, and regardless of migration status. The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), has updated that Convention.

Four ILO governance (priority) Conventions crucial to the functioning of the international labour standards system and the most important instruments for governance:

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

All international labour standards apply (with a few specific exceptions) to all workers, including migrant workers. Among particularly relevant instruments are the:

- Private Employment Agencies Convention, 1997 (No. 181);
- Domestic Workers Convention, 2011 (No. 189);
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Equality of Treatment (Social Security) Convention, 1962 (No.118); and
- Violence and Harassment Convention, 2019 (No. 190).

In addition, there are a full array of conditions of work and occupational safety and health standards.

The ILO webpage "International Labour Standards on Labour Migration" provides an extensive list of ILO Conventions, including those concerning protection of migrant workers' rights at work and the right to decent work, which are particularly relevant for BLAs.

Annex III lists the ratifications of/accessions to both UN human rights Conventions and key ILO Conventions for IGAD countries and migrant destination countries in Middle East – that is, GCC countries and Jordan and Lebanon.

Where both origin and destination countries have ratified relevant Conventions, common ground is already set for principles and rights highlighted in those instruments to be more readily reflected in BLAs.

4.1. INTERNATIONAL MIGRANT WORKER INSTRUMENTS

The ILO Migration for Employment Convention (Revised), 1949 (No.97); the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) can be considered key migration governance instruments.

These three instruments provide a comprehensive and complementary package of provisions for rights-based governance of migration readily domesticated in national legislation. Thirty-three African Union Member States have ratified at least one of these three instruments, among them Kenya and Uganda. Consideration of ratification of these instruments is currently reported in several IGAD countries. Twenty-two African States have ratified or acceded to the ICRMW, including Uganda from the IGAD region. No Middle Eastern migrant worker destination country (considered here) has ratified any of these instruments.

The ICRMW is particularly relevant because it lays out explicit recognition of the application of universal economic, social, cultural and civil rights to all migrant workers and members of their families, and identifies other rights pertaining to migrant workers and family members in regular, authorized migration/immigration status. While ratification obliges domestication of the Convention provisions in national law and practice, the rights in delineated in the ICRMW are those recognized in the Universal Declaration of Human Rights and other universal human rights instruments as inherent to all persons, including all migrants and refugees.

The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) and the Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151) – which accompany, respectively, the ILO Conventions Nos 97 and 143 – also provide useful guidance for BLAs, particularly the highly relevant Model Agreement on

Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons (hereafter referred to as the "Model Agreement"), which is attached as an Annex to Recommendation No. 86.

The Model Agreement was widely used in the 1950s and 1960s by European governments for developing BLAs (Wickramasekara 2015). It contains 29 articles with guidance on how to elaborate on them in an actual agreement. [4] The 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 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 private recruitment agencies (PRAs) in contrast to the dominating 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.

4.2. INTERNATIONAL LABOUR STANDARDS

4.2.1. ILO fundamental Conventions

Eight ILO fundamental Conventions cover subjects considered to be fundamental principles and rights at work: freedom of association and effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. The eight fundamental Conventions are as follows:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Age Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The 1998 ILO Declaration on Fundamental Principles and Rights at Work states that all Member States of the ILO have the obligation to respect, promote and realize the rights set out in the eight ILO fundamental Conventions,

4 See Annex VI for a list of the articles contained within the Model Agreement.

even if they have not ratified them. All or nearly all of these eight Conventions have been ratified by IGAD Member States and Arab States (Annex III).

All of the fundamental Conventions are relevant to treatment of migrant workers, particularly in countries where many IGAD migrants are employed, concerning in particular recognition of freedom of association and collective bargaining rights; non-discrimination and equality of treatment among workers regardless of origin; equality of treatment for women workers; preventing forced labour practices; and eliminating the worst forms of child labour.

4.2.2. Governance Conventions and their Recommendations

The four ILO governance Conventions on labour inspection, employment policy and tripartite consultation "relate to, and are important for, the functioning of the international labour standards system and are considered as the most important instruments from the point of view of governance" (ILO n.d.) They provide crucial normative guidance on governance principles, including tripartite participation and on the application and supervision of labour standards that should underpin the establishment, content and implementation of all BLAs.

Several of these Conventions – notably the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), have been ratified by several IGAD Members and several GCC States, as shown in Annex IV.

4.2.3. ILO technical Conventions and their accompanying Recommendations

All international labour standards (ILO Conventions and Recommendations) apply to all migrant workers unless otherwise stated. ILO Conventions on PRAs, wages, working time and termination of employment, OSH, social security, and violence and harassment, as well as ILO Conventions covering specific categories of workers, such as fishers, domestic workers, or nursing personnel, provide relevant guidance for the protection of the rights of migrant workers in general, and those in the specific employment categories and sectors mentioned in particular. An extensive list of ILO Conventions relevant to migration for employment and migrant workers is found on the ILO website. [5]

The ILO supervisory bodies have upheld the importance of BLAs for migration governance: The ILO Committee of Experts on the Application of Conventions and Recommendations has stressed, for example, that provisions of BLAs should not undermine existing protections or lower the standards set out in international labour standards and national laws and regulations (ILO 2016b).

A range of international labour standards (Conventions and Recommendations) explicitly refer to the usefulness of BLAs to give effect to the protection provisions of these Conventions and Recommendations. All international labour standards, both Conventions and Recommendations, have been agreed and adopted on a tripartite basis at annual International Labour Conferences. Conventions and Recommendations on social security, employment policy, employment relationships, PRAs, peace and resilience, and special categories of workers such as fishers, domestic worker and plantation workers are particularly relevant to migrant workers (box 2). They would thus be especially relevant to defining adequate terms of protection for migrant workers in the establishment and implementation of BLAs. The ILO Private Employment Agencies Convention, 1997 (No. 181), and the ILO Domestic Workers Convention, 2011 (No. 189), are key to ensuring relevant provisions in BLAs given the dominant role of recruitment agencies in migrant placement, and the particular risks faced by women migrant domestic workers.

5 See: ILO, "International Labour Standards on Migration".

Box 2. ILO Conventions and Recommendationsof particular relevance to bilateral labour agreements

- Convention of Migration for Employment, 1949 (No. 97);
- Migration for Employment Recommendation, 1949 (No.86) (which contains in its Annex the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons);
- Convention on Migrant Workers, 1975 (No. 143);
- Recommendation on Migrant Workers, 1975 (No. 151);
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Maintenance of Social Security Rights Convention, 1982 (No. 157);
- Maintenance of Social Security Rights Recommendation, 1983 (No. 167)
- Nursing Personnel Convention, 1977 (No. 149);
- Nursing Personnel Recommendation, 1977 (No. 157);
- Employment Policy Convention, 1964 (No. 122);
- Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
- Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176);
- Private Employment Agencies Convention, 1997 (No. 181);
- Private Employment Agencies Recommendation, 1997 (No. 188);
- Employment Relationship Recommendation, 2006 (No. 198);
- Work in Fishing Convention, 2007 (No. 188);
- Work in Fishing Recommendation, 2007 (No. 199);
- HIV and AIDS Recommendation, 2010 (No.200);
- Domestic Workers Convention, 2011 (No. 189);
- Domestic Workers Recommendation, 2011 (No. 201);
- Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205);
- Violence and Harassment Convention, 2019 (No. 190).

4.3. UN HUMAN RIGHTS CONVENTIONS

All nine core international human rights instruments contain principles and provisions highly relevant to migrant workers and members of their families. The universality of human rights implies that the principles in these instruments should be reflected in – and certainly not violated by – terms set in BLAs as well as in the actual treatment of migrant workers deployed under BLAs.

The United Nations Treaty Bodies for nearly all of these instruments have issued specific General Comments or Recommendations regarding the application of these instruments to migrants and the obligations by States parties to those covenants and Conventions. Most of these core UN Conventions have been ratified by all IGAD Member States and nearly all Arab States (see Annex III).

CEDAW is of special relevance in view of the abuses suffered by women migrant workers, especially domestic workers, from the IGAD region in the Middle East. All IGAD countries except Sudan and all Middle East destination countries have ratified CEDAW, which deals with all forms of discrimination against women. This is important in incorporating gender-sensitive and gender-responsive provisions in BLAs and MOUs.

The International Convention on the Elimination of All Forms of Racial Discrimination is also of particular relevance to preventing discrimination and upholding equality of treatment. Issues concerning discrimination against migrants are currently raised to the Committee on the Elimination of Racial Discrimination in periodic reports by many States Parties as well as by independent submissions – including submission particularly regarding Middle East countries. The Committee itself invariably includes questions on discrimination in the treatment of migrants in its review of States Parties reports.

4.4. AFRICAN UNION AND REGIONAL ECONOMIC COMMUNITY TREATIES AND PROTOCOLS ESPECIALLY RELEVANT TO BILATERAL LABOUR AGREEMENTS

African Charter on Human and Peoples' Rights (Banjul Charter) 1981

Ratified by 54 African States, this continental instrument provides a firm African framework on human and peoples' rights that recognizes the indivisibility of all rights, and that collective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. The Charter's Preamble emphasizes that "[t]he enjoyment of rights and freedom also implies the performance of duties on the part of everyone" (OAU 1981). The Charter does not contain a derogation clause. It provides a high standard of rights that all African States but one has formally deemed applicable to all people in Africa, and therefore can serve as a reference for setting terms in BLAs intending to protect the rights and dignity of Africans elsewhere.

Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment

This instrument was approved by African Heads of State and Government in 2018 and has now been ratified by several countries. While primarily concerned with free movement and rights of residence and establishment in Africa, the Protocol contains several key principles relevant to establishing and implementing BLAs. Its General Principles call for:

- mutual recognition of qualifications;
- portability of social security benefits;
- prohibition of mass expulsion;
- deportation or expulsion only by a decision taken in accordance with the law in force in the host country;
- expenses of expulsion or deportation to be borne by expelling State;
- protection of property acquired in the host country; and
- facilitating remittance transfers of earnings and savings (African Union 2018).

EAC Common Market Protocol (provisions on free movement)

Major provisions in the EAC Common Market Protocol guarantee rights of EAC citizens to move freely and to establish residence, employment and/or businesses in another EAC country. The Protocol provisions explicitly recognizing rights to decent work and to social security for all EAC nationals in other EAC countries pose standards for treatment of non-national workers that can serve as inspiration for terms of protection and treatment of nationals deployed to third countries under BLAs (EAC 2010)..

5

International guidance frameworks (non-binding)

5.1. ILO GUIDANCE FRAMEWORKS

ILO Multilateral Framework on Labour Migration

The ILO Multilateral Framework on Labour Migration provides important guidance for law, policy and practice on governing migration, much of which is relevant to the formulation, elaboration and implementation of BLAs (ILO 2006). The Multilateral Framework is a compilation of "non-binding principles and guidelines for a rights-based approach to labour migration" defined through research and a tripartite meeting of experts representing governments, employers' and workers' organizations from all regions. Its guidelines are especially useful for BLA provisions on decent work; protection of migrant workers; prevention of abusive migration practices; and international cooperation on labour migration.

ILO General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs [6]

The ILO General Principles and Operational Guidelines for Fair Recruitment together with the Definition of Recruitment Fees and Related Costs form a comprehensive approach to realizing fair recruitment through development, implementation and enforcement of laws and policies aiming to regulate the recruitment industry and protect workers' rights. The General Principles and Operational Guidelines were developed by a Tripartite Meeting of Experts in 2016 (ILO 2016a), and the Definition of Recruitment Fees and Related Costs was adopted by a Tripartite Meeting of Experts in 2018 (ILO 2019a). Together, they reaffirm the principle set out in ILO standards that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment. This guidance provides principles and language for key components of BLAs covering recruitment and placement.

5.2. GLOBAL DEVELOPMENT AND MIGRATION FRAMEWORKS

UN 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development is the globally agreed framework for advancing sustainable development and governance at all levels, with emphasis on equality and non-discrimination (United Nations 2015). The Agenda 2030 recognizes "the positive contribution of migrants for inclusive growth and sustainable development" (para. 29). Some 45 targets across 16 of the 17 Sustainable Development Goals (SDGs) apply to refugees, migrants and migration. [7] The 2030 Agenda provides specific linkages between deployment of migrant workers and contributions to development and human welfare under rights-based BLAs. The actions and indicators under SDG targets provide markers for BLA terms and for evaluation of BLA outcomes.

6 See: ILO, General Principles and Operation Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs (2019).

7 See GMPA, "The Sustainable Development Goals and Migrants/Migration" (2016).

New Urban Agenda

The New Urban Agenda adopted in October 2016 at the UN Habitat III in Quito, Ecuador, sets out the framework, commitments and guiding principles for governance, development and welfare of the world's cities (UN General Assembly 2016). A large portion of the world's migrants – and of workers deployed under BLAs – resides in cities. The inclusive language on migrants and formulations on human and labour rights, social protection and inclusion for migrants provide authoritative language applicable to the formulation of BLAs.

2018 Global Compact for Safe, Orderly and Regular Migration [8]

The Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees are intended to enhance international cooperation, covering international migration governance and refugee response in a comprehensive and holistic manner. The GCM is the first intergovernmentally negotiated compact on international migration. [9] It advocates a "whole-of-government approach" addressing the multifaceted aspects of migration and a "whole-of-society approach" calling for multi-stakeholder consultation and partnerships – both applicable to establishing and implementing BLAs – across government, as well as with the private sector/employers, trade unions and parliamentarians (UN General Assembly 2018).

2011 UN Guiding Principles on Business and Human Rights.

The UN Guiding Principles on Business and Human Rights recognize and reiterate States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms, as well as the obligations of business enterprises, as specialized organs of society, to comply with all applicable laws and to respect human rights (OHCHR 2011). The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure, therefore including all those employing migrant workers. Thus, they are relevant to formulating and implementing BLAs.

5.3. AFRICAN UNION AND REGIONAL ECONOMIC COMMUNITY GUIDANCE INSTRUMENTS

The Migration Policy Framework for Africa (Banjul 2006)

The Migration Policy Framework for Africa adopted by African Heads of State and Government at Banjul in 2008 provides necessary guidelines and principals to assist governments and regional economic communities in the formulation and implementation of national and regional migration policies. While non-binding, the Framework nonetheless sought to be a comprehensive and integrated reference document. It provides a broad range of policy recommendations relevant to the formulation and implementation of BLAs, including on labour migration, inter-State cooperation, and gender and mobility and on health and migration (African Union 2006).

8 See: UN General Assembly, Global Compact for Safe, Orderly and Regular Migration – Intergovernmentally Negotiated and Agreed Outcome (2018).

9 The ILO Migration for Employment Convention (Revised), 1949 (No. 97) was the first global international instrument on migration governance (originally negotiated in 1934–35 under ILO auspices), followed by the ILO Migrant Workers (Supplementary Provisions) Convention, 1974 (No. 143). The ICRMW adopted in December 1990 remains the comprehensive and binding international instrument on human rights and migration governance under the auspices of the United Nations. The GCM is, however, the first global migration "compact" to be negotiated by governments.

(Revised) Migration Policy Framework for Africa and Plan of Action (2018–2030)

The revised Migration Policy Framework for Africa is a guide to improve migration governance by facilitating safe, orderly and dignified migration (African Union Commission 2018). It seeks to promote the socio-economic well-being of migrants and society through compliance with international standards and laws. Key elements include the "security of migrants' rights and addressing the migration aspects of crises". It calls for the establishment of regular, transparent, comprehensive and gender-responsive labour migration policies, legislation and structures at national and regional levels. In particular, the Migration Policy Framework for Africa calls for "standardised bilateral labour agreements to ensure the protection of migrant workers and facilitation of remittance transfers" (African Union Commission 2018, 10). It also supports social protection and social security coverage for migrants, a key element for BLAs, as discussed below.

IGAD Regional Migration Policy Framework (2012)

The IGAD Regional Migration Policy Framework was inspired by and drew upon the 2006 Migration Policy Framework for Africa (IGAD Secretariat 2012). It articulates a coherent strategic approach to guide IGAD Member State migration management programmes within the regional migration policy framework, taking into account region-specific concerns. Its section on labour migration includes recommended strategies relevant to the development, implementation and evaluation of BLAs, including:

- ratification and domestication of international instruments relating to labour;
- transparent and accountable labour recruitment and admissions systems;
- establishment of institutional mechanisms for cooperation between government authorities, workers' organizations and employers' organizations;
- empowerment of migrant labour to become part of all arrangements affecting their welfare;
- effective and sustained involvement of social partners and civil society in the elaboration and implementation as well as monitoring and periodic evaluation of migration policy and legislation; and
- promotion of gender equality in labour migration policy and legislation.

6

A template and core content for rights-based and gender-responsive bilateral labour agreements

This section first outlines a core structure for a bilateral agreement. Next, it elaborates on appropriate core content for the elements of the proposed model template.

6.1. PROPOSED STRUCTURE OF A BILATERAL LABOUR AGREEMENT

Standardization of agreement structure can help with the streamlining of its content. The wide disparity in BLA/MOU structures for the same origin country with different destination countries and differences among IGAD country BLAs with similar destination countries highlight the need for a unified approach to their development. While origin countries often may respond to a draft BLA template and text provided by a country of destination (COD), such COD templates may contain only minimal provisions for effective protection of migrant workers. It is, therefore, strategic for the country of origin (COO) to have a blueprint ready for negotiation. A template proposal with minimum or core provisions makes it easier to achieve a mutually acceptable agreement through such negotiations.

The proposed structure presented in this chapter has drawn upon the ILO Model Agreement of 1949 (see Annex VI for a list of articles) and subsequent work listed in the Background Report (ILO and IGAD 2021). Additional elements have been added based on those identified by a large majority of tripartite and other stakeholders consulted across all seven IGAD countries, as well as concerns listed in normative standards, in existing BLAs, and/or in recent reviews of and guidelines on BLAs. The core or standard template can be adapted to the needs of different countries and of different categories of workers. Table 1 below shows the proposed structure for the BLA template.

The proposed agreement template contains 26 articles. The structure should be regarded as a flexible one that can be adapted to the specific needs of IGAD countries individually. Some elements can be combined or added based on the relative importance assigned by the parties to the provisions of the specific agreement being negotiated.

6.2. CONTENT FOR ELEMENTS OF THE AGREEMENT TEMPLATE

This section presents suggested content for each of the elements in the proposed structure, with the chapter organized under headings that conform to the structure and article numbering in table 1.

The suggested content has been articulated according to international norms, in particular ILO Conventions, the ILO Model Agreement annexed to Recommendation No.86, and other international and regional instruments, as well as current practice and good practices (Wickramasekara 2015; 2018a; 2018c; ILO and IOM 2019c; ILO and IGAD 2021). Migrant rights, gender concerns, and consultation with other stakeholders (migrant workers, employers in the COD, trade unions, recruitment agencies in both countries, and concerned civil society organizations) are treated as cross-cutting issues. These and other specific concerns raised by IGAD stakeholders have been addressed. The list of criteria of good practices and provisions in BLAs described in the Background Report has also been reflected

(Annex VII). This chapter also draws on unpublished ILO comments on a draft regional model BLA for the African Union. [10]

Under each element, IGAD countries can draft appropriate text based on the guidance provided below. Examples of good provisions/ practices of BLAs in different regions can be found in the compendium of good practices in BLAs and MOUs compiled by Wickramasekara (2019c).

Table 1. Proposed structure for a bilateral labour agreement

Article No.	Article title
	Title of the Agreement
	Preamble to the Agreement
A.1	Purposes/Objectives of the Agreement
A.2	Definitions
A.3	Applicable laws and standards
A.4	Non-discrimination and equality of treatment
A.5	Competent authorities and division of responsibilities between the two parties
A.6	Exchange of information between the parties
A.7	Organization of recruitment, introduction and placing
A.8	Information and assistance to migrant workers
A.9	Contract of employment, including (where applicable) a Standard Employment Contract (SEC) attached as a binding annex
A.10	Change of employment and facilitating mobility
A.11	Protection of decent working conditions including occupational safety and health
A.12	Protection of wages
A.13	Decent living conditions: housing, nutrition and leisure
A.14	Social protection/social security provisions, including health coverage
A.15	Employment of women workers
A.16	Supervision of working and living conditions and role of labour inspection
A.17	Trade union rights and access to support mechanisms from civil society
A.18	Dispute settlement and access to effective remedies (worker/employer)
A.19	Access to training and skills development and skills recognition
A.20	Transfer of savings and remittances
A.21	Return and repatriation and reintegration
A.22	Provisions for emergency situations
A.23	Joint Committee/Joint Technical Group/ Joint Working Group
A.24	Implementation, monitoring and evaluation procedures
A.25	Language versions
A.26	Effective date and termination clause

Source: Modified for the IGAD context from Wickramasekara 2018b and IGAD and ILO 2021, table 4.

10 The ILO has shared these comments on a confidential basis with the expert contributors in view of their high relevance to the issues discussed in this report.

Title of the Agreement

Some agreement titles are general in that they only mention the agreement/MOU between the two countries. It is preferable for the title to be specific, and to clarify:

- the type of accord (BLA or MOU or Protocol);
- its purpose (for example, cooperation in the field of human resources or labour matters);
- coverage (type of sectors or workers – all, or specific categories such as domestic service/workers, construction workers, etc.).

Box 3 provides some examples:

Box 3. Some examples of agreement titles

Good examples of agreement titles include:

- the title of the Romania–Spain agreement (2002): Agreement between the Kingdom of Spain and Romania on the regulation and organisation of labour force migratory flows between both States;
- the title of the Philippines–Germany agreement (2013): Agreement concerning the Placement of Filipino Health Professionals in Employment Positions in the Federal Republic of Germany; and
- the title of the Kenya–Qatar agreement (2012): 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.
- If the accord is intended for a particular migration scheme, that also could be specified (for example, "Recruiting workers to [name of destination country] from [name of origin country] under the [specific name of the scheme or agreement concerned]").

Preamble to the Agreement

The Preamble usually explains the spirit of cooperation underlying the agreement and would serve as an introduction. It should briefly explain the context and motivations/reasons for the agreement.

The Preamble must also carry a reference to the basic objectives and goals without going into details (for example, enhancing friendly bilateral relations, or promoting cooperation in the field of human resources).

References to relevant international, regional and/or national instruments and frameworks are essential here, including universal human rights instruments, ILO fundamental Conventions and migrant worker instruments. Consideration should be given to inserting additional provisions in the Preamble:

i. to affirm the parties' commitment to respect, promote and realize the fundamental principles and rights at work, as well as relevant ILO Conventions that both countries have ratified; and

ii. to emphasize the need to implement the BLA in line with fundamental labour standards and human rights. A reference to the ILO General Principles and Operation Guidelines on Fair Recruitment could also be added.

When the number of women migrant workers is considerable, it is equally important to refer to the principle of gender equality and the need to address gender concerns. The relevant instruments are listed in subsection A.15 below. Most GCC and IGAD countries have ratified ILO Convention No. 100 (Equal Remuneration) and No. 111 (Discrimination). CEDAW has been ratified by all GCC countries, Jordan and Lebanon in the Middle East and by most IGAD countries (except Somalia and Sudan).

It is important for both countries to show that the interests of employers as well as protection of workers have been considered. Recent agreements mention the objective of ensuring protection of the rights of both workers and employers in the Preamble (for example, Saudi Arabia domestic worker agreements). A reference could also be included in the Preamble to the cooperation and collaboration between the parties to prevent and prohibit exploitation and abuse in the workplace.

The Preamble could include a clause on consultation with the representative workers'/ trade union organizations and employer's organizations in both the COO and COD on BLA implementation and review, given social partners' key roles in employment and labour relations. ILO Convention No. 143 calls on governments to seek the cooperation of employers' and workers' organizations and other appropriate bodies in promoting acceptance and observance of a national policy "designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms" concerning migrant workers lawfully admitted to the territory (Art. 10). Article 15 of Convention No. 143 encourages the conclusion of BLAs generally; while Article 7 requires, "The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above [that is, migration in abusive conditions], and the possibility of their taking initiatives for this purpose shall be recognised." The 2016 ILO General Survey concerning the migrant workers instruments highlighted: "The contribution of the social partners is an unequivocally valuable component of the instruments, essential to ensuring their successful implementation in practice" (ILO 2016b, para. 618). One recent (pre-pandemic) draft agreement between an IGAD country and a GCC country does mention in its Preamble: "Recognizing the importance of mutual cooperation to strengthen actions on labour matters by encouraging consultations and dialogue among the stakeholders."

Box 4. Good provision examples:
References to international instruments in the Preamble

General Agreement in the Field of Manpower Between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal

"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; …

"Determined to respect, promote and realize the rights of workers and improve their working conditions;"

Draft agreement of an IGAD country with a Middle Eastern country

"Reaffirming the obligation of both countries as members of the International Labour Organization … and their commitments to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up;"

1998 migration agreement between Argentina and Peru preamble:

"Mindful of the human rights instruments adopted within the framework of the United Nations and the Organization of American States …" (and they are listed).

A.1 Purposes/Objectives of the Agreement

It is important to spell out the specific objectives of the agreement as a separate item going beyond the general references in the Preamble. These objectives for origin and destination countries can be a combination of the following:

- Addressing labour shortages and meeting labour market needs of employers;
- Regulating international recruitment, deployment and migratory flows for better protection of workers;
- Ensuring human and labour rights protection and welfare of migrant workers employed abroad;
- Improving overseas employment opportunities for nationals;
- Enhancing the development benefits of regulated labour mobility for origin and destination countries;
- Providing better options for regular migration as an alternative to irregular migration.
- Ensure/enhance accountability and transparency among parties involved in overseas employment.

A.2 Definitions

The definition of key terms used in the agreement serves to avoid subsequent ambiguity in interpretations among parties to the agreement. It is preferable to use internationally accepted and neutral terms to the extent possible. Most terms that are likely to be included in the agreement "definitions" are defined in relevant international labour standards, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), and the ILO General Principles and Operational Guidelines for Fair Recruitment. For example, the ICRMW provides clear definitions for "migrant worker" and for specific categories of migrant workers. The General Principles and Operational Guidelines define the terms "employer", "labour recruiter", and "recruitment". Paragraph 1(b) of Recommendation No. 86 also provides a relevant definition of "recruitment". It is also important to provide definitions of migration and recruitment costs based on the ILO Definition of Recruitment Fees and Related Costs (ILO 2019a).

The definitions should be mutually agreed upon by the two State parties. Care should be taken not to adopt definitions that deviate from those that are internationally accepted or are not gender-sensitive. Annex I on the glossary of terms and Annex II on appropriate terminology provide definitions for most of the terms that would be used in a BLA.

A.3 Applicable laws and standards

Migration for overseas employment involves different stages: pre-departure; employment and residence in the destination country; and return and reintegration. Origin country laws, policies, and programmes would apply to the pre-departure stage (such as recruitment), and on return and reintegration. Likewise, COD laws, policies and programmes would apply during the period of migration. To this effect, the draft BLA could state the main national laws and regulations applicable to the pre-departure, recruitment, employment and residence of migrant workers, including domestic workers.

This provision of the BLA could reiterate a general notion of applicability of international labour standards to the protection and treatment of migrant workers. If not already mentioned in the Preamble, it could also include a reference to the general applicability of the eight fundamental ILO Conventions (all or most ratified by IGAD and GCC and other Middle East countries) and the expectation that all Member States of ILO are expected to uphold the principles in these Conventions.

This provision could also specify that in case of difference between labour standards applicable in the employment country and those in the country of origin and/or minimum relevant international labour standards, the standard of protection of migrant workers applicable in the COD shall be the higher standard of protection. The clause should also specify that in the absence of specific national laws and regulations or equivalent legislation applying to a migrant worker's situation, relevant minimum international labour standards shall be considered applicable.

This section should also cover arrangements for protection of those not usually covered

by labour laws, such as workers in agriculture and domestic work. Some GCC countries have separate laws and regulations for domestic workers which should be listed.

A.4 Non-discrimination and equality of treatment

A specific provision on non-discrimination is essential for a standard BLA, all the more so for BLAs with countries where discrimination on various grounds, such as sex, race, colour, ethnic origin, religion, social origin and/or nationality, is evidenced. Non-discrimination and equality of treatment on these grounds are key principles embodied in the ILO fundamental equality Conventions, notably the Discrimination (Employment and Occupation), 1958 (No.111), and the Equal Remuneration Convention, 1951 (No. 100). They are also key features of international instruments concerning migration, including Convention No. 97 (Article 6) and Convention No. 143 (Articles 1, 8, 10 and 12) and the UN human rights instruments.

Equality of treatment should apply, without discrimination, to migrant workers. Migrant workers should at least enjoy equality of treatment in respect of wages, working and living conditions, social security, and trade union rights, on par with national workers in the destination country (Art.17 of the ILO Model Agreement; Convention No. 97, Art.6). While it is also important that no distinctions, or preferences, or exclusions are made between migrant workers and nationals, the principle of equal treatment embodied in Article 6(1) of Convention No. 97 refers also to treatment that should be applied, without discrimination based on nationality, race, religion or sex, between different groups of migrant workers.

In addition, this provision should specify the fundamental principle of equal remuneration between men and women for work of equal value in line with ILO fundamental Convention No. 100, as well as equal remuneration between migrant workers and nationals for work of equal value, in line with Convention No. 97 and Recommendations Nos 111 and 151.

In practice, however, temporary migrant workers rarely enjoy equality of treatment with national workers, and there is often disparate treatment between workers from different countries according to nationality and gender, often reflected in the wages offered by nationality, and according to whether jobs are dominated by men or by women. A particularly good provision is article 14 of the General Agreement in the Field of Manpower Between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal, which deals specifically with "Equality of Treatment" on par with nationals in Jordan. Several IGAD agreements with Middle East/GCC countries mention equality of treatment with nationals of other countries, which is helpful, but that formulation implicitly (if not explicitly) excludes equality of treatment with national workers – contrary to international standards that call for equality of treatment for migrant workers with national workers.

The application of the principle of equality of treatment in social security should be regulated through a separate bilateral social security agreement concluded between the COD and the COO aimed at the maintenance of the acquired rights and rights in the course of acquisition. No IGAD Member State or Asian country has been able to develop such bilateral social security agreements with GCC countries, Jordan or Lebanon.

A.5 Competent authorities and division of responsibilities between the two parties

The roles and responsibilities of each party to a BLA must be spelled out in the agreement, including for the implementation, enforcement and review of each of the provisions. A specific substantive clause early in the agreement will specify the roles and division of responsibilities for each party as well as common or shared responsibilities. Agreements often mention the responsible unit in each country for implementation, designating them as the "first party" and the "second party".

Responsibilities of COOs may go beyond pre-departure, recruitment, reintegration and return, and also include respect for migrant workers' rights during the journey and collaboration with CODs upon deployment. Responsibilities of CODs may also include regulation of labour recruiters and agencies, cooperation with countries of origin regarding pre-departure, as well as training and skills development. Laws and regulations aimed at combating trafficking of persons fall within the responsibilities of both countries.

Several IGAD agreements show the responsibilities shared by the two parties as well as individual responsibilities of each party.

Agreements may also assign second levels of responsibility as needed to ensure credibility of enforcement. This would include designation of the national agencies with responsibilities for monitoring and enforcement in the COD, particularly for labour inspectors for monitoring workplaces, and the public health authority and/or others for monitoring living, housing and healthcare. Similarly, the agreement should identify the authorized national authorities responsible for reviewing and vetting employment offers from abroad, for monitoring recruitment and recruitment agencies, for providing pre-departure training and orientation, and for reception and reintegration support upon return. The Philippines–Manitoba (Canada) MOU (2010) mentions that the Philippines Department of Labour and Employment would include its associated agencies – the Philippines Overseas Employment Administration, the Overseas Workers Welfare Administration, the Technical Education and Skills Development Authority, and the Professional Regulation Commission – as appropriate.

While the ultimate responsibility for migration policies and inter-State cooperation lies with the government, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society.

A.6 Exchange of information between the parties

This refers to the exchange of information between the COO and the COD on a regular basis, as provided for in Convention No. 97 (Article 1) and the ILO Model Agreement (Article 1). This exchange could take place through the Joint Committee. Article 1 of the Model Agreement contains detailed provisions [11] relating to this exchange of information.

It is important to know how the two parties exchange information or the mechanisms used for doing this following an agreement, but there is hardly any documentation regarding this matter. High level contacts between ministries of labour or diplomatic channels may be used to indicate the general demands for workers and applicable laws and regulations. In some agreements, this is a task for the Joint Committees. The responsible ministry may pass these to public and private recruitment agencies as needed. The increasing use of information and communication technology may facilitate such exchanges. At the same time, recruitment agencies may have their own channels to obtain information on available job opportunities in various sectors and skills. Information on conditions of life and work and customs and culture in the destination country is usually provided to migrant workers through pre-departure orientation programmes. The Abu Dhabi Dialogue has sponsored a Comprehensive Information and Orientation Programme consisting of pre-employment, pre-departure and post-arrival modules with cooperation between the COO and COD. These may be relevant for IGAD origin countries (with adaptation).

Another important issue is the avoidance of misleading propaganda by recruitment agencies or sub-agents relating to emigration and immigration possibilities or about working and living conditions abroad. The two parties can include a sub-article to this effect. The Inter-Agency Understanding agreements of New Zealand with Pacific Island countries contain such a provision: "The Participants will act promptly to correct any false or misleading information about the RSE Work Policy." [12]

A.7 Organization of recruitment, introduction and placement

The term "recruitment" should be understood to explicitly refer to the "advertising, information dissemination, selection, transport, placement into employment" and – for migrant workers –include provisions for return to the country of origin, where applicable (ILO 2016a. 2).

The need for BLAs to regulate recruitment has been recognized in a number of ILO instruments. Article 8(2) of the Private Employment Agencies Convention, 1997 (No. 181), specifies: "Where workers are recruited in

11 The Model Agreement covered permanent as well as temporary migration. At the time, transfers of labour were mostly arranged by public employment services of the two parties.

12 "RSE" stands for "Recognised Seasonal Employer". New Zealand's RSE Scheme allows the horticulture and viticulture industries to recruit workers from overseas for seasonal work when there are not enough New Zealand workers.

one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment [of migrant workers]." Article 15(d) of the Domestic Workers Convention, 2011 (No. 189), provides guidance on actions to prevent abuses and fraudulent practices on the part of recruitment agencies, with specific reference to the development of bilateral, regional or multilateral agreements.

The ILO General Principles and Operational Guidelines for Fair Recruitment provide detailed guidelines on how governments, employers and recruitment agencies can ensure and practice fair recruitment. The General Principles and Operational Guidelines state that governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers that are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards. The General Principles and Operational Guidelines also re-stated the important ILO principle that "no recruitment fees or related costs should be charged to, or otherwise borne by workers or jobseekers" (ILO 2016a, 3) (see also Convention No. 181, Article 7). The "employer pays principle" is now widely promoted by international business groups, including the Institute of Human Rights and Business, the World Employment Confederation and the Consumer Goods Forum, among others (ILO 2019b). At the same time, trade unions and NGOs promote the "workers do not pay principle", which does not indicate who should pay. Both principles may lead in practice to placing the primary responsibility of meeting recruitment fees on the employer. Article 6.2 of the General Principles and Operational Guidelines states: "Prospective employers, public or private, or their intermediaries, and not the workers, should bear the cost of recruitment" (ILO 2016a, 16). The evidence from law and practice documented in an ILO (2019b) comparative study on recruitment fees in different regions is not clear cut. The BLAs reviewed in the Asia and Middle East region (GCC States and Jordan) by the this ILO (2019b) study refer either to employers' responsibility, or the workers should not pay principle, or they spell out costs to be paid by employers, especially travel costs. Some recent bilateral agreements and MOUs expect the employer to pay specified costs (for example, the General Agreement between Nepal and Jordan; the MOU between Nepal and Malaysia, 2018). The General Agreement in the Field of Manpower Between the Government of the Hashemite Kingdom of Jordan and the Government of Nepal stipulates that PRAs should not charge any recruitment fees to workers, and that the employer should pay for the cost of visa fees, return air tickets, and home leave every two years.

The agreement should define the roles of both the COO and COD in ensuring fair recruitment, by:

- Identifying clearly the entities authorized to undertake recruitment and placement activities (for example, registered/licensed PRAs and public employment services of both parties);
- Including provisions that migrant workers will be given free and accurate information about their recruitment conditions;
- Providing for joint action to minimize recruitment malpractices and reduce migration costs, and that recruitment fees and related costs should not be borne by migrant workers. A joint monitoring mechanism, however, needs to be put in place to enforce compliance with fair recruitment processes. The ILO General Principles and Operational Guidelines for Fair Recruitment state that governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers that are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards.

Article 15(d) of the Domestic Workers Convention, 2011 (No. 189), provides further guidance on actions to be taken to prevent abuses and fraudulent practices on the part of PRAs mediating the recruitment of workers from abroad, including the development of bilateral, regional or multilateral agreements.

Respective liability provisions should be specified for local recruitment agencies (PRAs) in the country of origin and for the recruiter/PRA and the employer in the country of

employment. It will be helpful to acknowledge limits on the liability of PRAs in the origin country for occurrences in the destination country, including actions by employers that are beyond the knowledge and control of origin country PRAs and outside the legal jurisdiction of the origin country. IGAD countries have followed the practice of the standard employment contract (SEC) being countersigned by PRAs in both countries, indicating joint responsibility for adherence to the agreed recruitment and employment conditions, and accountability in case these are not respected.

Box 5 provides some examples of good provisions/practices in BLAs on fair recruitment based on the IGAD region.

Box 5. Good provisions/practices on fair recruitment in BLAs

▶ **No recruitment fees or related costs charged to workers**

Ethiopia–Saudi Arabia domestic worker agreement:

Article 4 (5): "Ensure that recruitment offices, companies or agencies of both countries and the employer shall not charge or deduct any cost relating to his/her recruitment and deployment from the salary of the domestic worker or impose any kind of unauthorized salary deductions;"

Uganda–United Arab Emirates MOU:

Article 5(b): Ensure that the employer incurs all recruitment fees and that none shall be levied on the worker;

▶ **Recruitment through licensed agencies only**

Kenya–Saudi Arabia domestic worker agreement:

Article 4(f): "Ensure the recruitment of domestic service workers through PEAs [private employment agencies], offices or companies that are licensed/registered by their respective governments."

Also, Ethiopia–United Arab Emirates MOU, article 11(2–5).

▶ **Undertake to enumerate all costs incurred in recruitment process**

Uganda–United Arab Emirates MOU:

Article 5(a): "Identify and itemize all costs associated with the recruitment and employment of Ugandan workers."

▶ **Pre-departure and post arrival orientation**

Uganda–United Arab Emirates MOU:

Article 3(7). "Undertaking joint collaborative programs and activities, including pre-departure and post-arrival training and briefing programs in pursuit of the objective of improving the administration of the full temporary contract employment cycle."

▶ **Joint verification of employment contracts by COO and COD**

Ethiopia–United Arab Emirates MOU:

Article 9(8): "The Parties will collaborate, by way of linking their relevant systems, to ensure that the main terms of each employment are shared with and verified by Ethiopia for the purpose of the granting of a work permit by the UAE [United Arab Emirates]."

Also, Article 5(6) of the Kenya–Uganda MOU.

References to ethical and fair recruitment

Uganda–United Arab Emirates MOU:

Article 3(2): "Regulation on the deployment of manpower in accordance with the principles of transparency, ethical recruitment, fairness and mutuality of benefits;"

Provisions for joint liability of recruitment agencies and employers

Uganda–Jordan agreement:

Article 5(5): "The employer in Jordan, the recruitment company in Jordan and the employment company in Uganda shall be jointly and severally liable for matters pertaining to the, hiring and deployment of Ugandan migrant worker including full implementation of the employment contract."

A.8 Information and assistance to migrant workers in a language they can understand

International instruments have recognized this to be a priority need for migrant workers who are moving to another country where they are not nationals. Article 2 of ILO Convention No. 97 highlights the obligation of the ratifying government to provide an adequate and free service to assist migrants with regard to employment, and in particular to provide them with accurate information. Article 8 of the ILO Model Agreement elaborates on this matter, highlighting the shared responsibility of the COO and the COD:

> The migrant accepted ... shall receive, in a language that he understands, all information he may still require as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he is going. ... On arrival in the country of destination, migrants and the members of their families shall receive all the documents which they need for their work, their residence and their settlement in the country, as well as information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in the country of immigration.

The ILO General Principles and Operational Guidelines for Fair Recruitment states: "Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment" (ILO 2016a, 8).

The information should cover relevant labour law governing the employment relationship; employers' obligations, including occupational health and safety (OSH) regulations; obligations of employers' and/or recruitment agencies in relation to migration costs; prohibitions regarding confiscation of travel and identity documents; and dispute resolution mechanisms and access to justice.

It is crucial to provide gender-specific information to migrant workers, especially women migrant domestic workers. CEDAW General Recommendation No. 26 contains the following:

> Deliver or facilitate free or affordable gender- and rights-based pre-departure information and training programmes that raise prospective women migrant workers' awareness of potential exploitation ... targeted to women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women.

In this respect, some IGAD Member States have put mandatory pre-departure orientation in their national legislation. What is important is to recognize in BLAs is that a commitment to post-arrival training should be an obligation of the destination country.

In the context of this article, an important cross-regional initiative is the Comprehensive Information and Orientation Programme (CIOP) launched under the auspices of the Abu Dhabi Dialogue and led by the Government of the Philippines. It acts to establish coherence between information delivered by Asian countries of origin and GCC destinations and covers the entire migration journey. The CIOP consists of three modules for migrant workers: Pre-Employment Orientation, Pre-Departure Orientation, and Post-Arrival Orientation. Based on existing information programmes and their delivery and challenges across COOs and CODs, a background report and a regional guide have been produced for each of the three topics, highlighting recommendations, best practices and proposed training modules [13], coordinated by the IOM. These were launched at the Abu Dhabi Dialogue 5th Ministerial Consultation on 17 October 2019, and will be piloted among selected migration corridors. Since these modules have been endorsed by both origin countries in Asia and Gulf destination countries, IGAD countries can draw upon and adapt them for their needs.

A.9 Contract of employment, including where applicable a Standard Employment Contract (SEC)

The employment contract plays a central role in a bilateral agreement because it defines the returns to employment (wages and other remuneration) and the conditions of work for migrant workers. The ILO Model Agreement, Article 22, provides detailed guidelines on the formulation of an employment contract. For domestic workers, Article 7 of Convention No. 189 lists detailed contract provisions.

The contracts should be concrete and enforceable in the country of destination. However, it is crucial that the employment contract be provided to the migrant worker in a language he/she understands. Since the text in the main agreement needs to be concise, it is a good practice to attach a more detailed standard employment contract as an annex to the BLA (see A.10 below). The requirement of a standard written contract formalizes the employment relationship between the worker and the employer, and provides specific guidance on work expected and the applicable terms and conditions of employment.

The individual employment contract shall include the details of the employer's obligations concerning the worker's wages and remuneration (including overtime pay and paid annual leave); working hours, including overtime; rest periods; accommodation and its type, or the payment of accommodation allowance; and the medical treatment. Application of minimum international standards for occupational safety and health (OSH) should also be specified.

In view of the common malpractice of contract substitution, it is important to establish a system of joint verification of contracts by authorities of the COO and COD. It is equally important that migrant workers are "informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner" (Convention No. 189, Article 7). It would be preferable in all cases for the contract to be delivered to migrant workers and signed by them before their departure from the country of origin so as to minimize contract substitution. Where this is not possible, they should be briefed fully on the employment contract and a tentative copy provided.

The BLA should include a provision on the application to all migrant workers of minimum standards for conditions of work and existing labour standards in the country of employment. In the absence of specific national standards, regulations or equivalent legislation applying to the migrant worker›s situation, relevant minimum international labour standards shall be considered applicable.

The employment contract should include provision for renunciation of the contract by either party to the employment relationship, and grounds on which either party may rescind the contract. The contract of employment could state that workers shall be authorized to exit the country without restriction upon the expiry of contract without separate permission from the employer or on the valid grounds accepted in the SEC.

Standard employment contract (SEC)

A SEC helps employers to comply with legal requirements on the working conditions and entitlements of migrant workers. The

13 The links to the six information products (background report and associated regional guide) for each of the modules can be found on this page: http://abudhabidialogue.org.ae/projects/comprehensive-information-and-orientation-programmes-ciop.

worker also understands his or her rights and obligations. Individual employment contracts of workers should be based on the SEC. It is, therefore, essential that the model contract be shared with recruitment agencies for adherence. There is no general accepted model or template for the employment contract, and different countries may adopt different formats. It is strongly recommended that the parties adopt a standard model employment contract, and the main text should mention that this contract is an integral part of the agreement.

For domestic workers, several model employment contracts have been proposed (ILO and IGAD 2021). Especially useful guidance is found in the ILO Convention on Domestic Workers, 2011 (No. 189), and the related ILO Recommendation No. 201. Annex IX lists the guidelines on employment contracts offered by these two instruments.

Joint verification of contracts by both COO and COD authorities is another important measure. The actual enforcement of the SEC depends on an effective labour inspection service in the COD.

A detailed listing of the provisions of an SEC for domestic workers is provided in Annex X. Key provisions relate to the following.

a. Complete contact details of the employer and the worker. This is important because it is generally difficult to trace domestic workers when they work in private households.

b. Job description – This is an especially important provision missing in most SECs.

c. Applicable wages based on equal pay for work of equal value; specification of allowable deductions, overtime rates, method of payment, salary increment on renewal of contract; payment of wages into worker's bank account; issue of receipts.

d. Working and rest time – This is especially important for domestic workers, who frequently experience excessive hours of work. Convention No. 189 provides detailed guidelines. A standard 8-hour workday should be provided. Weekly rest is standardized at one day per week in all agreements.

e. Social protection – health and work injury benefits and insurance arrangements.

f. 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.

g. Right of workers to keep their passport and work permit documentation at all times.

h. Dispute resolution procedures and access to justice.

A.10 Change of employment and facilitating mobility

General Principle No. 12 of the ILO General Principles and Operational Guidelines for Fair Recruitment on recruitment states: "Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer" (ILO 2016a, 8). This provision is especially important in view of the sponsorship system (kafala) prevailing in GCC countries, which requires employer permission to change or leave employment (ILO 2017b). With a view to strengthening protection of migrant workers covered by the bilateral agreement against abusive employer practices, the ILO recommends that a provision be inserted regarding the conditions to change employment before and after the end of the contract of employment, duly taking into account the above-mentioned observations.

An encouraging development is the recent legal reforms in Qatar dismantling major restrictive elements of the kafala system. These relate to removing the requirement for workers to obtain an exit permit for leaving the country either temporarily or permanently, and removing the requirement of securing a no-objection certificate from the employer to change employers (ILO, unpublished). Now, all workers can change employers without first obtaining a no-objection certificate (Qatar 2020a; 2020b). These reforms apply to all workers, including those not covered by labour law, such as agricultural and domestic workers. Considerable efforts would, however, be needed towards the effective implementation and enforcement of these reforms. These developments need to be reflected in existing

IGAD agreements (through revision) and/or in new bilateral agreements with Qatar. The reforms in Qatar represent a good practice to be followed by other GCC countries, Lebanon and Jordan.

The BLA can differentiate between different legitimate situations for change of employment:

- Migrant workers who lose their employment before expiry of contract or who suffer premature termination of contract (due to company bankruptcy, etc). In these situations, a migrant who has lost their employment should be allowed sufficient time to find alternative employment, and the authorization of residence should be extended accordingly, in accordance with Convention No. 143 (Art. 8) and Recommendation No. 151 (Para. 31), which also provide protection against the automatic withdrawal of the authorization of residence or work permit in the case of loss of employment.
- Workers who suffer abuse, exploitation or discrimination on the job.
- Completion of the normal contract: The worker should be able to change to a different job without permission from the previous employer.
- Free choice of employment for migrant workers who have resided in the country of employment for at least two years, in accordance with Convention No. 143.
- Crisis and emergency situations such as those similar to the ongoing COVID-19 pandemic crisis (see A. 22 below).

The SEC can stipulate the conditions under which a change of employment is possible without prior permission of the employer based on above situations.

At the same time, both the employer and the worker should be able to terminate the employment contract, provided a sufficient notification period is given.

Consideration could also be given to the need to ensure the possibility of change in employment if the employment for which the migrant has been recruited does not correspond to their physical capacity or occupational qualifications – in line with the ILO Model Agreement, Article 23(1) and 24(1),

A.11 Protection of decent working conditions, including occupational safety and health

This provision of the BLA should specify the application to all migrant workers of minimum standards for conditions of work, and occupational safety and health (OSH) in the country of employment. In complement, it should specify terms of protections for specific categories of workers that may be employed in the context of the BLA. It may be guided by relevant ILO Conventions that define minimum standards concerning working conditions and OSH, 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);
- Safety and Health in Agriculture Convention, 2001 (No. 184); and
- Domestic Workers Convention, 2011 (No. 189), among others.

A specific clause should call for gender-specific protection for women migrant workers. The Nepal–Jordan General Agreement contains a separate article (No. 15) on protection of female workers, in addition to highlighting the need for special consideration to the specific vulnerabilities of female migrant workers under the agreement's Objectives (art. 1(c)). The Government of Jordan is also obliged to "[a]dopt effective measures, with due regard for the special characteristics of the female workers, to ensure their occupational health and safety" (art. 4(j)). Article 15 of the agreement has the following provisions, among others:

- Employers should ensure proper arrangements to address specific risks faced by female workers and their

protection against any violence, threats and physical and/or sexual abuse.

- The female worker shall not be subjected to conditions of forced labour, unlawful holding of passports, restriction of movement and communication with their families and the embassy/consulate.
- GOJ [Government of Jordan] shall provide appropriate mechanisms to seek justice for any violence against female workers in accordance with the Laws.
- Employer shall provide appropriate privacy to female workers including separate room.

These are particularly good provisions that can be included in similar agreements concerning women workers. The new ILO Violence and Harassment Convention, 2019 (No. 190), and its accompanying Recommendation No. 206 are an important reference in this regard. The ILO Maternity Protection Convention, 2000 (No. 183), and the Domestic Workers Convention, 2011 (No. 189), are also relevant references.

Specification of working environment protections, including measures to protect workers from heat stress where applicable, is also a key provision to ensuring migrant workers' occupational safety and health, particularly in BLAs with GCC and other Middle East countries characterized by extremes of high temperature and humidity and/or dryness.

Provisions may also be included to ensure migrant workers are covered by minimum standards relating to working time, rest time, vacation and night work, such as those delineated in the:

- Weekly Rest (Industry) Convention, 1921 (No. 14);
- Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106);
- Reduction of Hours of Work Recommendation, 1962 (No. 116);
- Holidays with Pay Convention (Revised), 1970 (No. 132); and
- Night Work Convention, 1990 (No. 171).

A.12 Protection of wages

A specific provision should be included spelling out the payment of decent wages to migrant workers, including reference to minimum wages and spelling out allowable deductions and provision for overtime pay. Three ILO Conventions provide guidance in this regard:

- Protection of Wages Convention, 1949 (No. 95);
- Minimum Wage Fixing Convention, 1970 (No. 131); and
- Protection of Workers› Claims (Employer›s Insolvency) Convention, 1992 (No. 173).

The BLA should include a clause providing for equal remuneration for work of equal value, ensuring that wages set or offered in the context of the BLA are based on objective criteria determining the value of the work and not based solely on local "market value" that may be subjectively set in/by the destination country. This is in particular to impede fomenting competition among IGAD origin countries regarding the determination of wages above the minimum wage, if there is one, in the country of destination. While some origin countries, including Ethiopia, India, Indonesia, Nepal and the Philippines, have established minimum wages for selected categories of migrant workers (such as domestic workers), the ILO Committee of Experts has cautioned that this practice may lead to unhealthy competition between countries, which can drive down wages (ILO 2014; 2016b).

The BLA should also specify wage protection measures for migrant workers, including payment by the employer into a bank account controlled by the migrant worker, issuance of payment slips showing amount of pay and allowable deductions, and payment periodicity (usually monthly) should be specified in the BLA.

Workers should have easy access to complaints mechanisms on wage issues without fear of intimidation and retaliation. Only the COD can establish and supervise such mechanisms on its territory, but doing so should be explicitly specified in a BLA. Wage protection should also provide for recovery of wages in arrears or unpaid wages, even after the worker has returned home.

It is recommended that consideration be given to inserting an explicit provision in the model

BLA to prevent wage discrimination between migrant workers and nationals, and to avoid different minimum wages being set for different countries, creating unfair competition between countries of origin.

Jordan, Malaysia and Qatar have introduced minimum wages that are applicable to migrant workers. An important development for negotiation by IGAD Member States of new bilateral agreements with Qatar (or revision of existing ones) is the adoption of a non-discriminatory minimum wage into law by the Government of Qatar. This minimum wage applies to all workers, of all nationalities, in all sectors, including those employed in households. Law No. 17, adopted on 30 August 2020, establishes a minimum wage of 1,000 Qatari riyals that will enter into force after six months. In addition to the minimum basic wage, employers must ensure that workers have decent accommodation and food. The legislation stipulates that employers pay allowances of at least 300 riyals and 500 riyals to cover costs of food and housing, respectively, if they do not provide workers with these directly (ILO 2020d). It is a good practice that can be considered by other GCC countries, Jordan and Lebanon.

A.13 Decent living conditions, including housing, nutrition and leisure

The BLA could include a provision specifying minimum standards and modalities of living conditions for migrant workers, including reference to housing, food and nutrition; access to leisure and rest; and possibilities to maintain their own national and ethnic identity. This would facilitate supervision of living conditions mentioned under A.18 below. This would include mention of/clauses on:

- Specification of minimum decent accommodation – Sleeping and personal space and respect for privacy should be listed, preferably with reference to the ILO Workers› Housing Recommendation, 1961 (No. 115). For domestic workers, reference should be included to ILO Convention No. 189 and related Recommendation No. 201.
- Provision should also be specified for supply of adequate healthy nutrition for migrant workers and access to culturally appropriate food (where food is supplied by the employer).
- Equality of treatment with respect to accommodation, as specified in ILO Convention No 96, Article 6(1). For example, dormitories provided for migrant workers at construction sites, for work in agriculture, or for work at industrial sites should not be substandard and of lesser quality than those made available for national workers.

A clause should specify that the respective parties will "take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin", as per Article 12(f) of Convention No. 143.

A.14 Social protection provisions including health coverage

To obtain decent treatment of migrant workers consistent with ILO Conventions and international human rights standards, the provisions on social protection should elaborate as precisely as possible:

- The guiding principle with respect to social security is equality of treatment. BLAs should include provisions ensuring that migrant workers are treated not less favourably than national workers with respect to social protection, including healthcare.
- Migrant workers access to national social protection schemes, with reference to the relevant branches of social security included in the Social Security (Minimum Standards) Convention, 1952 (No. 102), which sets minimum standards for all nine branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit. However, careful assessment is needed on what is feasible to propose for BLAs with each country in consideration of:
  - what social security coverage is or is not extended to national workers;
  - what social security coverage is provided for workers from other GCC countries under existing GCC accords; and
  - what coverage is provided for migrant workers of other nationalities.
- Provision of health insurance/coverage, with specification that it should be provided as a function of employment, and that the employer should contribute to the cost of

health insurance/health coverage. Health insurance/coverage should also include coverage for accidents and sickness "off the job" as well as at work.

- Work injury compensation and benefits (in accordance with the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), and Convention No. 121).

Portability of social security entitlements (acquired or in course of acquisition) should also be spelled out. Reference should be included to separate bilateral Social Security Agreements (which may be existing or forthcoming) that ensure the portability of social protection entitlements and set out in detail the methods for applying social security to migrant workers. Reference to the Equality of Treatment (Social Security) Convention, 1962 (No.118), could also be included. ILO Convention No. 118 sets modalities of international access to and portability of social protection.

However, legislation in GCC States have excluded migrant workers from comprehensive social security since the late 1980s. Some existing BLAs mention only access to health benefits and injury/accident compensation. No Middle East country has signed social security agreements with migrant worker origin countries. Existing national legislation in CODs usually precludes access to comprehensive social protection coverage for migrant workers – regardless of whether they are temporary or permanent. What may be feasible for IGAD countries is to commit to raising social protection coverage in BLAs over time towards the standards of coverage spelled out above. As an immediate step, the inclusion of insurance schemes to cover social protection should be considered for this component of BLAs, based on existing agreements such as the Nepal–Jordan BLA.

A.15 Employment of women workers and gender equality

"In order for BLAs/MOUs to achieve their aim of promoting 'fair migration' for regulated and orderly cross-border movement of workers and protecting the human rights of all migrants, they must incorporate a gender perspective and give particular attention to the groups of vulnerable migrant workers including MDWs [migrant domestic workers]" (ILO 2016c, 3).

In ensuring decent work of migrant women, parties can draw upon general human rights and migrant worker instruments, such as: ILO Conventions Nos 100, 111, 156, 183, 189 and 190; CEDAW General Recommendation No. 26; and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) General Comment No. 1 on Domestic Workers (see box 6). A cross reference could be made to the principle of non-discrimination, including on the basis of gender, referred to in Article 1 of Convention No. 111. It would also be essential to ensure that pre-departure services, including medical testing, and assistance provided to migrant workers are gender-responsive, and that women migrants are not subjected to pregnancy testing before departure or upon arrival.

Box 6. Instruments relevant for addressing gender concerns

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Equal Remuneration Convention, 1951 (No. 100);
- Workers with Family Responsibilities Convention, 1981 (No. 156);
- Maternity Protection Convention, 2000 (No. 183);
- Domestic Workers Convention, 2011 (No. 189);
- Violence and Harassment Convention, 2019 (No. 190),
- UN Convention on the Elimination of Discrimination Against Women (CEDAW);
- CEDAW General Recommendation No. 26 (2008);
- CMW General Comment No.1 on Migrant Domestic Workers, 2011.

Furthermore, it is advisable to ensure that gender concerns are being taken into account in the context of access, entitlements and portability of social security for women migrant workers, as laid down in the ILO Social Protection Floors Recommendation, 2012 (No. 202). Given that domestic workers may not be covered by labour laws in most destination countries (Bahrain is an exception), it is important to attach SECs addressing their issues of concern – such as equality of treatment, wage protection, rest periods, leave days, hours of work, privacy, right to communication, complaints mechanisms, prohibition of passport confiscation, maternity protection, and freedom form harassment and violence – with these contract items being in line with the international instrument mentioned above. Provision must be made for multilingual hotlines accessible by domestic workers. While IGAD country domestic worker agreements with Saudi Arabia contain a vague provision – "Endeavour to establish a mechanism which will provide 24-hour assistance to the domestic workers" – there is, however, no evidence that this has been followed up. It is better to modify the provision in the BLA to state that a multilingual hotline will be established within a short, specific timeframe (for example, within three months of the agreement coming into force).

A.16 Supervision of working and living conditions and role of labour inspection

Article 16 of this template BLA should specify minimum standards and modalities of living conditions for migrant workers, including reference to housing, food and nutrition, access to leisure and rest, and possibilities to maintain their own national and ethnic identity. The appropriate authorities competent to inspect housing, health, and other aspects of migrant worker living conditions should be identified in this article.

The responsibility of supervising the working and living conditions of migrant workers lies with the competent authorities of the COD according to Article 15 of the ILO Model Agreement. The Model Agreement also calls for cooperation between the COO and COD authorities with regard to temporary migrant workers.

This provision in the BLA should explicitly provide for diligent labour inspection of – and jurisdiction to pursue labour standards violations at – all workplaces where migrant workers are employed, by the competent national authority, normally the national Labour Inspection authority, usually under the Ministry of Labour. Reference could be made to the terms and parameters for labour inspection, and the roles and responsibilities of labour inspectors as laid out in the ILO Labour Inspection Convention, 1947 (No. 81) – which most IGAD and almost all GCC and other Middle East countries have ratified. Provision should be included in the BLA for regular inspection of working and living conditions and of facilities by the appropriate labour, health or other authorities, as being essential to monitoring compliance.

The COD must guarantee an adequate labour inspection system for carrying out this supervision, especially with the entry into force of agreements. It would be important to insert text to this effect in the agreements themselves. This would include the following:

- commitment of the COD to intensify labour inspection services as warranted by the agreement;
- briefing of labour inspectors and employers on obligations under the new agreement;
- provision of additional training on labour and OHS inspection regarding migrant/foreign workers and workplaces with migrant workers;
- allocation of extra funds for the service; and
- monitoring of commitments.

The results of the monitoring done by the labour inspection service can be shared at the Joint Committee meetings.

Consular officials of the country of origin should be allowed access to visit workplaces and places of accommodation to assess existing working and living conditions. The Nepal–Jordan 2017 agreement contains good provisions in this area (Wickramasekara 2018c).

The laws should include mechanisms for monitoring the workplace conditions of women migrant workers, especially in the kinds of jobs where they dominate, such as domestic work, as recommended in CEDAW General Recommendation No. 26.

Regarding domestic workers, Article 6 of Convention No. 189 states: "Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy." Article 17 calls for development and implementation of "measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work", and also to specify "the conditions under which access to household premises may be granted, having due respect for privacy" in accordance with national laws and regulations.

A.17 Trade union rights and access to support mechanisms from civil society

This refers to the right of migrant workers to join local trade unions and/or migrant associations, which is a basic right of workers. In practice, however, there are many obstacles to this right. Some CODs may not allow union rights, even for local workers (for example, Saudi Arabia, United Arab Emirates). Others may not allow migrant workers to hold positions in unions. Employers may retaliate if workers join unions or engage in unionization activity, even where legally allowed.

Organizations of migrant workers are also not common, even in origin countries. In addition to strengthening trade unions' capacity to organize migrant workers and advocating for respect of freedom of association, what is needed for workers is access to support organizations such as NGOs concerned with migrant welfare, human rights institutions, diaspora organizations, or religious-based organizations that can provide support. This is quite important for women migrant workers, who often suffer multiple discrimination as both migrant workers and women in destination countries. COO and COD trade unions and NGOs can cooperate to offer support to migrant workers.

The agreements can contain provisions that aim to facilitate the functioning of support organizations and to facilitate access to these organization by migrant workers, within the law of the countries involved.

A good practice by COO trade unions is entering into separate bilateral MOUs with their counterparts in destination countries. This practice should be encouraged by both COOs and CODs.

A.18 Dispute settlement and access to effective remedies (Worker/Employer)

Guideline 10.5 of the ILO Multilateral Framework on Labour Migration calls for "providing for effective remedies to all migrant workers for violation of their rights and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation" (ILO 2006, 20).

All BLAs have a section on dispute settlement or resolution. The general position is provision for an amicable settlement between the two parties in dispute, failing which, access to judicial means is allowed. Clear guidelines on complaint and settlement mechanisms are needed that go beyond "amicable settlement" phrases. Recourse to judicial means is a difficult option for low-skilled migrant workers because of legal costs and language problems.

The BLA could specify the process by which workers can initiate complaints, seek assistance and obtain remedy in line with the national laws and regulations. A separate annex or protocol may be developed for detailed provisions with attention to the following:

- Provision of information and access to legal aid, assistance and services, and to courts.
- Specification of rights and access to complaint mechanisms, procedures and hearings in or translated into a language the migrant worker can understand and use.
- Provision for informing and permitting the involvement of consular representatives of the migrant's origin/citizenship country in such procedures.
- Specification of accessible and gender-responsive grievance/complaint and resolution mechanisms and procedures, including hotlines.

- Specification of access to the appropriate procedures and institutions for respective workplace and non-workplace complaints.
- Provision for follow up, access to valid complaint resolution mechanisms, and provision for enforceable compensation where applicable, after the migrant worker has returned/been returned to their country of origin prior to resolution of claims and/or complaints in the country of employment.
- Redress mechanisms and ensuring equal treatment with regard to access to justice, including provision for sufficient time for the migrant worker(s) to stay in the country of employment to be able to file and await the decision of legal proceedings regarding, for example, legal status, dismissal, abusive conditions, etc. Specifications should also provide for alternative employment, relief or retraining during the period the migrant worker is entitled to stay in the country (until end of contract, expiring of employment benefits, or conclusion of redress proceedings).
- Mechanisms for follow up of unresolved complaints and/or redress after return home by migrant workers.
- Regular reports of outcoes of dispute settlement and resolution.

A.19 Access to training and skills development and skills recognition

This provision of the BLA should cover pre-departure orientation of migrant workers for employment in the destination country as well as vocational training for selected jobs. It is important that all this training should be adapted to the specific needs of women migrant workers as well.

The ILO Model Agreement, Article 9, states: "The parties shall co-ordinate their activities concerning the organisation of educational courses for migrants, which shall include general information on the country of immigration, instruction in the language of that country, and vocational training." The provisions of the ILO Human Resources Development Convention, 1975 (No. 142), can also provide guidance.

In the case of temporary, low-skilled workers, CODs expect the COO to undertake the main responsibility for skills training. Employers in CODs may be reluctant to invest in vocational training or human resource development, and workers may have access to on-the-job training only. As a minimum, it is important for employers in CODs to provide training in occupational safety and health (OSH) matters, especially when workers are involved in hazardous occupations such as construction.

Another good practice observed in some bilateral MOUs is cooperation between the COO and COD to train workers in the country of origin. There are some proposals to promote cooperation in skills matching and recognition of qualifications under the Abu Dhabi Dialogue. An important issue is the division of costs of training between the two parties. Italian agreements with COOs (Albania, Moldova, Sri Lanka) provide for prior training of workers before migration to acquire skills required by employers, and at no cost to the workers. A recent ILO (2020b) study has reviewed skills modules in BLAs, and cost sharing for same, but they may be less applicable to the context of IGAD or migration of low skilled workers.

The BLA should include provisions on skills recognition for migrant workers and allowance for their access to skills development in the country of employment, as well as for recognition in the COO of skills acquired abroad by the migrant worker. Box 7 provides some good provisions on skills and recognition.

Box 7. Some good provisions on skills development and recognition in BLAs

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

Article 9: Common responsibilities of the parties

9(6). "The Parties will collaborate to align their respective occupational standards to facilitate the acquisition and mutual recognition of the relevant labor skills."

Article 16 is on the establishment of a Joint Labour Committee; among functions of this Committee, the following is mentioned:

Article 16(c): "To study emerging employment opportunities and explore avenues of collaboration in the fields of training and skill enhancement."

Ukraine–Argentina agreement, 1999

There is a section in this agreement (chapter IV) devoted to recognition of qualifications. Article 15 reads: "The Parties undertake to promote the mutual recognition of diplomas and transcripts. The institutions of the Parties shall consider the possibility of drafting a convention on the recognition of diplomas and certificates of study at all levels."

Argentina has repeated this same provision in its agreement with Peru (1998).

The Happy Return Programme of the bilateral MOUs related to the Employment Permit System (EPS) of the Republic of Korea

The Republic of Korea provides skills training to migrant workers to encourage their return home under the Happy Return Programme. It recognizes that successful reintegration is a shared responsibility between the origin country and the Korean EPS. Vocational skills provided before return are not confined to the current occupation of the workers. It also provides support in linking to jobs in the home country is provided through job matching and job fairs.

Philippines–Manitoba (Canada) MOU, 2010

This MOU calls for ensuring "the needs of Employers for Workers with the appropriate skills are met through training and credential recognition activities". The MOU contains an annex on qualification recognition, which states: "The Participants will support initiatives and co-operate with each other and the appropriate educational and credential issuing authorities to establish training and education programs in the Philippines that meet the requirements and standards necessary for entry into specific occupations in Manitoba and that will improve the education and training opportunities in the Philippines."

A.20 Transfer of savings and remittances

ILO Convention No. 97 (Art. 9) specifies that the host country permit the transfer of earnings and savings of migrant workers as the migrant workers may desire, in line with national laws and regulations. Article 13 of the ILO Model Agreement on transfer of funds calls upon both parties to support the "simplification and acceleration of administrative formalities regarding the transfer of funds so that such funds may be available with the least possible delay to those entitled to them."

The standard text in most IGAD and other bilateral agreements in this regard is around the recognition by the COD of the right of the migrant worker to transfer savings and remittances in line with national laws and regulations, but without mention of facilitation. The Ethiopia–United Arab Emirates MOU, for example, includes a standard text: "Ensure that workers exercise the right to remit their incomes to their country of origin or elsewhere, at their discretion, in accordance with and subject to UAE [United Arab Emirates] financial and other relevant regulations". The

only support for facilitating remittances in mentioned in an IGAD agreement is in the standard employment contract attached to the Kenya–Saudi Arabia agreement concerning domestic workers: "The employer shall help the [domestic worker] to remit her/his salary through proper banking channels." In the absence of any enforcement mechanism, it is difficult to assess the value of this provision. It is more important that the COD provide such assistance through the provision of reliable information on low-cost remittance channels.

In view of the SDG Agenda target of reducing remittance transaction costs to 3 per cent by 2030, [14] the text can be modified to state that the two parties would facilitate transfer of remittances at a low cost by providing information on remittance options. It is important to include a module on financial literacy in pre-departure training programmes that also explains how workers can open bank accounts and remit through them.

It is also important to make it explicit that remittances will not be taxed at origin or destination. Similarly, mention should be made of facilitating access to bank accounts for migrant workers. Both of these measures contribute to utilization of formal (rather than informal) mechanisms for remitting.

Box 8 lists some good provisions on remittances found in BLAs.

Box 8. Some good provisions on remittance transfers

Sri Lanka–Italy agreement, 2011

This is one of the few agreements to go beyond the standard remittance provision, advocating a more proactive approach:

"The Italian Party agrees to disseminate information on the national remittances system, with the aim of aiding migrant workers in the choice of the most advantageous way."

There is no information on how this has worked in practice. In any case, only a small number of workers were able to migrate under the scheme.

Spain's bilateral agreements with Guinea-Bissau and Mali

These agreements elaborate on optimizing the development impact of remittances. As stated in the Guinea-Bissau–Spain agreement, 2008:

> Actions aimed at improving the impact of remittances on the development of the communities to which they are directed. With the latter aim, the Contracting Parties undertake to cooperate with the financial institutions of the two countries in order to reduce transaction costs and to adapt the financial system to the reception and productive investment of remittances through promotion of popular savings and credit entities that can provide their services in an accessible manner, both geographically and economically.

Philippines – Bilateral agreement with Japan and MOU with the United States of America to facilitate remittance transfers.

Dedicated remittance agreements may be needed when the volume of remittances is large or there are special problems in remittance channels. Details are not available on these specific agreements.

Source: Wickramasekara 2018c.

14 UN 2030 Agenda for Sustainable Development SDG target indicator 10.c: "By 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%."

A.21 Return and repatriation and reintegration

Provisions covering return and repatriation are essential components of any BLA. The ILO migrant workers instruments and the ICRMW clearly lay down migrant workers' 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. The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), particularly its Section X on "migrants affected by crisis situations" is especially relevant in these times of COVID-19.

An article of the BLA covering return and repatriation and reintegration should cover the following:

- Provisions concerning procedures and treatment in cases of death, disability, serious injury or illness, including care-in-place and repatriation as needed.
- Provisions covering situations in which a migrant worker, while having entered the country through regular channels, ends up in an irregular situation (over-stay, fleeing abusive employer, etc.), including equality of treatment with nationals regarding rights arising out of past employment in respect of remuneration, social security and other benefits.
- Prohibition of arbitrary deportation and mass expulsions, with provisions that the cost of expulsion shall not be borne by the migrant worker and their family.
- Provisions for negotiation of mutually agreeable measures and solutions in situations of crisis, civil/military conflict, disasters or health emergencies.
- Issues relating to emergency situations and repatriation are elaborated in A.22 below.

A standard provision (of the agreement or employment contract) is that return travel/repatriation costs should be paid by the employer, except under certain conditions: (i) employee leaving before the end of the contract (unless due to no fault of the employer; (ii) employee violates conditions of contract or engages in misconduct; or (iii) in some cases, the employee fails the medical test on arrival.

The Saudi Arabia domestic worker agreements [15] provide for paid leave for return to the home country at the end of two years' service. They also provide that the COD facilitates the issuance of exit visas for the repatriation of domestic workers upon contract completion, emergency situations or as the need arises. A provision can be made for compensation and repatriation as needed in case of serious illness, work accidents or disability of the worker. In the event of the death of a worker, the funeral or the repatriation of the remains should be arranged at the expense of the employer in line with COD laws. Any back pay and all remaining dues should be transferred to the next of kin.

Reintegration

References to reintegration are absent in most agreements, probably on the ground that it is the task of the COO. There are, however, good practices in this area, such as under the MOUs under the Employment Permit System (EPS) of the Republic of Korea, which have a Happy Return Programme component covering training before departure and active job placement services in the home country. It is highly recommended that the return and repatriation provision be expanded to ensure clear understanding of reintegration programmes and mutual cooperation between the two parties. The COVID-19 pandemic has highlighted the critical gaps in return and reintegration programmes in the absence of cooperation between the two States parties.

A.22 Provisions for emergency situations

In view of recurring situations of crisis, civil/military conflict, disasters or health emergencies (such as the COVID-19 pandemic) in CODs, it is important to provide measures in the BLA for negotiation of mutually agreeable measures and solutions in the absence of relevant pre-determined responses. These could provide additional protection measures for migrant workers. The ILO Employment and Decent Work for Peace and Resilience

15 Saudi Arabia has signed dedicated domestic worker agreements with several countries since 2012 – Bangladesh, India, Indonesia, the Philippines and Sri Lanka. These agreements also contain a standard employment contract that prohibits confiscation of passports, defines hours of work and rest, and requires payment of wages into bank accounts.

Recommendation, 2017 (No. 205), encourages States to strengthen cooperation in preparing for and responding to crisis situations, including through bilateral arrangements. There should be voluntary and systematic exchange of information and knowledge for preventing and mitigating crises, and cooperation to ensure that migrant workers are provided with information on crisis-related impacts.

In such situations, it is extremely important to ensure that migrant workers have the right to claim unpaid wages. ILO Convention No. 143 and Recommendation No. 151 provide that, whatever the status of a migrant worker, if the worker has to return, they should be entitled to equality of treatment with respect to rights arising out of past employment as regards remuneration, social security and related benefits. The Protection of Wages Convention, 1949 (No. 95) – ratified by 98 countries – provides additional protection, specifying that the government must ensure that adequate protection is afforded to workers, whether nationals or foreign, with or without valid work permits, with respect to the payment of wages for work already performed. Article 12(2) of the Convention states: "Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract."

The BLA article should include an overall commitment by both parties to implement crisis response measures that are consistent with applicable labour standards covering either "stay in place" options or return options (when return is warranted). The article can usefully reiterate the parties' commitment to maintaining and strengthening bilateral and international cooperation, as well as their commitment to taking appropriate steps through bilateral or multilateral arrangements, including through regional mechanisms (IGAD mechanisms included), and strengthening and making full use of existing arrangements, institutions and mechanisms.

In cases where a disaster or emergency prevents migrant workers from returning to their country of origin and/or prevents them from carrying out their employment in the country of employment, the BLA should commit to equality of treatment of migrant workers and national workers in relation to emergency income support measures, healthcare and other special measures to ensure the welfare of the migrant workers during the crisis period. Cooperation is also essential to facilitate the voluntary return of migrant workers and their families to their country of origin in conditions of safety and dignity and their reintegration into labour markets when the situation permits.

In the ongoing COVID-19 pandemic crisis, many migrant workers lost jobs and were left without access to work and wages in countries of employment. Some have not been able to leave; others have been forcibly deported without pay or entitlements. Some migrant workers remaining in place have suffered denial of sustenance and healthcare in severe lockdowns and "sealing off" of migrant quarters. The BLA should include provisions calling for close cooperation between the two parties in times of crisis to ensure access to information, healthcare and sustenance for migrant workers. The agreements should provide for facilitating the voluntary return of migrant workers and their families to the country of origin in conditions of safety and dignity, or for migrant workers and their families to remain in place with at least minimum sustenance support and access to healthcare. Box 9 shows commitments of the IGAD internal security and migration ministers on the impact of COVID-19 on people on the move in the IGAD region. The ILO (2020a) policy brief "Protecting Migrant Workers during the COVID-19 Pandemic", which contains recommendations for policymakers and constituents, can also guide bilateral negotiations on current and future BLAs.

Box 9. IGAD Ministerial Statement on the Impact of COVID-19 on People on the Move in the IGAD Region

The following is a relevant extract from the statement:

After considering the report of the deliberations of the High Level Meeting of Experts and recommendations therein, we hereby solemnly declare to:

1. Enhance cooperation and coordination with the countries of destination and transit, as well as relevant agencies and partners, to guarantee the immediate provision of humanitarian assistance, and facilitation of safe and urgent release, return and reintegration;
2. Promote inclusive public health and socio-economic response and recovery strategies that integrate the protection of, and assistance needs for people on the move;
3. Promote equal and non-discriminatory treatment of all persons in line with international human rights principles and international law, irrespective of their immigration and citizenship status or the fact of their displacement
4. Enhance community-based approaches for addressing drivers and sustainable return and contextualize the approaches to the specific areas.

Source: IGAD 2020.

A.23 Joint Committee

An integral part of any agreement is the establishment of a Joint Committee (JC) to monitor and implement the agreement. Some agreements have referred to the follow up committee as a Joint Working Group or Joint Technical Working Group. The most common practice in this regard is to establish a committee with a combination of officials of the two signatory parties consisting of senior officials from both States parties. Agreements generally mention the functions of the committees and the frequency of meetings.

Some agreements mention annual meetings with venues alternating between the COO and the COD; while some may mention meetings being held "as needed". It is better to meet at least annually, and also when circumstances demand.

Almost all agreements highlight specific objectives of the JCs.

1. Periodic review, monitoring and assessment and evaluation of the implementation of the agreement.
2. Make necessary recommendations to resolve disputes arising from the implementation and the interpretation of the provisions of the agreement.
3. Make necessary recommendations to alter, amend and substitute, if required, any provisions of the standard employment contract.
4. Review emerging economic and labour market employment opportunities, and suggest areas for further collaboration.

Examples of good provisions that can be included are:

- specifying a timeframe for establishing the JC;
- mentioning clear timelines for frequency of meetings;
- validity, renewals and extensions of the agreement;
- elaboration of implementation plans;
- issuing detailed terms of reference and implementing guidelines;
- designation of focal points in both countries and at the embassy/consular level;

- provision for appointment of subcommittees or technical working groups;
- elaborating monitoring and evaluation procedures; and
- providing for consultative processes involving social partners and other stakeholders. This provision is mostly absent from the reviewed agreements.

In view of the specific issues experienced by women migrant workers, it is important to mention the designation of an official familiar with gender issues to the JC where women workers constitute an important share of total migrant flows (ILO 2016b). Detailed terms of reference for the JCs that will serve as a follow-up mechanism during the implementation phase could be added as an annex to the model BLA. Annexes XI and XII below provide generic terms of reference and a sample agenda for a JC. All records of such meetings should be processed and shared with stakeholders.

A.24 Implementation, monitoring, and evaluation procedures

Given that most agreements are poorly implemented, it is especially important to build concrete implementing, monitoring and evaluation procedures into the agreement.

The two States parties of the agreement are encouraged to set up a monitoring and evaluation system built into the BLA. Monitoring is a continuous process, while evaluation can be periodic. Chapter 7 of these Guidelines provides detailed guidelines on these procedures. Independent evaluation should be made mandatory before any renewal of the BLA, with a view to identifying needed revisions. The current practice of automatic renewal should be done away with because it encourages complacency and a lack of follow up. Joint funding of the evaluation is preferable. If not feasible, the origin country should undertake it.

Given that BLAs are concise documents, it is important to develop specific protocols or annexes for concrete implementation measures. New Zealand Inter-Agency Understandings and Italian bilateral agreements normally contain annexes of implementing guidelines (see, for example, Egypt–Italy, 2005).

It is important to provide specific provisions on the division of costs for follow up and implementation, as well as for monitoring and evaluation. It is also important to include representatives from workers' organizations, employers' organizations, and civil society, where possible, in the monitoring and evaluation processes in both the COO and COD. This is mostly absent in most agreements and MOUs.

A.25 Language versions

Agreements also specify the applicable language versions. This is generally inserted in the last article mentioning the signing of the contract in different languages.

In the case of IGAD, origin countries generally use the English version, while the destination country would use its own language version. For MOUs with GCC countries, the document would therefore be in both English and Arabic. It is important to clarify which version would be considered authoritative in the case of settlement of disputes.

A.26 Effective date and termination clause

Agreements usually have a validity period of three to five years. Most mention automatic renewal in the absence of a termination request by either party. Specific provisions in the BLA are essential to ensure periodic review of implementation, for amendment of the agreement, and for renewal or termination by the parties. The BLA should specify that any renewal or extension would be established contingent on a thorough joint review of the agreement, its terms, the implementation, assessment of success and of costs and benefits arising, lessons learned, and any specific lacunae in application and/or disputes that may have arisen in the established period of operation of the agreement. Automatic renewals are not recommended.

7

Specific guidelines on each stage of the bilateral labour agreement cycle

The BLA process consists of several stages: (i) preparation; (ii) negotiation and adoption; (iii) implementation and follow up; and (iv) monitoring and evaluation. The last item may overlap with implementation and follow-up, as well. The Guidelines elaborate below the activities involved in each stage.

7.1. PREPARATORY STAGE

Effective preparation is the key to successful outcomes in bilateral negotiations. All IGAD countries have had experience with BLAs with some Arab States. A key prerequisite to a successful outcome is to ensure that adequate attention is paid to preparatory steps.

7.1.1. Assignment of a coordination unit or focal point for agreements in the lead ministry

The establishment (if not already present) of a coordination unit within the responsible ministry for labour agreements – usually the Ministry of Labour – facilitates the systematic development of agreements. The coordination unit should be responsible for all BLA-related matters, and coordinate development of new agreements as well as revision of existing agreements. The unit should also be the repository for all agreement documentation, including copies of agreements and minutes of JC meetings. The Philippines provides a good example, having created the Department of Labor and Employment (DOLE) Committee on Bilateral Agreement Matters, bringing together the main units within the Department responsible for bilateral arrangements. [16] The presence of a dedicated unit also ensures that transfers of responsible officials do not lead to loss of institutional memory.

Ministries of Labour in all IGAD countries have key roles in the formulation and implementation of BLAs, necessarily in cooperation with ministries of Foreign Affairs for negotiations and for monitoring in the COD. The ministries of Labour all have a focal point official or, in some cases (such as Sudan), an interdepartmental team tasked with overseeing development and implementation of BLAs. However, in all cases, the capacity and resources available are considerably less than what is needed.

7.1.2. An Inter-Ministerial Steering Committee on bilateral labour agreements for coordination purposes

Coordination and consultation should take place at two levels: (i) across different government ministries and agencies involved in labour migration; and (ii) with other concerned stakeholders. At the same time, it is important for the government to appoint an advisory or steering committee drawn from different ministries and agencies with a mandate on labour migration, with the

16 In the Philippines, a "department" is the equivalent of a ministry, as in the United States. The Committee on Bilateral Agreement Matters is headed by the DOLE Undersecretary for Employment and the Administrator of the Philippine Overseas Employment Administration serves as committee vice-chairman. Other Committee members include the heads of DOLE's concerned agencies and offices: the Overseas Workers Welfare Administration, the Technical Education and Skills Development Authority, the Professional Regulations Commission, the Institute for Labour Studies, the Bureau of Local Employment, the International Labour Affairs Bureau, and the DOLE Legal Service. The Committee is expected to provide guidelines and rules of engagement in the negotiation, and to recommend to the DOLE Secretary the composition of the negotiating team. Other general functions of the Committee are to: (i) review and assess existing bilateral agreements/arrangements; (ii) monitor/evaluate the implementation of BLAs; (ii) coordinate with relevant agencies pertinent to proposals for BLAs; and (iv) recommend amendments/termination of BLAs whenever necessary. Please see: Department of Labor and Employment, "DOLE Creates Committee on Bilateral Labor Agreements", press release, 27 October 2010.

lead ministry serving as the chair. Based on consultations with IGAD countries, these are usually the Ministry of Labour as the lead technical ministry, along with the ministries/agencies for Foreign Affairs, Home Affairs/Interior, Justice, Women, Education, Social Security, among others. If possible, for broad-based representation, it is important for the committee to be expanded beyond inter-ministerial level to include representatives of social partners, recruitment agencies, migrant organizations and concerned civil society organizations. The Steering Committee can appoint technical working groups to study draft BLAs, and also nominate delegates for negotiations. Table 2 provides a listing of relevant stakeholders in the IGAD region.

While the ultimate responsibility for migration policies and inter-State cooperation lies with the government, these policies and practices are likely to be more effective when based upon social dialogue involving social partners and broader civil society. Employers – both public and private – hire workers, and trade unions are concerned with the protection, welfare and decent work for both national and migrant workers. At the same time, it is important to recognize the role of civil society organizations who can reach out to and offer support services to migrants, especially to groups at particular risk, such as those who have been trafficked or those in irregular status.

Normally a draft of a formal international agreement should be referred for a legal review to the relevant ministry or unit – be it the Ministry of Justice (as in Sudan) and/or the legal department of the Ministry of Foreign Affairs and/or the Attorney-General's Office (as in Ethiopia).

▶ Table 2. Relevant stakeholders for BLA development, negotiation, follow-up and implementation

Government stakeholders – IGAD countries	**Key stakeholders (in COO and COD)**
Djibouti – Ministry of Labour; Ethiopia – Ministry of Labour and Social Affairs; Kenya – Ministry of Labour and Social Protection; Somalia – Ministry of Labour and Social Affairs; South Sudan – Ministry of Labour, Public Service and Human Resource Development; Sudan – Ministry of Labour and Social Development; Uganda – Ministry of Gender, Labour and Social Development	Employers' organizations; Representative workers'/trade union organizations
Ministry of Foreign Affairs	**Other important stakeholders**
Ministry of Justice and/or Attorney-General	Private recruiment agency associations
Ministry of Interior	Migrant worker associations
Ministry of Women's Affairs	Concerned civil society organizations, including women's organizations
Ministry of Health	
Social Security Ministry or Bureau/agency	Annex: Model employment contract

7.1.3. Needs assessment for an agreement with the selected country

A national interest analysis is a common practice for countries entering into any treaties (trade, investment, etc.). The output of a national interest analysis is a summary statement of the advantages and disadvantages of becoming party to a treaty with regard to the national interest. The costs of the treaty action (economic, social, etc, as applicable), the obligations imposed (costs of compliance with the treaty), and the benefits expected can be reviewed to decide whether the proposed agreement is in the national interest.

For a BLA action, a simpler approach is to carry out a needs assessment. This should be done by the focal or coordination unit of BLAs mentioned in section 7.1.1. above. The unit can also engage specialists to carry out the assessment.

At the outset, the COO focal point should elaborate on the reasons for entering into a BLA or MOU. These can be a combination of some, or all of the following as seen from discussions with officials in IGAD countries and existing agreements:

- **Open up a new market for workers and promote employment and remittances:** For example, initiate a new flow of migrant workers or new categories of migrant workers (health workers, migrant domestic workers, etc.). Government officials in several IGAD countries stressed the need to tap new markets to expand overseas employment opportunities.

- **To secure a larger quota of labour from the destination country:** There have been high level political contacts by some IGAD Member States with GCC countries for this purpose. Government officials in some countries highlighted the need for expansion of overseas employment given local employment challenges, especially for youth.

- **To better manage/streamline existing labour flows by addressing recruitment malpractices, irregular migration and human trafficking:** The Preamble of the Ethiopia's Overseas Employment Proclamation No. 923/2016 states: "Whereas, it is believed that bilateral agreements with receiving countries may strengthen lawful overseas employment and could prevent human trafficking." For Ethiopia, a recurrent problem has been the migration of nationals to Saudi Arabia via Yemen in irregular situations, and mass deportations of undocumented Ethiopian nationals by Saudi Arabia. Article 12 of the Uganda–Jordan bilateral agreement deals with "Combating illegal employment and human trafficking". A few draft Kenyan agreements also contain a similar article. Country officials stressed irregular migration of nationals, especially youth, as an important issue to be addressed.

- **Address protection gaps and promote the welfare of workers in overseas employment:** All IGAD countries (except Djibouti) expressed this as a major issue with workers in the Middle East. The Kenya–Jordan agreement states: "The objective of this Agreement is to strengthen cooperation on labour matters and to provide a legal framework for the employment of Kenyan Workers in order to protect, enhance and enforce their rights as workers in the Hashemite Kingdom of Jordan."

- **To ensure compliance by recruitment agencies (PRAs) with applicable laws in both countries:** Saudi Arabian domestic worker agreements stipulate that only licensed PRAs are allowed to recruit and place workers, and the agreements introduce several measures for regulation of PRA operations and control of recruitment costs. Legal measures against errant PRAs are mentioned in some agreements. The Ethiopia–United Arab Emirates MOU specifically mentions applicable laws in the two countries for regulation of recruitment agencies. Moreover, the same agreement refers to the use of Tadbeer Service Centres – a public–private recruitment partnership in the United Arab Emirates – for the hiring of domestic workers. No IGAD country raised the issue of regulation of public employment agencies, probably because they are hardly active in this area of

recruitment and placement of migrant workers. Ethiopia's Overseas Employment Proclamation No. 923/2016 provides for government-to-government (G-to-G) systems in recruitment: "The Ministry may provide recruitment and placement services to Governmental organization in receiving country based on Government-to-Government agreement." However, there is no evidence of any such initiative by the Ethiopian Government or other IGAD governments up to now.

- **To streamline and regulate an existing flow of migrant workers to prevent abuses and improve governance:** Most GCC countries, Jordan and Lebanon already host migrant workers from IGAD countries who may have arrived in informal or irregular situations, but the protection status of these migrants is weak. IGAD countries are keen to improve the situation by a formal BLA or MOU. The Ethiopia Overseas Proclamation permits deployment of workers only to countries that have signed a BLA with Ethiopia.

In assessing the justification for a new or revised agreement, the following questions are relevant. In short, the origin country must be convinced about the value added by the agreement.

- Is the planned action consistent with other government priories in the areas of development and poverty alleviation, employment and labour market policies, and skills development?
- What are the critical issues of the current migration situation – governance of flows, protection of workers, reduction of irregular migration?
- Can the origin country adequately meet the labour market and skills needs of country of destination?
- Does the government have the capacity to administer the planned agreement?

The authorities must be convinced that the planned agreement can address the above issues. If the needs assessment exercise indicates a strong case for an agreement, the government should launch the process.

7.1.4. Gathering information on the baseline migration situation prior to the agreement

This is essential for the needs assessment as well as for monitoring and evaluation following the signing of an agreement. The baseline information will enable governments to assess what changes have emerged following the agreement. All information should be disaggregated by gender, where possible. Annex V provides a detailed listing of desirable baseline or benchmark information.

Many IGAD countries, however, do not have access to this type of comprehensive information, nor do they have the capacity to collect such information in a short time when they start developing a bilateral agreement. As a compromise, they have to identify essential information on which to base the agreements. A rapid assessment exercise may be used for the collection of the following information:

- The demand for migrant workers in the COD; skills and sectors or occupations in demand; and the availability of workers in the COO with the requisite skills to match this demand.
- If there is an existing flow of migrant workers to the concerned COD, it is important to have some basic information on the numbers involved by gender, channels of migration used, average recruitment and migration costs, migration status (regular and irregular), and the protection status of migrant workers. These will help narrow down the areas of focus for the agreement.
- Applicable legal and regulatory frameworks relating to labour migration in the destination country. The origin country should be familiar with the legal and regulatory framework of the COD, including labour and other laws affecting migrant workers. There are special laws for domestic workers in some GCC countries (Kuwait, Qatar, United Arab Emirates); while in Saudi Arabia a ministerial decision regulates the employment of domestic workers (2013 Ministerial Decision No.

310 of 1434). Jordan has issued several regulations on domestic workers; while Lebanon has only a standard unified employment contract to cover them.

- Information on applicable minimum wages, if any, is crucial for wage negotiations.
- International and regional instruments, other BLAs and MOUs on migration, and multilateral agreements signed by either party. It should be easy to obtain this information.

7.1.5. Decide on the type of agreement

The COO should decide on the type of agreement to be negotiated: a fully-fledged BLA, an MOU or a framework agreement. While this cannot be unilaterally decided, preliminary contacts and other agreements signed by CODs may provide some indication on possible options. For a COO, a BLA is usually a better option, since it is a legally binding instrument, in principle assuring that its provisions and protections will be respected. In one documented case, an IGAD country started with a draft BLA with a GCC country that ended up turning into an MOU in the process of negotiations (Wright and Mentz, unpublished).

Table 3 provides some pros and cons of BLAs and MOUs. All domestic worker agreements signed by IGAD countries with Saudi Arabia are BLAs. The usual practice of the Qatar Government is also to sign BLAs with COOs (such as with Ethiopia and Kenya). The United Arab Emirates has signed only MOUs with Ethiopia, Kenya and Uganda. Review of the implementation of BLAs, however, have not shown major differences from MOUs in practice when it comes to protection of migrant workers (Wickramasekara 2015). An example would be the domestic worker agreements of Saudi Arabia and Qatar, where continuing gaps in protection are on record that are similar to protection issues emerging in MOUs signed by other GCC countries or by Malaysia.

▶ Table 3. Pros and cons of BLAs and MOUs

BLA		MOU	
Pros	**Cons**	**Pros**	**Cons**
Legally binding	COD has to agree to a binding agreement. Requires more time to develop. Legal issues need to be examined.	Can be developed in a shorter time frame.	Not legally binding.
Carries more weight as they are signed by high level bodies.	May require approval of Parliament or Cabinet. More time consuming and change of government may delay matters.	A technical ministry or the lead ministry can sign the MOU.	These ministries may not carry high level authority.
Better enforcement	In practice, poor implementation may result from lack of political will.	More flexible.	Provides broad framework of commitments or understanding only.
Agreed conditions may not be arbitrarily changed	Difficult to modify with changing situations.	Easy to modify in a changed context.	In practice, there is not much evidence of MOUs being revised to introduce new procedures.
Provides for more effective implementation	More costly to implement.	Less costly to implement.	Implementation may suffer.

Source: Compiled by Piyasiri Wickramasekara.

7.1.6. Decide on the structure of the bilateral labour agreement and develop appropriate text

It is generally a good practice for the origin country to have its own template ready for discussion. If they use the blueprint provided by the country of destination, areas for negotiation may already be constrained – if not precluded altogether – and require more contentious bargaining. There have been mixed experiences in the IGAD region in this regard, with some countries mentioning that the initial draft was provided by the country of destination. For example, Saudi Arabia seems to use a standard framework for its domestic worker agreements with all countries, including IGAD countries. Similarly, Qatar has used a standard format for its agreements.

As explained in the Background Report, there are international guidelines in this respect (IGAD and ILO 2021). The ILO Model Agreement of 1949 provided the first detailed structure for a BLA. Based on this model, some modified structures have been proposed considering more recent developments, including in the Background Report (Wickramasekara 2018a; IGAD and ILO 2021). The present Guidelines have improved upon them and proposed a modified template (table 1), as discussed in Chapter 6. The guiding principle has been to make BLAs rights-based. As noted above, the template can be modified based on the specific needs of each country. The African Union Commission is preparing a draft model BLA for the African region, but it has not yet been made public. [17]

Once the basic structure of the BLA is decided, it is important to develop appropriate text for each element, including the Preamble. Detailed guidance on appropriate text to make the agreements rights-based has been provided in Chapter 6 above. More details on relevant text and good provisions and practices can be found in the sources listed in the Annex XIII (see for example Wickramasekara 2018a; 2018c). Review of the contents of other agreements entered into by COOs and CODs with other countries and any draft agreement sent by the COD may also provide some guidance, if they are consistent with the criteria listed in Chapter 6. Specific objectives and cooperation priorities may be mentioned in the Preamble of the agreement.

7.1.7. Internal review of the bilateral labour agreement/ MOU texts

The draft agreement should be circulated for legal review to the concerned ministry. Following clearance, the draft can be discussed at the Steering Committee. It is strongly recommended that other key stakeholders outside the government also be involved in the review. A draft for discussion with the COD can be developed, and the Steering Committee can provide the green light for starting negotiations. In IGAD countries, it is usually the Ministry of Foreign Affairs that may initiate the process of negotiation.

17 Information provided by the ILO.

7.2. NEGOTIATION PROCESS

The negotiation process is a critical part of the BLA process, which deserves special attention by both parties. Generic guidelines on some negotiation approaches can be found in the International Training Centre of the ILO (ITCILO) Online Training Toolkit "Developing and Implementing Bilateral Labour Migration Agreements in Africa" (ITCILO n.d.).

7.2.1. Selection of representative and competent negotiation team

Negotiation teams play a crucial role in the successful conclusion of an agreement. Important issues to raise in this context are:

- Do they represent key ministries? The Ministry of Foreign Affairs should take a lead role in the negotiation process given their mandate on foreign and international relations.
- Are technical specialists and skilled negotiators included in the team?
- Are non-government actors also involved at least as advisers?
- Is a gender specialist included in the team when migration of women workers is involved?
- Are they senior officials with the authority to make required decisions and justifying them to the capitals?
- Do they have reliable and competent translators/interpreters to facilitate the discussions?

Prior information on the negotiation team from the COD can also help in the selection of the COO team to some extent. It will also be necessary to provide orientation and capacity building for the negotiating team on:

- negotiation skills;
- broader political, economic and trade relations between the two countries;
- relevant international human rights and labour standards;
- international relations;
- legal and regulatory framework of the destination countries, including their other BLAs; and
- their own capacity to administer agreements.

The same team should follow up from the inception to the formal signing of the agreements to ensure success.

Advisory support by representative national social partner organizations, recruitment agency association representatives, migrant associations, trade unions and concerned NGOs would be important even if they are not part of the main negotiation team. Both origin and destination countries can also access advisory support from international organizations such as the ILO and IOM. Some IGAD origin countries are known to have sought technical advice on draft agreement text from the ILO. The ILO normally responds in the form of a confidential technical advisory note. It is up to the requesting country to decide whether to share this note with the other country, which is encouraged by the ILO. [18] The Lebanon National Workshop on Capacity Building and Sharing of Good Practices on Bilateral Labour Agreements (Beirut, 19 April 2018) is an example wherein the ILO had been approached by Lebanon (a destination country) to provide technical support on BLAs. Bilateral consultations at the time between the Government of Lebanon and the Government of Madagascar were the immediate backdrop for the workshop. [19]

The ILO can also arrange technical expertise during bilateral discussions with the agreement of both parties and can reply to specific technical questions during a negotiation.

18 Information provided by Kenza Dimechkie, Technical Officer, ILO Labour Migration Branch, Geneva.

19 Piyasiri Wickramasekara served as an international resource person at this workshop for the ILO.

7.2.2. Starting the negotiation process

Agreement on a timeframe

Deciding on a timeframe for the conclusion of negotiations is essential. Rushing a bilateral agreement or MOU is not a good idea. One of the parties may insist on a fast-track process, but this should be carefully reviewed.

At the same time, negotiations cannot go on for too long. The context for initiating the agreement may change during protracted negotiations. Therefore, a reasonable timeframe could be agreed upon. Various factors may influence the timeframe for negotiations, including whether a first-time agreement is being established between the two countries or there is a history of previous agreements and/or other current agreement(s) between the countries. The priority accorded to the conclusion of an agreement also may affect the timeframe. The timeframe for negotiations can also shift – or even be suspended – if there is a change in government on either side or a major global emergency, such as the current COVID-19 pandemic. [20]

Exchange of drafts and rounds of interactions

It is common for the first drafts to be exchanged through courier or diplomatic pouch or email, and for feedback to be similarly received without formal person-to-person meetings, as mentioned by IGAD country officials. Once some common understanding has been reached, there will be a need for face-to-face negotiations to address contentious issues.

This step will help identify priority areas of the agreement text with regard to: objectives and mutual benefits; categories of workers; sharing of responsibilities; follow up arrangements; and the key issues to be addressed. Review of similar agreements with other countries by the COO or COD should provide some guidance in this respect. For example, the initial agreement between the Philippines and Saudi Arabia on domestic workers served as a basis for negotiations on similar domestic worker agreements with Saudi Arabia by India and Sri Lanka.

7.2.3. Negotiation on the basis of equal partnership

Bilateral agreements partly reflect the response to usually disproportionate forces of COD demand for and COO supply of human resources. The bargaining power is obviously affected by the role of the negotiating country – as an origin or an employment country (Adamson and Tsourapas 2018). But the outcome is not a zero-sum game where nobody gains. There are mutual gains and benefits to be derived from agreements for both parties. CODs relieve labour shortages and gain skills, while the COOs gain in terms of employment for nationals and remittances. Therefore, bargaining should be conducted on an equal partnership basis to the extent possible.

Still different power dynamics between the origin and the destination country are a fact of life. In general, COO stakes in arriving at an agreement are much higher given their objectives of expanding overseas employment for nationals and earning more remittances. The COD may have access to labour from other countries. The COO has to consistently highlight to the COD the benefits that will come from the agreement in terms of contribution to better economic growth, infrastructure development, relieving labour shortages in specific sectors and enabling higher participation of women in the labour force (through reliance on migrant workers for care of children and domestic work). Some indicators of effective bargaining and negotiations are listed in box 10 below.

20 Indonesia and Malaysia have been negotiating since 2016 to revise the 2011 MOU on the employment of domestic workers from Indonesia to Malaysia. Political changes in Malaysia, lack of political will, new migration laws in Indonesia, and Indonesian insistence on better protection guarantees are mentioned as factors affecting the finalization of the MOU (Wickramasekara 2020).

Box 10. Some indicators of effective bargaining and negotiations

- **All issues in the agreement have been settled to mutual benefit.**

This is often difficult to achieve, and unlikely in actual practice, because some compromises may have to be made in arriving at an agreement.

- **A particularly contentious core issue has been settled to mutual satisfaction.**

This may be agreeing on a minimum wage or extending labour law to an excluded category such as domestic workers.

- **No compromises have been made on fundamental or bottom-line positions regarding protection and welfare of migrant workers.**
- **If the number of issues left unresolved is reduced, or the gap between the position of parties is narrowed, it can be considered partial progress or success.**
- **The adopted draft represents a good balance of interests between the country of origin and the country of destination.**
- **The BLA has made a tangible improvement on the existing situation of migration governance and worker protection.**

Differences in bargaining power and their impact on the final outcome are illustrated in table 4 through a comparison of the structure of the initial draft and the final outcome of an IGAD country bilateral negotiation with a GCC country.

▶ Table 4. Comparison of the structure of the initial draft and the final outcome of a bilateral negotiation between an IGAD Member State and a GCC Member State

Article	Article title (based on core elements defined for the study)	Kenya–Qatar, 2012
Title	Bilateral Agreement	MOU
	Preamble	Introduction
1	Definitions	Objectives
2	Objectives	General provisions/definitions
3	Responsibilities of the Parties	Areas of cooperation
4	Responsibilities of the First Party	Employment contract
5	Responsibilities of the Second Party	General responsibilities of both parties
6	Terms and Conditions of Employment	Responsibilities of the government of [COD]
7	Monitoring and Supervision of Working and Living Conditions	Responsibilities of the government of [COO]
8	Employment contract	Training and orientation
9	Training and orientation	Period of, and completion of employment
10	Recruitment process (largely split into responsibilities of parties)	Salary and remittance
11	Period of employment	Insurance

12	Salary and remittance	Repatriation of the remains of deceased workers
13	Insurance	Dispute resolution in employment
14	Equality of treatment	Joint Committee
15	Protection of female workers	Effectivity, duration and suspension
16	Repatriation of deceased workers	Amendment, revision and dispute resolution
17	Workers dispute settlement	
18	Joint Committee	
19	Validity and duration	
20	Revision and amendment provision	
	Protocol on domestic workers	Protocol on domestic workers

Source: Confidential, available with the ILO.

The final version has dropped crucial protection provisions: terms and conditions of employment, monitoring and supervising of living and working conditions, the recruitment process, equality of treatment, and protection of female workers. Some of these protections have been included in other sections. For instance, recruitment issues and references to the need for special protection of female migrant workers have been mentioned in other articles. And of particular note, the negotiations started as an attempt to forge a legally binding BLA, but the final outcome was a non-binding MOU, probably reflecting pressure from the COD.

Table 5 highlights some "dos" and "don'ts" in the negotiations process. Adequate preparation and prior homework are crucial for successful negotiations. Throughout the process, a cordial atmosphere with mutual respect should be maintained. Negotiators need to be given adequate authority for negotiation to keep the process on course. The COO should not compromise on bottom line or non negotiable positions, such as protection of rights of migrant workers, just to get a deal through.

▶ Table 5. Dos and don'ts in bilateral negotiations

Dos	Don'ts
Carry out extensive homework prior to negotiation.	Come to negotiations without adequate preparation.
Negotiate with COD team in a constructive spirit and arrive at common and balanced positions.	Confrontational and rigid approach.
Select balanced team of negotiators (with gender representation) with requisite skills, experience and technical competence.	Select negotiating team on political considerations, business interests and/or any reasons other than pertinent skills and technical competence.
Provide mandate/authority to accredited negotiators, and refer back to HQ on critical issues only.	Not provide a mandate to make decisions, and oblige the team to refer all matters to HQ/capital, thus delaying the negotiation process.
Decide on areas which are non-negotiable (bottom line positions) and where concessions can be made (flexible positions).	Not having a considered approach on priority or fall-back positions
No compromise or trade-offs on fundamental rights and international norms.	Agree to most conditions just to get the agreement through.
Agree on realistic timeframe.	Agree to open ended negotiations.

Respect political, social and cultural norms, and the diplomatic relations of the destination country unless they negatively affect migration and migrant workers.	Question political, social, cultural and religious issues of the destination country, refer to international criticism of COD migration policies, or question relations of COD with other origin countries.
Place major issues on the table at the beginning of negotiations, and start with easy to agree provisions.	Negotiate one issue at a time, or start with controversial and sensitive issues and get bogged down.

Source: Compiled by Piyasiri Wickramasekara.

In negotiating BLAs and MOUs, some issues are easier to settle than others. Table 6 provides an illustrative listing of such issues based on field consultations and review of actual agreements and good practices, dividing them into "soft" and "hard" issues that are easier or more difficult to negotiate, respectively. The last column of the table provides explanatory notes and some suggestions to address such issues. For example, countries often agree on the right of transfer of remittances, but taking on responsibility to facilitate such transfers or lowering transfer costs may be a different matter. Most agreements only mention that workers are free to transfer remittances and savings according to the laws and regulations of the country of destination.

There is general resistance to referring to international instruments on human and labour rights in the Preamble of agreements, although some bilateral agreements, such as the Nepal–Jordan general agreement and the Uganda–Jordan BLA (box 11) have provided for them. No IGAD agreements make any reference to freedom of association provisions – that is, trade union rights and rights to collective bargaining. The GMPA team was informed by some COO negotiators that they were told not to include a specific reference to promotion and protection of the rights of migrant workers in negotiating with a particular destination country.

Box 11. Reference to international instruments in BLAs

Bilateral Agreement between the Government of the Hashemite Kingdom of Jordan and the Republic of Uganda Concerning the Recruitment and Employment of Ugandan Migrant Workers

Preamble:

Acknowledging the importance of developing means to exchange manpower in such a way as to achieve the mutual benefits for the parties, in accordance with their employment related international obligations;

Realizing the importance of the mutual cooperation in promoting International Labour Standards including a fair, safe and healthy working environment in compliance with ILO's International Labour Standards.

Article 7(2):

The Hashemite Kingdom of Jordan shall ensure that all Ugandans including domestic workers enjoy all internationally recognised rights of migrant workers, including but not limited to:

a. Freedom from forced labour;

b. Protection from the unlawful confiscation of passports, restriction of their movement;

c. Right to prompt and correct wages;

d. Freedom from any form of the physical or sexual abuse.

While it is easier to agree on wage protection articles, agreement on a minimum wage or enforcement provisions for wage protection are much harder to agree upon. Another controversial area in negotiation is the application of the principle of equality of treatment. GCC agreements with IGAD countries normally refer to equal treatment in relation to migrant workers from other countries; whereas international instruments recommend equality of treatment on par with national workers.

An article on return and repatriation of workers at the end of their contracts is found in most agreements, including those of IGAD. This is because CODs want to prevent overstay of workers and ensure their return. However, few MOUs/BLAs have included provisions for ensuring facilitation of return and support for reintegration. [21] This may be because CODs believe that reintegration is the responsibility of COOs only. The COVID-19 pandemic has highlighted the crucial need for cooperation between the two Parties in this respect, as many migrant workers have been left stranded in CODs without jobs and unable to return to their home country.

Involvement of social partners and civil society organizations in implementation, monitoring and follow up of agreements is another provision absent in most agreements in Asia or Africa. While this is a recommended good practice at the international level, both parties may have to agree for the inclusion of such a provision. While COOs in IGAD may be receptive to this inclusion, there is no information on whether or not they have previously attempted to convince CODs in this respect.

It is important for COO negotiators to identify these hard-to-negotiate issues and prepare their positions on same in advance.

▶ Table 6. Soft and hard issues in bilateral agreement negotiations 1

Soft issues (Easier to agree on)	**Hard issues** (Often contentious in negotiation)	**Explanatory notes, comments and suggestions**
Applicable laws – Sometimes laws of both countries mentioned.		Impossible to apply laws of one Party in territory of another State. Reference to international Conventions ratified by both Parties and/or to international instruments as arbiters is a potential compromise to assure protection standards in a BLA (see below).
Listing of specific responsibilities of each Party.		This is generally agreed by Parties and included in new agreements.
	Reference in the Preamble to international instruments relevant to migrant workers and their human and labour rights.	A general reference to international instruments is preferable. If not possible, one can check on which international instruments have been ratified by both countries or by either the COO or COD and refer to them in Preamble.
Regulation of private recruitment agencies by both COO and COD.	Inclusion of employer pays principle: Some GCC countries already prohibit charging recruitment fees to workers.	Prohibitions are not enforced effectively in both COO and COD. Most origin countries have legalized recruitment fees. Still countries can apply prohibitions in BLAs as in the case of Nepalese agreements.

21 The Employment Permit System (EPS) of the Republic of Korea is an exception, as it includes a "happy return" component.

Employment contracts and SECs.	Elaboration of mechanisms for contract enforcement.	Specific responsibility and commitment of the COD to deploy or intensify labour inspection for supervising enforcement needs to be mentioned.
	Protection and enforcement of decent work conditions; occupational safety and health protections in line with minimum international standards.	What is required is a reference to applicability of all national labour and OSH standards to migrant workers in the COD; reference to applicability of relevant international labour standards in the absence of national regulation; and commitment to provision for labour inspection in all workplaces employing migrant workers.
	Gender issues: Maternity benefit and reproductive rights; privacy; right to communication.	These are especially important for migrant women domestic workers. COO can check on guarantees provided for these in COD legislation and ratified international instruments (Convention No. 189 or CEDAW). Important to include specific provisions in SECs. Right to communication is provided in Saudi Arabia domestic worker agreements.
Wage protection: Payment into bank accounts.	Minimum wages and equal wage for work of equal value. Addressing wage discrimination based on nationality.	Provision for wage protection is now generally accepted. But small enterprises and households may not honour it. COO must insist on enforcement mechanisms. Negotiators must insist on equal pay for work of equal value.
Skills – Pre-departure training.	Post-arrival training, and access to vocational training in COD.	Employers may not be interested in providing vocational training for temporary migrant workers. Usually, the responsibility is placed on the COO. There are, however, good practice examples such as the Ethiopia–United Arab Emirates MOU. The COD can monitor compliance by employers through inclusion of such a provision in the BLA
Right to remit.	Facilitation of remittances and ensuring low-cost transfers.	COD may not consider facilitation of remittances and lowering transfer cost as part of their responsibilities. However, destination countries have committed to SDG goals (including target indicator 10.c), which can be raised in the bargaining process.
Return/repatriation requirement at end of contract.	Support for dignified return of workers and their reintegration by COO and COD.	Only a few MOUs/BLAs have provisions for reintegration, such as the EPS of the Republic of Korea. (ILO 2015b). None of the IGAD BLAs had any mention of reintegration. The COO must negotiate for inclusion of this aspect as part of broad cooperation. The COVID-19 pandemic has highlighted the crucial need for cooperation between the two Parties in this respect.

	Equality of treatment and non discrimination in the workplace on par with national workers.	Some IGAD agreements mention equality of treatment with workers from other countries. But international instruments refer to equal treatment on par with national workers with regard to wages, working conditions, etc. Few Asian or African agreements contain this provision – the Nepal–Jordan agreement being an exception. IGAD countries should negotiate for equality of treatment with all workers, including national workers.
The establishment of the Joint Committee and specifying its functions	Implementing guidelines and detailed terms of reference.	All agreements contain the basic provision of JC establishment and functions. Implementing guidelines and detailed terms of reference could be an annex. This should be negotiated between the two parties.
Travel expenses of workers on first entry and end of contract.		Usually, to be paid by employer except under specified situations – workers terminating the contract prematurely, worker misbehaviour, etc.
Social protection – Medical and injury benefits.	More comprehensive social security provisions, such as pensions, portability and equality with national workers.	Separate social security agreements are needed. But GCC countries have continued to exclude migrant workers from comprehensive social security provisions since the late 1980s. The temporary nature of employment is an issue. These need to be negotiated at least on an incremental basis. COVID-19 pandemic has exposed the fragility of social protection provisions in BLAs.
Passport and identity retention.	This is included in the standard employment contract, but the provision should be included in the main agreement.	The main problem is enforcement, since employers still keep the passports of workers from IGAD countries. The COO should negotiate on how CODs ensure enforcement of regulations.
Contract of employment tied to a particular employer	Change of employment and mobility of workers during contract period or on expiry of contract.	Kafala system is entrenched in Middle East, with change of employment and return at the end of the country dependent on the sponsor's permission. Limited concessions have been made in Saudi Arabia and the United Arab Emirates under certain circumstances: abuse, withholding of wages, non-renewal of residency permit by employer (Saudi Arabia); completion of two years of the contract (United Arab Emirates), among others. The recent dismantling of some aspects of the kafala system in Qatar – such as the abolition of the need for a "No Objection Certificate" from the employer to change employers and the removal of the exit permit requirement – are good practices for promoting worker mobility to be followed by other Middle East destination countries.
	Equality of treatment	Joint Committee

Origin countries should follow changes in laws and regulations affecting the kafala system, and also bargain for facilitation of employment mobility and elimination of exit permit requirements. BLAs should mention justifiable situations for change of employment.	Protection of female workers	Effectivity, duration and suspension
	Freedom of association, collective bargaining and trade union rights.	No IGAD or Asian bilateral agreements contain this provision. Some countries have restricted or outlawed trade union rights even for local workers. Checking of compliance with ILO Declaration (1998) and ratification of Conventions Nos 87 and 98 is needed.
	Extension of labour law to domestic workers and labour inspection in private households.	Domestic workers are covered by special laws (Kuwait, Qatar, United Arab Emirates); ministerial decisions (Saudi Arabia Ministerial Decision No. 310 of 1434, 2013); special regulations (Jordan); or a standard unified employment contract (Lebanon). These have to be studied carefully, and special protection provisions may need to be negotiated to prevent abuse and exploitation.
Complaints and dispute resolution; amicable settlement between worker and employer and recourse to judicial means are normally included.	Hotlines for complaints; provision for prevention of retaliation by employers; legal support to migrant workers; and permission to stay until court cases are cleared.	Amicable settlement may not generally work because employer has more bargaining power; court cases pose language problems and can be costly for average migrant worker. A concrete complaints and dispute resolution mechanism jointly developed can be attached as an annex.
	Inclusion of social partners and civil society in BLA process.	Somalia, South Sudan and Sudan have mentioned consultations on BLAs with at least one partner at the national level. No IGAD bilateral agreement has provided for inclusion of social partners in implementation or monitoring and follow up. This may be because the COD has to agree to such a provision. The COO should consider getting social partner and concerned NGO advice at an informal level in developing, negotiating and following up of agreements.
Joint liability of recruitment agencies and foreign employers found in some SECs of IGAD agreements.		SECs contain such a provision because they are countersigned by recruitment agencies in both countries. Important to have such a clause in the main agreement. Enforcement of the provision and penalties for violations may be included.

Commitment to minimizing irregular migration.	Rights for migrant workers in irregular status, including non-levy of fines, decent treatment, no detention, and return in conditions of dignity.	Only three reviewed IGAD agreements (including two draft ones) refer to cooperation in addressing illegal recruitment activities or illegal employment and trafficking. None refer to workers in irregular status or their treatment or rights. If the presence of workers in irregular status from the COO is important, it is important to include provisions for their dignified return and for ensuring payment of due wages and other benefits.

[1] Some issues contain both soft and hard elements, as shown in the table.

Source: Confidential, available with the ILO.

7.2.4. Review and amendment of negotiated agreement

There will be several drafts and counterproposals during the negotiation process, and each one has to be carefully reviewed by the Steering Committee or focal point for legal and technical issues. It is desirable that social partners and other stakeholders also be consulted as needed.

7.2.5. Final text and adoption

When both sides have finalized the text, there will a formal signing event. Signed copies of the agreement must be deposited in the repository of the COO BLA coordination unit. Both countries should undertake to disseminate copies and content of the agreement to employers, workers, recruitment agencies and other stakeholders.

7.3. IMPLEMENTATION AND FOLLOW UP

Follow-up and implementation are often the weakest link in the BLA process. Therefore, both parties have to be pro-active following the signing of an agreement.

A general finding is that many agreements made by African or Asian countries with Arab States lack serious follow up and implementation. Fine words included in an agreement may make hardly any difference to governance and protection if the agreement is not seriously implemented. Therefore, both parties have to be proactive in the follow up to an agreement. Several steps need to be followed in this respect.

7.3.1. Reasons behind poor follow up and implementation

There are various reasons for poor follow up and implementation. Table 7 tries to summarize the issues.

In most cases, the political will to implement the agreement seems to be missing from both parties. The COO may be faced with a real dilemma between the promotion of overseas employment and protection of national workers abroad in a context of high

local unemployment and a need for more remittances. This may dissuade them from pressing too strongly on protection and rights of their workers. At the same time, however, the COD may have signed the agreement for publicity reasons without serious intent to follow up on same.

▶ Table 7. Reasons and explanations for poor implementation and follow up of BLAs

Reason	Explanation
Non-binding nature of MOUs.	May be preferred by COD because of absence of binding commitments and monitoring. COO must strive for a binding BLA.
Changing economic situations following the agreement.	Recession in COD may slow down hiring of workers or lead to retrenchments; the recent COVID-19 impact has led to layoffs and curbs on hiring new workers. .
The BLA should include provisions for lawful and dignified treatment of migrants in emergencies without discrimination, and for mutually agreed adjustments to agreement.	Select negotiating team on political considerations, business interests and/or any reasons other than pertinent skills and technical competence.
Sufficient resources not allocated for implementation and follow up.	Resources needed for periodic JC meetings, better workplace monitoring and inspection for labour law enforcement, and monitoring and evaluations and related data collection. The agreement must provide for clear division of costs between the two parties.
Non-involvement of other major stakeholders.	Employers in COD, workers and their unions, recruitment agencies and labour inspection services not briefed on their rights and responsibilities. It is important to ensure their involvement from the outset, and include provisions for sharing of agreements and for regular communications. There are good practices from some IGAD countries noted above.
Lack of staff and transfer of responsible personnel.	Key staff involved in development and negotiation of agreements transferred to other ministries/ departments. A dedicated BLA focal unit can address this issue to some extent.
Place major issues on the table at the beginning of negotiations, and start with easy to agree provisions.	Negotiate one issue at a time, or start with controversial and sensitive issues and get bogged down.

Source: Compiled by Piyasiri Wickramasekara.

7.3.2. Promote transparency and publicity of the agreement

The first step in transparency is to make the text of agreements publicly accessible. A dissemination plan should be included as part of any agreement.

It is most important to adequately brief the major stakeholders in migration:

- relevant government units;
- social partners and other stakeholders;
- workers who are in the process of migrating from the COO;

- migrant workers and their employers in the COD;
- recruitment agencies arranging the selection and placement of migrant workers in both countries; and
- labour inspection services in the country of employment.

These parties need to know what their rights and obligations are, and what the needed follow ups are under the agreement if it is to be seriously implemented. The 2016 ILO General Principles and Operational Guidelines for Fair Recruitment state that "labour recruiters acting across borders should respect bilateral or multilateral migration agreements" (para. 23). This is not possible unless agreements are shared with labour recruiters.

The COO should have the text of all agreements translated into national languages and easily accessible on websites, and also disseminate the texts to their migrant workers and employers in the CODs. A user-friendly summary of main features should be prepared for easy access by migrant workers, since they may not access the web. Pre-departure training programmes should explain and highlight how workers can benefit from the agreements with the countries they migrate to. Care should be taken that news of the existence of the BLA and the text of the agreement reach all groups of migrant workers, including women migrants.

Another major gap is the non-availability of information on the implementation and follow up of the agreements in the form of additional protocols, Joint Committee minutes, and related amendments. Although government parties may consider these items as being confidential, dissemination does indeed help improve both the implementation of and follow up on bilateral agreements, benefiting all parties in the final analysis.

IGAD countries do not generally share or disseminate copies of bilateral agreements. This practice needs to be changed in the interest of effective implementation.

7.3.3. The follow up mechanism – Active Joint Committees

Given that most agreements are poorly implemented, it is particularly important to build in concrete implementing, monitoring and evaluation procedures. An integral part of any agreement is the establishment of a Joint Committee (JC) to monitor and implement the agreement. The most common practice in this regard is to establish a committee with combination of officials of the two signatory parties, which might go under many different labels, such as "Joint Commission" or "Joint Working Committee" or "Joint Working Group". The committees consist of senior officials from both parties, and the agreements mention the functions of the committees and the frequency of meetings in general. All agreements and MOUs contain some variation of this mechanism. The agreement provides for periodic meetings, usually annually. The JCs should draw on and facilitate inputs from social partners and other stakeholders that can inform the committee on monitoring, review and evaluation.

Functions of Joint Committees

The functions of JCs are as follows:

- Periodic review, assessment and monitoring of the implementation of the agreement;
- Review employment opportunities and availability of corresponding skills for better cooperation;
- Propose amendments and improvements of the agreement and related documents; and
- Address possible disputes in the interpretation of provisions of the agreement and propose solutions.

How to judge active Joint Committees?

While most agreements plan to establish Joint Committees as standard practice, their active operation is crucial for successful implementation of agreements. The following questions may be raised:

1. Have they been established according to the agreement?
2. Do they meet as stipulated in the agreement? What is the actual frequency of meetings?
3. What are the concrete actions taken by JCs? Have they modified the agreement or added protocols – if so in what ways?
4. Have JCs reviewed or evaluated how well the agreement is working and followed up on related recommendations?
5. Are the outcomes of meetings disseminated? If not, why?
6. What is the degree of involvement in JCs by other actors: state governments, intending migrant workers, trade unions, employer groups, NGOs, private recruitment agencies)?

While the JCs could play a crucial role during the COVID-19 pandemic in preventing job losses, proposing measures for looking after health of workers, and facilitating returns with payment of due wages as needed, there is no evidence from IGAD countries that they have been active in this respect.

Good practices on Joint Committees

Box 12 shows practices gathered from a review of agreements in different regions, including the IGAD region. Generally, particular agreements may contain only a few of these features. It is important for the two parties to progressively include them in their agreements.

Box 12. Good practices on Joint Committees

- Mentioning a timeframe for setting up the Joint Committee (as per the Uganda–United Arab Emirates MOU);
- Specifying composition of the Committee;
- Clear timelines: frequency of meetings, validity, renewals and extensions;
- Elaboration of implementation plans (as per Italy and New Zealand RSE MOUs with Pacific Islands; there are no examples from the IGAD region).
- Elaboration of functions and terms of reference of JCs and implementing guidelines as an annex (as per the Italy agreements with Egypt and other origin countries, and the New Zealand RSE MOUs with Pacific Islands). Annexes XI and XII provide standard TORs and agenda for JCs.
- Designation of focal points in both countries and at the embassy/consular level;
- Provision for appointment of subcommittees, or technical working groups;
- Provision for mutually agreed protocols and amendments to the agreement;
- Consultative processes involving social partners and other stakeholders (there are no examples of such provisions in Asian or African bilateral agreements).
- Publicity for the agreement contents and the Joint Committees;
- Spelling out cost sharing arrangements for Joint Committees, monitoring and evaluation;
- Provision for evaluation of agreements;
- Capacity building of concerned staff for effective follow-up.

7.3.4. Steps for effective implementation of agreements

The biggest weakness of most BLAs is poor implementation, as noted above. A commitment to a joint implementation plan will, therefore, serve a useful purpose in follow up. The implementation plan may consist of the following items:

- Estimated targets of the numbers of migrant workers to be recruited/deployed under the BLA (or an estimated minimum–maximum range);
- Registration of movement under the new agreement: In general, many migrant workers are not even aware that they are migrating under any bilateral agreement. This is especially the case when a bilateral agreement is superimposed on existing flows of long duration. For government-to-government agreements there is proper registration of workers, such as in the Republic of Korea's Employment Permit System. For effective implementation, the COO should inform workers about the agreement and register workers migrating under the new agreement. The COD also should register workers arriving following the agreement.
- Supervision of recruitment agency operation and approval of employment contracts;
- Pre-departure and post-arrival orientation procedures;
- Plans for supervision of migrant workers' working and living conditions in the COD by labour inspection and of health conditions by designated authorities in the COD;
- Monitoring of complaints and dispute resolution procedures as per agreement, etc.

Table 8 provides some assessment criteria on the implementation of an agreement. Unless both the COO and COD establish procedures to conform to the provisions of the agreement, there is no reason to expect any change in the pre-existing situation.

Table 8. Assessment criteria of BLA implementation

Country of origin	Country of destination/employment
Has there been any briefing on the MOU provided to the stakeholders (recruitment agencies, employers, trade unions, concerned NGOs, state governments, intending migrant workers, etc.);	Has the COD publicized the MOU and briefed employers, sponsors, workers, labour inspection services and other stakeholders on the provisions of the MOU?
Has the text of the agreement been disseminated publicly – placed on government websites?	Has the agreement been disseminated publicly – placed on government websites?
Has the competent authority modified recruitment regulations, procedures and guidelines or any other laws on migration in line with the agreement?	Has the COD introduced or revised any enforcement legislation or procedures in line with the agreement? Has it extended labour law to cover domestic workers?
Are new workers migrating under a new employment contract? Is the standard employment contract (attached to the BLA) made available and explained to workers, employers and recruitment agencies? Is the contract jointly verified?	Is the standard employment contract attached to the BLA made available and explained to employers and recruitment agencies, and labour inspection services? Is the contract jointly verified?
Have recruitment practices improved and migration costs lowered following the agreement?	Do the authorities monitor the working and living conditions of workers entering under the BLA?

- Has the country established or improved a database on migrant workers following the MOU?
- Has the COD allocated more resources to labour inspection and supervision of workplaces and employer practices to ensure compliance with labour law as mentioned in the MOU?
- Is there a BLA implementation plan adopted and in place? Is the plan joint or unilateral?
- Is a joint BLA implementation plan adopted and in place? Is the plan joint or unilateral?
- Is the country monitoring flows, returns and complaints against baseline data?
- Has the COD created any new complaints and redress mechanisms for individual workers?
- How are the COO authorities helping migrants with dispute resolution in the COD – provision of advice, legal aid?
- Is a multilingual hotline available?
- Is there a noticeable reduction in the number and pattern of complaints following the agreement?

Source: Wickramasekara 2018b (see Annex VIII); ILO and IOM 2019b; 2019c.

7.3.5. Changes in migration laws, regulations and procedures following the agreement

Effective follow up and implementation of bilateral agreements may require changes to COD laws and procedures. This is to ensure adherence to the terms of the agreement and enforcement of provisions. Existing laws may not be adequate or could conflict with agreement content. Some categories, like domestic workers, may not be covered by labour law. For example, Saudi Arabia enacted Decree 301 of 1434 on Domestic Workers on 15 July 2013 to give effect to the provisions of the domestic worker agreement signed with the Philippines.

At the same time, several GCC countries (Kuwait, Qatar and the United Arab Emirates) have recently modified immigration laws affecting foreign workers, including domestic workers. Both Qatar and the United Arab Emirates have enacted separate laws on domestic workers without covering them under general labour law. The most significant reform by Qatar is to end mobility restrictions on migrant workers by allowing them to change jobs before the end of their contracts without first obtaining their employer's consent (Qatar 2020a; 2020b). The Government of Qatar also introduced recently a non-discriminatory minimum wage covering all migrant workers. The new laws also apply to domestic workers who are not covered by labour law. These developments have obvious implications for existing agreements, and the BLA focal points in the COO should monitor them closely. The Joint Committee can discuss modification of the agreements to take account of changed laws or situations as required. Monitoring should be integrated into all stages of the agreement cycle: development, implementation and renewal.

7.4. MONITORING

Monitoring has been defined as: "A function that uses the systematic collection of data on specified indicators continuing with which to provide management and the main stakeholders in an ongoing development intervention with indications of the extent of progress and the achievement of objectives and progress in the use of allocated funds" (ILO 2015a, 166).

Monitoring is a continuous and routine procedure usually carried out by programme administrators to ensure that the project is on track and/or the necessary corrective measures are taken in time. Applied to agreements, monitoring provides continuous information collection, analysis and reporting for decision-making by the Joint Committee and programme coordinators or focal points.

7.4.1. Functions of monitoring

The functions of monitoring are as follows:

- Check that the provisions of the agreement are being honoured and implemented appropriately.
- Ensure that procedures are being followed according to the work plan by responsible parties.
- Ensure that all activities are carried out on time by those responsible and that numbers are moving towards targets (number of migrant workers, volume of remittances, etc.).
- Identify any problems or lacunae in implementation, particularly with regard to the actual conditions and treatment experienced by migrant workers.
- Assist managers in making decisions and resolving problems.

7.4.2. Steps in monitoring

The steps in monitoring are as follows:

1. Assign responsibility for monitoring by each party: Focal point for agreements.
2. Gather needed data for monitoring of agreements from both parties.
3. Issue quarterly or ad hoc reports on the working of the agreement to the Joint Committee.
4. Annual reports on the agreement and its working.
5. Compare with baseline data to identify changes.

It is important to include a separate article on monitoring and evaluation in the agreement. Possible wording may be as follows: "Both parties undertake to continuously monitor the progress under the agreement, and carry out periodic joint evaluation of the agreement, especially before renewal."

7.4.3. Information base for monitoring

The BLA focal points can use a series of sources and reports for monitoring and evaluation purposes:

- migration-related statistics – flows, remittances, complaints, workplace accidents, etc.;
- workplace labour inspection and supervision reports;
- inspection reports on monitoring of health and living conditions;
- progress reports by each party;
- changes in policy, legal and regulatory frameworks in COO or COD on migration;

- high level missions between the two parties;
- additional protocols and exchange of notes between the two parties;
- views and submissions by concerned stakeholders;
- Proceedings of Joint Committee meetings (biannual or annual, as per agreement) and meeting minutes;
- media reports on migration issues in COO and with COD; and
- focus group discussions with key informants, concerned NGOs and migrant workers on emerging developments.

7.4.4. Broad consultative process in monitoring and follow up to the agreement

There is growing recognition of the crucial role of involvement and consultation with all concerned stakeholders – other related government agencies, employers' and workers' organizations, concerned NGOs (including migrant and women's organizations), and recruitment agencies – and having them briefed and/or invited by governments for the monitoring and follow-up process. This practice should be adopted by both the COO and COD where possible.

7.4.5. Resource allocation for follow up and implementation

Follow up and implementation of agreements can be a costly exercise. Each government should plan and set aside resources for this purpose for the duration of the agreement. Joint Committee meetings should decide on transparent and fair cost sharing between the two countries for follow up meetings, workplace monitoring and inspection for labour law enforcement, and data collection and research for monitoring and evaluation, among others. The general practice is for travel costs to be borne by the visiting party and local hosting expenses to be paid by the hosting government.

A major expected impact of a bilateral agreement is strengthened protection of workers in the workplace and improvement of their living conditions. This is the responsibility of COD authorities. There is, however, no evidence that the CODs considered in this report have done so following the signing of agreements in the past.

It is, therefore, essential to include a provision for this purpose in the agreements. The COD should commit and allocate additional resources to ensure compliance with labour and other laws and procedures as provided under the agreement. For example, increased inspection of workplaces and living conditions by the labour inspection service is crucial for effective follow up and implementation of agreements.

7.5. EVALUATION OF AGREEMENTS

The ILO has defined evaluation as: "The systematic and objective assessment of an ongoing or completed project, programme or policy, its design, implementation and results. The aim is to determine the relevance and fulfilment of objectives, development efficiency, effectiveness, impact and sustainability" (ILO 2015a, 163).

An evaluation requires research and in-depth analysis and differs from monitoring, which is a routine activity. Table 9 shows the key differences between monitoring and evaluation.

Table 9. Differences between monitoring and evaluation

Monitoring	Evaluation
Continuous.	Periodic: Mid-term, end term or as needed.
Keep track; oversight, analyses and documentation of progress.	In-depth analysis – Compare goals and objectives and planned activities and outputs with actual achievement.
Focuses on inputs, outputs, process, continued relevance, likely results.	Focuses on identifying results and outcomes, considers activities and outputs in relation to inputs, and considers results in relation to cost and processes, measuring overall relevance, impact and sustainability.
Translate objectives to performance indicators.	Answers why and how results, outcomes and impact were achieved.
Collect data on indicators routinely.	Contributes to building explanatory models.
Report progress to stakeholders and alert them to problems and provides options for corrective actions.	Provide managers, policymakers and other stakeholders with strategy, policy and good practice options to resolve problems and achieve productive outcomes and impact.

Source: Compiled by Piyasiri Wickramasekara.

This report also distinguishes between assessment and evaluation, which are sometimes used interchangeably (Wickramasekara 2018b). The generic meaning of assessment is that of judging or deciding on the quality of any selected intervention or feature. It is used extensively in the educational field where assessments document the performance of students in relation to a defined standard of performance. Assessments can be informal or formal on the one hand, or rapid or intensive. Like monitoring, assessment can focus on the process. Evaluation is a research activity involving in-depth analysis focusing on outcomes and addresses the objectives set out immediately below.

7.5.1. Objectives of the evaluation

The objectives of evaluations are the following:

- To demonstrate accountability to responsible parties;
- To improve implementation of the agreement and its management;
- To identify successful strategies and policies for extension/expansion/replication;
- To justify renewal or termination of an agreement.

7.5.2. The evaluation process

The evaluation process attempts to document what has changed after the agreement in relation to major indicators. The "before" and "after" situation is compared, and the baseline situation data can be used to assess changes.

The evaluation is meant to assess success in relation to original objectives, which may include:

- expansion of migration flows;
- protection of migrant workers;
- remittance expansion and facilitation, and lowering transfer costs;
- development outcomes: skills gains; reintegration; remittance flows and their impact, and migrant worker contributions to economic development and social welfare in the COD;
- reduction of irregular migration flows.

An evaluation can and should be conducted by the COO independently to assess the agreement in terms of its own interests and perspective of COO stakeholders. However,

joint evaluation by both the COO and COD is also advisable, particularly a final evaluation to determine the terms of a subsequent or updated agreement.

Strategic evaluation questions:

- Relevance: Does the agreement continue to meet the original objectives – improving governance, protection and development?
- Effectiveness: Has it been effective in achieving the desired outcomes or results – improved governance, protection and development benefits?
- Efficiency – results vs costs: Are the outcomes achieved at a reasonable cost?
- Sustainability: Will the achievements/ improvements gained as a result of the agreement continue for the reasonable future without extra investment?
- Impact: What are the positive or negative, direct or indirect changes brought to the lives of migrant workers, to the COO and to the COD?

7.5.3. Types of evaluation

Evaluations can be classified in terms of the following:

Timeframe: Interim (provisional), mid-term and final evaluation

Interim and mid-term evaluations are useful to guide policymakers in both the COO and COD to make adjustments to the agreement to ensure that the agreement fulfils the original objectives. At least one year must elapse before an interim evaluation can be undertaken.

Mode of evaluation: Self-evaluation versus independent evaluations

Self-evaluation: This is undertaken by those who are entrusted with the design and implementation of an agreement. The disadvantage is that the internal evaluation may not adopt a critical approach or may fail to highlight failures on the part of officials.

Independent or external evaluation: Carried out by those not directly connected with the programme, such as an external research institute or a specialized evaluator. An independent external evaluation can provide more objective findings and lessons.

Joint or unilateral evaluations: Both the COO and COD can cooperate and undertake/ sponsor a joint evaluation. A joint evaluation demonstrates the commitment of both parties to improve the agreement. The Joint Committee can take the initiative in launching a joint evaluation as a self-evaluation or as an independent one. The latter is generally preferable so as to obtain an objective assessment of the outcomes.

7.5.4. How to undertake an evaluation

There are several steps to be followed in undertaking an evaluation:

1. Prepare a concept note for evaluation explaining the reasons for the evaluation exercise; select the type of evaluation (self- or independent; interim, mid-term or final) and how it will be done; and get it approved by the Joint Committee.
2. Prepare detailed terms of reference for the evaluation team and call for proposals from interested parties. Applicants should present a detailed proposal on:
    a. research methodology, evaluation criteria, information gathering and analysis methods;
    b. evaluation and performance indicators to be used to assess relevance, impact, efficiency, effectiveness and sustainability;
    c. key issues and hypotheses;
    d. report structure;
    e. timeframe;
    f. qualifications and experience of the team in evaluation research; and
    g. proposed budget.
3. Select an evaluation team – internal or external – based on a careful review of the proposals.
4. Monitor the evaluation and provide information as needed. The responsibility may be undertaken by the respective BLA coordination units and/or by the concerned ministries and/or the Steering Committee.
5. The evaluation team should present an inception report with a more detailed

methodology, followed by the first draft of the evaluation report.

6. Review the first draft report and provide comments: This can be done by the Joint Committee or a technical working group appointed by the JC. In a joint evaluation, both the COO and COD teams may participate in the review.
7. Review and acceptance of the final evaluation report
8. Dissemination of the evaluation report to concerned stakeholders, especially the Joint Committee, and follow up with recommendations for improvements and changes.

7.5.5. Information and data for evaluation

The following information and data may be used and/or required to carry out a proper evaluation:

1. Baseline data – before the agreement (see section 7.1.4);
2. Analysis of migration flows by gender, remittances, complaints, returns, migrant earnings, recruitment and migration costs since the launching of the BLA;
3. Monitoring and progress reports, and administrative records and data;
4. Existing research, including rapid assessment reports;
5. Complaints databases;
6. Surveys in the COO and COD by authorities or third parties of migrant workers, returnees, employers and workplaces, and recruitment agencies;
7. Special surveys and case studies (of what has worked and what has not) to be carried out by the evaluation team;
8. Interviews with key informants from different stakeholders;
9. Focus group discussions with employers', workers' and migrant associations; trade unions; and NGOs. Separate focus group discussions with women migrants may be desirable.

7.5.6. Challenges and strategies to address them

There can be several challenges in an evaluation exercise, but these can be addressed in different ways:

1. The COO may not be convinced about the value of the evaluation if it believes the agreement cannot be changed irrespective of the findings. Still, it is important to document the outcomes and share them with the COD to be taken up in subsequent bilateral discussions.
2. Most agreements do not provide for evaluation plans and/or budgets for monitoring and evaluation. Effective planning is needed for evaluation exercises, which should be built into the agreement. A mid-term evaluation and a final evaluation before renewal are recommended.
3. Lack of relevant information: Quite often, benchmark data before the agreement or performance data following the agreement may not be available. While this is a common problem for COO agreements, the focal unit can start collecting relevant information even after the agreement is in force. The support of research institutes, labour attachés or consular sections should be mobilized.
4. One of the parties may feel that an evaluation is not a priority, making it difficult to commit to a joint evaluation. The COO, which may have a bigger stake in migration arrangements, can, however, can carry out its own evaluation, which can be shared with the COD.
5. It may often be difficult to isolate the impact of BLAs from other factors impacting the labour migration situation. For example, economic recession in a COD may adversely affect the demand for migrant workers envisaged under the BLA. Similarly COO overseas employment promotion campaigns not related to the BLA may affect migration outcomes. Changes in migration legislation subsequent to the agreement also may affect outcomes. A professional evaluation would be able to assess the influence of such factors through the adoption of an appropriate methodology.

7.5.7. Some examples of evaluation of bilateral labour agreements

Few countries carry out reviews or assessments or evaluations of their agreements. The Philippines has recently carried out a broad assessment of their bilateral agreements and MOUs with different countries (Mangulabnan and Daquio 2018) based on a desk review. The objectives were: assess content and context of BLAs in light of their compatibility to international norms; assess their adherence to migration policies of the Philippines; and propose a monitoring and evaluation framework. The evaluation team used the ILO Model Agreement as a key criterion in assessment of agreements. They found that most BLAs/MOUs contained core elements specified in ILO and Philippines frameworks. Monitoring and evaluation was found to be weak in most agreements, and Joint Committees were not meeting as expected, resulting in a lack of much in the way of concrete achievements.

This type of assessment can be described as a good practice relevant to IGAD countries, because no IGAD Member State has carried out a stocktaking or review of their existing bilateral agreements and MOUs according to our knowledge. It is important to do such a review to identify areas of gaps and weaknesses that can be relevant in proposing revisions to existing agreements or developing new ones.

For the IGAD region, a recent relevant assessment concerns review of selected agreements and MOUs of Uganda by researchers of the Human Rights Clinic of the University of Southern California's Gould School of Law (Wright and Mentz, unpublished). They reviewed Uganda's two BLAs with Saudi Arabia and Jordan, and one MOU signed with the United Arab Emirates. The study compared the agreements with a list of good provisions, and with relevant domestic, regional and international legal frameworks focusing on protecting the rights of Ugandan migrant workers and preventing human trafficking. Based on their assessment, the authors recommended rigorous enforcement of agreements through national laws and joint and several liability, wide dissemination of agreements, and involvement of other stakeholders and government agencies in the negotiation process. The assessment also recommended that the Ugandan Government seek to renegotiate the agreement with Saudi Arabia, which scored low in relation to several sets of criteria used.

Evaluations are more in-depth exercises than assessments based on desk reviews. Table 10 summarizes two evaluation studies and their methodology and findings.

▶ Table 10. Examples of evaluation of bilateral agreements

Description	MOU between Bangladesh and Malaysia on employment of Bangladesh workers in the plantation sector (2012-2015)	Thailand–Israel MOU for workers in agriculture
Year of study	2015	2016
Title of Study	*Review of the Government-to-Government Mechanism for the Employment of Bangladeshi Workers in the Malaysian Plantation Sector* (Wickramasekara 2016)	*Recruitment of Migrant Workers in Agriculture and Construction in Israel: The Impact of Bilateral Agreements* (Raijman and Kushnirovich 2018).
Objective of evaluation	▶ Assess the extent to which the MOU contributed to expansion of employment for Bangladeshi workers and improve their recruitment and protection. ▶ Assess the advantages and disadvantages of the government-to-government (G-to-G) labour migration scheme involving public employment services. ▶ Provide recommendations for improvement of the scheme.	▶ Contribute to methodology of evaluating BLA through comparison of before and after situations. ▶ Evaluate the impact of the BLA on the forms of recruitment and recruitment fees and migrants' working and living conditions after arrival in Israel.

Methodology	▶ Desk review of documents and records. ▶ Field visits to Bangladesh and Malaysia for consultations. ▶ Discussions with key informants: concerned government ministries, social partners, concerned NGOs and researchers in both countries; PRA association in Bangladesh. ▶ Focus group discussions (in Dhaka) with some Bangladeshi workers selected for migration to Malaysia; and focus group discussions with a few Bangladeshi workers working in Malaysia (not under MOU).	▶ Desk review. ▶ Sample survey using snowball sampling. ▶ Surveyed a sample of 55 Thai respondents before the BLA and 50 after its adoption.
Evidence of rights-based approach	Migrant rights and labour standards a key consideration in the analysis.	The indicators used represent migrant rights and labour standards in regard to working and living conditions.
Findings	▶ G-to-G mechanism lowered migration costs considerably for workers - from US$2,500–3,000 before MOU to about US$500 after MOU. ▶ Employment generated very modest: Only 7,616 Bangladeshi workers migrated under the MOU between 2012 and 10 June 2015; whereas 1.4 million registered in Bangladesh as potential migrants. ▶ Working conditions – Applicable wage: 900 Malaysian ringgit (about US$256) – modest improvement from before MOU situation. ▶ Workplace protection – No monitoring mechanism or follow up mechanism. Bangladeshi workers placed in remote plantations in precarious situation like other plantation workers.	▶ Good impact on forms of recruitment of migrant workers in agriculture – IOM and government agencies instead of PRAs. ▶ Sharp reduction in recruitment fees paid per worker – from US$9,149 before MOU to US$1,734 after MOU ▶ Slight improvement in employment conditions -modest increase in monthly wage from 4,657 Israel shekels to 4,994 shekels. ▶ No improvement in living conditions and payment for sick leave, etc. ▶ Serious violations of workers' rights persist even after MOU due to lax enforcement of labour laws by Israeli authorities.
Limitations	No survey of workers to assess workplace protection done due to resource constraints.	Limited sample of workers.

7.5.8. A short- to medium-term agenda for IGAD countries for the assessment and evaluation of agreements

In view of the fact that no IGAD country seems to have carried out a stocktaking or assessment or evaluation of their agreements to our knowledge, what is needed is a stepwise approach on a unilateral basis. In the current circumstances of the global COVID-19 pandemic, an immediate priority is to assess the COVID-19 impact on migration as it concerns each IGAD Member State and their existing BLAs.

Stocktaking exercise on the impact of the COVID-19 pandemic on migration and BLAs

Assess the situation of migrant workers in CODs with which BLAs are in effect – including both COO nationals addressed by the BLAs and those who are not – regarding:

- dismissals from work;
- provision or not of basic sustenance and healthcare for those remaining;
- health and safety situation of workers;
- whether dismissals and returns respected workers' rights and proper procedures;
- whether returned migrants obtained earned wages and entitlements prior to departure;
- whether conditions and protections in existing BLAs have been respected for migrant workers deployed under those BLAs;
- whether the Joint Committees met virtually or otherwise during the crisis period; and
- in short, whether the BLAs were invoked at any stage.

Pilot rapid assessment of selected agreements

Available information and discussions suggest that no IGAD country has attempted an assessment or evaluation of their agreements up to now. Therefore, instead of planning for a full-fledged evaluation, a country could start with a pilot rapid assessment exercise of selected agreements in force up to March 2020, with the idea being that the assessment can be completed within a short period. These reviews should be accompanied by the collection of qualitative and quantitative data as available. The broad assessment of bilateral agreements and MOUs in the Philippines mentioned above (Mangulabnan and Daquio 2018) is a good practice example for this purpose. A rapid stocktaking of the status and proposed content of new BLAs under negotiation or consideration as of March 2020 (most if not all currently suspended) can also be undertaken.

- The findings of these rapid assessments can identify where concerns should be raised with CODs and where terms of existing BLAs may have been – and may continue to be – disrespected or violated.
- The findings and concerns from the rapid assessments should be considered if and when negotiations for new BLAs or revision of current BLAs are initiated or restarted.
- Respective national assessments might possibly be shared with the other IGAD countries; such sharing is important both for enhancing common approaches to the current emergency and for forging common positions of solidarity in future negotiations and implementation of BLAs.

Evaluation of agreements

Following a review of the outcome of the above rapid assessments, the methodology could be refined towards conducting more thorough evaluations of existing agreements. Initially, an internal evaluation may be conducted. This internal evaluation should draw upon the actual outcomes of BLA objectives and provisions, and the effectiveness of Joint Committees using available records. The selection of the agreements to be evaluated may be decided on the basis of their duration, importance for migration flows, and successful features or problems experienced, among other reasons. At this stage, more emphasis can be laid on systematic data collection. We propose the following minimum data configuration in box 13.

Box 13. Data needed for quick evaluation of agreements

Outflow of workers to the destination country before and after the agreement, by sex and age and occupations. This will serve to assess how migration flows have changed or not following the agreement.

Recruitment and migration costs and wages/earnings before and after the agreement. These may be ascertained from administrative records, associations of recruitment agencies, key informants or selected migrant workers.

Number and pattern of complaints before and after the agreement. A lower number of complaints could be taken as a rough indicator reflective of improvement in protection. Administrative records of the lead ministry and consular sections can provide this information.

Estimates of workers in irregular status in the destination country before and after the agreement. The COD may be able to provide this information. An agreement is expected to reduce irregular entries by offering more legal avenues.

8

Towards and IGAD common approach to formulating bilateral labour agreements and memoranda of understanding

These Guidelines provide a normatively based standard and detailed guidance for the establishment, implementation and evaluation of BLAs for IGAD countries. The template and core content (Chapter 6 above) represent what rights-based, gender–responsive BLAs should contain with regard to provisions for the protection and welfare of migrant workers in destination countries. Moreover, this comprehensive Guidelines document also provides norms and detailed operational guidance for defining, negotiating, administering and monitoring BLAs.

The template and core content thus propose the basis for a common approach to negotiating bilateral agreements with other parties who may place lower priority on: effective follow up and implementation; protection of migrant workers; and equal treatment of migrant workers on par with national workers.

The January 2020 Regional Ministerial Forum on Harmonising Labour Migration Policies in East and Horn of Africa called for a united approach on drafting, negotiating and implementing BLAs, "acting in line with international legal frameworks on human and labour rights of migrant workers". The same call acknowledges that other, external actors can encourage counterproductive competition among IGAD countries by offering different – and substandard – terms to one or another IGAD Member.

The IGAD Ministerial Statement on the Impact of COVID-19 on People on the Move in the IGAD Region (2 September 2020) committed to "[d]evelop[ing] a common regional position and engag[ing] as a block with the Gulf Cooperation Countries to ensure protection of IGAD migrant workers" (IGAD 2020, 1).

These Guidelines are intended to be the starting point for IGAD Member States to collectively define what the shared minimum standards for BLAs should be; so that Member States can engage in negotiations for BLA terms that will not be undercut or undermined by any other IGAD Member.

It is anticipated that the validated template and core content can serve as a basis for consideration at an IGAD-wide ministerial consultation. That consultation would define and launch a formal IGAD consultative forum process to elaborate and build consensus on an IGAD Common Approach/Common Position to BLAs.

This document thus provides an overall foundation for the process of defining the content and formulations of that Common Approach. It also offers guidance on how to negotiate, implement and evaluate that approach once it is established.

This draft is thus a foundational contribution to launching an IGAD consultative process towards a Common Approach on BLAs. It is submitted in support of a ministerial initiative to convene that consultative process, with an expectation that the IGAD countries will own and commit to the process and the outcome of defining a common approach.

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Annexes

ANNEX I. GLOSSARY – DEFINITION OF KEY TERMS FOR THESE GUIDELINES

Evaluation

"The systematic and objective assessment of an ongoing or completed project, programme or policy, its design, implementation and results. The aim is to determine the relevance and fulfilment of objectives, development efficiency, effectiveness, impact and sustainability" (ILO 2015a, 163).

Evaluation requires research and in-depth analysis and differs from monitoring, which is a routine activity. Evaluations require considerable resources.

Migrant worker

"The term 'migrant worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". This international legal definition is provided in Article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

Monitoring

"A function that uses the systematic collection of data on specified indicators continuing with which to provide management and the main stakeholders in an ongoing development intervention with indications of the extent of progress and the achievement of objectives and progress in the use of allocated funds" (ILO 2015a, 166). Monitoring is a continuous and routine procedure usually carried out by programme administrators to ensure that the project is on track, and/or the necessary corrective measures are taken in time.

Rights-based approach

A rights-based approach to migration is founded on international standards, application of the rule of law, and use of right language recognizing the rights and dignity of migrant workers as human beings and their respect as workers. This approach treats migrant workers as human beings with human rights, including rights at work – not as "commodities". Annex II provides a proposed listing of selected terminology consistent with a rights-based approach.

International instruments recognizing migrant rights are the foundation of a rights-based approach. Non-discrimination and equality of treatment on par with national workers are core principles in international instruments concerning migrant workers. [22] A rights-based approach requires gender-responsive action and attention to groups and individuals at risk who need specific attention and support.

A rights-based approach upholds the accountability of duty-bearers: States, government at all levels, employers, and the host society. States are bound to respect, promote and realize human and labour rights of migrant workers irrespective of their legal status or nationality or gender. A rights-based approach also calls for empowerment of rights-holders – migrant workers and their family members – through knowledge of their rights and their effective and inclusive participation.

22 The 2006 ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration provides a synthesis of this approach drawing upon international instruments and international good practices.

Types of agreements:

Multilateral treaty

A multilateral treaty is a treaty between more than two subjects of international law.

Bilateral agreement or treaty

A bilateral treaty is a treaty between two subjects of international law, generally incorporated in a single document. The title indicates the subject of the treaty, preceded by the names of the parties. A bilateral treaty is a treaty as described under the 1969 Vienna Convention on the Law of Treaties: "An international agreement concluded between States in written form and governed by inter-national law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" (Article 2(1)(a)).

Bilateral agreements/treaties are agreements between two States which describe in detail the specific responsibilities of, and actions to be taken by each of the parties, with a view to accomplishing their goals. Therefore, bilateral labour agreements (BLAs) create legally binding rights and obligations.

Bilateral labour agreement (BLA)

Bilateral labour agreements are treaties to regulate the flow of workers between two States (State of origin of workers and the State of destination of workers). They are legally binding instruments which describe in detail the specific responsibilities of each of the parties and the actions to be taken by them with a view to accomplishing their goals. The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains in its Annex a Model Agreement on Temporary and Permanent Migration for Employment that has influenced bilateral labour agreements in different countries.

Memorandum of understanding (MOU)

"A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification" (United Nations 2012).

An MOU is a softer, often non-binding option, generally providing a broad framework through which to address common concerns (United Nations 2012). Since MOUs are not legally binding, there is no international requirement to publish them. MOUs also usually come into force and effect upon signature.

Table A1 briefly highlights the differences between MOUs and BLAs.

▶ Table A1. Differences between monitoring and evaluation

BLAs	MOUs
Legally binding and legally enforceable treaty.	Not legally binding.
Legal language and terms.	Less formal language.
Negotiation requires time.	Easier to negotiate and adopt than BLAs.
Specific and action-oriented commitments.	Defines broad areas of understanding.
Has to be approved by higher authority, for example, Parliament.	Can be approved by head of technical ministry/ agency.
Changes need to go through formal process.	More flexibility to modify with changing conditions.

Source: Compiled by Piyasiri Wickramasekara.

Memorandum of agreement (MOA)

The Philippines prefers to use the format of a memorandum of agreement, which is remarkably similar to a BLA. An example is the MOA between the Philippines and Bahrain on Health Services Cooperation. Qatar has also used MOAs with Sri Lanka, among others, but in actual practice, the outcomes have not been vastly different from an MOU (Wickramasekara 2015).

Framework agreements

Broad bilateral cooperation instruments covering a wide range of migration-related matters, including labour migration as well as irregular migration, readmission, and the nexus between migration and development. Framework agreements have been concluded by Spain and France with several West and North African countries. The recent agreements of South Africa with other southern African countries (for example, Lesotho, Namibia, the United Republic of Tanzania and Zimbabwe) fall into this type, and contain statements of mutual cooperation without specifically referring to migration flows (Bamu, unpublished; Monterisi, unpublished).

Inter-agency understanding (IAU)

The agreements between New Zealand and Pacific Islands States for employment of seasonal workers are labelled as IAUs – but they are similar to MOUs.

Protocol (additional or optional)

An instrument entered into by the same parties and which amends, supplements or clarifies a previous agreement. Qatar was one of the pioneers in signing bilateral agreements back in the early 1980s and revised many of them through the use of protocols in the 2000s (Wickramasekara 2015.

It is important to highlight the diversity of bilateral agreements relating to mobility of labour (see box below). The present study focuses on bilateral agreements and MOUs for labour migration of low-skilled workers commonly entered into by IGAD Member States.

ANNEX II. PREFERRED TERMINOLOGY IN MIGRATION DISCUSSIONS

Terms to be avoided	Preferred/ neutral terms	Justification
Labour exports/ imports	Emigration of labour, or labour outflow; immigration of labour, or inflow of labour	Migration involves the movement of human beings who should enjoy human and labour rights, unlike traded commodities.
Labour exporting/ importing countries	Emigration/Immigration country	"Labour is not a commodity" – Philadelphia Declaration of the ILO.
Manpower	Human resources	The term "manpower" is not gender-sensitive.
Labour sending countries Labour receiving countries:	Countries of origin (COO), or source countries Countries of destination (COD), or host countries	"Labour-sending/receiving countries" may imply that governments are engaged in labour emigration/immigration. Most overseas placements are done by the private sector. Workers are also mostly hired by private employers in destination countries.
Labour migrants/ temporary contractual labour (GCC countries) Economic migration/ economic migrants	Migrant workers; migrant labour Labour migration/migrant workers	International instruments have never used the term "labour migrants". "Economic migrant" is a rather derogatory term used to describe those seeking asylum for economic reasons rather than due to persecution.
Migrant domestic helper	Migrant domestic worker	Migrant domestic workers do much more than "help" in the household. They are engaged in full-time work, undertake many duties and often work excessive hours.
Unskilled workers	Low-skilled and/or semi-skilled workers; low-wage workers; workers in elementary occupations	All workers, especially migrant workers crossing borders for work, have specific skills. The preferred terms are consistent with the dignity of labour.
Illegal migration Illegal migrant workers/clandestine migration	Irregular migration/ undocumented migration Migrant workers in irregular status.	No human being is illegal. The term "illegal" criminalizes migrants who may become irregular due to a variety of reasons.
Voluntary return	Voluntary return, but only when migrants have an option to remain in the COD.	Return programmes for rejected asylum-seekers or deported workers in irregular status are not voluntary returns. Rather, they are disguised deportations.
Management	Governance	"Management" suggests control of migration to some extent: Who is doing the managing? "Governance" captures activities of both government and non-government entities.

Source: Compiled by Piyasiri Wickramasekara, 2018.

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

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

7	International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW)	Uganda	–	**7**	Equal Remuneration Convention, 1951 (No. 100)	Djibouti, Ethiopia, Kenya, South Sudan, Sudan Uganda	Saudi Arabia, UAE, Kuwait, Jordan, Lebanon
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, Sudan Uganda	Bahrain, Saudi Arabia, UAE, Kuwait, Jordan, Lebanon
9	Convention on the Rights of Persons with Disabilities	Djibouti, Ethiopia, Kenya, Somalia, Uganda,	Bahrain, Kuwait, Qatar, Saudi Arabia, UAE, Jordan				

– = 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 IV. RATIFICATION OF ILO GOVERNANCE CONVENTIONS BY IGAD MEMBER STATES AND MIDDLE EAST/GCC COUNTRIES [1]

Country	Governance Convention			
IGAD Member States	**C081**	**C122**	**C129**	**C144**
Djibouti	1978	1978	–	2005
Ethiopia	–	–	–	2011
Kenya	1964	–	1979	1990
Somalia	–	–	–	–
South Sudan	–	–	–	–
Sudan	1970	1970	–	–
Uganda	1963	1967	–	1994
Middle East /GCC Countries				
Bahrain	1981	–	–	–
Kuwait	1964	–	–	2000
Oman		–	–	–
Qatar	1976	–	–	–
Saudi Arabia	1978	–	–	–
United Arab Emirates	1982	–	–	–
Jordan	1969	1966	–	2003
Lebanon	1962	1977	–	–

– = not ratified;
C081 = Labour Inspection Convention, 1947 (No. 81);
C122 = Employment Policy Convention, 1964 (No. 122);
C129 = Labour Inspection (Agriculture) Convention, 1969 (No. 129); and
C144 = Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Source: Compiled by Piyasiri Wickramasekara, 2018.

ANNEX V. INFORMATION NEEDS FOR ASSESSING THE BASELINE SITUATION PRIOR TO AN AGREEMENT/MOU

Information need	Relevant information items	Possible sources of information
Country of origin (COO): Information on migration flows and profiles, return and circular migration, and channels of migration	**Migration for employment from the COO to the COD:** • trends and annual flows by gender; • occupational categories and sectors of employment, profile of migrant workers; • age, gender, education and skills; • share of low-skilled and skilled workers.	• Administrative records of COO; • immigration records of COD; • special surveys in both countries; • Central Bank and World Bank data for remittances.
	Remittances: • volume; • sources; • transfer costs; • share of GDP.	
	Return, reintegration and circular migration flows: • numbers and profile; • reasons for return; • re-migration/circular migration profile; • deportations; • reintegration indicators.	• COO and COD migration administrations; • special surveys. Normally, monitoring of return or re-migration is limited. Philippines has a data category of rehires in their statistics. Local authorities and NGOs may also have information.
	Channels of migration: • Share of public and private recruitment agencies, social networks and direct hiring in recruitment and placement and social networks in both COO and COD; • shares of different channels; • problems of different recruitment channels.	• Regulatory agencies in both COO and COD; • surveys; • trade union and civil society reports; • migrant complaints; • consular sources.

Country of destination (COD): Labour market needs and sources of migrant workers	• Labour market shortages and need/ demand for workers by gender, sectors, skills, occupations; • current sources of supply of migrant workers; • labour market needs tests.	• COD sources, especially the Ministry of Labour; • surveys of labour market shortages and needs; • COO embassy/consulate; • labour market needs assessment and LMIS
COD and COO: Applicable legal and regulatory frameworks relating to labour migration	**Applicable legal, and regulatory framework and policy on migration and labour in COO and COD:** • labour and migration laws; • laws and regulations applicable to recruitment agency; • labour inspection: regulations, access to migrant worker workplaces, capacity, and training regarding foreign/ migrant workers; • social protection laws and their coverage; • laws and regulations on specific categories of workers, such as migrant domestic workers; • qualifications and skills recognition systems for migrant workers; • predeparture and post-arrival training; • roles of social partners (employers' and workers' organizations); and • civil society involvement in migration and labour matters.	• Published national labour laws and other legislation, regulations and migration policies; • COO and COD authorities; • embassies and consulates in COO and COD; • social partners and concerned civil society organizations. including migrant worker associations; • international organizations; • third-party research, including by universities and research centres in the COD and COO.
COD: Overall governance and protection frameworks available to migrant workers	**Overall governance framework and other protections available to migrant workers in COD:** • constitutional guarantees for non-citizens/migrants; • coverage of labour law; • employment policy and regulations; • social protection laws and applicability to migrant workers; • international and regional human rights declarations and charters; • international human rights and labour standards ratified by the country; • presence of strong social partners and civil society organizations; • access to justice mechanisms for citizens and others.	• constitution; • published laws and regulations; • UN and ILO sources; • trade union and civil society sources; • third-party research.

Irregular migration	**Incidence of irregular migration** Numbers and profile by age, gender, duration, sector.	• COO and COD sources; • data on apprehensions, deportations and detentions; • embassy and consular sources; • civil society and trade union networks.
Protection status of migrant workers in COD	• Current protection status of migrant workers in the destination country, • pattern of complaints by gender and sector; • access to complaints mechanisms; • access to justice mechanisms.	• Complaints by migrant workers; • COO overseas employment administration complaint databases and records; • labour attachés, embassies and consulates; • reports by civil society and trade union networks; • third-party research; • press and media reports; • international organizations
Recruitment and migration costs	**Recruitment and related costs;** • legally permitted costs; • actual costs; • breakdown of migration costs; • recruitment cost as a percentage of earnings abroad; • recruitment costs in COO and in COD.	• Special surveys; • records of recruitment agencies; • overseas employment administration in COO.
Wage information	**Wages:** • minimum wages (where applicable) and earnings in COO and COD • wage trends; • wage protection mechanisms.	• COD Ministry of Labour; • surveys; • estimates by recruitment agencies; • consular sources.
International and regional instruments	International and regional instruments signed by both countries	• UN, ILO and regional ratification databases.

Employment mobility	**Relevant laws and regulations on changing employers:**
	• after specified duration;
	• upon completion of the contract; or
	• when in abusive contexts, such as non-payment of wages or violence
		• COD authorities – law and practice information, such as:
		  • the prevalence of the sponsorship (kafala) system in Gulf countries;
		  • tying of work permits to employers;
		  • information on any recent amendments to laws and regulation regarding job mobility and exit permits.

Other BLAs and MOUs signed by either Party	Information on other bilateral arrangements signed by either Party: • labour • social security • trade and • investment treaties.	• COO and COD authorities; • relevant government websites; • press releases; • treaty databases.
Multilateral agreements by either Party	Information on multilateral instruments or agreements entered into by either party: • international, continental and regional free trade; • trade in services; • free movement; • human rights; • labour and social security; and • regional integration instruments	• COO and COD authorities; • relevant government websites; • treaty databases; • press releases.

Source: Compiled by Piyasiri Wickramasekara.

ANNEX VI. LIST OF ARTICLES OF THE 1949 ILO MODEL AGREEMENT ON TEMPORARY AND PERMANENT MIGRATION FOR EMPLOYMENT, INCLUDING MIGRATION OF REFUGEES AND DISPLACED PERSONS

Article No.	Article Title	Article No.	Article Title
1	Exchange of Information	16	Settlement of Disputes
2	Action against Misleading Propaganda	17	Equality of Treatment
3	Administrative Formalities	18	Access to Trades and Occupations and the Right to Acquire Property
4	Validity of Documents	19	Supply of Food
5	Conditions and Criteria of Migration	20	Housing Conditions
6	Organization of Recruitment, Introduction and Placing	21	Social Security
7	Selection Testing	22	Contracts of Employment
8	Information and Assistance of Migrants	23	Change of Employment
9	Education and Vocational Training	24	Employment Stability
10	Exchange of Trainees	25	Provisions Concerning Compulsory Return
11	Conditions of Transport	26	Return Journey
12	Travel and Maintenance Expenses	27	Double Taxation
13	Transfer of Funds	28	Methods of Cooperation
14	Adaptation and Naturalization	29	Final Provisions
15	Supervision of Living and Working Conditions		

Source: Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, Annex, ILO Recommendation, 1949 (No.86).

ANNEX VII. LIST OF GOOD PROVISIONS AND PRACTICES IN BILATERAL LABOUR AGREEMENTS AND MOUS

No.	Good provisions crtiterion
Governance	
G1	Evidence of normative foundations and respect for migrant workers' rights (based on international instruments) – usually in Preamble
G2	Exchange of relevant information between COO and COD
G3	Transparency: clear objectives and sharing of information with concerned stakeholders, and dissemination of the agreement
G4	Defining clear responsibilities between parties – between COO and COD, and also with other responsible actors
G5	Concrete follow up, implementation, monitoring and evaluation procedures
G6	Fair recruitment principles: Commitment to effective regulation of recruitment agencies on both sides, and to control of migration costs, aiming for zero recruitment costs borne by workers
G7	Social dialogue and consultative processes
Protection	
P1	Provision of relevant information and assistance to migrant workers, potential migrants and their families and action against misleading propaganda
P2	Specific reference to equal treatment and non-discrimination of migrant workers
P3	Any reference to welfare and rights of migrant workers or their protection in the Preamble, Objectives or other text
P4	Address gender concerns: non-discriminatory treatment of women workers; prohibition of violence and harassment against women workers in workplaces; gendered impact assessments
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)
P6	Concrete and enforceable provisions relating to employment contracts and working conditions, preferably with a binding standard employment contract
P7	Wage protection measures
P8	Provision for supervision of working and living conditions and enforcement of regulations through adequate labour inspection services
P9	Prohibition of confiscation of travel and identity documents and methods of enforcement
P10	Social protection: insurance coverage and healthcare and injury benefits for migrant workers, including portability of benefits
P11	Trade union rights and access to support mechanisms from civil society
P12	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice for migrant workers
Development	
D1	Human resource development and skills improvement
D2	Recognition of skills and qualifications and competencies in the destination country, and on return in the origin country
D3	Facilitation of transfer of savings and remittances at low cost
D4	Return, reintegration and circulation

Source: Modified from Wickramasekara 2018c.

ANNEX VIII. LIST OF ASSESSMENT CRITERIA FOR BILATERAL LABOUR AGREEMENTS AND MOUS

No.	Assessment criterion
Development phase assessment criteria (DPC)	
DPC1	Presence of a Coordination Unit or focal point for BLAs/MOUs available in lead ministry
DPC2	Needs assessment conducted for the agreement with the selected country
DPC3	Information available on the baseline situation before the agreement
DPC4	Common understanding reached on broad areas of the agreement
DPC5	Coordination and consultative process involving other concerned government units and relevant stakeholders on the draft agreement
DPC6	Composition of selected negotiation team including technical and gender experts
DPC7	Conduct of negotiations on equal partnership basis
Agreement content/text assessment criteria (CAC)	
CAC1	Evidence of normative foundations and respect for migrant workers' rights (based on international instruments)
CAC2	Exchange of relevant information between COO and COD
CAC3	Provision of relevant information and assistance to migrant workers
CAC4	Defining clear responsibilities between parties
CAC5	Specific reference to equal treatment of migrant workers and non-discrimination
CAC6	References to protection of migrant workers or their rights in the Preamble, Objectives or other text
CAC7	Fair recruitment principles: Provisions to protect migrant workers from recruitment malpractices and reducing migration costs at both origin and destination
CAC8	Address gender concerns, and concerns of vulnerable migrant workers, particularly those not covered by labour laws in destination countries (domestic workers, agricultural workers, etc.).
CAC9	Concrete and enforceable provisions relating to employment contracts and working conditions including standard employment contracts
CAC10	Coverage of wage protection measures
CAC11	Provision for supervision of working and living conditions and effective labour inspection services
CAC12	Provision for facilitating worker mobility and prohibition of confiscation of travel and identity documents and effective enforcement
CAC13	Provision for transfer of savings and remittances by workers
CAC14	Adequate social protection and healthcare rights and benefits for migrant workers
CAC15	Trade union rights and access to support mechanisms from civil society
CAC16	Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice including multilingual hotlines
CAC17	Provision for human resource development and skills improvement
CAC18	Recognition of skills and qualifications and competencies in the COD, and on return in the COO
CAC19	Facilitation of transfer of savings and remittances at low cost
CAC20	Provision for dignified return, reintegration and circulation
Implementation Phase assessment criteria	

IAC1	Transparency and publicity; awareness creation about the agreement and its dissemination among employers, workers, recruitment agencies, labour inspection services and all relevant branches of the government.
IAC2	Concrete follow up mechanisms to agreement in place and implemented
IAC3	Adoption of a BLA implementation plan jointly or unilaterally and follow up.
IAC4	Active and operational Joint Committees meeting as scheduled and reviewing and revising the agreement as needed.
IAC5	Broad consultative process with all relevant stakeholders in monitoring and follow up to the agreement
IAC6	Resource allocation for follow up and implementation including for regular Joint Committee meetings, and monitoring and evaluation by both parties
IAC7	Changes in laws, regulations and procedures on migration and recruitment processes and their enforcement following the agreement
IAC8	Resource allocation and commitment by COD for supervision and enforcement of workplace protection and living conditions including for intensified labour inspection
IAC9	Reports on monitoring, progress and evaluation of the working of the MOU and updated databases of migrant workers

Source: Modified from Wickramasekara 2018c.

ANNEX IX. GUIDELINES OFFERED BY ILO CONVENTION NO. 189 AND RELATED RECOMMENDATION NO. 201 FOR STANDARD EMPLOYMENT CONTRACTS (SECS) FOR DOMESTIC WORKERS

Domestic Workers Convention, 2011 (No.189), Article 7:

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

(a) the name and address of the employer and of the worker;

(b) the address of the usual workplace or workplaces;

(c) the starting date and, where the contract is for a specified period of time, its duration;

(d) the type of work to be performed;

(e) the remuneration, method of calculation and periodicity of payments;

(f) the normal hours of work;

(g) paid annual leave, and daily and weekly rest periods;

(h) the provision of food and accommodation, if applicable;

(i) the period of probation or trial period, if applicable;

(j) the terms of repatriation, if applicable; and

(k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

Article 8:

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the term s and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

ILO Domestic Workers Recommendation, 2011 (No. 201):

Paragraph 6 provides additional provisions on the contract:

Para. 6(1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.

Para. 6(2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:

(a) a job description;

(b) sick leave and, if applicable, any other personal leave;

(c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;

(d) any other payments to which the domestic worker is entitled;

(e) any payments in kind and their monetary value;

(f) details of any accommodation provided; and

(g) any authorized deductions from the worker's remuneration.

ANNEX X. PROPOSED STRUCTURE OF MODEL STANDARD EMPLOYMENT CONTRACTS BASED ON INTERNATIONAL LABOUR STANDARDS

No.	Key Provisions
1	Name and address of worker / employer
2	Address of workplace
3	Start date and duration
4	Type of work to be performed/Job description
5	Remuneration: rate, regularity, method including opening of bank account in worker's name
6	Overtime provisions
7	Permitted deductions
8	Normal hours of work and rest
9	Weekly rest (24 hours)
10	Annual leave and public holidays
11	Sick pay
12	Maternity leave
13	Social security/insurance; medical provisions
14	Occupational safety and health
15	Food and accommodation
16	Environment free from abuse, harassment and violence
17	Respect for privacy
18	Right to join trade unions
19	Freedom of movement
20	Access to communications
21	Right to keep passport and identity documents
22	Dispute resolution procedure
23	Terms of termination

Source: Based on Holliday 2020

ANNEX XI. STANDARD TERMS OF REFERENCE FOR THE JOINT COMMITTEES OF BILATERAL LABOUR AGREEMENTS [23]

1. Background and rationale

Bilateral agreements and MOUs on labour migration are good practices for States to coordinate on migration policies and decent work for migrant workers.

Being non-binding instruments, MOUs need to be guided by firm principles and administered through accountable procedures and mechanisms to ensure their effective and efficient implementation.

Joint Committees (JCs) are the most important institutions set up by bilateral agreements and MOUs to monitor and follow up on the implementation of the same agreements.

Practice shows however that these structures are usually disregarded or only partially used, depriving the process, set up by the MOUs, of exchanging useful information and making arrangements for improvement, including for strengthening the protection of migrant workers.

MOUs generally have a broad and flexible approach, and are easier to negotiate and modify. As such, JCs represent key decision-making bodies for review of and making amendments to existing agreements and MOUs, allowing for adaptation to changing market conditions and alignment to stronger protection standards.

Below follows a suggested set of common terms of reference for the JCs.

2. Objective/purpose

Monitoring and follow up on the implementation of the agreement.

2.1. Common functions

- Propose means for enhancing coordination between the two parties.
- Review employment opportunities and availability of corresponding skills.
- Monitor and evaluate the progress of selection, placement, employment and reintegration of migrant workers according to protection and labour standards.
- Address possible disputes in the interpretation of provisions of the agreement and propose solutions.
- Propose amendments and improvements of the agreement and related documents.
- Specific tasks agreed by the Joint Committee.

2.2. Principles

- Spirit of collaboration between the two parties and confluence of their respective interests;
- Transparency and accountability;
- Active partnership with relevant social actors and organizations;
- Respect of international human rights and labour standards;
- Gender considerations.

23 Adapted with slight modifications from ILO, "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 (unpublished and restricted).

2.3. Composition and representation

Delegations should include three representatives per country. A standard composition should be represented by the lead ministry, and the overseas administration department.

The presence of alternative or additional delegates (ministry/department) can be agreed by the two parties depending on issues to be discussed, including specific labour markets. Such delegates may come from the Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Justice, among others.

Should a different ministry be the signatory of the agreement/MOU (such as, Labour and Employment or Foreign Affairs), a representative of that ministry should attend.

Each delegation shall be led by a focal point (usually the delegate with more seniority). Participation should be at a high level – Secretary, Deputy Secretary or Director-General level depending on the institutional structure of the country. Delegations' focal points shall have the necessary delegated authority to make decisions on any action, including proposals for amendments.

Gender balance in the representation should be actively encouraged.

2.4. Partners

Based on the decision of the two parties, representatives of civil society organizations; social partners, including trade unions and employers' organizations; migrant workers' groups; recruitment agency associations; UN agencies and regional organizations can be invited to the meetings to present specific topics or provide comments on planned arrangements and measures.

2.5. Chair and reporting lines

The Chairperson shall be the most senior focal point of the delegation of the country hosting the JC meeting or his/her delegate, if so agreed.

The Chairperson will nominate two secretaries (one from each delegation) and will distribute tasks regarding the objectives of the meetings, including taking of notes and reporting.

The JC will report to the leading ministries/agencies of the respective countries responsible for coordinating the governments overseas labour migration policy. Proposals for amendments shall be shared at the national level (national workshops) with key departments, civil society organizations and social partners for comments before finalization by the JC. Finalized amended texts should be exchanged between the two parties through respective diplomatic channels.

2.6. Meetings/venue

The JC shall meet at least once a year alternatively in both countries. Meetings can be held consecutively in the same venue, if so agreed by the JC, for example, due to organizational factors, security reasons, other.

Each party shall take initiative to propose additional meetings should specific issues require discussions and decisions. Email and official correspondence between parties to follow up on deadlines and actions shall also be encouraged.

The office providing the focal point for agreements/MOUs within the relevant ministry shall ensure the recording of all JC reports; follow up with relevant offices/departments on agreed deadlines; and oversee administration of the JC's calendar of meetings.

2.7. Methodology

2.7.1. Agenda and time

The JC meeting will normally be administered in one day. Additional days can be agreed for visits by the JC to workers' sites, training centres, specific related projects and/or to meet with migrant workers, employers, recruitment agency associations.

The agenda shall include as a minimum a review of previous minutes and agreed action points and recommendations, a roundtable on key developments in respective countries relevant for the programme, and a punctual review of key MOU parameters.

The agenda will be agreed by the two parties before the meeting (with the exception of "any

other business" or any development that has emerged concomitantly with the meeting).

The agenda and all other materials (PowerPoint presentations, assessments, external reports and statistics on trends) should be shared and agreed upon in advance, enabling both delegations to have enough time to prepare.

2.7.2. Common formats

A joint format for the JC report shall be agreed upon to ensure homogeneity in the reporting and to allow for coherent progress monitoring of agreed priority issues and indicators.

Spreadsheets with focal point contacta and email/telephone directories will also be shared.

The minutes of the meetings shall be shared with all participants for comments before drafting the final report.

"Do no harm" and confidentiality principles shall be observed and agreed upon in sharing information on individual cases, including migrant workers' complaints. Reports should not include personal details of workers and/or victims.

2.7.3. Interpretation services

Simultaneous interpretation service shall be ensured for the delegations, if needed.

2.7.4. Financial arrangements

Hosting costs to be borne by respective parties individually, if not agreed differently.

ANNEX XII. STANDARD AGENDA FOR MEETINGS OF THE JOINT COMMITTEE/JOINT WORKING GROUP OF THE BLA/MOU

Time	Activity	Description (guideline)
9.00	Welcome of the Chair Introduction of delegations	Appointment of Secretaries
	Administrative/logistic issues Approval of the agenda Rules of the meeting	Inclusion of Any other business Principles/Code of Conduct
9.30	Developments and/or emerging issues in the two countries	Legislative, socio-political, economy, security developments Key events/changes (political/electoral) Attended or upcoming regional and/or international conferences
10.00	Follow up on last JC/JWG meeting	Key information on actions/remedial actions undertaken on critical issues identified in the last JC/JWG meeting and their status
10.45	*Pause*	
11.00	Issues for review: Jobs and skills	Number, gender, timeframe, categories and occupational qualifications of desired (receiving country) and available (sending country) migrant workers
	Orientation/vocational training	Facilities for general education and vocational training Effectiveness of vocational training & on the job training imparted Orientation briefings and measures designed to promote adaptation Certificates and recognition at regional and international level in different industries
	Decent work and protection	Conditions of life and work, expectations and challenges International obligations of parties and status of national legislative provisions Cost of living, minimum wages and allowances, equal remuneration per occupational category and area of deployment

12.30	*Lunch break*	
14.00	(cont'd) Issues for review:	Housing conditions, tools and belongings, transport, supply of water and food Social security, health and occupational safety, medical assistance
	Decent work and protection	Available mechanisms/procedures for complaint and redress; coordination between COO and COD Labour Inspectors/Law enforcement/Courts Settlement of disputes, mediations, prosecutions of employers, changes of employers Incidents, deaths, arrests, detentions, prosecutions of workers
	Administrative provisions	Administrative provisions relating to entry, visa, work permits, overstay, change of employment, migration costs, recruitment fees, travel fees
	Financial arrangements	Low interest loans Bank accounts/funds for migrants' families & children Remittances and transfer of savings Incentives for reintegration
	Other services	Cultural exchanges between migrants and the local population; diaspora meetings; "Migrants day" Collaboration/projects with NGOs and workers organizations
15.45	*Pause*	
16.00	Points for action	Action points and recommendations (deadlines/ responsible offices), Good practices identified Drafting of meeting's report Proposals for MoU/BLA amendments
		Requests for technical assistance
16.45	AOB	
	Next meeting of the JC/JWG	Tentative date, venue, financial coverage
	Closing	

Adapted with slight modifications from ILO, "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 (unpublished and restricted).

ANNEX XIII. ILO STUDIES AND TOOLS ON BLAS 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.

This study 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. [24]

- 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*.

24 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.

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.

- 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.

- 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.

- 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:

- 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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