

Migrant Welfare Systems in Africa

Case studies in selected African Union member States:
Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa



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Acronyms

ACHPR	African Commission on Human and People's Rights
ACMS	African Centre for Migration and Society
ASEAN	Association of Southeast Asian Nations
AUC	African Union Commission
BLA	bilateral labour agreement
BSSA	bilateral social security agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEPGL	Economic Community for the Countries of the Great Lakes
CIPRES	Inter-African Conference on Social Insurance (French: <i>Conférence Interafricaine de la Prévoyance Sociale</i>)
CMW	United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
COMESA	Common Market for Eastern and Southern Africa
CSO	civil society organization
DESA	United Nations Department of Economic and Social Affairs
EAC	East African Community
ECA	United Nations Economic Commission for Africa
ECOWAS	Economic Community of West African States
FFM West Africa	Free Movement of Persons and Migration in West Africa
GFMD	Global Forum on Migration and Development
ICMPD	International Centre for Migration Policy Development
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IOM	International Organization for Migration
ISSA	International Social Security Association
ITUC	International Trade Union Confederation
ITUC-Africa	African Regional Organisation of the International Trade Union Confederation
MGI	Migration Governance Indicators
MIFOTRA	Ministry of Public Service and Labour (Rwanda)
MOU	memorandum of understanding

MoLSA	Ministry of Labour and Social Affairs (Ethiopia)
MSSA	multilateral social security agreement
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
REC	regional economic community
SADC	Southern African Development Community
SDG(s)	Sustainable Development Goal(s)
SSA	United States Social Security Administration
UNDP	United Nations Development Programme
UNHCR	(Office of the) United Nations High Commissioner for Refugees

1 Background and introduction

1.1. Purpose and scope of the report

This report, with the template in Appendix 6 for the design and implementation of a migrant welfare programme by African countries of origin, constitutes the final deliverable under the assignment to develop a model welfare programme or system for the African Union, its member States and African regional economic communities (RECs). A conceptual note on the notion of social protection employed in the report features in [section 1.3](#), and the methodology used to compile the report is described in [Chapter 2](#) (Methodology).

The substantive, thematic dimensions highlighted in this report include the following:

- (a) Challenges faced by international migrants in accessing social protection and the international normative framework – with reference to an indicative range of such challenges; a human rights approach to the treatment of migrant workers; obligations of countries of destination; measures undertaken by countries of origin; and relevant bilateral and multilateral agreements;
- (b) Labour migration trends and characteristics – specifically those pertaining to six selected countries of origin (Ethiopia and Kenya (East Africa), Côte d'Ivoire and Ghana (West Africa), and Mauritius and South Africa (Southern Africa), and including continental and regional labour migration patterns in East, Southern and West Africa, and labour migration to member States of the Gulf Cooperation Council (GCC);
- (c) Social protection and support services for migrant workers extended by selected countries of destination (Kenya and Rwanda (East Africa), Côte d'Ivoire and Ghana (West Africa), Egypt (North Africa),¹ Mauritius and South Africa (Southern Africa), and Kuwait (GCC)) – highlighting applicable legal, policy and related arrangements, including bilateral and multilateral agreements and arrangements, as well as enumerating legal, institutional, labour-market, administrative and other barriers to accessing these services (migrant workers' access to informal social protection was meant to be included in the discussion; however, sufficient reliable information on this could not be obtained);
- (d) Social protection and support services for migrant workers extended by six selected countries of origin – emphasizing applicable legal, policy and related arrangements, including bilateral and multilateral agreements and arrangements, that address legal, institutional, labour-market, administrative and other barriers to accessing these services (migrant workers' access to informal social protection was meant to be included in the discussion; however, sufficient reliable information on this could not be obtained);

¹ In this report, Egypt is treated primarily as a country of destination. Of course, Egypt is also a country of origin – in fact, according to *World Migration Report 2020*, it was the African country with the largest number of people living abroad in 2019 (IOM, *World Migration Report 2020* (Geneva, 2019), p. 57).

- (e) Comparative examples of migrant worker welfare programmes – including an overview of global developments, as well as local ones, particularly those in Bangladesh, Indonesia, Nepal, the Philippines, Sri Lanka and Canada (the last one as an example of a framework developed by a destination country);
- (f) Selected high-level conclusions and recommendations.

1.2. Migrant welfare funds: Description, objectives and operational framework

The International Labour Organization (ILO) describes migrant welfare funds, lists their objectives and indicates the operational frameworks that underlie them:

A migrant welfare fund (MWF) is a self-sustaining mechanism that enables the governments of countries of origin to provide additional welfare benefits and services to their migrant workers in countries of destination using a fund grown from the initial capital investment of foreign employers, recruitment agencies and/or the migrant workers [themselves]. In practice, such funds may supplement the social security benefits and compensation of migrant workers; provide access to mediation and conciliation services between foreign employers and migrant workers; compensate for illness, injury, disability and death sustained by workers while abroad; assist in the successful reintegration of migrant workers; and provide emergency and repatriation services to migrants in distress and/or during crisis situations. The capital contribution to such a fund and its management, disbursement of benefits, and qualifications for membership, as well as the monitoring of the implementation and reinvestment of the fund's capital are subject to the specific laws and policies of a country. Additional benefits may also be extended to the families of migrant workers who are left [behind] in countries of origin.²

1.3. Social protection: A conceptual note

Protective measures highlighted in this report go beyond the common notion of **social security** as a set of measures providing benefits, whether in cash or in kind, to secure protection from identifiable **social risks**, including by preventing poverty and vulnerability throughout the **life cycle**. Other forms of protection, understood to be included under the broader concept of **social protection** and its related support services, that fall within the scope of this report include worker-friendly contractual arrangements and work conditions (among other arrangements that positively impact the welfare of migrant workers and their families, e.g. reducing the cost of sending remittances, improving remittance infrastructure through technology and increasing access to formal remittances for irregular migrants), as well as legal and other forms of assistance rendered by governments and other role players. As such, this report makes references to the social protection of migrant workers and their families – including specific social security arrangements, whether contributory or non-contributory.³

² ILO, *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar*, policy brief issue no. 3, November (Geneva, 2015), pp. 1–2. See also: Katharine Jones, *Recruitment Monitoring & Migrant Welfare Assistance: What Works?* (Dhaka, IOM, 2015), p. 129; Iván Martín and Shushanik Makaryan, *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (Turin, Italy, European Training Foundation, 2015), p. 51.

³ Marius Olivier, “Viet Nam social security law reform: an integrated framework”, report (Geneva, ILO, 2020).

1.4. Limitations

The report captures information distilled from a literature review and a (limited) qualitative investigation, as discussed in [Chapter 2](#) (Methodology). However, the information obtained is incomplete in some respects, resulting in knowledge gaps – including, for example, in the degree to which migrants rely on informal social protection, resulting in this topic being barely discussed in this report. Lastly, while the report covers migrant workers, it does not specifically reflect on the position of refugees and asylum seekers.



2 Methodology

The topics covered in this report are informed, first, by a literature review of both primary and secondary sources. Second, qualitative research questionnaires were distributed among a limited number of governmental and non-governmental stakeholders (e.g. recruitment agencies, civil society organizations (CSOs), and research and academic institutions) in both countries of origin and countries of destination, and were meant to guide subsequent in-depth interviews. A number of completed questionnaires were received back from a few stakeholders in some of the countries under study. Despite the assistance provided by some IOM focal persons to arrange for the in-depth interviews, including with expert international and regional organizations, only a small number of them materialized. Constraints imposed by COVID-19-related travel bans and lockdowns made in-loco interviews in countries of origin and destination impossible. Meetings therefore had to take place virtually, which posed certain challenges, partly due to unreliable Internet connectivity. Nevertheless, despite these constraints, it was still possible to integrate into the report responses obtained from completed questionnaires and interviews held. Third, while survey questionnaires for African migrant workers abroad and returned migrant workers were made available online, feedback from only a few respondents were received despite best efforts, including through interventions by the African Union Commission (AUC). This rendered results insufficient from a quantitative research methodology perspective. Diaspora organizations and networks working with the diaspora in GCC countries appeared to be particularly reluctant to participate in the survey – a tendency attested to by the AUC.⁴

⁴ E-mail received from the Diaspora Division of the Citizens and Diaspora Organizations Directorate (CIDO) of the AUC on 8 March 2021.



3 The international normative framework and challenges faced by international migrants in accessing social protection

3.1. Challenges faced by international migrants in accessing social protection⁵

Globally, migrant workers face significant challenges with access to social security generally and the portability of social security benefits specifically. The following conclusion reached in a 2008 study succinctly summarizes the key challenges – not only in the ASEAN region, but, in fact, worldwide:

In the majority of the world's countries, including many ASEAN members, the legislative barriers limiting migrant workers' access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Moreover, in some countries, migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented.⁶

3.1.1. Immigration status and legal challenges: nationality, territoriality and related barriers

Migrant workers in and from Africa, including those migrating to GCC countries, are exposed to legal barriers – that is, they are often legally excluded from accessing social security. This exclusion could be the result of their specific **immigration status** (e.g. in the case of undocumented migrant workers), which generally makes them ineligible for access to benefits. In some countries, only permanent residents and/or long-term migrant workers have access to most forms of contributory social security as a rule. In other cases, a **social security law** might exclude specific categories of migrant workers or migrant workers as a whole, with the exclusion likewise applied to their family members. Non-contributory forms of social security support are, by and large, restricted to citizens and, at times, permanent residents. Migrant workers are therefore often subject to restrictions based on **nationality**. In addition, they may be required to hold residence in a country for a particular minimum period before they can access certain social security benefits. Also, due to restrictions based on the principle of **territoriality**, social security arrangements may not apply beyond the borders of country issuing the benefits. As noted in the second edition of *Report on Labour Migration Statistics in Africa* by the African Union:

⁵ Adapted from: Marius Olivier, "Portability of social security for migrant workers in Asia", in: Asian Development Bank (ADB), ILO and OECD, *Building Partnerships for Effectively Managing Labor Migration: Lessons from Asian Countries* (Tokyo, ADB; Paris, OECD; and Bangkok, ILO, 2019). Available at www.adb.org/publications/building-partnerships-effectively-managing-labor-migration.

⁶ Edward Tamagno, *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements* (Geneva, ILO, 2008), pp. 1–2.

There are two critical concepts regarding social protection for migrant workers: access and portability. The principle of “nationality” in social security legislation often leads to less favourable treatment of non-national workers in destination countries. Although a number of countries recognize the principle of equal treatment of nationals and non-nationals, migrant workers may, in practice, be denied or given only limited access to social protection because of their status or nationality, or because they have not worked or resided long enough in the host country. Specific categories of migrant workers (e.g. domestic and informal sector workers) may face additional barriers. As pointed out in ILO (2016): “Migrant domestic workers, estimated at approximately 11.5 million persons worldwide, face even greater discrimination than that experienced by domestic workers in general. Approximately 14 per cent of countries whose social security systems provide some coverage for domestic workers do not extend the same rights to migrant domestic workers.”

The principle of “territoriality” limits the scope of application of social security legislation to the territory of the State in which it is enacted. Consequently, migrant workers may lose coverage under the social protection scheme of their home country. In addition, territoriality may result in restrictions on the portability of accrued rights and the coordination of benefits abroad, in the absence of bilateral and multilateral social security agreements.⁷

3.1.2. Weak provisions in bilateral labour agreements and the absence of bilateral social security agreements

Bilateral labour agreements (BLAs), including memorandums of understanding (MOUs) between African countries, may extend labour rights protection to (documented) migrant workers, but rarely do they make provisions for meaningful social security coverage.⁸ Also, the general lack of bilateral social security agreements (BSSAs) between African countries and GCC countries, and often also between African countries themselves, contributes to the legal exclusion of African migrant workers. Such agreements would invariably provide for equal access by nationals and non-nationals to the social security benefits granted under them. In addition, they generally provide for the portability of benefits and other social security coordination principles, such as allowing migrant workers to fulfil the required qualifying periods for entitlements by aggregating periods of contributions from all countries where they have even been employed. However, where bilateral and multilateral social security agreements (BSSAs and MSSAs) exist, they tend to cover only migrant workers in formal employment, leaving migrants working in the informal economy without any significant level of protection.⁹

3.1.3. Labour market challenges

There are also challenges related to the **labour market status** of migrant workers. In some African countries, coverage is denied to all workers – including national workers – in certain categories of work, for example, domestic work. Informal workers generally fall outside the scope of social security laws, which typically cover only workers in the formal economy (i.e. those working for an employer in an identifiable employment relationship). This is particularly problematic in developing African countries, given that a large percentage of intra-African migrant workers work informally.

⁷ African Union, *Report on Labour Migration Statistics in Africa* (2017), (second edition, Addis Ababa, AUC, 2019), pp. 47–48.

⁸ Piyasiri Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Geneva, ILO, 2015); Clara van Panhuys, Samia Kazi-Aoul and Geneviève Binette, “Migrant access to social protection under bilateral labour agreements: A review of 120 countries and nine bilateral arrangements”, *Extension of Social Security (ESS) working paper no. 57*, (Geneva, ILO, 2017), p.3.

⁹ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 48.

3.1.4. Administrative and other challenges

Other shortcomings include challenges related to **administrative practice, immigration policy, language barriers** and related obstacles. Often, a passport or nationality registration document is required by authorities, which not all migrant workers may have ready access to. Migrant workers eligible for membership may also be required to be registered and paid-up members before they are entitled to draw benefits from a social security scheme. Furthermore, restrictions may be imposed on the ability of migrant workers to change employers – an existing practice in several countries of destination, especially certain Gulf countries. Closely related to this point is the broader issue that migrant workers whose employment contracts have come to an end often have to leave the destination (or host) country within a short time. The result is that these workers invariably fail to access social security benefits because of time constraints, even in instances where they may otherwise be entitled to such benefits. This highlights the need to ensure better alignment between immigration law and policy, on the one hand, and social security protection, on the other.

3.1.5. Challenges in relation to the nature of social protection schemes

In some countries with retirement provident fund schemes – and, at times, in the case of pension schemes as well – migrant workers eligible to receive benefits may take a lump-sum withdrawal from their accrued pension contributions upon departure from the country at the end of their contract. It needs to be pointed out that a lump-sum payment provides limited protection compared to regular pension payments.¹⁰ Furthermore, access to long-term benefits (such as a pension) usually require a rather long period of contributions – a requirement that effectively disqualifies many migrant workers. From an African perspective, it has been noted that “[u]nlike nationals, migrant workers often fail to qualify for benefits under contributory social insurance schemes, owing to shorter periods of employment and residence or because of their status as non-nationals. The lack of bilateral or multilateral agreements may prevent migrant workers from continuing to receive benefits when they move from one country to another. This is particularly true of long-term benefits (e.g. invalidity, old-age and survivors’ benefits) for which the qualifying periods are often considerable.”¹¹

3.1.6. Voluntary schemes, less beneficial arrangements and lack of effective coverage

Some countries provide voluntary migrant worker coverage arrangements. Of course, voluntary coverage often means incomplete coverage – in the absence of compulsion, workers, including migrant workers, are unlikely to contribute due to, among others, financial considerations; migrant workers are therefore left without appropriate coverage. Also, in some countries, particularly in Asia, separate but less beneficial schemes have been established for migrant workers. This may be the case even in a country that has ratified the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) or any other similarly focused international instrument that requires equal treatment of national and foreign workers. Finally, although equality of treatment may be formally recognized as policy, many migrant workers are not insured against, among others, occupational injuries and diseases. This may be due to their undocumented status, the non-compliance of employers, and migrants’ lack of awareness of their rights, language barriers, onerous administrative procedures and other factors.

¹⁰ Cheng Boon Ong and Céline Peyron Bista, *The State of Social Protection in ASEAN at the Dawn of Integration* (Bangkok, ILO, 2015), p. 21.

¹¹ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 48.

3.1.7. Inadequate exit provisions, protection abroad and return arrangements

Also impacting migrant workers is the inadequate regulation of: (a) exit arrangements (including the regulation of private recruitment agencies), (b) their protection while abroad and (c) arrangements in relation to their return.

3.1.8. Limited social protection coverage in Africa

The second edition of Report on Labour Migration Statistics in Africa notes:

...[C]overage is limited in many countries and regions. The ILO (2017) estimates that only 45 per cent of the world's population is covered by at least one social protection benefit (relevant to SDG indicator 1.3.1). In Africa, this proportion is even lower, namely 17.8 per cent. On the whole, social protection coverage is much lower in Africa than the world average. Statistics on the social protection coverage of migrants and their families are generally scanty or non-existent, but coverage is likely to be much lower than for the rest of the population because migrant workers face greater obstacles in accessing social protection.¹²

3.1.9. Conclusion: Migrant workers are at a double disadvantage

Migrant workers are doubly disadvantaged because they receive less social protection both at home and in the host country. In host (or destination) countries, they are often excluded from tax-financed schemes, such as social assistance programmes and social pension schemes, despite contributing to the host country economy through work, consumption and taxation.¹³ Recognizing these issues, several countries have moved to compensate for the shortfall among their often-large migrant worker populations abroad. Still, the large majority of migrant workers “do not have the option of enrolling in their own national social security systems or that of the host country, or they cannot transfer the accrued contributions or entitlements between social security systems.”¹⁴

3.2. A human rights approach to social protection

3.2.1. Universal recognition and value of social protection as a human right

At the global level, social protection, understood in the narrower social security sense, is recognized as a right accruing to everyone. This much appears from the provisions in, among others, the Universal Declaration of Human Rights (1948) (in particular, arts. 22 and 25), and the International Covenant on Economic, Social and Cultural Rights (1966) (in particular article 9). The principle is embedded in the Sustainable Development Goals (SDGs), with some SDG targets (e.g. 1.3, 3.8, 5.4 and 10.4) referring explicitly to it. Social protection is also one of the pillars of the ILO concept of “decent work”. In sub-Saharan Africa, several studies have found that social protection has a consistently positive impact on poverty reduction, nutrition and food security, and other human development outcomes.¹⁵

3.2.2. The Banjul Charter: an African Union instrument endorsing social protection as a human right

The right to social security – and, for that matter, the right to social assistance – is not specifically protected in the foundational human rights instrument of the African Union, the African Charter

¹² Ibid., p. 47.

¹³ Ong and Peyron Bista, *The State of Social Protection in ASEAN* (see footnote 10), pp. 51–52.

¹⁴ Ibid., p. 53. See also: ILO Convention 157 (Maintenance of Social Security Rights Convention) of 2 June 1982.

¹⁵ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 47.

on Human and People's Rights (the "Banjul Charter"), which has been ratified by all 55 African Union member States. Nevertheless, as noted by the African Commission on Human and Peoples' Rights (ACHPR), in its Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the Banjul Charter, this right can be derived from a joint reading of a number of rights guaranteed under the Charter, including (but not limited to) the rights to life, dignity, liberty, work, health, food, protection of the family and protection of the aged and the disabled, in addition to the right to be strongly affirmed in international law.¹⁶ The Charter further stresses that the right to social security imposes, among others, the following obligations on States parties:

Minimum core obligations

a. Ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education consistent with human life, security and dignity; ...

National plans, policies and systems

...b. Take effective measures to fully realize the right of all persons to social security, including social insurance. These measures include: ... 2. Non-contributory schemes such as universal or targeted social assistance (where benefits are received based solely on need); ...

Vulnerable groups, equality and non-discrimination

...j. Ensure that all persons, especially individuals belonging to vulnerable and disadvantaged groups, are covered by the social security system, in order to ensure universal coverage, non-contributory schemes will be necessary.¹⁷

3.2.3. Other African Union instruments endorsing social protection as a human right

Similarly, the African Union Social Policy Framework argues for the extension of social protection through measures such as publicly financed, non-contributory cash transfers.¹⁸ The framework notes that there is a consensus for a **minimum package** of essential social protection to cover essential benefits, including health care, for children, informal workers, the unemployed, older persons and persons with disabilities. The idea of a minimum package of support to be extended to vulnerable persons is also reflected in other African Union instruments, notably the Social Protection Plan for the Informal Economy and Rural Workers (SPIREWORK).¹⁹ In fact, there is a clear tendency for recent African Union legal instruments concerning particular **vulnerable groups** to include social protection, as well as social assistance, as critical components. For example, the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa (2016), among others, stipulates that States parties shall:

Article 5: Right to make decisions. States Parties shall: ... (2) Ensure that, in the event of incapacity, Older Persons shall be provided with legal and social assistance in order to make decisions that are in their best interests and well-being;

...

¹⁶ ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Banjul, 2010), para. 81.

¹⁷ Ibid., para. 82(a).

¹⁸ African Union, Social Policy Framework for Africa (Addis Ababa, 2008), para. 31.

¹⁹ African Union, Social Protection Plan for Informal Economy and Rural Workers (SPIREWORK) (Addis Ababa, 2011), paras. 10 and 27.

Article 7: Social protection. States Parties shall: ... (2) Ensure that universal social protection mechanisms exist to provide income security for those Older Persons who did not have the opportunity to contribute to any social security provisions; ...

3.2.4. Subregional instruments and African national constitutions that also subscribe to the principle of social protection as a human right

The 2007 Code on Social Security in the Southern African Development Community (SADC), for example, provides that anyone in the SADC region who has insufficient means to support their and their dependants' subsistence should be entitled to social assistance in accordance with the level of socioeconomic development of the member State providing such assistance (para. 5.1). The right to social assistance is specifically extended to those in need who are old, unemployed or dependent on economic survival (subsistence) activities, and disabled (paras. 10.1, 11.1 and 14.1). The constitutions of several African countries also recognize social protection (particularly in the social security sense) as a human right. Examples are section 27 of the Constitution of South Africa and section 43 of the Constitution of Kenya.

3.3. Country-of-destination obligations to migrant workers²⁰

3.3.1. Key United Nations and ILO instruments with provisions for social security to migrant workers and their families

Several United Nations and ILO instruments uphold key standards relating to the social security of migrant workers. The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) stipulates, in its article 68, that “[n]on-national residents shall have the same rights as national residents” and adds the proviso that in the case of benefits paid out of public funds, among others, other rules may apply, implying that non-contributory arrangements (particularly those regarding social assistance) do not have to be extended to non-citizens. Other key ILO and United Nations instruments are as follows (the first three place emphasis on migrant workers' rights and the last three focus on promoting the equal treatment of migrants):

- (a) ILO Migration for Employment Convention (Revised), 1949 (No. 97), which, in its article 6, establishes the principle of equality of treatment with respect to social security;
- (b) ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which, in its article 9, addresses the problem of migrant workers in irregular situations and stipulates that they should enjoy equality of treatment with respect to rights arising out of past employment as regards remuneration, social security and other benefits;
- (c) United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990;
- (d) ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19);
- (e) ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118);
- (f) ILO Maintenance of Social Security Rights Convention, 1982 (No. 157), which calls for the maintenance of acquired rights and rights in the course of acquisition by providing for the cumulation of qualifying periods completed in different countries.

²⁰ Adapted from: Marius Olivier, “Portability of social security for migrant workers in Asia” (see footnote 5).

In addition, the ILO Social Protection Floors Recommendation, 2012 (No. 202) sets out four basic social security guarantees that should be available to all residents of a country, whether nationals or non-nationals. Other relevant instruments include the ILO Domestic Workers Convention, 2011 (No. 189), given the large number of migrants doing domestic work.²¹ Furthermore, the ILO Private Employment Agencies Convention, 1997 (No. 181) requires that migrant workers recruited via private employment agencies (PEAs) enjoy adequate statutory social security benefits (arts. 11 and 12). In addition, recently:

... in adopting the Global Compact for Safe, Orderly and Regular Migration (2018), many United Nations Member States committed themselves to ensuring that migrant workers at all skill levels have access to social protection in their countries of destination, and to upholding the portability of applicable social security entitlements and benefits earned by migrant workers in their countries of origin.²²

3.3.2. Core principles emanating from standards upheld in United Nations and ILO instruments

Two of the key principles can be summarized as follows:

- (a) International standards do not draw a distinction between workers based on nationality:

[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses, such as, for example, Convention [No.] 102 of 1952.²³

This is informed by a consideration of migrants' humanity, the recognition of their vulnerable status and the adoption of a human rights approach, as reflected particularly in article 17 of the ICRMW.

- (b) As per article 28 of the ICRMW, migrant workers (including undocumented migrant workers) and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health, based on the principle of equality of treatment with nationals of the State concerned. It has been remarked: "Entering a country in violation of its immigration laws does not deprive migrants of the fundamental human rights provided by human rights instruments...nor does it affect the obligation of States to protect migrants in an irregular situation".²⁴

3.3.3. Beyond the principle of reciprocity: a human rights approach to extending social protection to migrants/migrant workers

Older ILO conventions relied on the principle of reciprocity, requiring each ratifying member State to extend the same social protection (particularly in the social security area(s) covered by the particular convention) available to its national workers to migrant workers from the other ratifying

²¹ Article 14 of the Convention requires that domestic workers should enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

²² African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 48.

²³ Nilim Baruah and Ryszard Cholewinski, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (Vienna, OSCE; Geneva, IOM; and Geneva, ILO, 2006).

²⁴ ILO, *Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration* (Geneva, 2006), paras. 9–10.

States.²⁵ Modern coordination instruments (especially BSSAs and MSSAs – a more thorough discussion of which is available in [section 3.5](#) of this report) have reduced the role of citizenship and reciprocity in determining eligibility for social protection. Protection is increasingly based on a **human rights understanding** of the need of migrant workers to be protected through social protection arrangements – that is, informed by a consideration of migrants’ humanity, the recognition of their vulnerable status and the adoption of a human rights approach, reflected in particular in article 27 of the ICRMW. This is also evident in the existing international standards framework,²⁶ with relevant international human rights instruments espousing the general principle that all persons, by virtue of their essential humanity, should enjoy all human rights “unless exceptional distinctions, for example, between citizens and non-citizens, serve a legitimate State objective and are proportional to the achievement of that objective”.²⁷ As previously mentioned (in [section 3.3.2](#) of this report), it has also been remarked that:

[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses, such as, for example, Convention 102 of 1952.²⁸

Therefore, equal treatment of nationals and non-nationals is, in fact, no longer dependent on reciprocity – a tendency observed in recent United Nations and ILO instruments.²⁹ For example, the ILO Social Protection Floors Recommendation, 2012 (No. 202) suggests the extension, in principle, of a national social protection floor to “all residents”.

3.3.4. Key social security implications as regards documented workers’ access to social protection

Within the existing international standards framework, States should ensure equality of treatment for (documented) migrant workers and their families in relation to access to housing, including social housing schemes, social and health services, unemployment benefits, and unemployment services, provided that conditions are met and subject to immigration terms (as per arts. 43 and

²⁵ See, for example: ILO Convention 19 (Equality of Treatment (Accident Compensation) Convention) of 19 May 1925, available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C019; and, of wider application, ILO Convention 118 (Equality of Treatment (Social Security) Convention) of 6 June 1962, available at www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312263. The latter Convention requires member States to guarantee equality of treatment of social security provisions for migrant workers for any or all of the nine branches of social security that are in force in their territory and for which they agree to be bound.

²⁶ United Nations General Assembly resolution 2200A (XXI) on the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966 (A/RES/21/2200). Available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en. See also the interpretation accorded to article 27 of the UNMWC in: United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19 on the right to social security of 4 February 2008 (E/C12/GC/19).

²⁷ David Weissbrodt, “Final report on the rights of non-citizens”, 26 May 2003 (E/CN.4/Sub.2/2003/23). Available at <http://hrlibrary.umn.edu/demo/noncitizenrts-2003.html>. (In its General Comment No. 15 (The position of aliens under the Covenant), the United Nations Human Rights Committee explained that “the rights set forth in the Covenant [on Civil and Political Rights] apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness...The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.” (See also: David Weissbrodt, “Prevention of discrimination: The rights of non-citizens”, progress report of the Special Rapporteur, of 3 June 2002 (United Nations document no. E/CN.4/Sub.2/2002/25/Add.1), paras. 14, 50, 51, 63 and 66.))

²⁸ Baruah and Cholewinski, *Handbook on Establishing Effective Labour Migration Policies* (see footnote 23), pp. 154–155.

²⁹ United Nations General Assembly resolution 45/158 on the International Convention on the Protection of Rights of All Migrant Workers and Their Families (ICRMW), adopted on 18 December 1990 (A/RES/45/158), art. 27. (The position appears to be particularly nuanced: There is a discernible trend, confirmed by both international standards and State practice, towards affording “enhanced protection to regular and longer-term migrant workers, often with reference to key principles operative in this domain, such as the lawful residence, lawful employment and means of subsistence criteria” (Marius Olivier, “Social protection for migrant workers in ASEAN: Developments, challenges, and prospects”, report (Bangkok, ILO, 2018), p. 120. Available at www.ilo.org/asia/publications/WCMS_655176/lang--en/index.htm).

45 of the ICRMW). States should also guarantee equal enjoyment of social security provisions for migrant workers for any or all of the nine areas of social security through instruments that are in force in its territory and for which it agrees to be bound.³⁰ Furthermore, social security rights should be retained when workers move from one country to another, with acquired rights being exportable to home countries (or to the countries to which migrant workers remigrate) – BSSAs and MSSAs should be designed to support this.³¹ In any case, there is a discernible trend, in both international standards and State practice, towards affording enhanced protection to regular and longer-term migrant workers, often with reference to key principles operative in this domain, such as the lawful residence, lawful employment and means-of-subsistence criteria.³²

3.3.5. Protection of undocumented migrant workers: normative considerations

Irregular/undocumented (im)migrant workers enjoy paltry social security protection³³ At best, they may be entitled to (rarely specifically defined) emergency health care and, presumably, some other basic or essential form(s) of assistance. It has been noted that international law explicitly provides for equal treatment with nationals in relation to social security, provided that irregular migrant workers fulfil the relevant national and international legal requirements.³⁴ International law further provides for equal treatment of regular migrant workers, but only with respect to social security rights arising out of past employment.³⁵ In fact, the United Nations High Commissioner for Human Rights has concluded that although “there may be grounds, in some situations, for differential treatment between migrants and non-migrants in specific areas”, these will be permissible only for “as long as minimum core obligations are not concerned: differentiations cannot lead to the exclusion of migrants, regular or irregular, from the core content of economic, social and cultural rights...”³⁶ Regarding pathways to regularizing the status of undocumented migrants, note should be taken of relevant provisions of the United Nations Global Compact for Safe, Orderly and Regular Migration (2018). For example, under its objective 5, aimed at enhancing the availability and flexibility of pathways for regular migration, the Compact stresses the following actions in relation to migrants affected by natural disasters, among others:

- ...
- (g) Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to

³⁰ ILO Convention 118 (Equality of Treatment (Social Security) Convention) of 6 June 1962. Available at www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312263. The provision is dependent upon the home country of the migrant also being a party to ILO Convention 118, and to specific conditions regarding the use of public funds.

³¹ ILO Convention 157 (Maintenance of Social Security Rights Convention) of 2 June 1982. Available at www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312302.

³² The concept of **lawful residence** has been utilized by countries to provide different levels of protection: enhanced protection offered to “lawful residents”, on the one hand, and lesser recognition afforded to the rights of irregular or undocumented residents, on the other. Requiring a **minimum level of subsistence** on the part of migrants (also referred to as a “means-of-subsistence test”) has permitted countries to develop their own financial criteria for granting lawful residence status to migrants. Migrants who are unlikely to be able to support themselves and their dependants are refused admission to a country that has such a requirement; similarly, (temporary) migrants who become dependent on State support may be refused continued residence based on this principle. **Lawful employment** is required to ensure continued employment and, often, as a precondition for (social insurance) benefits to accrue to (certain categories of) non-citizens.

³³ Regional United Nations Issue-Based Coalition on Social Protection (IBC-SP), “Social protection responses to the COVID-19 crisis in the MENA/Arab States region”, paper (New York, United Nations, 2020), pp. 4 and 6. Available at <https://socialprotection.org/discover/publications/social-protection-responses-covid-19-crisis-mena-arab-states-region>.

³⁴ Klaus Kapuy, “The social security position of irregular migrant workers: New insights from national social security law and international law”, paper (Cambridge, United Kingdom, Intersentia, 2011). See also: United Nations, ICRMW, art. 27(1) (see footnote 29).

³⁵ ILO Convention 143 (Migrant Workers (Supplementary Provisions) Convention) of 24 June 1975, art. 9(1). Available at www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/ILO_C_143.pdf.

³⁶ Report of the United Nations High Commissioner for Human Rights of 1 June 2010 (E/2010/89), para. 14. Available at www.refworld.org/docid/4d904c7c2.html.

sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible.

- (h) Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible...³⁷

3.3.6. Protection of undocumented migrant workers: regularization arrangements to enhance access to social protection

Regular/documented migrant status provides not only in-principle access to labour market in countries of destination, but also pathways towards at least contributory social security and, if possible, wider social protection services. It is therefore important to invest in regularization initiatives. Examples of such interventions include Thailand’s National Verification Process (for nationals of Cambodia, Lao People’s Democratic Republic and Myanmar) and South Africa’s special permit regimes for nationals of Angola, Lesotho and Zimbabwe. In Portugal, given the COVID-19 context, the Government decided to regularize all foreign workers with pending residential visa requests, granting them access to the health-care system and the same social rights otherwise available only to nationals.³⁸

3.3.7. African instruments supporting the extension of social protection to migrant workers

The extension of social protection to all, including migrant workers, is a priority for the African Union and its member States. The principle of equal treatment of migrant workers is emphasized in, among other, the African Union’s Agenda 2063 (“The Africa We Want”) and the African Union (Revised) Policy Framework for Africa and its Plan of Action 2018–2030. Also, under the AU–ILO–IOM–ECA Joint Labour Migration Programme for Africa, the project partners are implementing the project, “Extending access to social protection and portability of benefits to migrant workers and their families in selected regional economic communities in Africa”.

3.3.8. The normative impact on African migrant workers of social protection priorities included in the overarching strategic framework of African Union–ILO collaboration

Several developments are worth highlighting:

- (a) **Ouagadougou +10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa (2015).**³⁹ One of the six key priority areas of the Plan of Action is Key Priority Area 3 on Social Protection and Productivity for Sustainable and Inclusive Growth. Its expected outcome is “extend[ing] social protection floors coverage to the excluded”

³⁷ United Nations General Assembly resolution 73/195 on the Global Compact for Safe, Orderly and Regular Migration, adopted on 19 December 2018 (A/RES/73/195), para. 21.

³⁸ Regional United Nations Issue-Based Coalition on Social Protection, “Social protection responses to the COVID-19 crisis in the MENA/Arab States region” (see footnote 33).

³⁹ The declaration and plan of action were adopted by African heads of State and government during the Twenty-fourth Session of the African Union Assembly in 2015.

(i.e. including migrant workers). For Key Priority Area 5 on Labour Migration and Regional Integration, the expected outcome is stated as follows: “Social security [is] extended to migrant workers and their families through access and portability regimes compatible with international standards and good practice”.

- (b) **AUC–ILO Joint Operational Plan 2019–2021.** The Plan’s goal to “promote the extension of social protection to workers in the informal economy and rural sectors” has particular significance for African migrant workers, given that a large number of them are in the informal economy.
- (c) **Abidjan Declaration and its Implementation Plan (2019).** The Declaration on “advancing social justice: shaping the future of work in Africa” seeks to guide African Union–ILO cooperation and stipulates the following priorities:

...

- (b) Strengthening the capacities of all people to benefit from the opportunities of a changing world of work through: ... (iii) progressively extending sustainable social protection coverage”; ...
- (c) Strengthening the efficiency of the institutions of work to ensure adequate protection of all workers through: ... (iii) ensuring effective and comprehensive action to achieve transition to formality in conformity with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); ...⁴⁰

The implementation plan lists the following actions, among others:

...

- (d) comprehensive measures for removing policy and regulatory barriers to formalization, in line with Recommendation No. 204, and enhancement of competitiveness and sustainability of formal sector enterprises;
- (e) comprehensive measures for progressive extension of social protection coverage.⁴¹

3.3.9. Interpreting the extent of social protection available to migrants in the African Charter on Human and Peoples’ Rights

In interpreting the foundational African Union instrument – that is, the African Charter on Human and Peoples’ Rights of 1982 – its key monitoring body, the ACHPR, has made it clear that (both regular and irregular) migrant workers are to be regarded as vulnerable and disadvantaged groups. Hence, States should recognize and take steps to combat intersectional discrimination based on, among others, migration status; ensure that migrants are covered by the social security system and have physical access to social security services; and ensure that members of the families of migrant workers enjoy equality of treatment with their nationals with regard to access to education, social and health services and participation in cultural life.⁴²

⁴⁰ ILO, Abidjan Declaration on Advancing Social Justice (“Shaping the future of work in Africa”), adopted on 6 December 2019 (AFRM.14/D.4(Rev)).

⁴¹ Ibid., para. 2.

⁴² ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter (see footnote 16).

3.3.10. Subregional instruments and documents that also subscribe to social protection for migrant workers

In particular, provision is made for equal treatment in relation to (contributory) social security and access to, as well as portability of, social security benefits in several REC instruments. This is apparent, for example, in the case of West Africa, from the provisions of the General Convention on Social Security of Member States of ECOWAS (2013); and, in the case of the SADC region, from the provisions of the SADC Code on Social Security (2007), the SADC Cross-border Portability of Social Security Benefits Policy Framework (2016), the Guidelines on the Portability of Social Security Benefits in SADC (2020), the SADC Labour Migration Action Plan 2013–2015 (renewed for 2016–2019 and again for 2020–2025) and the SADC Labour Migration Policy Framework (2014).

3.4. Country-of-origin measures to protect migrant workers⁴³

3.4.1. Unilateral interventions to extend social protection to migrant workers abroad: a growing reality

As a matter of principle of international law, countries generally assume responsibility for their nationals or citizens living and working abroad, at least in terms of providing them with diplomatic protection. This sense of responsibility has not necessarily translated to extending social protection to these migrant workers. At any rate, given the weak protection typically available to migrant workers in many countries of destination, the unilateral extension of social security and supportive measures by countries of origin has become a growing reality. Chapter 7 of this report is dedicated to an overview of developments and dedicated country experiences are discussed in more detail. Here we provide an overview of characteristics and key developments.

3.4.2. Main forms of unilateral interventions

Unilateral interventions take two main forms and include:

- (a) The adoption of constitutional guarantees and statutory frameworks facilitating the protection of migrant workers abroad, for example: the 1979 Emigration Ordinance and the 1979 Emigration Rules of Pakistan; the 2008 Constitution of Ecuador,⁴⁴ the 1987 Constitution of the Philippines and the 2013 Constitution of Viet Nam; the Migrant Workers and Overseas Filipinos Act (1995) and the more recent Filipino Overseas Workers Welfare Administration Act (2015);⁴⁵ Mexico's migration law and regulations;⁴⁶ and the Law on Vietnamese Workers Working Abroad Under Contract (2006);

⁴³ Adapted from: Marius Olivier, "Extending social protection to Vietnamese workers abroad", report (Geneva, ILO, 2020). See also: Marius Olivier, "Social protection for migrant workers abroad: Addressing the deficit via country-of-origin unilateral measures?", in: *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (M. McAuliffe and M. Klein Solomon, conveners) (Geneva, IOM, 2017), pp. 79–90.

⁴⁴ Article 11(2) of the 2008 Constitution of Ecuador provides for "universal citizenship", that is, citizenship irrespective of where a person resides. Articles 416(6) and 416(7) state that every person shall be equal and possess the same rights, duties and opportunities, and nobody shall be discriminated against on any ground, including migratory condition (i.e. migratory status). The constitutional imperative to protect Ecuadorians abroad is further reflected in the National Plan for Foreign Policy (Spanish: *Plan Nacional de Política Exterior*) 2006–2020, which establishes "protection to emigrants" as one of the priority axes of Ecuadorian foreign policy.

⁴⁵ Section 2 of the Philippines' Overseas Workers Welfare Administration Act of 2015 stipulates that "[i]t is the policy of the State to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all. Towards this end, it shall be the State's responsibility to protect the overseas Filipino workers (OFWs)."

⁴⁶ Article 2 of Mexico's Migration Law sets guidelines for the formulation of migration policy, including: (a) respect for the rights of both Mexican and foreign migrants; (b) facilitation of international mobility; (c) complementarity of the Mexican labour market with those of other countries in the region; and (d) full equality between nationals and foreigners, particularly as it relates to civil liberties.

- (b) **Special overseas workers' welfare arrangements** by national and even subnational governments (the State level, as in the case of India) that extend protection to workers and, at times, also their families (as in the case of India, Pakistan, the Philippines, Sri Lanka and Viet Nam). Examples abound and include:
- i. **Philippines.** Filipino workers recruited by foreign-based employers abroad can opt for “voluntary” membership in (a) the Social Security System (SSS) and, optionally, (b) the SSS Flexi-Fund Programme (i.e. on top of the voluntary SSS scheme), which provides for individual worker accounts. There is compulsory social insurance coverage, as well as compulsory membership of and contribution to the national health insurance scheme (PhilHealth) for overseas Filipino workers (OFWs) whose employment contracts were processed through the Philippine Overseas Employment Administration (POEA), a government agency.⁴⁷
 - ii. **Sri Lanka.** The Overseas Workers Welfare Fund has a compulsory insurance scheme in place. It also assists in covering the cost of repatriating migrant workers, offers scholarships for their children, and has loan schemes with partner banks to cover migrants' pre-departure costs and finance the start-up of their self-employment ventures back home. The Fund also supports returnees who have incurred a disability while they were employed overseas.⁴⁸
- (c) Voluntary affiliation in national social insurance schemes, as in the case of Albania, Jordan, Mexico, Mozambique⁴⁹ and the Republic of Korea, among others.
- (d) Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the sending (or origin) country.
- (e) Exportability of social security benefits and the provision of related services (e.g. medical care) abroad.

3.4.3. Limited provisions in international and regional instruments

International and regional standards and instruments do not regulate this phenomenon (i.e. unilateral country-of-origin measures).⁵⁰ However, reference to such initiatives by countries of origin is increasingly being made in what are regarded as “soft law” and explanatory and implementing instruments. At the Asian regional level, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) encourages countries of origin to set up policies and procedures to protect their workers abroad. The draft Social Protection Action Plan of the South Asian Association for Regional Cooperation (SAARC) encourages countries of origin to provide a basic level of protection to their nationals working abroad through voluntary insurance and by pay benefits abroad and ensuring safe migration. Also of particular relevance is the (non-binding) ILO Multilateral Framework on Labour Migration, which provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved.

⁴⁷ See also section 7.3 of this report.

⁴⁸ See also section 7.5 of this report.

⁴⁹ Mozambican workers abroad who are not covered by the compulsory social security system of the host country may register for compulsory social security in Mozambique, but the more limited scheme for self-employed persons would be applicable to them (art. 14.4 of the Law on Social Protection of 2007 (4/2007), read with art. 18.2. The Social Security Act of 1994 (No. 34 of 1994) of Namibia provides for the coverage of Namibian citizens and permanent residents working for a Namibian employer outside Namibia (the definition of “employee” is given in section 1).

⁵⁰ At any rate, the ILO Multilateral Framework on Labour Migration provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved. (ILO, ILO Multilateral Framework on Labour Migration (Geneva, 2006). Available at www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm).

3.4.4. Complementary institutional arrangements and support services

Extension mechanisms are often supported by a range of complementary institutional measures, including a dedicated emigrant ministry and/or specialized statutory bodies to protect the interests of their citizens and residents in the diaspora (as observed in the cases of, e.g. Bangladesh, India, Nepal, the Philippines and Sri Lanka), gather information about recruitment contracts and provide consular support. The Philippines, for example, has established the Office of the Undersecretary for Migrant Workers Affairs at the Department of Foreign Affairs, POEA, the Overseas Workers Welfare Administration (OWWA), the Migrant Workers and Other Overseas Filipinos Resource Center, SSS offices in several destination countries and an extensive network of labour attachés at its diplomatic missions, in addition to investing in the screening of and provision of information to potential migrants. Generally, support services are made available to migrant workers at three stages – pre-departure, at destination (i.e. in the host country) and upon return (e.g. via return settlement programmes) – and include lobbying for the protection of migrant workers.

3.4.5. The important impact of unilateral measures despite evident limitations

Unilateral arrangements emanating from countries of origin are of relatively recent origin but seem to be growing in extent and popularity. They cover sizeable numbers of migrant workers – for example, 8 million in the case of the Philippines and 2 million in Sri Lanka's. These arrangements provide interesting and important avenues of coverage, protection and support where little or none is available in the destination country concerned. Unilateral measures also easier to adopt than bilateral or multilateral agreements. As noted, such security promotion measures principally affect those involved in circular and temporary migration and could be further defined and strengthened through international migration agreements.⁵¹

3.4.6. Limitations

Unilateral arrangements and interventions, important as they are, cannot, however, replace effective measures in destination countries that extend equal social security treatment to migrant workers and ensure the transfer (or portability) of benefits. They imply a shift of the social security burden to the country of origin and its structures, despite the fact that the destination country concerned benefit from migrant workers' contributions to their development. It is therefore argued that unilateral measures should remain measures of last resort, to be available to the extent that bilateral and other agreements/arrangements do not make the necessary provisions.

3.5. Bilateral and multilateral agreements/arrangements ⁵²

3.5.1. Bilateral labour agreements

Bilateral labour agreements: international standards and guidance

Generally speaking, the principled aims of BLAs are to regulate labour migration flows and extend employment rights. Several key United Nations and ILO instruments include pertinent provisions regarding the scope and content of BLAs.⁵³ Apart from provisions to this effect in article 27 of the

⁵¹ Wouter van Ginneken, "Social protection for migrant workers: national and international policy challenges", *European Journal of Social Security*, 13(5):209–221 (2013), p. 214.

⁵² Adapted from: Olivier, "Portability of social security for migrant workers in Asia" (see footnote 5), pp. 46–54, 57 and 58; Olivier, "Extending social protection to Vietnamese workers abroad" (see footnote 43).

⁵³ See, in particular: United Nations, ICRMW (see footnote 29); also, these two ILO migrant worker-specific conventions and their associated recommendations: (a) ILO Convention 97 (Migration for Employment Convention (Revised)) of 8 June 1949, available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312242; and its accompanying Recommendation 86 (Migration for Employment Recommendation (Revised) (with an annexed Model Agreement), available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R086; and (b) ILO Convention 143 (Migrant Workers (Supplementary Provisions) (see footnote 35), and its accompanying Recommendation 151 (Migrant Workers Recommendation), available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312489.

ICRMW, attention is, in particular, drawn to the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, contained in the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86). The annexed Model Agreement requires the exchange of information on the social security system of the country of destination (art. 1), and the recognition of documentation needed, concerning participation in that country's social security system (art. 4). Importantly, article 21 enjoins member States to conclude separate BSSAs to specifically deal with the "methods of applying a system of social security to migrants and their dependants."

In the absence of a bilateral social security agreement, BLAs should clarify the social protection position of migrant workers. An authoritative ILO review of bilateral agreements and MOUs on the migration of low-skilled workers indicates as a good practice the provision of social security and health-care benefits for migrant workers on par with local workers.⁵⁴ As discussed in the next section, access to and portability of social security rights and benefits should ideally be contained in a separate bilateral social security agreement. However, to the extent that this is not currently feasible, it is recommended, as a second-best option, that new and/or revised BLAs concluded by African countries of origin should appropriately provide for this.

3.5.2. Bilateral social security agreements

Core content of bilateral social security agreements

BSSAs help to streamline the social security position of individuals who migrate (for work) to another country and are usually informed by what are generally referred to as social security coordination principles (Box 1).

Box 1. Core principles underlying bilateral social security agreements

These social security coordination principles inform BSSAs:

- (a) The choice-of-law principle, which guides in identifying the applicable legal system;
- (b) Equal treatment (in the sense that discrimination based on nationality is prohibited), ensuring access to social security benefits covered by the agreement in the destination country;
- (c) Aggregation or totalization of insurance periods (in that all periods taken into account by the various applicable national laws are aggregated for purposes of acquiring and maintaining entitlements to benefits and of calculating such benefits);
- (d) Maintenance of acquired rights (i.e. benefits built up by the person are retained); Payment of benefits, irrespective of the country in which the beneficiary resides (i.e. the "portability" principle);
- (e) Administrative cooperation (between the social security institutions of the States parties to the agreement);
- (f) Sharing of liability to pay for the benefit (i.e. pro rata liability of the respective institutions).

Portability must be distinguished from exportability, as the latter requires no cooperation between the origin (or sending) and host (or receiving) countries, with the social security institution (supported by the legal framework) of either country alone determining eligibility, level of benefit(s) and whether benefits are payable (i.e. exportable) to other countries.⁵⁵

⁵⁴ Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers* (see footnote 8), p. 30.

⁵⁵ Rachel Sabates-Wheeler and Johannes Koettl, "Social protection for migrants: The challenges of delivery in the context of changing migration flows", *International Social Security Review*, 63(3–4):115–144 (2010), p. 120.

The value of bilateral social security agreements

BSSA (along with MSSAs) are, across the globe, the core type of intervention for extending social security protection to migrant workers. The first BSSA was concluded in 1904; today there are more than 2,000 of them worldwide.⁵⁶ In fact, in the absence of such an agreement, a person may not be covered under the social security system of either the host or origin country – or, in some cases, doubly covered. Coordination arrangements help to resolve this problem. In addition, targeted, country-specific, cross-border bilateral agreements offer the advantage of incorporating regulations and standards that pertain specifically to unique migratory patterns that may exist between two States, as well as catering to the specifics of their respective national social security schemes and associated legal systems. Furthermore, the establishment and enhancement of an appropriate array of bilateral agreements is particularly crucial given the longer time that is generally necessary to develop comprehensive multilateral agreements.

Cementing protection

The worldwide evidence suggests that multilateral and bilateral agreements play a profound role in cementing the protection of certain social security entitlements of migrants. To illustrate this point, had it not been for the incorporation of the portability principle in most multilateral and bilateral agreements, fewer than the 30 per cent of migrants worldwide who return to their home countries would have done so.⁵⁷ This has important implications for both countries of destination and countries of origin in Africa.

The importance of evidence-based support

Informing the conclusion and implementation of BSSAs requires an understanding of the labour and social security laws of the country of destination, as well as existing bilateral agreements/arrangements. In this regard, Philippine legislation requires the following:

For this purpose, the Department of Foreign Affairs, through its foreign posts, shall issue a certification to the POEA, specifying therein the pertinent provisions of the receiving country’s labor/social law, or the convention/declaration/resolution, or the bilateral agreement/arrangement which protect the rights of migrant workers.⁵⁸

Shortcomings

Although entering into a BSSA is generally seen as the preferred way to guarantee the social security entitlements of migrants, Holzmann et al. note that this practice “necessarily results in a highly complex and hardly administrable set of provisions on the portability of social security benefits”.⁵⁹ In addition, such agreements may end up granting differing (i.e. disharmonized) rights and entitlements to migrants, which could undermine regional integration. One way to remedy this is to establish common standards, within a regional or multilateral framework, against which all bilateral agreements are measured, as discussed in the next section.

⁵⁶ Ibid., p. 125. See also: Robert Holzmann, Johannes Koettl and Taras Chernetsky, “Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices”, World Bank Social Protection Discussion Paper No. 0519 (New York, World Bank, 2005), p. 32. (The authors remark: “The administrative approach to achieve the portability for both pension and health care benefits seems to be reasonable cost-effective after a bilateral or multilateral agreement has been successfully concluded.”)

⁵⁷ Domenico Paparella, “Social security coverage for migrants: Critical aspects”, paper presented at the European regional meeting of the ISSA, themed “Migrants and Social Protection”, Oslo, 21–24 April 2004. Available at <https://www1.issa.int/pdf/oslo04/2paparella.pdf>.

⁵⁸ Government of the Philippines, An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes (Republic Act No. 10022 of 2009), section 3. (This section amends section 4 of Republic Act No. 8042 of 1995.)

⁵⁹ Holzmann et al., “Portability regimes of pension and health care benefits for international migrants” (see footnote 56), p. 25.

Required cooperation and complementarity

In order to achieve full portability, cooperation between the social security institutions of the origin country and those of the host country would be required to ensure a joint determination of benefit levels for particular migrants. However, the administrative and technological capacity to achieve this may be lacking. There may also be compatibility problems regarding similar social security schemes in the countries concerned, given the differences that may exist as regards the nature of the social security schemes – a matter of considerable importance in the African context.

Limited equal treatment guarantee

While equality of treatment is a core principle of bilateral (and multilateral) agreements, it should be noted that this principle generally operates within the existing framework and for purposes of giving effect to the bilateral agreement. Only those (potentially) covered by the terms of the agreement – and, as a rule, only to the extent of the agreement – can benefit from the operation of the equality-of-treatment principle. In other words, BSSAs do not provide a general guarantee of equal treatment for migrants in the social security system of the host country. These agreements therefore do not create a foundation for invoking a human rights basis for the treatment of migrants, including particularly vulnerable migrant groups such as informal (economy) workers and undocumented migrants. In fact, in Africa, given the preponderance of informal and informal economy workers, bilateral agreements are unlikely to extend any meaningful coverage to these groups.

International standards

BSSAs are strongly advocated for in international instruments. The first global convention that calls upon countries to enter into BSSAs is an ILO convention widely ratified by African countries, namely the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).⁶⁰ The ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118) covers the equality-of-treatment and portability-of-benefits principles indicated above, while the ILO Maintenance of Social Security Rights Convention, 1982 (No. 157) provides for the totalization of insurance periods and the pro-rated sharing of benefit payments by the countries concerned, based on the ratios of insurance periods they respectively cover. Of particular importance (and assistance) are the ILO model provisions for the conclusion of social security agreements, contained in the relevant annexes to the ILO Maintenance of Social Security Rights Recommendation, 1983 (No. 167). Finally, article 27(1) of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) stipulates that: “With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties.”

African continental and regional imperatives

From a continental perspective, bilateral and multilateral agreements to enhance social protection for migrants/migrant workers are promoted in the AU–ILO–IOM–ECA Joint Programme on Labour Migration Governance for Development and Integration in Africa and the African Union Free Movement Protocol (2018). Article 18 of the Protocol states: “States Parties shall through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another member State residing or established in that member State.” At the regional level, mention could in particular be made of several SADC instruments supporting the conclusion

⁶⁰ ILO Convention 19 (Equality of Treatment (Accident Compensation) Convention) (see footnote 25). See also: ILO Convention 157 (Maintenance of Social Security Rights Convention) (see footnote 31).

of bilateral arrangements: the SADC Code on Social Security (2007), the SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016), the (draft) SADC Guidelines on the Portability of Social Security Benefits in SADC, the SADC Labour Migration Action Plan 2013–2015 (renewed for 2016–2019 and again for 2020–2025) and the SADC Labour Migration Policy Framework, 2014.

BSSAs typically develop incrementally

Countries of origin and/or destination may, for a variety of reasons, not be willing or ready to immediately conclude a comprehensive BSSA. In fact, a phased and incremental approach to developing BSSAs (with specific considerations enumerated in Box 2) may be apposite for African countries to consider, as the worldwide experience with such approach tends to confirm.

Box 2. Adopting an incremental approach to the development of bilateral social security agreements

A **phased and incremental approach** is typically adopted in relation to any one or combination of the following areas covered by BSSAs:

- (a) **Type(s) of scheme(s) covered.** The existence of one or more schemes (e.g. such as occupational injury schemes) **common to the country of origin and the country of destination**, and especially those with common elements within these schemes, could make them an ideal first candidate for coordination. The BSSA could then be extended to include other schemes as well (e.g. pension-oriented public retirement fund schemes).
- (b) **Benefits provided for.** It might be that **monetary benefits** that are, in principle, **portable** should enjoy priority status. Related benefits, such as health-care and integration services, could be incrementally introduced as the institutional and professional capacities to render these services develop.
- (c) **Categories of persons covered.** Provisions could initially be made for extending the benefits of cross-border social security arrangements to certain categories of persons only (e.g. **lawfully residing/employed migrant workers and their dependants**), which could be extended over time to include other categories, such as **self-employed workers**.
- (d) **Social security principles covered.** In addition, certain core social security coordination principles may be introduced or implemented progressively, rather than at once, assuming that a rationale for doing so exists. For example, it may be prudent to arrange for the **avoidance of double contribution** as a first step, and then to expand the BSSA to cover **totalization and portability arrangements** as well. The experience of several countries in this regard may be particularly helpful.

The need to strengthen capacity and understanding of negotiating social security agreements

Negotiating BSSAs requires a set of skills and a clear understanding of the subject matter. As noted in an account of the Philippine experience, a **four-stage process**⁶¹ is involved:

- (a) **Exploratory meetings** between the delegations of involved countries to discuss information on the features of the country scheme, the profile(s) of covered persons and initial preferences as regards the social security agreement, among other matters;

⁶¹ "Negotiating for bilateral social security agreements: The Philippine experience" [slide presentation], slide 11. Presented by Judy Frances A. See, Social Security System (SSS) Senior Vice-President for International Operations, at the Ninth ASEAN Forum on Migrant Labour (AFML), Vientiane, 9 November 2016.

- (b) **Formal negotiations** between the delegations, comprising three stages, namely: (i) prior (draft agreement for discussion), (ii) initial (deliberation on the proposed provisions of the agreement) and (iii) succeeding (finalizing the agreement for concurrence);
- (c) **Signing and ratification** of the agreement by States parties (which begins with the scheduling of the signing and ensuring compliance with ratification requirements, followed by administrative meetings of liaison offices);
- (d) **Entry into force and implementation.**

Tamagno, in turn, suggests that negotiation, approval and implementation of a social security agreement generally involves an eight-step process:⁶²

- (a) Preliminary discussions;
- (b) Preparation of a preliminary draft of the agreement;
- (c) Negotiations;
- (d) Review of the agreed text;
- (e) Signing of the agreement;
- (f) Approval of the agreement;
- (g) Conclusion of an administrative arrangement;
- (h) Entry into force of the agreement.

The need for an implementing administrative agreement/arrangement

The administrative arrangement is an important subsidiary instrument aimed at supporting the implementation of the BSSA:

The social security agreement establishes the legal framework for the coordination of the social security systems of the countries concerned. It also sets out the principles that will underlie the administrative assistance that the social security authorities and institutions of each country will provide to the authorities and institutions of the other country(ies). A subsidiary instrument, known as an administrative arrangement, describes in greater detail how the administrative assistance will be provided (modalities, procedures, etc.). The administrative arrangement is essential to the implementation and administration of the agreement. Therefore, it should usually be concluded and signed before the agreement enters into force. Any forms required for the implementation and administration of the agreement should also usually be agreed before the agreement enters into force.⁶³

Suggested changes to the legal framework

In order to facilitate the negotiation and conclusion of BSSAs by countries of origin, several adjustments to the legal frameworks of these countries need to be considered.⁶⁴

⁶² Tamagno, *Strengthening Social Protection for ASEAN Migrant Workers* (see footnote 6), pp. 25–26 and Annex I.

⁶³ *Ibid.*, pp. 25–26.

⁶⁴ Adapted from: Olivier, “Extending social protection to Vietnamese workers abroad” (see footnote 43).

Box 3. Suggested changes to the legal frameworks of countries of origin to facilitate the negotiation and conclusion of bilateral social security agreements

The following adjustments to the legal framework could assist with the negotiation and conclusion of BSSAs by countries of origin:

- (a) Set out the **rationale and main objectives** to be achieved by having the BSSA in place, referring in particular to constitutional imperatives and international standards and guidelines, as well as the value of international best practice, aimed at incrementally extending appropriate social security to various categories of overseas migrant workers and other migrants residing abroad;
- (b) Provide, in relevant laws, an **explicit mandate to negotiate, conclude and implement BSSAs and implementing agreements** that are context-specific, including in relation to different countries of destination and different categories of workers, and tailored to the needs and interests of the country of origin;
- (c) Indicate the **institutions** mandated to negotiate, conclude and implement appropriately informed BSSAs, as well as the need for **inter-institutional collaboration** with other government ministries, departments and institutions, as well as cross-border collaboration with institutions in destination countries;
- (d) Stipulate **specialized arrangements** such that BSSAs so concluded take **precedence** over provisions of laws in the country of origin that regulate the social protection context of affected migrant workers abroad;
- (e) Provide that BSSAs indicate the extent to which affected migrant workers **remain covered** under the country-of-origin social protection system;
- (f) Include an undertaking to ensure that affected migrant workers are appropriately informed about the contents and implications of BSSAs applicable to them, and that they are **entitled to country-of-origin government support** to exercise their rights and fulfil their obligations under the BSSAs.

Importantly, **link to the conditions** under which migrant workers would be allowed to be deployed abroad in the existence of **concluded BSSAs** and in relation to relevant Filipino laws.⁶⁵

Institutional strengthening

Attention also needs to be given to **strengthening institutions** involved in negotiating, concluding and implementing BSSAs. This may, among others, entail detailed **technical training** and advice and **building negotiation capacity**. Much can be learned from ASEAN countries with significant experience in this regard, such as the Philippines. The ILO would also be ideally suited to render support.

3.5.3. Multilateral social security agreements

Key principles

As with BSSAs (discussed in [section 3.5.2](#)), a key principle in relation to MSSAs is coordination, primarily aimed at eliminating the restrictions that national social security schemes place upon the rights of migrant workers to access social security.⁶⁶ Coordination rules leave national schemes intact and only supersede such rules where they are disadvantageous to migrant workers.⁶⁷ In other words, MSSAs do not, in any way, affect the freedom of participating countries to determine

⁶⁵ See section 7.5 of this report.

⁶⁶ "Coordination rules are rules intended to adjust social security schemes in relation to each other (as well as to those of other international regulations), for the purpose of regulating transnational questions, with the objective of protecting the social security position of migrant workers, the members of their families and similar groups of persons." (Frans Pennings, *Introduction to European social security law* (The Hague, Kluwer, 1993), p. 6.)

⁶⁷ *Ibid.*

the structure of their own social security schemes. It is not even required that social security schemes be harmonized for purposes of coordination, although it could be argued that there should at least be some compatibility of social security schemes to render coordination effective.

Examples from around the world

MSSAs have a more recent origin than BSSAs. The first such agreements were entered into soon after the end of the Second World War.⁶⁸ A number of multilateral social security agreements currently exist across the globe. The following examples may be of particular relevance:

- (a) **European Union.** The European Union arrangement, enclosed in **European Union Regulation 883/2004**, is the **most comprehensive** in the world. The Regulation is an extensive legal provision that ensures far-reaching portability of social security entitlements and access to social security within the European Union. It is essentially informed by an economic rationale to support the **free movement of persons**. Bilateral arrangements between individual European States are applicable to the extent that they contain more favourable provisions than those of Regulation 883/2004. One of its main characteristics is the **incremental development of the European Union coordination regime**, particularly concerning **scope of coverage**. The scope of categories of persons and contingencies covered have indeed gradually expanded over the years, as have the type of social security schemes and range of benefits falling within the purview of the European Union regulatory framework.
- (b) **Caribbean.** The **CARICOM Agreement on Social Security (1996)** facilitates the **free movement** of labour within the CARICOM Single Market. Barring certain provisions, the Agreement allows for contributions to **voluntary insurance schemes to be taken into account**. The Agreement provides for the same essential coordination arrangements indicated in [section 3.5.2](#), in relation to BSSAs. Unlike the European Union regulation, the CARICOM Agreement does not cover short-term benefits.
- (c) **Latin America.** Among MSSAs in which Latin American countries participate, The **Ibero-American Social Security Convention (2011)** is particularly noteworthy as it involves 18 Latin American and 2 European (and European Union member) countries, Portugal and Spain. Noteworthy is the fact that the Convention includes **countries with vastly different social security models** and which vary greatly in terms of the coverage, scope and intensity of the benefits they extend to migrants – which makes coordination of legislation extremely difficult.⁶⁹ For the rest, the Convention employs various coordination principles earlier discussed.

ECOWAS General Convention on Social Security

The current multilateral ECOWAS General Convention on Social Security (2013) is of recent origin: It is a revised version of a similarly entitled convention adopted in 2004 (11 years after its drafting in 1993). The adoption of the Convention must be seen in the light of several factors and instruments, including considerable intraregional migration: 84 per cent of international migration in West Africa is to another State in the region and is irregular in nature, largely involving informal

⁶⁸ Simon Roberts, "A short history of social security coordination", in: *Fifty Years of Social Security Co-ordination: Past – Present – Future* (Y. Jorens, ed.) (Brussels, European Union, 2009), pp. 8–28.

⁶⁹ Adolfo Jiménez Fernández, "Social security coordination in Ibero-America: The Ibero-American Multilateral Agreement on Social Security, in: *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms* (R. Blanpain, P. Arellano Ortiz, M. Olivier and G. Vonk, eds.) (The Hague, Kluwer, 2014).

workers.⁷⁰ An extensive range of ECOWAS instruments – in particular the ECOWAS free movement instruments – effectively support a multilateral arrangement.

Salient characteristics of the ECOWAS Convention. The General Convention covers workers subject to the social security laws of contracting States, thereby effectively excluding informal economy and irregular or undocumented workers. The material scope of the Convention is ambitious, covering all nine branches of social security benefits regulated by the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102). The universally known social security coordination principles discussed in Box 1 are also embedded in the Convention. A study was commissioned to assess member States’ social security systems’ degree of conformity with the Convention and identify main challenges and ways forward for effective coordination.⁷¹

The value of MSSAs

Multilateral agreements “have the advantage that they generate **common standards and regulations** and so avoid discrimination among migrants from various countries who otherwise might be granted differing rights and entitlements through different bilateral agreements.”⁷² Furthermore, an MSSA can establish a standardized framework for more detailed, context-sensitive and country-specific bilateral agreements between countries. MSAs can also serve the purpose of regional integration, and the values and core principles associated therewith, such as freedom of movement, free trade and equal treatment of residents of the different countries of the region.

Challenges with MSSAs; incremental development advisable

The challenges facing BSSAs in relation to administrative and technological capacity, the limited applicability of the principle of equality of treatment, and the absence of a broader human rights focus are equally relevant here. For these reasons in particular, MSSAs are unlikely to extend any meaningful coverage to workers in the informal economy and undocumented migrants. Also, effective MSSAs – as is the case with bilateral agreements – would require that the relevant social security schemes forming the subject of entitlements be compatible, at least to some extent. This may pose particular challenges in the African context. For example, it would be difficult – although not impossible – as the ECOWAS General Convention seems to suggest,⁷³ to develop a coordination regime for the portability of retirement benefits if some countries covered by the agreement have pension-oriented arrangements in place while others provide for lump-sum payments. Similar considerations apply to health-care benefits. Finally, MSSAs are routinely developed incrementally, as the examples mentioned earlier seem to suggest.

⁷⁰ Main flows proceed from the poorer hinterland (the Niger and Mali) towards coastal countries (Senegal, Côte d’Ivoire and Ghana, among others). (“Migration and development policies and strategies in the ECOWAS region: the role of data” [slide presentation]. Presented by Geertrui Lanneau (IOM) at the regional workshop on “Strengthening the collection and use of international migration data for development”, Dakar, 8–11 September 2015.)

⁷¹ C. Fall and C.T. Tounkara, “Analysis of ECOWAS member States’ social security systems and their consistency with the ECOWAS General Convention on Social Security”, report produced for the Free Movement of Persons and Migration (FFM) in West Africa (Abuja, ECOWAS, 2016).

⁷² Nilim Baruahand and Ryszard Cholewinski, *Handbook on Establishing Effective Labour Migration Policies* (see footnote 23), p. 156.

⁷³ Ways to deal with the asymmetrical nature of portability between a provident (lump sum) fund and a regular pension fund scheme have been suggested. (See also: Gloria O. Pasadilla and Manolo Abella, “Social protection for migrant workers in ASEAN”, CESifo Working Paper No. 3914 (Category 3: Social Protection) (Munich, CESifo, 2012), p. 25.)

4 Labour migration trends and characteristics: Selected countries of origin

4.1. Continental and regional labour migration patterns

4.1.1. A global snapshot

The number of international migrants is estimated to be almost 272 million globally, with nearly two thirds being migrant workers. This figure constitutes 3.5 per cent of the world's population. Most international migrants born in Africa, Asia and Europe reside within their regions of birth, emphasizing the intraregional nature of migration (including labour migration) mobility.⁷⁴ According to the latest available estimates, there were roughly 164 million migrant workers around the world in 2017, accounting for nearly two thirds (64%) of the stock of international migrants then.⁷⁵

4.1.2. The continental picture

Migration within and from Africa has risen exponentially in recent times. In 2019, over 21 million Africans were living in another African country, compared to 18.5 million in 2015. In addition, the number of Africans residing in regions outside Africa rose from 17 million in 2015 to 19 million in 2019.⁷⁶ The number of international migrant workers increased significantly from 7.5 million in 2008 to 14.4 million in 2017 – an average annual growth rate of 7.5 per cent, a sharper rise than observed for the average annual growth rate of the overall population.⁷⁷ To some extent, the sharp rise in African migration mirrors the rapid population growth in Africa. Over the ten-year period 2008–2018, Africa's population has grown from 945 million to 1.215 billion (and expected to reach 2.5 billion by 2050)⁷⁸ – an average growth rate of 2.8 per cent. Even more pronounced has been the net increase, from 509 million in 2008 to 662.5 million in 2018 (or about 30%), in the working-age population (i.e. the number of potential workers in a country's economy). Also, as has been noted in relation to migrant workers in Africa:

The stock of migrant workers is concentrated in Southern Africa and, to a lesser extent, in West Africa and East Africa. The Northern African countries have reported the least number of migrant workers: this has to do with the fact that migrants in that subregion tend to be in transit to Europe or the Middle East and do not stay on as residents. ... West African countries recorded the lowest average annual growth rate of migrant workers during the period from 2008 to 2017. The Southern African and East African countries have been attracting more migrant workers, with annual growth rates of, respectively, 13.4 per cent and 9.8 per cent over the same period. The continuous growth in the number of migrant workers in these two subregions stands in contrast to the moderate growth of their populations and labour force. The average annual growth rate of the number of international migrant workers in Africa is almost three times that of the labour force, which puts additional pressure on the labour market.⁷⁹

⁷⁴ IOM, *World Migration Report 2020* (Geneva, IOM, 2019), pp. 2 and 4.

⁷⁵ *Ibid.*, p. 33.

⁷⁶ *Ibid.*, pp. 4–6.

⁷⁷ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 4.

⁷⁸ "The most populous subregion is West Africa, which accounts for 30.5 per cent of the continent's total population, followed by East Africa (27.8%), Northern Africa (15.7%), Southern Africa (14.0%) and Central Africa (12.0%)" (*ibid.*, p. 21).

⁷⁹ *Ibid.*, p. 36.

Significant labour migration corridors exist in Africa – for example, between South Sudan and Uganda, between Somalia and Ethiopia, and between Burkina Faso and Côte d'Ivoire.⁸⁰

A prevailing gender disparity in labour migration is apparent

Gender disparity evidently prevails in the labour market: Of the total labour force of 434 million, 246 million are men, as opposed to 188 million who are women (the figure does not account for women who are involved in own-use production work (i.e. home-based activities, family businesses and caregiving)).⁸¹ This picture of gender disparity in the labour force participation rates is seen in Africa generally and the RECs specifically.⁸² Among the RECs, the East African Community (EAC) performs best, with a difference of just 2 percentage points between the male and female labour force in 2017, followed by ECOWAS (5 percentage points). A similar picture prevails in relation to migration in the continent: While the number of migrant women increased by 93.4 per cent between 2008 and 2018 (which is large considering an increase of just 28.8% in the total female population during the same period), male migration still dominates. Two RECs, the EAC and the Intergovernmental Authority on Development (IGAD), where there is almost parity among female and male migrants, are the exception.⁸³ Female migrant workers typically end up working in informal jobs.

Several drivers give rise to labour migration within and from Africa

These factors drive labour migration within and from the continent:⁸⁴

- (a) Demographic pressures in many destination countries outside of Africa, in particular ageing populations and increasing deficits in labour forces, as Africa confronts a growing, educated and young population.
- (b) Unemployment, jobless growth and a dearth of decent work opportunities in several African countries. In fact, many African migrants decide to settle permanently in their countries of destination because of the socioeconomic opportunities available to them in these countries.
- (c) Growing wage and other inequalities between and within countries (rising exclusion).
- (d) A global skills shortage that is set to worsen:
 - i. The shortage of health workers which will reach 12.9 million in 2035.
 - ii. A McKinsey Global Institute study calculated that, by 2020, global shortages of high skilled professionals would reach “38 million to 40 million fewer workers with tertiary education (college or postgraduate degrees) than employers will need”.
- (e) A shortage of 4.3 million health workers (as of 2006) that is expected to reach 12.9 million in 2035.

⁸⁰ IOM, *World Migration Report 2020* (see footnote 74), p. 58.

⁸¹ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), pp. 3 and 24.

⁸² *Ibid.*, pp. 3, 25 and 26.

⁸³ *Ibid.*, pp. 31–32.

⁸⁴ AUC, ILO, IOM and ECA, “Joint Labour Migration Programme” [slide presentation]. Presented at the conference, “Labour Migration Governance for Development and Integration in Africa: A Bold Initiative”, Addis Ababa, 9 November 2015; African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 11.

Key continental-level instruments and frameworks inform labour migration governance

These include:

- (a) Joint Africa–EU Declaration on Migration and Development (2006), adopted in Tripoli;
- (b) Action Plan for Boosting Intra-Africa Trade (2012), adopted (the Action Plan recognizes the key role of the free movement of persons and the need to regulate flows of migrant workers);
- (c) AU–ILO–IOM–ECA Joint Programme on Labour Migration Governance for Development and Integration in Africa (2015) (the joint programme essentially provides a framework for addressing all aspects concerning labour migration governance);
- (d) African Union Migration Policy Framework for Africa and Plan of Action for 2018–2030 (2018);
- (e) African Continental Free Trade Agreement (2018);
- (f) African Union Free Movement of Persons Protocol (2018) (the Protocol envisages a gradual extension of free movement, including of migrant workers, emphasizes the protection of the fundamental rights of migrant workers and their families, and provides for the portability of social security benefits).

Overarching African and global frameworks also impact on labour migration

The African Union’s main visionary document, Agenda 2063 (The Africa We Want), stresses the benefits arising from the free movement of people and goods, which include the promotion of intra-African trade, labour mobility and the transfer of knowledge and skills. Migration issues are alluded to in Aspiration 2 (“An integrated continent, politically united, based on the ideals of pan-Africanism and the vision of Africa’s Renaissance”) and Aspiration 7 (“Africa as a strong, united and influential global player and partner”).⁸⁵ Furthermore, two key international development frameworks, one with a dedicated focus on migration, are currently being implemented in Africa:

- (a) The 2030 Agenda for Sustainable Development enshrines the principle of “leaving no one behind” in the Sustainable Development Goals (SDGs), placing an obligation on African governments to alleviate the distress of specific population groups such as migrants (and, particularly, of vulnerable subgroups of migrants) by combating abuse and exploitation, modern slavery and human trafficking: “The ultimate aim is to achieve a brighter future in which all African people are empowered to realize their full potential and share the benefits of growing prosperity. This is in line with the 2030 Agenda, which calls for bold and transformative steps towards achieving a sustainable, resilient and peaceful world that is free of poverty.”⁸⁶
- (b) The Global Compact for Safe, Orderly and Regular Migration emphasizes the essential role of migration and positive contribution that migrants can make to sustainable and inclusive development and to the economic and social life of both their countries of origin and their host countries. It commits its signatories to improve cooperation on international migration, and the need for effective migration governance to ensure that migration is recognized as a catalyst for prosperity, sustainable development and innovation in the modern world.

⁸⁵ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 9.

⁸⁶ *Ibid.*, p. 11.

In several regional economic communities, free movement regimes inform and support labour migration flows and governance

The following regimes are specifically highlighted in this report:⁸⁷

- (a) **COMESA Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence.** Adopted by the Common Market for Eastern and Southern Africa (COMESA) in 2001, the COMESA Free Movement Protocol seeks to facilitate the free movement of citizens of member States, with a view to achieving a true common market in the region.
- (b) **Protocol on the Establishment of the EAC Common Market Protocol.** Adopted in 2010, the EAC Common Market Protocol emphasizes the importance of the free movement of goods, people and labour, as well as the rights of establishment and residence, in accelerating economic growth and development.
- (c) **ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment.** Adopted in 1979, the ECOWAS Free Movement Protocol calls on member States to eliminate obstacles to the free movement of people, services and capital.
- (d) **IGAD Regional Migration Policy Framework.** Adopted by IGAD in 2012, the Framework addresses regional concerns such as migration and pastoralism, migration and human security, and internal displacement owing to political instability. It provides a coherent strategy for migration management programmes, emphasizing the need for harmonized and systematic approaches, while providing some scope of variation in national policies.
- (e) **SADC Protocol on the Facilitation of the Movement of Persons.** Adopted in 2005, the SADC Facilitation Protocol calls for the progressive elimination of obstacles to the movement of people from the region into and within the territories of States parties.

It must be noted that several African countries, despite being signatories to these free movement regimes, have introduced rules restricting the free movement of persons.

4.1.3. Intra-regional migration

Overview

International migration of Africans is essentially of a contiguous nature: Most of it occurs between African countries, even though international migrants represent just 2.1 per cent of the total population in Africa.⁸⁸ The position of migrant workers in Africa has been summarized in the following terms:

As African economies are largely dominated by urban informal economy and agriculture, migrant workers in the continent are often found in settings characterized by low incomes and wages, lack of social protection, precarious jobs and workplaces, abysmal working conditions, and low skills portfolios. Many migrants are self-employed or employed in agriculture and informal activity, while significant numbers may be found in industry and services.

⁸⁷ Ibid., p. 10.

⁸⁸ Ibid., p. 8.

There is also significant cross-border, “circular” mobility of commercial tradespeople, accompanied by increased cross-border trade flows that promote local growth and employment.⁸⁹

For the purposes of this report, the focus falls on East, Southern and West Africa as migrants’ regions of origin.

East Africa

In East (and Southern) Africa, intraregional migration is driven by the increasing demand for both low- and highly skilled workers. East African economies, notably those of Kenya and Rwanda, with its expanding technology sector, are increasingly becoming diversified, leading to an increased demand for workers in the services industry, in particular from the United Republic of Tanzania and Uganda. The EAC Common Market Protocol provides for the free movement of labour and has supported labour migration in the subregion. Some of the ratifying EAC countries have already abolished the requirement for work permits for East African citizens.⁹⁰

Southern Africa

Intraregional migration is well-established in Southern Africa. South Africa attracts sizeable numbers of migrants, including also irregular migrants, asylum seekers and refugees from within and outside the region – with increases in the influx of migrants leading to repeated xenophobic attacks. Significant numbers of people have traditionally migrated from countries such as Eswatini, Lesotho, Malawi and Zimbabwe to take advantage of work opportunities in South Africa and Botswana. In addition to traditional sectors (such as mining), which still attract high numbers, other sectors (such as finance and information technology) are increasingly drawing migrants to South Africa.⁹¹

West Africa

Multiple drivers cause the significant measure of intraregional migration in West Africa, where majority of migrants move within the subregion. One of the key reasons behind this phenomenon is the visa-free regime among ECOWAS member States. Other reasons include the small sizes of some of the countries and strong ethnic ties spread out across the subregion. Labour mobility is informed by seasonal, temporary and permanent migrant workers moving largely from countries such as the Niger and Mali, to Ghana and Côte d’Ivoire: “A large number of migrant workers are in low-skilled sectors, including domestic work, informal trade and agriculture. In parts of West Africa, agricultural labourers often move during the harvest period...as well as through the off-season harvest...Some of the migrant workers are children...”⁹² Despite the ECOWAS free movement regime, irregular migration remains prevalent, especially in circumstances where people do not possess identity documents: “Alarming high levels of unemployment still affect many of the countries in the Community, and the inflow of more highly skilled migrant workers aggravates the intense competition for jobs.”⁹³

Remittances and other migrants’ contributions play a crucial role

Migrants in the labour force make a significant contribution to poverty reduction and socioeconomic development in both countries of origin and destination.⁹⁴ As far as countries of origin are concerned, this is, in particular, achieved via the transfer of financial means to support households and invest in the local economy. These transfers have a positive effect by alleviating poverty and social inequality

⁸⁹ ILO, *International Labour Migration: A Rights-based Approach* (Geneva, ILO, 2010), p. 17.

⁹⁰ IOM, *World Migration Report 2020* (see footnote 74), p. 62.

⁹¹ *Ibid.*, pp. 62–63.

⁹² *Ibid.*, p. 64.

⁹³ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 32.

⁹⁴ *Ibid.*, p. 11.

in the recipient households and communities of origin. They also support savings and investments, strengthening the financial system (also the balance of payments) and economic growth in the countries of origin: “Many countries have accordingly included in their national development plans measures to ensure that diaspora savings can be mobilized in a more formal framework and used for public investment.”⁹⁵ In fact, much can be learned from the comparative evidence in this regard. For example, it has been reported that remittance-spending in the Philippines is “what keeps the big service industries such as retail, education, real estate [etc.]...growing despite the sluggish performance of domestic industry and agriculture. The Philippines has become a service-led economy without going through an industrial revolution.”⁹⁶

Significant increase in the volume of remittances in Africa

It has been noted that, between 2010 and 2017, the volume of (formal channel) remittances in Africa increased by more than 30 per cent: “In absolute terms, the increase amounted to USD 18,979.77 million, which highlights the diaspora’s potential as a catalyst for development in many African countries. There was a slight decrease between 2014 and 2016, but by 2017 the total estimated transfers received from African international migrants, including those living and working outside Africa, amounted to USD 75,747.40 million” – which is higher than the combined total of official development assistance and foreign direct investment received by the continent. Two countries, Nigeria and Egypt, together received (a little) over 55 per cent of total transfers in 2017.⁹⁷ Approximately 10 times more remittances are received in the continent than are sent from or within it. However, the volume of remittances is evidently underreported in Africa, due to the proliferation of informal remittance networks aimed at avoiding the high transaction costs affecting many migrant workers.⁹⁸ Ethiopia can be cited as an example. While the World Bank estimated remittance flows to Ethiopia in 2017 at USD 800 million on the basis of formal transfers alone, the National Bank of Ethiopia also considered informal transfers, which were estimated at almost USD 5 billion for the same year – thus, the volume of informal transfers to Ethiopia is therefore over five times that of formal transfers.⁹⁹ Bearing this in mind, it has been estimated that around USD 81 billion was sent to Africa in 2018.¹⁰⁰

Several remittance transfer challenges need to be addressed

Africa remains the most expensive continent to send money to and within/from: “As at fourth quarter of 2018, the average cost of remittance to Africa was 9 per cent, compared to the global average of 7 per cent; this is a significant decline compared to the 14 per cent [registered] in 2008...Africa also has the most expensive country to send money from (South Africa, at 15.76%) and the costliest corridors.”¹⁰¹ Further measures to address the high transfer costs and other issues regarding remittances need to be considered. A starting point should be SDG Target 10.7c, through which the global community has committed itself to reduce to less than 3 per cent on the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent by 2030. Other steps should include: (a) creating enabling regulatory frameworks for cross-bordering remittances; (b) improving domestic payments infrastructure with new technologies; (c) improving data collection; (d) increasing transparency; (e) improving access to remittance services for irregular migrants; (f) leveraging remittances as a tool for financial inclusion; and (g) moving (or transforming) informal transactions into formal ones.¹⁰²

⁹⁵ Ibid., pp. 49–50.

⁹⁶ Rene Ofreneo and Jonathan Sale, “Social security and migrant workers in the Philippines: Social protection for the country’s economic protectors”, in: *Social Security and Migrant Workers: Selected Studies of Cross-border Social Security Mechanisms* (The Hague, Kluwer, 2014), p. 167.

⁹⁷ Ibid., pp. 50 and 55; Caludia Natali and Leon Isaacs, “Remittances to and from Africa”, in: *Africa Migration Report: Challenging the Narrative* (Addis Ababa, African Union and IOM, 2020), pp. 23–34).

⁹⁸ African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 5.

⁹⁹ Ibid., pp. 50.

¹⁰⁰ Natali and Isaacs, “Remittances to and from Africa” (see footnote 97), pp. 117–118.

¹⁰¹ Ibid., pp. 117 and 120.

¹⁰² Ibid., pp. 117 and 126–128.

4.2. African labour migration to countries of the Gulf Cooperation Council

4.2.1. Facts and figures

The *World Migration Report 2020* notes that labour migration has contributed to significant population changes, especially in GCC States:¹⁰³

With the exceptions of Oman, Bahrain and Saudi Arabia, migrants made up the majority of the populations in GCC countries . . . 88 per cent in the case of the United Arab Emirates, nearly 79 per cent in Qatar; and 72 per cent in Kuwait.

. . . Significant labour migration corridors to Gulf States exist, such as from Egypt to Saudi Arabia and the United Arab Emirates.¹⁰⁴

. . . Large income disparities between the origin and destination countries, and the high levels of unemployment in North Africa, remain significant causes of migration

. . . as of 2019, almost 12 million North Africans were living outside their countries of birth, with roughly half in Europe and 3.3 million living in Gulf States.¹⁰⁵

The demand for foreign labour is linked to the steep economic development of these States over the last decades, drawing both skilled and semi-skilled labour to various sectors, including construction and maintenance, retail and domestic service and, in the case of Qatar, the country's preparation for the 2022 World Cup.¹⁰⁶ In recent years, large numbers of low- and semi-skilled workers have also moved from East Africa to GCC countries on temporary work contracts. The proximity to East Africa and employment opportunities make GCC countries an attractive labour market destination.¹⁰⁷

4.2.2. A sectoral perspective

GCC countries remain top destinations for migrant workers, who dominate key sectors in the region. As noted in the *World Migration Report 2020*, migrant workers comprise over 95 per cent of the labour force in construction and domestic work in the Gulf States. From 2013 to 2017, the number of migrant workers in the Arab States increased by over 5 per cent, following greater demand for male migrant workers, many of whom are involved in manual labour, mostly in the construction sector.¹⁰⁸ The second and third top remittance-sending countries in the world (after the United States of America) (in 2017) were, in fact, the United Arab Emirates (USD 44.37 billion) and Saudi Arabia (USD 36.12 billion).¹⁰⁹

4.2.3. The need for protection

Regulation and protection of migrants' rights remain a challenge in GCC countries, despite some progress. Cases of alleged abuse and maltreatment are reported regularly and have, in the case of several African (and Asian) countries, led to labour migration bans to GCC States at one time

¹⁰³ The GCC countries include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

¹⁰⁴ IOM, *World Migration Report 2020* (see footnote 74), pp. 4, 58, 70 and 71.

¹⁰⁵ *Ibid.*, p. 66.

¹⁰⁶ *Ibid.*, pp. 83–84; Kennedy Atong, Emmanuel Mayah and Akhator Odigie, "Africa labour migration to the GCC States: The case of Ghana, Kenya, Nigeria and Uganda – an African trade union overview", report (Lomé, ITUC-Africa, 2018), p. vii.

¹⁰⁷ *Ibid.*, p. 62.

¹⁰⁸ *Ibid.*, p. 34.

¹⁰⁹ *Ibid.*, p. 36.

– reportedly fuelled by unscrupulous practices that perpetuated a largely weakly regulated private recruitment agency sector in several African countries.¹¹⁰ Among others and specifically, the *kafala* system, which ties migrant workers to their employers, remains entrenched and “continues to contribute to the vulnerability of labour migrants [migrant workers] in the Gulf, including to conditions of forced labour and wage exploitation.”¹¹¹ Human Rights Watch reported that under the system, employers control migrant workers’ ability to enter and exit the country, residency status and ability to change jobs. This has reportedly resulted in workers’ passports being withheld from them, and workers being forced to work excessive hours and denied their wages: “Migrant domestic workers in particular, can be confined to their employers’ homes and may be subject to physical and sexual abuse. The *kafala* system also has led to hundreds of thousands of undocumented workers, as employers can force people into such status and workers who escape abuse can become undocumented.”¹¹²

4.2.4. Recent reforms in GCC countries

Several GCC member States have implemented reforms to the system, but these have been minimal and reportedly have had limited positive impact on migrants.¹¹³ Recently, for example, Saudi Arabia announced that, as from March 2021, it would ease some of the contractual restrictions that give employers control over the lives of some 10 million migrant workers. These reforms would reportedly allow private sector workers to change jobs and leave the country without their employer’s consent. They would also be able to apply directly for government services, and their employment contracts would be documented digitally. However, while these developments are significant, the *kafala* system has not been abolished. Human Rights Watch comments that it appears workers are still required to have an employer to act as their sponsor to enter Saudi Arabia, and that employers retain the power to renew or cancel their workers’ residence permits at any time. In addition, the reforms apparently do not apply to domestic workers, who are some of the most vulnerable migrants in the country.¹¹⁴

4.2.5. Restricted access to social protection in GCC countries

Historically, GCC countries have restricted access to their social security systems to citizens. As noted in a 2010 ILO publication, these countries exclude foreigners from the public social security system and make no provision for migrant workers, even if only on a voluntary basis.¹¹⁵ For this reason, in addition to the short-term, temporary nature of employment of regular migrant workers and, in the case of irregular migrant workers, the irregular nature of their employment, migrant workers do not have access to benefits available through the public contribution-based retirement and social insurance schemes of these countries.¹¹⁶ For citizens of GCC countries, the situation is different: They could be covered as migrant workers in other GCC countries.¹¹⁷ In fact, in 2006 the GCC adopted the Unified Law of Insurance Protection Extension for GCC State Citizens Working in Other GCC Countries. It has been noted that this law has resulted in better pension protection and greater labour mobility (for citizens of GCC countries).¹¹⁸ Migrant workers would routinely

¹¹⁰ Atong et al., “Africa labour migration to the GCC States” (see footnote 106), pp. vii–ix.

¹¹¹ Ibid., p. 84.

¹¹² Rothna Begum, “What will it take for Saudi Arabia to abolish abusive sponsorship system?: Migrant workers face abuse and exploitation”, article in the Human Rights Watch website news section, 30 October 2020. Available at www.hrw.org/news/2020/10/30/what-will-it-take-saudi-arabia-abolish-abusive-sponsorship-system.

¹¹³ IOM, *World Migration Report 2020* (see footnote 74), p. 84.

¹¹⁴ BBC News (online), “Saudi Arabia eases ‘kafala’ system restrictions on migrant workers”, 4 November 2020. Available at www.bbc.com/news/world-middle-east-54813515.

¹¹⁵ ILO, *International Labour Migration* (see footnote 89), p. 109.

¹¹⁶ ISSA, “Civil retirement and social insurance systems in the Gulf Cooperation Council – Reality and challenges”, paper presented at the World Social Security Forum, Thirty-first ISSA General Assembly, Doha, 10–15 November 2013, p. 9.

¹¹⁷ Ibid., pp. 12–13.

¹¹⁸ van Ginneken, “Social protection for migrant workers” (see footnote 51), pp. 215–216.

also be excluded from health benefit schemes unless they are covered under what is known as a family health scheme – however, in that case, they consequently do not have access to independent and confidential health-care services.¹¹⁹ It also has to be noted that, to date, none of the GCC countries have ratified the ILO Domestic Workers Convention, 2011 (Convention No. 189), which requires that essential labour and social security protection be extended to domestic workers.

4.2.6. The domestic worker model employment contract in GCC countries

The model contract for domestic workers approved by GCC countries provides, in general terms, for medical care in case of disease and, more specifically, for medical care and compensation in the event of an occupational injury. However, compensation is only payable to the extent that the domestic legal system of the country concerned provides for this. Also, no mention is made of sickness benefits; nor are other social security contingencies, including maternity protection, covered. The worldwide apex body for trade unions, that is, the International Trade Union Confederation (ITUC), therefore called upon GCC countries to revise the model contract¹²⁰ to provide for more extensive social and labour law protection.

4.2.7. Absence of BSSAs in GCC countries

No provision is made for the portability of social security benefits. Portability would, in any event, hardly be relevant if the migrant worker concerned is not allowed to contribute to and access a public social insurance scheme of a particular GCC country. Also, as far as could be established, there is currently no BSSA in place between an African country and any of the GCC countries – as discussed elsewhere in this report, such agreements typically provide for the portability of social (security) benefits. Portability is also not covered in the current or envisaged BLAs or MOUs between African countries and GCC countries.

4.2.8. The need for supportive arrangements to enhance protection in GCC countries

A 2018 publication of the apex trade union body in Africa, that is, the African Regional Organisation of the International Trade Union Confederation (ITUC-Africa), enumerates a number of wide-ranging measures to enhance the protection of African migrant workers in GCC countries, which seemingly are required to support enhanced social protection of these workers.¹²¹

- (a) There is need for an identified, well-resourced lead agency to coordinate migration and labour migration governance within a regulated environment.
- (b) There is a need for awareness and education of the general public as regards migration, specifically in relation to the fact that laws in the GCC countries are not the same, as well as on available jobs and skills needed, the rights of workers, culture and dress code.
- (c) PEAs should be regulated with some agreed criteria and laws, to be reviewed when necessary, with harsher penalties for defaulting agencies.
- (d) The ratification, application and implementation of standard-enabling instruments, such as the African Union Free Movement Protocol, with relevant ILO conventions (Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Private

¹¹⁹ A. Rijssen, "Migrant workers in the Middle East", PhD thesis (Netherlands, Tilburg University, 2013), p. 23.

¹²⁰ ITUC, "Gulf Countries should revise domestic workers contract", article, 2 July 2013. Available at www.ituc-csi.org/gulf-countries-should-revise.

¹²¹ All except the last bullet point has been adapted from: Atong et al., "Africa labour migration to the GCC States" (see footnote 106), pp. ix–x and 66–67.

Employment Agencies Convention, 1997 (No. 181) and Domestic Workers Convention, 2011 (No. 189)) and the ILO Forced Labour Protocol (No. 29), should be prioritized and implemented.

- (e) African governments should devise means of providing support and protection to migrants in GCC States. Where embassies are present, a labour attaché equipped with the appropriate capacity and mandate should be deployed to cater to the needs of migrants.
- (f) In the areas of integration of migrants and reintegration of return migrants, there is a need for migrant resource centres and other active labour market programmes.
- (g) African governments should seek statutory representation in the Abu Dhabi Dialogue (a ministerial consultation process established in 2008).
- (h) As regards non-State stakeholders, the publication recommends engagement with State actors and complementing their efforts at improving migration governance; advocacy campaigns to highlight the protection needs and rights of affected migrant workers and their families; a decisive campaign to combat human trafficking; organizing affected workers; and capacity-building to improve trade unions' knowledge, skills and competence to effectively engage in migration governance. It urges unions to do more in the area of engaging African governments to review and/or renegotiate BLAs – processes that should involve social partners and other relevant stakeholders.
- (i) To the above could be added the acknowledgement of, engagement with and support to solidarity supportive groups organized by migrant workers in GCC countries.¹²²

4.3. Labour migration in selected countries of origin

4.3.1. Côte d'Ivoire

Policy and legal framework

Côte d'Ivoire lacks a comprehensive national migration policy, nor does a labour migration policy exist. Immigration issues are generally dealt with in detail by the respective legislation. As has been noted: “Major obstacles for formal labour recruitment include the lack of regulations on international labour recruitment, the lack of regular labour migration pathways and an articulated national migration policy.”¹²³ There is an increase in the level of attention being paid to the issue of trafficking, although the focus remains on child victims rather than on the whole spectrum of trafficking in persons. Regarding emigration, on the contrary, policies are close to non-existent. Promising initiatives can nevertheless be found. The current national development plan (“Côte d'Ivoire 2021–2025”) includes migration and envisages the adoption of a general migration policy, a specific migration and development policy, and the establishment of a national migration office.¹²⁴ Since 2014, Côte d'Ivoire has been working on a national migration policy strategy and organizes forums for its diaspora. A migration profile was developed by IOM in 2016. The report on

¹²² Ibid., p. 65.

¹²³ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa: The Case of Côte d'Ivoire, the Gambia, Ghana, Nigeria and Senegal* (Geneva, 2020), p. 10. Available at <https://publications.iom.int/system/files/pdf/an-exploratory-study-on-labour-recruitment.pdf?language=en>.

¹²⁴ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (Vienna, ICMPD, and Geneva, IOM, 2015), p. 136.

migration and development in Côte d'Ivoire¹²⁵ recommended that public policies in Côte d'Ivoire systematically consider the multiple consequences of migration, as well as the impact of sectoral policies on migration. Also, there have been limited attempts to institutionalize bilateral relations on migration-related matters.

Institutional arrangements

Migration management in Côte d'Ivoire is undertaken by various ministries. Those directly in charge of migration management are the Ministry of Security and Civil Protection, the Ministry of Territorial Administration and Decentralization, the Ministry of Foreign Affairs and the Ministry of Justice.¹²⁶

General and labour immigration data

Identified as a lower middle-income country located in West Africa and with an estimated population of 26.4 million (July 2020), Côte d'Ivoire's population is likely to continue growing for the foreseeable future because almost 60 per cent of the population is younger than 25, the total fertility rate is holding steady at about 3.5 children per woman, and contraceptive use is under 20 per cent.¹²⁷ As a result of this demographic history, the profile of Ivorians who migrate outside the country is mainly young people and less among the elderly. According to DESA, the total number of international migrants at mid-year was 2.5 million, constituting thus nearly 10 per cent of the total country population, while the international migrant stock as a percentage of the total population at mid-year stands at 9.9 per cent. Net migration (immigrants minus emigrants) in the five years prior to 2019 were –40,000, while the share of female migrants in the international migrant stock was 44.6 per cent. Côte d'Ivoire is the West African country with the largest number of international migrants present in its territory.¹²⁸

Labour emigration

The Ivorian diaspora is composed of approximately 1.1 million individuals around the world, a figure equivalent to approximately 5.4 per cent of the total Ivorian population.¹²⁹ Out-migration in Côte d'Ivoire is a recent phenomenon and numbers have recently begun to increase due to unemployment, relative deprivation and political crises faced in the early and mid-2000s. In recent years, irregular migration from Côte d'Ivoire to Europe, as well as to North Africa and the Gulf countries to a lesser extent, has seen a significant increase. Since 2016, Ivorian migrants have been in the top ten nationalities of migrants to arrive in Italy. North African countries are also increasingly becoming destination countries for Ivorian migrants. Ivorian emigration is mainly directed towards OECD member States rather than other African States, which are said to only host 7.5 per cent

¹²⁵ OECD, "Interactions entre politiques publiques, migrations et développement en Côte d'Ivoire" (Interactions between public policies, migrations and development in Côte d'Ivoire), *Les voies de développement* (Paris, OECD, 2017) (in French). Available at www.oecd.org/fr/pays/cotedivoire/interactions-entre-politiques-publiques-migrations-et-developpement-en-cote-d-ivoire-9789264277090-fr.htm.

¹²⁶ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), pp. 10–11.

¹²⁷ CIA, *The World Factbook* (2021 update). Available at www.cia.gov/library/publications/the-world-factbook/geos/print_iv.html (accessed 29 August 2020).

¹²⁸ Côte d'Ivoire's 2014 population census additionally states that 24.2 per cent of the total population located within the country is of non-Ivorian nationality (Institut National de la Statistique, *Commentaires : Principaux Résultats du RGPH 2014* [Comments: Main Results of the Population and Housing Census] (Abidjan, 2014)). Main countries of origin include Burkina Faso (53.7%), Mali (20.5%), Guinea (6.5%) and Ghana (4.4%). Migrant workers in Côte d'Ivoire work as entrepreneurs or independent workers (54.1%); caregivers (19.8%); public employees (12.2%); contract workers (7.3%); apprentices (1.8%); and local cooperative employees (1.1%) (DESA, "International migrant stock 2019: country profiles", data set. Available at www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp (accessed on 29 August 2020)).

¹²⁹ IOM, "Côte d'Ivoire: Key migration statistics", data set on the Migration Data Portal. Available at https://migrationdataportal.org/data?i=stock_abs_&t=2019&cm49=384 (accessed on 29 August 2020).

of Ivorian nationals in the diaspora.¹³⁰ Labour emigration flows are dominated by lower-educated (47.6%) and highly educated individuals (30.7%).¹³¹

Government responses to emigrant labour

A policy framework informing labour migration from Côte d'Ivoire does not yet exist. However, multilateral and bilateral arrangements supporting the payment and portability of social security benefits have been concluded, as indicated in later sections of this report. Much of the Government's focus is on stimulating employment creation in Côte d'Ivoire.¹³² Also, no circular migration programmes have been established by the Government – whether as part of regional integration processes or in the course of bilateral agreements with countries of destination.¹³³ Nevertheless, in the area of diaspora engagement, the Government of Côte d'Ivoire has taken decisive steps, including the preparation of a draft policy on the management of Ivorians abroad, alongside a range of other measures:

The Ivorian [G]overnment better considers the concerns and return of diaspora members by regularly consulting them and by creating a ministry, with a General Directorate for Ivorians Abroad, specially dedicated to the diaspora in 2013. Other initiatives include the annual excellence award to the best Ivorian of the diaspora, with a EUR 15,000 prize and the award of the national order for Ivorians abroad. A diaspora-mapping project to facilitate the voluntary online registration of the Ivorian diaspora, developed with the support of IOM and launched in 2018. The Diaspora Forum is held every two years while the Centre for the Promotion of Investments in Côte d'Ivoire (Centre de Promotion des Investissements en Côte d'Ivoire, CEPICI) provides facilities to members of the diaspora to open businesses; additionally, Diaspora for Growth (DFG), is a forum organized for and dedicated to entrepreneurs from the diaspora.

Côte d'Ivoire intends to designate its diaspora population as its 32nd region and as such, at the initiative of the General Directorate for Ivorians Abroad (DGIE), an internal workshop to develop a draft policy for the management of Ivorians abroad was organized on 9 November 2018. The draft diaspora management policy was presented at the 2019 Diaspora Forum, where an agreement was also signed between the Ministry of African Integration and Ivorians Abroad (Ministère de l'Intégration Africaine et des Ivoiriens de l'Extérieur (MIAIE)) and the African Solidarity Fund (Fonds de Solidarité Africains, FSA) to facilitate diaspora investments.¹³⁴

¹³⁰ ICMPD and IOM, "Côte d'Ivoire", in: *A Survey on Migration Policies in West Africa* (see footnote 124).

¹³¹ Ibid. (According to OECD data, the emigration rate of nurses was estimated at 4.2 per cent and that of medical doctors at 11.1 per cent. (OECD, *International Migration Outlook* (Paris, 2007, SOPEMI edition), pp. 212–213).)

¹³² The Agence Emploi Jeunes (AEJ) plays a crucial role in the Ivorian public employment sector. As the country's main public employment agency, AEJ promotes youth employment, holding a variety of responsibilities, including ensuring the reception, education and orientation of young jobseekers, providing support to those that carry out initiatives that would potentially create jobs for young people, and implementing special programmes for the vocational reintegration and employment of young people. The Directorate of Strategies and Employment Programs (DSPE) also implements measures favouring the creation and safeguarding of employment while promoting income-generating activities. Furthermore, the DSPE proposes strategies to strengthen the hiring capacity of companies, as well as formulating and developing strategies to better match training and employment.

¹³³ IOM, *Migration Governance Indicators – The Republic of Côte d'Ivoire: Profile 2019* (Geneva, 2019), p. 18. Available at <https://publications.iom.int/fr/system/files/pdf/mgi-cote-dlvoire-2019.pdf>.

¹³⁴ Ibid., pp. 16 and 21.

Recruitment arrangements

Recruitment of foreign migrant workers to Côte d'Ivoire mainly occurs via informal channels, including social networks, and primarily targets citizens from neighbouring ECOWAS countries.¹³⁵ Recruitment agencies reportedly do not provide pre-departure training, invariably do not have contracts with placement agencies in countries of destination, and do not focus on protecting migrant workers via appropriately designed employment contracts.¹³⁶

Remittances

In 2019, the contribution of Ivorian migrants to personal remittances received (as a percentage of GDP) by the country was 0.6 per cent, or approximately USD 338 million. USD 919 million in remittances were received in 2018.¹³⁷ Despite their low rate, remittances are typically channelled towards education.¹³⁸

Bilateral and multilateral agreements

Côte d'Ivoire has ratified a number of United Nations human rights conventions,¹³⁹ including:

- (a) International Covenant on Civil and Political Rights (ICCPR) (1966);
- (b) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966);
- (c) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979);
- (d) United Nations Convention on the Rights of the Child (CRC) (1989);
- (e) United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

However, the country has not ratified the two ILO conventions specific to migrant workers (Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), nor has it signed or ratified the ICRMW. It has also not ratified the ILO Private Employment Agencies Convention, 1997 (No. 181) and the ILO Domestic Workers Convention, 2011 (No. 189).

West African commitments

Côte d'Ivoire is bound by ECOWAS texts, including its Treaty (1975) and its subsequent protocols regarding the free movement of persons, residence and establishment. In addition, the ECOWAS MSSA, that is, the General Convention on Social Security of Member States of ECOWAS, is applicable to Côte d'Ivoire as well. Furthermore, the country has also signed (but not yet ratified) the Multilateral Convention on Social Security (2006) of the Intra-African Conference on Social Security Provision (CIPRES),¹⁴⁰ and plans to extend the portability of retirement pensions to all 16 CIPRES member States.¹⁴¹ Côte d'Ivoire also participates in the ECOWAS-led regional consultative process – the Migration Dialogue for West Africa (MIDWA).

¹³⁵ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123).

¹³⁶ Information obtained during an interview with an Ivorian recruitment agency representative.

¹³⁷ World Bank, "Personal remittances, received (US\$) – Côte d'Ivoire", data set. Available at <https://data.worldbank.org/indicator/BX.TRFPWKR.CD.DT?locations=CI> (accessed on 29 August 2020).

¹³⁸ OECD, "Interactions entre politiques publiques, migrations et développement en Côte d'Ivoire" (see footnote 125).

¹³⁹ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 145.

¹⁴⁰ ECOWAS, "Convention multilatérale de sécurité sociale de la Conférence interafricaine de la prévoyance sociale (CIPRES)" (Multilateral Convention on Social Security of the Intra-African Conference on Social Protection (CIPRES)), adopted on 27 February 2006. Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/99191/118290/F-151911049/INT-99191.pdf.

¹⁴¹ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), p. 13. (Apparently, Côte d'Ivoire is also party to an Air Afrique personnel bilateral arrangement (information obtained during an interview with a trade union representative).

Bilateral labour and social security agreements

The main bilateral agreement pertaining to entry and stay is that which has been concluded with France. This agreement, the 1992 Convention on Circulation and Stay of Persons between Côte d'Ivoire and France,¹⁴² eases some of the restrictions under French immigration legislation and provides for the issuance of the same stay or residence permit to family members in cases of family reunification (instead of a temporary stay permit under French administrative law), as well as the possibility to obtain a ten-year residence permit after three years of stay in the country (instead of five years under French administrative law). Côte d'Ivoire has concluded a number of BLAs to bring organized labour into the country since the 1960s.¹⁴³ Among others, in 1960, a convention was signed with Burkina Faso (named "Upper Volta" at the time), Côte d'Ivoire's main supplier of foreign labour. The convention was specifically dedicated to the conditions of recruitment and employment of migrants from Upper Volta in Côte d'Ivoire.¹⁴⁴ However, this agreement was suspended in 1974 due to non-compliance with some of the agreement's provisions.¹⁴⁵ In addition, Côte d'Ivoire has a BSSA with France regarding social protection for migrant workers. Several payment agreements between social security authorities have also been concluded over the years (specifically with Burkina Faso, Benin, Togo, Mali, the Niger and Senegal).¹⁴⁶

The need for protection: migrant workers in Côte d'Ivoire

Due to the informal nature of recruitment of migrant workers to Côte d'Ivoire, these migrant workers often find themselves in a vulnerable situation, as they often do not perceive it as necessary to register in Côte d'Ivoire, whether with the consular authorities of their country of origin nor with the Ivorian authorities, beyond their initial authorized visa-free stay of 90 days. They tend to be undocumented and face expulsions; in addition, social tensions with local populations and the risk of trafficking in persons are other problems to which these foreign nationals might be exposed. Also, apart from Ivorians, the most common trafficking victims in Côte d'Ivoire come from other West African States, who may find themselves bound in forced labour where they face exploitative conditions.¹⁴⁷

The need for protection: migrant workers from Côte d'Ivoire

North African countries (notably Morocco, Tunisia and Algeria) are increasingly becoming destination countries for Ivorian migrants. Tunisia and Morocco are particularly attractive destinations, as neither country requires a visa for entry by Ivorian nationals for a 90-day stay. If the stay is not regularized after this 90-day period, hefty fines are incurred by migrants, who may be rendered especially vulnerable to exploitation out of fear of being disclosed to authorities.¹⁴⁸ This may be inferred from by the fact that Ivorian migrants represent 80 per cent of all victims of trafficking identified by IOM Tunisia, fuelled by the existence of informal recruitment channels. In fact, Ivorian migrant workers end up in trafficked situations in many other countries in Europe, the Middle East and North Africa: They often work in deplorable conditions without pay for months on end; additionally, their identity documents are confiscated upon arrival, preventing them from

¹⁴² "Convention entre le Gouvernement de la Côte d'Ivoire et le Gouvernement de la République Française relative à la circulation et au séjour des personnes de 21 septembre 1992" [Convention between the Government of Côte d'Ivoire and the Government of the French Republic of 21 September 1992]. Available at www.info-droits-etrangers.org/wp-content/uploads/2017/12/convention-france-cote-divoire.pdf.

¹⁴³ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), p. 7.

¹⁴⁴ "Convention relative aux conditions d'engagement et d'emploi des travailleurs voltaïques en Côte d'Ivoire" (Convention on Conditions of Engagement and Employment in Côte d'Ivoire of Workers from the Volta Region), adopted on 9 March 1961. Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=33907&p_country=CIV&p_count=482.

¹⁴⁵ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 145.

¹⁴⁶ *Ibid.*, p. 144.

¹⁴⁷ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), pp. 7–8.

¹⁴⁸ Poor working conditions of Ivorians in Maghreb countries have been reported, for example, by a recruitment agency representative in an interview.

leaving. Also, an increase has been identified in the number of Ivorian workers recruited informally for work in the Gulf region, particularly to Kuwait, Saudi Arabia and the United Arab Emirates – recruitment for which is known to occur through informal agents, and most commonly involving women and girls deployed for domestic work in Kuwait. There is currently a growing awareness within the Government of Côte d'Ivoire of the abuse and exploitation faced by women in Gulf countries: "This attention has led to a mechanism being put in place at the airport in Abidjan to conduct in-depth questioning of persons suspected of migrating to the Gulf [region] without official work visas and contracts or other documentation to prove they had secured employment abroad; this has, however, not been overly effective in identifying nor stopping migrants from reaching their intended destination." There is indeed a strong link between informal recruitment, trafficking in persons and exploitation within Côte d'Ivoire and of Ivorians abroad.¹⁴⁹ Importantly, the absence of a sufficient evidence base complicates policymaking in this area. There is indeed a need for a system coordinating migration data pertaining to the full migration cycle of Ivorian migrant workers.¹⁵⁰

Returning migrant workers

There has been a trend of increased recruitment of Ivorian diaspora to return to their countries of origin or to other countries in the ECOWAS subregion.¹⁵¹ Most Ivorians have returned due to fears for their safety, especially in countries with heightened security situations such as Burkina Faso. Programmes aimed at the sustainable reintegration of returnee migrants have been launched with the support of IOM.¹⁵²

4.3.2. Ethiopia

Policy and legal framework

A recent ILO report commented:

Ethiopia's labour migration policy objectives are currently spread across different laws and policies, which renders it unclear, inaccessible, and difficult to work towards and to assess progress against. Moreover, there is no single policy framework dedicated to the employment of migrant workers. The rules and procedures for regulating their employment are contained in a number of laws and documents, with the effect that it is difficult to know what they are and how to implement them harmoniously at the federal and regional levels. The development of a labour migration policy, and the development of a single policy document that details the rules and regulations regarding the employment of migrant workers will help to address policy implementation challenges.¹⁵³

¹⁴⁹ Ibid., pp. 9–10.

¹⁵⁰ Information obtained during an interview with an Ivorian trade union representative.

¹⁵¹ The Government of Côte d'Ivoire supports repatriation, as reported by a government representative during an interview.

¹⁵² Florianne Charrière and Marion Frésia, *West Africa as a Migration and Protection Area* (Geneva, UNHCR, 2008), available at www.refworld.org/pdfid/4a277db82.pdf; IOM, "Promoting sustainable reintegration of returned migrants in West and Central Africa", news article on the IOM website, 19 November 2019, available at www.iom.int/news/promoting-sustainable-reintegration-returned-migrants-west-and-central-africa.

¹⁵³ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (Geneva, 2020), p. 32.

Policy context

At the moment, Ethiopia has a set of different migration-related policy frameworks: the Diaspora Policy (2013), the Immigration Proclamation (No. 354/2003), the Refugee Proclamation (No. 1110/2019), the Overseas Employment Proclamation (No. 923/2016) and the Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and the Smuggling of Persons (No. 1178/2020). Concrete provision is made for immigrant labourers to engage in skills transfer in Ethiopia; even so, this is not integrated into a framework of contributing towards the realization of the developmental goals enshrined in the Growth and Transformation Plan; revisions to the expatriate work permit service in Ethiopia has therefore been recommended. Neither a migration policy nor a migration profile has been developed for Ethiopia.¹⁵⁴ The National Social Protection Policy (2012) mentions the coverage of returning emigrants under the country's productive and safety net programmes but does not include or refer to foreign migrant workers in Ethiopia.¹⁵⁵

Institutional arrangements

A large number of government ministries and other institutions in Ethiopia are stakeholders in matters relating to immigrant workers and/or emigrant workers – including the Ministry of Labour and Social Affairs (MoLSA) and the Ministry of Foreign Affairs. Yet it has been noted that services for Ethiopians working in foreign countries remain fragmented and uncoordinated and that the capacity of the MoLSA Employment Service Promotion Directorate, in particular, is weak. Furthermore, Ethiopia's Overseas Employment Proclamation (No. 923/2016) provides that the National Coordinating Committee, established under article 39 of the Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants, be created at the regional and even woreda (district) levels, and shall perform certain activities in relation to overseas employment.¹⁵⁶

General and labour immigration data

Identified as a low-income country located in the Horn of Africa, with an estimated 2019 population of 109.2 million, estimated to reach 205.4 million by 2050, Ethiopia had a total population of international migrants numbering 1.3 million in 2019. The international migrant stock as a percentage of the total population stood at 1.1 per cent in the same year, with net migration (immigrants minus emigrants) at 150,000.¹⁵⁷ *National Labour Migration Management Assessment: Ethiopia* remarks that the main countries of origin reflect the reality in most countries and parts of the world, namely that migration mostly occurs within the same region, in particular from countries sharing borders with Ethiopia: "However, it is also evident that by far the majority of migrants to Ethiopia are refugees – as is also confirmed by data emanating from the Office of the United Nations High Commissioner for Refugees (UNHCR). This, in turn, indicates that the number of migrants who move to Ethiopia within the framework of labour migration is indeed limited."¹⁵⁸

Labour emigration

Ethiopia is a country of origin, destination and transit for migrants. Labour migration from Ethiopia is a recent phenomenon and has been largely driven by economic considerations. Specifically, drivers of emigration include the lack of appropriate employment opportunities in the country; poverty despite a high rate of economic growth; wage differentials between Ethiopia and

¹⁵⁴ IOM, *National Labour Migration Management Assessment: Ethiopia* (Addis Ababa, 2017), p. 8. Available at https://publications.iom.int/system/files/pdf/national_labour_migration_assessment_report.pdf.

¹⁵⁵ Government of Ethiopia, National Social Protection Policy (final draft, 26 March 2012).

¹⁵⁶ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 23.

¹⁵⁷ DESA, "International migrant stock 2019: country profiles", data set, available at www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp (accessed on 29 August 2020); IOM, "Ethiopia: Key migration statistics", data set on the Migration Data Portal, available at https://migrationdataportal.org/data?i=stock_abs_&t=2019&cm49=231 (accessed on 29 August 2020).

¹⁵⁸ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 9.

countries of destination; and a range of cultural factors, among which is the expectation for young women to migrate in order to support their families financially.¹⁵⁹ International flows of labour from Ethiopia, mostly of low-skilled persons, fuelled by the oil boom in the Gulf region, has caused the rapid growth of the economies of its countries and a corresponding demand for migrant workers, including domestic workers. The official 2017 figure of 180,00 Ethiopian migrant workers¹⁶⁰ does not reflect the full extent of irregular migration, often associated with the different human trafficking routes to Europe, the Middle East and Southern Africa. An IOM-commissioned assessment of the socioeconomic situation and needs of Ethiopian returnees from Saudi Arabia (approximately 168,000 were deported from Saudi Arabia between November 2013 and March 2014) indicates that more than three quarters of the returnees had irregular status by the time they were deported from Saudi Arabia: Close to 60 per cent migrated irregularly from the beginning, thus entering Saudi Arabia irregularly, whereas 15.4 per cent entered Saudi Arabia regularly and then became irregular migrants due to various reasons, including by overstaying their visas. Similarly, by far the majority of the estimated 100,000 Ethiopians in South Africa entered South Africa as asylum seekers.¹⁶¹

Countries of destination

The main countries of destination are in Europe, particularly the United Kingdom of Great Britain and Northern Ireland, Italy and Germany, the United States, Canada, and those in the Gulf region. The two primary destinations for regional migration from Ethiopia to other African countries are the Sudan and South Africa. Circular migration from Ethiopia to the Sudan has existed for the past few decades, and females have recently begun to migrate to the Sudan in search of domestic work.¹⁶²

Government responses to emigrant labour

As noted in the 2017 Labour Migration Management Assessment, there is currently only partial reflection on and accommodation of migration issues in policy and development planning in Ethiopia. For example, the Growth and Transformation Plan does not explicitly recognize the importance of labour migration in the economic development of the country. Neither does it elaborate on the potential of international labour migration from Ethiopia as a mechanism to create employment opportunities for unemployed or underemployed persons in the country: “In fact, government policy in this regard appears to promote local employment, and to deal with labour exporting only to the extent that there is need to regulate this phenomenon and extend protection to affected workers. This restricted perspective of migration from Ethiopia for work purposes is also reflected in the regulatory instrument developed for this purpose, that is, both the earlier Proclamation No. 632/2009 and the recently adopted Proclamation No. 923/2016.”¹⁶³ The 2016 National Employment Policy and Strategy still prioritizes the domestic demand for manpower, but does include, subject to qualifications, important objectives in pursuit of the overarching goal to “protect the rights and their safety of international labour migrants [migrant workers] from Ethiopia in order to make them competitive and ensure their benefits from their employment engagements.”¹⁶⁴

¹⁵⁹ Ibid., p. 5; IOM, *National Labour Migration Management: Ethiopia – Training of Trainers Manual* (Addis Ababa, 2017), pp. 12–13, available at https://publications.iom.int/system/files/pdf/training_of_trainers_manual_ethiopia.pdf; Katherine Kuschminder and Melissa Siegel, *Migration & Development: A World in Motion – Ethiopia Country Report* (Maastricht, Maastricht University and United Nations University, 2014).

¹⁶⁰ IOM, *National Labour Migration Management: Ethiopia – Training of Trainers Manual* (see footnote 159), pp. 12–13.

¹⁶¹ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), pp. 5–7.

¹⁶² Katherine Kuschminder, Lisa Andersson and Melissa Siegel, “Profiling Ethiopian migration: A comparison of characteristics of Ethiopian migrants to Africa, the Middle East and the North”, in: *Crossing African Borders: Migration and Mobility* (Lisbon, University of Lisbon – Center of African Studies, 2012), pp. 28–43.

¹⁶³ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 9.

¹⁶⁴ Government of Ethiopia, *National Employment Policy and Strategy* (Addis Ababa, 2016), para. 2.5.6.2.1. (To achieve this goal, the Strategy lists the following specific objectives, among others: (a) establishing bilateral and multilateral agreements to ensure fair and objective employment opportunities; (b) assisting workers in gaining the necessary knowledge, skills and attitude to competitively participate in the international labour market; (c) enabling these workers to so participate without affecting domestic labour market demand; and (d) devising and implementing mechanisms to curb illegal labour migration.)

Initiatives to support labour migration from Ethiopia

Furthermore, dedicated steps to inform and in part support labour migration from Ethiopia are discernible in the adoption of a diaspora policy, the relative recent review of the regulatory framework pertaining to employment exchange services (in relation to recruitment for overseas employment), resulting in the adoption of a new overseas employment proclamation, a well-organized and well-capacitated Diaspora Engagement Affairs Directorate within the Ministry of Foreign Affairs, and a suggested comprehensive institutional framework tasked with overseas employment issues within MoLSA.¹⁶⁵ Other initiatives include the development of a dedicated Diaspora Proclamation, as well as the establishment of a Diaspora Coordination Forum and a Diaspora Trust Fund.¹⁶⁶ Also, Ethiopia has, in recent years, concluded a range of bilateral agreements and MOUs providing for the employment of Ethiopians abroad, or has prepared draft arrangements in this regard. Some of these agreements provide for bilateral exchange of manpower. These arrangements have been concluded and/or negotiated with Bahrain, Jordan, Lebanon, Kuwait, Oman, Saudi Arabia, Qatar, South Sudan, the Sudan and the United Arab Emirates. Yet Ethiopia continues to grapple with access to and portability of social security benefits.¹⁶⁷

Recruitment arrangements

Ethiopia operates a detailed regulatory framework provided for in the Overseas Employment Proclamation, Proclamation 923/2016. This framework concentrates on recruitment in relation to employment abroad of Ethiopian migrant workers, and not on international migrant labour being accommodated in the Ethiopian labour market.¹⁶⁸ Employment abroad of a migrant worker (which includes per definition also a jobseeker) from Ethiopia via an Ethiopian private employment agency (PEA) constitutes one avenue of overseas employment regulated by the Proclamation; the Proclamation also covers the employment of a migrant worker via a government-to-government arrangement or through direct employment: (i) Regarding government-to-government arrangements, MoLSA is mandated to provide recruitment and placement services to governmental organizations in receiving countries based on a government-to-government agreement; and (ii) Direct employment by a foreign employer is regarded as an “exceptional” category, as the Proclamation stipulates that “[N]o employer shall directly recruit and employ a worker except through the Ministry or an Agency”. Notwithstanding this provision, allowance is made for direct employment of staff of an Ethiopian mission, where the employer is an international organization, or where the job seeker acquires a job opportunity by his own accord in job positions other than domestic worker service. However, in this last-mentioned case (not involving an Ethiopian mission or an international organization), the direct employment by a foreign employer must be “permitted” by the MoLSA, if a range of conditions have been met (art. 6(3)).¹⁶⁹

Conditions under which deployment is allowed

Other measures are also contained in the Overseas Employment Proclamation (No. 923/2016) to protect the rights of nationals working overseas. In addition to multiple conditions imposed on those wishing to emigrate, the proclamation further states that overseas workers can only be deployed to countries with which Ethiopia has a bilateral agreement and which introduce measures to regulate employment agencies.

¹⁶⁵ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 9.

¹⁶⁶ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153), p. 43.

¹⁶⁷ *Ibid.*

¹⁶⁸ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), pp. 49–58.

¹⁶⁹ These conditions are as follows: (a) an assurance has been secured that the worker’s basic rights and dignity will be respected in the country of destination; (b) life and disability insurance coverage has been bought from the domestic insurance market by the foreign employer, the contents of which may be subject to a MoLSA directive; (c) appropriate air or land transport arrangements have been submitted together with the contract of employment; and (d) an advertisement to vacant positions permitted for direct employment “shall only be conducted through the Ministry or the appropriate authority” (arts. 6(3) and (4), read with art. 62).

Remittances

The volume of inward remittances have declined from a very high level some years ago, though they remain substantial at USD 531 million (2019 data), constituting 0.6 per cent of GDP; outward remittances were valued at USD 8.7 million in 2018.¹⁷⁰ Informal remittance flows remain significant, accounting for as much as 78 per cent of the total volume in some corridors.¹⁷¹ Remittances to Ethiopia are largely linked to household survival and consumption, personal (private) and national (public) savings, investments, balance of payments and economic growth. The 2017 National Labour Migration Management Assessment recommended the need for evidence-based research to determine the impact of remittances on socioeconomic development in Ethiopia and addressed the issues of high transfer costs and the use of remittances to provide or enhance social security coverage. The assessment concluded by recommending the use of modern, innovative and inexpensive transfer mechanisms and the drafting of a remittance policy.¹⁷² A recent ILO study also suggested that the cost of remitting through formal channels and the ease of using formal channels be improved further. It concluded that incentives to remit from Ethiopia are aimed at significant investors and do not aid other migrant workers.¹⁷³

Bilateral and multilateral agreements

Ethiopia has not ratified the ICRMW nor the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and is not taking any known steps to do so. The country, however, ratified the ILO Private Employment Agencies Convention, 1997 (No. 181) in 1999,¹⁷⁴ the African Union Charter on Human and Peoples' Rights (1981) and a number of other African Union protocols. It is a member of two RECs, namely, COMESA and IGAD.¹⁷⁵ The former has a yet-to-be operational free movement regime in place, while the latter is still developing such a regime. However, there are other important IGAD initiatives that are already ongoing, aimed at supporting labour migration, notably the IGAD Regional Migration Policy Framework (2012). Ethiopia also participates in the IGAD Regional Consultative Process (RCP). Regional political integration and human security remain key issues concerning labour migration through implementation of key regional frameworks on migration management and forced population displacements.¹⁷⁶

¹⁷⁰ World Bank, "Personal remittances received (US\$) – Ethiopia", data set. Available at <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=ET> (accessed on 29 August 2020).

¹⁷¹ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153), p. 48. (The use of informal remittance channels remains significant as the irregular status of many Ethiopian migrant workers renders the use of formal channels problematic (information obtained during an interview with an Ethiopian university researcher.)

¹⁷² IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), pp. 66 and 69.

¹⁷³ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153), p. 48.

¹⁷⁴ *Ibid.*, p. 34; IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 42.

¹⁷⁵ Ethiopia is not a member of the East African Community (EAC). However, it has been attending EAC-related meetings as an observer, in the wake of increasing and strengthening trade links with the EAC. (Eric Kabeera, "East Africa: Ethiopia eyes stakes in EAC integration projects", article on the All Africa website, 24 June 2014 (first published on *The New Times* (online)). Available from <http://allafrica.com/stories/201406250682.html>.)

¹⁷⁶ ECA, "COMESA – Peace, Security, Stability and Governance" section. Available at <https://archive.uneca.org/oria/pages/peace-security-stability-and-governance>.

Bilateral arrangements

Ethiopia has concluded several BLAs and MOUs, while others are in draft form. It has not adopted any separate BSSAs. The BLAs and MOUs¹⁷⁷ cover areas such as recruitment, including in terms of monitoring the regulation of the industry; transfer of remittances to Ethiopia; the applicability of the domestic legal framework of the country of destination; protection of the labour rights of Ethiopian migrant workers; and the establishment of a joint bilateral commission, joint working group or some other institutional framework to give effect to and monitor compliance with the instrument concerned. No provision is made for the portability of social security benefits for migrant workers. These BLAs and MOUs face several other challenges, as discussed later in this report, and may have to be revised to take account of the provisions of the Overseas Employment Proclamation (No. 923/2016).¹⁷⁸

The need for protection

Ethiopian migrant workers in an irregular situation are exposed to hardship and abuse, including through smuggling and human trafficking, during the migration journey and while in destination countries. In some destination countries, maltreatment includes denial of their freedoms (including, for example, in the context of the employer sponsorship (or *kafala*) system prevalent in many GCC countries), wages and even of food; being forced to work for long hours without pay; physical and verbal abuses; and retention of their passports by their employers.¹⁷⁹ While Ethiopia is already making significant steps in making arrangements to strengthen the protection and welfare of its migrant workers and their rights, including through the development of a template or model contract of employment and the envisaged appointment of labour attachés to render support to migrant workers in destination countries, the 2017 National Migration Labour Migration Management Assessment Report gives a clarion call for the need to protect migrant workers in several other ways, specifically:

- (a) Strengthening the social protection system to improve and ensure the social and economic well-being of migrant workers and the families they have left behind;

¹⁷⁷ Countries with which Ethiopia has BLAs that have either been concluded or are in draft form include:

- (a) Bahrain: Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of Bahrain concerning the Employment of Ethiopian Manpower in Bahrain (2013);
- (b) Qatar: Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Qatar concerning the Employment of Ethiopian Manpower in the State of Qatar (2013) (Proclamation 793/2013, published in the Federal Negarit Gazette of Ethiopia);
- (c) Kuwait: Agreement between the Federal Democratic Republic of Ethiopia and the Government of the State of Kuwait on the Field of Exchange of Manpower Ratification Proclamation (2010) (Proclamation 677/2010, published in the Federal Negarit Gazette of Ethiopia);
- (d) Saudi Arabia: Agreement on Labour Cooperation for Ethiopian Domestic Workers Employment between the Ministry of Labour of the Kingdom of Saudi Arabia and the Ministry of Labour and Social Affairs of the Federal Democratic Republic of Ethiopia (2018) (Proclamation 1092/2018, published in the Federal Negarit Gazette of Ethiopia);
- (e) Lebanon: Cooperation Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of Lebanon concerning the employment of Ethiopian Manpower in Lebanon (2014).
- (f) South Sudan: Draft Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of the South Sudan on Exchange of Manpower (2012).
- (g) Djibouti: Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of Djibouti on Exchange of Manpower (2009).
- (h) Jordan: Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Hashemite Kingdom of Jordan Employment of Ethiopian Workers (2012).
- (i) Sudan: Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of Sudan on Exchange of Manpower (2009).
- (j) United Arab Emirates: Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and the Government of the United Arab Emirates on the Field of Exchange of Manpower (2012). (IOM, National Labour Migration Management Assessment: Ethiopia (footnote 150), pp. 39–40.)
- (k) Oman: Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of Oman concerning the Employment of Ethiopian Manpower in Oman (2013).

¹⁷⁸ IOM, National Labour Migration Management Assessment: Ethiopia (see footnote 154), pp. 39–41; IOM, Migration Governance Indicators – Ethiopia: Profile 2019 (Geneva, 2019), p. 15, available at <https://publications.iom.int/books/migration-governance-indicators-profile-2019-ethiopia>.

¹⁷⁹ Ibid., p. 7.

- (b) Implementing concrete measures to ensure enhanced protection through the National Human Rights Action Plan;
- (c) Protecting the rights and interests of migrant workers abroad and upon return, as well as safeguarding the plight of, in particular, women and children staying behind;
- (d) Providing social protection for migrant workers in receiving Middle Eastern countries, which is largely absent even with the implementation of bilateral arrangements concluded between Ethiopia and these destination countries.

The need for the above is confirmed by a number of Ethiopian scholars interviewed for this report. An important recent development in this regard is a bilateral agreement concluded between the Confederation of Ethiopian Trade Unions and its Lebanese counterpart.¹⁸⁰

Return migrant workers

Returnee reintegration and support to returnee migrants other than victims of human trafficking is an area that has thus far received insufficient attention.¹⁸¹ However, a recent report remarked that “return and reintegration activities have been expanding since the first mass deportation from Saudi Arabia in 2013. MoLSA has a department dedicated to reintegration that oversees reintegration at the regional level and is the government focal point for reintegration.” Also, the recent Reintegration Directive provides a policy framework for return and reintegration programmes. Some assistance is provided by NGOs and programmatic support given by international partners.¹⁸² The absence of appropriate measures in this regard fuels remigration, which is indeed a widespread practice in Ethiopia. Also, the inclusion and implementation of return and reintegration provisions and measures are weakly developed in the bilateral instruments within the migration framework for Ethiopia and would need strengthening.¹⁸³ For example, a study in relation to among others the return experiences of Ethiopian migrant domestic workers showed that the renegotiations by women returnees on issues of reception, economic betterment, relationship-rebuilding and exercising agency with families and communities are often stressful, isolating and disempowering.¹⁸⁴ Ethiopian scholars interviewed for this report have indicated that return and reintegration services are currently provided only by NGOs, but remain weak and incomplete. The lack of data on Ethiopian migrant workers abroad and returned migrant workers have also been highlighted as a particular concern.

Mainstreaming the return of migrant workers

Areas in relation to the return of migrant workers to be better mainstreamed are indicated in the 2017 *National Labour Migration Management Assessment Report*:¹⁸⁵

- (a) Addressing gaps in the provision of reintegration services to returning migrant workers;
- (b) Ensuring proper provision of cooperation and support relevant to the objectives of organs engaged in counselling and reintegration activities for returnees;

¹⁸⁰ Information obtained during an interview with an Ethiopian trade union representative.

¹⁸¹ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153), pp. 44 and 53.

¹⁸² *Ibid.*, pp. 53–54.

¹⁸³ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 76.

¹⁸⁴ Naami Beliu Ketema, *Female Ethiopian migrant domestic workers: an analysis of migration, return migration and reintegration experiences* [master’s thesis] (Eugene, University of Oregon, 2014), pp. 90–106. Available at <https://core.ac.uk/download/pdf/36692616.pdf>.

¹⁸⁵ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154).

- (c) Comprehensive migration laws and regulations, which include those governing the entry, stay and transit of foreigners, and the exit and return of nationals, with clear provisions on migrants' rights;
- (d) Returnee reintegration and support especially smuggled and trafficked returning migrant workers and those exposed to abuse in countries of destination need counselling and trauma support;
- (e) Provision of social protection and social security benefits, particularly unemployment insurance, compensation for employment injury and old-age pension for migrant workers while working abroad and/or upon their return.

4.3.3. Ghana

Policy and legal framework

It has been noted that, "Ghana has a well-defined national migration policy that addresses legal and regulatory aspects of migration. The Immigration Act of 2000 (Act 573), the Immigration Amendment Act of 2012 (Act 848) (dealing with migrant smuggling and human trafficking), and the Immigration Regulations of 2001 (Legislative Instrument 1691) serve as Ghana's primary legislation regulating immigration."¹⁸⁶ The Ghana Refugee Law of 1992 prohibits the expulsion of refugees to countries where the situation is disruptive. A legislative framework regulates and monitors labour emigration from the country. The National Migration Policy of 2016 includes goals, objectives and strategies for the country related to migration. Furthermore, it indicates remittances and development as a priority area and lists a number of strategies for harnessing the development potential of remittances. It also deals with related issues such as diaspora engagement, recruitment of Ghanaians for work abroad, and the return, readmission and reintegration of emigrant Ghanaians. Ghana also has a national strategy specifically for addressing the displacement of people in the case of disasters – the National Disaster Management Plan. More recently, the National Labour Migration Policy 2020–2024¹⁸⁷ was adopted, and a Draft Diaspora Engagement Policy¹⁸⁸ was developed. A Homeland Return Act is currently being finalized and would provide for the acquisition of citizenship by those in the diaspora; when passed, the Act would enable those in the diaspora to be granted Ghanaian citizenship even while they are still abroad.¹⁸⁹

Institutional arrangements

The Ministry of Employment and Labour Relations (MELR) and the Labour Department facilitate the mainstreaming of labour migration and international labour recruitment issues. The Ministry of Foreign Affairs and Regional Integration (MFARI) is the most important ministry when it comes to Ghanaian emigration. It is responsible for the protection of Ghanaians abroad and deals with immigration, with several institutions under its purview. Ghana's Migration Unit, an interministerial body, is responsible for coordinating national activities related to migration and the development of a migration policy framework for the country. The Ghana Immigration Service is responsible for controlling, regulating, conditioning and monitoring the status and activities of foreigners in Ghana, and records entries and exits at several border points – implementing clear and easily accessible admission and eligibility criteria. The Ghana Refugee Board is responsible for the processing of asylum applications and works to address the needs of asylum seekers and refugees.¹⁹⁰

¹⁸⁶ IOM, "Migration governance snapshot: The Republic of Ghana", May 2018, p. 3. Available at www.migrationdataportal.org/sites/g/files/tmzbd1251/files/2018-05/MGI%20report%20Ghana_0.pdf.

¹⁸⁷ Government of Ghana – MELR, Ghana National Labour Migration Policy 2020–2024 (Accra, 2020).

¹⁸⁸ Government of Ghana – MFARI, Diaspora Engagement Policy for Ghana (Draft) (Accra, 2020).

¹⁸⁹ See, for example: Claude Nyarko Adams, "Ghana: Diasporans Citizenship Acquisition Law in offing – GTA CEO", *Ghanaian Times*, 1 September 2020. Available at <https://allafrica.com/stories/202009020183.html>.

¹⁹⁰ Scalabrini Institute for Human Mobility in Africa, "Ghana" section. Available at www.sihma.org.za/african-migration-statistics/country/ghana.

General and labour immigration data

Identified as a lower middle-income country located in West Africa and with an estimated population of 29.34 million (July 2020), Ghana's total number of international migrants was 466,800 in 2019; the international migrant stock as a percentage of the total population stood at 1.5 per cent in 2019, with net migration (immigrants minus emigrants) of –50,000.¹⁹¹ Immigration and labour immigration are essentially of a contiguous nature and have risen exponentially. Most migrants, including migrant workers, in Ghana come from nearby African countries, in particular Togo (21.8%), Nigeria (16.9%), Côte d'Ivoire (15.6%) and Burkina Faso (14.2%), that is, majority are from ECOWAS member States.¹⁹² Foreign nationals, the majority of whom are male, are employed across all sectors, but most are low-skilled and working in the private informal sector, while a select few work for multinational companies.¹⁹³

Labour emigration

According to DESA, the total number of international emigrants from Ghana was 970,600 in 2019 (estimate) – which reflects a rising tendency in the number of Ghanaians leaving the country (the 2015 figure was 905,852) and constitutes about 3 per cent of the Ghanaian population. Much of emigration is to the rest of the West African region – in particular, Nigeria and Côte d'Ivoire. The United States and the United Kingdom also attract sizeable numbers of emigrants from Ghana.¹⁹⁴ The majority (71%) of Ghanaian migrants reside in ECOWAS countries (Burkina Faso, Côte d'Ivoire, Mali, Nigeria and Togo) and are migrant workers who have migrate independently rather than being recruited by a specific agency or company. This trend is made possible by membership in ECOWAS, which guarantees visa-free movement for nationals of countries in the region (migrating within the region is easier and often facilitated through familial and social networks). Most recently, in recent decades, as noted by ITUC-Africa (2018), migration to GCC countries for employment opportunities has significantly risen.¹⁹⁵ Other emerging places of destination also noted by Ghanaian national authorities include India, Hong Kong Special Administrative Region, China, and various countries in South-East Asia.¹⁹⁶

Profile of migrant workers from Ghana

Male emigrants still dominate, although Ghanaian women have become increasingly involved in migration because of the increased demand for them and their services in the care industry.¹⁹⁷ Many skilled professionals have left – Ghana has one of the highest emigration rates among the highly skilled in West Africa (46%), reflecting the skill level of emigrants from Ghana. This has impacted on much-needed human capital: According to estimates, more than 56 per cent of doctors and 24 per cent of nurses that have been trained in Ghana are working abroad. Reasons for leaving include low salaries, poor long-term career prospects and bleak prospects of saving enough for retirement in Ghana. The health-care sector is especially experiencing severe brain

¹⁹¹ Migration Policy Institute, "Country Resources – Ghana" section, available at www.migrationpolicy.org/country-resource/ghana; DESA, "International migrant stock 2019: Country profiles", data set (see footnote 157); IOM, "Ghana: Key migration statistics", data set on the Migration Data Portal, available at https://migrationdataportal.org/?i=stock_abs_&t=2019&cm49=288 (accessed on 29 August 2020).

¹⁹² According to border statistics from Ghana Immigration Services, Europeans constituted the largest group of non-African arrivals (15.3%), followed by North Americans (9.7%), between 2000 and 2007. (IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123)).

¹⁹³ Maastricht Graduate School of Governance, *Ghana Migration Profile: Study on Migration Routes in West and Central Africa* (Maastricht, 2017), pp. 5–6; Joseph Teye, "Situational analysis report for the development of labour migration policy in Ghana", paper (Accra, 2018).

¹⁹⁴ Scalabrini Institute for Human Mobility in Africa, "Ghana" section (see footnote 190).

¹⁹⁵ ITUC-Africa, "18th meeting of the General Council of ITUC-Africa", webpage. Available at www.ituc-africa.org/18th-meeting-of-the-General-Council-of-ITUC-Africa.html.

¹⁹⁶ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 165.

¹⁹⁷ Maastricht Graduate School of Governance, *Ghana Migration Profile* (see footnote 193), p. 7.

drain, to such an extent that the Government has implemented some incentives for health-care professionals to stay and work in Ghana.¹⁹⁸

Government responses to emigrant labour

Incentives have not managed to curb the flight of workers.¹⁹⁹ Nevertheless, as indicated in the 2016 National Migration Policy, the “continued emigration trend of Ghanaian workers and the increased population of the Ghanaian diaspora committed to national development has also prompted the need for national policy and legislation.” To this end, the Government partnered with IOM to encourage the diaspora in developed countries to temporarily or permanently work in their area of expertise and transfer knowledge and capacity in the field concerned (via a MIDA project). A Diaspora Affairs Bureau (DAB) was established within the MFARI in 2012 to enhance communication with the diaspora.²⁰⁰ Operating as part of the legal branch in the ministry, it has two support units – the Diaspora Support Unit and the Migration and Development Unit: “These units are tasked with managing a databank on the diaspora in combination with promoting policies that encourage diaspora investment within Ghana. Moreover, MFARI is the ministry responsible for Ghanaians that live abroad as all Ghanaian embassies that are in foreign nations operate under the Ministry and Foreign Affairs and Regional Integration. The embassies also manage and operate a database of Ghanaians who live abroad in combination with a DAB for Ghanaians who are living in the diaspora.”²⁰¹

The 2016 National Migration Policy and other policy initiatives

Also, the 2016 National Migration Policy specifically stresses the need to harness the development potential of emigrants; the creation of incentives to retain Ghanaian professionals; the provision of a framework for the financial contribution of emigrants towards national development goals; the promotion and facilitation of the return of skilled emigrants through brain gain initiatives, such as reintegration packages; and increasing research and data-gathering on emigrant investors and skills transfer. It further suggests developing a database of Ghanaian emigrants; instituting microlevel support for diaspora initiatives; the registration of all Ghanaian emigrants by the National Identification Authority; mainstreaming diaspora investments, skills and knowledge transfer in development planning; creating incentives for diaspora investment, trade and technology transfer; initiating processes to achieve portability of diaspora social security as a means to encourage their return.²⁰² A Diaspora Engagement Policy has also been developed, for imminent submission to and approval by the Cabinet of Ghana.²⁰³

Migration in the context of trade

The 2016 National Migration Policy deals with migration in the context of trade in services (i.e. provision of labour), with migrant workers as a separate category of emigrant Ghanaians – indicating that there was no prior policy guiding this type of migration and noting the relevance of Mode 4 of the World Trade Organization’s General Agreement on Trade in Services (GATS), which provides for the movement of natural persons whereby a foreign national provides a service within a State as an “independent supplier” (e.g. professional consultant or health worker) or employee of a service supplier (e.g. consultancy firm, hospital and construction company). The National Migration

¹⁹⁸ Scalabrini Institute for Human Mobility in Africa, “Ghana” section (see footnote 190); IOM, *Migration in Ghana: A Country Profile* 2009 (Accra, 2009), p. 13; Micah Bump, “Ghana: Searching for Opportunities at Home and Abroad”, *Migration Information Source* (online journal of the Migration Policy Institute), 1 March 2006, available at www.migrationpolicy.org/article/ghana-searching-opportunities-home-and-abroad.

¹⁹⁹ Scalabrini Institute for Human Mobility in Africa, “Ghana” section (see footnote 190).

²⁰⁰ Government of Ghana – Ministry of the Interior, *National Migration Policy for Ghana* (Accra, 2016), p. 23.

²⁰¹ Maastricht Graduate School of Governance, *Ghana Migration Profile* (see footnote 193), p. 11.

²⁰² Government of Ghana – Ministry of the Interior, *National Migration Policy for Ghana* (see footnote 196), pp. 42–43 and 71–72.

²⁰³ CBNBC Africa, “Ghana plans diaspora engagement policy to attract foreign direct investment”, 18 November 2020. Available at www.cnbcafrica.com/media/6210575504001.

Policy suggests that, given the number of Ghanaian artists and athletes engaged in migration in such context, it should be mainstreamed into the migration policy framework.²⁰⁴

Recruitment arrangements

The 2016 National Migration Policy stresses the importance of:²⁰⁵

- (a) Promoting ethical recruitment practices;
- (b) Advocating for the compliance of countries of destination with international migration and labour standards;
- (c) Developing reciprocal agreements with countries of destination regarding academic and professional/occupational credentials;
- (d) Sensitizing emigrants about job and investment opportunities in Ghana;
- (e) Creating opportunities for engaging with emigrants, such as online platforms and diplomatic missions.

Remittances

Unlike remittances sent from Ghana, remittances to Ghana have been rapidly increasing over the years. According to the World Bank, Ghana received USD 2.980 billion in 2016; USD 3.536 billion in 2017; USD 3.803 billion in 2018 (5.8% of the national GDP); and USD 3.723 billion in 2019 (5.5% of the national GDP). Remittance inflows constituted 5.2 per cent of GDP in 2020. The reasons for the rise vary, but possibly include stronger economies in high-income countries and higher oil prices, favouring regional economies.²⁰⁶ Similar problems are experienced in the education sector: It is believed that over 60 per cent of faculty positions at polytechnics and 40 per cent in public universities are vacant.²⁰⁷ The 2016 National Migration Policy provides several pointers for the enhancement of sending remittances to Ghana. It recognizes the positive contribution of remittances to household consumption and national development and reflects the Government's commitment to maximizing its benefits and minimizing the challenges to remittance flows, suggesting that leveraging remittances for development is an important aspect of the migration–development nexus. To this end, it sets as policy objectives the reduction of barriers (and costs) associated with remittances; engagement with the diaspora through Ghanaian diplomatic missions abroad to help increase remittance flows; and utilizing innovative products and new technologies to broaden formal remittance markets.²⁰⁸

Bilateral and multilateral agreements

While Ghana ratified the ICRMW in 2000 and most other United Nations human rights conventions, it has not yet ratified key ILO labour migration conventions, namely the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). As noted in a 2018 IOM publication, Ghana has agreements in place with many countries concerning cooperation on labour migration, although some of them (e.g. older agreements with Jamaica and the United Kingdom) have fallen into

²⁰⁴ Government of Ghana – Ministry of the Interior, National Migration Policy for Ghana (see footnote 200), pp. 64–65.

²⁰⁵ Ibid., p. 44.

²⁰⁶ World Bank, “Personal remittances, received (current US\$) – Ghana (2021)”, data set, available at <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?amp%3Bstart=2016&%3Bview=map&end=2016&locations=GH> (accessed on 29 August 2020); IOM, “Ghana: Key migration statistics”, data set on the Migration Data Portal (see footnote 191). (The average cost of sending remittances from Ghana (in %) is 14.5 per cent (ibid.).

²⁰⁷ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 165.

²⁰⁸ Government of Ghana – Ministry of the Interior, National Migration Policy for Ghana (see footnote 200), pp. 69–70.

disuse.²⁰⁹ Bilateral agreements include the United States–Ghana Trade and Investment Framework Agreement and two agreements between Ghana and Kenya on the development of partnerships in air services and trade. In 2011, Ghana also signed bilateral agreements with Turkey on: (a) bilateral air services, health and medical sciences, and military training and sciences, and (b) mutual abolition of visa requirements for holders of diplomatic passports.²¹⁰ Although Ghana is bound by the ECOWAS Free Movement Protocols ratified by the country, it still applies legal restrictions on foreigners across a number of sectors.²¹¹ It is equally bound by the ECOWAS General Convention on Social Security (2013), but has not concluded separate and specific BSSAs.²¹² The implications of this have been noted in a 2015 publication on migrant policies in West Africa: “In the vast majority of cases, migrant workers can only fully benefit from social security benefits when social security agreements are concluded. The absence of a system of maintenance of acquired rights and provision of benefits abroad, as well as of rights in course of acquisition, is likely to be a deterrent to the permanent return of migrants in Ghana.”²¹³

The need for protection

The National Migration Policy (2016) espouses the principles of: (a) the protection of migrant rights, (b) facilitation of migrant equality and (c) adherence to the 1992 Constitution, which guarantees the rights of Ghanaians to emigrate and the right of all persons to circulate freely within Ghana. The principles are further in line with the 2006 African Union Migration Policy Framework for Africa²¹⁴ and the 2008 Common Approach on Migration of the Economic Community of West African States (ECOWAS),²¹⁵ as well as the promotion of human development in general. Further, it presents strategies for developing social protection policies for migrants in urban areas, as well as controlling irregular migration flows and addressing challenges as regards the implementation of the border management protocols of Ghana and the protection of migrants against human rights abuses, particularly in reference to trafficking in persons and migrant smuggling. Also, as indicated in the next section, it seeks to promote sociocultural acceptance of returnees and the protection of returnee (and family) rights and ensures that the Government complies with international protection obligations. Finally, the National Migration Policy seeks to promote strategies to enhance the principle of non-discrimination against migrants in Ghana and the sensitization of the general population to upholding the rights of migrants. To this end, the Government of Ghana has signed international, regional and subregional conventions and protocols for the protection of migrant rights against predicaments that include discrimination, unfair treatment, mass expulsion, persecution and avoidance of other malpractices, as earlier indicated.

Return migrant workers

The improvement in the Ghanaian economy vis-à-vis the economies of neighbouring countries, as well as restrictions on Ghanaians travelling abroad (for instance, those travelling to European Union countries) and facilitated repatriation of those without valid documents have factored in the return of migrants, including migrant workers, to Ghana. To promote further linkages with Ghanaians living abroad and encourage return, the Non-Resident Ghanaians Secretariat (NRGS) was instituted in 2003. However, it is reportedly difficult for the Government of Ghana

²⁰⁹ Ibid., p. 177.

²¹⁰ IOM, “Migration governance snapshot: The Republic of Ghana”, May 2018 (see footnote 186), pp. 4–5.

²¹¹ Maastricht Graduate School of Governance, *Ghana Migration Profile* (see footnote 193), p. 12. (The Migration Profile also notes that: “Central to Ghana’s NMP [National Migration Policy] is the Common Approach on Migration of the ECOWAS community, which sets out a policy framework for the transition “to move beyond migration control and exclusion to migration management and opportunity”...”)

²¹² ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 176.

²¹³ Ibid.

²¹⁴ African Union, *Migration Policy Framework for Africa and Plan of Action (2018–2030) – Executive Summary* (based on the revised policy document) (Addis Ababa, 2018). Available at <https://au.int/sites/default/files/documents/35956-doc-au-mpfa-executive-summary-eng.pdf>.

²¹⁵ ECOWAS, *ECOWAS Common Approach on Migration*, adopted 18 January 2008. Available at www.unhcr.org/49e47c8f11.pdf.

and development organizations to encourage voluntary return to Ghana.²¹⁶ In a research study conducted in 2001, just over half of interviewed Ghanaian returnees were self-employed upon return, with most of them employing other Ghanaians – suggesting that return migration creates jobs.²¹⁷ The National Migration Policy sets as policy objectives facilitating the return, readmission and reintegration of Ghanaian emigrants; strengthening government capacity to manage return (e.g. via the establishment of a unit within the ministry responsible for the implementation of the Migration Policy); raising awareness about job opportunities in Ghana; assisting returning migrants with re-engagement in their sector of work (e.g. by providing incentives for returning migrants to restart work in their area of expertise and advertising this among the emigrant and Ghanaian populations); and creating awareness among Ghanaians about the positive contributions of returnees. Emphasis is also placed on establishing a database of Ghanaians residing abroad, promoting sociocultural acceptance of returnees and the protection of the rights of returnees (and their families).²¹⁸

4.3.4. Kenya

Policy and legal framework

The Constitution of Kenya advocates for decent work, promotes freely chosen productive employment, fundamental rights at work, adequate income from work, and representation and social protection for workers.²¹⁹ Other legal frameworks on labour migration in Kenya include: Immigration and Citizenship Act (No. 12 of 2011), the Counter-Trafficking in Persons Act (No. 8 of 2010), the National Employment Authority Act, 2016 (No. 3 of 2016); the Employment Act (No. 1 of 2007) and the Labour Institutions Act (No. 12 of 2007).²²⁰ The Government has, in addition, passed the Labour Migration Management Bill,²²¹ which aims to reinforce the legal framework on labour migration management. The Kenya Diaspora Policy (2014) has been developed and the National Migration Policy is in draft form. *Migration in Kenya: A Country Profile 2015* is set to be updated. Yet it has been indicated by Human Rights Watch that the absence of comprehensive legislation and policy has contributed largely to systematic labour abuses and created an exploitative space for recruitment agencies. Kenya has not developed a comprehensive strategy to address reported labour abuses, particularly in the GCC region. It has not created the same protection infrastructure as key migrant-sending Asian countries, such as an official labour and welfare office, safe shelter houses and other protection initiatives. Furthermore, Kenya lacks detailed strategies and capacity for the implementation of its regulations.²²² With the assistance of IOM, Kenya is in the process of developing a National Labour Migration Policy and Strategy, as well as the Labour Bill to Enhance Protection of Kenyans Working Abroad.²²³ A draft of the National Labour Migration Policy and Strategy is apparently available.

²¹⁶ Scalabrini Institute for Human Mobility in Africa, “Ghana” section (see footnote 190).

²¹⁷ Ibid.

²¹⁸ Government of Ghana – Ministry of the Interior, National Migration Policy for Ghana (see footnote 200), p. 45.

²¹⁹ Migai Akech, *Institutional Reform in the New Constitution of Kenya* (Nairobi, International Center for Transitional Justice, 2010); Jacob Omolo, “Employment challenges in Kenya”, *African Journal of Economic Review*, 1(1):18–32 (2013).

²²⁰ Promise Lawinta, *Analysis of the Law Relating to Human Trafficking in Uganda in Comparison with Kenya and Tanzania* (Kampala, Kampala International University School of Law, 2019).

²²¹ “Kenya labour migration: trends, challenges, management and potential areas for cooperation” [slide presentation]. Presented by Peter K. Tum, O.G.W., Principal Secretary of the State Department for Labour, at the Regional Ministerial Forum on Harmonizing Labour Migration Policies in the East and Horn of Africa, Nairobi, 20 January 2019. Available at <https://labour.go.ke/wp-content/uploads/2020/01/PS-Presentation-for-Regional-LM-Forum-FINAL.pdf>.

²²² Froilan Malit, Jr and Ali Al Yuoha, “Kenyan migration to the Gulf countries: balancing economic interests and worker participation”, Migration Information Source (online journal of the Migration Policy Institute, 18 May 2016, available at www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection); Sara Pavanello, Samir Elhawary and Sara Pantuliano, “Hidden and exposed: urban refugees in Nairobi, Kenya”, working paper (London, Overseas Development Institute, 2010).

²²³ IOM, “IOM Development Fund supports Government of Kenya in crafting labour migration policy and labour bill”, news article on the IOM website, 8 May 2019. Available at www.iom.int/news/iom-development-fund-supports-government-kenya-crafting-labour-migration-policy-and-labour-bill.

Institutional arrangements

Labour migration in Kenya is regulated by a number of related institutions. The National Employment Authority (NEA) received its direct and immediate mandate in this area from the National Employment Authority Act (No. 3 of 2016). The Ministry of Labour, along with the Kenya Revenue Authority (KRA) and NEA, are specifically mandated to inspect recruitment licences to ensure compliance with legal requirements. NEA facilitates the employment and placement of Kenyans for jobs outside the country. The Ministry of Labour and Social Protection, Social Security and Services (MOLSP) is in place to handle labour issues, as well as the provision of social security and other services to Kenyans across the board. The ministry is responsible for collecting skills inventories and labour market information from employers and private employment agencies, as well as facilitating the processing of administrative requirements for labour migration. Other ministries of relevance are the Ministry of Interior and Coordination of National Government; the Ministry of Foreign Affairs; and the Ministry of East African Community and Regional Development. Non-State institutions also play key roles in Kenya. In particular, the Central Organization of Trade Unions (COTU) of Kenya, along with some of its affiliates, and Trace Kenya, a pro-migrant NGO, have been directly involved with various strategies in response to labour migration.

Adopted arrangements

The Government of Kenya implements rules outlining requirements for hundreds of private employment agencies that place Kenyans in work abroad. These requirements include informing Kenyan employees seeking work abroad of their prospective wages, visa fees, airfare and medical examinations, and specifying any administrative costs that may be imposed on the worker concerned. MOLSP, through the State Department for Social Protection, requires contracts deemed credible to be signed in the presence of a labour ministry officer and requires applicants to register with the Kenyan embassy in the host country. In order to further address the exploitation of Kenyan nationals in Gulf States, in addition, MOLSP has assigned labour attachés already working in Kenyan missions in Qatar and Saudi Arabia. Social partners engage in tripartite consultations with the Government of Kenya. Ministries, international organizations, NGOs and academia participate in the National Coordination Mechanism on Migration (NCM), a Government-led, inter-agency platform on migration issues.²²⁴

General and labour immigration data

Kenya, classified as a lower-middle-income country, has a total population of 53.5 million according to July 2020 estimates by the Migration Policy Institute, with a population growth rate of 2.2 per cent; at this rate, the population is projected to reach 91.6 million by 2050. Kenya's overall unemployment rate is 11.4 per cent and youth unemployment rate stands at 26.2 per cent. In 2019, the country had 1 million international migrants (2% of the total population), while the total number of emigrants stood at 525,400 (net immigration of –50,000 in the five previous years).²²⁵ The vast majority of immigrants in Kenya are from other African countries, majority of whom are from East African countries and partner States. The reasons for labour migration to Kenya vary and include: (a) Kenya's strategic location as a regional hub in East Africa and (b) Kenya's economic development, "which attracts temporary and permanent immigrants to Nairobi (the largest urban centre in East Africa), as well as offering opportunities in industries and factories, the expanding services and technology sectors and improving markets, as well as access to social services." In

²²⁴ ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153), pp. 20–21.

²²⁵ Migration Policy Institute, "Country Resources – Kenya" section. Available at www.migrationpolicy.org/country-resource/kenya. See also: IOM, "Kenya: Key migration statistics", data set on the Migration Data Portal, available at https://migrationdataportal.org/?i=stock_abs_&t=2019&cm49=404 (accessed on 29 August 2020); DESA, "International migrant stock 2019", data set (see footnote 157)

addition, migrants come to Kenya for educational and tourism purposes. Also, Kenya hosts large numbers of forced migrants, including refugees and asylum seekers from neighbouring countries.²²⁶

Labour emigration

Since the 1970s, many highly skilled Kenyans have emigrated to Western countries, as well as within Africa, predominantly in search of better opportunities and greater political stability.²²⁷ Starting in the 1990s, however, Kenyan migration intensified, as migrants increasingly left for highly skilled work primarily in Western countries. In 2019, 525,400 Kenyans lived abroad, compared to about 237,000 in 1990.²²⁸ The United Kingdom became a top destination for Kenyan migrants, who numbered more than 151,000 in that country alone in 2015. More recently, other African and GCC countries have become the leading destinations for Kenyan migrants.²²⁹ This implies that Kenya is increasingly witnessing South–South migration, as opposed to a South–North one.²³⁰ In particular, the signing of the EAC Common Market Protocol and its embedded free movement regime has facilitated an increase in flows of people, goods and services within the East African region, implying increasing emigration from Kenya to the United Republic of Tanzania and Uganda, among others.

Pull and push factors

Key push factors that contribute to labour migration from Kenya include youth unemployment, religion and low wages in the country, as well as the clandestine activities of private recruiters and general lack of information about migration, while the successful migration (including until return) of many Kenyan migrants and availability of employment abroad are reported to be some of the pull factors.²³¹ Other pull factors include the opportunities for a better life, specifically in terms of higher salaries and better quality of education and health care in countries of destination.²³² The 2015 Kenya Migration Profile reported loss of skilled personnel in key sectors: The health sector is a concern, with estimates of the emigration rate of health professionals reaching as high as 51 per cent.²³³

Government responses to emigrant labour

Developments in this regard have been summarized as follows:

Recognizing the growing economic importance of its diaspora, Kenya has begun work on legislation to address issues surrounding emigration. In 2007, the Government sought to curb recruitment malpractices by enacting the Labour Institutions Act, which regulates cross-border recruitment by private employment agencies, including the registration requirements, agents' obligations and penalties for violations. The law's subsequent amendments in 2014 regulated recruitment costs, shifting the responsibility for payment to the recruitment agencies, except for a service fee that should not exceed 25 per cent of the workers' first monthly salary. In 2009, Kenya drafted an overall migration policy, followed the next year by a National Labour Migration Policy. These policies, which remain in draft form, encompass the

²²⁶ IOM, *Migration in Kenya: A Country Profile 2015* (Nairobi, 2015) pp. 15, 27 and 28.

²²⁷ George Odipo, Charles Owuor Olungah and Dalmas Ochien'g Omia, "Emigration mobility trends and patterns in Kenya: a shift from South–North to South–South Migration", *International Journal of Development and Economic Sustainability*, 3(4):29–48 (2015).

²²⁸ Edward Miguel and Joan Hamory, "Individual ability and selection into migration in Kenya", Human Development Research Paper 2009/45 (New York, UNDP, 2009).

²²⁹ Jonathan Crush, "Diasporas in the South: Situating Africa Diaspora in Africa", in: *Diaspora for Development in Africa* (S. Plaza and D. Ratha, eds.) (New York, World Bank, 2011); Malit and Al Yuoha, "Kenyan migration to the Gulf countries" (see footnote 222).

²³⁰ Malit and Al Yuoha, "Kenyan migration to the Gulf countries" (see footnote 222).

²³¹ Atong et al., "Africa labour migration to the GCC States" (see footnote 106).

²³² Tum, "Kenya labour migration" (see footnote 221).

²³³ IOM, *Migration in Kenya: A Country Profile 2015* (see footnote 256), pp. 62–63.

deployment of Kenyan workers, their labour rights and protections while abroad, and reintegration. In 2015, Kenya implemented a diaspora policy focused on harnessing the potential of its nationals abroad to contribute to the country's economic development. The policy seeks to facilitate remittance inflows.²³⁴

It is therefore clear that Kenya has begun institutionalizing efforts to send migrant workers abroad and create a framework to protect them.²³⁵

Recruitment arrangements

Kenyan workers who migrate regularly through private employment agencies should receive pre-departure training, although this regulation does not appear to be strictly enforced. As indicated earlier, Kenya adopted the Labour Institutions Act (No. 12 of 2007, amended in 2014), which regulates cross-border recruitment by private employment agencies, by establishing, for example, agency registration requirements, agents' obligations, penalties for violations and employer responsibility for paying recruitment costs, subject to a service fee. In addition, the Government of Kenya supports the self-regulation of private employment agencies, in particular via the establishment of umbrella bodies exercising professional control (among others, via the issuance of codes of conduct), for example, the Kenya Association of Private Employment Agencies (KAPEA) and the Association of Skilled Migrant Agencies of Kenya (ASMAK).²³⁶ There are both licensed and unlicensed recruitment agencies in Kenya that focus on the Gulf market. The largest number of Kenyan migrants are recruited as domestic workers, who are largely female and young. The Labour Institutions Act (No. 12 of 2007) and its accompanying legislative instrument (Employment (General) Rules, 2014 (Legal Notice No. 28 of 2014)), the Employment Act (No. 1 of 2007), as well as the Counter-trafficking in Persons Act (No. 8 of 2010) all together form the basis of the legal framework regulating the recruitment industry in Kenya. In addition, while Kenya has yet to ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and its accompanying recommendation (Recommendation 188), it has also ratified the 2014 Protocol to the ILO Forced Labour Convention, 1930 (No. 29) to guide the operations and further strengthen its national systems.²³⁷ Despite progress in labour recruitment in Kenya, migrants remain vulnerable and continue to be exposed to various challenges throughout the recruitment process and during deployment in countries of destination. For instance, there are noted practices of recruitment agencies whereby travel documents of migrants are processed without the involvement of the migrants themselves.²³⁸

Remittances

Kenya has seen a significant and sharply increasing inflow of remittances, especially since 2010. In 2019, total annual (formal) remittance income stood at USD 2.38 billion, constituting 3 per cent of GDP. The (rapidly declining) volume of remittance outflows amounted to USD 2.56 million in 2019.²³⁹ It has been reported that the diaspora policy implemented by the Government of Kenya greatly influenced diaspora remittances and financial inclusion in the right direction in Kenya.²⁴⁰ The average cost of sending remittances from Kenya (as a percentage of the amount sent, at a

²³⁴ Malit and Al Yuoha, "Kenyan migration to the Gulf countries" (see footnote 222).

²³⁵ See also: Emmanuel Kwesi Arthur, Salome Mwangeli Musau and Festus Mithi Wanjohi, "Diaspora remittances and financial inclusion in Kenya", *European Journal of Business and Management Research*, 5(2):1–10 (2020).

²³⁶ See also: ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Ethiopia* (see footnote 153).

²³⁷ Atong et al., "Africa labour migration to the GCC States" (see footnote 106).

²³⁸ Ibid.

²³⁹ World Bank, "Personal remittances, received (current US\$) – Kenya", data set. Available at <https://data.worldbank.org/indicator/BX.TRFPWKR.CD.DT?locations=KE> (accessed on 29 August 2020).

²⁴⁰ Arthur et al., "Diaspora remittances and financial inclusion in Kenya" (see footnote 235).

USD 200 basis) remained high at 11.5 per cent²⁴¹ – despite the fact that Kenya has been working to reduce the cost of remittances by facilitating access to financial services. It has been recommended that Kenya implement financial incentives, such as tax rebates, to encourage the use of inward remittances for investment.²⁴²

Bilateral and multilateral agreements

Kenya has ratified the two key labour migration-related conventions of the ILO, namely the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), but has yet to sign and ratify the ICRMW and the ILO Private Employment Agencies Convention, 1997 (No. 181). It is a member of several RECs, and the free movement regimes embedded in some of them impact labour migration to and from Kenya: (a) the EAC, underpinned, among others, by its Common Market Protocol (2009) and its embedded free movement arrangements, which is aimed at the free movement of persons, labour and services, as well as ensuring the enjoyment of the right of establishment and residence of their citizens within the Community; (b) the Community of Sahel–Saharan States (CEN–SAD), which, among others, facilitates free movement of persons and capital, as well as freedom of residence, work, ownership and economic activity; (c) COMESA, which is informed, among others, by a yet-to-be implemented free movement regime; and (d) IGAD, guided by its Revised Regional Migration Policy Framework, which promotes the free movement of persons.

Bilateral arrangements

In order to enhance the protection of Kenyan migrant workers, the Government has signed a number of BLAs with those of Saudi Arabia, Qatar and the United Arab Emirates, particularly on the recruitment of Kenyan domestic workers. BLAs with Jordan, Oman and Kuwait are apparently being negotiated. These agreements contain several provisions to address the vulnerabilities faced by migrant workers. As an example, the provisions contained in the BLA with Qatar are as follows:

- (a) Detailed conditions of employment are to be specified in recruitment applications.
- (b) MOLSP must provide migrant workers with information on working conditions and living expenses in Qatar.
- (c) Kenyan workers are to be repatriated by the Government of Qatar upon expiry of their work contracts.
- (d) Employers are to shoulder the cost of the return and leave travel (if any) of migrant workers, including their leave travel.
- (e) The nature and terms of employment are to be defined in an individual contract between the worker and employer that complies with the model contract attached to the agreement.²⁴³

Kenya has no bilateral, regional or multilateral agreements in place to facilitate the transferability and portability of social security benefits. These particularly important in the regional context, given the free regimes of the EAC and other RECs and increasing labour migration in the East African region; however, attempts to put multilateral instruments in place are hampered by the failure thus far to finalize the draft of the Social Security Portability Bill under the EAC Common Market Protocol.²⁴⁴

²⁴¹ IOM, “Kenya: Key migration statistics” (see footnote 225).

²⁴² ILO, *An Assessment of Labour Migration and Mobility Governance in the IGAD Region: Country Report for Kenya* (Addis Ababa, 2020). Available at www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-addis_ababa/documents/publication/wcms_743315.pdf.

²⁴³ *Ibid.*, pp. 29–30.

²⁴⁴ *Ibid.*, pp. 49–50.

The need for protection

Regular migrant workers in Kenya enjoy the same protections as Kenyan workers under national labour law, as discussed in [section 5.1.1](#) of this report. However, it is not clear to what extent this protection is enforced, and irregular migrant workers do not benefit at all from any of the protection measures in place. In response to the high rate of reported labour abuses of Kenyan workers in the region, particularly domestic workers, Kenya imposed a ban on labour migration to GCC countries in 2012; it overturned the ban in November 2013.²⁴⁵ Furthermore, a recent ILO labour migration assessment of Kenya recommended adequate attention to the protection challenges faced by Kenyan migrant workers elsewhere, and to reflect this in the National Migration Policy. This should include the protection of irregular migrant workers in Kenya. A national referral mechanism will facilitate assistance to Kenyans trafficked abroad returning to Kenya and to migrant workers trafficked in or into Kenya.²⁴⁶ The Draft National Labour Migration Policy and Strategy for Kenya recognizes the abuse and exploitation of Kenyans working abroad; the exploitative working conditions and limited rights of many migrant workers, especially low-skilled workers; and the fact that women face specific protection challenges.²⁴⁷ It calls for various interventions to ensure that migrants' rights are protected, including through the conclusion of BLAs, pre-departure training and effective regulation of private employment agencies. The Kenya Diaspora Policy also calls for the development of several mechanisms, including BLAs, to enhance the protection of Kenyan migrant workers; strengthening the regulatory framework for employment agencies; conducting pre-departure training for migrant workers; and facilitating the registration of Kenyans abroad through Kenyan diplomatic missions.

Return migrant workers

Kenya does not have a return and reintegration policy or strategy.²⁴⁸ The Diaspora Policy calls for the development of reintegration mechanisms for returnees, which include “programmes to absorb returnees”, “debriefing and counselling of returnees” and “help desks in government institutions and other agencies that interact with Kenyans abroad, indicating the lack of a sustainability mechanism for labour migration and the proper completion of the labour migration cycle.”²⁴⁹ Some NGOs, however, do provide assistance to returnee Kenyans. One existing programme is the IOM Assisted Voluntary Return and Reintegration (AVRR) programme, which addresses various issues related to return and reintegration, from pre-departure and during transportation, to arrival and during the post-arrival period.²⁵⁰

4.3.5. Mauritius

Policy and legal framework

Mauritius adopted a National Migration and Development Policy in 2018, which purports to set out the Government's strategic vision to dealing with challenges and opportunities related to migration in a holistic and proactive manner. A migration profile for Mauritius was developed by IOM in 2013. Key immigration labour migration-related legislation comprises the Non-Citizens (Employment Restriction) Act (No. 15 of 1970), read with the Immigration Act (No. 13 of 1970). It has been noted that, “Mauritius is a country of immigration, its economic development and growth, in particular specific sectors, and labour market have benefited from the presence of different categories of foreigners. In recent years, procedures to remove specific barriers and hence a more

²⁴⁵ Malit and Al Yuoha, “Kenyan migration to the Gulf countries” (see footnote 222).

²⁴⁶ ILO, *Assessment of Labour Migration and Mobility Governance: Kenya* (see footnote 242).

²⁴⁷ Speech by Eng. Peter K. Tum, O.G.W. Principal Secretary State Department During The Regional Ministerial Forum on Harmonizing Labour Migration Policies in the East and Horn of Africa (20 January 2019) (available at <https://labour.go.ke/wp-content/uploads/2020/01/PS-Presentation-for-Regional-LM-Forum-FINAL..pdf>).

²⁴⁸ *Ibid.*

²⁴⁹ Government of Kenya, Kenya Diaspora Policy (Nairobi, 2014), section 2.4.9.

²⁵⁰ Atong et al., “Africa labour migration to the GCC States” (see footnote 106).

flexible employment from abroad have been adopted.”²⁵¹ No dedicated policy or legal framework informs emigrant labour, despite the introduction in 2015 of the Mauritius Diaspora Scheme.

Institutional arrangements

Key institutional arrangements include those involving Mauritian Government entities such as the Prime Minister’s Officer (PMO), which is the national focal point for issues pertaining to migration, as well as the Department of Home Affairs, the Ministry of Labour, Industrial Relations, Employment and Training (MLIRET), the Ministry of Foreign Affairs, Regional Integration and International Trade, and the Ministry of Education and Human Resources, Tertiary Education and Scientific Research – all of which are involved in different aspects of migration management, including the design and operational implementation of migration policies. The Passport and Immigration Office (PIO) enforces migration policy and contributes to policy design. It manages border control at ports of arrival, enforces immigration regulations, processes applications and issues occupational and residence permits to applicants who wish to work, invest or live in Mauritius. Applications for residence, occupation and work permits are reviewed by the PMO Home Affairs Division.²⁵² MLIRET facilitates the employment of Mauritian nationals abroad.

Coordination arrangements

Coordination between government entities on migration-related matters is facilitated by the National Steering Committee on Migration and Development, chaired by the PMO. Established in 2015, the committee is composed of relevant ministries and other governmental entities. It has established a solid partnership framework and meets on a regular basis to ensure coordination among its members on migration matters. As already noted: “This cooperative inter-agency structure involves all relevant stakeholders in the promotion of a consolidated and comprehensive approach to migration management.”²⁵³ The committee worked on the development of a National Migration and Development Policy, which was formally endorsed by the Government in 2018. With a view to engaging the diaspora, the Government, in 2015, launched the Mauritius Diaspora Scheme, which is under the purview of the Economic Development Board. The scheme aims to attract Mauritian investors and skilled professionals living abroad back to Mauritius to participate in the economic development of the country.²⁵⁴ In fact, Mauritius formally engages with CSOs, the private sector and members of the diasporas in migration agenda-setting, including through active participation in the development of the National Migration and Development Policy: “The EDB, through the Mauritius Diaspora Scheme, and the Ministry of Foreign Affairs, Regional Integration and International Trade formally and informally engage with members of the diaspora and diaspora associations through EDB diplomatic missions and other promotional activities. Moreover, the recently adopted National Migration and Development Policy provides for the establishment of a diaspora affairs bureau under the Ministry of Foreign Affairs, Regional Integration and International Trade, as well as “diaspora desks” in diplomatic missions abroad.”²⁵⁵ Despite these arrangements, there is no dedicated institution responsible for implementing emigration policy. As IOM notes in a 2018 publication: “As for the assistance of nationals residing abroad, the Republic of Mauritius maintains 19 diplomatic missions and has one consulate overseas. The Government may wish to increase representation [through the] necessary facilities in identified countries to which significant numbers of Mauritians have emigrated.”²⁵⁶

²⁵¹ GFMD, “Examples of good practices on regional mobility cooperation – Mauritius”, background paper (Geneva, 2018). Available at www.gfmd.org/pfp/ppd/10282.

²⁵² IOM, “Migration governance snapshot: The Republic of Mauritius”, June 2018, p. 3. Available at www.migrationdataportal.org/sites/g/files/tmzbdl251/files/2018-07/Migration%20Governance%20Snapshot-%20The%20Republic%20of%20Mauritius.pdf.

²⁵³ Ibid.

²⁵⁴ Economic Development Board of Mauritius, The Mauritian Diaspora Scheme homepage. Available at www.diaspora.mu/government.aspx.

²⁵⁵ IOM, “Migration governance snapshot: The Republic of Mauritius”, June 2018 (see footnote 252), p.5.

²⁵⁶ Ibid., p. 4.

General and labour immigration data

Designated as a middle-income country located in Southern Africa with an estimated population of 1.3 million (2019), Mauritius' total number of international migrants has slowed down since 2015 and was 28,800 in 2019; the international migrant stock as a percentage of the total population stood at 1.2 per cent in 2019; the net migration rate has remained negative over the last few years but at a decreasing rate (from –3,100 in 2011 to –1,950 in 2016).²⁵⁷ Unlike most other SADC countries, the majority of migrants did not originate from other SADC countries (only 11,200 of the 28,800 did so in 2019), but from India, Bangladesh and China.²⁵⁸ As noted, “The fact that certain jobs are not seen to be attractive to the local population, the discrepancy between the needs of the labour market and the education system outcomes, the lack of specific skills in certain areas, emigration and other demographic factors (e.g. ageing and a low fertility rate) will continue to influence the need for labour mobility.”²⁵⁹ Since 2006, net increase in migration has been negative.²⁶⁰

Labour emigration

According to DESA, the total number of international emigrants from Mauritius stood at 188,300 (estimate) in 2019.²⁶¹ The sheer and rising numbers involved suggest that Mauritians are seeking jobs abroad, both on a short- and a long-term basis. High emigration rates, reaching 43.7 per cent, are associated with the highly educated (brain drain) leaving Mauritius for employment in OECD and selected non-OECD destinations.²⁶² The main countries of destination for Mauritians include France, United Kingdom, Australia, Canada and Italy. Diaspora members (including those who hold dual nationality) constitute one of the key target groups of the National Migration and Development Policy. Specific areas of intervention include engaging and fostering links with the diaspora; mobilizing the diaspora's intellectual, social and cultural potential, capital and skills for development; and promoting the diaspora's participation in the country's economic development. The Migration Policy also sees the management of labour migration as a specific area of intervention, with the objective of expanding legal migration channels and opportunities abroad, including through government-to-government bilateral agreements. The vision of the Mauritius–Africa Strategy of the African Continental Free Trade Area is for Mauritius to become the “ideal and indisputable platform for doing business across Africa and supporting reforms, trade and investment across the region.” To enhance the position of Mauritius as a business hub and learning platform for the continent, the following arrangements are indicated:

- (a) Bilateral agreements, to expand the economic horizon of Mauritius;
- (b) Regional trade, to boost and diversify Mauritian export;
- (c) Gross investment;
- (d) Development of special economic zones with a secure environment to operate and expand business from.²⁶³

²⁵⁷ IOM, “Mauritius, Republic of: Key migration statistics”, data set on the Migration Data Portal, available at https://migrationdataportal.org/data?cm49=480&focus=profile+&i=stock_abs_&t=2019 (accessed on 29 August 2020); Government of Mauritius, Migration and Development Policy and Action Plan of the Republic of Mauritius 2030 (Port Louis, 2018), p. 13.

²⁵⁸ DESA, “International migrant stock 2019: country profiles” (see footnote 157).

²⁵⁹ GFMD, “Examples of good practices on regional mobility cooperation – Mauritius” (see footnote 251).

²⁶⁰ Sanjeev Sobhee, *Assessing the Evidence: Opportunities and Challenges of Migration in Building Resilience against Climate Change in the Republic of Mauritius* (Geneva, IOM, 2016), p. 13.

²⁶¹ IOM, “Mauritius, Republic of: Key migration statistics” (see footnote 257).

²⁶² Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 14.

²⁶³ Mauritius–Africa Strategy [slide presentation]. Prepared by the Economic Development Board of Mauritius, 2020. Available at www.edbmauritius.com/media/3030/2020-africa-strategy-2020-website.pdf.

Statistical context

No official statistical basis exists for emigration, as the census does not give this information; nor does the Continuous Multi-purpose Household Survey include any questions to capture emigration, and no statistical information is available from consulates of Mauritius abroad either. The only sources of information are the statistics of the countries of residence of Mauritians abroad.²⁶⁴ It has also been remarked that it is difficult to capture statistics on emigration, as many Mauritians migrate on their own:

Employment opportunities had been identified abroad...with the support of the diplomatic missions, yet more efforts (marketing, negotiation, etc.) are needed to tap into the opportunities available in various labour markets. The implementation of the Mauritius Africa Strategy requires analysis on possible deployment of nationals in other countries on the continent for employment purposes (e.g. the Special Economic Zone in Senegal, the Technology Park in Accra, etc.), thus possibly providing concrete labour opportunities to Mauritians willing to work abroad, including highly qualified professionals who are unable to secure a job at home.²⁶⁵

Recruitment

Certain regulations are in place for private recruitment agencies. For example, in order to be obtain or renew a licence, a recruitment agency has to implement policies and processes to ensure that their activities are conducted in a manner that treats migrant workers with dignity and respect, and which is free from any form of coercion or inhumane treatment, as per the Recruitment of Workers Act (No. 39 of 1993). MLIRET inspectors conduct periodic assessments of the living and working conditions of migrant workers; set standards for the ethical recruitment of migrant workers are apparently being developed. A recruitment licence authorizes the licensee to recruit the following categories of workers:²⁶⁶

- (a) Mauritians for employment in Mauritius;
- (b) Mauritians for employment abroad;
- (c) Non-citizens for employment in Mauritius.

Protection of migrant workers in and from Mauritius: institutional arrangements

The Special Migrant Workers Unit (SMU), which was set up in 1999 by the MLIRET, is tasked with monitoring whether migrant workers are employed on decent terms and conditions and whether their fundamental rights are respected. The SMU carries out regular inspections. Furthermore, migrant workers are informed of their rights and obligations arising out of their vetted contract of employment by the officers of the Unit. It also ensures that migrant workers are paid all their dues and requires employers to shoulder the cost of the worker's return ticket. Non-citizens have access to all the human rights bodies operating in Mauritius, including the National Human Rights Commission, the Independent Police Complaints Commission and the Equal Opportunities Commission. However, the Government has no mechanisms or measures in place to protect the rights of its nationals working abroad but provides consular assistance in a number of countries on a case-by-case basis.²⁶⁷

²⁶⁴ IOM, *Migration in Mauritius: A Country Profile 2013* (Port Louis, 2014), p. 87.

²⁶⁵ GFMD, "Examples of good practices on regional mobility cooperation – Mauritius" (see footnote 251).

²⁶⁶ Ibid.

²⁶⁷ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 6; GFMD, "Examples of good practices on regional mobility cooperation – Mauritius" (see footnote 251).

Protection of migrant workers in and from Mauritius: recent policy pronouncements

The National Migration and Development Policy and Action Plan for Mauritius 2030 makes clear the in-principle position of the Government on the protection of Mauritian migrant workers, as well as foreign workers in the country:

This Policy emphasises the Government's role to protect the rights and interests of the persons targeted by its scope and reinforces measures and tools directed towards the achievement of these objectives. In the first place, the Government will continue to provide the necessary protection to Mauritian citizens residing abroad through diplomatic missions, negotiation of social security agreements and those deciding to emigrate (through fair recruitment procedures, employment contracts, circular migration schemes). Likewise, the protection framework targets foreign workers coming to Mauritius (through ethical and fair recruitment, employment conditions, portability of benefits gained in Mauritius, bilateral agreements to be signed with key countries of origin to facilitate safe labour migration) and other foreigners deciding to move to Mauritius for various reasons and based on the existing schemes.²⁶⁸

Working conditions of foreign workers

Nevertheless, it has been reported, also by the Government, that the working conditions of migrant workers often leave much to be desired. A 2013 survey uncovered several problems faced by migrant manual workers:

The safety and health standards where they live are often compromised, as sometimes they are packed in one room for living [quarters]. Communication is a barrier, too, as many migrant manual workers cannot understand the local dialect, nor can they communicate in a common foreign language. The study by Gopaul (2013) also indicated that the conditions of migrant workers may not be necessarily satisfactory as compared to local workers. Their work and pay conditions differ quite significantly. Moreover, these workers lack social protection and find it difficult to adjust to the Mauritian lifestyle. Differences in working conditions could be explained by the fact that the Government has not been actively involved in the recruitment and management of foreign labour until recently.

The ILO has urged for the implementation of an action plan to improve the working and living conditions of expatriate workers in Mauritius:

Some of the recommendations proposed are to reduce the discrimination in work and pay conditions and adopt measures that would integrate migrant workers within the labour market framework. The action plan will also identify and address all forms of disparities in their working schemes so as to improve their status. Trade unions, as well as the Mauritius Employers Federation and the Ministry of Health and Quality of Life, will be the responsible parties to ensure that progress is made to these effects.²⁶⁹

In line with this, the National Migration and Development Policy (2018) stipulates as an objective the enhancement of protection mechanisms available to citizens working and residing abroad.

²⁶⁸ Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 20.

²⁶⁹ Sobhee, *Assessing the Evidence* (see footnote 260), p. 19.

Bilateral and multilateral arrangements

Mauritius had ratified the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and United Nations Convention on the Rights of the Child (1989), but neither the ICRMW nor the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). In addition, it has adopted the African Charter for Human and Peoples' Rights, 1981 (on 16 April 1999). The Migration and Development Policy recommends the ratification of the ILO Private Employment Agencies, 1993 (No. 181).²⁷⁰ As a member, Mauritius participates in the regional migration programmes of two RECs, COMESA and SADC, and the two associated migration platforms: the Migration Dialogue for COMESA (MIDCOM) and MIDSAs, respectively. It has ratified the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, 1984 (Mauritius waived visa requirements for all COMESA citizens and signed the MOU for Facilitating Mobility of Businesspersons and Professionals in APEI Countries in 2016). Mauritius is also a member of the Indian Ocean Commission (IOC). Furthermore, Mauritius is currently implementing the Southern African Development Community Qualifications Framework (SADCQF) and is aligning its national framework with the regional framework.²⁷¹

Existing bilateral arrangements

Mauritius is actively promoting labour agreements with other countries. The Government has signed a technical cooperation agreement with Seychelles in 1990, a bilateral labour service cooperation agreement with China in 2005 and an Agreement on the Regulation of Manpower Employment with Qatar in 2014. In addition, circular labour migration agreements have been signed with France (2008) and Italy (2012), as well as with Canadian employers, universities and cultural associations between 2008 and 2014 to enable Mauritian workers to gain professional experience and training in these countries before returning to Mauritius. Furthermore, several MOUs were signed in 2017 with Seychelles concerning the recruitment of Mauritian doctors and teachers to work in Seychelles.²⁷² A draft MOU, awaiting feedback from Lesotho,²⁷³ concerns cooperation on a reciprocal basis as regards the recruitment and development of specified categories of professionals and low-skilled workers. In addition, feedback obtained from government key informants interviewed for this report indicates that France has signed a return and reintegration agreement with Mauritius; an MOU has been concluded with Nepal (2019) and Bangladesh (2020); and BLAs have been concluded with Qatar and the United Arab Emirates, with labour exchange yet to occur. An agreement or MOU with Rwanda is likely to materialize. However, the aforementioned agreements and MOUs do not provide for social security benefits in favour of Mauritians employed abroad. The National Migration and Development Policy recommends the following:

Enter into bilateral labour migration agreements with the main countries of origin (but also to diversify them) to ensure that the recruitment and employment of foreign workers is effected in the most responsible manner, in line with labour standards, including through the provision of pre-departure and pre-orientation training and the availability of protection safeguards. The signature of social protection agreements (portability of various rights and benefits) should also be considered.²⁷⁴

²⁷⁰ Mauritius is not party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. Mauritius signed the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa but has not ratified or acceded to it.

²⁷¹ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 6.

²⁷² *Ibid.*, p. 4.

²⁷³ (Draft) Memorandum of Understanding between Lesotho and Mauritius on Cooperation in the Field of Labour (2018).

²⁷⁴ Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 25.

Remittances

According to the World Bank, inward personal remittances in 2020 constituted 1.2 per cent of GDP in Mauritius.²⁷⁵ They amounted to almost USD 319 million, while outward remittances steadily rose to USD 798 million.²⁷⁶ Mauritius aligns with SDG Target 10.c: Since the first quarter of 2017, overall remittance costs have remained lower than 3 per cent.²⁷⁷

4.3.6. South Africa

Policy and legal framework

South Africa is in the process of developing a National Labour Migration Policy and is contemplating the development of a National Migration Policy. The White Paper on International Migration for South Africa (2017)²⁷⁸ effectively serves as an overarching migration management policy framework. No dedicated policy, or legal framework for that matter, currently exists in relation to supporting migrant workers from South Africa and engaging with the South African diaspora. A National Employment Policy is in the process of being finalized, and also deals with matters related to labour migration. The Immigration Act (No. 13 of 2002) is the main law regulating immigration, including immigrant labour.

Institutional arrangements

Different regulatory activities pertaining to labour migration are managed under different ministries in South Africa, with limited coordination and without an overarching vision, direction and objective. Among others, these activities and the relevant institutional stakeholders are:

- (a) Recruitment of foreign workers by public and private employment agencies (Department of Employment and Labour (DEL));
- (b) Inspection of workers' conditions of employment by the Inspection and Enforcement Services (under DEL);
- (c) Issuance of work and corporate permits (Department of Home Affairs (DHA), following DEL recommendations);
- (d) Determination of critical skills needed in South Africa (Department of Higher Education (DHET), DHA and DEL);
- (e) Drafting of policies governing the shortage of skills in specific sectors (DHET, as well as the Department of Health (DoH) and the Department of Science and Technology (DST));
- (f) Assessment of South African skills in the diaspora (Department of International Relations and Cooperation (DIRCO));
- (g) Financial regulations on remittance transfers (National Treasury) and their implementation (private banks);
- (h) Allocation of compensation (for occupational injuries and diseases) monies by the Compensation Fund (DEL) and the Compensation Commissioner (DoH);
- (i) Allocation of unemployment insurance benefits by the Unemployment Insurance Fund (UIF and DEL);

²⁷⁵ IOM, "Mauritius, Republic of: Key migration statistics" (see footnote 257).

²⁷⁶ World Bank, "Personal remittances, received (US\$) – Côte d'Ivoire", data set. Available at <https://data.worldbank.org/indicator/BM.TRF.PWKR.CD.DT?locations=MU> (accessed on 29 August 2020).

²⁷⁷ GFMD, "Examples of good practices on regional mobility cooperation – Mauritius" (see footnote 251).

²⁷⁸ Government of South Africa – Department of Home Affairs, White Paper on International Migration for South Africa (Pretoria, 2017).

- (j) Payment of social assistance benefits (South African Social Security Agency (SASSA); lead department: Department of Social Development (DSD));
- (k) Tracing of beneficiaries of due benefits and pension rights accrued across various private funds and trusts (private sector and social security agencies);
- (l) Conciliation, mediation and arbitration of industrial disputes (Commission for Conciliation, Mediation and Arbitration (CCMA));
- (m) Negotiation and management of BLAs with neighbouring countries (DIRCO, DEL and DHA).

Interministerial coordination exists formally in practice (i.e. the Inter-Ministerial Committee on Migration), but there is no integration of databases or no integrated services to the public as yet.

Migrants in South Africa

Increased intraregional migration has influenced population changes in South Africa, a middle-income country with a total population of 57.8 million in 2019, projected to rise to 75.5 million by 2050. In 2005, international migrants comprised 2.8 per cent of South Africa's population; by 2019, this figure had risen to 7.2 per cent, or 4.2 million, still reflecting a net migration rate of –0.2 migrants per 1,000 population.²⁷⁹ Foreign-born international migrants of working age are said to number 2 million, representing 5.3 per cent of the labour force.²⁸⁰ According to the *World Migration Report 2020*, South Africa remains the most significant destination country in Africa. From 2 million in 2010, the country had around 4 million international migrants residing there in 2019,²⁸¹ accounting for 16.5 per cent of the total migrant population in Africa.²⁸² The number of international migrants to South Africa has been constantly rising. In South Africa, migrants from within the SADC region constitute 94 per cent of the total stock of African migrants and around 75 per cent of all (regular) migrants in the country.²⁸³

Employment of foreigners in South Africa

Foreign-born migrants are more likely to be employed than South Africans but are also more likely to be employed in precarious work, particularly in the informal economy. The reasons for (labour) migration are manifold, including work, studies, business, trade and family reasons; however, migrants have also moved due to risks of persecution, rendering South Africa a significant destination for refugees and asylum seekers.²⁸⁴ BLAs with a number of neighbouring countries support migrant work in South African mines in particular. Many who migrate do so undocumented. No credible statistics on irregular migration are available, but this phenomenon has given rise to the institution of special permit regimes aimed at regularizing the position of undocumented migrants from Angola, Lesotho and Zimbabwe.²⁸⁵

²⁷⁹ IOM, "South Africa: Key migration statistics", data set on the Migration Data Portal. Available at https://migrationdataportal.org/?i=stock_abs_&t=2019&cm49=710 (accessed on 29 August 2020).

²⁸⁰ ACMS, "Fact sheet on foreign workers in South Africa: overview based on Statistics South Africa data (2012–2017), 14 May (Johannesburg, 2020).

²⁸¹ IOM, *World Migration Report 2020* (see footnote 74), pp. 56, 57 and 62.

²⁸² African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 31.

²⁸³ Jonathan Crush and Vincent Williams, "Labour migration trends and policies in Southern Africa", Southern African Migration Programme (SAMP) Policy Brief No. 23 (Waterloo, Canada, SAMP, 2010), pp. 5 and 7.

²⁸⁴ ACMS, "Fact sheet on foreign workers in South Africa" (see footnote 280).

²⁸⁵ IOM, *Bilateral Labour Migration Arrangements in Two SADC Corridors* (Geneva, 2021). Available at <https://publications.iom.int/books/bilateral-labour-migration-agreements-two-sadc-corridors>.

While there is strong evidence indicating the positive effects of migration on the South African labour market,²⁸⁶ there is a prevailing view held by many in South Africa that the availability of foreign labour takes away jobs from South Africans – given the constantly high and rising unemployment rate in South Africa (around 28%). This, in particular, has given rise to widespread xenophobia and maltreatment of foreigners; the Government of South Africa (at both national and provincial levels) have taken or are contemplating steps to limit reliance on foreign labour and restrict labour market access to foreigners.²⁸⁷ This seems to build on the historical approach adopted in South African immigration law and policy: “What we have seen is that South Africa is approaching migration in a way that prioritizes national interests and national security, thus linking it to national security and risks.”²⁸⁸

Labour emigration

According to DESA, the total number of international emigrants from South Africa stood at 824,600 in 2019 (estimate).²⁸⁹ The brain drain has affected certain critical professions – among others, health specialists and financial auditors. Unlike immigration data, official data on (labour) emigration are not available. No policy or institutional framework exists currently to support and facilitate employment abroad, or to involve the diaspora in the development of the country. A Draft National Labour Migration Policy for South Africa (2020), currently being considered, highlights labour emigration and diaspora engagement as areas in critical need of better regulation and facilitation.

Remittances

According to the World Bank, personal inward remittances constituted 0.3 per cent of South Africa's GDP in 2020,²⁹⁰ amounting to almost USD 891 million, while outward remittances steadily rose to USD 1.052 billion.²⁹¹ South Africa has the highest average cost of sending remittances in Africa, at 15.8 per cent.²⁹²

Recruitment

As regards national legislation, the Employment Services Act (No. 4 of 2014) regulates the operations of private employment agencies. The Act considers both temporary employment services and recruitment agencies constitute private employment agencies. Draft regulations of 2018 also provide for the recruitment of foreign workers by private employment agencies, as the Act works on the premise that all provisions of the labour legislation apply to all workers regardless of their status. While the Employment Services Act has usefully strengthened labour legislation, its current state leaves the following unaddressed:

- (a) Explicit authorization for private employment agencies to facilitate the recruitment of foreign workers into South Africa;

²⁸⁶ World Bank, “Mixed migration, forced displacement and job outcomes in South Africa”, report (New York, 2018); OECD and ILO, *How Immigrants Contribute to South Africa's Economy* (Paris, OECD, 2018), available at <http://dx.doi.org/10.1787/9789264085398-en>; IOM, *The Socioeconomic Contributions of Migrant Business Owners in South Africa's Informal Urban Settlements and Inner-city Areas: A Case Study of the City of Johannesburg* (Pretoria, 2021).

²⁸⁷ Among other regulations in a recently published draft amendment to the National Road Traffic Regulations, foreign truck drivers with professional driving permits issued from other countries would not be allowed to drive South African trucks. (See, for example: IOL, “Truck attacks: draft policy to limit foreign truck drivers working in South Africa greeted with caution”, 26 May 2021. Available at www.iol.co.za/mercury/news/truck-attacks-draft-policy-to-limit-foreign-truck-drivers-working-in-south-africa-greeted-with-caution-62f47079-5c6a-4b74-8456-7eb4bc627887.)

²⁸⁸ Jonathan Klaaren, “Historical overview of migration regulation in South Africa”, in: *Immigration Law in South Africa* (F. Khan, ed.) (first edition, Cape Town, Juta, 2018), p. 33.

²⁸⁹ IOM, “South Africa: Key migration statistics” (see footnote 279).

²⁹⁰ World Bank, “Personal remittances, received (% of GDP) – South Africa”, data set. Available at <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=ZA> (accessed on 29 August 2020).

²⁹¹ World Bank, “Personal remittances, paid (current US%) – Mauritius”, data set. Available at <https://data.worldbank.org/indicator/BM.TRF.PWKR.CD.DT?locations=MU> (accessed on 29 August 2020).

²⁹² Natali and Isaacs, “Remittances to and from Africa” (see footnote 97), pp. 117 and 118.

- (b) The sourcing and recruitment of foreign workers abroad for employment in South Africa;
- (c) The recruitment of South African workers for overseas placement by South African or foreign private employment agencies, or through a partnership between South African and foreign agencies;
- (d) The activities of foreign private employment agencies in South Africa;
- (e) Online recruitment activities by South African or foreign private employment agencies.

Protection of migrant workers in and from South Africa

Some protection is built into the requirement under the Immigration Act (No. 13 of 2002) that any application for a work visa or critical skills visa must receive a certificate from DEL confirming that the salary and benefits are not inferior to the average salary and benefits of a citizen or permanent resident occupying a similar position. As discussed later in this report, migrant workers to South Africa have been exposed to xenophobia and, especially if they are undocumented, exploitative behaviour. No dedicated framework exists to extend protection to migrant workers abroad.

Bilateral and multilateral arrangements: United Nations instruments

South Africa has ratified several key United Nations treaties and conventions of relevance to labour migration:

- (a) Universal Declaration of Human Rights (1948);
- (b) International Covenant on Civil and Political Rights (ICCPR) (1966);
- (c) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966);
- (d) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965);
- (e) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979);
- (f) International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984);
- (g) United Nations Convention on the Rights of the Child (CRC) (1989);
- (h) United Nations Convention on the Rights of Persons with Disabilities (CRPD) (2006);
- (i) Convention Relating to the Status of Refugees (1951);
- (j) United Nations Convention against Transnational Organized Crime (UNTOC) (2000), and its three supplementing Protocols, among which are: (i) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and (ii) the Protocol against the Smuggling of Migrants by Land, Sea and Air.

Bilateral and multilateral arrangements: ILO instruments

While all fundamental ILO conventions have been ratified by South Africa, the country has, however, not ratified the two key ILO labour migration-related instruments: the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Neither has it ratified two other important technical

instruments in relation to migrant workers, the ILO Maintenance of Social Security Rights Convention, 1982 (No. 157) and the Private Employment Agencies Convention, 1997 (No. 181). South Africa has also not ratified the ICRMW. These instruments are relevant to labour migration in terms of affording migrant workers general protection of their fundamental human rights, but also more specific rights (civil and political, social and cultural) and to specific categories of migrants (women, children, persons with disabilities, refugees). Of particular importance is the fact that these instruments, as is the case with other United Nations and ILO instruments, as well as African Union and SADC instruments, do not allow unequal treatment of migrant workers and nationals of destination countries. South Africa has also ratified the ILO Domestic Workers Convention, 2011 (No. 189). This is particularly important as the Convention applies to all workers, regardless of the regularity of their migration, and because domestic work is an occupation where there are substantive numbers of migrants according to the 2012 Labour Force Survey (about 9% of workers in the sector were migrant workers then). Also of significance is the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), ratified by South Africa. In terms of this Convention, South Africa undertakes to grant to nationals (and/or their dependants) of any other ILO member State which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, the same treatment with respect to workmen's compensation as it grants to its own nationals.

Multilateral arrangements: African Union and SADC instruments

Several African Union and SADC instruments respectively have been ratified by South Africa:

- (a) African Charter on Human and Peoples' Rights (1981);
- (b) African Charter on the Rights and Welfare of the Child (1990);
- (c) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003);
- (d) African Youth Charter (2006);
- (e) Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).

South Africa is a member of SADC and also participates in the MIDSAs process. SADC instruments adopted by South Africa include:

- (a) Protocol on the Facilitation of Movement of Persons (2005) (not yet in force);
- (b) SADC Code on Social Security (2007);
- (c) SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016);
- (d) (Draft) Guidelines on the Portability of Social Security Benefits in SADC (2020);
- (e) SADC Labour Migration Action Plan 2013–2015, renewed for 2016–2019 and again for 2020–2025;
- (f) SADC Labour Migration Policy Framework (2014).

Bilateral arrangements

As explained later in this report, South Africa historically concluded a number of BLAs with certain SADC countries – in particular with a view to facilitate the use of migrant labour in South African mines. However, these agreements are fraught with shortcomings, including in relation to their failure to appropriately address social protection matters.

5 Social protection and support services for migrant workers extended by countries of destination: Selected country experiences

5.1. Legal, policy and other arrangements

A focus on social protection provisioning

In this part, the focus is briefly placed on the legal, policy and other arrangements that facilitate social protection and support service provisioning. Reference is made to immigration requirements and arrangements only to the extent that these are relevant to the enquiry into social protection provisioning.

5.1.1. Côte d'Ivoire

Public contributory social security and health regimes are applicable to (documented) migrant workers, subject to qualifications

According to the Social Security (General Standards) Code (Law No. 1999-477), all workers (in the formal economy) in Côte d'Ivoire, regardless of their nationality, are entitled to the benefits of the National Social Security Fund (*Caisse Nationale de Prévoyance Sociale, CNPS*).²⁹³ Payment of the different pension benefit types is generally made when the beneficiary reaches age 60, and after compliance with a minimum period of contribution. This may impact negatively on migrant workers, unless bilateral or multilateral arrangements (such as under the ECOWAS General Convention on Social Security) provide for appropriate dispensation. Nevertheless, in the case of foreign workers permanently leaving the country, the 60-year-old age restriction does not apply to one of the pension benefit type – the old age settlement (*remboursement des cotisations de vieillesse*).²⁹⁴ Furthermore, old-age pension is payable abroad. Also, in order to qualify for benefits under the health insurance scheme (*Caisse Nationale d'Assurance Maladie (CNAM) – Régime Général de Base (RGB)*), foreign nationals residing in Côte d'Ivoire must have six continuous months of contributions (instead of the three months applicable to Ivorians).²⁹⁵ Subject to this, migrant workers have access to all public health services/benefits, in particular those available under the insurance-based scheme, but not the medical assistance scheme, which is financed exclusively through the State budget.²⁹⁶

²⁹³ Government of Côte d'Ivoire, Social Security Code (Law No. 99-476 of 2 August 1999) (in French). Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=57048. See also: IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), p. 13.

However, workers (and therefore migrant workers) in the informal economy are not covered by the national scheme. Undocumented migrants are similarly not covered, due to non-compliance with the requirement for workers to be formally registered with the public scheme (information obtained during an interview with a representative of the Government of Côte d'Ivoire).

²⁹⁴ SSA and ISSA, "Côte d'Ivoire", in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 96.

²⁹⁵ *Ibid.*, p. 98.

²⁹⁶ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), pp. 12 and 13. Available at <https://publications.iom.int/fr/system/files/pdf/mgi-cote-divoire-2019.pdf>.

Equal access to labour rights and social services

Migrant workers are entitled to all rights under the Labour Code (Law No. 2015-532) without discrimination.²⁹⁷ This implies that they have equal access with nationals to cash sickness benefits, which is an employer liability arrangement in Côte d'Ivoire. Migrants also have equal access to public education at the primary, secondary and tertiary levels, but tuition fees in public universities are higher than for Ivorian nationals, depending on whether they are ECOWAS nationals or not.²⁹⁸ Immigrants also have almost the same access to social services as nationals, but they do not have access to government social housing.²⁹⁹

Access to employment

Migrant workers do not have access to employment in the civil service.³⁰⁰ Subject thereto, and under ECOWAS instruments governing unrestricted access to independent economic activity of paid work, all ECOWAS nationals have equal access to the labour market in Côte d'Ivoire; in 2007, the country waived the residence permit requirements for ECOWAS nationals.³⁰¹

5.1.2. Egypt³⁰²

Foreign workers are covered by contributory social security and in principle by health insurance arrangements, but have limited access to non-contributory social security benefits, and health insurance

Regarding contributory benefits, the new Law on Social Insurance and Pensions (Law No. 148 of 2019) is a consolidated law that has significantly extended the scope of persons and groups covered and range of benefits. It covers, among others, also domestic workers and certain self-employed persons and workers, particularly those in the informal economy. Regarding the scope of persons covered, it also applies to all employees who have a regular employment relationship with their employer according to the Labour Code (Law No. 12 of 2003) of Egypt. The Labour Code applies to “any natural person” and clearly does not exclude foreign workers, although it makes it clear that reciprocity conditions may impact on this.³⁰³ The Law on Social Insurance and Pensions does not require, as a preceding law did, that its provisions only apply to foreign employees from countries with whom Egypt has a reciprocity agreement. As far as non-contributory benefits are concerned, social assistance programmes in Egypt are, as far as could be determined, accessible only by Egyptian citizens and not by migrant workers and their families.³⁰⁴ These programmes include Social Pension (or “Old Age Pension”) and the so-called “*Takaful* and *Karama*” programme, adopted as part of a poverty reduction strategy in Egypt.³⁰⁵ Regarding (publicly organized) health insurance, the Law Promulgating the Health Insurance System (Law No. 2 of 2018), can be extended to foreigners who are earning their income or living in Egypt, subject to reciprocity.³⁰⁶

²⁹⁷ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 143.

²⁹⁸ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), pp. 13 and 18.

²⁹⁹ *Ibid.*, p. 13.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*, p. 12; ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 142.

³⁰² In Egypt, the number of international migrants increased from 300,000 in 2010 to more than 500,000 in 2019. These migrants come primarily from Somalia and Sudan, but also the Syrian Arab Republic and the Palestinian Territories (IOM, *World Migration Report 2020* (see footnote 74), p. 67).

³⁰³ Government of Egypt, Labour Code (Law No. 12 of 2003) (Cairo, 2003), arts. 1 and 27.

³⁰⁴ See also: SSA and ISSA, “Egypt”, in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 114. (Apparently, benefits are portable based on either bilateral agreements providing for the same benefits, or a minimum of 10 years of contributions and if the beneficiary is under the age of 60 (information obtained during an interview with a representative of the Government of Egypt).)

³⁰⁵ Social Pension is essentially an unconditional cash transfer that mainly targets the elderly (65 years of age and older), using demographic (or pension-tested) targeting. On the other hand, *Takaful* aims to promote children's human development through conditional cash transfers, while *Karama* aims to promote social inclusion among elderly people and people with disabilities through unconditional cash transfers. (See, for example: Charlotte Bilo and Anna Carolina Machado, “Child-sensitive non-contributory social protection programmes in the MENA region”, *Policy in Focus*, 14(3):42–47 (2017).)

³⁰⁶ As indicated in the ILO abstract concerning the scope of coverage of the new law: Government of Egypt, Law No. 2 of 2018 promulgating the Health Insurance System. Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=108410&p_count=8&p_classification=15.

However, gradual extension of coverage under the new health insurance system is foreseen, implying that migrant workers will not be covered immediately. Also, non-Egyptians have access to non-contributory primary health care and special health programmes (e.g. in relation to HIV, hepatitis and COVID-19), but not secondary and tertiary health care.³⁰⁷

Qualified access to social services

Refugees and asylum seekers enjoy qualified access to social services, including employment, education, health and housing.³⁰⁸ In particular, as noted by the UNHCR, the Government of Egypt maintains a tolerant asylum policy and continues to grant refugees and asylum seekers access to public health care, and South Sudanese, Sudanese, Syrians and Yemenis to the public education system.³⁰⁹

Restricted labour market access potentially impacting on social security entitlements

Foreigners are prohibited from obtaining work permits as long as the labour market has Egyptians to fill positions. Also, certain labour market sectors may, by decree, be closed to foreign workers, while the number of foreigners may not exceed 10 per cent of an organization's workforce in the case of unskilled and semi-skilled workers and 25 per cent in the case of skilled workers.³¹⁰ The formal entry of foreign domestic workers is strictly controlled. Work permits are valid for one year, with the possibility of renewal.³¹¹ This potentially restricts access to social security benefits that require contributions over a longer period, particularly in circumstances where the beneficiary is not allowed to take his or her contributions as a lump sum upon return to the country of origin.

5.1.3. Ethiopia

Foreign workers do not, as a rule, have access to publicly provided social insurance schemes

Both the contributory public sector and contributory private sector programmes are, in principle, accessible only to Ethiopian citizens, as provided for in two separate proclamations (Nos. 714/2011 and 715/2011).³¹² However, as noted in article 3(1) of both proclamations, the respective schemes are open only to Ethiopian nationals, subject to two exceptions: (a) where international agreements (which may include bilateral agreements) provide for the coverage of foreigners and (b) foreign nationals of Ethiopian origin. Regarding the latter, Proclamation No. 270/2002³¹³ guarantees certain rights and privileges to foreign nationals of Ethiopian origin – among others, not to be subjected to the exclusion that applies to foreign nationals regarding the coverage of pension schemes under the relevant pension law (art. 5(3)).³¹⁴

³⁰⁷ Information obtained during an interview with a representative of the Government of Egypt.

³⁰⁸ For a detailed analysis, see: Amira Hetaba, Claire McNally and Elena Habersky, "Refugee entitlements in Egypt", Cairo Studies on Migration and Refugees, paper no. 14 (Cairo, Center for Migration and Refugee Studies – The American University in Cairo, 2020). Available at <https://documents.aucegypt.edu/Docs/GAPP/Refugee-Entitlements-Report%202020.pdf>. (According to a representative of the Government of Egypt: As far as education is concerned, all children have access to government primary and secondary schools (implying Arab-speaking schools; 65,000 foreign children are so accommodated); foreigners have access to tertiary-level education, but have to pay more than Egyptians in order to access this.)

³⁰⁹ UNHCR, "2019 year-end report: Egypt", available at <https://reporting.unhcr.org/sites/default/files/pdfsummaries/GR2019-Egypt-eng.pdf>; UNHCR, "Fact sheet: Egypt (September 2020)", available at www.unhcr.org/eg/wp-content/uploads/sites/36/2020/10/UNHCR-Egypt_Fact-Sheet_September-2020.pdf.

³¹⁰ Government of Egypt, Labour Code (see footnote 303), art. 30; also, decrees promulgated in terms of this article, in particular Decree No. 49 of 2008, amending Decree No. 136 of 2003 concerning the Conditions and Procedures of Granting Work Permits to Foreigners.

³¹¹ Ray Jureidini, "Irregular workers in Egypt: migrant and refugee domestic workers", *International Journal on Multicultural Societies*, 11(1):75–90 (2009); Mohamed Farahat, "National legislation for migrants' recruitment in Egypt" [slide presentation], 2000.

³¹² SSA and ISSA, "Ethiopia", in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 122. See also: Government of Ethiopia, Public Servants' Pension Proclamation (Proclamation No. 714/2011, published in the Federal Negarit Gazette, No. 78, 24 June 2011); Government of Ethiopia, Private Organization Employees' Pension Proclamation (Proclamation No. 715/2011, published in the Federal Negarit Gazette, No. 79, 24 June 2011).

³¹³ Government of Ethiopia, Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin (Proclamation No. 270 of 2002, published in the Federal Negarit Gazette, No. 17, 5 February 2002).

³¹⁴ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), pp. 32–34.

Foreign workers are entitled to access social health insurance and labour law-embedded social security benefits

Membership in the public Social Health Insurance Scheme is open to foreign workers, with employers bearing the obligation to ensure their employees are registered.³¹⁵ However, universal (non-contributory) benefits are available only to Ethiopian citizens.³¹⁶ Also, the Labour Proclamation of 2003 (No. 377/2003) does not distinguish between local and foreign workers in terms of its scope of coverage.³¹⁷ The implication is that foreign workers are entitled to claim sick leave and maternity leave benefits, as well as compensation for employment injury benefits, as provided for under the proclamation. Refugees reportedly enjoy benefits in accordance with Ethiopia's commitments under global refugee instruments it has ratified.³¹⁸

5.1.4. Ghana

Foreign workers have qualified access to contributory social security benefits and health insurance

Payment of the different pension benefit types is generally made at age 60, assuming compliance with a minimum period of contribution (usually 15 years). This may impact negatively on migrant workers, unless bilateral or multilateral arrangements (such as those under the ECOWAS General Convention on Social Security) provide for an appropriate dispensation. Nevertheless, the legislative framework does not draw these distinctions. However, the National Pensions Act, 2008 (No.766) (as amended in 2014 by Act No. 833),³¹⁹ in the case of **basic contributory pension**, allows a non-Ghanaian member who is emigrating or has emigrated permanently, to be paid a lump sum instead of a pension; in the event where the member does not qualify for a pension, a return of contributions, with interest, shall be paid as a lump sum.³²⁰ Also, in the event of a **contributory occupational scheme benefit**, a non-Ghanaian who does not satisfy the qualifying conditions for a benefit, but desires to emigrate permanently, may be entitled to the entire accrued benefit in the scheme in a lump sum. For the rest, however, benefits (including disability pensions and survivor grants) are not payable abroad.³²¹ The absence of portability has indeed been indicated by several government officials and researchers interviewed for this report as one of the critical challenges to be addressed, noting that legal and institutional reforms may be needed to implement a portability regime. Attention has also been drawn to the fact that the ECOWAS General Convention on Social Security has not yet been fully implemented, also from the perspective of portability of benefits. Special arrangements could exist in the case of reciprocal agreements with the government of another country.³²² Also, the National Pensions Act, 2008 (No. 766) makes it compulsory only for workers (and their employers) in the formal economy (i.e. where an employment relationship exists) to contribute to the national scheme. Self-employed persons and workers in the informal economy are not compelled to participate, potentially leaving many migrant workers outside the net of formal contributory social security protection in Ghana to the extent provided for in the national scheme.³²³ However, it has been suggested that migrant workers in the informal economy should be able to access schemes extending social security in the informal economy.³²⁴

³¹⁵ Government of Ethiopia, Social Health Insurance Proclamation (Proclamation No. 690 of 2010, published in the Federal Negarit Gazette, No. 50, 19 August 2010), arts. 5(1) and (2).

³¹⁶ SSA and ISSA, "Ethiopia" (see footnote 312).

³¹⁷ Government of Ethiopia, Labour Proclamation (Proclamation No. 377 of 2003, published in the Federal Negarit Gazette, No. 12, 26 February 2004).

³¹⁸ Information obtained during an interview with an Ethiopian researcher.

³¹⁹ Government of Ghana, National Pensions Act (No. 766 of 2008), art. 73A (as inserted by the National Pensions (Amendment) Act (No. 883 of 2014)).

³²⁰ *Ibid.*, art. 101(3).

³²¹ SSA and ISSA, "Ghana", in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), pp. 135–38.

³²² Government of Ghana, National Pensions Act (No. 766 of 2008), art. 82; see also section 5.3.4 of this report.

³²³ *Ibid.*, arts. 30, 58 and 107–109.

³²⁴ Information obtained during an interview with an official of the Government of Ghana.

As far as health insurance is concerned, the National Health Insurance Act, 2012 (No. 852),³²⁵ according to article 27(1), all residents of Ghana have to participate in the National Health Insurance Scheme; employers have to ensure that their employees are registered under the scheme. Contributors to the national pension scheme (see previous paragraph) are exempted from paying contributions to the national social security and insurance schemes, with 2.5 per cent of social security contributions transferred to the National Health Insurance Authority in lieu.³²⁶ The term resident is defined in a way that excludes undocumented foreigners, as well as foreigners who have not lived in the country (legally) for 6 months or more within any period of 12 months. An employee or official of the Government of Ghana who is abroad during the year of assessment, however, is regarded as a resident.³²⁷

Equal access to labour rights and social security entitlements, provided for in labour legislation, and to social services

Migrant workers are entitled to all rights ensured under the Labour Act, 2003 (No. 651), without discrimination, and, in principle, the Workmen's Compensation Act, 1987 (No. 187).³²⁸ This implies that they have equal access as nationals to cash sickness, cash maternity and employment injury benefits, which are employer liability arrangements in Ghana. However, self-employed persons and informal economy workers are excluded from these arrangements, thereby leaving many migrant workers outside the net of labour law-related social security protection in Ghana.³²⁹ Furthermore, in the area of education, all children in Ghana have access to public primary and secondary schools, and admission does not require a residence permit. Permanent residents can also access university education.³³⁰

Restricted access to employment

The perception that citizens are negatively affected by competition from foreign workers, especially in small and medium-sized enterprises and the trade sector,³³¹ has led to the adoption of legislation to make segments of the labour market accessible only to Ghanaians. The key legislative instrument for this purpose is the Ghana Investment Promotion Centre (GIPC) Act, 1994 (No. 478), revised in 2013. The sectors so carved out for citizens reportedly include selected retail or service enterprises (sale of goods in a markets, beauty salons and barber shops), gambling enterprises and the operation of taxi services with a fleet smaller than ten cars. The revision to the GIPC Act in 2013 (Act 865) expanded the list of reserved enterprises to include the printing of telecommunications recharge scratch cards, production of stationery, retail of pharmaceutical products and the production and sale of sachet water.³³² Yet the effectiveness of this statutory development has been questioned, as this has promoted the practice of "fronting". As stated in a recent OECD–ILO study in this regard:

Partly with a view to the perception of "unfair competition", the Ghana Investment Promotion Centre (GIPC) Act of 1994 (Act 478), and revision in 2013 (Act 865),

³²⁵ Government of Ghana, National Health Insurance Act (No. 852 of 2012). Available at www.ilo.org/dyn/natlex/docs/MONOGRAPH/108706/134522/F192975399/GHA108706.pdf.

³²⁶ Government of Ghana, National Pensions Act (No. 766 of 2008), art. 55 (as amended by the National Pensions (Amendment) Act (No. 883 of 2014), art. 1).

³²⁷ Government of Ghana, National Health Insurance Act (see footnote 325), art. 109.

³²⁸ Government of Ghana, Labour Act (No. 651 of 2003), art. 1; Provisional National Defence Council (PNDC), Workmen's Compensation Act, 1987 (PNDC Law 187); ICMPC and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170.

³²⁹ SSA and ISSA, "Ghana" (see footnote 321), pp. 136 and 137.

³³⁰ IOM, "Migration governance snapshot: The Republic of Ghana" (see footnote 210), p. 2.

³³¹ For example, in relation to Ghana, a recent OECD–ILO study remarks: "Nevertheless, there is the perception that entrepreneurs displace some native-born workers in the trade sectors. One explanation that has been [put forward] is that importing consumer goods is cheaper for Chinese immigrants in particular. In general, immigrants from industrial countries have more connections with manufacturers in their countries of origin, and consequently it is easier for them to import consumer goods." (OECD and ILO, *How Immigrants Contribute to Ghana's Economy* (Paris, OECD, 2018), p. 120. DOI: 10.1787/9789264302037-en.)

³³² *Ibid.*, p. 47.

reserve certain types of activities and enterprises for Ghanaian citizens, including sales of goods in markets or open stalls. However, interviews suggested that foreign-born entrepreneurs circumvent this legislation by using Ghanaian connections. This “fronting” practice entails joint ownership of businesses and may create benefits for immigrants and Ghanaians alike. Apart from legal constraints, some foreign-born entrepreneurs also cite discrimination as a reason to use Ghanaian connections.³³³

Imposing quotas

In Ghana, individual companies have some restrictions on the total number of immigrant employees they can employ.³³⁴ While there is no quota system with fixed annual limits applicable to all employers, quotas are set on an individual basis. In this regard, the Immigration Quota Committee has the right to specify the quota on migrant workers that can be employed by an employer, subject to the principal immigration requirement for the employment of foreigners in Ghana that such employment of foreign workers “will be to the benefit generally of Ghana”.³³⁵ Also, a foreign worker cannot change employers and type of employment without the approval of the Immigration Quota Committee: “In other words, it is only when granted indefinite residency status (after a minimum of five years of residence in the country) that a migrant worker can have free access to the labour market.”³³⁶

In a recent OECD–ILO report on Ghana, it has been found that the role of immigrant workers in filling skills gaps, by imparting skills to an understudy, contributes to the positive perception of these workers in large-scale enterprises: “Potential friction with native-born workers may be limited by making arrangements for skills transfers between immigrant and native-born workers – a practice that seems to be common in Ghana.”³³⁷ Yet, as was noted in a 2015 ECOWAS study, what seems to be missing is “an assessment and projections of labour shortages within the national labour market, with a view to better understanding the potential need for migrant workers and adopting adequate policies in this regard.”

ECOWAS nationals

Under ECOWAS instruments governing unrestricted access to independent economic activity of paid work, all ECOWAS nationals are meant to have equal access to the labour market. Apparently, such measures, including the residence rights of ECOWAS citizens, are dealt with administratively in Ghana rather than through official regulations.³³⁸

Strengthening labour migration governance in Ghana

The National Labour Migration Policy 2020–2024 emphasizes strategies for enhancing legislative, institutional, regulatory and international frameworks. With reference to the legislative framework, the policy supports the ratification of international instruments on labour migration. These include the ILO Convention on Migration for Employment (Revised 1949) (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the ILO Maintenance of Social Security Rights Convention, 1982 (No. 157), the ILO Private Employment Agencies Convention, 1997 (No. 181) and the ILO Domestic Workers Convention, 2011 (No. 189).³³⁹

³³³ Ibid., p. 120 (authority omitted).

³³⁴ OECD and ILO, *How Immigrants Contribute to Developing Countries' Economies* (Paris, OECD, 2018), p. 62. Available at www.oecd-ilibrary.org/development/how-immigrants-contribute-to-developing-countries-economies.

³³⁵ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170; Government of Ghana, Immigration Act (No. 573 of 2000), art. 27(3).

³³⁶ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170.

³³⁷ OECD and ILO, *How Immigrants Contribute to Ghana's Economy* (see footnote 331), p. 119.

³³⁸ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170.

³³⁹ Government of Ghana – MELR, Ghana National Labour Migration Policy 2020–2024 (see footnote 187), p. 10.

5.1.5. Kenya

Migrant workers have in-principle access to social security and health insurance protection in Kenya

The position of migrant workers in Kenya could be summarized as follows:

- (a) **Contributory arrangements.** The key law, Kenya's National Social Security Fund Act (No. 45 of 2013), established the National Social Security Fund,³⁴⁰ and states in article 19(1) that "every employer who, under a contract of service, employs one employee or more shall register with the Fund as a contributing employer and shall, register his employee or employees, as members of the Fund". *Employee* is defined to mean any person who has attained the age of 18 years and who is employed in Kenya under a contract of service.³⁴¹ Regular migrant workers therefore also participate in the Fund as members. The Act also allows for voluntary registration by self-employed persons and, by extension, applies to migrants who are self-employed in Kenya and in a regular status. Provision is further made for an emigration benefit, such that a member is entitled to his or her pension fund and provident fund credit even after migrating from Kenya, without any present intention of returning or residing again in Kenya, to a country without a reciprocal agreement made pursuant to the provisions of the law.³⁴² However, as also indicated by several respondents to questionnaires distributed for the purposes of this report, the portability of social security benefits is one of the key challenges faced by migrant workers in Kenya and Kenyan migrant workers abroad, in the absence of suitable BSSAs involving Kenya.
- (b) **Social security protection embedded in Kenya's employment and work injury benefit laws.** (Documented) migrant workers are entitled to the social security benefits provided for under the Employment Act (No. 11 of 2007), including cash sickness, maternity benefits and severance benefits. This flows from the fact that the Act applies to all employees employed by any employer under a contract of service.³⁴³ The same applies to work injury benefits provided under the Work Injury Benefits Act (No. 13 of 2007).³⁴⁴
- (c) **Public health insurance.** Migrant workers, including self-employed migrants, are obliged to pay contributions to the National Hospital Insurance Fund, if they are ordinarily resident in Kenya and at least 18 years of age and if their total income is not below a prescribed amount.³⁴⁵
- (d) **Social assistance.** Migrant workers do not qualify for the non-contributory old age benefit, as the universal pension is payable only to citizens of Kenya.³⁴⁶

³⁴⁰ Under the Act, NSSF members are eligible for the age/retirement benefit, survivor's benefit, invalidity benefit, withdrawal benefit, emigration and other benefits that may be prescribed by the Minister with the concurrence of the Minister for Finance in Kenya. The Act replaced the old provident fund programme with: (a) individual accounts (collectively called a pension fund) that are mandatory for all employed persons aged 18 to 60; and (b) a new provident fund programme (SSA and ISSA, "Kenya", in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 148).

³⁴¹ Government of Kenya, National Social Security Fund Act (No. 45 of 2013), section 2(1)(a). Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/97350/115470/F-463813696/KEN97350.pdf.

³⁴² *Ibid.*, sections 39 and 46.

³⁴³ "Employee" is defined as "a person employed for wages or salary". (Government of Kenya, Employment Act (No. 11 of 2007), section 3(2).)

³⁴⁴ Refer to the Work Injury Benefits Act (No. 13 of 2007) regarding coverage (section 3), read with the definition of "employee" in section 5(1) of the Act.

³⁴⁵ Government of Kenya, National Hospital Insurance Act (No. 9 of 1998) (as amended), section 15.

³⁴⁶ SSA and ISSA, "Kenya" (see footnote 340), p. 148.

5.1.6. Kuwait

Foreign workers are largely excluded from public scheme-provided social security arrangements and social services in Kuwait

While specialized arrangements exist for citizens of GCC countries working in Kuwait (see section 5.3.6 of this report), foreign workers in Kuwait, especially temporary contractual workers (TCWs), do not qualify for membership of and benefits from the Public Institution for Social Security.³⁴⁷ In fact, in acceding to the International Covenant on Economic, Social and Cultural Rights (1966), Kuwait has made a formal declaration to the effect that its social security provisions only apply to Kuwaitis.³⁴⁸ Similarly, foreign workers are not covered under universal medical benefits, unemployment insurance and social assistance, although, being covered under The Law of Labor in the Private Sector (No. 6 of 2010), they could claim compensation for workplace injuries, sickness leave and maternity cash benefits.³⁴⁹ Separate health insurance arrangements have been introduced for non-GCC foreign nationals. Under the Law on Alien Health Insurance and the Imposition of Fees against Medical Services (No. 1 of 1999), free health care was discontinued for TCWs and stateless migrants and replaced with employers' obligation to pay their employees' health insurance fees. TCWs have to bear the cost of accessing medical facilities and health insurance for their dependants.³⁵⁰ As far as government-funded education is concerned, "the majority of TCWs' children do not have access to public schools but TCWs can enrol their children in private educational institutions. The Government, however, has allowed children of TCWs [working as] faculty members [under] the Ministry of Education and [at] Kuwait University to attend public schools." Kuwait accepts international students at tertiary institutions, provided they fulfil visa requirements.³⁵¹ The lack of social protection for foreign workers is accentuated by the fact that Kuwait has not ratified any of the United Nations or ILO migration-dedicated conventions.³⁵²

5.1.7. Mauritius

Migrant workers generally have access to social protection and social services³⁵³

A 2018 publication of the Global Forum on Migration and Development (GFMD) refers to Mauritius as an example of a good practice on regional mobility cooperation. The children of a non-citizen who holds a valid work and residence permit, have access to primary, secondary and

³⁴⁷ The Public Institution for Social Security, *Social Security Guide in Kuwait* (Kuwait, 2009), available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/13622/102915/F-1073434804/KUW89553%20Guide.pdf; IOM, "Migration governance overview: The state of Kuwait, May 2018", p. 3, available at www.migrationdataportal.org/sites/g/files/tmzbd1251/files/2019-09/MGI%20Kuwait%20Report%20FINAL.pdf.

³⁴⁸ United Nations General Assembly resolution 2200A (XXI) on the International Covenant on Economic, Social and Cultural Rights (see footnote 26).

³⁴⁹ SSA and ISSA, "Kuwait", in: *Social Security Programs Throughout the World: Asia and the Pacific, 2018* (Washington, D.C., SSA, 2018), pp. 153–157; Government of Kuwait, The Law of Labour in the Private Sector (Law No. 6 of 2010), *Al-Kuwait Al-Yawm*, issue no. 963, 21 February 2010; S. Taqa, *The Legal Framework of Migrant Workers' Rights in the Arab Countries* (Beirut, Arab Network for Migrants' Rights, 2013), pp. 83–86. Separate arrangements are made for domestic workers, who account for 27 per cent of the total migrant workforce in Kuwait (Government of Kuwait, Law on the Employment of Domestic Workers (Law No. 68 of 2015); Kuwait Society for Human Rights, *Rights and Obligations of Domestic Workers in Kuwait: Guide* (Kuwait, 2018).

³⁵⁰ IOM, "Migration governance overview: The state of Kuwait, May 2018", p. 3, available at www.migrationdataportal.org/sites/g/files/tmzbd1251/files/2019-09/MGI%20Kuwait%20Report%20FINAL.pdf; Government of Kuwait, Law on Alien Health Insurance and the Imposition of Fees against Medical Services (Law No. 1 of 1999).

³⁵¹ IOM, "Migration governance overview: The state of Kuwait, May 2018", pp. 3 and 5. Available at <https://migrationdataportal.org/sites/default/files/2019-09/MGI%20Kuwait%20Report%20FINAL.pdf>.

³⁵² *Ibid.*, p. 2.

³⁵³ The social security system of Mauritius provides for contributory retirement support via arrangements provided under the National Pensions Act (No. 44 of 1976). Social assistance is available under the circumstances indicated in the Social Aid Act (No. 2 of 1983) or in the event of absolute poverty, as foreseen in the Social Integration and Empowerment Act (No. 26 of 2016). Other parts of the legal system regulate unemployment benefits and coverage in the event of an occupational injury or disease. Mauritius' main labour law is The Workers' Rights Act (No. 20 of 2019).

tertiary education under the same conditions as Mauritian citizens. In addition, non-citizens may access most health-care services for free, including treatment for chronic diseases.³⁵⁴ Furthermore:

[T]hey are also eligible to participate in the national social insurance scheme, which entitles them to a disability, retirement or survivor pension. Under the National Pensions Act, both local and foreign workers are eligible to contribute to the national pensions scheme from the first day of employment, with the exception of non-citizens employed in export-oriented companies, who are eligible only after two years of residence in the country. They are also required to contribute to the National Savings Fund, which entitles them to the payment of a lump sum on retirement or when they leave the country. The lump sum comprises the contributions paid, together with accrued interest at the time of the payment.³⁵⁵

Migrant workers and non-citizens are also not excluded from social assistance available under the circumstances indicated in the Social Aid Act (No. 2 of 1983) or in the event of absolute poverty, as foreseen in the Social Integration and Empowerment Act (No. 26 of 2016). In fact, the non-contributory, universal old-age pension is payable to all residents in Mauritius, but non-citizens must have at least 15 years of residence since age 40, including the three years immediately before the claim is made.³⁵⁶ The same principle applies in the case of the non-contributory universal disability pension and non-contributory widow's pension: five years of residence in the last ten years is required.³⁵⁷ Also, contributory old-age pensions, disability pensions and survivor pensions are payable abroad.³⁵⁸ Furthermore, Mauritius allows non-citizens access to tertiary education institutions, without any limitations, on the same basis applicable to citizens. In addition, the Non-Citizens (Property Restriction) Act (No. 22 of 1975), as amended, provides non-citizens with the right to acquire property for both business and residential purposes. Finally, all migrants, irrespective of their legal status, have the right to access humanitarian aid in the event of a crisis or natural disaster.³⁵⁹

Access to the labour market: a mixed picture

Permanent residents and their spouses, and effectively also holders of occupation permits (i.e. a combined work and residence permits), have unrestricted access to the labour market and may switch employers. There is no limit on the number of years an occupation permit holder can work and reside in Mauritius. Yet for certain other migrant (worker) categories, the Government's position is different:

According to the regulations outlined in the Republic of Mauritius' Immigration Act (Act No. 13) and the Non-citizens (Employment Restriction) Act (Act No. 15), as well as the Work Permit Guidelines established by the Ministry of Labour, Industrial Relations, Employment and Training (MLIRET), migrants holding a work permit cannot freely access the labour market (private or public sector), or switch employers.

³⁵⁴ "Mauritius extends its medical coverage to all, including migrants mainly due to free health services to all in all public hospitals and care centres. Non-citizens in the Republic of Mauritius may access most health-care services for free, including treatment for chronic conditions such as diabetes" (GFMD, "Examples of good practices on regional mobility cooperation – Mauritius" (see footnote 251)). However, it has also been remarked that the Republic of Mauritius still applies HIV-related restrictions on the entry, stay and residence of non-nationals. Migrant workers and, in some cases, international students must provide evidence of their negative HIV status to qualify for work and residence permits (section 8 of the Immigration Act (No. 13 of 1970)). However, migrant workers are not discriminated against under The Employment Rights Act (No. 33 of 2008) (IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 3).

³⁵⁵ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 2.

³⁵⁶ SSA and ISSA, "Mauritius", in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), pp. 181–187.

³⁵⁷ *Ibid.*, p. 182.

³⁵⁸ *Ibid.*

³⁵⁹ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), pp. 5–6.

Neither can they seek permanent residence or bring their families to the Republic of Mauritius, unless a residence permit application has been made separately for family members. Migrant workers must leave the country after a maximum of four years of continuous employment, with the exception of workers in the manufacturing and construction sectors, who are allowed to work up to eight years.³⁶⁰

The Migration and Development Policy of the Republic of Mauritius 2030 (adopted in 2018) envisages the (re)assessment of the differentiated quota system, given the need for manpower from abroad.³⁶¹ It further suggests monitoring and analysing thoroughly and regularly the national labour market situation (via labour market surveys, dialogues with social partners and business associations and analysis of various socioeconomic indicators), in order to identify shortages of local skills, skills demand and to project needs-based planning scenarios related to the recruitment of foreign manpower in the short-, medium- and long-term.³⁶²

Qualified entitlement to labour rights with social protection implications

Migrant workers and non-citizens are generally covered under the provisions of The Workers' Rights Act 2019 and are therefore entitled to, among others, paid sick leave and paid maternity leave, as well as a gratuity on retirement.³⁶³ However, they are subject to certain restrictions, discussed more fully in [section 5.2.7](#) of this report – for example, they are not entitled to severance pay on termination of employment unless they have been appointed on an indefinite contract of employment.³⁶⁴ They are also not entitled to transition unemployment benefits or to participate in the Portable Retirement Gratuity Fund.³⁶⁵

5.1.8. Rwanda

Legislative provisions generally extend (in particular, contributory forms of) social protection to foreign workers

Social insurance, health insurance and labour laws extend protection to foreign workers essentially on the basis of equality vis-à-vis Rwandans:

- (a) The **key social security law**, Law No. 6/2003, modifying the earlier 1974 decree,³⁶⁶ provides for the different social security branches or risk categories to be covered by what is now known as the Rwanda Social Security Fund. According to article 2, the Law applies to all workers³⁶⁷ while they are working in Rwanda, although provision is made for seconded foreign workers to be covered by the social security system of their country of origin if the secondment does not exceed six months – subject to any reciprocal agreement binding on Rwanda.

³⁶⁰ Ibid., pp. 2–3.

³⁶¹ Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 25. (The Action Plan gives the following instruction: “Assess the current differentiated quota system in terms of advantages and disadvantages in relation to various economic sectors in order to take policy decisions concerning (i) the establishment of adapted recruitment and employment schemes (based on sectors’ emerging needs) and (ii) flexible and streamlined recruitment procedures (for specific sectors, the quota system could temporarily be put on hold or a flexible yearly mechanism could be put in place given the stringent need of manpower from abroad and the volume of foreign labour force could be increased).”)

³⁶² Ibid., pp. 24–25.

³⁶³ Government of Mauritius, Workers’ Rights Act 2019 (No. 20 of 2019), sections 46, 52 and 109, respectively.

³⁶⁴ Ibid., section 69(2).

³⁶⁵ Ibid., sections 84(10) and 90(1)(d); SSA and ISSA, “Mauritius” (see footnote 356), p. 185.

³⁶⁶ Government of Rwanda, Law Modifying and Completing the Decree Law of 22 August 1974 concerning Organization of Social Security (Law No. 06/2003).

³⁶⁷ Self-employed workers can join voluntarily, per article 3 of the law.

- (b) The **new pension law**, Law No. 5/2015, makes provision for a mandatory and a voluntary pension scheme.³⁶⁸ Article 4(a) of the Law stipulates that all employees covered under Rwanda’s labour law (see (f) of this list), regardless of nationality, shall be covered by the mandatory scheme.³⁶⁹ Seconded foreign workers could be covered by the social security system of their country of origin if the secondment does not exceed 12 months – subject to any reciprocal agreement binding on Rwanda. Apparently, the old-age pension is payable abroad under a reciprocal agreement.³⁷⁰
- (c) According to article 4 of the **long-term savings law**, Law No. 29/2017,³⁷¹ which regulates a voluntary savings account scheme, any Rwandan (including also Rwandans abroad) and “any other foreigner residing in Rwanda”³⁷² has the right to subscribe as a member. Article 9 of the Law allows a non-national to draw his or her benefits upon definitive departure from Rwanda; alternatively, the non-national can maintain his or her savings in the scheme.
- (d) Formal-sector workers are covered by different **health-care schemes** and corresponding laws, according to their status. For the majority of Rwandans, a community-based health insurance (CBHI) model was introduced. Residents of a particular area pay premiums into a local health fund and can draw from it when in need of medical care. Premiums are paid according to a sliding scale; the poorest members of society are entitled to use the service for free, while the wealthiest pay the highest premiums and have to make co-payments for treatment. Government and international donors have been co-funding the system. Rwanda aims to reach universal health coverage through this model – well over 80 per cent of the population of Rwanda are reportedly covered by the CBHI.³⁷³ Foreigners are not excluded from the CBHI scheme: Article 4 of the CBHI law³⁷⁴ defines an ordinary member as “any person who, either personally or through a third party, pays an annual contribution”.³⁷⁵ Therefore, residents of Rwanda not covered by any other health insurance programme are captured under the scheme.³⁷⁶
- (e) The **maternity leave benefits scheme law**, Law No. 3/2016,³⁷⁷ also covers all workers, regardless of nationality, type of contract, duration of contract or wage level. Seconded foreign workers could be covered by the social security system of their country of origin if the secondment does not exceed twelve months – subject to any reciprocal agreement binding on Rwanda.³⁷⁸

³⁶⁸ Government of Rwanda, Law Governing the Organization of Pension Schemes (Law No. 05/2015).

³⁶⁹ See also article 5 of the law, read with: Government of Rwanda, Ministerial Order Determining Modalities of Registration with Mandatory Pension Scheme (No. 004/16/10/TC) of 19 April 2016.

³⁷⁰ SSA and ISSA, “Rwanda”, in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 213.

³⁷¹ Government of Rwanda, Law Establishing the Long-term Savings Scheme and Determining Its Organization (No. 29/2017). (This law provides for the so-called Ejo Heza Long-term Savings and Pension Scheme, which aims to provide coverage for those working in the informal economy. (See also: UNDP, *Informality and Social Protection in African Countries: A Forward-looking Assessment of Contributory Schemes* (New York, 2021), pp. 77–79.)

³⁷² Beneficiaries also include self-employed persons and workers in the informal sector.

³⁷³ Theophile Ruberangero, Crispus Ayebare and Astrid de Laiminne de Bex, “Social Protection: An Ongoing Process – Rwanda”, in: *Successful Social Protection Floor Experiences, Sharing Innovative Experiences Vol. 18* (New York, UNDP, 2011), pp. 343–346.

³⁷⁴ Government of Rwanda, Law Governing the Organisation of the Community-Based Health Insurance Scheme (No. 03/2015).

³⁷⁵ *Ibid.*, art. 7. (The scheme shall offer health-care coverage to household members who have paid their respective contributions, with the exception of members insured under another medical insurance scheme.)

³⁷⁶ SSA and ISSA, “Rwanda” (see footnote 370), p. 215.

³⁷⁷ Government of Rwanda, Law Establishing and Governing Maternity Leave Benefits Scheme (No. 03/2016).

³⁷⁸ *Ibid.*, art. 3.

- (f) The **new labour law**, Law No. 66/2018,³⁷⁹ applies to all employers and employees in the public sector and the private sector.³⁸⁰ In the case of a foreign employee, a written contract of employment must be concluded.³⁸¹ Foreign workers in Rwanda are therefore entitled to all benefits provided under the labour law, including employment injury insurance (if not covered by the RSSF), sick leave and maternity leave. Article 39(6) stipulates that the employer bears the duty to “affiliate and contribute for an employee” to social security in Rwanda.

A supportive policy framework exists

The Revised National Employment Policy (2019) acknowledges that while it is investing in skills for the future, Rwanda will seek to fill temporary skills by attracting skills individuals in priority sectors, among others, from the international community.³⁸²

5.1.9. South Africa

Legislative framework informing immigration status and social security provisioning

The Immigration Act (No. 13 of 2002), regulates various visa types and migration statuses, including temporary migrant and permanent resident status. Different permit types determine the type of temporary migrant status (e.g. work permits and corporate permits), some of which may give rise to eligibility for permanent resident status. The 1996 Constitution of South Africa guarantees the right to access to social security to everyone. Various social assistance grant types are provided for under the Social Assistance Act (No. 13 of 2004). These include, among others, grants for older persons, persons with disabilities and children. The Unemployment Insurance Act (No. 63 of 2001) provides for contributory benefits in the event of unemployment caused by job loss, sickness, adoption or maternity. The main law regulating occupational injuries and diseases is the Compensation for Occupational Injuries and Diseases Act (No. 130 of 1993). The National Health Insurance Bill of 2019 will, once adopted, regulate the payment of health insurance benefits. In the absence of a national retirement scheme framework, the Pension Funds Act (No. 24 of 1956) regulates occupational and private retirement schemes. Progress is being made towards the establishment of a National Social Security Fund, to be facilitated by dedicated legislation to be developed. Various laws provide for labour law protection, including the Labour Relations Act (No. 66 of 1995), the Basic Conditions of Employment Act (No. 75 of 1997), the Employment Equity Act (No. 55 of 1998) and the National Minimum Wage Act (No. 9 of 2018). The Basic Conditions of Employment Act specifically imposes an obligation on the employer to provide certain social security benefits to employees, including sickness and maternity benefits.

Qualified access to contributory social security³⁸³

As far as currently available contributory social security schemes of a public nature are concerned, there no longer appear to be restrictions imposed on migrant workers, regardless of their permanent or temporary immigration status in South Africa: Even the legal restriction from accessing unemployment insurance benefits placed on migrant workers on temporary work permits has been removed. However, accessing these benefits abroad may be problematic, for example, for asylum seekers who may lack appropriate documentation to claim from, among

³⁷⁹ Government of Rwanda, Law Regulating Labour in Rwanda (No. 66/2018).

³⁸⁰ Ibid., art. 2(2).

³⁸¹ Ibid., art. 12.

³⁸² Government of Rwanda – MIFOTRA, Revised National Employment Policy (Kigali, 2019), sections 5.6 and 6.5. Available at www.mifotra.gov.rw/fileadmin/user_upload/Mifotra/Publication/_POLICIES/FINAL__REVISED_NATIONAL_EMPLOYMENT_POLICY.pdf.

³⁸³ See, in particular: Marius Olivier, “Social security: framework”, in: *The Law of South Africa (LAWSA): Labour Law and Social Security Law*, vol. 13, part 2 (Durban, LexisNexis, 2012), paras. 89–94.

others, the South African Unemployment Insurance Fund.³⁸⁴ The position of undocumented workers, who may not have a valid work permit, is unclear, especially in view of case law to the effect that a person whose work permit has expired still enjoys unfair dismissal protection³⁸⁵ – this may be of relevance for access to contributory benefits provided by public social security schemes. There are no restrictions on migrant workers joining non-public retirement and health insurance schemes. The legal position in relation to the envisaged public retirement scheme – that is, the National Social Security Fund – remains unclear. A government discussion document suggests that all “permanent residents, including migrant workers” should be included, without specifying whether this applies to all categories of temporary migrant workers and whether refugees and asylum seekers will be included.³⁸⁶ Certain government representatives interviewed for this report expressed the view that the (contributory) part of the South African social security system should be accessible to all (regular) migrant workers in South Africa. Finally and importantly, there have been unilateral attempts made for the main social security laws to regulate portability on the basis of reciprocal treatment, but no specific direction is given regarding what the bilateral agreements should ideally include.³⁸⁷

A mixed picture informs entitlement to non-contributory (social) assistance

As far as entitlement to social assistance benefits is concerned, in view of the constitutional guarantee of access to appropriate social assistance for everyone and clarifying constitutional case law,³⁸⁸ social assistance benefits are available to all permanent residents and refugees,³⁸⁹ but apparently not to temporary residents – thereby (in the absence of a bilateral agreement to the contrary) excluding temporary migrant workers in South Africa. Recent jurisprudence confirms that all asylum seekers, refugees and holders of special dispensation permits (see [section 4.3.6](#) of this report), who were in South Africa when the COVID-19 state of disaster was declared, qualify to apply for the (special) COVID-19 social relief grant.³⁹⁰ According to government representatives interviewed for this report, consideration is being given in order to extend the mainstream social assistance grant system to cover not only refugees but also asylum seekers.³⁹¹ Also, according to a recent government announcement, a new grant type may target unemployed people aged 19 to 59 years. However, government representatives interviewed for this report indicated that this may initially not be available to foreigners.

Differentiated access to health care and social services

As indicated above, there are no restrictions on joining non-public health insurance schemes. However, as far as the envisaged National Health Insurance Fund is concerned, the draft legislation

³⁸⁴ In *Lucien Ntumba Musanga v Minister of Labour* ((unreported) case no. 29994/18 NGHC), a settlement agreement was entered into to permit applications for Unemployment Insurance Fund (UIF) benefits from individuals who could only provide asylum permit numbers. Regulations to the Unemployment Insurance Act that sought to prevent asylum seekers from receiving UIF benefits were challenged as being unconstitutional and, thus, required amendments to the Unemployment Insurance Act. A recent, unreported Equality Court case, *Saddiq v Department of Labour* ((unreported) case no. EQ 04/2017, Equality Court for the subdistrict of Emfuleni), specifically considered the case of an asylum seeker who had been employed for more than two years and made contributions to the UIF, was dismissed by his employer but did not receive benefits from the Department of Labour of South Africa, as the Department had no system in place to process asylum seekers’ claims for unemployment insurance benefits and pay them. The magistrate decided the case based on the Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000), finding that the applicant had been the victim of unfair discrimination and awarding him ZAR 30,000 in damages, in addition to the UIF benefits to which he was entitled. Importantly, the Department of Labour was ordered to correct its computer system to allow any asylum seeker who contributed to the UIF to receive benefits in the future.

³⁸⁵ South Africa Labour Court, *Discovery Health Ltd v CCMA* [2008] 7 BLLR 633 (LC).

³⁸⁶ Government of South Africa – Interdepartmental Task Team on Social Security and Retirement Reform, “Comprehensive social security in South Africa”, discussion document, v. 11.9, March 2012. Available at www.gov.za/sites/default/files/gcis_document/201611/comprehensivesocialsecurityinsouthafrica.pdf.

³⁸⁷ Olivier, “Social security: framework” (see footnote 383), para. 94.

³⁸⁸ South Africa Constitutional Court, *Xhosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* [2004] 6 BCLR 569 (CC).

³⁸⁹ SSA and ISSA, “South Africa”, in: *Social Security Programs Throughout the World: Africa, 2019* (Washington, D.C., SSA, 2019), p. 237.

³⁹⁰ *Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others ZAGPPHC 308* (2020).

³⁹¹ *fin24*, “New grant may target unemployed people aged 19 to 59 years, govt says”, 26 May 2021. Available at www.news24.com/fin24/economy/south-africa/new-grant-may-target-unemployed-people-aged-19-to-59-years-govt-says-20210526.

provides a rather complex picture.³⁹² It is stipulated that: (a) the Fund will cover permanent residents, refugees and “certain categories or individual foreigners determined” by the relevant government minister; (b) asylum seekers and “illegal” foreigners will only be entitled to emergency medical services and services for notifiable conditions of public health concern; (c) all children, including children of asylum seekers or illegal migrants, are entitled to basic health-care services as provided in the Constitution; and (d) a foreigner visiting South Africa for any purpose must have travel insurance covering medical care. Access to public health care is complex and confusing, also in view of legislative uncertainty and inconsistent practice. The position can be summarized as follows:³⁹³

- (a) The Constitution guarantees everyone the right to have access to health-care services, and that no one may be refused emergency medical treatment (section 27).
- (b) The National Health Act (No. 61 of 2003) confirms that: (i) all persons in South Africa can access primary health care at clinics and community health centres; and (ii) all pregnant or breastfeeding women and children under the age of six are entitled to health-care services at any level.
- (c) The Refugees Act (No. 130 of 1998), as amended, states that refugees have the same right to access health care as South African citizens.
- (d) A 2007 Department of Health circular confirmed that: (i) refugees and asylum seekers, with or without permits, can access the same basic health-care services as South African citizens (which means it is free at point of use, but can be charged thereafter, on the basis of the application of a means test); and (ii) refugees and asylum seekers, with or without permits, can access HIV antiretroviral treatment.
- (e) The Immigration Act (No. 13 of 2002), in contrast, states that staff at clinics and hospitals must find out the legal status of patients before providing care (except in an emergency). In addition, hospitals and clinics have to report any “illegal foreigner” and anyone whose status is not clear.
- (f) The following non-citizen categories are entitled to health care, subject to compliance with a means test in the same way as South African citizens: (i) non-South Africans who have permanent or temporary residence indicated in their passport; and (ii) anyone from the SADC region who is undocumented. The following persons therefore would have to pay full fees at health-care facilities (except in the case of emergency health care), regardless of their means to do so: (i) undocumented persons from outside the SADC region; and (ii) people on a tourist/visitor’s visa.
- (g) Everyone in South Africa, regardless of their nationality or documentation status, has the right to access treatment for HIV and tuberculosis.
- (h) In reality, though, some migrants and refugees are reportedly denied access to health care simply because they are foreign. Access may also be impeded because of the poor state of public health in South Africa – affecting South Africans as well.

³⁹² Government of South Africa, Draft National Health Insurance Bill (B11-2019), published in Government Gazette No. 42598 of 26 July 2019.

³⁹³ Scalabrini Centre of Cape Town, “Migrant and refugee access to public healthcare in South Africa”, article, 25 September 2019. Available at <https://scalabrini.org.za/news/migrant-and-refugee-access-to-public-healthcare-in-south-africa>. (During an interview for this report, a representative of the Scalabrini Centre indicated that migrants in South Africa have access to basic health care, which differs from province to province.)

Access to social services appears to be incoherent. While migrants may have access to, in particular, basic education, according to a CSO interviewed for this report, State-provided housing is not available to foreigners.

Legal provisions qualify access to the labour market

For foreigners other than refugees and asylum seekers, there are essentially two laws that regulate their access to the labour market: the Immigration Act (No. 13 of 2002) and the Employment Services Act (No. 4 of 2014), including the regulations pertaining to these two laws. The Immigration Act provides for a range of visas including, for current purposes, treaty visas, work visas and corporate visas.³⁹⁴ A **treaty visa** is issued to a foreigner conducting activities in South Africa under the terms of an international agreement to which South Africa is a party.³⁹⁵ A **corporate visa** is issued to a corporate applicant for the employment of a foreigner who may conduct work for the corporate applicant in South Africa.³⁹⁶ Importantly, for the purposes of issuing a corporate visa, the Department of Home Affairs must determine, in consultation with the prescribed departments, the maximum number of foreigners to be employed in terms of a corporate visa by a corporate applicant, after having considered, in particular, “corroborated representations made by the corporate applicant in respect of the **need to employ foreigners**, their **job descriptions**, the **number of citizens or permanent residents employed and their positions**, and other prescribed matters [emphases added].”³⁹⁷ However, the Minister of Home Affairs may, after consultation with among others the Minister of Labour, “**designate certain industries**, or segments thereof, in respect of which the Government may reduce or waive this particular requirement [emphases added].”³⁹⁸ Industries or segments thereof can also be designated, in respect of which agreements can be concluded with one or more foreign States and where it is set as a condition of a corporate visa that its holder “employs foreigners partially, mainly or wholly from such foreign countries.”³⁹⁹

A **work visa** is approved for a maximum of five years, on the condition that the Department of Employment and Labour has issued a certificate confirming among others that, despite a thorough search, the prospective employer could not find a South African employee with the skills and experience equivalent to those of the applicant.⁴⁰⁰ To this, the Employment Services Act adds that the Minister of Labour may, after consulting the Economic Development Board, make regulations to facilitate the employment of foreign nationals; these regulations may include the requirement that the employers must satisfy themselves that there are no other persons in the country with suitable skills to fill a vacancy, before recruiting a foreign national.⁴⁰¹ Also, the employer needs to prepare a skills transfer plan for that person in that specific position.⁴⁰²

As a rule, with the exception of those with critical skills and permanent residence or specific cases approved by the Department of Home Affairs, immigrant workers are not allowed to change jobs; permits/visas are tied to a specific job and employer.⁴⁰³ An employer may not permit a foreign national to perform any work which such foreign national is not authorized to perform in terms of his or her work permit; or to engage in any work contrary to the terms of his or her work permit.⁴⁰⁴ A person who employs a foreign national within the territory of South Africa prior to

³⁹⁴ Government of South Africa, Immigration Act (No. 13 of 2002), sections 14, 19 and 21.

³⁹⁵ Ibid., section 14(1).

³⁹⁶ Ibid., section 21(1).

³⁹⁷ Ibid., section 21(2).

³⁹⁸ Ibid., section 21(4)(a).

³⁹⁹ Ibid., section 21(4)(b).

⁴⁰⁰ The Draft First Amendment of the Immigration Regulations, 2014 Made Under the Immigration Act (Government Notice No. R. 1328, in Government Gazette 42071 of 29 November 2018), amending regulation 18.

⁴⁰¹ Government of South Africa, Employment Services Act (No. 4 of 2014), section 8(2)(a).

⁴⁰² Ibid., section 8(4).

⁴⁰³ OECD and ILO, *How Immigrants Contribute to Developing Countries' Economies* (see footnote 334), p. 64.

⁴⁰⁴ Government of South Africa, Employment Services Act (see footnote 401), section 9.

that foreign national producing an applicable and valid work permit, shall be guilty of an offence and liable on conviction to a fine or imprisonment as contemplated in section 49(3) of the Immigration Act, as amended.

Balancing key objectives as regards the employment of foreigners

Note should be taken of the attempt in the Employment Services Act (No. 4 of 2014) to give due recognition to two objectives, that evidently need to be understood in a manner that will ensure a balanced approach in relation to the employment of foreign nationals. One purpose of the Act, set out in section 2, is the **facilitation of the employment of foreign nationals** in the South African economy, where their contribution is needed in a manner, among others:

- (a) That **gives effect to the right to fair labour practices** contemplated in section 23 of the Constitution;
- (b) That **does not impact adversely** on existing labour standards or the rights and expectations of South African workers.

This balance between foreign workers' employment protection, on the one hand, and the protection of South African workers, on the other, is also reflected in the South African constitutional precepts and jurisprudence, and in international standards.

Specific arrangements applicable to refugees' and asylum seekers' access to the labour market

The Refugees Act (No. 130 of 1998)⁴⁰⁵ places a general prohibition on the refusal of entry, expulsion, extradition or return of **refugees** to another country if the aforementioned acts will result in them being persecuted or their lives, physical safety and freedom will be threatened. In principle, refugees enjoy full legal protection, which includes the fundamental rights set out in Chapter 2 of the Constitution.⁴⁰⁶ Concomitant to this is the constitutional position that refugees qualify for the constitutionally entrenched right to access to social security and social assistance, as well as the other socioeconomic rights in terms of section 27 of the Constitution.

The Refugees Act also defines the term **asylum seeker** but treats them differently from refugees. An asylum seeker is someone who has arrived in South Africa and applied for asylum, that is, for recognition as a refugee, while a refugee is someone who has been granted asylum.⁴⁰⁷

The effect of section 2 of the Act is to permit any person to enter and remain in the country for the purpose of seeking asylum from persecution on account of race, religion, nationality, political opinion or membership of a particular social group, or from a threat to his or her life, physical safety or freedom on account of external aggression, occupation, foreign domination or disruption of public order.⁴⁰⁸ Such provisions intersect with sections of the Immigration Act (No. 13 of 2002).⁴⁰⁹ According to section 23 of the Immigration Act and regulation 22 of the Regulations, the

⁴⁰⁵ Government of South Africa, Refugees Act (No. 130 of 1998), section 2(a) and (b). See also: Government of South Africa, Immigration Act (see footnote 394), sections 23 and 27(d).

⁴⁰⁶ Government of South Africa, Immigration Act (see footnote 394), section 27(b). (According to section 27 of the Act, a refugee is entitled to a formal written recognition of refugee status in the prescribed form; enjoys full legal protection, which includes the rights set out in Chapter 2 of the 1996 Constitution of the Republic of South Africa (except those rights that only apply to citizens); is, in principle, entitled to permanent residence after a certain number of years of continuous residence in the country from the date on which he or she was granted asylum; is entitled to an identity document referred to in section 30; is entitled to a South African travel document on application; and is entitled to seek employment.)

⁴⁰⁷ South Africa Constitutional Court, *Ahmed v Minister of Home Affairs* [2018] ZACC 39, para. 24.

⁴⁰⁸ See, for example: South Africa Supreme Court of Appeal, *Minister of Home Affairs and Others v Watchenuka and Others* ZASCA 142 (2003); 1 All SA 21 (SCA) (2004). (The Constitutional Court, in *Ruta v Minister of Home Affairs* ZACC 52 (2018), para. 24, described this as a remarkable provision and one that was perhaps "unprecedented in the history of our country's enactments".)

⁴⁰⁹ Government of South Africa, Immigration Act (see footnote 394).

Director-General may issue an asylum transit visa to any person who arrives at a South African port of entry and claims to be an asylum seeker. The visa is valid for five days and allows the asylum seeker only to travel to the nearest Refugee Reception Office in order to apply for asylum.⁴¹⁰ If the application for asylum succeeds, the applicant becomes entitled to all the rights of refugees provided for in section 27 to 34 of the Refugees Act, including the rights to live and work in South Africa and to apply for a permanent residence permit. In terms of the provisions of the Refugees Amendment Act (No. 11 of 2017), an asylum seeker visa may allow an asylum seeker to work or study while awaiting the outcome of his or her asylum application.

However, the right to work of asylum seekers, in light of recent legislation, specifically the Refugees Amendment Act (RAA 2017) (which entered into force in 2020), is now severely curtailed.⁴¹¹ Section 22(8) of the Refugees Act, as amended by RAA 2017, builds on the premise that the right to work in South Africa may not be endorsed on the asylum seeker visa of any applicant who is:

- (a) Able to sustain himself or herself and his or her dependants;
- (b) Offered shelter and basic necessities by the UNHCR or any other charitable organization or person;
- (c) Seeking to extend his or her right to work, after having failed to produce a letter of employment as contemplated in subsection (9), provided that such extension may be granted if a letter of employment is subsequently produced while the application, given the terms in section 21 of the Refugees Act, is still pending.

The impact of these provisions is severe, also from the perspective of asylum seekers' ability to contribute to and benefit from contributory social security. Furthermore, these newly inserted provisions exclude all asylum seekers from all forms of self-employment and work in the informal economy – irrespective of whether they can self-sustain or rely on others.⁴¹²

The impact of constitutional jurisprudence on legal provisions restricting access to the labour market and the quest for protection

The vast and growing constitutional jurisprudence in South Africa on the matter can be summarized as follows:

- (a) Any consideration of the issue of (restricting) access to the South African labour market has to be mindful of and sensitive to the provisions of the Constitution, being the supreme law of the country. The State is bound to comply with and implement the provisions of the Constitution, in the particular the Bill of Rights.
- (b) The vulnerable status of non-citizens as a group, and of particular categories of non-citizens – such as children and refugees – has been recognized by the courts and been given constitutional significance.⁴¹³

⁴¹⁰ South Africa Constitutional Court, *Ahmed v Minister of Home Affairs* (see footnote 407), paras. 24 and 25. (Once an asylum seeker has entered South Africa, he or she must apply for asylum at a Refugee Reception Office. The Refugee Reception Officer must issue an asylum seeker permit to the applicant pending the outcome of his or her application for asylum.)

⁴¹¹ Government of South Africa, Refugees Amendment Act (No. 11 of 2017), sections 22(8) and (9), read with section 9c.

⁴¹² Ruvi Ziegler, "Access to effective refugee protection in South Africa: Legislative commitment, policy realities, judicial rectifications?", *Constitutional Court Review*, 10:65–106 (2020).

⁴¹³ South Africa Constitutional Court, *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development* (see footnote 388), para. 74; South Africa Constitutional Court, *Larbi-Odam and Others v Member of the Executive Council for Education and Another (North-West Province)* [1997] 12 BCLR 1655 (CC); [1998] 1 SA 745 (CC).

- (c) The Constitutional Bill of Rights has been held to apply to citizens and non-citizens, except for those provisions which evidently apply to citizens only.⁴¹⁴ This has caused the courts to accept that the term “everyone”, as it is used in relation to, for example, the constitutional right to access to social security⁴¹⁵ includes non-citizens as well.
- (d) Section 22 of the Constitution restricts the right to choose one’s trade, occupation or profession to citizens. However, this provision does not prevent foreigners from seeking employment.⁴¹⁶
- (e) The exclusion or restriction of foreigners from access to the South African labour market could nevertheless be challenged on the basis of the operation of other fundamental rights – in particular the right to human dignity and equality. This flows from the basic tenet of constitutional interpretation that fundamental rights are interrelated and interdependent.⁴¹⁷
- (f) The blanket prohibition of wage-earning employment by asylum seekers has been found to be unconstitutional, on the basis that this would infringe on their right to human dignity, as they would be left destitute.⁴¹⁸
- (g) This principle was subsequently extended – the prohibition on asylum seekers to seek self-employment was found to infringe on their right to human dignity, as this would deprive them from earning a living and leave them destitute. In *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism*, the Supreme Court of Appeal held that the complainants were entitled to apply for new business or trading licences and the renewal of such licences and to renew written consent to operate tuck shops (or spaza shops) within the terms of the applicable legislation. The Supreme Court of Appeal further declared that the closure of businesses operated by the refugees and asylum seekers on the basis of being denied trading permits was unlawful and invalid.
- (h) The fundamental right to equality could also be affected. The Constitutional Court has held that permanent residents may not be discriminated against vis-à-vis citizens when it comes to access to permanent employment in the public sector as teachers⁴¹⁹ and to access to social assistance.⁴²⁰ However, there is some authority

⁴¹⁴ South Africa Constitutional Court, *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development* (see footnote 388), paras. 46–47; *South Africa Constitutional Court, Lawyers for Human Rights v Minister of Home Affairs* [2004] 7 BCLR 775 (CC); [2004] 4 SA 125 (CC).

⁴¹⁵ Government of South Africa, Constitution of the Republic of South Africa, section 27(1)c. Cape Town, 1996.

⁴¹⁶ In *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others* [2007] (4) SA 395 (CC) (para. 57; see also para. 47), the Constitutional Court held that “...the Refugees Act guarantees the applicants the right to seek employment. It is the choice of vocation that is reserved only for citizens and permanent residents.” In *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* [2015] (1) SA 151 (SCA) (para. 38), the Supreme Court of Appeal states: “Section 22 of the Constitution does not, as contended for by the respondents, prevent refugees from seeking employment. The emphasis in that section of the Constitution is on a citizen’s right to choose his or her trade, occupation or profession freely.”

⁴¹⁷ South Africa Constitutional Court, *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority* [2007] (4) SA 395 (CC); South Africa Supreme Court of Appeal, *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* [2015] (1) SA 151 (SCA).

⁴¹⁸ Supreme Court of South Africa, *Minister of Home Affairs and Others v Watchenuka and Others* (see footnote 408), para. 32.

⁴¹⁹ South Africa Constitutional Court, *Larbi-Odam v Member of the Executive Council for Education (North-West Province)* [1997] 12 BCLR 1655 (CC); [1998] 1 SA 745 (CC) paras. 30–31. (“Permanent residents should...be viewed no differently from South African citizens when it comes to reducing unemployment.” (See also: South Africa High Court, *Baloro v University of Bophuthatswana* [1995] 8 BCLR 1018 (B); [1995] 4 SA 197 (B)).)

⁴²⁰ South Africa Constitutional Court, *Khosa and Others v Minister of Social Development and Others; Mahlaule v Minister of Social Development 2* (see footnote 386) paras. 68–75. (The exclusion of non-citizens who were permanent residents from receiving social assistance grants in terms of Social Assistance Act 59 of 1992 3(c) and 4(b)(ii) constituted unfair discrimination.)

in the case law for a distinction to be drawn between foreigners with permanent status and those with only temporary residency status.

- (i) In *Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others*, the Constitutional Court upheld the constitutionality of a statutory provision which restricted, as a rule, access, to the private security industry, among others, to citizens and permanent residents – in view of the nature of the industry.
- (j) The right to fair labour practices may also be relevant. Due to the operation of this fundamental right, it has been held that foreign workers whose work permits have expired are nevertheless entitled to employment protection.⁴²¹

New SADC visa regimes foreseen in the White Paper on International Migration for South Africa

Chapter 11 of the White Paper on International Migration for South Africa⁴²² (2017) regards integration within SADC as paramount to South Africa's international migration policy and proposes a set of measures to facilitate further the safe, orderly and regular migration of SADC nationals to South Africa. It envisages treatment of migrant workers on the basis of specialized visa categories, such as the SADC special work visa, the SADC traders' visa, and the SADC small and medium enterprise visa.

5.2. Barriers to accessing social protection and support services

A focus on a range of often interrelated barriers

The barriers discussed in the following sections are often interrelated and include legal, policy, institutional, labour market, administrative and other barriers. The barriers are dealt with together, on a country-by-by country basis. The reflection in [section 5.1](#) also needs to be considered for this purpose.

5.2.1. Côte d'Ivoire

Migrant workers, in particular those from outside the ECOWAS region, may experience some restrictions regarding access to contributory social security benefits

As appears from the discussion in [section 5.1.1](#), arrangements to preserve benefits and make them portable are provided for under the ECOWAS General Convention of Social Security (2013); however, these arrangements may not be available to migrant workers from outside the ECOWAS region. This implies that they may not be able to access certain long-term benefits under contributory scheme arrangements, as they may not be able to meet the requirements of such payments (in particular, certain pension benefit payments). Public health insurance benefits are reportedly also not portable.⁴²³

Non-ECOWAS nationals' restricted access to the labour market

The requirement of a work permit to access the Ivorian labour market, linked to the often informal way in which migrant workers are recruited, could render many non-ECOWAS nationals irregular or undocumented. This may impact on their eligibility to participate in and benefit from

⁴²¹ South Africa Labour Court, *Discovery Health Ltd v CCMA* (see footnote 385); South Africa Labour Appeal Court, *Joseph v University of Limpopo and Others* [2011] 12 BLLR 1166 (LAC); South Africa Labour Appeal Court, *Dunwell Property Services CC v Sibande* [2012] 2 BLLR 131 (LAC).

⁴²² Government of South Africa – Department of Home Affairs, White Paper on International Migration (see footnote 278).

⁴²³ Information obtained during an interview with an Ivorian recruitment agency representative.

contributory social security arrangements and, in fact, labour rights protection, as well as access to certain social services.

Many migrant workers in a precarious situation due to several reasons

The lack of an appropriate migration policy regime for migrant workers in Côte d’Ivoire and of well-developed formal recruitment arrangements, linked to often informal recruitment practices, render these workers vulnerable and open to exploitation, as discussed in [section 4.3.1](#) of this report – despite the fact that many of them are well integrated in the labour market. Also, there is no coordinated policy to assist immigrants to return to their countries of origin.⁴²⁴ Lastly, given the limited scope of persons covered under the public social insurance scheme, and the requirement for registration to access the scheme, migrant workers in the informal economy and/or in an irregular status are not covered.

Ratification of key international instruments, adoption of suitable migration-related policies and implementation of ethical labour recruitment requirements for increased protection

In order to overcome the challenges experienced by migrant workers highlighted in this section, it would be important for the Government of Côte d’Ivoire to take a range of measures. These include strengthening the migration policy environment and ratifying key ILO and United Nations instruments to help guide the legal and policy framework, as well as ensuring the implementation of provisions pertaining to foreign workers coming to and Ivorian migrant workers leaving the country. Particularly noteworthy are the recommendations contained in the recent report, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa*, which reflect on these matters and, in particular, on the need for ethical labour recruitment, as follows:⁴²⁵

- (a) Address the lack of a migration policy, a labour migration policy and a central inter-agency coordination mechanism.
- (b) Improve the framework for monitoring and regulating private employment services and strengthen enforcement mechanisms in this regard.
- (c) Revise the legislative framework applicable to private employment agencies, with a view to also include international recruitment and recruitment for temporary work in Côte d’Ivoire.
- (d) Ratify key conventions impacting on recruitment and labour migration.
- (e) Address the risk of human trafficking and migrant smuggling resulting from informal recruitment practices.
- (f) Increase support for domestic workers (*Note: The relevant ILO convention has yet to be ratified*).
- (g) Facilitate international labour recruitment via existing public employment services. This implies undertaking market assessments to enhance informed decision-taking by prospective migrant workers and thereby formalizing migrant labour recruitment.
- (h) Spread awareness among the general population regarding the risks posed by informal recruitment.

⁴²⁴ IOM, *MGI – Côte d’Ivoire 2019* (see footnote 133), pp. 18 and 21.

⁴²⁵ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), pp. 19–22.

5.2.2. Egypt

The need for formal policy frameworks and enhanced ratification of international and regional instruments

The absence of formal policies in relation to migration and refugees has been noted.⁴²⁶ So, too, is there a need to facilitate the ratification of international and regional instruments pertaining to migration – the current state of affairs in this regard is indicated in [section 5.3.2](#) of this report.

Certain migrant groups' exclusion from protection

Apparently, (migrant) female agricultural workers have been excluded from labour law coverage. It has been suggested that these workers, who reportedly count several million, are affected as regards both their labour and social security rights. In particular, “they also face risks of injuries without any legal or health protection, insurance, compensation, incentives or benefits.”⁴²⁷ Domestic workers are also not covered, impacting on foreign domestic workers as well.⁴²⁸ In addition, protection under formal social insurance arrangements are not available to workers (including migrant workers) in the informal economy.⁴²⁹

The need for an improved recruitment regime

A recent review undertaken for IOM reports the following observations concerning the Egyptian recruitment regime:

Although Egypt has a recruitment policy and regulatory framework, there are gaps in relation to international standards, especially in the area of migrants' recruitment processes, and there are some specific categories of workers still left behind, such as refugees and domestic workers, which lead to characterizing the recruitment processes in respect of these categories as unethical.

The review established that the current legal system bears inside the roots of unethical recruitment processes and the driving factors of human trafficking through recruitment processes.

...

This review concludes that the Egyptian legal system in [the] context of ethical recruitment processes needs to be reformed to ensure the rights of workers and to avoid the potential abusive practices in the recruitment processes, and to be a more comprehensive system by ensuring the inclusion of all categories of workers, specifically the most vulnerable groups, such as refugees and domestic workers.⁴³⁰

⁴²⁶ Gerasimos Tsourapas, “Egypt: Migration and diaspora politics in an emerging transit country”, Migration Information Source (online journal of the Migration Policy Institute), 8 August 2018. Available at www.migrationpolicy.org/print/16257#.X4_yDNUzbiU.

⁴²⁷ Eman Elwarraky, “The challenges facing Egypt's female migrant workers”, policy analysis for the Fikra Forum of the Washington Institute for Near East Policy, 4 December 2020, available at www.washingtoninstitute.org/fikraforum/view/the-challenges-facing-egypts-female-migrant-workers; Abeer Salem, “Protection of domestic workers in Egypt, including migrants”, report (New York, Population Council, 2020).

⁴²⁸ Salem, “Protection of domestic workers in Egypt, including migrants” (see footnote 427).

⁴²⁹ Information obtained during an interview with a representative of the Government of Egypt.

⁴³⁰ Mohamed Frahat, “Legal review and institutional framework concerning ethical recruitment in Egypt (Cairo, IOM, 2020), p. 11; Heba Saleh Moghaieb, “Safeguarding the workers on the move in the MENA region”, draft report for IOM (2020).

5.2.3. Ethiopia

The need to consider extending key social protection benefits to currently excluded foreign workers

As indicated in [section 5.1.3](#) of this report, foreign workers are excluded from contributory benefit types except in the areas of social health insurance and labour law-embedded social security provisions. They are thus not eligible for, in particular, old-age, invalidity and survivor's benefits. A 2017 IOM assessment reflects on this as follows:

While Ethiopia's approach appears restrictive in its current state with respect to incorporating foreign nationals, there remains room for reciprocity based on the signing of bilateral agreements providing for the coverage of foreigners. Importantly and theoretically speaking, it has to be borne in mind that the exclusion of foreigners from membership of national public social security schemes in the country may impact on the willingness of other countries to cover their respective migrant workers under the receiving country's social security schemes – reciprocity is a well-established principle in social security treatment of foreigners. It is suggested that for this reason as well, and in view of the sizeable number of Ethiopians working abroad, the approach of introducing social coverage to foreign workers with exceptional circumstances may be reconsidered. Also, as indicated below, it is indeed appropriate to provide in more detail for the coverage of nationals of both the countries of origin and countries of destination in concluded bilateral social security agreements. One of the foundational principles that applies in this regard is that the nationals of the two countries concerned have to enjoy equality of treatment in social security terms in the respective countries.⁴³¹

5.2.4. Ghana

Addressing the plight of vulnerable immigrant workers

The National Labour Migration Policy indicates that barriers to accessing social protection in Ghana are perpetuated by migrant smuggling and trafficking in persons, with the policy giving particular focus on the needs of women, children and other vulnerable groups. It suggests that the responsible ministry collaborate with law enforcement agencies to address these challenges.⁴³²

Strengthening the regulatory framework, enhancing capacity and simplifying work permit requirements

The National Labour Migration Policy provides for the simplification of the requirements to obtain a residence and/or work permits. It further emphasizes the need to strengthen the regulatory framework for labour migration governance through the implementation of ILO guidelines on fair recruitment; regulation of the Ghanaian recruitment industry through effective licensing schemes and penal provisions; and enhancing the capacity of so-called “public employment centres” to provide tailored migration-related information to potential emigrants and immigrants.⁴³³

Addressing the ad hoc nature and other challenges associated with skills transfer programmes

As indicated in the National Labour Migration Policy, a major limitation of skills transfer programmes is the fact that they are organized on an ad hoc basis: In addition, there is currently no comprehensive framework in place to transfer skills from immigrants and returned migrants in Ghana. While the skills transfer requirement is part of work permit application and renewal process in Ghana, these

⁴³¹ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 33.

⁴³² Government of Ghana – MELR, *Ghana National Labour Migration Policy 2020–2024* (see footnote 187), pp. 11 and 52.

⁴³³ *Ibid.*, pp. 10 and 43.

requirements are poorly implemented and not effectively linked with educational programmes. Again, there are no systems in place to enhance skills transfer from Ghanaian professionals who return home permanently. Several strategies for promoting the transfer of skills and professional experience by migrant workers, returnees and the diaspora are suggested, including:

...collaboration with Development Partners to fund short-term knowledge exchanges between Ghanaians in the diaspora and their counterparts in Ghana, working with Ghana Missions to provide information on employment opportunities in Ghana, fostering stronger links between local and Diaspora professional associations, developing online platforms for initiating engagement processes for those who desire to return home permanently, and collaborating with the ECOWAS countries to harmonize work permit regimes and reduce the cost of work permits for highly skilled immigrants from the West Africa subregion.⁴³⁴

Labour market demand not sufficiently appreciated

The 2018 Migration Governance Snapshot suggests that Ghana's migration policy is not oriented towards local labour market demand, and none of its primary migration agencies report on local demand for foreign labour. Also, existing visas do not distinguish by skill and/or industry. Furthermore, information on the impact that Ghanaian emigrants have on the local labour market in countries of destination is not collected.⁴³⁵

5.2.5. Kenya

Lack of awareness and absence of portability arrangements

Migrant workers arriving in Kenya do not receive on-arrival training and information from the Government. They may receive training and information from their employer.⁴³⁶ Furthermore, while legislative provision has been made for the conclusion of BSSAs, portability and other social security coordination arrangements are currently lacking, mostly due to the fact that BSSAs have not been concluded yet. As noted from questionnaires completed by government officials, BLAs make insufficient provisions for social protection, hence the need to revisit these agreements.

5.2.6. Kuwait

Foreign workers are exposed to restrictions and challenges

The *kafala* system, discussed in [section 4.2](#) of this report, is operative in Kuwait. Domestic workers are especially prevented from changing jobs or leaving the country without their employer's permission, leaving gaps for exploitative practices. TCWs are generally restricted from transferring jobs, as they are only allowed to move, and only within the same sector, after they have worked for a minimum of three years and only with the permission of the original employer. They are restricted by law from taking up self-employed activities and may not own more than 49 per cent equity in any business, for which they need the approval of the sponsor. A policy of "Kuwaitization" is in place that targets the replacement of TCWs with native-born nationals in the labour market through various incentives, regulations, policies and educational reforms. TCWs are also prohibited from assuming leadership and middle management positions in State-owned companies. Lastly, family reunification is only possible under certain circumstances.⁴³⁷

⁴³⁴ Ibid., pp. 11 and 47–48.

⁴³⁵ IOM, "Migration Governance Snapshot: The Republic of Ghana", May 2018 (see footnote 186), p. 4.

⁴³⁶ ILO, *Assessment of Labour Migration and Mobility: Kenya* (see footnote 242), p. 53.

⁴³⁷ IOM, "Migration governance overview: The state of Kuwait, May 2018" (see footnote 351), pp. 3–4.

Additional protective measures were recently introduced

Decrees prohibiting employers from confiscating passports of TCWs were adopted. Also, the Labour Law (No. 6 of 2010) introduced an increasing minimum wage and overtime pay rates, among others (see [section 5.1.6](#) of this report). As also indicated in [section 5.1.6](#), a new law protecting and extending labour rights to domestic workers was introduced in 2015. In 2013, Kuwait adopted the Law on Trafficking in Persons and Smuggling of Migrants (No. 91 of 2013).

5.2.7. Mauritius

More flexible employment for immigrant workers, but restricted access to the labour market remains for some migrant workers⁴³⁸

In recent years, measures to remove specific barriers, including a more flexible employment-from-abroad regime, have been adopted. Nevertheless, under the Non-Citizens (Employment Restriction) Act (No. 15 of 1970), read with the Immigration Act (No. 13 of 1970), a non-citizen shall not engage in any occupation in Mauritius for reward or profit, or be employed in Mauritius, unless he or she possesses a valid permit and complies with conditions stipulated in the permit.⁴³⁹ While permanent residents and their spouses have unrestricted access to the labour market, provided they hold occupation and/or work permits, migrants holding only work permits cannot freely access the labour market (private or public) or switch employers; neither can they seek permanent residence or bring their families to Mauritius, unless a residence permit application has been separately submitted for family members. As a rule, they have to leave the country after four years of continuous employment. However, holders of occupation permits can freely access the labour market or switch employers.⁴⁴⁰

Some labour law restrictions impact on certain social protection entitlements of migrant workers and non-citizens

As a rule, and as indicated in [section 5.1.7](#), Mauritius' main labour law, the Workers' Rights Act (No. 20 of 2019), extends protection to migrant workers on the same basis as that applicable to Mauritian workers. However, important exceptions exist, some of which may reflect the time restriction imposed on the employment of migrant workers, thus impacting on migrant workers' enjoyment of social protection. The restrictions include the following in particular:⁴⁴¹

- (a) The rule that employment that is permanent in nature should attract an indefinite contract of employment does not apply to migrant workers.
- (b) Migrant workers are not entitled to long-service leave, or to severance benefits.
- (c) Migrant workers and non-citizens are not entitled to access the transition unemployment benefit or to participate in the Portable Retirement Gratuity Fund (the objective of which is to recognize the terms of service of an employee irrespective of the number of employers for whom the employee has worked for in Mauritius).

Migrant workers have not been excluded from labour law protection in the COVID-19 context. Under the Workers' Rights (Prescribed Period) Regulations (2020), an employer may not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.

⁴³⁸ See also [section 5.1.7](#) of this report.

⁴³⁹ GFMD, "Examples of good practices on regional mobility cooperation – Mauritius" (see footnote 251).

⁴⁴⁰ IOM, *Migration Governance Indicators – Republic of Mauritius Second Profile 2021* (Geneva, 2021). Available at <https://publications.iom.int/books/migration-governance-indicators-second-profile-2021-republic-mauritius>.

⁴⁴¹ Government of Mauritius, Workers' Rights Act (see footnote 363), sections 13(4), 47(1), 69(2), 84(10) and 90(1)(d).

Lengthy contribution and residence periods and the exclusion or voluntary coverage of the self-employed possibly affecting some migrant workers

As it appears in [section 5.1.7](#), non-citizens have to fulfil a lengthy residence period condition in order to qualify for non-contributory old-age, disability and survivor benefits. Also, in the case of contributory benefits, long qualifying periods of contributions are often required and/or (pension) benefits may only be payable upon reaching a certain minimum age. Furthermore, self-employed persons are, at times, excluded from coverage; in other cases, voluntary contributions can be made.⁴⁴² These conditions may impact negatively on many migrant workers in particular, as they may not have had a long period of residence or contributions in Mauritius.

Health status restrictions

The Constitution of Mauritius allows for the enactment of laws that discriminate against non-citizens according to their health status (e.g. Immigration Act (No. 13 of 1970)) on grounds that migrants living with a disability or disease may present a threat to public safety or a burden to the taxpayer. Among others, Mauritius still applies HIV-related restrictions on the entry, stay and residence of non-nationals. Migrant workers and, in some cases, international students must provide evidence of their negative HIV status to qualify for work and residence permits.⁴⁴³

Limited labour migration management policy/programme basis

As noted in the 2018 Migration Governance Snapshot:

Mauritius does not have a defined programme managing labour migration, and the Government tends to hire foreign workers to meet the needs of the labour market on an ad hoc basis. The immigrant workforce typically holds visas of up to four years before returning to their country of origin. Some work permits issued for specific sectors (textiles, construction and export-oriented industries) can be renewed for a further four years. There is no specific Government programme to manage or adjust work visas based on labour market demand, even though the issue of work permits tends to be demand-driven and subject to certain well-defined criteria for different sectors and scarcity areas. For example, given that there is a lack of Mauritian labour in the ICT-BPO5 sector, the eligibility criteria to apply for an OP in that sector have been relaxed. The Ministry of Labour evaluates the effects of emigration on the labour market, but this evaluation is not systematic and is conducted exclusively within the framework of circular migration agreements.

Also, generally speaking, as noted in the same publication, Mauritius is yet to participate in international schemes with common qualification frameworks – although it is currently implementing the Southern African Development Community Qualifications Framework (SADCQF) and is aligning its national framework with the regional framework.⁴⁴⁴

Absence of asylum provisions and human trafficking strategy

Mauritius has no provisions to grant asylum in accordance with the relevant United Nations instruments (as it has not ratified the relevant United Nations instruments). Also, its migration laws detailed in the Immigration Act and the Non-citizens (Employment Restriction) Act do not include any measures or procedures that regulate the return (or the protection of assets) of migrants who

⁴⁴² SSA and ISSA, “Mauritius” (see footnote 356), pp. 181–187.

⁴⁴³ Republic of Mauritius, Immigration Act (No. 13 of 1970), section 8; IOM, “Migration governance snapshot: The Republic of Mauritius”, June 2018 (see footnote 252), p. 3.

⁴⁴⁴ IOM, “Migration governance snapshot: The Republic of Mauritius”, June 2018 (see footnote 252), pp. 5–6.

might leave Mauritius during a crisis.⁴⁴⁵ Finally, although anti-trafficking legislation has been adopted and a steering committee on human trafficking has been set up, Mauritius does not currently have a specific strategy to combat human trafficking.

Institutional barriers

Although the Government has implemented the Mauritius Diaspora Scheme, there is no dedicated institution responsible for implementing emigration policy.⁴⁴⁶ Also, “As for the assistance of nationals residing abroad, the Republic of Mauritius maintains 19 diplomatic missions and has one consulate overseas. The Government may wish to increase representation with necessary facilities in identified countries to which significant numbers of Mauritians have emigrated.”⁴⁴⁷

A dedicated focus on improving the conditions of migrant workers in Mauritius is required

Discrimination and poor working conditions experienced by at least certain migrant workers have been indicated in [section 4.3.5](#) of this report. It has been reported that the ILO has urged for the implementation of an action plan to improve the working and living conditions of expatriate workers in Mauritius:

Some of the recommendations proposed are to reduce the discrimination in work and pay conditions and adopt measures that would integrate migrant workers within the labour market framework. The action plan will also identify and address all forms of disparities in their working schemes so as to improve their status. Trade unions, as well as the Mauritius Employers Federation and Ministry of Health and Quality of Life, will be the responsible parties to ensure that progress is made to these effects.⁴⁴⁸

5.2.8. Rwanda

Foreign workers generally have access to social protection and supportive arrangements, but some challenges remain

The extensive social protection coverage enjoyed by foreign workers was highlighted in [section 5.1.8](#) of this report. Nevertheless, some challenges remain. One of these relates to the current absence of bilateral arrangements to strengthen social protection of foreign and overseas migrant labour on a reciprocal basis (see [section 5.3.8](#) of this report). Another concerns the high cost of sending remittances from Rwanda, indicated to constitute 7.4 per cent of the amount sent (on a USD 200 basis).⁴⁴⁹ The National Labour Mobility Policy (2019) confirms the need to facilitate secure and low cost means for transfer of remittances.⁴⁵⁰

The policy framework provides a supportive framework for extending protection to foreign workers, on the basis of equality vis-à-vis national workers

The National Labour Mobility Policy (2019) sets as a cardinal objective the protection of all workers and particularly migrant workers in accordance with international standards, both those lawfully resident and those in an irregular situation – to optimize the benefits of labour migration and ensure human rights and dignity for all persons. One of the actions to be pursued for this purpose

⁴⁴⁵ Ibid., p. 7.

⁴⁴⁶ The Migrant Workers' Unit, set up in 2001 (within the Ministry of Labour, Industrial Relations, Employment and Training), provides services to migrant workers in Mauritius. More information about the Migrant Workers' Unit is available on the ministry website: <https://labour.govmu.org/Pages/Labour-and-Industrial-Relations.aspx>.

⁴⁴⁷ IOM, “Migration governance snapshot: The Republic of Mauritius”, June 2018 (see footnote 252), p. 4.

⁴⁴⁸ Sobhee, *Assessing the Evidence (Mauritius)* (see footnote 260), p. 19.

⁴⁴⁹ IOM, “Rwanda: Key migration statistics”, data set on the Migration Data Portal. Available at https://migrationdataportal.org/data?i=stock_abs_&t=2020&cm49=646.

⁴⁵⁰ Government of Rwanda – MIFOTRA, National Labour Mobility Policy (Kigali, 2019), section 3.3. Available at www.mifotra.gov.rw/fileadmin/user_upload/Mifotra/Publication/_POLICIES/FINAL_LABOUR_MOBILITY_POLICY.pdf.

is to ensure non-discrimination and equality of treatment for all workers, migrants and nationals abroad and at home, also through labour inspection.⁴⁵¹ A recent OECD–ILO report stresses the positive impact of immigrant workers on Rwanda’s economy.⁴⁵²

Strengthening the recruitment context: a key objective

The Revised National Labour Mobility Policy (2019) emphasizes the need to strengthen the recruitment framework. It stresses the need to:

Develop comprehensive guidelines for recruitment in line with ILO Convention 181 so as to prevent abuse of the process and violation of workers’ rights. Issues for consideration include formalization of social security, transfer (portability), and repatriation of social security benefits, administrative policies and procedures, licensing schemes and penalty provisions.⁴⁵³

Also, the revised policy stresses legislating and strengthening the regulation of private employment agencies engaged in recruitment of foreign migrant labour and emigrant labour; and strengthening the capacity of private and public employment agencies to meet the labour migration needs.⁴⁵⁴

5.2.9. South Africa

Legal restrictions in relation to access to social security, health care and the labour market

A range of matters have been canvassed in [section 5.1.9](#) of this report. It needs to be stressed that many of the contributory social security benefits involving public social security schemes, in particular the Unemployment Insurance Fund and the Compensation Fund, presupposes the existence of an employment relationship. Extending contributory social security to other workers, including those in the gig economy and workers in the informal economy, as is the case with self-employed workers, would require deliberate steps to extend current provisioning and/or design tailor-made schemes to fit the context of such worker categories. Certain government representatives interviewed this report expressed the view that the public (contributory) social security system should be extended to cover all migrant worker categories, regardless of the existence of an employment relationship.

Further labour market barriers: increasing attempts at restricting access by foreigners to the labour market

Building on the discussion in [section 5.1.9](#), the following dimensions require reflection:

- (a) **Reserving sectors of the South African economy and labour market for access by South African citizens only.** In order to address the skewed profile of the South African labour force and the gaps left to fill critical needs in a range of professions, the Government of South Africa has adopted several measures – including a Critical Skills List⁴⁵⁵ and an Occupations in High Demand List (both meant to be regularly updated; and last updated in 2020). Some attempts are reportedly considered to reserve certain labour market sectors for South Africans only.⁴⁵⁶ One provincial government is in the process of drafting a new law to

⁴⁵¹ Ibid., section 2 (particularly section 2.2.).

⁴⁵² OECD and ILO, *How Immigrants Contribute to Rwanda’s Economy* (revised version, 2019) (Paris, OECD, 2019). Available at www.oecd-ilibrary.org/development/how-immigrants-contribute-to-rwanda-s-economy_9789264291829-en.

⁴⁵³ Ibid., p. 24.

⁴⁵⁴ Government of Rwanda – MIFOTRA, Revised National Employment Policy (see footnote 382), section 7.1, Table: “Policy area 6”.

⁴⁵⁵ Michele Capazario and Fouché Venter (DNA Economics), *A Technical Report for the 2020 Critical Skills List* (Pretoria, 2020).

⁴⁵⁶ *BusinessTech*, “Government to review rules around hiring foreign workers in South Africa”, 27 August 2020. Available at <https://businesstech.co.za/news/business/429332/government-to-review-rules-around-hiring-foreign-workers-in-south-africa>.

bar foreigners from doing business in townships.⁴⁵⁷ Already, the Expanded Public Works Programme is reserved for South African citizens.

- (b) **Imposing quota limitations on (foreign) workers recruited by employers.** The issue to be addressed here does not concern the broader issue of setting quotas of (an upper limit on the number of) foreigners allowed to fill positions in certain sectors, which is relevant to the approval of work permits. In this regard, the Department of Home Affairs, drawing on data from other departments, had established a Quota List gazetted in 2007. The more specific issue addressed here concerns the arrangement that at least 60 per cent of the total staff complement employed in the operations of the business are South African citizens (or permanent residents) employed permanently in various positions. This is a current requirement, in accordance with the Immigration Regulations (2014) (as amended) formulated pursuant to the Immigration Act (No. 13 of 2002), in relation to business persons applying for either a business visa or a permanent residence permit.⁴⁵⁸ Also, the Draft Regulations on the Employment of Foreign Nationals (2018), based on the Employment Services Act (No. 4 of 2014) requires proof of this requirement on the part of the applicant for a work visa or a corporate visa.⁴⁵⁹ A related question is whether this requirement can be made applicable also to the composition of businesses already/currently employing foreign nationals, and not only when a business visa (or a permanent residence permit for a business person), work visa or corporate visa application, or the renewal of a business visa, is entertained. It should be noted that the 2018 Draft Regulations, in accordance with the Employment Services Act, do not provide for this requirement to apply when a work visa or corporate visa is renewed.
- (c) **Transfer of skills by expatriates and monitoring thereof (skills transfer plan).** Currently, provision is made in the Employment Services Act, for the preparation by an employer of a skills transfer plan for that person in that specific position, to ensure that skills required for the work opportunity are transferred to South African citizens.⁴⁶⁰ Regulation 4 of the Draft Regulations on the Employment of Foreign Nationals contains further details regarding the skills transfer plan.

Administrative and other barriers

Challenges experienced by migrant mineworkers and other migrant worker categories in accessing social protection benefits have been widely reported. This is particularly the case when migrant workers (have to) return to their countries of origin. Due to the operation of employment termination and stringent immigration requirements, such migrant workers are often not able to finalize social security payments to which they are entitled to in time. Procedures to claim benefits are notoriously cumbersome, and South African social security institutions and mining companies experience operational and other difficulties processing claims and rendering the necessary

⁴⁵⁷ Loyiso Sudimba, "New law to bar foreigners doing business in Gauteng townships", *IOL*, 26 September 2020. Available at www.iol.co.za/news/politics/new-law-to-bar-foreigners-doing-business-in-gauteng-townships-f7feb3a0-6c9a-48d0-abf5-36276bbe52f7.

⁴⁵⁸ The Draft First Amendment of the Immigration Regulations, 2014 Made Under the Immigration Act (Government Notice No. R. 1328, in Government Gazette 42071 of 29 November 2018) amended regulations 14 and 24, which are applicable to the situation wherein a person intends to establish or invest in a business or has done so.

⁴⁵⁹ Government of South Africa – Department of Labour, Draft Regulations on the Employment of Foreign Nationals (Government Notice No. R. 1433, in Government Gazette 42120 of 28 December 2018), regulations 2(1)(k) and 3(1)(k).

⁴⁶⁰ *Ibid.*, section 8(4).

assistance.⁴⁶¹ According to government representatives interviewed for this report, projects are underway in neighbouring countries to ensure beneficiaries would be able to claim from South African social security funds.

Widespread xenophobia and exploitation of undocumented migrant workers

Xenophobia has been simmering in South African society in the wake of an evident perception that foreigners are effectively taking away jobs from South Africans. This has, at times, erupted in violent attacks, the killing of some foreigners and the destruction of property. In addition, foreign workers in particular industries have complained of being unable to access their social security benefits, also upon having returned to their countries of origin, and the maltreatment of, in particular, undocumented migrant workers.⁴⁶² Over the years, several United Nations committees, entrusted with supervising the implementation of a range of United Nations instruments ratified by South Africa, have been critical of South Africa's treatment of non-citizens.⁴⁶³

5.3. Bilateral and multilateral agreements/arrangements

In this part, again on a country-by-country basis, there is a brief reflection on the impact of multilateral agreements, BLAs and BSSAs concluded by the countries concerned.

5.3.1. Côte d'Ivoire

Dedicated ECOWAS free movement and social security regimes support labour market access and access to social security for ECOWAS nationals

Under the ECOWAS free movement protocols, Côte d'Ivoire is bound to allow nationals from other ECOWAS member States to reside in and work in waged or self-employment in the country. Furthermore, for those engaged in the formal economy and on the basis of the provisions of the ECOWAS General Convention on Social Security, ECOWAS nationals enjoy equal treatment with Ivorian nationals as regards access to social security; have their periods of employment or contribution aggregated with similar periods in Côte d'Ivoire for purposes of calculating the benefit they would be entitled to; and have their benefits paid to them, in either Côte d'Ivoire or another ECOWAS member State where they may find themselves in. In addition, the country has also signed (but not yet ratified) the CIPRES Multilateral Convention on Social Security (2006),⁴⁶⁴ and plans to extend the portability of retirement pensions to all 16 CIPRES member States.⁴⁶⁵

Limited use is (currently) made of BLAs and BSSAs

As previously indicated, Côte d'Ivoire has concluded a number of BLAs to bring organized labour into the country since the 1960s.⁴⁶⁶ A BLA was signed, in 1960, with Burkina Faso (Upper Volta at the time), Côte d'Ivoire's main supplier of foreign labour. The convention was specifically dedicated

⁴⁶¹ Avinash Govindjee, "Advocating for the improved legal rights and protections for Mozambican migrant mineworkers, ex-migrant workers and their families" (under the project, *Voices from the Underground: Improving the Protection and Advocacy Capacity of Migrant Mineworkers and their Families in Southern Africa*), research report submitted to Lawyers for Human Rights (May 2016); Marius Olivier, "Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part I)", *SADC Law Journal*, 1:121–148 (2011); Marius Olivier, "Enhancing access to South African social security benefits by SADC citizens: The need to improve bilateral arrangements within a multilateral framework (Part II)", *SADC Law Journal*, 1:129–163 (2011).

⁴⁶² See, among others: IOM, "Migrant mineworkers advocating for decent work", available at <https://storyteller.iom.int/stories/migrant-mineworkers-advocating-decent-work>; Kudakwashe Paul Vanyoro, "Regularising labour migration of Zimbabwean domestic workers in South Africa", ACMS policy brief, July 2019.

⁴⁶³ Marius Olivier, "Social security: Core elements", in: *LAWSA (The Law of South Africa): Labour Law and Social Security Law*, 13(3) (Durban, LexisNexis, 2013), para. 137 (pp. 184–189).

⁴⁶⁴ ECOWAS, "Convention multilatérale de sécurité sociale" (see footnote 140).

⁴⁶⁵ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), p. 13.

⁴⁶⁶ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), p. 7.

to the conditions of recruitment and employment of Voltaic migrants in Côte d'Ivoire.⁴⁶⁷ However, this agreement was suspended in 1974, due to non-compliance with some of the agreement's provisions.⁴⁶⁸ It has been noted that only a few such BLAs were concluded, in view of the country's policy of economic liberalization.⁴⁶⁹ Nevertheless, BLAs may guarantee the protection of labour rights of migrant workers in Côte d'Ivoire, but is unlikely to extend social security protection to them. Of course, being able to access the labour market on the strength of the BLA may enable the foreign worker to contribute to and draw benefits from the public social security scheme in the country.

As far as BSSAs are concerned, Côte d'Ivoire has a social security agreement with France. Several payment agreements between social security authorities have also been concluded over the years (with Burkina Faso, Benin, Togo, Mali, the Niger and Senegal).⁴⁷⁰ Depending on the specific provisions of the agreements, this may support the portability of social security benefits to which the worker is entitled.

5.3.2. Egypt

Egypt has concluded a number of BSSAs, including with a number of African countries

According to a 2017 ILO publication,⁴⁷¹ Egypt has ratified six BSSAs (but only four are implemented), including three with African countries: Morocco, the Sudan and Tunisia.⁴⁷² The (revised) BSSA with Sudan of 1978 covers several risk categories/benefit types.⁴⁷³ Both the Egypt–Morocco and Egypt–Tunisia BSSAs cover the risk categories of illness, maternity, death, work injury and occupational diseases; the Egypt–Morocco BSSA, in addition, covers old age and invalidity. None of the three BSSAs mentioned covers unemployment benefits and social assistance. Also, all three agreements provide for: (a) equality of treatment between nationals and non-nationals with respect to social security; (b) the portability of social security benefits (i.e. the transfer of benefits to the worker's country of origin); and (c) the accumulation of periods of contribution.⁴⁷⁴ The value of the Egypt–Sudan BSSA has been questioned, given the very few Egyptian migrant workers employed in the Sudanese private sector. Yet neither a BSSA nor a BLA has been concluded between Egypt and Libya, despite the fact that a large percentage of all Egyptian migrant workers are to be found in Libya.⁴⁷⁵ Also, the BSSAs do not cover self-employed persons and exclude seasonal workers – which, given the size of the labour force active in the informal economy, excludes a large part of the migrant workforce in these countries. Finally, it has been suggested that these BSSAs are not accessible to migrants; in some cases, they have no knowledge of the content of the agreements.⁴⁷⁶

Bilateral labour and free movement agreements and MOUs have been concluded, but do not provide explicitly for social (security) protection

In 2004, Egypt and the Sudan concluded an Agreement on the Freedom of Movement, Residence, Work, and Property between the Government of the Arab Republic of Egypt and the Government of the Republic of Sudan ("Four Freedoms Agreement"). This agreement provides for movement,

⁴⁶⁷ "Convention relative aux conditions d'engagement et d'emploi des travailleurs voltaïques en Côte d'Ivoire" (see footnote 144).

⁴⁶⁸ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 145.

⁴⁶⁹ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), p. 14.

⁴⁷⁰ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 144.

⁴⁷¹ ILO, *Study on Bilateral Labour and Social Security Agreements in North Africa* (Geneva, 2018).

⁴⁷² *Ibid.*, p. 49. The other three BSSAs are with Cyprus, Greece and the Netherlands.

⁴⁷³ Old-age pensions and monetary benefits, in cases of natural illness, occupational injury, childbirth and burial.

⁴⁷⁴ However, as far as the Egypt–Sudan BSSA is concerned: "In case nationals of one of the two countries terminate their employment in the other country without being entitled to a pension, that part of their contributions corresponding to the old age branch is transferred to their country of origin. The old pension law of the country of origin then applies to these workers. The law does not apply to government employees of one of the two parties working temporarily in the other country." (ILO, *Study on Bilateral Labour and Social Security Agreements in North Africa* (see footnote 471), pp. 38–39.)

⁴⁷⁵ *Ibid.*, pp. 32 and 39.

⁴⁷⁶ *Ibid.*, p. 41.

residence, work and property ownership rights for citizens of both countries. However, it does not cover social security entitlements. As indicated above, Egypt and the Sudan have concluded a separate BSSA.

Certain regional agreements could impact on social protection for migrant workers in Egypt but have not yet been ratified by Egypt

These regional, multilateral agreements include:

- (a) The Arab Convention, (No. 2 of 1967) on labour mobility, which commits member States to facilitating labour movement and to grant migrant workers the same rights and privileges as their own nationals, especially in the domain of labour protection (pay/wages, hours of work, paid leave and social security).
- (b) The Arab Labour Organisation Convention (No. 14 of 1981), concerning the right of Arab workers to social insurance when they move to find work in an Arab country.
- (c) The Treaty Establishing the Community of Sahel–Saharan States (CEN-SAD), which states that free movement of people is a core objective of this REC. The Treaty stipulates that the same rights, advantages and obligations granted to a member State’s own citizens should be applied to nationals of the signatory countries, in conformity with the provisions of their respective constitutions.
- (d) The Arab Maghreb Union (UMA) Social Security Convention (1991), which specifies migrants’ right to social security in the Maghreb. This multilateral convention envisages that the conditions for granting social security benefits, the rules for paying them and the method of reimbursement between the national social security institutions would be set out.
- (e) The COMESA Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence (2001), developed with a view towards the operationalization of the COMESA Common Market, with its objective to remove all restrictions to the free movement of persons, labour and services and provide for the right of establishment and right of residence.
- (f) The African Union Protocol to The Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (2018), which calls for the right to seek and accept employment without discrimination in any other member State in accordance with the laws and policies of the host member State. The Protocol articulates that States parties shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another member State residing or established in that member State.

Other (global) multilateral agreements have been ratified by Egypt and have implications for the extension of social security to migrant workers

Three instruments, in particular, should be mentioned – the social security implications/provisions of these instruments are briefly alluded to in [section 3.2](#) of this report:

- (a) The African Charter on Human and Peoples’ Rights (1981) of the African Union, ratified by Egypt in 1984 – the right to social security is viewed as a right derived from the provisions of the Charter.

- (b) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ratified by Egypt in 1993 – this instrument provides for equality of treatment between migrants and nationals. With respect to social security, article 27 of the Convention calls for migrant workers and members of their families to enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties.
- (c) The ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118), ratified by Egypt in 1993 (but Egypt has specifically excluded family benefits) – the Convention provides for the granting of benefits to be accorded without any condition of residency and addresses the issue of the social security of migrant workers from a global perspective. It covers the nine branches of social security and provides that, for each branch accepted under the Convention, a ratifying State undertakes to grant equality of treatment to nationals of other ratifying States (and their dependants) with its own nationals (including refugees and stateless persons, if specifically accepted) within its territory.

5.3.3. Ethiopia

Scope exists to improve social protection coverage for foreign workers by adopting further global instruments and concluding focused bilateral agreements

Except for the ILO Private Employment Agencies Convention, 1997 (No. 181), Ethiopia has not ratified any of the key ILO migration-related conventions, including those with social security implications; nor has it ratified the ICRMW. Ratification may support Ethiopia’s attempt to ensure labour migration responses that are sensitive to the needs and contexts of migrant workers. Furthermore, while some legislative provision is made for bilateral agreements, as far as could be determined, no BSSAs have been concluded yet. As indicated in [section 6.3.3](#), the current BLA framework makes insufficient provision for social security protection.

5.3.4. Ghana

Reciprocal agreements may contain dedicated social security arrangements

Article 82 of the National Pensions Act (No. 766 of 2008) allows for the conclusion of a bilateral (reciprocal) agreement with the government of another country in which a scheme similar to the Ghanaian social security scheme has been established, and for the agreement to provide for maintenance of accrued rights and the aggregation of insurance contribution periods.⁴⁷⁷ However, as far as could be determined, no such reciprocal agreements have yet been concluded by Ghana. The National Labour Migration Policy 2020–2024 contains pertinent provisions aimed at strengthening portability of social security benefits, and the conclusion of BSSAs. These sentiments are echoed in the Draft Diaspora Engagement Policy.⁴⁷⁸ This is discussed in more detail in [section 6.3.3](#) of this report.

⁴⁷⁷ According to art. 82, the agreement could include the following provisions: “(a) That any period of membership of a scheme in the jurisdiction of that government may be treated as a period of membership of the [Ghanaian] social security scheme and the reverse; and (b) That subject to agreed conditions, an amount standing to the credit of a member of the social security scheme in Ghana who works for an employer in the jurisdiction of this country may be transferred to the credit of a member in the scheme in another country and the reverse.”

⁴⁷⁸ Government of Ghana – MFARI, Diaspora Engagement Policy for Ghana (Draft) (see footnote 188), p. ix.

5.3.5. Kenya

Absence of social security agreements despite legislative provision

Kenya currently has no bilateral, regional, or multilateral agreements in place to facilitate the transferability and portability of social security benefits. However, provision for such agreements is made in the National Social Security Fund Act (No. 45 of 2013). This law also regulates the position of a Kenyan employee residing in another EAC member State. This is further discussed in [section 6.3.4](#) of this report. As noted in [section 5.2.4](#), BLAs make insufficient provision for social protection and may have to be revisited.

Significant ratification of international instruments provides a basis for enhanced (social) protection of foreign workers

Several key ILO social security and migration-related conventions have been ratified by Kenya, including the Unemployment Convention, 1919 (No. 2), the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the Equality of Treatment (Social Security) Convention, 1962 (no. 118) (including in respect of these three social security branches: old-age, invalidity and survivor's benefits); the Migration for Employment Convention, 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Maritime Labour Convention, 2006 (including in respect of the following social security branches: medical care, sickness, old-age, employment injury and maternity benefits). These conventions (and their accompanying ILO recommendations) provide specific norms and guidelines for extending protection, including social protection, to migrant workers, and support the conclusion of bilateral arrangements to this effect.

5.3.6. Kuwait

Subject to specialized arrangements applicable to citizens of GCC countries, foreign workers in Kuwait do not generally benefit from BSSAs

Under the Unified Law on Insurance Protection Extension for Citizens of Gulf Cooperation Council States Working outside Their Countries in Any of the Council Member States (2006), a GCC national will contribute to his or her own country's pension insurance while working outside in any member GCC country. However, BSSAs benefiting migrant workers from countries outside the GCC have not yet been concluded.

BLAs rarely provide for social security protection explicitly

Kuwait has signed a number of bilateral (labour) agreements with Asian and African countries. However, while these agreements regulate the movement and working conditions of foreign workers in Kuwait and address preventing human trafficking and the exploitation of TCWs, they invariably do not extend social security to migrant workers so covered. It is also a member of the Abu Dhabi Dialogue, a non-binding inter-government consultative process engaging Asian countries of destination and 11 countries of origin, the aim of which is among other to better administer the TCWs cycle and maximizing benefits to the workers, employers and the economies of all the countries concerned.⁴⁷⁹

Bilateral trade union agreements assist with protecting the rights of migrant workers in Kuwait

The Kuwait Trade Union Federation has concluded several agreements and MOUs with federations and trade unions of countries of origin of migrant workers for the protection of their rights.⁴⁸⁰

⁴⁷⁹ IOM, "Migration governance overview: The state of Kuwait" (see footnote 351), p. 5.

⁴⁸⁰ S. Taqa, *The Legal Framework of Migrant Workers' Rights in the Arab Countries* (Beirut, Arab Network for Migrants' Rights, 2013) pp. 86–87.

5.3.7. Mauritius

BLAs have been concluded, but do not contain social protection guarantees

As indicated in section 4.3.5, Mauritius has concluded a number of labour migration-related BLAs and lately MOUs, while others are being considered. The Migration and Development Policy (2018) recommends entering into BLAs with main countries of origin and considering the conclusion of BSSAs.⁴⁸¹ However, pertinent social protection (in particular social security protective arrangements) has not been included in the BLAs; nor have dedicated BSSAs been concluded. In the case with Lesotho, Mauritius appeared not to favour the conclusion of a BLA, but rather to consider an MOU.⁴⁸² The Migration and Development Policy foresees the conclusion of BLAs with the main countries of origin (but also to diversify them) to ensure that the recruitment and employment of foreign workers is effected in the most responsible manner, in line with labour standards, including through the provision of pre-departure and pre-orientation training and the availability of protection safeguards.⁴⁸³

BSSAs do not yet exist but are envisaged and are effectively required for the portability of certain social protection benefits

According to the Migration and Development Policy, there are no portability schemes with other countries, hence the contributions paid by foreigners in Mauritius can be either claimed at the moment of departure from the country or at retirement age, irrespective of their residency status. The Policy suggests that the signing of social protection agreements (portability of various rights and benefits) should also be considered.⁴⁸⁴ This is already relevant, since the non-contributory, universal old-age pension is payable abroad only under a reciprocal agreement.⁴⁸⁵

Multilateral (regional) arrangements could help to inform the extension of social protection to migrant workers abroad

At the regional level, mention could in particular be made of several SADC instruments supporting the conclusion of bilateral arrangements and more broadly the extension of social protection, also to migrant workers in Mauritius – namely the SADC Charter of Fundamental Social Rights (2003) (“the Social Charter”), the SADC Code on Social Security (2007), the SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016), the Draft Guidelines on the Portability of Social Security Benefits in SADC (2020), the SADC Labour Migration Action Plan 2013–2015 (renewed for 2016–2019 and again for 2020–2025) and the SADC Labour Migration Policy Framework (2014).

5.3.8. Rwanda

National policy favours the conclusion of bilateral agreements

The Revised National Employment Policy (2019) emphasizes that the Ministry of Foreign Affairs and International Cooperation should negotiate and foster BLAs using its rich resource of embassies/missions worldwide.⁴⁸⁶ This is echoed in the National Labour Mobility Policy (2019), which also raises the need to understand the impact of implementing the EAC Free Movement of Labour Measures to enhance national and regional development.⁴⁸⁷ In fact, the Policy recognizes that arrangements flowing from Rwanda’s membership in the EAC and COMESA impose certain obligations on the

⁴⁸¹ Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 25.

⁴⁸² Government of Lesotho – Ministry of Labour and Employment, “Study tour of the Government of the Kingdom of Lesotho to the Republic of Mauritius and negotiation of bilateral labour agreement”, February 2018.

⁴⁸³ Government of Mauritius, Migration and Development Policy of and Action Plan 2030 (see footnote 257), p. 25.

⁴⁸⁴ Ibid., pp. 24–25.

⁴⁸⁵ SSA and ISSA, “Mauritius” (see footnote 356), p. 181.

⁴⁸⁶ Government of Rwanda – MIFOTRA, Revised National Employment Policy (see footnote 378), section 7.1; Government of Rwanda – MIFOTRA, National Labour Mobility Policy (see footnote 446), p. 25.

⁴⁸⁷ Government of Rwanda – MIFOTRA, National Labour Mobility Policy (see footnote 450), section 3.1.

country relating to free movement; these considerations need to be considered while entering into agreement with other countries in the region. It specifically encourages negotiation with States for a common labour mobility policy within the EAC.⁴⁸⁸ It has, however, been noted that the lack of portability of social security benefits is a particular challenge that needs to be addressed.⁴⁸⁹

BSSAs remain largely non-existent

In a recent (2020) submission of a periodic report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Government of Rwanda summarizes the position as follows:

82. As of today, the transferability of pension benefits has only been realized between Rwanda and Burundi, largely due to the reciprocal arrangements the two countries have between their mandatory pension schemes.
83. Burundi and Rwanda are among the countries that signed an MOU in 1978 that binds the CEPGL [Economic Community of the Great Lakes Countries] countries to allow portability of pension benefits.
84. On the basis of a new bilateral agreement with Rwanda that allows pension portability, individuals who live in Rwanda, but have a contribution record with the mandatory pension scheme of Burundi — National Institute of Social Security of Burundi — receive their pension payments through quarterly transfers.
85. Individuals who live in Burundi but have a contribution record with the Rwanda Social Security Board (RSSB), receive their pension as monthly payments.
86. Within the context of the CEPGL, a general social security convention was adopted in 1978 and came into force in 1980. It is modelled on international instruments, with the sole difference being that it does not extend its scope of application to family and maternity benefits.
87. With regard to the EAC countries no agreement had been concluded, but it should be noted that discussions on the adoption of an EAC social security agreement are under way.
88. As a result, the EAC Secretariat is in discussion with partner States and stakeholders to come up with appropriate policies that will guide priority activities in order to make progress with the coordination and harmonization of the pensions sector in line with the EAC Common Market Protocol, the Monetary Union Protocol and the EAC Treaty.
89. EAC partner States are working on guidelines that will allow employees from the formal sector to transfer their pension contributions and benefits to other schemes across the region.
90. The six EAC member States are also working to ensure that fund managers can invest retirees' money in any country in the region.⁴⁹⁰

⁴⁸⁸ Ibid., p. 21.

⁴⁸⁹ Information obtained from a questionnaire completed by a representative of the Government of Rwanda.

⁴⁹⁰ CMW, Second periodic report submitted by Rwanda under article 73 of the Convention pursuant to the simplified reporting procedure, due in 2017 of 30 January 2020 (CMW/C/RWA/2), paras. 82–90. Available at www.ecoi.net/en/file/local/2024479/G2002275.pdf.

5.3.9. South Africa

A limited legal framework provides for BSSAs⁴⁹¹

South Africa is not yet bound by an MSSA. Recently, however, the development of an envisaged MSSA involving South Africa and the other four BRICS countries (Brazil, the Russian Federation, India and China) was announced.⁴⁹² In the absence of a currently existing multilateral arrangement including South Africa, there are only a few examples and little use made of BSSAs and effective portability arrangements in South African law and practice.⁴⁹³ In addition, the scope of the agreements provided for by law is limited, as they are qualified by restrictions and qualifications that hardly let them qualify as true BSSAs. The relevant legal provisions providing for BSSAs and portability of social security benefits are mainly to be found in the Compensation for Occupational Injuries and Diseases Act (COIDA) (No. 130 of 1993),⁴⁹⁴ the Occupational Diseases in Mines and Works Act (ODMWA) (No. 78 of 1973),⁴⁹⁵ the *Road Accident Fund Act* (RAFA) (No. 56 of 1996)⁴⁹⁶ and the Social Assistance Act (SAA) (No. 13 of 2004).⁴⁹⁷ The assumption on which these provisions are premised is clearly that coverage must be reciprocal. However, there are provisions in, for example, COIDA that potentially clash with and/or severely limit, in particular, the portability and reciprocity principles usually espoused by BSSAs. Section 60 of COIDA provides that if an employee or a dependant of an employee to whom a pension is payable, as per the Act, is resident outside South Africa or is absent from the country for a period or periods totalling more than six months, the Director-General may award a lump sum as determined by him/her in lieu of such pension, and upon payment of such lump sum the right to the pension shall expire. Other social security laws in South Africa do not provide for cross-border social security arrangements. This is true of the Unemployment Insurance Act (No. 63 of 2001).⁴⁹⁸ However, it would appear that the Act, in particular, should have provided for the possibility of reciprocal agreements and portability of benefit payments, and should have done so in a manner which is not in conflict with South Africa's international obligations. This flows from the fact that the ILO Unemployment Convention, 1919 (No. 2) which South Africa has ratified, provides for reciprocity, and requires of ratifying member States to ensure that workers "belonging to" one ratifying member State and working in the territory of another "shall be admitted to the same rates of benefit of such insurance as those which obtain for the workers belonging to the latter" (see article 3 of the Convention). In conclusion, with the possible (limited) exception of the much-criticized BLA with Mozambique, which allows for the cross-border payment of employment injury benefits – BSSAs involving South Africa do not generally exist.

⁴⁹¹ Olivier, "Social security: Framework" (see footnote 383), para. 94.

⁴⁹² *The Economic Times* (online), "BRICS nations keen on multilateral social security framework", 13 May 2021. Available at <https://economictimes.indiatimes.com/news/economy/policy/brics-nations-keen-on-multilateral-social-security-framework/articleshow/82600316.cms>.

⁴⁹³ Government representatives interviewed for report referred to two existing agreements: (a) on arrangement with the Dutch Social Insurance Bank (Netherlands), for the payment of Dutch social security benefits to Dutch beneficiaries in South Africa; and (b) a bilateral agreement with Namibia, for the continued payment of social assistance benefits residents of Walvis Bay (previously part of South Africa). The discontinuation of the latter agreement is being considered.

⁴⁹⁴ Government of South Africa, Compensation for Occupational Injuries and Diseases Act (COIDA), (No. 130 of 1993), which provides for the possibility of bilateral cross-border agreements on the basis of reciprocity between South Africa and another country. The reciprocal arrangement has to relate to compensation for employees for accidents resulting in disablement or death.)

⁴⁹⁵ Government of South Africa, Occupational Diseases in Mines and Works Act (ODMWA) (No. 78 of 1973), section 105. (The Act stipulates that: "The commissioner may with the approval of the Minister make arrangements with any other Government Department or any other institution, organization or authority to undertake the payment, on behalf of the commissioner, of benefits or other amounts awarded under the previous Act or this Act.")

⁴⁹⁶ Government of South Africa, Road Accident Fund Act (RAFA) (No. 56 of 1996), section 9, in terms of which the relevant Minister may, upon the recommendation of the Board of the Fund, co-operate and enter into agreements with any public or private institution in respect of the reciprocal recognition of compulsory motor vehicle insurance or compulsory motor vehicle accidents compensation." The Minister must sign the agreement on behalf of the Fund.)

⁴⁹⁷ Government of South Africa, Social Assistance Act (No. 13 of 2004), section 2(1), which provides that the Act applies to a non-citizen who resides in South Africa if an agreement between South Africa and the country of which that person is a citizen makes provision for the Act to apply to that person.

⁴⁹⁸ Government of South Africa, Unemployment Insurance Act (No. 63 of 2001).

The importance of the SADC (regional) framework supporting the extension of social protection to migrant workers abroad

Several SADC regional instruments impact on the social protection status of migrant workers in South Africa, both directly and indirectly. Important in this regard are the protective provisions contained in, among other, the SADC Charter of Fundamental Social Rights (2003) (“the Social Charter”). At the regional level, mention could in particular be made of several SADC instruments supporting the conclusion of bilateral arrangements – specifically the SADC Code on Social Security (2007), the SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016), the Draft Guidelines on the Portability of Social Security Benefits in SADC (2020), the SADC Labour Migration Action Plan 2013–2015 (renewed for 2016–2019 and again for 2020–2025) and the SADC Labour Migration Policy Framework, 2014.

South Africa’s unsatisfactory experience with historical BLAs

South Africa concluded five BLAs under the previous political regime, primarily to provide labour for South African mines. These agreements were finalized with Botswana, Eswatini, Lesotho, Malawi and Mozambique. The agreements specify conditions and obligations on issues such as recruitment, contracts, remittances and deferred pay, taxation, required documentation, unemployment insurance and appointment of labour officials to be stationed in South Africa. It has been indicated that:⁴⁹⁹

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

Other shortcomings of BLAs concluded by South Africa

There are also other considerations emanating from the extensive literature written on this subject.⁵⁰⁰ One of these considerations relates to the **deferred pay arrangement** contained

⁴⁹⁹ IOM, *Bilateral Labour Migration Arrangements in Two SADC Corridors* (see footnote 285).

⁵⁰⁰ See, for example: Marius Olivier, *Developing a Framework for a Redesigned Bilateral Labour Migration Regime between South Africa and Mozambique, with Particular Emphasis on Mozambican Mineworkers*, (Munich, Germany, Max Planck Institute for Social Law and Policy, 2016), pp. 16–18.

in these agreements. In terms thereof, after an initial period of employment, as much as 60 per cent of a mineworker's salary is compulsorily deferred and can only be received once the worker returns to the country of origin. Concerns raised include that mineworkers are not properly informed about the payment options available to them in the country of origin. Objections against the deferred pay arrangement itself have been raised in the literature on this subject, and include the remark in an authoritative report prepared for the ILO that "[s]uch mandatory deductions are not consistent with international labour standards"⁵⁰¹ and the fact that the ICRMW, ratified by, among others, Lesotho and Mozambique, but not by South Africa, stresses that migrant workers have the right to (freely) transfer their earnings and savings to their State of origin or any other State.⁵⁰² It is further echoed by the provision in the SADC Labour Migration Policy Framework that migrant workers have the right to transfer earnings and savings on return to their country of origin.⁵⁰³ In fact, the organized labour movement in South Africa, which also represents employed mineworkers from origin SADC countries, has consistently argued for the deferred pay arrangements to be abolished,⁵⁰⁴ given the obligatory and inflexible nature of the deferred payment system and the fact that it is "felt to be discriminatory in the sense that South African nationals are not subject to the same kinds of regulations."⁵⁰⁵

Social security deficiencies embedded in the BLAs concluded by South Africa, and South African Government responses to BLA shortcomings

Furthermore, social security and related arrangements, particularly portability issues, have received limited attention in the agreements. As a rule, but subject to some limited exceptions (i.e. the provisions on workers' compensation in the case of Mozambique), they do not cover public social security transfers but only employer- and occupational-based payments. Also, no provision is made for retirement or related disability benefits in the agreements, including death benefits in favour of the dependants or survivors of migrant workers in South Africa and former migrant workers. Insufficient provision is made in the agreements concerning compensation procedures, required documentation, and informing mineworkers and ex-mineworkers of their social security entitlements. As has been noted, "...compensation authorities in South Africa have failed to disseminate culturally sensitive information about the autopsy process widely enough."⁵⁰⁶ Furthermore, the agreements also fail to provide appropriately for the tracking and tracing of beneficiaries to whom compensation or other payments are due, be it the mineworkers themselves or their dependants. Large sums of unclaimed money have consequently accumulated over the years – a matter of serious concern to both the Government of South Africa and the governments of countries of origin. Finally, health and safety guarantees and protection are largely absent from the agreements.⁵⁰⁷

The shortcomings of the bilateral agreements indicated here have prompted a government department in South Africa to argue for their "nullification" and for providing for the limited

⁵⁰¹ Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers* (see footnote 8), p. 31.

⁵⁰² United Nations General Assembly resolution 45/158 on the International Convention on the Protection of Rights of All Migrant Workers and Their Families (see footnote 29).

⁵⁰³ SADC, Labour Migration Policy Framework, paras. 5.1.5(iii), (e) and (j), and 5.1.5(e).

⁵⁰⁴ The National Union of Mineworkers (NUM) in South Africa has recommended that the deferred pay system be abolished as it does not serve the interests of workers. However, the Chamber of Mines and the supplying States think otherwise (see, for example: Brij Maharaj, "Immigration to post-apartheid South Africa", *Global Migration Perspectives* no. 1 (Geneva, Global Commission on International Migration, 2004), p. 18.

⁵⁰⁵ Theo Sparreboom and Pete Sparreboom-Burger, *Migrant worker remittances in Lesotho: A review of the Deferred Pay Scheme*, working paper no.16 (Geneva, ILO, 1996), p. 4.

⁵⁰⁶ Ryan Boyko, Seyward Darby, Rose Carmen Goldberg and Zorka Millin (for the Yale Global Health Justice Partnership), *Fulfilling Broken Promises: Reforming the Century-old Compensation System for Occupational Lung Disease in the South African Mining Sector* (New Haven, Connecticut, Yale Law School and Yale School of Public Health, 2014), p. 23. Available at www.polity.org.za/article/fulfilling-broken-promises-reforming-the-century-old-compensation-system-for-occupational-lung-disease-in-the-south-african-mining-sector-2014-01-15.

⁵⁰⁷ For further details, see: Olivier, *Developing a Framework for a Redesigned Bilateral Labour Migration Regime* (see footnote 500), pp. 20–22.

protective elements present in them to be captured in new MOUs – or otherwise the revision of these agreements. As noted in the course of research undertaken for IOM, the department is of the view that broader-based MOUs with flexible provisions, on the basis of which concrete measures could be taken as the need arises, present a more acceptable solution than BLAs. It is also of the view that labour migration, as such, should be dealt with as per the South African immigration and visa regime, rather than through bilateral arrangements.⁵⁰⁸

Other labour- and labour migration-related cooperation agreements and MOUs concluded by South Africa

As is increasingly the case in certain other SADC countries as well (e.g. Mauritius (see [section 5.3.7](#) of this report)), use is made of MOUs or other cooperation arrangements. Several of these arrangements have been concluded by South Africa; other SADC countries have followed suit. South Africa has concluded such arrangements with Lesotho (first in 2006, and again in 2013), Mozambique and Zimbabwe (replacing preceding the MOUs of 2004 and 2009). The focus of these arrangements is on cooperation in the fields of employment and labour. Indicated areas of cooperation of relevance to labour migration usually include but are not limited to social security issues, often specified to also cover compensation in respect of occupational injuries and diseases and pension portability; occupational safety and health; and public employment services. In the case of the Zimbabwe–South Africa MOU, labour migration management is also specifically indicated. Particularly noteworthy is the fact that, unlike the BLAs mentioned above, after a stipulated period of time, most of the MOUs are said to renew automatically, subject to termination by either party on (usually) six months' written notice.⁵⁰⁹

5.4. Conclusions and recommendations

Subject to some exception and certain qualifications, migrant workers invariably have access to contributory social security, including health insurance schemes, in countries of destination.

Contributory social security

As far as contributory social security schemes of destination countries are concerned, migrant workers appear to be able to participate in public social insurance scheme arrangements, often on a compulsory basis and on par with nationals. Among the destination countries featured in this report, the exceptions appear to be Ethiopia and Kuwait (although Ethiopia allows foreign nationals of Ethiopian origin and foreigners covered by bilateral agreements to be covered); Kuwait follows the general trend discernible in GCC countries, namely not to extend (most) of its contribution-based social insurance arrangements to foreigners.⁵¹⁰

Despite this general trend, it needs to be emphasized that the contribution periods required for long-term benefits (e.g. pension benefits) may result in migrant workers being unable to draw such benefits, unless they are allowed to prematurely withdraw at least their contributions. In several cases (e.g. Ghana, Kenya, Mauritius and Rwanda), migrant workers are allowed to take such lump sum in the form of an emigration benefit when they leave the country of destination.

- (a) **National health insurance.** In most of the studied countries, migrant workers are allowed – and may even be compelled – to contribute to the national health insurance schemes in place in the countries of destination. In some cases, this

⁵⁰⁸ IOM, *Bilateral Labour Migration Arrangements in Two SADC Corridors* (see footnote 285).

⁵⁰⁹ *Ibid.*

⁵¹⁰ See section 4.2 of this report.

may be restricted to certain categories of non-nationals (e.g. in South Africa, it is envisaged that refugees will be covered by the unfolding national health insurance scheme; asylum seekers and undocumented migrant workers will have access to only limited health care). However, special residence periods (e.g. Ghana) or longer periods of contributions (e.g. Côte d'Ivoire), in comparison with nationals, may apply. A separate health insurance arrangement has been put in place in Kuwait.

- (b) **Special rules applicable to seconded migrant workers.** Special arrangements may exist in the case of seconded workers. For example, in the case of Rwanda, and subject to bilateral agreements concluded by Rwanda, seconded workers can join the Rwandan social security scheme only if the period of secondment exceeds 12 months. The implication is that these workers otherwise will/should remain covered by the social security scheme of the country of origin during such period of secondment.

Some provision is made for portability arrangements in national legislation, but not necessarily the full range of universally applicable social security coordination principles

Several countries have introduced limited provisions in their laws to provide for the portability (i.e. exportability) of certain social security benefits, in particular, but not restricted to, long-term (e.g. pension) benefits (e.g. Ghana and South Africa). In certain cases, this is made subject to the existence of a reciprocal agreement to this effect (e.g. Rwanda). Even so, most of the relevant laws do not provide for the usual range of coordination principles to apply – for example, only in some cases is provision made for the totalization of insurance contribution periods.

Migrant workers usually have equal access to labour rights, implying their equal entitlement to labour law-embedded social security benefits

The labour laws of the studied countries rarely differentiate between nationals and non-nationals. Therefore, but subject to qualification, migrant workers are entitled to draw benefits such as sickness and maternity benefits, and at times also employment injury benefits on par with nationals of the country concerned, to the extent that the labour laws impose an obligation on employers to provide these benefits, either directly or via an insurance mechanism. Ethiopia, Ghana, Kenya, Kuwait, Mauritius, Rwanda and South Africa provide examples of this approach. This also applies in the event that the countries have set up special contributory benefit schemes, such as a maternity leave benefit scheme (Rwanda) or unemployment insurance (South Africa). However, in the case of Mauritius, most migrant workers are not entitled to certain social security-related labour rights accruing to nationals, such as the transition unemployment benefit and benefits arising from the Portable Retirement Gratuity Fund.

One must bear in mind that the limited period for which work permits are granted, may in fact, if not in law, impact on access to some of these benefits, which the migrant workers would otherwise have enjoyed.

Non-contributory assistance is rarely extended to migrant workers

With some exception and qualification, migrant workers do not have access to non-contributory tax-financed assistance in destination countries. This generally applies also to access to tax-financed health care (e.g. in Côte d'Ivoire, Egypt and Kuwait). However, in Mauritius, foreigners who have completed fairly extensive periods of residence in the country may be able to qualify for access to social assistance. In South Africa, permanent residents and refugees have been granted access to social assistance, due to the judiciary's enforcement of the progressive fundamental rights-infused provisions of the South African Constitution. However, migrant workers with short-term contracts rarely benefit from these exceptional arrangements.

As far as **access to social services** is concerned, a mixed picture presents itself. Generally, migrant workers and their dependants do not enjoy equal access to social services – however, Mauritius is for most part an exception to this trend. Children’s access to (public) education may be an exception but may attract higher tuition fees than for children of nationals (Côte d’Ivoire), while this exception may not apply to (subsidized) tertiary education (Ghana). In Kuwait, however, foreign children do not have access to public schools.

Preferential treatment is given, or meant to be given, to nationals covered by multilateral and bilateral frameworks

The free movement and social security coordination instruments (i.e. the ECOWAS General Convention on Social Security of Member States and its implementing instrument) of ECOWAS imply equal access by nationals of ratifying ECOWAS member States to social security regimes in the ECOWAS region, and for the implementation of various social security coordination principles, including portability of benefits; maintenance of acquired rights; and totalization of insurance benefits. This is increasingly evident in the case of Côte d’Ivoire (ECOWAS), with Ghana in the process of giving effect to these regional commitments. CIPRES arrangements involving a number of West African countries also subscribe to the regional preferential agenda. In East Africa, based on historical multilateral arrangements through the Economic Community of the Great Lakes Countries (CEPGL), Burundi and Rwanda are bilaterally implementing social security coordination principles. EAC free movement instruments are in place. However, EAC MSSAs, with their accompanying portability guidelines, are yet to be formally adopted. In Southern Africa, the range of SADC instruments, in particular the SADC Code on Social Security (2007), the SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016), the (draft) Guidelines on the Portability of Social Security Benefits in SADC, the SADC Labour Migration Action Plan 2013–2015 (renewed for 2016–2019 and 2020–2025) and the SADC Labour Migration Policy Framework (2014), although not binding, provide a solid basis for the extension of contributory social security coverage and benefits to nationals of ratifying or subscribing SADC member States.

Foreign workers who are undocumented and/or work in the informal economy lack appropriate protection

Most destination countries do not include **undocumented migrants** in their social security regimes (e.g. Ghana and Kenya), with the exception, in some cases, of humanitarian aid or emergency health care (Mauritius and South Africa). In the COVID-19 context, certain countries have extended some and at time specialized support to migrants regardless of their formal status (e.g. Mauritius and, to an extent, South Africa). It needs to be noted that migrant workers can be, or become, undocumented due to an overly strict work (and/or residence) permit regime. Also, prospective or current migrant workers may not be aware of the requirements to be satisfied in this regard or may not be able, for financial or other reasons, to meet these requirements. There may therefore be a need to simplify the work and residence permit regime in countries of destination. Also, there may be a need to consider, in appropriate circumstances, the regularization of undocumented migrant workers, in consultation with countries of origin, in an attempt to promote regular labour migration and enhance the protection of the migrant workers concerned. South Africa provides a good example of successful attempts in this regard, while Thailand serves as another good practice comparative example.

Most contributory social security arrangements in countries of destination have been developed with formal economy participants in mind. **Informal economy migrant workers** who, in the majority of African countries, form part of the bulk of the (informally employed) workforce, are therefore routinely excluded from coverage. At times, voluntary and even compulsory participation of the self-employed in public social security or even national health insurance schemes is indicated (e.g. Kenya, Mauritius and Rwanda). Several African countries have started developing unique, tailor-made social security schemes for those in the informal economy. However, the extension of these schemes to migrant workers in the informal economy needs to develop.

Access to (formal) labour market participation is critical for contributory social security coverage, but subject to several restrictions in destination countries

The majority of destination countries covered in this report do not grant migrant workers equal access to the national labour market. Restrictions relate to quotas, the exclusion of certain sectors, skills transfers obligations imposed on employers and foreign workers, and restrictions on changing employers or type of employment (as observed in Côte d'Ivoire, Egypt, Ghana, Mauritius and South Africa). At times, these restrictions apply not to all migrant worker categories, but essentially to those whose employment status is restricted, and usually of shorter duration (Mauritius) or who are not permanent residents (South Africa). However, due to the operation of the free movement regime instruments applicable in ECOWAS, nationals of ECOWAS countries are meant to have free labour market access in other ECOWAS countries (of destination), even if work permits are still required. It also should be noted that implementing these restrictions, in particular quota systems, restricted access to certain labour market sectors and skills transfer obligations, is fraught with challenges, as the Ghana experience has indicated. Also, the underlying labour market needs assessment required to inform these restrictive measures may be absent. Furthermore, one would expect skills transfer regimes to be effectively linked with dedicated educational/training programmes, which may not be the case.

Restricted access to the (formal) labour market may impact on the ability of migrant workers to participate in destination countries' contributory social security schemes, given the bias of these schemes towards formal labour market participation. Also, short periods of employment caused by time-limited work permits may impact significantly on migrant workers' access to long-term benefits, given the long(er) period of contributions required before these benefits may be drawn. There may therefore be a need to revisit the work permit regime in destination countries.

Finally, with some exception the studied countries of destination have only limited systems in place to continuously undertake an assessment of their labour market needs, and to inform the issuing of work permits and restrictions on labour market access.

The exclusion of certain migrant worker categories from key social protection, in particular social security benefits may have a detrimental impact beyond the migrant workers concerned

Due to the reciprocity principle embedded in BSSAs, the exclusion of migrant workers from components of the (public) contributory social security system may impact on the willingness of other countries to extend social security protection to nationals of that country when working abroad and may impede the conclusion of BSSAs involving the country concerned.

Despite significant progress in recent years, underlying policy and legal regimes guiding labour migration interventions are often absent

Some of the destination countries studied in this report have in recent years adopted migration and in particular labour migration policies, and at times also employment policies, to help inform directions pertaining to labour migration (e.g. Ghana, Mauritius, Rwanda and South Africa (in the process of developing a national labour migration policy) and access to social protection. This is an important development that should be replicated across the board by African countries. Yet the experience of even those countries that have adopted such policy and legal regimes reveals that certain caveats need to be heeded:

- (a) **Labour market needs assessments and visa regime revision.** Policymaking should be informed, as well as foresee, local labour market needs assessments and the revision of accompanying visa regimes to address identified areas of critical skills needs in countries of destination.

- (b) **Addressing the position of excluded categories of migrant workers and their families.** Adopted policies and associated legal frameworks should also address the position of often excluded categories of migrant workers, in particular migrant workers in the informal economy, as well as refugees and asylum seekers, and should contain appropriate provisions regarding undocumented migrant workers, including the possibility of regularizing their legal status. Finally, policy and legal frameworks need to more comprehensively address the plight of accompanying family members.
- (c) **Responding to labour migration and social protection challenges.** The policy and accompanying legal framework should address pertinent challenges in the labour migration space and access to social protection by migrant workers. Regarding the former, the informal mode of recruitment obtaining in several destination countries is a particular concern, while the lack of implementing ethical recruitment norms leaves many migrant workers subject to abuse and exploitation. Emphatic policy and legal responses to, in particular, recruitment challenges are required (see [Appendix 1](#) for further details). Regarding the latter, certain migrant worker categories are at particular risk of not being (appropriately) covered by social protection arrangements (and, in particular, social security arrangements), either because of their explicit exclusion from such coverage, or the failure of policy and legal regimes to address their plight in this regard – again, the position of informal economy migrant workers should in particular be highlighted.

Ratification and implementation of key United Nations, ILO, continental and African regional labour migration and social security instruments are key to help guide national legal and policy frameworks pertaining to migrant workers

With some exception (e.g. Egypt and Kenya), the general picture emerging from the destination countries studied in this report is that these countries have a poor record of ratifying important United Nations and ILO, but also African Union (continental) and REC (regional) instruments, pertaining to: (a) labour migration and (b) social protection for migrant workers. Ratification and implementation of these instruments would go a long way towards strengthening labour migration and social protection (for migrant workers) legal and policy regimes in African countries. This would greatly assist in extending protection to migrant workers in the areas of, among other, recruitment (see also [Appendix 1](#)) and the extension of (at least) contributory social security to migrant workers.

Address institutional, operational and attitudinal barriers

Challenges identified in the case studies covered in this report include the lack of institutional coordination (even among government departments and other public agencies); insufficient human capacity; high remittance costs; administrative barriers impeding on access to social security benefits (e.g. when claiming benefits); discrimination and poor working conditions; exploitation of undocumented and informal economy migrant workers; and xenophobia. These are matters to be addressed through proper training; revamped institutional and operational measures; and appropriate legal regulation and policy provisions.

Some use is made of BLAs, but these rarely advance the social protection of affected migrant workers

Several of the destination countries covered in this report have concluded labour migration and related BLAs. These agreements may guarantee the protection of labour rights of migrant workers in destination countries, but invariably make no, or insufficient, provision for extending social security protection to migrant workers. Egypt, Ethiopia, Kuwait and Mauritius can be cited in this regard; pension and employment injury benefits are to some extent provided for in the BLAs

concluded by South Africa. Of course, being able to access the labour market on the strength of the BLAs may enable foreign workers to contribute to and draw benefits from the public social security scheme in destination countries.

It has to be noted that there is a developing tendency, in particular in Southern Africa, of countries of destination not being prepared to conclude BLAs, but less exacting MOUs.⁵¹¹ This may further diminish the possibility and efficacy of social security undertakings contained in such MOUs.

Finally, examples exist of bilateral trade union agreements, which are particularly useful in assisting with protecting the social protection rights of affected migrant workers (e.g. in Kuwait).

Most of the studied countries of destination have not (yet) concluded BSSAs; existing BSSAs remain incomplete

Countries which do not currently have BSSAs in place with, for example, other African countries, include Ethiopia, Ghana, Kenya and Mauritius – even though recent policy pronouncements (e.g. Ghana, Mauritius and South Africa (draft provisions)) and even legislative provisions (e.g. Ghana, Kenya and South Africa) may envisage the conclusion of such agreements, or even for unilateral portability arrangements. As indicated earlier in this report, BSSAs (together with MSSAs) are regarded worldwide as the gold standard for the social protection of migrant workers.⁵¹²

However, as confirmed by the country studies captured in this report, where BSSAs do exist, certain shortcomings need to be addressed:

- (a) **Limited social protection support.** BSSAs often provide for only limited social security support (e.g. as regards portability of some benefits). Egypt provides a good example as a country that has included a relatively wide range of social security benefits in many of its concluded BSSAs.
- (b) **BSSAs with key origin countries may be absent.** Also, BSSAs with countries from where large numbers of migrant workers are drawn may not have been concluded yet.
- (c) **Excluded categories of migrant workers.** Furthermore, African BSSAs typically do not include the self-employed, informal economy workers and, at times, other categories of migrant workers within its sphere of coverage. In this way, the majority of migrant workers will remain outside the purview of these agreements. Of course, first and foremost, there is a need to include these categories of workers in the domestic social security systems of both countries of origin and destination. This is indeed gradually unfolding in Africa.⁵¹³

⁵¹¹ IOM, *Bilateral Labour Migration Arrangements in Two SADC Corridors* (see footnote 285).

⁵¹² See section 3.5.2 of this report.

⁵¹³ UNDP, *Informality and Social Protection in African Countries: A Forward-looking Assessment of Contributory Schemes* (New York, 2021); Marius Olivier, "Social security protection for informal economy workers: Developing world perspectives", in: *Social Security Outside the Realm of the Employment Contract – Informal Work and Employee-like Workers* (Mies Westerfeld and Marius Olivier, eds.) (Cheltenham, United Kingdom, Edward Elgar Publishing Ltd, 2019), pp. 2–29.

6 Social protection and support services for migrant workers extended by countries of origin: Selected country experiences

6.1. Legal, policy and other arrangements

6.1.1. Côte d'Ivoire

Key measures to engage the Ivorian diaspora have been adopted

These measures include the following:⁵¹⁴

- (a) Establishment of the Ministry of African Integration and Ivorians Abroad, with a General Directorate for Ivorians Abroad, in 2013;
- (b) Establishment of the Diaspora for Growth, a forum organized for and dedicated to entrepreneurs from the diaspora;
- (c) Envisaged designation of the Ivorian diaspora as the “thirty-second region” of Côte d'Ivoire;
- (d) Development of a draft policy on the management of Ivorians abroad;
- (e) Agreement concluded between the Ministry of African Integration and Ivorians Abroad and the African Solidarity Fund to facilitate diaspora investments;
- (f) Mapping of the diaspora to facilitate voluntary online registration (launched in 2018);
- (g) Holding of a biennial Diaspora Forum and the awarding of an annual excellence award to the “best Ivorian of the diaspora”;
- (h) Provision of facilities by the Centre for the Promotion of Investments in Côte d'Ivoire to open businesses.

Côte d'Ivoire has not extended its national social insurance and health insurance system to its migrant workers abroad

While limited provision is made for the portability of certain benefits available under the public social insurance scheme, no provision has (yet) been made to extend the reach of the Ivorian national social security and health insurance schemes to Ivorian migrant workers abroad.

Some support is available to Ivorians abroad in times of crisis

It has been noted that “Côte d'Ivoire has in place measures to assist its citizens living abroad in times of crisis. This includes consular assistance, legal assistance, assistance to return to Côte d'Ivoire or reintegration assistance (for instance by providing housing). In this regard, IOM supported the

⁵¹⁴ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), p. 16, 18 and 21. Available at <https://publications.iom.int/fr/system/files/pdf/mgi-cote-divoire-2019.pdf>.

Ministry of African Integration and Ivorians Abroad (*Ministère de l'Intégration Africaine et des Ivoiriens de l'Extérieur* (MIAIE)) to elaborate in November 2017 a national plan to assist the voluntary return and reintegration of migrants in distress, which is being validated by the Government.”⁵¹⁵

6.1.2. Ethiopia

Social (security) protection is yet to be extended to Ethiopian migrant workers abroad, although there are other efforts in place to protect them

As far as could be determined, Ethiopia does not extend social security arrangements to its citizens working abroad. The Government of Ethiopia has been working to curb irregular migration, combat human trafficking and smuggling, and ensure the protection of migrants. The Government has attempted to provide protection of Ethiopian migrant workers through a review of the regulatory framework for employment exchange services and issuance of the new proclamation on the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants. In fact, Ethiopia has made efforts to align the labour law, social security and human trafficking legal frameworks to international standards – particularly via the adoption of two new proclamations concerning human trafficking and migrant smuggling (Proclamation No. 909/2015) and overseas employment (Proclamation No. 923/2016). As regards the latter, Ethiopia strictly prohibits the deployment of overseas workers without the presence of a bilateral agreement signed with the recipient country. Even then, unless these agreements clearly provide details on the rights and duties of the parties and the means and venues of enforcement in case of violations, these arrangements may not give enough guarantees. The Government of Ethiopia upholds the contents of a model Contract of Employment; the minimum requirements highlighted in the contract includes insurance coverage for life or disability.⁵¹⁶

6.1.3. Ghana

Legal provisions providing for the extension of social security to Ghanaian workers abroad are largely absent

With a few limited exceptions, the Ghanaian statutory framework does not extend social security and health insurance coverage to Ghanaian migrant workers abroad. As noted in [section 5.3.4](#), some provision is made in the National Pensions Act for aggregation of insurance contribution periods and maintenance of acquired rights, to be included in bilateral reciprocal agreements with another country. However, this does not imply that Ghanaian migrant workers abroad are entitled to contribute to and benefit from the Ghanaian public social security scheme. Also, an employee of or official in the Government of Ghana who is abroad during the year of assessment is also regarded as a resident for purposes of the National Health Insurance Act.⁵¹⁷ This provision clearly has in mind that government employees posted abroad could still benefit from the National Health Insurance in Ghana but does not apply to other migrant workers abroad. For the rest, for now, due to the absence of current arrangements to extend social security to Ghanaian migrant workers abroad, these workers are invariably placed in a position where they have to rely on informal support mechanisms and on Ghanaian diaspora associations in countries of destination.⁵¹⁸

There is a foreseen extension of social security to Ghanaians abroad

The National Labour Migration Policy 2020–2024 and the Draft Diaspora Engagement Policy suggest that there is a need to develop social security schemes that would allow Ghanaians living in other countries to be able to voluntarily register for social security schemes in Ghana: “This would particularly be useful for Ghanaians working in the informal sectors in other African countries,

⁵¹⁵ Ibid., p. 19.

⁵¹⁶ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154).

⁵¹⁷ Government of Ghana, National Health Insurance Act (see footnote 325), art. 109.

⁵¹⁸ As noted by several researchers interviewed for the purposes of this report.

as anecdotal evidence suggests that most of these people are not covered by any social security scheme.” Ghanaian migrant workers including those in the informal sectors would have to be sensitized on the benefits of contributing to a voluntary social security system.⁵¹⁹ The need for such an approach is accentuated by the informal nature of work in which many Ghanaians seem to be involved in, and the inability of the current mainstream social security scheme framework in Ghana to adequately cover such workers. The ILO General Survey Concerning Social Security Instruments (2011) states that the principal challenge in relation to equality of treatment and non-discrimination is the low coverage of social security, since almost 9 million workers out of the estimated 11 million total working population are engaged in informal economic activities. It is estimated that less than 1 per cent of workers in the informal economy is covered by the Social Security and National Insurance Trust (SSNIT).⁵²⁰

A developing policy regime is set to inform further labour emigration policymaking in Ghana

The needed extension of social security and supporting arrangements to Ghanaian workers abroad must be seen in the light of a developing policy framework. The lack of a comprehensive labour emigration policy is tempered by the development of a Diaspora Engagement Policy⁵²¹ and the recent adoption of a Labour Migration Policy,⁵²² in addition to explicit announcements in this regard also in the National Migration Policy (2016) and the earlier National Employment Policy (2014).⁵²³ However, generally speaking, this needs to be supported by an identification of employment opportunities abroad, which is still largely lacking.⁵²⁴ Also, the National Migration Policy specifically stresses the need to harness the development potential of emigrants; the creation of incentives to retain Ghanaian professionals; provision of a framework for the financial contribution of emigrants towards national development goals, the promotion and facilitation of the return of skilled emigrants through brain gain initiatives, such as reintegration packages; and increasing research and data gathering on emigrant investors and skills transfer.

6.1.4. Kenya

There is a general absence of provisions, subject to qualification, extending social protection to Kenyan migrant workers abroad and of portability arrangements

The Kenyan legal framework does not currently extend social protection to Kenyan migrant workers abroad. Since Kenyan migrant workers may not enjoy sufficient social security coverage in certain countries of destination, this has prompted workers to rely on different forms of informal social protection, supported by their engagement with Kenyan diaspora associations in these countries.⁵²⁵ Also, although some provision is made in the legal framework for portability arrangements, this is not supported by bilateral arrangements. As alluded to in [section 5.1.5](#), provision is made for the payment of a one-off emigration benefit (pension and provident fund) in the event of intended permanent relocation from Kenya. Also, as discussed more fully in [section 6.3.4](#), special arrangements are applicable when a Kenyan worker resides in another EAC member State, while BSSAs could contain dedicated portability and other arrangements. However, apparently no such agreement currently exists.

⁵¹⁹ Government of Ghana – MELR, Ghana National Labour Migration Policy 2020–2024 (see footnote 187), p. 41. See also: Government of Ghana – MFARI, Diaspora Engagement Policy for Ghana (Draft) (see footnote 188), p. ix.

⁵²⁰ ILO, “General survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization”, report presented at the 100th Session of the International Labour Conference, 3 March 2011, p. 87.

⁵²¹ Government of Ghana – MFARI, Diaspora Engagement Policy for Ghana (Draft) (see footnote 188).

⁵²² Government of Ghana MELR, Ghana National Labour Migration Policy 2020–2024 (see footnote 187).

⁵²³ Ibid. See also section 4.3.3 of this report.

⁵²⁴ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170.

⁵²⁵ Information obtained from questionnaires completed by key informants.

Reforms have been advocated

In completed questionnaires received, some government key informants have indicated that work is currently being undertaken by government towards an enhanced framework informing the portability of social security benefits. Furthermore, the importance of creating an avenue for Kenyan migrant workers to contribute to Kenyan public social protection schemes, in particular the National Social Security Fund and the National Health Insurance Fund, has been stressed, as a measure that would enable Kenyan family members staying behind in Kenya to benefit.

6.1.5. Mauritius**Arrangements to attract the Mauritian diaspora**

This matter is also partly dealt with in [section 4.3.5](#). As noted by IOM, large Mauritian diasporas have been established in Australia, Canada, South Africa, the United Kingdom and France:

Recognizing the importance of migration as a means of development both through remittances and skills acquisition abroad, the Mauritian government has responded to this situation with a comprehensive strategy to promote circular migration as well as set up structures to improve opportunities for migrants to invest, develop small and medium enterprises, and use their newly acquired skills from abroad, upon their return to Mauritius.⁵²⁶

The Mauritius Diaspora Scheme (2015), complemented by the Mauritian Diaspora Scheme Guidelines (2020), operating under the purview of the Economic Development Board, aims to attract Mauritian investors and skilled professionals living abroad back to Mauritius to participate in the economic development of the country. A citizen of Mauritius and a child or grandchild of that citizen abroad qualifies as part of the diaspora, irrespective of whether that person holds a Mauritian passport. Incentives provided include tax exemption for a period of up to ten years, in the case of income remitted to Mauritius; exemption from the payment of motor vehicle excise duty; exemption from the payment of customs duty and value added tax on household and personal effects imported into Mauritius; exemption from the payment of registration duty in respect of the transfer of a (first) residential property; and, if the person does not hold citizenship, the granting of permanent residency status (i.e. a permanent residence permit valid for a period of ten years, renewable) to the person concerned and his spouse, child or up to three wholly dependent next of kin.⁵²⁷

Labour exchange arrangements accentuate the need for social protection guarantees

The need for appropriate social protection arrangements for Mauritian workers is accentuated by the large and growing number of Mauritians working and living abroad, some of whom may not enjoy sufficient social protection coverage in the country of destination. This is especially true if they are working abroad on a short-term basis, often informed by bilateral labour exchange agreements concluded with such countries – as discussed in [section 4.3.5](#) of this report. With assistance from IOM, this has resulted in a strategy designed for placing workers in foreign countries, and the development of an online job portal used as a platform for both local and international job offers. Additionally, IOM established an online Database and Migration Resource Centre for Mauritians seeking employment abroad which provides an informative assistance to potential and actual Mauritian migrants in the migration and decision-making process, as well as to assist returning migrants to Mauritius, by providing information on options, procedures and reliable contacts.⁵²⁸

⁵²⁶ IOM, Mauritius homepage. Available at www.iom.int/countries/mauritius.

⁵²⁷ Economic Development Board of Mauritius, The Mauritian Diaspora Scheme homepage. Available at www.diaspora.mu/government.aspx.

⁵²⁸ IOM, Mauritius homepage. Available at www.iom.int/countries/mauritius.

6.1.6. South Africa

Deficient data, policy and strategic frameworks

South Africa has been losing substantial numbers of qualified and experienced professionals over the last decades; however, the country does not currently keep records of its nationals who have permanently relocated abroad, except for those who register with the Registration of South Africans Abroad (ROSA). No regular data collection or mapping of the diaspora is undertaken – there is need for the inclusion of an emigration module into the labour force, community and census surveys to provide data on South Africans residing abroad for purposes of employment. In fact, the emigration of South Africans for employment has been a neglected area of State intervention. No policy or strategic framework – for example, in the form of a diaspora policy or a national skills retention strategy – has yet been developed for the retention of skills and incentives for South African emigrants to return on a temporary or permanent basis, to facilitate diaspora remittances and investments, to reintegrate returning South Africans, or to support the recruitment and placement of South African workers overseas in fair and ethical conditions. Also, no dedicated assistance or protection is offered in terms of the labour and social protection rights of South African migrant workers, particularly when abroad and at return.

No provision has yet been made for extending the South African social security regime to South African migrant workers abroad

Apart from the limited framework provided for the portability of social security benefits in some of South Africa's social security laws, steps have not yet been taken to consider extending (contributory) social security benefits to South African migrant workers abroad, to the extent that such workers may not be (adequately) covered by the social security system of the country of destination. Several government representatives interviewed for this report expressed the view that consideration should be given to effect such extension.

The need for an enhanced legal framework

The Employment Services Act (No. 4 of 2014) regulates the operation of private employment agencies, but does not address the following situations:

- (a) The recruitment of South African workers for overseas placement by South African or foreign private employment agencies or the partnering between South African agencies and foreign ones;
- (b) The activities of foreign private employment agencies in South Africa;
- (c) Online recruitment activities by South African or foreign private employment agencies.

6.2. Barriers to accessing social protection and support services

6.2.1. Côte d'Ivoire

Several interventions aimed at facilitating, supporting and protecting Ivorian migrant workers are largely absent

Apart from initiatives aimed at engaging the diaspora and to assist Ivorians abroad in crisis and their voluntary return, an appropriate legislative and policy framework to inform the engagement of Ivorian migrant workers abroad is largely lacking. This also applies to the recruitment of Ivorians for work abroad – much of the recruitment happens informally. This leaves Ivorian migrants exposed to abuse and exploitation – as already indicated, there is indeed a strong link between informal

recruitment, trafficking in persons and exploitation within Côte d'Ivoire and of Ivorians abroad.⁵²⁹ As noted in [section 4.3.1](#), there is a lack of pre-departure training and formal employment contracts organized by recruitment agencies. Furthermore, public employment services are not involved in facilitating employment abroad.⁵³⁰ There are also no circular migration programmes in place.

6.2.2. Ethiopia

Ethiopian workers abroad face significant barriers as they are unable to access Ethiopian social protection and often also country of destination social protection

In Ethiopia, while social protection is being promoted as demonstrated by the adoption of the Overseas Employment Proclamation (No. 923/2016) and the drafting of the Ethiopian National Social Protection Policy, major challenges in accessing social protection still exist. Challenges in relation to extending social security to migrant workers include lack of focus or exclusion of migrant workers from social security legislation, overrepresentation in the informal sector, discrimination and lack of equality of treatment with other workers. To this can be added poor legal protection and exclusion from social security; linguistic and cultural barriers; as well as overall stigmatization and discrimination; complexity of procedures; and inadequacy of administrative mechanisms, often a deterrent to social security registration. Lack of an adequate base of information which leads to asymmetric positions in negotiations between workers and employers constitutes additional barriers.⁵³¹

There are major challenges regarding support services for Ethiopian migrant workers abroad and returned migrant workers

As indicated in [section 5.1.3](#), Ethiopian scholars interviewed for this report have indicated that return and reintegration services are currently only provided by NGOs but remain weak and incomplete. They have also pointed to the weak support available to Ethiopian migrant workers abroad. Note has to be taken of recent legal and institutional mechanisms adopted by the Government of Ethiopia to address return and reintegration concerns, as discussed in [section 5.1.3](#).

6.2.3. Ghana

Challenges experienced by Ghanaian workers abroad in relation to access to social protection and, in some cases, treatment abroad

As indicated in [section 5.1.4](#), emigration benefits and portability of social security benefits are provided for only in relation to non-Ghanaian contributors to the public social security scheme in Ghana. Furthermore, exploitation and abuse suffered by Ghanaian workers abroad led to the imposition of a ban on labour migration to countries in the Gulf region in 2017.⁵³²

Strengthening the recruitment regime

While there is an absence of public employment services operative in this area, private employment agencies are active in the recruitment of Ghanaians for work abroad. However, it has been remarked that many of them are unlicensed and operate outside the scope of law; some are reportedly involved in human trafficking activities; the shortcomings of the current recruitment

⁵²⁹ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), pp. 9–10.

⁵³⁰ Ibid.

⁵³¹ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154); ILO, *Improving Social Protection for Ethiopian Migrant Domestic Workers (MDWs)* (Addis Ababa, 2017), available at www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/--sro-addis_ababa/documents/publication/wcms_621553.pdf.

⁵³² IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), p. 33; Atong et al., "Africa labour migration to the GCC States" (see footnote 106), p. 60.

regime have been extensively reported, as is the case with suggested solutions.⁵³³ In addition, while some recruitment agencies would render different forms of support to Ghanaian workers prior to departure and while in the country of destination, they do not bear liability to do so. In fact, the current legislative regime imposes on the Government the obligation to provide pre-departure orientation and vet contracts prior to granting exit permits.⁵³⁴ The National Labour Migration Policy 2020–2024 indicates the following steps to be taken to help address these shortcomings:⁵³⁵

- (a) Ratify and domesticate the ILO Private Employment Agencies Convention, 1997 (No. 181).
- (b) Implement ILO General Principles and Operational Guidelines on Fair Recruitment and design comprehensive frameworks on the responsibilities of private recruitment agencies and penalties for violation of the rights of migrants.
- (c) Regulate the Ghanaian recruitment industry through effective licensing schemes, codes of conduct, publishing the list of licensed private recruitment agencies, monitoring and penal provisions to address offences by private recruitment agencies, including withdrawal of recruitment and placement licences in cases of violations, and requirements for insurance bonds to be used to offer monetary compensation to internal and international migrant workers when a private recruitment agency fails to meet its obligations.

Extending protection of migrant workers abroad

In order to further extend protection of Ghanaian migrant workers abroad against abuse and exploitation, the National Labour Migration Policy 2020–2024 policy proposes the use of effective mass communication channels and pre-departure training programmes to raise awareness about the dangers of irregular migration and rights of migrants. Other policy proposals for protecting labour emigrants and their families include: strengthening the resource and technical capacity of Ghanaian embassies to play a key role in the protection of migrant workers; engaging Governments of destination countries to set-up mechanisms for migrant workers to lodge complaints about violations of their rights and implementing regulations to prohibit the seizure of travel documents of migrant workers. Also the National Migration Policy for Ghana (2016) emphasizes principles of protection of migrant rights, facilitation of migrant equality, adherence to the 1992 Constitution of Ghana, which guarantees the rights of Ghanaians to emigrate and the right of all persons to circulate freely within Ghana.⁵³⁶

Diaspora engagement: Remittance facilitation and migrant-led investments

Building on the measures contained in the National Migration Policy (see [section 4.3.3](#)), the National Labour Migration Policy 2020–2024 suggests the following strategies to leverage remittances for development include: empowering of Ghana Missions to develop services to facilitate remittances transfers; working with the Bank of Ghana and banks/financial institutions in destination countries to reduce the cost of transferring money to Ghana; organizing financial literacy programmes for migrants and recipients of remittances; and working with financial institutions to develop more attractive remittances-linked investment products. This Policy also indicates that migrant-led investments is expected to be promoted by organizing regular investment promotion campaigns among migrants, establishing fiscal and non-fiscal incentives for migrants' business development and growth, reducing the administrative cost of doing business in Ghana, fostering partnerships

⁵³³ Ibid., pp. 33 and 39–46; ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 170.

⁵³⁴ Information obtained during interviews with representatives of two recruitment agencies.

⁵³⁵ Government of Ghana – MELR, *Ghana National Labour Migration Policy 2020–2024* (see footnote 187), p. 33.

⁵³⁶ Government of Ghana – Ministry of the Interior, *National Migration Policy for Ghana* (see footnote 200).

with prominent Ghanaian professionals abroad and using them as agents to lobby entrepreneurs to invest in Ghana.⁵³⁷

Strengthened return and reintegration arrangements

Several researchers and recruitment agencies interviewed for purposes of the Report indicated the weak return and reintegration support currently available to Ghanaian migrants. The draft Diaspora Engagement Policy suggests in this regard the following:

The policy strategies include development of a national return, readmission and reintegration framework for all categories of return migrants (skilled and unskilled, professional, among others) within a relatively short period of time, return migration programmes that cover preparation prior to return which can equip potential returnees with information on adjustment and reintegration as well as socio-economic opportunities in Ghana such as jobs and skills training programmes. In addition, the establishment of returnee counselling services that can address the peculiar needs of return migrants and thereby facilitate their smooth readmission and reintegration into the Ghanaian society shall be pursued.⁵³⁸

6.2.4. Kenya

Steps taken to protect Kenyan migrant workers abroad, supported by limited legislative provisions

Subject to measures indicated in sections 6.1.4 and 6.3.4 of this report, dedicated policy and legal provisions on extending social and related forms of protection to Kenyan workers abroad are largely lacking. However, the Employment Act (2007) requires a foreign contract of service to be attested by a labour officer.⁵³⁹ Also, in response to reports of exploitation and abuse of Kenyan domestic workers in certain Gulf countries, the Government of Kenya has adopted a range of measures:

The Government of Kenya, in 2014, imposed a total ban on the export of labour to the Gulf following reports of deplorable working conditions, human rights violations, exploitation and abuse of Kenyans. The licences of 930 recruitment agencies in Kenya were also revoked. A task force was subsequently established to review the framework of foreign employment and labour migration and recommend interventions to address the challenges in the sector. A key intervention is the setup of an Inter-Ministerial Vetting Committee to vet the registration of private recruitment agencies, of which 65 have so far been accredited and authorized to place labour for employment abroad. A key informant at the NEA said that all labor contracts for those who will work abroad will be attested by labor authorities to ensure that Kenyans do not face exploitation abroad.⁵⁴⁰

In addition, before workers depart, they will undergo a mandatory pre-departure training under a skills curriculum developed and executed by NITA. This initiative specifically, empower and facilitate the integration of domestic workers intending to travel to the Gulf countries. Kenya is also party to some BLAs, for instance, with Saudi Arabia (2017), Qatar (2017) and the United Arab Emirates (2017) to ensure the protection of the human and labour rights of especially Kenyan domestic workers in GCC States. Other BLAs have also been initiated with Kuwait, Oman, Lebanon and

⁵³⁷ Government of Ghana – MELR, Ghana National Labour Migration Policy 2020–2024 (see footnote 187), p. 11.

⁵³⁸ Government of Ghana – MFARI, Diaspora Engagement Policy for Ghana (Draft) (see footnote 188), p. xi.

⁵³⁹ Government of Kenya, Employment Act (see footnote 343), sections 83–86.

⁵⁴⁰ Atong et al., “Africa labour migration to the GCC States” (see footnote 106), p. 57; “Kenya labour migration” (see footnote 221).

Jordan. Kenya has also stationed labour attachés or officials in the GGC States to monitor the living and working conditions of their migrants.

Policy responses supporting protective interventions

The Draft National Labour Migration Policy and Strategy (2017) for Kenya recognizes the abuse and exploitation of Kenyans working abroad; the exploitative working conditions and limited rights of many migrant workers, especially low-skilled workers; and those women who face specific protection challenges. It calls for various interventions to ensure that migrants' rights are protected, including the concluding of BLAs, pre-departure training, and the effective regulation of private employment agencies. The 2014 Diaspora Policy also calls for several mechanisms to enhance the protection of Kenyan migrant workers, including the development of BLAs; strengthening the regulatory framework for employment agencies; conducting pre-departure training for migrant workers; and facilitating the registration of Kenyans abroad through Kenya's diplomatic missions.⁵⁴¹

Further foreseen reforms

According to a government key informant in a questionnaire, steps have been taken to enhance the protection of Kenyan migrant workers abroad by designing a migrant welfare fund. Furthermore, given the current inadequate return and reintegration measures, steps are also being taken to design a return and reintegration programme. Also, the Government of Kenya is paying particular attention to appointing labour attachés in countries with which a BLA has been concluded.

6.2.5. Mauritius

The need to further strengthen access to social protection for Mauritian migrant workers abroad

Portability arrangements are in place in relation to certain Mauritian social security payments. However, most of these arrangements are restricted to portability of benefits to which Mauritians (and in some instances, non-Mauritians) may be entitled to. Also, they do not, as such, provide for Mauritian workers abroad to continue contributing to the (contributory) part of the Mauritian social security system. It has been suggested that the Government of Mauritius is trying to put in place a hybrid system of social protection for Mauritian workers who are working in countries of destination: This system will benefit the workers, as well as their family members and help to regularize social security payments to retired citizens who have worked overseas."⁵⁴²

Limited measures to support ethical recruitment and the protection of Mauritian migrant workers abroad

No formal regulations or institutional measures have been developed to promote the ethical treatment and recruitment of migrant workers, even though there are certain regulations in place regarding private recruitment agencies. The improved regulation of recruitment charges has been specifically indicated as an area that needs to be addressed.⁵⁴³ Mauritius has few mechanisms or measures in place to protect the rights of its nationals working abroad but provides consular assistance in a number of countries on a case-by-case basis.⁵⁴⁴

⁵⁴¹ ILO, *Assessment of Labour Migration and Mobility Governance: Kenya* (see footnote 242); "Kenya labour migration" (see footnote 217).

⁵⁴² Sobhee, *Assessing the Evidence (Mauritius)* (see footnote 260), p. 19.

⁵⁴³ Information obtained from a questionnaire completed by a representative of the Government of Mauritius.

⁵⁴⁴ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 6.

Strengthened return and reintegration framework required

Return and reintegration arrangements have reportedly not been well developed.⁵⁴⁵ However, a BLA with France provides for and incentives assistance voluntary return and reintegration.⁵⁴⁶

6.2.6. South Africa

Constrained access to social security benefits

In section 5.2.9 of this report, mention is made of challenges experienced by foreign workers returning to their country of origin in accessing South African social security benefits. These constraints largely also apply to South African migrant workers living and/or employed abroad.

6.3. Bilateral and multilateral agreements/arrangements

6.3.1. Côte d'Ivoire

The impact of dedicated ECOWAS free movement and social security regimes

Under the ECOWAS free movement protocols, Ivorian nationals are allowed to reside in and work in waged or self-employment in other ECOWAS countries. Furthermore, for those engaged in the formal economy and on the basis of the provisions of the ECOWAS General Convention on Social Security, Ivorian nationals enjoy equal treatment with nationals as regards access to social security in other ECOWAS countries where Ivorian nationals may work; have their periods of employment or contribution in Côte d'Ivoire aggregated with similar periods in other ECOWAS countries, for purposes of calculating the benefit they would be entitled to; and have their benefits paid to them, in either Côte d'Ivoire or another ECOWAS member State where they may find themselves. Also, as mentioned earlier, it has also signed (but not yet ratified) the CIPRES Multilateral Convention on Social Security (2006).⁵⁴⁷ Ivorian nationals stand to benefit from the envisaged extension of portability of retirement pensions to all 16 CIPRES member States.⁵⁴⁸

Labour rights are extended, but little provision is made for social protection coverage in existing BLAs

The current BLAs, particularly those with France and Qatar, arrange for entry into and employment in the countries concerned and extend coverage under the labour laws of the two concerned countries. However, little provision is made in the BLAs for extending social protection coverage in these two countries, respectively.

BSSAs are of benefit to Ivorian workers abroad

These benefits flow from the provisions of the BSSAs that Côte d'Ivoire has in place with France and with Benin, Burkina Faso, Mali, the Niger, Senegal and Togo), and may include equal access to the (contributory) social security schemes of the countries concerned, and the portability of social security benefits.⁵⁴⁹

⁵⁴⁵ Information obtained from a questionnaire completed by a representative of the Government of Mauritius and during an interview with several others.

⁵⁴⁶ IOM, "Migration governance snapshot: The Republic of Mauritius", June 2018 (see footnote 252), p. 6.

⁵⁴⁷ ECOWAS, "Convention multilatérale de sécurité sociale" (see footnote 140).

⁵⁴⁸ IOM, *MGI – Côte d'Ivoire 2019* (see footnote 133), p. 13.

⁵⁴⁹ ICMPD and IOM, *A Survey on Migration Policies in West Africa* (see footnote 124), p. 144.

6.3.2. Ethiopia

Ethiopian migrant workers abroad are not covered by BSSAs, while BLAs invariably do not cover social (security) protection

As noted earlier, BSSAs meant to cover Ethiopian workers abroad have yet to develop. Ethiopia participates in several bilateral migration negotiations, primarily with respect to labour and exchange of manpower, and the protection of nationals working overseas. New bilateral agreements have been signed with Saudi Arabia (2017) and United Arab Emirates (2018) based on the Overseas Employment Proclamation (No.923/2016). Previously, bilateral agreements were signed with countries such as Qatar and Jordan (2012) and Kuwait (2010), but these need to be revised to account for Proclamation No. 923/2016. In addition, bilateral negotiations are under way with Oman, Bahrain and Lebanon.⁵⁵⁰ However, as noted in a 2017 labour migration assessment regarding Ethiopia, social security is an area that has received little attention in the current range of bilateral instruments. For example, in some of the instruments, no or inadequate provision is made for migrant workers suffering from occupational injuries or diseases. Social security support can be achieved in various ways, including the development of a welfare fund financed by recruitment agencies/employers/governments concerned, and/or contributions made (e.g. through remittances) by migrant workers themselves. Legally speaking, occupational injury or disease cover should be funded by employers.⁵⁵¹

There is a need for an improved bilateral regime to ensure better support for Ethiopian workers abroad

BLAs and other agreements should ensure better protection for Ethiopian migrant workers abroad, in view of their particular migration experience. This may include the need to agree on conditions for regularization interventions.⁵⁵² An important development, though, is the existence of a bilateral agreement between the Confederation of Ethiopian Trade Unions and its Lebanese counterpart.⁵⁵³

6.3.3. Ghana

Despite some legislative provision, bilateral agreements do not yet extend social protection

Earlier, mention was made of legislative provision in Ghana allowing for the conclusion of a bilateral (reciprocal) agreement with the government of another country in which a scheme similar to the Ghanaian social security scheme has been established, and for the agreement to provide for maintenance of accrued rights and the aggregation of insurance contribution periods.⁵⁵⁴ However, as far as could be determined, also for the benefit of Ghanaian workers abroad, no such reciprocal agreements have yet been concluded by Ghana. Furthermore, the few but increasing number of BLAs concluded by Ghana⁵⁵⁵ apparently do not provide for social security protection of Ghanaian workers abroad. This also affects many Ghanaians who return home before retirement, who face challenges in receiving social security benefits because, apart from the ECOWAS *General Convention on Social Security* which governs social security transfers within the ECOWAS region, BSSAs are absent.

⁵⁵⁰ IOM, *MGI – Ethiopia 2019* (see footnote 178).

⁵⁵¹ IOM, *National Labour Migration Management Assessment: Ethiopia* (see footnote 154), p. 41.

⁵⁵² Information obtained from an interview with and from questionnaires completed by Ethiopian researchers.

⁵⁵³ Information provided during interview with an Ethiopian trade union representative.

⁵⁵⁴ See section 5.3.4 of this report.

⁵⁵⁵ IOM, *An Exploratory Study on Labour Recruitment and Migrant Worker Protection Mechanisms in West Africa* (see footnote 123), pp. 38–39. (During interviews, government representatives, researchers and recruitment agencies indicated that such agreements have been concluded with Qatar and the United Arab Emirates, as well as with Barbados (concerning the despatch of nurses to Barbados), in addition to a non-operational agreement with Italy.)

Policy proposals support the conclusion of bilateral agreements and portability of social security benefits to Ghanaians working abroad

The *National Migration Policy* (2016) includes strategies to achieve portability of social security for Ghanaians working abroad in order to encourage their return. The *National Labour Migration Policy 2020–2024* further indicates the creation of platforms that facilitate negotiations and signing of social security portability agreements with major destination countries so that Ghanaians working in those countries would be able to access their social security benefits even if they return to Ghana before attaining their retirement age: “Such a strategy would encourage Ghanaian professionals living abroad to return home, as anecdotal evidence suggests that lack of access to social security benefits is one reason why some highly-skilled migrants are reluctant to return.”⁵⁵⁶ The Policy recommends the following strategies in this regard:⁵⁵⁷

- (a) Formulate new legislative instruments to facilitate the implementation of the ECOWAS *General Convention on Social Security* and relevant ILO instruments on migrant workers social protection, particularly the Convention on Social Security (Minimum Standards), 1952 (No. 102); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Maintenance of Social Security Rights Recommendation, 1983 (No. 167) and the Social Protection Floors Recommendation, 2012 (No. 202), which sets basic social security guarantees to all residents and children.
- (b) Sign BSSAs and MSSAs with countries of destination with high numbers of Ghanaian nationals and establish mechanisms through which the social security systems of Ghana and host countries can work together to ensure that migrant workers enjoy the benefits of social security portability.
- (c) Ensure that social security provisions are included in temporary labour migration programmes or BLAs using the Annex of the ILO Migration for Employment Recommendation, 1949, (No. 86) as a model agreement.

6.3.4. Kenya

Kenya has ratified several multilateral instruments and concluded BLAs, but no BSSA, to date

The extent and value of the multilateral (in particular, ILO) instruments ratified by Kenya were raised in [section 5.3.5](#) of this report. It has signed BLAs with certain categories, including Qatar and the United Arab Emirates, as well as with Saudi Arabia, on the recruitment of Kenyan domestic workers. However, these agreements do not contain specific provisions regarding social security benefit protection.

Legislative provisions provide a framework for the conclusion of BSSAs and extend protection to Kenyan workers in other EAC member States

The National Social Security Fund Act, Act 45 of 2013 authorizes Government to make Regulations to give effect in Kenya to any social security agreement providing for reciprocal arrangements with the government of any country beyond the EAC, in which a fund scheme similar to the Kenyan National Social Security Fund has been established. The Regulations could stipulate the extent to which the provisions of the Act should be modified or adapted to give effect to the Act, and are in principle applicable to self-employed persons too. Specific provision is made for the avoidance of a right to a double benefit. In the event of a Kenyan employee residing within another EAC member State, the NSSF has to coordinate with the social security scheme of that country to

⁵⁵⁶ Government of Ghana – MELR, *Ghana National Labour Migration Policy 2020–2024* (see footnote 187), p. 42.

⁵⁵⁷ *Ibid.*; Government of Ghana – MFARI, *Diaspora Engagement Policy for Ghana (Draft)* (see footnote 188), p. xi.

ensure that, among others: (a) the member is registered under the social security scheme of that member State; (b) payment of contributions into the scheme of that country and the preservation of contributions and corresponding benefits; and (c) the exportability of benefits – and where the employee returns to Kenya, the physical transmission of contributions and benefits to the NSSF. Finally, provision is also made for continued membership of and contribution payments in relation to Kenyan workers being seconded abroad, provided the secondment does not exceed a period of three years.⁵⁵⁸

Insufficient social protection provisions in BLAs call for revision of these agreements

It has been noted by some government officials and non-government stakeholders in their respective completed questionnaires submitted for the purposes of this report, that the current BLAs do not sufficiently provide for social protection, including in terms of social benefits in particular. Therefore, it has been indicated, there is a need to align BLAs with international standards in this regard.

6.3.5. Mauritius

There is an absence currently of bilateral agreements extending social protection to Mauritian workers abroad

As noted in [section 5.3.7](#), BLAs with dedicated social protection provisions, and BSSAs are currently not existing. However, the Migration and Development Policy (2018) foresees fundamental change in these areas; it provides:

47. On the basis of the previous lessons learnt and experiences, enter into new labour migration government-to-government bilateral agreements, including on circular migration (training, employment, apprenticeship), in full respect of labour standards and decent work principles. Consult social partners in the process of negotiating bilateral agreements; 48. Initiate, negotiate and sign labour migration agreements with representatives of the private sector abroad; 49. Negotiate social protection agreements with the main countries of destination so as to ensure protection concerning various aspects of social policy.⁵⁵⁹

Bilateral agreements to support and the involvement of the Mauritian diaspora are foreseen

The policy further foresees the conclusion of bilateral agreements on the recognition of qualifications, certificates and diplomas with the countries of destination concerned; as well as the initiation of temporary return skills and knowledge exchange twinning and mentorship programmes (scholarships, secondments, sponsorships, internships) for qualified diaspora members who would work with their peers in specific sectors (e.g. health, finance, technology, ocean economy, management) during a pre-determined period of time. Finally, the policy envisages the signing of memoranda of cooperation with the most important countries of destination for the Mauritian diaspora, enabling its members to take special leave for extended absences without the loss of residence and employment rights and entitlements, thus facilitating and encouraging their temporary return.⁵⁶⁰

⁵⁵⁸ Government of Kenya, National Social Security Fund Act (see footnote 341), section 64.

⁵⁵⁹ Government of Mauritius, Migration and Development Policy and Action Plan 2030 (see footnote 257), p. 27 (paras. 47–49).

⁵⁶⁰ *Ibid.*, p. 30 (paras. 69–71).

6.3.6. South Africa

BSSAs are largely absent

In [section 5.3.9](#) of this report, mention was made of the various South African social security laws providing for portability of some social security benefits, as well as for the conclusion of bilateral (social security) agreements providing for such benefits to be made available on the basis of reciprocity. However, with the few limited exceptions indicated there, such BSSAs have not been concluded, while those BLAs, which make limited provision for entitlement to and rendering of social security benefits (such as the BLA between Mozambique and South Africa, earlier discussed), only apply to the migrant workers coming to South Africa, and not to South African migrant workers abroad. Several government representatives interviewed for this report expressed the view that the conclusion of BSSAs should be a priority.

6.4. Conclusions and recommendations

The studied countries of origin have not (yet) extended their publicly provided social security coverage to their migrant workers abroad

While some provision is made in the legislative and policy domains of the studied countries of origin for unilateral portability of certain social security benefits and the conclusion of BSSAs, and while limited provision is made for seconded workers to be covered by origin country social security systems (e.g. Ghana (public servants); Kenya (through the provisions of the National Social Security Fund Act), the studied countries have not (yet) extended the reach of their own public social security systems to capture their migrant workers abroad. In this regard, much can be learned from commendable approaches adopted in certain Asian countries of origin (see [Chapter 7](#)) and even in Africa – for example, article 14(4) of the *Law on Social Protection*, Law No. 4 of 2007 (Mozambique) stipulates:

“Mozambican workers abroad who are not covered by international agreements may register in compulsory social security and the scheme for self-employed persons will be applicable to them.”

Recent/developing policy frameworks foresee the better regulation of labour migration and enhanced social protection of migrant workers abroad

Recent policy instruments (e.g. Ghana, Mauritius, Kenya (draft), South Africa (draft)) envisage streamlined labour migration regimes and, to some extent, the extension of social protection to migrant workers abroad. The policy frameworks foresee among other improved regulation of the private recruitment industry, in an attempt to better protect migrant workers emanating from the countries of origin.

Some legal frameworks are being adopted to deal with the plight of migrant workers from origin countries

Ethiopia provides a good example of a country that has adopted a legal framework to streamline overseas deployment, including the regulation of the recruitment industry. This is accompanied by a model employment contract, which also provides for some modicum of social security coverage. However, otherwise, legislative measures pertaining to recruitment of nationals for work abroad are still absent, even though the developing policy framework acknowledges the need for this (see above). Also, as mentioned above, these legislative measures do not (yet), but subject to the indicated qualifications, extend coverage in terms of domestic social security systems to these migrant workers. Several countries have also adopted anti-human trafficking laws.

BSSAs and MSSAs are important for extending social protection support, although BLAs rarely make provision for this purpose

These matters were extensively discussed in [section 5.4](#). However, the legal frameworks of the concerned origin countries often still have to contain provisions to give effect to MSSAs and BSSAs – as acknowledged in, for example, recent Ghanaian policy frameworks. In the Kenyan case, the *National Social Security Fund Act* regulates the position of Kenyan employees residing in other EAC member States and emphasizes coordination with the social security schemes of such countries, for this purpose.

Countries of origin have adopted a wide range of measures to protect and support migrant workers abroad

Although the absence of the involvement of public employment services is noticeable, some of the studied origin countries have commenced with labour exchange arrangements and agreements – notably Ghana and Mauritius. However, more work can be done to invest in identifying suitable employment opportunities abroad. Also, given the negative experiences of many migrant workers in certain Gulf countries, several origin countries (e.g. Ethiopia, Ghana and Kenya), have introduced temporary bans on employment in certain or all countries of destination. This has been accompanied by a strengthened legal environment (e.g. Ethiopia) and administrative measures to ensure vetting of recruitment agencies, attestation of employment contracts, pre-departure orientation, the requirement of a supporting BLA informing deployment of workers abroad, and the appointment of labour attachés (e.g. Kenya).

Extensive arrangements have been made to liaise with and involve the diaspora in the development of origin countries

Supported by recent policy regimes, and following the example of many other African countries, some of the studied countries of origin (e.g. Côte d' Ivoire, Ethiopia, Ghana (foreseen)) have adopted a wide range of measures to liaise with and involve the diaspora – including the mapping of the diaspora; setting up a of a dedicated Ministry and other agencies; the development of clarifying policies; support given to investments and entrepreneurial involvement from migrant workers abroad, on a preferential basis; the easing of remittance regulations; skills transfer programmes; tax incentives; and reducing the cost of doing business. However, the data environment needs to be strengthened – regular and improved data collection (e.g. via a dedicated emigration module as part of Labour Force surveys) and mapping of the diaspora can be improved.

While some provision is made to support and involve returnees, much more can be done to extend support to returned migrant workers, and family members of migrant workers who have stayed behind in origin countries

Some policy measures are being adopted or are foreseen to support returnees, also in relation to reskilling, business support and including them into the labour market of countries of origin (e.g. Ghana), these measures are incomplete. Much can be learned from worldwide good experience in this regard. Similarly, family members of migrant workers, in particular those staying behind in countries of origin, are largely neglected in the policy, legal and institutional domains of these countries.



7 Migrant worker welfare programmes: Comparative examples

7.1. Overall perspectives: A recent study

7.1.1. Findings from a recent comparative study⁵⁶¹

A recent comparative study reflects on two dimensions of relevance to this report, in relation to 13 countries of origin outside the European Union framework, namely: (a) access to social protection by immigrants, emigrants and resident nationals in the country concerned; and (b) diaspora policies, consular services and social protection of citizens of the country concerned abroad. Some of the key dimensions are indicated in the succeeding sections.

7.1.2. Non-resident nationals: Formal exclusion, with some exceptions

The study conclusions in this regard are:

- (a) Employment status and residence in the country of origin are crucial. Moving abroad usually result in the loss of most social protection benefits, particularly social assistance. The territoriality principle appears to be the paramount consideration.
- (b) However, certain exceptions exist:
 - i. In certain policy areas, notably pensions and invalidity, provision is made for exportability of benefits.
 - ii. At times, special schemes are created to cover migrants abroad – for example, to grant access to health care for the individual concerned and even for his/her family in the country of origin.
 - iii. Bilateral and multilateral agreements play a crucial role to extend coverage.

One of the reasons for this state of affairs is that often these migrants work and reside in countries of destination with strong welfare regimes.

7.1.3. Creation of a supportive institutional framework

A supportive institutional framework is important to enable access to social protection in both the country of origin and the country of destination. Furthermore, to the extent that there is engagement with the diaspora, this may have an influence on homeland policies and politics, including those concerning treatment of the diaspora in social protection terms. The institutional framework relates to the support given by consulates, the institutional structures in the country of origin rendering support, and the possibility of interest-representative institutions (e.g. diaspora-elected parliamentary members; official consultative bodies).

⁵⁶¹ Jean-Michel Lafleur and Daniela Vintila, *Migration and Social Protection in Europe and Beyond (Volume 3): A Focus on Non-EU Sending States*, IMISCOE Research Series (Cham, Switzerland Springer, 2020).

7.2. Nepal

A limited but increasing range of social protection benefits, in addition to other benefits, are available to Nepalese migrant workers

Currently, limited provision is made in the form of compensation through the Foreign Employment Welfare Fund (FEWF), funded, among others, via individual contributions from outgoing migrant workers. The FEWF has been utilized, for example, to provide compensation to the families of deceased migrant workers (survivors' benefit) and to workers who sustain injuries or suffer from grave illness (employment injury benefit) – the eligibility period to avail of these benefits is the duration of the labour approval or within a year of return to Nepal. Migrant workers are also required to purchase life insurance of at least USD 8,795 through insurance companies enlisted with the Department of Foreign Employment – this covers workers against the death or physical injury occurring from whatever reason, and must remain valid during the term of foreign employment.⁵⁶² In addition, the Non-Resident Nepali Act (No. 2064 of 2008) extends certain benefits to non-resident Nepalese, defined to include both Nepalese citizens residing abroad for work (excluding those in member countries of the South Asian Association for Regional Cooperation (SAARC)) and foreign citizens of Nepalese origin (again excluding those in SAARC countries).⁵⁶³ “Non-resident Nepalis [Nepalese], under the Act, are eligible for Non-Resident Nepali (NRN) Identification cards for ten years, with the possibility of renewal. The cards grant benefits such as the waiver of a visa for entry into Nepal and eligibility for certain rights in Nepal on the same basis as nationals, including on investment and purchase of land or other property in order to reside in Nepal.”⁵⁶⁴ In addition, a foreign citizen of Nepalese origin may conduct any industry or business on par with Nepalese citizens.⁵⁶⁵

Comprehensive institutional arrangements support Nepalese migrant workers, both horizontally and vertically

The Nepal Labour Migration Report (2020) notes that:

A robust institutional architecture with a comprehensive legal and policy framework is in place to better regulate and manage this sector. While MOLESS (Ministry of Labour, Employment and Social Security) has the overall responsibility of guiding labour migration-related policymaking, other key dedicated government institutions include DOFE [Department of Foreign Employment] for regulatory tasks, the Foreign Employment Board (FEB) for welfare-related tasks and the Foreign Employment Tribunal (FET) for access to justice. In addition, a large number of stakeholders from the public and private sectors are engaged in various facets of labour migration governance. The successes and challenges of migration related initiatives lie in stronger horizontal and vertical coordination among the different stakeholders.

...

Labour migration governance is multi-level with ongoing initiatives at the subnational, national, bilateral, regional and global levels. At the local level, the Local Governance Operations Act (LGOA) 2017 has mandated local governments to carry out foreign employment related activities including data collection, training, information

⁵⁶² Government of Nepal – Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report 2020* (Kathmandu, 2020), pp. 79–80.

⁵⁶³ Government of Nepal, Non-Resident Nepali Act (No. 2064 of 2008), art. 2(a).

⁵⁶⁴ IOM, *Migration in Nepal: A Country Profile 2019* (Kathmandu, 2019), pp. 76–77.

⁵⁶⁵ Government of Nepal, Non-Resident Nepali Act (see footnote 563), arts. 10 and 13.

dissemination, and reintegration of returnee workers. At the national level, recent reform initiatives include the amendment of the Foreign Employment Act and Rules to increase transparency in labour migration governance and the development of a comprehensive Foreign Employment Information Management System (FEIMS).⁵⁶⁶

Bilateral (labour) agreements have shown remarkable progress, providing for limited social protection and social security benefits

Especially in recent years, BLAs or MOUs with a host of destination countries, including Jordan, Japan, Malaysia, Mauritius and the United Arab Emirates, have been signed or renewed. These agreements contain strong worker-centric provisions, including, among others: (a) the “Employer pays” principle; (b) a standard (or “model”) employment contract, as well as a separate more comprehensive version for domestic workers; (c) equal pay for equal work; (d) no-cost access to justice; (e) cooperation on joint skills and orientation programmes; (f) health examination; (g) equal treatment vis-à-vis nationals of the destination country; (h) change of employer by migrant workers; (i) health and accidental insurance and medical fees, to be borne by the employer; (j) end-of-service benefits; (k) occupational health and safety emphasis; (l) special provisions to ensure the safety, security and welfare of female workers, with due regard to their special needs; (m) appropriate return arrangements; and (n) the establishment of a joint working group or joint technical committee to ensure proper implementation and monitoring of the BLA.⁵⁶⁷

Social security arrangements – on both a bilateral and unilateral basis – need to be further developed and better formalized

However, shortcomings in regard to social security, particularly in relation to **inadequate social security provisioning and arrangements**, have been recognized in the Nepal Labour Migration Report (2020), arguing that the revised **Foreign Employment Policy** should “...provide avenues for different types of bilateral cooperation in addition to the standard bilateral labour agreements **such as social security agreements**, skills partnerships and sector-specific agreements while considering the heterogeneity across migration corridors in terms of volume, employment sectors, recruitment modality and maturity. The policy should be forward-looking and explore the possibilities of including migrant workers in Nepal’s contributory social security schemes and overseas voting during general elections in Nepal [emphasis added].”⁵⁶⁸ Regional platforms, such as the Abu Dhabi Dialogue, provide a framework for interrogating social security and welfare schemes, **including the provision of insurance schemes** by both labour-sending and labour destination countries to deliver health coverage and funds to assist migrant workers in distress.⁵⁶⁹ The Nepal Labour Migration Report (2020) emphasizes the importance of preventive measures, but also recognizes the need for improved health care, especially in relation to the overall health of returnee migrant workers and, as indicated above, the possible inclusion of migrant workers in the Nepalese contributory social security system (launched in November 2018), noting their ability to contribute during their productive years, for social protection when they are in need.⁵⁷⁰

There is significant engagement with the Nepalese diaspora

Apart from (tax-free) investment incentives in Nepal, some of which are facilitated through the Foreign Investment and Technology Transfer Act (No. 2075 of 2019), much has been done by the Ministry of Foreign Affairs to involve the Nepalese diaspora in serving Nepal. The Government of

⁵⁶⁶ Government of Nepal – Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report 2020* (see footnote 562), pp. xv–xvi.

⁵⁶⁷ *Ibid.*, pp. xvi and 65–69.

⁵⁶⁸ *Ibid.*

⁵⁶⁹ *Ibid.*, pp. 70–71.

⁵⁷⁰ *Ibid.*, p. 84.

Nepal has set up a “Brain Gain Centre” to recognize and foster contribution to Nepal’s social and economic progress by the diaspora Nepalese experts and professionals around the world. Under the statutory umbrella of the Non-Resident Nepali Act, the Non-Resident Nepali Association has at its aim to unite the Nepalese diaspora. It has a network of Coordination Councils in 80 different countries.⁵⁷¹

Identified priorities will shape further reform of the support provided to Nepalese migrant workers

Apart from the envisaged revision of the Foreign Employment Policy previously mentioned, the Nepal Labour Migration Report (2020) of the Government of Nepal suggests the following key areas for the way forward.⁵⁷²

- (a) **Foreign Employment Information Management System.** Upgrade the Foreign Employment Information Management System (FEIMS) to include necessary details of workers and add foreign employers, and to inform policymaking.
- (b) **Migration survey.** Conduct a nationally representative migration survey once in two years, with standardized variables and templates.
- (c) **Integrated service delivery.** Integrate service delivery of migration-related services under one roof, to be prioritized at each province, and to simplify labour approvals individually, while considering an online pre-departure orientation certification system.
- (d) **Local and provincial government involvement.** Build the capacity of local governments; integrate Migrant Resource Centres (MRCs) and Employment Service Centres; and include provincial-level labour offices in migration-related services.
- (e) **Improved service delivery, including at diplomatic missions.** Improve interministerial coordination (labour and foreign affairs ministries) to ensure timely responses; prioritize labour counsellors and attachés at current and emerging destination countries, including all destination countries with which Nepal concludes BLAs. Setting up an emergency fund at diplomatic missions, targeted towards especially vulnerable migrants, should be considered.⁵⁷³
- (f) **Improved bilateral agreement and joint working group interventions.** Improve the BLA/MOU environment through coordinated implementation by relevant ministries, the preparation of a standard operations manual that covers the full BLA/MOU cycle, including preparation, drafting, negotiating and implementation and indicated institutional responsibilities; organize cross-border joint working group (JWG) meetings regularly with clear implementation agendas indicated; and invest in portability of social security benefits.
- (g) **Diversified labour markets.** Diversify labour emigration to include new destination countries and new sectors of employment.
- (h) **Financial and social remittances.** Expand on financial and social remittances – by marketing the Foreign Employment Savings Bond, promoting collective remittances in priority sectors (such as tourism, hydropower and agriculture), expanding on

⁵⁷¹ IOM, *Migration in Nepal: A Country Profile 2019* (see footnote 564), pp. 77–78 and 89–90.

⁵⁷² Government of Nepal – Ministry of Labour, Employment and Social Security, *Nepal Labour Migration Report 2020* (see footnote 562), pp. xvi–xviii.

⁵⁷³ For a detailed discussion of the role of Nepalese missions in migration governance, see: *Ibid.*, pp. 87–92.

the Government's comprehensive reintegration of returnee programmes by increasing the ownership of programmes targeted to returnee workers (including returnee soft loan programmes and business training), and establishing a one-stop centre for returnee migrant workers.

- (i) **Access to justice.** Improve access to justice and ensure timely response to grievances and their regular follow-up.
- (j) **Leveraged global and regional platforms.** Leverage global and regional platforms (including the Colombo Process, the Abu Dhabi Dialogue and SAARC) to raise issues concerning migrant worker rights, to develop a common voice on key issues in migration governance with other sending countries and to promote exchange of good practices. The Nepal Labour Migration Report 2020 (2020) emphasizes in particular that representatives of Nepal's Diplomatic Mission in major destination countries should regularly interact with consular officials and labour attachés of other Colombo Process member countries to share good practices and to identify avenues for cooperation and collective bargaining.⁵⁷⁴

7.3. The Philippines

An incrementally expanding social security coverage framework has been put in place for the benefit of Filipino migrant workers⁵⁷⁵

Over the last few decades, the Government of the Philippines has progressively adopted measures to extend social security coverage to Filipino migrant workers. These include:

- (a) Filipino workers recruited by foreign-based employers abroad may be covered by the Social Security System (SSS), provided for under the Social Security Act of 1997, on a voluntary basis.⁵⁷⁶ However, it is now incumbent on the 2.3 million overseas Filipino workers (OFWs) to compulsorily contribute to the Filipino Social Security System (SSS).⁵⁷⁷ In fact, Filipino migrant workers have two layers of social security protection under the SSS:⁵⁷⁸
 - i. A defined-benefit, social insurance scheme, providing basic pension as a safety net – this is the same regular coverage programme available to local workers in the Philippines. It has been noted that voluntarily insured persons pay the equivalent of the combined insured person and employer contributions of 11 per cent of gross monthly earnings on 31 income classes.⁵⁷⁹
 - ii. A defined-contribution, individual account scheme, serving as a supplemental pension-savings plan – the so-called “SSS Flexi-Fund Program”, a provident fund offered exclusively to Filipino migrants.

⁵⁷⁴ Ibid., p. 117.

⁵⁷⁵ See also section 3.4 of this report.

⁵⁷⁶ Government of the Philippines, Social Security Act of 1997, section 9(c). (It has to be noted that compulsory coverage is only for sea-based OFWs. Apparently, one of the gaps identified for SSS is the limited number of land-based OFWs covered by it because of its voluntary membership policy. To close this gap, it appears necessary to make SSS membership compulsory for land-based OFWs.)

⁵⁷⁷ Government of the Philippines, Social Security Act of 2018 (Republic Act No. 11199), section 9-B.

⁵⁷⁸ See, “Negotiating for bilateral social security agreements” (see footnote 61).

⁵⁷⁹ ISSA and SSA, *Social Security Programs Throughout the World: Asia and the Pacific* (Washington, D.C., SSA, 2018), p. 211. (For voluntarily insured OFWs, the minimum and maximum monthly earnings used to calculate contributions are PHP 5,000 pesos and PHP 16,000, respectively.)

- (b) Also, due to recent legislative changes, all Filipino citizens, including all expatriate Filipino workers, have to contribute to the Philippine universal health-care system (PhilHealth).⁵⁸⁰ However, as has been indicated, Filipino migrant workers already enjoy comprehensive health coverage in some countries; the contribution payable to the Philippine universal health-care system places a significant burden on Filipino migrant workers abroad.⁵⁸¹
- (c) Coverage flowing from membership of/registration with the Overseas Workers Welfare Administration (OWWA), which has been granted a key institutional role in the provision of benefits and services, including social security services to OFWs⁵⁸² – registration (on a two-yearly basis) is compulsory for OFWs whose employment contracts have been processed at the POEA and voluntary for nationals who have left as non-contract workers and later acquired foreign employment. Social security benefits available against the payment of a contribution include, among others:⁵⁸³
- i. Death benefits;
 - ii. Disability benefits (including total disability benefit in the event of a permanent disability) and dismemberment benefits;
 - iii. Burial benefit;
 - iv. Health-care benefits (to be developed within a two-year period, taking into consideration the health-care needs of women).
- (d) Compulsory insurance cover provided and paid for by licensed recruitment agencies, should the OFW have been recruited by the agency. Social security benefits are provided for by Republic Act No. 10022 of 2009,⁵⁸⁴ amending the Migrant Workers and Overseas Filipinos Act of 1995,⁵⁸⁵ and include:⁵⁸⁶
- i. Accidental death;
 - ii. Permanent total disability;
 - iii. Medical evacuation and medical repatriation;
 - iv. Subsistence allowance in the course of a case or litigation for the protection of the OFWs' rights in the receiving country.

⁵⁸⁰ Government of the Philippines, Universal Health Care Act of 2018 (Republic Act No. 11223), sections 4(f), 5 and 9.

⁵⁸¹ Rhoderick Ople, "Why Filipinos in Italy strongly oppose the Philippines' Universal Healthcare Law", article on the Rights Corridor website, 29 August 2020, available at <https://rightscorridor.com/why-filipinos-in-italy-strongly-oppose-the-philippines-universal-healthcare-law/>; Jay Hilotin, "86% spike in health insurance premium for Filipinos; what you must pay from 2019 to 2024", Gulf News (online), 14 July 2019, available at <https://gulfnews.com/world/asia/philippines/186-spike-in-health-insurance-premium-for-filipinos-what-you-must-pay-from-2019-to-2024-1.1562805169802>.

⁵⁸² The Overseas Workers Welfare Administration Act of 2015 stipulates the following in section 34 ("Guiding Principles"): Pursuant to its mandate, the OWWA shall provide gender-responsive reintegration programs, repatriation assistance, loan and credit assistance, on-site workers assistance, death and disability benefits, health care benefits, education and skills training, social services, family welfare assistance, programs and services for women migrant workers and other appropriate programs that provide timely social and economic services. Nothing in this Act shall be construed as a limitation or denial of the right of an OFW to avail of any benefit plan which may be adopted in the employment contract, or offered voluntarily by employers, or by the laws of the receiving country, over and above those provided under this Act.

⁵⁸³ *Ibid.*, section 35(3).

⁵⁸⁴ Government of the Philippines, An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes (Republic Act No. 10022 of 2009).

⁵⁸⁵ Government of the Philippines, Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042 of 1995).

⁵⁸⁶ Government of the Philippines, Republic Act No. 10022 of 2009 (see footnote 584), section 23. (The section amends Republic Act No. 8042 of 1995 by adding to it section 37-A ("Compulsory Insurance Coverage for Agency-hired Workers").)

- (e) Social security benefits or insurance provided for in the employment contract between the foreign employer or principal and the OFW, again in the event that the OFW has been recruited by a licensed recruitment agency – for which the employer or principal and the recruitment or placement agency incur joint and several liability.⁵⁸⁷

The protection of the rights of Filipino migrant workers is set as a condition for deployment abroad

Several other legal, institutional and operational measures and interventions support the extension of social security support to OFWs. These include the stipulation that the issuance of permits of deployment abroad by POEA is only allowed where the rights of Filipino migrant workers are protected. In this regard, the Migrant Workers and Overseas Filipinos Act of 1995, as amended, recognizes any of the following as a guarantee on the part of the receiving country for the protection of the rights of overseas Filipino workers:⁵⁸⁸

- (a) It has existing labour and social laws protecting the rights of workers, including migrant workers.
- (b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers.
- (c) It has concluded a bilateral agreement or arrangement with the Government of the Philippines on the protection of the rights of overseas Filipinos.

A proviso is added in the law, to the effect that “the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.”

Filipino migrant workers’ protection is further enhanced by the imposition of liability on employers or principals and recruitment agencies

According to Filipino law, the principal or employer and the recruitment agency are jointly and severally liable for any and all claims arising out of the implementation of the employment contract involving Filipino workers for overseas deployment (similar proposals are also contained in a recent ILO technical note on the Vietnamese context).⁵⁸⁹ This obligation is a condition precedent for the approval of the contract. Also, recruitment agencies are required to have a performance bond (paid for by the agencies) with the mandated government agency, the Philippine Overseas Employment Authority (POEA). This bond shall be answerable for all money claims or damages that may be awarded to the workers. A final judgment against a foreign employer or principal shall automatically disqualify the employer or principal from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.⁵⁹⁰

⁵⁸⁷ Ibid., section 7. (The section amends section 10 of Republic Act No. 8042 of 1995.)

⁵⁸⁸ Ibid., section 3 (The section amends section 4 of Republic Act No. 8042 of 1995); Ofreneo and Sale, “Social security and migrant workers in the Philippines” (see footnote 96), p. 171.

⁵⁸⁹ ILO, “Technical note on the Draft Law on Vietnamese Workers Working Abroad Under Contract (amended) – 27 March 2020 version (second preliminary set of comments)”, April 2020.

⁵⁹⁰ Government of the Philippines, Republic Act No. 10022 of 2009 (see footnote 584), section 7. (The section amends section 10 of Republic Act No. 8042 of 1995.)

Other supportive legal, institutional and operational measures

Other legal, as well as institutional and operational arrangements provide a broader contextual framework supporting the extension of social security benefits to OFWs. These include the following:⁵⁹¹

- (a) Regulating and monitoring recruitment/placement agencies;
- (b) Legal assistance;
- (c) Hearing of and deciding upon OFWs' money claims;
- (d) Ascribing and delineating roles of a large number of government departments and other (in particular public) institutions, such as:
 - i. Department of Health, Department of Labour and Employment, and Department of Interior and Local Government;
 - ii. POEA, OWWA, NRCO (National Reintegration Center for OFWs), Migrant Workers and Other Overseas Filipinos' Resource Centres; local government units, and an Inter-Agency Committee to implement a shared government information system for migration;
 - iii. A large number of SSS offices;
- (e) Tailor-fit systems supporting the registration of OFWs, contributions modalities and benefit payment arrangements;
- (f) A range of user-friendly service channels made available by the SSS to Filipino migrants (including overseas e-payment centres, online access to records, SSS social media sites, a unified, multi-purpose ID, and a dedicated contact centre).

Return migration: the example of the Philippines

Return migration in the Philippines is addressed by several government agencies, with a focus on the welfare and humanitarian needs of returning OFWs. Of particular importance is the NRCO. Established in 2007 and institutionalized in Republic Act No. 10022 of 2009,⁵⁹² NRCO received initial funding worth USD 40 million to undertake a range of support services for the benefit of return migrant workers. These include: (a) job referrals; (b) assistance towards entrepreneurship/micro-enterprise development; (c) training and capacity-building; (d) counselling; and (e) reintegration programmes for distressed returnees.⁵⁹³ Furthermore, return migration preparation is also addressed by the Government of Philippines. For example, under the so-called Tulay Project, a public-private partnership between Microsoft and the Government, skills training in information technology (a highly transferable skill set that would enhance migrants' employability back in the home country) is provided to Filipino migrant workers while they are still working abroad.

⁵⁹¹ See, "Negotiating for bilateral social security agreements" (see footnote 61).

⁵⁹² Government of the Philippines, Republic Act No. 10022 of 2009 (see footnote 584).

⁵⁹³ Graziano Battistella, *Return Migration: A Conceptual and Policy Framework* (New York, Center for Migration Studies, 2020). Available at <https://cmsny.org/publications/2018smc-smc-return-migration>.

7.4. Bangladesh

Currently, no provision is made for the extension of Bangladeshi social security system coverage to migrant workers abroad

Apart from the limited social protection focus indicated below, there is no indication of an attempt to extend the current Bangladeshi social security system to the country's workers abroad. This is the consequence, as well, of the absence of a public scheme in Bangladesh providing contributory benefits to workers generally: the payment of some contributory benefits (e.g. maternity, sickness and employment injury benefits) is essentially a matter of employer liability.⁵⁹⁴

Some but limited insurance-based and social protection benefits are available to Bangladeshi migrant workers

The Government of Bangladesh implemented a subsidized compulsory insurance system for aspiring migrant workers beginning in November 2019.⁵⁹⁵ The legal basis for the insurance scheme is contained in the Wage Earners' Welfare Board Act (No. 30 of 2018), which provides for the establishment of the Wage Earners' Welfare Board for the purpose of protecting migrants and their dependants. It provides for a range of support services, including some with a clear social protection focus, in particular, "assistance in realizing compensation for death of migrant workers and ailments owing to workplace hazards, arrear salary, insurance and service benefits, and providing financial assistance to the dependants." The other support services intended to be provided by the Board include: (a) assistance to migrant workers, and, in appropriate cases, bringing them back home; (b) providing social and economic protection to returnee migrants and their rehabilitation; (c) establishment, operation and maintenance of pre-departure briefing centres for migrant workers; (d) assisting migrant workers, and their rescue, "in case they are victims of torture, accident or are in distress owing to ailment or any other reasons, and, if the need arises, providing of legal and medical [support]"; (e) assistance in bringing back bodies of migrant workers who die abroad and, if need arises, providing financial and other assistance for funerals; (f) provision of scholarship to meritorious children of migrant workers and assistance for the welfare of handicapped children of migrants and dependants; and, generally, (g) adopting and implementation of projects intended for the welfare of the expatriates and "any other welfare activity intended for the expatriates as may be prescribed by the Government".⁵⁹⁶

There are special arrangements to extend social protection and ancillary support to female migrant workers abroad

Article 9 of the Wage Earners' Welfare Board Act provides that: (a) the Board shall take steps for rescue of, and bringing back female migrant workers, in case they become victims of torture, accident or are in distress owing to ailment or any other reasons; and providing legal and medical aid, helping in obtaining compensation and, if need arises, setting up help desks and safe homes abroad; and (b) the Board may, if it deems fit, take and implement projects for social and economic rehabilitation and reintegration of the returnee female migrant workers.

⁵⁹⁴ SSA and ISSA, "Bangladesh", in: *Social Security Programs Throughout the World: Asia and the Pacific, 2018* (Washington, D.C., SSA, 2018), pp. 61–63.

⁵⁹⁵ IOM and Government of Bangladesh, Voluntary Global Compact for Migration review survey report – Bangladesh of 14 June 2020 (20/IOM/MoEWOE/COM/0513). Available at https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/bangladesh_voluntary_gcm_survey_report.pdf.

⁵⁹⁶ Government of Bangladesh, Wage Earners' Welfare Board Act (No. 30 of 2018), art. 8; R. Khan, *Wage Earners' Welfare Board Act 2018 – Salient Features* (Geneva, ILO, 2019).

A supportive legal and policy framework exists⁵⁹⁷

The Government of Bangladesh actively encourages labour migration, in an attempt to deal with unemployment and the need for development in the country: the total remittance inflow in 2019–2020 amounted to USD 18.2 billion, contributing more than 60 per cent of the foreign currency reserves of the country. In 2020, 12 million Bangladeshis were working in 174 countries. Following the ratification by Bangladesh of the ICRMW in 2011, amended legislation has been adopted. The key laws are the Overseas Employment and Migrants' Act (2013) and, indicated above, the Wage Earners' Welfare Board Act (2018). The Overseas Employment Act deals with salient matters regarding recruitment agencies, the registration of migrant workers, the employment contract, duties of labour focal points and labour attachés, bilateral agreements, the rights of migrant workers, penalties and monitoring and enforcement. Detailed regulations have been promulgated in a number of areas, and a Code of Conduct for private recruitment agencies has been developed.

The Expatriates Welfare and Overseas Employment Policy was adopted in 2016, followed by its *Action Plan* in 2019.⁵⁹⁸ The Policy sets the following objectives:

- (a) Promoting safe migration;
- (b) Protection of migrant workers and their family members;
- (c) Benefits and welfare services for migrant workers;
- (d) Migration of women workers;
- (e) Governance of labour migration.

Some of the key areas to be attended to, indicated in the Policy and the *Action Plan*, include the following:

- (a) Extension of insurance-based protection to include, among others, maternity coverage;
- (b) Education and health services for children and family members of migrant workers, as well as housing support;
- (c) The need to develop a social protection policy and strategy for the social protection of migrant workers and their families;
- (d) Rehabilitation and reintegration of returnee migrants, including poor and destitute returnee migrants, in terms of a comprehensive welfare programme, as well as their social integration and integration into cooperatives; tax benefits to encourage local business entrepreneurship;
- (e) Setting up of Labour Welfare Resource Centres;
- (f) Establishment of a Department of Expatriate Welfare;
- (g) Maintain a labour market research unit;
- (h) Inclusion of labour migration in national planning and development strategies;

⁵⁹⁷ Government of Bangladesh – Ministry of Expatriates' Welfare and Overseas Employment, *Labour Migration Governance in Bangladesh* (Dhaka, 2015); IOM and Government of Bangladesh, Voluntary Global Compact for Migration review survey report – Bangladesh of 14 June 2020 (see footnote 595).

⁵⁹⁸ Government of Bangladesh – Ministry of Expatriates' Welfare and Overseas Employment, *Expatriates Welfare and Overseas Employment Policy* (Dhaka, 2016); Government of Bangladesh – Ministry of Expatriates' Welfare and Overseas Employment, *Action Plan for the Implementation of the Expatriates' Welfare and Overseas Employment Policy, 2015* (Dhaka, 2019).

- (i) Creation of a labour migration information system;
- (j) Set up and strengthen and involve migrant workers abroad in social network activities;
- (k) Use Bangladeshi expatriates' skills and expertise;
- (l) Attract investments from expatriates;
- (m) Use the skills and experience of returned migrants to strengthen the economy – with an emphasis on the creation of a supportive database; skills development; employment creation; support to start small businesses; involvement of returned migrants in execution of development plans;
- (n) Establish a legal aid fund;
- (o) Mainstream gender sensitization in all operations and include gender sensitivity arrangements in BLAs and MOUs;
- (p) Invest in market-based research informing expansion of labour markets abroad;
- (q) Development of a standard employment contract, appropriately adjusted for female migrant workers;
- (r) Close examination of the labour and social protection laws of countries of destination;
- (s) A well-planned skills development programme aligned with the National Skills Development Policy;
- (t) Steps to be taken to ensure that private recruiting agents and recruiters in destination countries, as socially responsible institutions, conform to existing laws and rules while conducting business: emphasizing among other classification of recruiting agents and recruiters; the development of a Code of Conduct; and monitoring and evaluating their operations;
- (u) A Code of Ethical Conduct for all migration intermediaries.

Comprehensive institutional and operational arrangements facilitate labour migration from Bangladesh

The core institutional and administrative framework is provided by the Ministry of Expatriates' Welfare and Overseas Employment; other ministries and institutions also play a significant role. These include the Bureau of Manpower, Employment and Training; the Wage Earners' Welfare Board; the Probashi Kallyan Bank (intended also to attract and channel diaspora investment); the Bangladesh Overseas Employment and Services Limited (business support enhancement); the District Employment and Manpower Office (DEMO) and the Technical Training Centre. A constantly increasing number of labour wings of Bangladeshi diplomatic missions abroad are playing an important role in executing migration support, including through diplomacy to ensure workers' rights and protection. The contributions of the relevant government departments is coordinated through the National Steering Committee on Expatriates' Welfare and Overseas Employment; a forum of stakeholders in the form of the National Migration Forum also exists. The overall aim is to base migration governance on the framework of ethical migration, espousing the principle of migration with dignity.⁵⁹⁹

⁵⁹⁹ A. Barkat, A. Osman, S. Ahmed and F. Rabby, *Strengthening the Organizational Mechanism for an Effective International Labour Migration Management in Bangladesh* (Geneva, IOM and Dhaka, Human Development Research Centre, 2019), pp. 5 and 123; IOM and Government of Bangladesh, *Voluntary Global Compact for Migration review survey report – Bangladesh of 14 June 2020* (see footnote 595).

Operationally, the Government has formed a Vigilance Task Force to combat illegal and irregular migration. Also, to promote safety and security, the entire recruitment system and process relating to overseas employment has been digitized, including the issuing of a multi-purpose smart card. Several BLAs and MOUs have been concluded, while a Migrants' Welfare Bank was established in 2010 to provide loans to migrant workers, including returned migrant workers, and to assist with investment and the sending of remittances.⁶⁰⁰ Comprehensive skills development training is provided to aspirant migrant workers, while legal aid is extended to migrant workers abroad. The Government also provides a two per-cent cash incentive to all remitters to encourage remittance inflows.⁶⁰¹ Special arrangements were made to support Bangladeshi workers abroad during the COVID-19 pandemic.⁶⁰²

7.5. Selected further examples of social security schemes and insurance-based coverage for migrant workers abroad: Indonesia and Sri Lanka

Initial private insurance-based scheme extended specific forms of social protection to Indonesian migrant workers abroad

Indonesia has had a policy of actively protecting its migrant workers abroad. Pursuant to the National Medium-Term Development Plan 2015–2019, Indonesia has been extending considerable support to Indonesian workers abroad. Previously, one of the key components of this support has been the establishment of a wide-ranging compulsory insurance scheme for overseas Indonesian workers (known as TKI insurance),⁶⁰³ largely informed by several supportive regulatory instruments.⁶⁰⁴ The lead provision was article 68 of the 2004 Act concerning the Placement and Protection of Indonesian Overseas Workers. It stipulated that the private (recruitment or placement) agency is obliged to insure workers abroad in an insurance programme to be regulated per ministerial decree.⁶⁰⁵ The insurance premium was payable by the recruiting agency, although this was then recovered from the workers.⁶⁰⁶ The insurance provided for by the law covered three stages:⁶⁰⁷ pre-placement,⁶⁰⁸ during placement⁶⁰⁹ and after placement.⁶¹⁰ The insurance coverage could be

⁶⁰⁰ IOM and Government of Bangladesh, Voluntary Global Compact for Migration review survey report – Bangladesh of 14 June 2020 (see footnote 595).

⁶⁰¹ Ibid. (The remittances are primarily used to support rural households and to purchase land.)

⁶⁰² Ibid. (These have included the provision of telemedicine services; the establishment of an Emergency Support Fund and a Working Committee for return and reintegration; the provision of soft loans; the launching of a returnee database; the hosting of a platform website; the opening of an emergency hotline; compensation through the Wage Earners Welfare Board; and the provision of cash assistance.)

⁶⁰³ "Indonesian Workers Protection's Policy through TKI Insurance Programme" [slide presentation]. Prepared by the Government of Indonesia – Ministry of Manpower, 29 September 2016. Available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/presentation/wcms_533051.pdf. See also: ILO, "Social protection for Indonesian migrant workers: Efforts and challenges", brief (Jakarta, 2015), pp. 1–3. (TKI insurance was managed by a consortium of private insurance companies.)

⁶⁰⁴ For example: Law No. 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad; Law No. 6 of 2012 on Ratification of International Convention on the Protection of the Rights of All Migrant Workers and their Families; and several Ministerial Laws.

⁶⁰⁵ See in this regard: Ministerial Law No. PER-07/MEN/V/2010 on TKI insurance and its amending Ministerial Law No 1 Year 2012 on amended Ministerial Law on TKI Insurance.

⁶⁰⁶ ILO, "Social protection for Indonesian migrant workers: Efforts and challenges", brief (Jakarta, 2015), p. 3. ("... as nor the recruiting agency, neither the employer are obliged by law to bear a part of it." The brief also indicates other challenges being experienced, including lack of clarity and claims procedures.)

⁶⁰⁷ "Indonesian Workers' Protection Policy through TKI Insurance Programme" [slide presentation] (see footnote 603).

⁶⁰⁸ At the pre-placement stage, the following cover, in relation to the risks specified, was provided for a period of five months: (a) death; (b) sickness and disability; (c) accidents; (d) failure to depart due to no fault of prospective migrants; and (e) physical violence and rape or sexual assault.

⁶⁰⁹ During placement, coverage, in relation to the following risks, was provided for a period of 24 months (which could be extended): (a) death; (b) illness and disability; (c) accidents inside and outside of working hours; (d) termination of employment, individually or en masse prior to the expiration of labour agreements; (e) unpaid wages; (f) problematic deportations; (g) legal problems; (h) physical violence and rape or sexual harassment; (i) insanity; (j) transfer of migrant workers to another workplace or any other place that is not in accordance with the placement agreement; and (k) failed placement through no fault of the migrant worker(s).

⁶¹⁰ For the period after placement, the coverage foreseen (for a one-month period) are in relation to the following risks: (a) death; (b) illness; (c) accident; and (d) actions of others during the return trip to the area of origin, such as the risk of physical violence and rape or sexual assault and risk of loss of property.

extended if the labour contract was extended. A one-year extension attracted a premium of 40 per cent of the (initial) insurance amount, while a two-year extension attracted an additional 80 per cent of the insurance amount.⁶¹¹ It should be noted that at the pre- and post-placement stages, it was possible (and could indeed be imperative, especially if the Indonesian worker worked in the formal sector in Indonesia) to be a registered member of and paying contributions to the national schemes of the *Badan Penyelenggara Jaminan Sosial* ((BJPS), “Social Security Administrator”).

Social security for Indonesian migrant workers is now mainstreamed, but challenges remain

Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers has brought about a new dispensation,⁶¹² by moving away from a private insurance-based regime to one that sees Indonesian migrant workers mainstreamed in the national social security programme:

This Law also provides Social Security protection to Indonesian Migrant Workers that is previously managed by insurance companies that are part of insurance consortium with protection plan that covers preplacement, placement period, and post-placement. The protection role is now transferred and managed by Social Security Agency (BPJS) in accordance with Law Number 40 of 2004 on National Social Security System and Law Number 24 of 2011 on Social Security Organizing Agency. For certain risks that are not covered by the Social Security program, BPJS can cooperate with government or private institutions.⁶¹³

The 2017 Law requires that every aspirant migrant worker must be registered and have a social security membership number.⁶¹⁴ Also, before the employment relationship can commence, the employer and migrant worker must have concluded an agreed and signed employment contract, which must contain certain conditions and terms of employment, among others in relation to social security and/or insurance(s).⁶¹⁵ Further protection extended to Indonesian migrant workers is embedded in the provision that the placement costs are not to be borne by Indonesian migrant workers;⁶¹⁶ and that Indonesian migrant workers can only work in a destination country that: (a) has legislation that protects foreign workers; (b) has a written agreement (concluded) between the government of the destination country and the Government of Indonesia; and/or (c) has a social security system and/or insurance that protects foreign workers.⁶¹⁷

⁶¹¹ “Indonesian Workers’ Protection Policy through TKI Insurance Programme” [slide presentation] (see footnote 603).

⁶¹² It has been remarked that the new law reinforces policies to provide end-to-end protection to overseas workers, including the following measures:

- (a) Holistic protection (socioeconomic and legal protection before, during and after recruitment);
- (b) Provision of social security system for Indonesian migrant workers;
- (c) Integrated services for international migrant workers at any level of government, from local government to central/national;
- (d) Skill improvement programmes for international migrant workers;
- (e) Strengthening of public agency for international migrant worker recruitment, under the National Agency for the Protection and Placement of international migrant workers. Private sector roles are limited only to international migrant worker placement, not recruitment. The measures are intended to promote ethical recruitment.

(See, for example: GFMD, *Law on Protection of Indonesian Migrant Workers* (Geneva, 2019). Available at <https://gfmd.org/print/pfp/ppd/11056>.)

⁶¹³ President of the Republic of Indonesia, “Elucidation of the Law of The Republic of Indonesia No. 18 of 2017 on the Protection of Indonesian Migrant Workers” (Jakarta, 2017). (See, in particular: Government of Indonesia, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, art. 29.)

⁶¹⁴ Government of Indonesia, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, art. 5.

⁶¹⁵ *Ibid.*, art. 15(2)(e), read with art. 14.

⁶¹⁶ *Ibid.*, art. 30(1). (This is a clear break with the position before the Law was adopted. (See also: Didik Eko Pujianto, “Long road to removal of migrant worker placement costs”, *The Jakarta Post*, 11 January 2021. Available at www.thejakartapost.com/academia/2021/01/11/long-road-to-removal-of-migrant-worker-placement-costs.html.)

⁶¹⁷ Government of Indonesia, Law on the Protection of Indonesian Migrant Workers, art. 31. Article 72 of the Law prohibits the placement of Indonesian migrant workers in a destination country that does not comply with these requirements.)

However, it has been noted that the ministerial regulations, which give effect to the provisions of the new Law, have not yet provided for the Indonesian public health insurance regime to be extended to Indonesian migrant workers. This reportedly leaves a void. In any event, bilateral cooperation mechanisms to operationalize Indonesian health insurance in countries of destination are apparently still lacking, while an obligation may still rest upon Indonesian migrant workers to contribute to the national health insurance scheme of the country of destination, in the absence of a BSSA aimed at avoiding dual coverage.⁶¹⁸

Limited insurance-based arrangements exist in Sri Lanka, against the background of more extensive social protection and welfare support⁶¹⁹

On the basis of the Sri Lanka Bureau of Foreign Employment Act (No. 21 of 1985), which established the Sri Lanka Bureau of Foreign Employment (SLBFE), the SLBFE provides a range of migrant worker support services. In particular, the Overseas Workers Welfare Fund (OWWF) was set up to provide a range of insurance and other benefits, essentially funded via registration fee paid by the overseas workers.⁶²⁰ Under the insurance scheme, provision is made for:⁶²¹

- (a) Repatriation due to harassment, illness, accident or injury after leaving employment abroad, including in the event of pregnancy as a result of sexual harassment: medical expenses incurred after returning to Sri Lanka, and cost incurred in respect of return ticket of the migrant worker;
- (b) Death due to any cause while working abroad: compensation to legal heirs;
- (c) Death within Sri Lanka within three months of arriving, due to a critical illness or accident occurred while working abroad during the contract period: compensation to legal heirs including medical expenses incurred after returning to Sri Lanka;
- (d) Permanent disability, including permanent partial disability, occurred while working abroad during the contract period: compensation depending on the extent of the disability; costs incurred in respect of return ticket of the migrant workers; medical expenses incurred after returning to Sri Lanka.

Furthermore, a pregnant or disabled returnee migrant worker may seek assistance after arrival. Non-registered workers (presumably also undocumented migrant workers) may be able to obtain assistance, but not all welfare benefits, on a case-by-case basis.⁶²² The above insurance-based benefits are accompanied by a more extensive range of services and benefits available also to family members of migrant workers, and migrant workers who have returned. Family support includes among other a scholarship scheme for children. Housing and livelihood loans, as well as loans to support self-employment are also available. A special unit provides for the protection and welfare needs of the children of migrant workers.⁶²³

In addition to the above, migrant workers may voluntarily join a pension scheme.⁶²⁴

⁶¹⁸ Wafda Vivid Izziyana, Harun Harun, Absori Absori, Kelik Wardiono, Heru Santoso Wahito Nugroho and Arief Budiono, "Health insurance for Indonesian migrant workers", *Medico-Legal Update*, 19(1):188–192 (2019).

⁶¹⁹ See also section 3.4 of this report.

⁶²⁰ Government of Sri Lanka, Bureau of Foreign Employment Act (No. 21 of 1985), art. 45.

⁶²¹ Government of Sri Lanka – Bureau of Foreign Employment, *Safe Labour Migration Information Guide* (Colombo, ILO, 2013), pp. 57–58; Government of Sri Lanka – Bureau of Foreign Employment, "Benefits of the insurance coverage", webpage available at www.slbfe.lk/page.php?LID=1&PID=110.

⁶²² Sri Lanka Bureau of Foreign Employment, *Safe Labour Migration Information Guide* (see footnote 621), pp. 38–40.

⁶²³ *Ibid.*, pp. 39 and 53–56. Government of Sri Lanka – Bureau of Foreign Employment, "Other welfare benefits", webpage available at www.slbfe.lk/page.php?LID=1&PID=113.

⁶²⁴ Sri Lanka Bureau of Foreign Employment, *Safe Labour Migration Information Guide* (see footnote 621), pp. 39 and 56; SSA and ISSA, "Sri Lanka", in: *Social Security Programs Throughout the World: Asia and the Pacific*, 2018, p. 244 (Washington, D.C., SSA, 2018).

But challenges remain and call for envisaged legislative and policy reform

The insurance-based scheme operating under the auspices of the OWWF remains a limited scheme. It does not yet provide pension coverage, and even health benefits remain limited. Essentially, migrant workers can only enjoy the benefits upon their return to Sri Lanka (they are not covered for medical expenses within receiving countries), with little insurance-based support while they work abroad. Also, even though the scheme's two-year period can be extended, many migrant workers are not aware of this and the additional steps to be taken to operationalize the extension (i.e. re-registration), leading to a loss of coverage.⁶²⁵ Furthermore, the current scheme does not amount to an extension of social security coverage available to workers in Sri Lanka to Sri Lankan migrant workers. In addition, financial sustainability has been one of the major challenges of the scheme.⁶²⁶ Therefore, despite being quoted by the ILO as a case of good practice in providing social protection to migrant workers by a sending country,⁶²⁷ major challenges remain.⁶²⁸ It is believed that challenges will be addressed in the not yet promulgated Sri Lanka Employment Migration Authority Act, which, according to the Government of Sri Lanka, has been drafted to set up an authority on migration to replace the SLBFE Law, and to establish a Foreign Employment Promotion Fund.⁶²⁹

7.6. Dedicated extension of social protection arrangements to migrant workers in countries of destination: The example of Canada

Canada has a comprehensive social security system

First, it has to be indicated that the Canadian social security system has three levels:⁶³⁰

- (a) A residence-based system (the Old Age Security System), which provides a monthly pension to most people over age 65 who have lived in Canada for at least ten years;
- (b) A contribution-based system (the Canada Pension Plan and the Quebec Pension Plan), which provides retirement, disability, survivor and death benefits to people who have contributed to the system;
- (c) Private savings.

⁶²⁵ Pilar Luz Rodrigues, "The overseas workers welfare fund in Sri Lanka", blog post on the [socialprotection.org](https://socialprotection.org/discover/blog/overseas-workers-welfare-fund-sri-lanka) website, 28 October 2019, available at <https://socialprotection.org/discover/blog/overseas-workers-welfare-fund-sri-lanka>; "Shadow report – Sri Lanka to the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)", jointly presented by 20 CSOs for consideration during the twenty-fifth session, 29 August to 7 September 2016, p. 24.

⁶²⁶ Iván Martín and Shushanik Makarayan, *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (Turin, Italy, European Training Foundation, 2015), p. 52.

⁶²⁷ Teresita del Rosario, *Best Practices in Social Insurance for Migrant Workers: The Case of Sri Lanka* (Asian Regional Programme on Governance of Labour Migration, working paper no. 12) (Bangkok, ILO Regional Office for Asia and the Pacific, 2008). Available at www.ilo.org/dyn/migpractice/docs/267/WVWF.pdf.

⁶²⁸ United Nations Human Rights Council, "Report of the Special Rapporteur on the human rights of migrants, François Crépeau, on his mission to Sri Lanka (19–26 May 2014)" (A/HRC/29/36/Add.1), para. 43. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_36_Add_1_ENG.DOCX. (For a critical analysis of the shortcomings of the current labour migration regime, in particular from the perspective of the ICRMW, see: Piyasiri Wickramasekara, "Accession with low compliance: Sri Lanka's experience with the 1990 International Convention on Migrant Workers", in *Migration and Development*, 10(1):122–143 (2019). DOI: 10.1080/21632324.2019.1630171.)

⁶²⁹ CMW, "Consideration of reports submitted by States Parties under article 73 of the Convention pursuant to the simplified reporting procedure – Second periodic report of States parties due in 2011: Sri Lanka" of 3 May 2016 (CMW/C/RWA/2), p. 2, available at www.refworld.org/docid/57c9880d4.html; "Introductory statement at the presentation of Sri Lanka's second period report" (CMW/C/LKA/2), p. 98, report submitted by Ravinatha P. Arinasinha, Ambassador and Permanent Representative of Sri Lanka and Head of Delegation at the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, twenty-fifth session of the CMW Committee, Geneva, 1 September 2016, available at https://tbiinternet.ohchr.org/Treaties/CMW/Shared%20Documents/LKA/INT_CMW_STA_LKA_25046_E.pdf. See also the informative reflection in: ILO, *Sri Lanka's Policy on Labour Migration: How far have we come?* (Colombo, 2018); ILO, *Review of Law, Policy and Practice of Recruitment of Migrant Workers in Sri Lanka* (Colombo, 2019).

⁶³⁰ Government of Australia, "Canada's social security system" (2015), available at <https://guides.dss.gov.au/guide-social-security-law/10/5/1/30>; SSA and ISSA, "Canada", in: *Social Security Programs Throughout the World: Americas, 2019* (Washington, D.C., SSA, 2019), pp. 98–107.

The Canadian social security system provides extensive coverage for certain categories of migrants/migrant workers

In particular, the Canada Pension Plan (CPP) provides migrant workers with an income when they reach old age and can no longer work due to retirement, disability or death. All individuals working in Canada qualify for the pension plan if they reach certain eligibility requirements. In the case of a worker's death, their spouse and/or next of kin could be entitled to benefits. Importantly, the principle of portability is heeded: Non-residents to Canada, including migrant workers, are able to contribute to the pension plan and can later receive some benefits in their home country. The types of benefit and eligibility can be summarized as follows:⁶³¹

- (a) **Retirement pension.** The contributor must have made at least one valid contribution in Canada.
- (b) **Survivors' pension.** The spouse does not have to have worked or lived in Canada; the migrant worker must have made at least ten valid contributions.
- (c) **Death benefit.** The benefit is received by the next of kin (closest relative(s)) who have not worked or lived in Canada; the migrant worker must have made at least ten valid contributions.
- (d) **Disability pension.** The migrant worker must have contributed four out of the last six calendar years before a doctor has determined a disability.

Migrant workers and their dependants are also entitled to medical care and child benefits, among others. However, the non-contributory old-age social security pension requires that the person must have lived in the country for at least ten years to be eligible and be a Canadian resident of legal resident.⁶³²

Special arrangements exist in relation to migrant workers in the Province of British Columbia province, under the Temporary Foreign Worker Programme. Access to the CPP is ensured, health insurance deductions can be made for non-occupational medical coverage and employers of Seasonal Agricultural Work Programme (SAWP) workers have to pay employment insurance premiums (i.e. in respect of occupational injuries and diseases).⁶³³

7.7. The value of migrant resource centres

Objectives of migrant resource centres

These centres are physical structures that provide services to migrants which facilitate and empower them to migrate in a legal, voluntary, orderly and protected fashion.⁶³⁴ The core role of MRCs in ensuring migrants' empowerment for protection is to provide migrants with information that will help them to move in a regular, informed manner.⁶³⁵ In general, MRCs: (a) provide migrants with information on how their migration, remittances and return plans can be linked to development;

⁶³¹ Migrant Worker Hub and Affiliation of Multicultural Societies and Service Agencies of British Columbia (AMSSA), "Canada pension plan for migrant workers", information sheet, 2 August 2019. Available at https://migrantworkerhub.ca/wp-content/uploads/2019/08/Canada-Pension-Plan-Info-Sheet_final.pdf.

⁶³² *Angloinfo*, Social Security Benefits in Canada section (2021). Available at www.angloinfo.com/how-to/canada/money/social-security.

⁶³³ Migrant Worker Hub and Affiliation of Multicultural Societies and Service Agencies of British Columbia (AMSSA), "Employment standards for migrant workers in British Columbia", information sheet, 20 February 2020. Available at https://migrantworkerhub.ca/wp-content/uploads/2019/06/EmploymentStandardsInfoSheet_FINAL_February2020.pdf.

⁶³⁴ IOM, *Migrant Resource Centres: An Initial Assessment*, Migration Research Series No. 40 (Geneva, 2015) Available at <https://publications.iom.int/books/mrs-no-40-migrant-resource-centres-initial-assessment>.

⁶³⁵ *Ibid.*

(b) provide services which enable migrants to protect themselves; (c) gather and distribute information to enable migrants to exercise their rights and prevent their exploitation; and (d) provide services that ensure migrants can access their rights including social protection.⁶³⁶

Roles related to social protection

Areas in which MRCs play a role in relation to social protection, as broadly defined, include:⁶³⁷

- (a) Pre-departure information, orientation and advice;
- (b) Information about legal migration rights, processes and procedures;
- (c) Pre-departure employment-related information and assistance;
- (d) Pre-departure information and assistance on integration and living in the destination country;
- (e) Pre-departure information and assistance for students embarking on international “Study abroad” programmes;
- (f) Information and reintegration services for returning migrants;
- (g) Protection of migrant rights: services for migrants at risk or who have experienced exploitation;
- (h) Information services and advice about remittances and investment-related services;
- (i) Pre-departure orientation training and seminars;
- (j) Cooperation with other stakeholders in countries of origin;
- (k) Cooperation with relevant organizations in countries of destination.

Examples of MRCs

Countries that have utilized MRCs and that have also recorded success in labour migration management, include the Philippines,⁶³⁸ which has established a total of 17 One-Stop-Shop MRC. These MRCs are owned by the local government, which also bear the centres’ operational costs. In Egypt,⁶³⁹ the MRCs help to improve the conditions for the would-be migrants and to prevent irregular migration; and in the Sudan, MRCs offer information, medical assistance, psychosocial support and assisted voluntary return to irregular migrants.⁶⁴⁰

Recommendations and conclusions

Establishment of MRCs by both countries of origin and destination is a global clarion call. MRCs are world over responsible for providing information, protection and assistance for migrants.⁶⁴¹ They are further recognized as having a key role to play in the empowerment and protection of migrants. However, MRCs need to be institutionalized at both origin and destination. Also, there should be procedures in place for set-up procedures and strategies for achieving sustainability of MRCs over time. Furthermore, MRCs should be empowered to carry out job-matching mechanisms, as well as follow-ups on migrant workers.

⁶³⁶ Jane Pillinger, *Running an Effective Migrant Resource Centre: A Handbook for Practitioners* (Geneva, IOM, 2015). Available at <https://publications.iom.int/books/running-effective-migrant-resource-centre-handbook-practitioners>.

⁶³⁷ Ibid.

⁶³⁸ See, for example: IOM, “IOM establishes one-stop migrant resource centres in four Philippine provinces”, article on the IOM website news section, 17 October 2011, available at www.iom.int/news/iom-establishes-one-stop-migrant-resource-centres-four-philippine-provinces; ILO, “QC, ILO partner for first migrant workers’ one-stop shop in Metro Manila”, press release, 22 August 2022, available at www.ilo.org/manila/public/pr/WCMS_854299/lang-en/index.htm.

⁶³⁹ For more information, visit the Migrant Service Centres website at www.migrantservicecentres.org.

⁶⁴⁰ For more information, visit The Migrant Project website at www.themigrantproject.org/resource-centre.

⁶⁴¹ Pillinger, *Running an Effective Migrant Resource Centre* (see footnote 636).

MRCs have the potential to handle social protection functions for migrant workers. These centres offer a neutral space for potential and actual migrants to obtain accurate information on legal migration procedures and documentation required, the risks of irregular migration, how to stay healthy and safe during the migration process, and the rights and responsibilities that migrants have throughout the migration process. MRCs are critical actors in promoting social protection for migrant workers. They undertake a range of tasks which are important in harnessing migration for development, as well as in empowering migrants for social protection. MRCs are key stakeholders in migration management and development.

7.8. Conclusions and recommendations

Migrant welfare assistance is essentially a human rights issue

The importance of properly designed migrant welfare funds derives in the first place from the reality that this type of assistance is essential for migrant workers and their families to realize their human rights, including rights to social security, health care and access to justice. Simultaneously, in the second place, this gives effect to the obligation, arising from international law and often also the constitutional domain and imposed on governments, to honour these rights and to take steps and create a framework for their execution. The human rights protection appears from the wide range of international and regional instruments and their embedded standards.⁶⁴² Nevertheless, the impact of these instruments is hampered by their low ratification by African countries and the fact that, with some exception, the instruments engage with the position of documented migrants only.

Migrant welfare funds can generate significant income for the benefit of and provide much-needed and effective assistance to migrants

The ILO-published *Blueprint to Establishing a Migrant Welfare Fund* is contained in Appendix 3. A 2011 IOM study concerning the experiences of Colombo Process countries remarks the following in relation to the Philippines:

A membership-driven welfare fund like OWWA can benefit migrants in a number of ways. First, it allows the Government to raise sufficient revenue to finance inherently expensive needs. Indeed, cash-strapped countries like the Philippines would be hard pressed to allocate sufficient resources from the national budget. Second, a welfare fund also enables a government to provide critical on-site services, especially repatriation, in emergency situations. Finally, a welfare fund, if managed effectively, has the potential to financially support activities that can leverage migrant resources for development, such as business entrepreneurship and career development among returning migrants...⁶⁴³

The following assessment in relation to migrant welfare funds in Colombo Process member States (CPMS), contained in a subsequent 2015 IOM study, is equally important for African countries too:

Those CPMS governments which do not currently operate a Migrant Welfare Fund may wish to consider opening one. Overall, Migrant Welfare Funds, as long as they are operated well, have been shown to be the most effective in providing CPMS migrants with access to welfare assistance. There is however a need to take into account the caveats noted above in relation to not increasing migration costs to

⁶⁴² Katharine Jones, *Recruitment Monitoring & Migrant Welfare Assistance: What works?* (Dhaka, IOM, 2015) pp. 13, 125–128 and 157.

⁶⁴³ Dovelyn Rannveig Agunias, Christine Aghazarm and Graziano Battistella, *Labour Migration for Colombo Process Countries: Good Practices, Challenges and Ways Forward* (Geneva, IOM, 2011), p. 60.

migrants, the need to regulate any private sector actors involved in administration of the funds, and publicity shared with migrants about the funds' existence. Attention should also be paid to the governance of these and review mechanisms established so that funds can be evaluated and any barriers to their operation (for the benefit of migrants) are identified and rectified at the earliest possible stage.⁶⁴⁴

The same study comments on the key characteristics and usefulness of such schemes in the CPMS in the following terms:

Overall, the various schemes of the CPMS are funded by mixtures of fees charged to migrants, [private recruitment agencies], and destination country employers with some contributions from governments. The welfare funds are largely government-operated, with only the Philippines opting for a model of governance that separates responsibility from the organs of state into the separately constituted OWWA. Interestingly, the governance of the OWWA includes migrant participation on the Board to provide an additional layer of oversight. Private sector insurance companies are increasingly important to the mix, with contributions often compulsory. The underlying principle is to ensure at least a modicum of protection for migrants who may be denied these protections and rights in destination countries. On this basis, international organizations and researchers have tended to view welfare schemes as a success story. The following positive points are usually raised:

- Because of their contributory basis, migrant welfare schemes spread financial risk: they enable origin country governments to raise sufficient revenue to finance the, inherently expensive, welfare support which they would be unlikely or unable to otherwise fund.
- Welfare funds also enable origin governments to provide key welfare services to their nationals in the country of destination, especially to fund their embassies' ability to fund repatriation in emergency situations.

...

According to one recent report, funds also have the potential to enable governments to financially support activities that can leverage migrant resources for development, such as business entrepreneurship and career development among returning migrants, although no evidence of these provisions were found during the course of this research.⁶⁴⁵

...

And in their assessment, Martin and Makarayan find that these funds have been found to be effective when they are part of an integrated labour migration management system and are linked to a government agency monitoring the needs and risks of migrant workers abroad.⁶⁴⁶

⁶⁴⁴ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 15.

⁶⁴⁵ *Ibid.*, p. 132. See also: Martin and Makarayan, *MISMES* (see footnote 626), pp. 52–53.

⁶⁴⁶ Martin and Makarayan, *MISMES* (see footnote 626), pp. 52–53.

Migrant welfare funds face several challenges

The 2011 IOM study referred to earlier⁶⁴⁷ and a subsequent 2015 IOM study⁶⁴⁸ indicate the following challenges:

- Providing welfare support comes with a significant price tag for governments of origin countries, including costs attached to expanding the institutional framework – among other maintaining shelters and, additionally, the appointment of labour attachés and other support personnel.
- Migrant workers are often not aware or sufficiently appreciative of services at their disposal.
- Processing and settling of insurance claims represent another challenge.
- Proper allocation of funds is a key issue – especially the difficult question whether to let undocumented migrant workers, or those who failed to pay premiums benefit.
- Migrant workers continue to face barriers to accessing health services.
- Providing direct support in the country of destination may be problematic and ideally requires maintaining an open dialogue with destination countries regarding migrant welfare.
- The training of diplomatic personnel is a key consideration.
- Welfare and insurance schemes have been subject to allegations of financial mismanagement. More generally, there is need to attend to the governance and review of the performance of welfare funds.
- Private sector actors may provide helpful services; however, the often-negative experience with private recruitment agencies in relation to abuse and exploitation of migrant workers highlights the need for better regulation and monitoring (as discussed later).

Martin and Makarayan further indicate that the main challenge has been the financial sustainability of these funds, due to the low membership fee levels. Simultaneously, this leads to low and inadequate levels of coverage.⁶⁴⁹

Challenge no. 1: Access to health care

As previously noted: “Migrant workers often cannot fully access available medical services in the destination country, and they may have access to fewer or more costly services than the local population. Barriers can be legal, administrative, organizational or socioeconomic; they may result from migrants’ own health beliefs and health-seeking behaviour, or from cultural and linguistic challenges.”⁶⁵⁰ It should be noted that due to a variety of factors, migrant workers and their families are often disproportionately exposed to negative health outcomes. Yet certain destination countries may deny them access to mainstream (public) medical facilities, except in cases of emergency or, if covered, occupational injury-related health care. In some cases (e.g. Kuwait), migrant workers have to contribute to a segregated medical care scheme, and/or the provision of medical care is indicated as an employer liability.⁶⁵¹ Some countries of origin attempt to include (foreign) employer liability for health care within bilateral

⁶⁴⁷ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 64–65.

⁶⁴⁸ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 132–133 and 158–159.

⁶⁴⁹ Martin and Makarayan, *MISMES* (see footnote 626), p. 52.

⁶⁵⁰ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), p. 65.

⁶⁵¹ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 145–146; see also section 5.1.6 of this report.

agreements with destination countries and the associated contracts of employment. Recently, origin countries such as the Philippines, have made membership of and contribution to the national health (insurance) scheme compulsory, in an attempt to better protect their migrant workers abroad. However, as noted below, in the latter case origin countries must take care not to subject affected migrant workers to dual coverage challenges.⁶⁵²

Challenge no. 2: Access to legal services

There are several human rights and other considerations which make free or affordable access to justice a paramount requirement.⁶⁵³ Access to legal services may be required within the country of origin prior to departure, or at return – in the latter case, for example, to assist with claiming social security benefits due to returned migrant workers. In principle, legal services – whether public or private – remains limited. It is, however, particularly in countries of destination that the need for legal assistance arises – among other to resolve disputes with the employer, to deal with visa and related challenges, and to assist the migrant workers in the event of alleged employer abuse/exploitation. NGOs are pivotal to the legal assistance migrant workers receive in destination countries. Workers' rights centres also provide useful models of practice. In both cases the need to fund these institutions is a concern. Invariably, migrant workers turn to embassies for assistance. Some origin countries embassies hire local lawyers to assist their nationals (e.g. Sri Lanka), or may employ lawyers of their own to do so (Philippines). Again, costs may be a factor. Migrant welfare funds could assist in providing the necessary funding, including for migrants at home.⁶⁵⁴

Migrant welfare programmes provide a range of services, which include limited social protection insurance-based arrangements

It is apparent from the country-of-origin case studies presented in this part of the report that, despite considerable differences, a range of core services are rendered by migrant welfare programmes. Some but limited insurance-based coverage is made available as part of the core services so rendered. A 2015 IOM study summarizes this as follows:⁶⁵⁵

Migrant welfare funds: typical core services

- (a) Insurance against health, disability and health;
- (b) Repatriation of workers due to contract violations, fraudulent job placement, and/or physical violence;
- (c) Pre-departure training and information.

Migrant welfare funds: secondary services

- (a) Vocational training;
- (b) Scholarships for university education, or education fees for families of migrants;
- (c) Reintegration loans at return.

⁶⁵² Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 145–146; see also section 7.3 of this report.

⁶⁵³ "Available legal help is pivotal to whether or not employees can enforce their contractual rights; it also strengthens the rule of law by increasing transparency within the system of contract migration, makes private and government actors accountable, and often addresses systematic gaps in rights protections. In short, having access to legal services is essential for migrant workers to be able to access justice..." (Ibid., p. 149.)

⁶⁵⁴ Ibid., pp. 149–151 and 159.

⁶⁵⁵ Ibid., p. 129 (Adapted from: Dovelyn Rannveig Agunias and Neil Ruiz, "Protecting overseas workers: Lessons and cautions from the Philippines", *Insight*, September (Washington, D.C., Migration Policy Institute, 2007). Available at www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf. See also: Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 57–59.)

Current country-of-origin insurance-based arrangements rarely extend comprehensive and sufficient social security coverage to migrant workers and their families and may require decoupling social security from broader welfare and social protection interventions

Many key social security risks are not covered and, even where they are covered, the coverage is often minimal. Also, the insurance-based schemes usually provide time-bound protection, normally ending upon or soon after return of the migrant worker to the country of origin. Only in some cases is support extended to family members, including family members who stayed behind in the country of origin. Lack of awareness and problems experienced when claiming benefits are periodically raised as challenges. Importantly, it appears necessary to ensure that all key social security risks encountered by migrant workers and their families are sufficiently covered; this may require decoupling social security provisioning from broader welfare and social protection support available to migrant workers abroad.

Few countries have started to extend country-of-origin social security measures, either in the form of specialized schemes, or as an extension of national schemes, to migrant workers abroad and at times foreign nationals who originated from the country of origin

While not all social security benefits may currently be available to migrant workers and their families, countries of origin appear to be investing increasingly in extending special scheme arrangements or existing public social security scheme arrangements to migrant workers abroad and, at times, also their families, even those remaining in the countries of origin. These include health coverage, even in countries of destination, and portability of benefits. In doing so, countries of origin deliberately have to overcome territoriality restrictions – not only by adopting legislation that would ensure the extra-territorial application of these arrangements, but also by establishing institutional and operational measures, including awareness-raising measures and support to access the contributory and benefit claim procedures.

Nevertheless, several challenges may impede the extension of country-of-origin social security measures. In particular, public social security schemes in the country of origin may be non-existent or weakly developed and therefore not provide meaningful coverage, including for workers in these countries. Also, in addition to overcoming territoriality restrictions, a strong and coordinated institutional framework and effective operational arrangements need to be in place – as is evident from the Philippine good practice example.

Some countries extend social security coverage also to foreign nationals who originated from the country of origin; apparently, however, these benefits may only be available while they reside in the country of origin.⁶⁵⁶

Appropriately designed and well-managed, publicly arranged social security provisioning may have advantages over private insurance-based arrangements

Well-designed and -managed public social security arrangements applicable to migrant workers abroad may imply savings on the part of the contributing migrant worker, provided that the migrant worker is not required to pay an additional or a double contribution in the absence of an employer contribution. Also, it would facilitate streamlining of migrant workers' social security contributions and compliance with eligibility criteria and benefit withdrawal, irrespective of whether the migrant worker works in the country of origin or the country of destination. In this way, a seamless continuation of social security coverage to the benefit of the worker is ensured.

⁶⁵⁶ See the country case studies of Nepal and Ethiopia (sections 7.2 and 5.1.3, respectively, of this report).

Compulsory coverage may strengthen social security coverage for migrant workers abroad, but dual coverage challenges need to be overcome

Some countries have made insurance-based coverage compulsory for their migrant workers. However, in doing so, countries of origin have to be mindful of the real possibility that some countries of destination oblige migrant workers present in their countries to contribute to country-of-destination social security schemes – especially health insurance schemes. The effect of this may be that, in the absence of a bilateral agreement aimed at avoiding dual coverage, the migrant worker concerned may be required to contribute to a scheme covering the same social security risk in both the country of origin and country of destination – as is evident from the Philippine experience indicated above.⁶⁵⁷ This can be avoided by stipulating that the obligation to contribute to the country-of-origin scheme only applies to the extent that the migrant worker is not already covered under a similar arrangement in the country of destination and/or by entering into a BSSA, which contains an appropriate arrangement aimed at avoiding dual coverage.

Importantly, requiring migrant workers to mandatorily contribute to welfare/social security schemes providing meaningful coverage increases the costs of migration.⁶⁵⁸ Ways and means need to be found to enable migrant workers to so contribute, including among other subsidized schemes or contributions and the dedicated use of remittances to help migrant workers and their families to contribute to such schemes.

More can be done to provide protection to families of migrant workers abroad, in particular families staying behind in countries of origin

As indicated previously, only in some cases is support extended to family members, including family members who stayed behind in the country of origin. More can be done to strengthen protection, including in the social security domain. In particular, consideration should be given to ensuring that dependants' and survivors' benefits, as well as family benefits, are appropriately captured in insurance-based social security schemes. A 2015 IOM study has found that, generally, limited financial and other support is given to families of deceased migrant workers – welfare funds and/or insurance-based arrangements in countries of origin are used to pay for the repatriation and burial of the deceased, restricted survivors' benefits and health care. Countries of destination invariably do not provide compensation, but places an obligation on employers to pay for the repatriation of the deceased and, of course, the payment of outstanding wages and end-of-service benefits.⁶⁵⁹ In the broader social protection domain, much can be learned from good practice examples of countries providing business start-up or education support through migrant welfare funds to children of migrant workers abroad, in the country of origin (e.g. access to schools; scholarship programmes) – as, for example, in the case of Pakistan, Philippines and Sri Lanka.⁶⁶⁰ Also, it is important to ensure appropriate health coverage for those staying behind, through health insurance programmes and access to State-provided health care.⁶⁶¹

A welfare fund can address other critical social protection and related support to migrant workers prior to migration, during their employment abroad and at return

Key areas of interventions, and building on already existing measures in a range of countries of origin, include making contributions towards legal aid and recourse, as well as grievance redressal (e.g. Indonesia, Nepal, Philippines, Thailand and Sri Lanka), including by involving the services of legal

⁶⁵⁷ See section 7.3 of this report.

⁶⁵⁸ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 638), p. 13.

⁶⁵⁹ *Ibid.*, pp. 155–156.

⁶⁶⁰ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 58–60; Martin and Makarayan, *MISMES* (see footnote 626), p. 51.

⁶⁶¹ *Ibid.*, p. 75.

professionals abroad; subsidized medical services and health care (e.g. India and the Philippines); and the financing of pre-departure and related training (e.g. Bangladesh and Viet Nam).⁶⁶²

A particularly important area covered by migrant welfare funds concerns **repatriation** of migrant workers. Increasingly, the principle gaining ground, as confirmed by global good practice, appears to be that, depending on the specific circumstances, repatriation is a cost to be borne by: (a) employers, except where the migrant worker commits breach of contract or an unlawful act (e.g. overstaying in conflict with visa conditions); and/or (b) the relevant recruitment agency, especially where the actual employment abroad does not match what was described in the job offer and/or in the employment contract. Repatriation may also be specifically dealt with in a bilateral agreement between the origin and destination country, as well as in the employment contract – assuming that the agreement or the contract reflects the evolving principle outlined above, to ensure that the worker is adequately protected. Enforcement may, however, be difficult and needs to be specifically provided for; it would ideally require the cooperation and even legislative intervention on the part of the country of destination (as has lately been happening in, for example, Bangladesh, Nepal, Oman and the United Arab Emirates). Otherwise, in the absence of clear arrangements in this regard being appropriately enforced, the responsibility to repatriate a migrant worker often becomes a burden on embassies and consulates – in effect saddling the country of origin with the ultimate responsibility.⁶⁶³

Better regulation of the recruitment industry and protection-oriented obligations imposed on recruitment agents, as well as implementing the “Employer pays” principle, are key to migrant workers’ protection, including social protection

The following needs to be noted:

- **Large-scale government-managed migration, supported by effective public employment services, is difficult to achieve.**⁶⁶⁴ Given the comprehensive role played by private recruitment agents in labour migration and the widespread reporting of abuse and exploitation implicating agents, countries of origin have to tighten the regulatory environment and compliance monitoring measures, even if ways and means need to be found to involve private recruitment agencies in collaborative and coordinated fashion to support labour migration from countries of origin. Furthermore, investing in public employment agencies may be worth considering, provided that governments are able to provide the required skilled human resources and financial means to operate these agencies efficiently. Despite the reality that a small percentage of migrant workers are placed abroad through public employment agencies, it has been remarked that:

Specialized (public) international placement agencies have proved their effectiveness in different contexts and for different kind of migrants (highly skilled in Tunisia, unskilled in Asia) in prospection of job opportunities, pre-selection and job-matching. They are sustainable (and often self-financing) and specialize precisely in optimizing the skills and labour market outcomes of migrant workers, establishing standard mechanisms to ensure that they protect their rights. They compete effectively with private recruitment agencies, develop economies of scale and pursue the public good. However, they do not

⁶⁶² Ibid., pp. 60 and 62.

⁶⁶³ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 147–148.

⁶⁶⁴ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 56 and 74.

always take into account development considerations, since very often, their main objective is to maximize the number of placements abroad. Despite their unbeatable position, they rarely undertake tracing studies of their “clients” or “beneficiaries”.⁶⁶⁵

- **Adhering to the “Employer pays” principle.** This involves among other eradicating the payment of migration costs that should be for the account of the recruitment agency and/or the foreign employer – a standard increasingly endorsed in global guidelines and recent State practice. Failure to address this appropriately may result in increased migrant worker debt bondage and in contributing to irregular migration patterns.⁶⁶⁶
- **Imposing joint and several liability.** Also, imposing joint and several liability on recruitment agencies and (foreign) employers in the event of non-compliance with regulatory requirements, human rights imperatives and contractual obligations needs to be considered and appropriate arrangements have to be made to implement and enforce such liability – the experience of countries such as the Philippines may be of particular value.
- **Self-regulation and fair recruitment principles.** Considerable benefit can be gained from requiring the recruitment industry to self-regulate (e.g. via enforceable codes of conduct, ideally supported by a ranking system), in addition to implementing the public regulatory regime, and adhering to widely endorsed and emphatic fair recruitment principles, increasingly embedded in a large range of international standards and guidelines, and indicated in more detail in the next item and in [Appendix 1](#).⁶⁶⁷
- **Different dimensions of State regulation of international recruitment.** The different dimensions of State (government) regulation of international recruitment have been depicted as follows and provide a helpful reference for African countries of origin and associated destination countries.⁶⁶⁸

Prevention

- (a) Licensing and associated rules on recruitment activities;
- (b) Rules on recruitment fees;
- (c) Immigration/emigration rules;
- (d) Bilateral agreements (government to government agreements focused on migrant worker protection in recruitment processes);
- (e) Codes of conduct (“soft law”).

Monitoring and enforcement

- (a) Requiring private recruitment agencies to report;
- (b) Inspections of licensees;
- (c) Action against illegal recruiters;
- (d) Immigration and emigration processes;

⁶⁶⁵ Martin and Makarayan, *MISMES* (see footnote 626), p. 54, read with p. 60.

⁶⁶⁶ *Ibid.*, p. 71.

⁶⁶⁷ *Ibid.*, p. 74.

⁶⁶⁸ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 3.

- (e) Complaint mechanisms;
- (f) Liability;
- (g) Sanctions regime.

In essence, there is significant scope for strengthening recruitment monitoring. Several matters of relevance need to be raised.⁶⁶⁹

- **Adherence to monitoring standards and guidelines operating at various levels is key to ensuring protection of African migrant workers.** A 2015 IOM study indicates the following typology of recruitment monitoring:⁶⁷⁰
 - (a) **Supranational monitoring.** The role played by international human rights law, standards and instruments, by international organizations, and within the auspices of multilateral frameworks such as the Abu Dhabi Dialogue.
 - (b) **State-led monitoring.** Government regulation (including legislation and associated rules and orders), government monitoring and enforcement of regulation (including redress). State-led monitoring also includes government-to-government agreements.
 - (c) **Non-State-led monitoring.** The role played by trade unions, NGOs and businesses (recruitment agencies and employers) in “soft” regulation, including private initiatives.”

However, the study notes that, as far as Colombo Process member States and associated destination countries are concerned, international human rights standards on recruitment are not generally referenced when relevant laws and policies are devised.

- **Globally, human rights-based recruitment standards have been rapidly developing, providing a solid basis for protecting African migrant workers, from a recruitment perspective.** For African countries of origin and associated countries of destination, it is of critical importance to ensuring appropriate protection of African migrant workers that these standards are heeded. African governments should invest in drawing from the rich tapestry of human rights standards informing ethical recruitment. These standards are summarized in [Box 3](#) (see [Appendix 1](#) for a more elaborate reflection on key recruitment standards).

⁶⁶⁹ Drawing largely from: *Ibid.*

⁶⁷⁰ *Ibid.*, p. 3.

Box 3. Summary of the key human rights standards relating to recruitment

- (a) States should provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including by providing for penalties for agencies which engage in fraudulent or abusive employment (Private Employment Agencies Convention, 1997 (No. 181) and Forced Labour Protocol, 2014 (No. 29)).
- (b) States should ensure that private recruitment agencies do not charge recruitment fees to workers (Private Employment Agencies Convention, 1997 (No. 181)).
- (c) States should ensure that private recruitment agencies do not make illegal deductions from workers' salaries (Work in Fishing Convention, 2007 (No. 188) and Domestic Workers Convention, 2011 (No. 189)).
- (d) States should ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning their activities (Work in Fishing Convention, 2007 (No. 188) and Domestic Workers Convention, 2011 (No. 189)).
- (e) States should ensure that private recruitment agencies do not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind (Private Employment Agencies Recommendation, 1997 (No. 188)).
- (f) States should ensure that private recruitment agencies inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment (Private Employment Agencies Recommendation, 1997 (No. 188)).

Source: Katharine Jones, *Recruitment Monitoring & Migrant Welfare Assistance: What works?* (Geneva, IOM, 2015), p. 44 (Fig. 5).

- **Learning from the experiences of other countries and regions, African governments should contemplate a range of measures to implement appropriate recruitment monitoring frameworks.**⁶⁷¹ Among others, such measures include:

- (a) Robust screening of applications from private recruitment agencies;
- (b) Ongoing monitoring of licensed private recruitment agencies by their home authorities;
- (c) Close monitoring of fees charged to migrants;
- (d) Ongoing monitoring of private recruitment agencies through emigration clearance processes;
- (e) Include labour attachés in attesting documents (in particular, the employment contract with the foreign employer);
- (f) Systematic bilateral sharing of information about exploitative private recruitment agencies between licensing authorities and those of associated destination States;
- (g) Deal with the continued existence of unlicensed sub-agents;
- (h) Implement rarely used criminal sanctions, over and above administrative sanctions to cement the liability of private recruitment agencies in the event of exploitation of migrant workers, where the exploitation is not beyond the control or influence of the agencies;

⁶⁷¹ Ibid., pp. 4–7. Mekong Migration Network, *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants' Rights* (Chiang Mai, Thailand, 2019), p. 122.

- (i) Assist migrant workers (including irregular migrant workers) in obtaining restitution and accessing complaints mechanisms both at home and abroad.
- **Adjust national legal and policy frameworks to improve recruitment monitoring.**⁶⁷² Some of the measures that should appear prominently in the legal and associated policy framework informing recruitment monitoring include:
 - (a) *Regulating relevant business relationships involving private recruitment agencies.* Introduce rules that regulate the business (commercial) relationships between private recruitment agencies, and between private recruitment agencies and sub-agents (usually illegal recruiters).
 - (b) *Public disclosure of complaints against and sanctions on recruitment agencies.* Arrange for information on complaints made about private recruitment agencies and sanctions applied to be shared with the public, to enhance transparency of licensing frameworks, and assist prospective and other migrant workers, as well as associated destination State authorities and potential employers, in making informed decisions.
 - (c) *BLAs to include monitoring provisions.* Include provisions in BLAs for recruitment monitoring (of private recruitment agencies, of the required process, and of government-to-government liaison regarding recruitment) – to enable and commit governments and implementing authorities in both countries of origin and destination to engage in recruitment monitoring.
 - (d) *Capture related migration businesses in the legal framework.* Extend the focus of national legal and policy frameworks beyond the international recruitment industry to also capture related “migration businesses” working in partnership with recruiters, “and which are often contributors to various degrees of migrant exploitation. These include pre-departure training centres, medical centres, insurance companies and travel agencies, among others – some of which might be owned by private recruitment agencies. These businesses are often subject to different regulation, if indeed they are regulated, and are usually not overseen by the same authorities responsible for recruiters, despite the interrelationship with recruitment exploitation. This hampers the ability of the authorities to effectively monitor international recruitment and, of individuals seeking remedy, to establish the appropriate legal liability of the different private sector actors involved.”⁶⁷³
 - (e) *Provide for incentives.* While penalties for non-compliant agencies and agencies engaged in fraudulent or abusive employment are an important deterrent intervention, national legal and policy frameworks should also provide incentives (rewards) for private recruitment agencies to either comply or go beyond compliance to act ethically.
 - **Involve trade unions and NGOs.** It has been noted that: “Trade unions and NGOs are essential contributors to monitoring of international recruitment industries through: a) advocating for individuals, often through facilitating litigation against perpetrators; b) exposing exploitation and campaigning for change; and c) helping recruiters to develop more ethical business practices.”⁶⁷⁴

⁶⁷² Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 7–8.

⁶⁷³ Ibid.

⁶⁷⁴ Ibid., p. 8.

- **Impose licensing and accreditation requirements on recruitment agencies and employers in destination countries.** The 2015 IOM study alluded to in the previous section also refers to the following good practice experiences:

Requiring ‘foreign’ private recruitment agencies which recruit workers into a destination country to also be licensed with the destination State authority (e.g. the United Kingdom) with the aim of increasing bilateral oversight of international recruiters.

Requiring ‘foreign principals’ (private recruitment agencies or employers) to be accredited through the overseas mission (e.g. the Philippines) enabling checks to be conducted as to whether any complaints have previously been lodged against these businesses.⁶⁷⁵

- **Adopting regional approaches.** Origin country governments should consider working together as a bloc to enhance recruitment monitoring, particularly to abolish recruitment fees, for example, by adopting appropriate regional instruments and monitoring institutions. They could also as a bloc engage with associated destination countries on recruitment monitoring in such countries, with reference to matters outlined above.⁶⁷⁶

Invest in harmonized standard employment contracts which guarantee a minimum of social security and other social protection benefits

A well-developed, standardized employment contract, to which countries of origin and countries of destination commit and which is enforceable in both countries, appears to be critical prerequisite for the protection of migrant workers. Such a standardized contract is already required, or envisaged, by some origin countries.⁶⁷⁷ As remarked by Martin and Makarayan:

Model employment contracts are clearly a cost-effective, easy-to-implement and straightforward way of protecting migrant workers’ rights, in particular for most vulnerable, non-skilled migrants, at least in its non-mandatory variety. The registration of contracts of migrant workers in the public employment services of countries of origin is another effective, complementary way of protecting their rights; this is particularly true, if it is also used in the framework of the recognition of acquired skills or social security rights, as is the case in some countries.⁶⁷⁸

Apart from clear and enforceable terms and conditions of employment (adjustable to the context of the specific work environment), a certain modicum of social security and broader social protection support should appear in the employment contract, adjusted to the context of both the country of destination and the country of origin. BSSAs and even BLAs can build on the nature and ambit of the protection, but even so, this does not remove the importance of having such provisions included in the contract of employment. Countries bound together in a regional framework could agree on a standardized contract applicable to migrant workers from various countries in the region, both for intraregional and international labour migration.⁶⁷⁹

⁶⁷⁵ Ibid., p. 9.

⁶⁷⁶ Ibid., p. 11.

⁶⁷⁷ See sections 7.2 (Nepal) and 7.4 (Bangladesh) of this report.

⁶⁷⁸ Martin and Makarayan, *MISMES* (see footnote 626), p. 55.

⁶⁷⁹ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 73–74.

Pre-departure skills training is critical for both destination and origin countries

- **Rationale and advantages.** Suitable skills training arrangements, especially if well-coordinated with destination countries, help to enhance job placement and avoid skills mismatching. However, pre-departure information sessions often miss this important objective, as they often focus on cultural orientation and practical information. There may be a need to concentrate particularly on improving both information relayed to and skills training for particular vulnerable groups, including domestic workers and other migrants working in skilled and low-skilled sectors.⁶⁸⁰ The advantage of well-designed skills programmes is appreciated by destination countries that have “become increasingly enthusiastic about the skills-based training programmes, understandable as hiring already-trained workers reduces the costs for employers of hiring migrants from overseas”.⁶⁸¹ In particular, to the extent that labour market needs can be integrated into the training programme, this ensures a high rate of placements. Also, “[T]he involvement of employers in destination countries and the integration of those programmes into wider reform plans of national vocational training institutions (i.e. their level of embedment into national policies) are key success factors.”⁶⁸²
- **Risks and requirements.** Such training risks increasing migration costs for prospective migrant workers and therefore requires investment by governments of origin and destination countries, as well (foreign) employers as the ultimate beneficiaries of a trained foreign workforce. Furthermore, public employment agencies could render much-needed service by maintaining a jobseeker database to respond to international job offers.⁶⁸³ In addition, validation and recognition of migrants’ skills and qualifications – including the validation of practical skills – appear to be critical to successful placement subsequent to skills training.⁶⁸⁴
- **Skills partnerships between countries of origin and destination.** In their study, Martin and Makarayan (2015) records interesting skills partnerships which combine international development cooperation with migration management policies. They remark:

Although these two policy fields usually have nothing to do with each other, there is an added value in combining them in certain sectors with high labour mobility. For example, interesting projects with good potential development effects include investing in schools from likely emigrant regions to learn, use and renew skills (e.g. the Italian Fayoum project in Egypt); or creating international traineeships for professional skills development across countries (e.g. German triple-win project). As noted by Clemens (2014), global skills partnerships can provide a common cooperation ground to the countries of origin and destination for migration management.⁶⁸⁵

⁶⁸⁰ Ibid., pp. 71–72; Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 159.

⁶⁸¹ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 14 and 158; Martin and Makarayan, *MISMES* (see footnote 626), p. 55.

⁶⁸² Martin and Makarayan, *MISMES* (see footnote 626), p. 55.

⁶⁸³ Ibid.

⁶⁸⁴ Ibid., p. 56.

⁶⁸⁵ Ibid., p. 61.

Pre-departure programmes should be planned well and have clarity in their objectives, intended audiences and content

A 2015 IOM study reflects on this as follows in relation to Colombo Process member States (CPMS), but evidently of relevance for African countries as well:

For the most utility, content should also be tailored to individual destination countries. Content should include information about migrants' rights, including access to remedy at home as well as in the destination country. CPMS governments may wish to consider allowing workers' representatives, including CSOs and trade unions input into designing pre-departure programme content as well as in delivering it. The participation of migrant returnees in programmes has also been highlighted as a model of good practice. The 'one-stop shop' model developed exhibited by the Migrant Resource Centres may be useful in delivering all-round services to migrants.⁶⁸⁶

Well-designed institutional and operational arrangements are necessary to foster protection

Best practice examples indicate that countries of origin succeed in providing meaningful support and social protection to their migrant workers abroad when they have coordinated **institutional structures** in place:

- (a) These structures usually involve different levels of government (including local governments); specialist public bodies, often located within ministries; and diaspora-related private institutions.
- (b) Of critical importance are the services rendered by embassies/consulates, to which labour attachés and welfare officers should ideally be attached – Colombo Process countries invariably invest in utilizing embassies to provide support to migrant workers, which also includes the monitoring of migrants' workplaces, and providing shelters within embassy grounds for migrants in distress.⁶⁸⁷ Particularly important in this regard is partnering with service providers, including civil society, to support the work of diplomatic missions (as is the case with, e.g. India and Indonesia).⁶⁸⁸
- (c) Labour attachés fulfil an important role in assisting and protecting migrant workers in destination countries. Their role is also proactive as best practice suggests that they make employers and recruiters respect the rights accorded to migrant workers, including domestic workers.⁶⁸⁹ However, apart from funding constraints, several other challenges are experienced, particularly those related to governance and institutional capacities at destination.⁶⁹⁰ Key recommendations

⁶⁸⁶ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 15.

⁶⁸⁷ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 61–63.

⁶⁸⁸ *Ibid.*, pp. 63–64.

⁶⁸⁹ C.R. Abrar, S. Irudaya Rajan, L.H. Ruhunage and T. Siddiqui, *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, India and Sri Lanka*, working paper no. 23 (Brighton, United Kingdom, Migrating Out of Poverty, 2014), p. 6.

⁶⁹⁰ Abrar et al. (2014) summarize some of these challenges as follows (*ibid.*, p. 6):

The challenges faced by the LAs [Labour Attachés] in rendering effective services were also identified. Physical distance in large countries such as Malaysia, lack of qualified personnel and resources, absence of laws pertaining to domestic workers in the Gulf States, the high cost of providing legal assistance, the presence of migrants with irregular and undocumented status, and the propensity of some workers to opt for industrial action that violates local laws, are some of the major challenges identified by the LAs during the study. Moreover, migrants interviewed as part of the study also pointed to a perceived lack of capacity among LAs' offices, as well as differential treatment for low-skilled migrants, and limited opening times, which made accessing the services of LAs difficult.

The issue of coordination and coherence was also highlighted. The study suggests that authorities in the ministries do not always appoint the best-qualified personnel as LAs. The LAs' performance at destination is often hampered by delays on decisions and actions by those in charge of the line agency or relevant ministry at home. In some instances, monitoring and evaluation mechanisms are weak. This working paper discusses the above findings and concludes with practical policy recommendations to address these issues.

for strengthening labour attachés include recruitment and training of qualified personnel; improving the capacity of labour attachés to deal with a large number of issues concerning migrant workers and to expand their liaison with these workers; linking with employers and the private sector, to enhance recruitment opportunities for interested migrant workers and explore other labour market possibilities in the destination country; and improving resource allocation for the labour attaché wing of embassies, as well as coordination and coherence between different wings of overseas diplomatic missions.⁶⁹¹

- (d) Also, maintaining welfare desks at the departure and arrival lounges of international airports in the home country is particularly helpful for on-site assistance, services and advice extended to migrant workers (see the examples of Bangladesh and Indonesia, among others).⁶⁹²
- (e) Consideration could be given to joint approaches and cost-sharing by countries of origin in relation to assistance given to migrant workers abroad, ideally complemented by collaborative efforts on the part of countries of destination, given the value these countries derive from labour migration.⁶⁹³
- (f) Enhancing the capacities of origin countries to render meaningful social protection benefits and other services to their migrant workers abroad requires capacity-building interventions following a determination of capacities needed to implement support programmes, and to address data gaps and produce the evidence to inform policy and implementation.⁶⁹⁴

In addition, the case studies described above suggest that a dedicated *operational framework* of services and tools is necessary to enhance and streamline access to the country-of-origin social security system and benefits, as well as other social protection benefits and services available to migrant workers. This may require the digitization of operations, processes and interfacing between governments/agencies and migrant workers and their dependants. The Philippine and Bangladesh examples of electronic interfacing and smart card technology are particularly helpful.⁶⁹⁵ Also, monitoring and evaluation should be included as an integral component of policies and programmes aimed at rendering welfare and other forms of social protection support to migrant workers abroad.⁶⁹⁶

Nevertheless, challenges experienced with the funding and administration of migrant welfare funds, in particular, need to be addressed – among other, by including destination-country governments and foreign employers in providing support, both financially and technically; by implementing formal mechanisms for periodically informing fund members about the fund's financial standing and services offered in a given period; and by more effectively including undocumented migrants, who remain most vulnerable and in need of support, but without jeopardizing the system's integrity and the fund's sustainability.⁶⁹⁷

⁶⁹¹ Ibid., pp. 31–34.

⁶⁹² Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 58–61.

⁶⁹³ Ibid., p. 75.

⁶⁹⁴ Ibid., p. 76.

⁶⁹⁵ Ibid., p. 75.

⁶⁹⁶ Ibid., p. 78.

⁶⁹⁷ Ibid., p. 75.

Civil society institutions play a critical role in supporting migrant workers and fulfilling advocacy roles, but face constraints

Trade unions and NGOs have been particularly active in providing various forms of assistance to migrant workers and their families, and to highlight the plight of migrant workers prior to and during their stay in the destination country and at return. However, as has been noted:

With trade unions either banned or facing limitations on their operation, NGOs in destination countries try to fill the gaps in migrant welfare but are however largely limited to providing humanitarian assistance. However, NGOs, often struggling financially, are usually limited to providing humanitarian assistance in the form of emergency shelter, assistance with repatriation. In more limited circumstances, NGOs at home and overseas also provide access to legal assistance for migrants to seek redress for wrongs – either financial or criminal. Advocacy on the part of individual NGOs is substantially more limited ...⁶⁹⁸

Invest further in Migrant Resource Centres

As discussed above, migrant resource and similar centres (e.g. employment service centres) play an important information-providing and supportive role. Origin countries should consider establishing MRCs where they do not presently exist and facilitate access by providing mobile services to prospective migrant workers. Enhanced information-sharing could be achieved “by developing concise destination country profiles that outline employment conditions, required documents, health information and government contacts and services in a language migrants can readily understand.” Origin countries bound together in regional frameworks could also work with each other by sharing information among themselves and collating information in one region-wide resource hub.⁶⁹⁹

Nevertheless, while the rationale for establishing and maintaining MRCs is self-evident, efforts should be made to increase their use, to offer some products (also) in digital format and to integrate such centres in national labour migration services:

Migrant resource centres (MRCs) or mobility centres are becoming the visible ‘window’ of many migration policy interventions, including MISMEMS. The idea of combining all services and information relevant for potential or returning migrants is, of course, rational. The question is the rate of use (often there is no data on the number of beneficiaries, but there is anecdotal evidence of some cases of low rates of use). There is also the relevance of some of the services or ‘products’ offered. Being a package, it is difficult to differentiate those elements that have a positive impact from those which do not. A good example of this are migration guides, which are very popular in many MRCs (because they are visible and tangible). These are expensive to produce and print, and can be better replaced by on-line information resources (which can be more easily updated, much cheaper to collect and produce and accessible to anybody who can read). They are more effective to the extent that they are embedded in national public employment services or other public bodies.”⁷⁰⁰

⁶⁹⁸ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 14.

⁶⁹⁹ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 72–73. See also section 7.7 of this report.

⁷⁰⁰ Martin and Makarayan, *MISMEMS* (see footnote 626), p. 56.

Diaspora networks and remittance support enhance social protection support and developmental initiatives in the country of origin

The following supportive interventions are importance (consult [Appendix 2](#) for further details):

- **Involving diaspora associations.** A well-organized network of diaspora associations could enhance social protection support, for example, of family members in the country of origin.
- **Streamline remittance transfer arrangements.** Streamlined and smooth remittance transfer arrangements greatly benefit households and contribute to economic development in countries of origin. Remittances have a positive impact on poverty reduction and socioeconomic development, through household support and economic investment in the countries of origin, as well as strengthening the financial system (in particular, the balance of payments) and economic growth. For example, it has been suggested that remittance spending in the Philippines is “what keeps the big service industries such as retail, education, real estate...growing despite the sluggish performance of domestic industry and agriculture.”⁷⁰¹ This would require attention being paid to moderating the regulatory environment to encourage remittance transfers; taking measures to bring about the lowering of remittance transfer fees, including by enhancing competition between approved remittance transfer operators; and supporting remittance transactions through mobile phones (widely practised in countries such as Afghanistan, Bangladesh, India, Malaysia and the Philippines).⁷⁰²
- **Enhance diaspora investments.** Favourable opportunities to invest in government and private assets may further enhance the ability of the country of origin to strengthen social protection support.⁷⁰³ Dedicated institutional arrangements (which could be mainstreamed into national investment institutions) and specialized incentive modalities may need to be developed to serve this purpose. India, for example, has created the Overseas Indian Facilitation Centre and the India Development Foundation of Overseas Indians. Several countries, including some countries discussed in this report, have developed incentives to attract investments from the diaspora in particular, for example, through the issuance of diaspora bonds.
- **Support diaspora skills transfer.** Of particular importance is the value to be gained from integrating qualified migrants in addressing critical labour market skills needs in countries of origin – at least on a temporary basis, given the limited success achieved with attempts to ensure the permanent return of highly skilled migrants to African countries of origin. The experience in sub-Saharan Africa is highlighted as follows:

Programmes for the temporary stay of qualified migrants in countries of origin have a long tradition, in particular in Sub-Saharan Africa and in sectors like health or education (both basic and university education). They have proved useful in transferring knowledge back to countries of origin. However, even if the qualified migrants work on a voluntary basis, they are often expensive (in terms of travel expenses and other costs). Ultimately, only when they are clearly targeted (in terms of the sector and the objectives of the process) do they produce a positive cost–benefit ratio.⁷⁰⁴

⁷⁰¹ See section 4.1 of this report; Ofreneo and Sale, “Social security and migrant workers in the Philippines” (see footnote 96), p. 167.

⁷⁰² Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 66 and 76.

⁷⁰³ *Ibid.*, p. 66.

⁷⁰⁴ Martin and Makarayan, *MISMES* (see footnote 626), p. 55.

Appropriate return and reintegration arrangements are key to support for and protection of returned migrant workers, including social protection beyond the period of migrant work abroad

The 2011 IOM study previously mentioned summarizes the good practice experiences of Colombo Process countries in this regard in the following terms (consult [Appendix 2](#) for further details):

Though reintegration remains one of the least developed policy areas, CP governments have initiated programmes to reintegrate migrants upon their return. Such programs encourage return migrants to actively contribute to the economy and society, mainly by helping them find business and employment opportunities. Successful reintegration considers the needs of migrants on several levels: economic (business creation, new employment, reskilling or skills upgrading) and psychosocial (adaptation after prolonged absence, reunification of the migrant family).⁷⁰⁵

- **Adopted measures.** Measures adopted by countries of origin include preferential access to start-up investment; loans for new businesses, for example, at the local government level; entrepreneurship training, especially for migrant women; supporting private-sector efforts to provide job-matching services to returnees; and supporting reintegration support services provided by civil society actors.⁷⁰⁶ Implementing and making known return employment information platforms could be effective means of providing information and hence improving the match of return migrant workers, in terms of skills use and labour market integration.⁷⁰⁷
- **Remaining challenges.** Several challenges remain, including the need for financial education to manage overseas earnings and entrepreneurship support in origin countries; insufficient attention paid to reskill returnees and enhance placement services for them; limited social security portability possibilities (see also the next point); lack of legal and health support services at return; and limited and underdeveloped social reintegration services.⁷⁰⁸ Also, regarding the efficacy of targeted entrepreneurship and income-generating schemes for returnees, a word of caution has to be heeded:

Targeted entrepreneurship and income generating schemes for returnees often combine some form of grants and training programmes. They feature a high rate of failure and have proved useful only for the returning migrants who were already exposed to business management during migration and who can contribute co-financing capital. The business environment in the country of origin is determinant in the success prospects of these initiatives.⁷⁰⁹

Ensuring portability of social security benefits from the country of destination is a critical social protection intervention

Again, with reference to the experience in Colombo Process countries, it has been reported that:

Some [Colombo Process] governments have also focused on ensuring that returnees will have access to the social security earned while working abroad – an issue more

⁷⁰⁵ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 66 and 76. See also: Valérie Wolff, Stella Opoku-Owusu and Diasmer Bloe, “Diaspora engagement on country entrepreneurship and investment policy trends and notable practices in the Rabat Process region”, background paper presented at the Rabat Process Thematic Meeting on Diaspora Engagement Strategies: Entrepreneurship and Investment, Bamako, 5–6 October 2016). Available at www.rabat-process.org/en/document-repository?task=document.download&id=158.

⁷⁰⁶ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 66–68.

⁷⁰⁷ Martin and Makarayan, *MISMES* (see footnote 626), p. 56.

⁷⁰⁸ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 68–70.

⁷⁰⁹ Martin and Makarayan, *MISMES* (see footnote 626), p. 56.

relevant for migrants who worked in Western countries. India and the Philippines have social security agreements with destination countries that give returnees continued access to pensions and other benefits earned at the destination. India has signed BSSAs with Belgium, France, Germany, Switzerland, Luxembourg, Netherlands, Hungary and Denmark, while the Philippines has similar arrangements with Austria, the United Kingdom, Spain, France, Canada, the Netherlands, Switzerland, Belgium and [the Republic of] Korea.⁷¹⁰

However, it has been remarked that it remains difficult to achieve what is needed – that is, ensuring that wages and social security benefits earned abroad can be fully transferred back home at a minimal cost.⁷¹¹ Bilateral and multilateral arrangements, explained in the next point, may be indispensable to achieve this outcome.

Bilateral and multilateral agreements are key to migrant worker welfare support but need to be further developed

In addition to the specific benefits flowing from BLAs, as well as BSSAs and MSSAs described earlier in this report,⁷¹² there is some evidence of a new generation of progressive BLAs containing worker-centric provisions regarding recruitment and welfare support, including a limited range of social security benefits. However, in view of the need for an appropriate range of social security-specific benefits to be available to migrant workers and their families, bilateral and multilateral agreements need to be further developed and better formalized as, for example, advocated in the Nepalese policy frameworks.⁷¹³ Yet African governments have to understand that it takes time to negotiate such agreements, that dedicated measures need to be included in the agreements to enhance their enforceability and that the weak and unequal bargaining power of African countries has to be appropriately remedied, for example, through welfare outcomes jointly agreed among African origin countries and with their associated destination countries.⁷¹⁴ Furthermore, the impact and effectiveness of many of the measures discussed in this part of the report (e.g. skills training, recruitment monitoring, diaspora involvement) could be significantly enhanced if integrated into BLAs between countries of origin and destination.⁷¹⁵

In any event, enforcing countries-of-origin unilateral measures may require the cooperation of destination countries

A 2011 IOM report comments as follows: “All too often, good practices such as minimum wage standards, standard contracts and job descriptions are unilateral efforts not easily enforced at destination. Bilateral or multilateral discussions and agreements on such matters can help ensure that migrant workers’ rights are effectively protected.”⁷¹⁶

Utilize regional platforms to strengthen social protection for migrant workers abroad and develop common strategies

There are increasingly good examples of regional institutions providing a platform for jointly investigating social security support needs and possibilities in relation to migrant workers abroad, to arrange for collaboration in and with countries of destination, and to otherwise exchange good practices. Such platforms also provide a basis for countries of origin to develop a common voice and a set of common strategic aims on key issues in migration governance, in particular, to

⁷¹⁰ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), p. 66.

⁷¹¹ *Ibid.*, p. 72.

⁷¹² See section 3.5 of this report.

⁷¹³ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 79–80.

⁷¹⁴ Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 128.

⁷¹⁵ Martin and Makarayan, *MISMES* (see footnote 626), p. 59.

⁷¹⁶ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 56–57.

advocate for enhanced social protection for their migrant workers abroad, also vis-à-vis countries of destination. The Colombo Process⁷¹⁷ and Abu Dhabi Dialogue⁷¹⁸ serve as useful examples of these possibilities. Learning from the Asian experience, in the African context, this could include intraregional consultations and joint approaches at the level of RECs, RCPs and continental (i.e. African Union) structures.⁷¹⁹

Enhance the evidence basis and data environment

The success and streamlining of many of the measures discussed in this part of the Report are dependent on a sufficient evidence base and an enhanced data environment – as, generally speaking, too little is known of what works and does not work in a particular context. This requires the enhancement of statistical capacity, especially in countries of origin, and dedicated data capturing and evaluative arrangements, including:

- (a) Labour force surveys in countries of destination and origin that include pertinent questions on participation in migrant support measures;
- (b) A mandatory information template for all projects and programmes implemented;
- (c) A mandatory post-programme evaluation framework for all programmes and projects funded and implemented.⁷²⁰

⁷¹⁷ The Colombo Process – an RCP for “migrant-origin” States in South and South-east Asia – was “set up in 2003 ... the [Process]’s first thematic focus is the protection of and provision of services to migrant workers – in particular, protecting migrant workers from abusive practices in recruitment and employment, and providing appropriate services to them in terms of pre-departure information, orientation and welfare provisions.” (Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), p. 2). Colombo Process member States currently include 12 Asian countries, namely Afghanistan, Bangladesh, Cambodia, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam (Colombo Process, “Members”, webpage available at www.colomboprocess.org/about-the-colombo-process/members (2021)). The aim of the Colombo Process is to provide a forum for Asian labour-sending countries to: (a) share experiences, lessons learned and best practices in overseas employment; (b) consult on issues faced by overseas workers and labour-sending and -receiving States, and propose practical solutions for the well-being of overseas workers; (c) optimize development benefits from organized overseas employment and enhance dialogue with countries of destination; and (d) review and monitor the implementation of recommendations and identify further steps for action (Colombo Process, “Objectives”, webpage available at www.colomboprocess.org/about-the-colombo-process/objectives (2021)).

⁷¹⁸ The Abu Dhabi Dialogue was established in 2008 as a forum for dialogue and cooperation between Asian countries of labour origin and destination. It currently consists of the 12 member States of the Colombo Process – namely Afghanistan, Bangladesh, Cambodia, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Viet Nam – and six Gulf countries of destination – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, as well as Malaysia. Regular observers include the IOM, ILO, private sector and civil society representatives. The permanent secretariat is provided by the United Arab Emirates, and the current chair-in-office is Sri Lanka. As a State-led regional consultative process, the Abu Dhabi Dialogue aims to enable safe, orderly and regular labour migration in some of the world’s largest temporary labour migration corridors. Through multilateral dialogue and cooperation on the joint development of labour mobility-related programming, implementation and reporting, the Dialogue helps to ensure that member States develop partnerships for adopting best practices and are in a position to learn from one another’s experience. Civil society has been invited to contribute to the dialogue and in recent years to partner in realization of some of the programme areas. (Colombo Process, “Objectives”, webpage available at www.colomboprocess.org/about-the-colombo-process/members; Development Assistance Roadmap Portal in the Middle East, “Abu Dhabi Dialogue”, webpage available at <https://darpe.me/aid-entries/abu-dhabi-dialogue-add>.)

⁷¹⁹ Agunias et al., *Labour Migration for Colombo Process Countries* (see footnote 643), pp. 79–80; Jones, *Recruitment Monitoring & Migrant Welfare Assistance* (see footnote 642), pp. 14 and 158.

⁷²⁰ Martin and Makarayan, *MISMES* (see footnote 626), pp. 61–62.



8 Selected high-level conclusions and recommendations

Appreciate and give effect to the human rights of migrant workers and their entitlement to be treated with dignity and enjoy social protection

This requires the strengthening of constitutional, legal and policy frameworks acknowledging this essentially rights-based approach and the concomitant obligations imposed on States. Simultaneously, the adoption and implementation of international and regional instruments also by countries of origin regarding their own migrant workers, confirming the (social) protection of migrant workers, give further support to honouring the basic fundamental rights to protection accruing to migrant workers.

Several global instruments recognize social protection, particularly as understood in the narrower social security sense, as a right accruing to everyone, including migrant workers and their dependants – for example, the Universal Declaration of Human Rights (in particular, arts. 22 and 25) and the International Covenant on Economic, Social and Cultural Rights (in particular, art. 9). It has also been embedded in the Sustainable Development Goals (SDGs), with some SDG targets (e.g. 1.3, 3.8, 5.4 and 10.4) referring explicitly to social protection. It is further one of the pillars of the ILO concept of Decent Work. The right to social security is derived from several human rights acknowledged in the African Union’s foundational human rights instrument, the African Charter on Human and People’s Rights (1982) (the Banjul Charter), ratified by all 55 African Union member States. This right imposes on African Union member States the obligation to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education consistent with human life, security and dignity (i.e. minimum core obligations). Member States have to take effective measures to fully realize the right of all persons to social security, including social insurance.⁷²¹ Other African Union instruments, including the African Union Social Policy Framework for Africa (2008) and the Social Protection Plan for the Informal Economy and Rural Workers (SPIREWORLD) (2011), confirm these minimum core obligations, as is the case with a number of recent African Union human rights protocols. The SADC Code on Social Security is an example of a REC instrument endorsing the right to social protection, including for migrants (art. 17). The national constitutions of several African countries also recognize social protection (particularly in the social security sense) as a human right. Social protection has been found to have a consistently positive impact on poverty reduction, nutrition and food security, and other human development outcomes, including in Africa.⁷²²

Build on diplomatic and consular support interventions

The *Vienna Convention on Diplomatic Relations* (1961), extensively ratified by African Union member States, describes the functions of a diplomatic mission to include “protecting in the receiving State the interests of the sending State and its nationals, within the limits prescribed by international law” and “negotiating with the Government of the receiving State” (arts. 3(1)(a) and (c)). Diplomatic missions fulfil consular functions (art. 3(2)), which, according to the *Vienna Convention on Consular*

⁷²¹ ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter, (see footnote 16), paras. 81 and 82(a).

⁷²² African Union, *Report on Labour Migration Statistics in Africa*, second edition (see footnote 7), p. 47.

Relations (1963) (ratified by almost all African countries), include protecting, in the receiving State, the interests of the sending State and of its nationals (within the limits prescribed by international law); helping and assisting nationals of the sending State; and representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, with a view to the preservation of the rights and interests of these nationals (arts. 3(a), (c) and (i)). Consular functions may also be exercised by a sending State on behalf of a third State, upon notification to the receiving State (art. 8). Consular services for migrant workers and their dependants have seen a rising demand, at times supported through intergovernmental consular agreements, as well as BLAs and BSSAs, for example, in the areas of social security, health protection, worker protection, other welfare assistance (e.g. hotlines and safe houses for exploited workers) and diaspora engagement, including on behalf of third countries.⁷²³

Extension of social security to migrant workers abroad is weakly developed but holds significant promise

The country-of-origin case studies investigated in this report do not yet extend significant unilateral social security support to their migrant workers abroad. In fact, generally speaking, these countries provide better protection in social security terms for immigrant workers. In some cases, portability arrangements are in place. Generally, however, countries of origin do foresee and provide for the conclusion of BSSAs that could achieve this effect, although very few such agreements have actually been concluded. BSSAs, as is the case with MSSAs (e.g. ECOWAS), remain international best practice for the extension of social security protection. BLAs rarely provide for sufficient social protection.

The absence of appropriate social protection for African migrant workers in many countries of destination requires the adoption of innovative social protection extension modalities

It is clear that, given the absence of meaningful social (security) protection in several countries of destination, innovative solutions need to be found to extend country-of-origin protection to African migrant workers. Different modalities present themselves – including extending existing in-country social security protection to migrant workers abroad and/or to design tailor-made arrangements. Decisions regarding whether participation should be compulsory or voluntary also have to be taken. Examples from beyond Africa, such as the Philippines, provide good practice models from which valuable lessons can be learned.

The reality of the context should be considered

Many African countries of origin have weak but developing welfare regimes – which restricts the extent to which meaningful social protection can be extended. In addition, the technical and operational capacity to make country-of-origin measures available beyond the borders of the country may be lacking; innovative solutions to overcome such challenges need to be developed. Collaboration with countries that have done this, as well as with expert organizations such as IOM, could prove invaluable.

Provide for gender-sensitive support for orderly migration for employment and development during all stages of the migration experience for all categories of affected migrants

Country-of-origin measures should respond to the needs of migrant workers and their families during all stages of the migration cycle/experience: before departure, during the time abroad and at

⁷²³ George Haynal, Michael Welsh, Louis Century and Sean Tyler, *The Consular Function in the 21st Century: A Report for Foreign Affairs and International Trade Canada* (Toronto, Canada, University of Toronto, 2013), pp. 1-1 and 1-2; 1-11 to 1-17; 2-1 to 2-6; and 2-64 to 2.70.

return – bearing in mind also the particular gendered experience of migration. They should ensure the realization of social protection and welfare assistance of migrant workers and their dependants, simultaneously contributing optimally to the economic, social and human development of countries of origin and countries of destination. Prospective, existing and returned migrant workers, including migrant workers on short-term engagements and active in the informal economy, as well as their family members, should benefit from these measures.

A supportive institutional, operational and funding regime is indispensable

Extending social (security) protection to migrant workers abroad must be seen as part of the broader framework of support and engagement needed. For this reason, institutional arrangements in the country of origin, consular support, and ongoing diaspora engagement are required. This should be accompanied by appropriate policy and legislative regimes – authorizing the extraterritorial measures and regulating labour migration (e.g. the recruitment industry), among other. An appropriate institutional framework may have to be set up first to ensure that eventual delivery of and access to social protection are ensured.

In fact, the successful development and roll-out of country-of-origin measures depend on close coordination and collaboration among different government and other public entities entrusted with implementing social protection and welfare support measures in the countries of origin. Also required is collaboration with social partners (employers' and workers' organizations) and other role players, including private employment agencies, civil society entities, migrant workers, returned migrant workers, migrant workers' associations and other concerned agencies. Cooperation with governments of and other stakeholders in countries of destination, including foreign employers, private employment agencies, legal aid clinics and advocacy institutions, may be needed to ensure social protection and welfare assistance (e.g. regarding accessibility of social security schemes and benefits; information on labour market needs and living and working conditions, inspection of such conditions; provision of legal assistance; establishment of safe houses), and the achievement of development objectives (e.g. diaspora engagement and investment in skills training).

Also, there is need for an appropriate funding framework. Well-designed migrant welfare funds may be of particular assistance to fulfil this purpose and to achieve the operational objectives set out above.

Design a set of principles and guidelines that are well-aligned with international norms and comparative best practices

Of particular assistance for African countries of origin would be the development of a set of principles and guidelines, perhaps in a template form, that could assist countries in designing and implementing suitable and dedicated arrangements. This should be aligned with guidelines that are already in place elsewhere in the world. A compendium of “tools” and good practice experiences should accompany this. These principles and guidelines should be aligned with international standards aimed at protecting migrant workers and learn from good State practice. All of this is required, in view of the absence of any clear normative framework at the global level, from which countries of origin could take their guidance. Despite the current normative regime informing the protection of migrant workers by countries of destination, as supported by multilateral and bilateral social security and free movement regimes, migrant workers, including from Africa, remain significantly exposed to limited or absent protection, including social protection.

Regional and continental involvement, as well as intercontinental engagement with countries of destination, may be required

Adopting suitable country-of-origin approaches is a matter of regional and African concern. Ways and means should be found to include the work to be done in this regard also within the workplans of African RECs and African Union organs, with a view to developing synergies and exchange

across the continent. This would imply the adoption of common positions by and collaboration among countries of origin – learning in this regard from similar approaches adopted elsewhere in the world. This could be done within the framework of an existing continental platform, such as the Pan-African Forum on Migration (PAFOM). Common positions so adopted should feed into intercontinental platforms of engagement with GCC destination countries, in particular the Afro-Arab partnership (involving the African Union and the League of Arab States).⁷²⁴

Ensure an appropriate evidence base for country-of-origin measures

Country-of-origin social protection and welfare support measures should be informed by solid evidence generated through accurate, valid, timely, and comparable gender-disaggregated data on labour and skills demand/preference in countries of destination, migrants' skills and employment profiles, migrant stocks and flows, migrants' rights and entitlements (also in the labour law sense), migrant working and living conditions, social protection needs and coverage, legal protection and supervisory mechanisms, as well as normative, legislative and regulatory frameworks. Data collection and treatment should respect personal privacy rights and data protection standards.

⁷²⁴ Proposal made by an interviewed African Union representative.

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Appendix 1 Key recruitment standards⁷²⁵

International standards and guidelines

The promotion of **ethical recruitment** is a key principle embedded in international standards. African countries affected by existing bilateral labour agreements (BLAs) could benefit from the following international standards, which provide a framework for the regulation of private employment (or recruitment) agencies.

In addition to the International Labour Organization (ILO) Private Employment Agencies Convention, 1997 (No. 181) – the main international instrument that addresses the subject – also of crucial relevance are guidelines, developed also at the international level, to help inform the development of **a framework for the regulation and operationalization of recruitment** (and particularly of private employment agencies (PEAs)).

ILO Private Employment Agencies Convention

The core instrument is ILO Private Employment Agencies Convention, 1997 (No. 181), which provides, among others, for the protection of migrant workers, the prohibition of discrimination, reporting procedures, the specification of agencies' responsibilities by the relevant government, and its implementation and enforcement. Ratifying countries also undertake to review conditions to promote cooperation between the public employment service and PEAs.

In its preamble, the Convention acknowledges the role that PEAs play in a “well-functioning” labour market, but also notes the need to protect workers against abuses, to guarantee the right to freedom of association and promote collective bargaining and social dialogue.

Three types of labour market services are covered by the Convention, namely:

- (a) Services for matching offers of and applications for employment, without the PEA becoming a party to the employment relationships;
- (b) Services consisting of employing workers with a view to making them available to a third party (i.e. “labour-broking”);
- (c) Services related to job-seeking.

The Convention stipulates that PEAs shall not, as a rule, charge directly or indirectly, in whole or in part, any fees or costs to workers.

The Convention further provides for ratifying member countries to ensure the following, among others:

- (a) Extension of the freedom of association and collective bargaining rights to migrant workers and, more generally, adequate protection for and the prevention of abuse of recruited and placed migrant workers (arts. 4 and 8). The Convention specifically stipulates that in the event of employment abroad, the conclusion of BLAs should be considered to prevent abuses and fraudulent practices in recruitment, placement and

⁷²⁵ Adapted from: Marius Olivier, “Selected areas of relevance for the development of a labour migration policy for South Africa: Recruitment, bilateral agreements and freedom of movement”, report (2019).

employment (art. 8). This stresses the importance of making sufficient provision in BLAs for these matters.

- (b) Penalties to be contained in laws or regulations, including prohibition of those PEAs that engage in fraudulent practices (arts. 8 and 14(3)).
- (c) Measures to ensure the prevention of child labour (art. 9).
- (d) Adequate mechanisms, which involve apex employer and trade union bodies, for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of PEAs (art. 10).

Note should be taken of other ILO conventions specifically relevant to PEAs that have been ratified by only a few African countries. It is suggested that by ratifying and implementing these instruments, African governments will ensure enhanced protection, including welfare projection, of its migrant workers. The instruments include:

- (a) ILO Migration for Employment Convention (Revised), 1949 (No. 97);
- (b) ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

The International Recruitment Integrity System (IRIS) of IOM

Particular mention should be made of IRIS,⁷²⁶ spearheaded and currently being piloted by IOM. The system effectively serves as a platform for addressing unfair recruitment and bridge international regulatory gaps governing labour recruitment in countries of origin and destination. It defines and sets a benchmark for ethical recruitment – the IRIS Standard (see [Box A1](#)).

IRIS establishes a voluntary certification process for international labour recruiters, which includes creating a list of “certified ethical labour recruiters” to help employers and workers make more informed decisions about recruitment. The IRIS Standard is maintained by certified recruiters through a monitoring and compliance mechanism.

⁷²⁶ For more information, visit the IRIS website at www.iris.iom.int. See, in particular: IOM, “Overview of IRIS”, fact sheet (Geneva, 2020), available at https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS_2020.pdf; IOM, “The IRIS Standard”, information sheet (Geneva, 2019), available at <https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/IRIS%20Standard%20Report%20.pdf>.

Box A1. The goal of IRIS

IRIS aims to transform the international recruitment industry to make it fair for workers, recruiters and employers. It does this by:

- (a) Promoting the “Employer pays” principle;
- (b) Promoting greater transparency in international recruitment;
- (c) Promoting the rights of migrant workers.

The IRIS Standard comprises **two overarching principles**:

- (a) Respect for laws and fundamental principles and rights at work;
- (b) Respect for ethical and professional conduct;

...as well **five specific principles**:

- (a) Prohibition of recruitment fees and related costs to jobseekers;
- (b) Respect for freedom of movement;
- (c) Respect for transparency of terms and conditions of employment;
- (d) Respect for confidentiality and data protection;
- (e) Respect for access to remedy.

ILO general principles and operational guidelines for fair recruitment

In 2016, the ILO published general recruitment principles, supplemented by operational guidelines, to lay down the responsibilities of governments, enterprises and public employment services. The responsibilities of the key role players, indicated in the concluding part of the Guidelines (part IVB), with relevant the general principles entail (in bold), are as follows:

- (a) Recruitment should take place in a way that **respects, protects and fulfils internationally recognized human rights**, including those expressed in international labour standards, particularly the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
- (b) Recruitment should **respond to established labour market needs, and not serve** as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
- (c) **Appropriate legislation and policies** on employment and recruitment should apply to all workers, labour recruiters and employers.
- (d) Recruitment should take into account policies and practices that promote **efficiency, transparency and protection for workers** in the process, such as mutual recognition of skills and qualifications.
- (e) **Regulation** of employment and recruitment activities should be **clear and transparent and effectively enforced**. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
- (f) Recruitment across international borders should **respect the applicable national laws, regulations, employment contracts and applicable collective agreements** of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.

- (g) **No recruitment fees or related costs** should be charged to, or otherwise borne by, workers or jobseekers.
- (h) The **terms and conditions** of a worker's employment should be specified in an *appropriate, verifiable and easily understandable* manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.
- (i) **Workers' agreement** to the terms and conditions of recruitment and employment should be **voluntary and free from deception or coercion**.
- (j) Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
- (k) **Freedom of workers to move** within a country **or to leave** a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
- (l) 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.
- (m) Workers, irrespective of their presence or legal status in a State, should have **access to free or affordable grievance and other dispute resolution mechanisms** in cases of alleged abuse of their rights in the recruitment process, and **effective and appropriate remedies** should be provided where abuse has occurred.

Global Compact for Safe, Orderly and Regular Migration

The United Nations Global Compact for Safe, Orderly and Regular Migration (2018) contains important principles in Objective 6, stated as follows:

OBJECTIVE 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work

22. We commit to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination.

To realize this commitment, we will draw from the following actions:

- (a) Promote signature, ratification, accession and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour.
- (b) Build upon the work of existing bilateral, subregional and regional platforms that have overcome obstacles and identified best practices in labour mobility, by facilitating cross-regional dialogue to share this knowledge, and to promote the full respect for the human and labour rights of migrant workers at all skills levels, including migrant domestic workers.
- (c) Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices, prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced

- labour, including by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry.
- (d) Establish partnerships with all relevant stakeholders, including employers, migrant workers, organizations and trade unions, to ensure that migrant workers are provided written contracts and are made aware of the provisions therein, the regulations relating to international labour recruitment and employment in the country of destination, their rights and obligations, as well as on how to access effective complaint and redress mechanisms, in a language they understand.
 - (e) Enact and implement national laws that sanction human and labour rights violations, especially in cases of forced and child labour, and cooperate with the private sector, including employers, recruiters, subcontractors and suppliers, to build partnerships that promote conditions for decent work, prevent abuse and exploitation, and ensure that the roles and responsibilities within the recruitment and employment processes are clearly outlined, thereby enhancing supply chain transparency.
 - (f) Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors, ensuring that international human rights and labour law is observed to prevent all forms of exploitation, slavery, servitude, and forced, compulsory or child labour.
 - (g) Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law.
 - (h) Take measures that prohibit the confiscation or non-consensual retention of work contracts, and travel or identity documents from migrants, in order to prevent abuse, all forms of exploitation, forced, compulsory and child labour, extortion and other situations of dependency, and to allow migrants to fully exercise their human rights.
 - (i) Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions.
 - (j) Ensure migrants working in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace, in a manner that does not exacerbate vulnerabilities of migrants that denounce such incidents and allow them to participate in respective legal proceedings whether in the country of origin or destination.
 - (k) Review relevant national labour laws, employment policies and programmes to ensure that they include considerations of the specific needs and contributions of women migrant workers, especially in domestic work and lower-skilled occupations, and adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse, including sexual and gender-based violence, as a basis to promote gender-responsive labour mobility policies.

- (l) Develop and improve national policies and programmes relating to international labour mobility, including by taking into consideration relevant recommendations of the ILO General Principles and Operational Guidelines for Fair Recruitment, the United Nations Guiding Principles on Business and Human Rights, and the IOM International Recruitment Integrity System (IRIS).

World Employment Confederation Code of Conduct

The Code of Conduct developed in the 1967 by the Confederation of Private Employment Agencies (CIETT),⁷²⁷ now known as the World Employment Confederation,⁷²⁸ is of particular importance. The World Employment Confederation Code of Conduct contains 10 key principles, namely:⁷²⁹

- (a) Respect for laws;
- (b) Respect for ethical and professional conduct;
- (c) Respect for free of charge provision of services to jobseekers;
- (d) Respect for transparency of terms of engagement;
- (e) Respect for health and safety at work;
- (f) Respect for principle of non-discrimination;
- (g) Respect for workers' rights;
- (h) Respect for confidentiality;
- (i) Respect for quality of service and fair competition;
- (j) Respect for access to remedy.

⁷²⁷ The CIETT (Confederation of Private Employment Agencies) is the authoritative voice representing the interests of agency work businesses. Founded in 1967, CIETT consists of 40 national federations of private employment agencies and 6 of the largest staffing companies worldwide. Its main objective is to help its members conduct their businesses in a legal and regulatory environment that is positive and supportive. Its secretariat headquarters is in Brussels. (For more information, visit the CIETT website at www.ciett.org.)

⁷²⁸ The World Employment Confederation is the "voice" of the employment industry at the global level, representing labour market enablers in 50 countries and 7 of the largest international workforce solutions companies. As the voice of labour market enablers, the World Employment Confederation was set up in order to promote common interests of the employment industry on an international level. One of its main objectives is to help its members to conduct their businesses in a legal and regulatory environment that is positive and supportive. (For more information, visit the WEC website at www.wecglobal.org.)

⁷²⁹ World Employment Confederation, "Code of conduct", webpage available at wecglobal.org/world-employment-confederation-global/code-of-conduct-2.

Private employment agencies that are CEITT members agree to recognize, through what was then known as the "CIETT Charter of Private Employment Agencies", that:

- (a) Employment through private agencies should respect the international and national principles of non-discrimination on all issues linked to working conditions.
- (b) Private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services.
- (c) Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on a strike.
- (d) Private employment agency should facilitate access to training for the agency workers, to ensure they are in tune with international guidelines.
- (e) Social dialogue and collective labour bargaining should be seen as an appropriate means to organize the private employment agency industry whenever relevant and fitting.

(Alice Kimani, "Role of private employment agencies in preventing labour-related trafficking: Promoting best practices of private employment agencies (PEAs) in Kenya", report (Nairobi, IOM, 2011).

Selected good practice: Ethiopia's Overseas Employment Proclamation (No. 923/2016)

Generally, there is a need to develop and implement an instrument that regulates public employment services and PEAs in a coordinated manner. This should be done in a way that provides a streamlined context in relation to different modes of recruitment – whether a migrant worker is recruited on the basis of the agreement, or directly by or on behalf an employer, or on the basis of having successfully applied for a position. Several African countries (among others, Kenya and Uganda) have recently adopted or modified policy and regulatory frameworks to this effect. One of the most recently adopted instruments in Africa is Ethiopia's Overseas Employment Proclamation (No. 923/2016), which provides an advanced framework that could serve as a benchmark in this regard, not only in the country, but also elsewhere in Africa.

What follows is essentially a summary of the Proclamation, which provides for:⁷³⁰

(a) Three envisaged modes of employment of migrant workers (which also includes, by definition, jobseekers) abroad:

- i. Placement by an Ethiopian PEA;
- ii. Government-to-government arrangement;
- iii. Direct employment.⁷³¹

Regarding government-to-government arrangements, the Ministry of Labour and Social Affairs (MoLSA) is mandated to provide recruitment and placement services to governmental organizations in receiving countries based on a government-to-government agreement (art. 4).⁷³²

Direct employment by a foreign employer is regarded as an “exceptional” category, as the Proclamation stipulates that “no employer shall directly recruit and employ a worker except through the Ministry or an Agency” (art. 6(1)). Notwithstanding this provision, allowance is made for direct employment of staff of an Ethiopian Mission, where the employer is an international organization, or where the jobseeker acquires a job opportunity by his own accord in job positions other than house maid service (art. 6(2)). However, in this last-mentioned case (not involving an Ethiopian mission or an international organization), the direct employment by a foreign employer must be “permitted” by the MoLSA, if a range of conditions have been met (art. 6(3)).⁷³³

(b) Educational and medical requirements

- i. *Education* (art. 7). A worker interested in taking up overseas employment must have completed at least the eighth grade of education. In addition, the worker must have obtained a certificate of occupational competence for the work he or she is to be employed (i.e. a certificate indicating that the worker is capable of performing a particular task). Once other requirements set by the employer are met, the certificate has to be presented.

⁷³⁰ IOM, *National Labour Migration Management: Ethiopia – Training of Trainers Manual* (see footnote 159).

⁷³¹ Government of Ethiopia – Ethiopian Overseas Employment Proclamation (No. 923/2016) of 19 February 2016, art. 2(3).

⁷³² *Ibid.*, art. 5 (The services to be provided by MoLSA “shall include interviewing and selection; causing medical examinations; approval of employment contracts, provision of pre-employment and pre-departure orientations, facilitation of departure of employed workers and other similar services.”).

⁷³³ *Ibid.*, art. 6. (These conditions comprise the following: (a) an assurance has been secured that the worker's basic rights and dignity will be respected in the country of destination; (b) life and disability insurance coverage has been bought from the domestic insurance market by the foreign employment, the contents of which may be subject to a MoLSA directive; (c) appropriate air or land transport arrangements have been submitted together with the contract of employment; and (d) an advertisement to vacant positions permitted for direct employment “shall only be conducted through the [m]inistry or the appropriate authority” (arts. 6(3) and (4), read with art. 62).

- ii. *Medical examination* (art. 9). The Government of Ethiopia selects the medical institution to which a PEA must refer the prospective migrant worker once the employer's requirements have been fulfilled.

(c) Awareness-raising

MoLSA or the relevant regional government body (i.e. entrusted with the power to implement labour laws) has the responsibility to (per art. 8):

- i. Undertake regular pre-employment and pre-departure awareness-raising for interested citizens;
- ii. Conduct continuous national awareness-raising activities for the public at large, as well as for those responsible for governing and managing, and working for, PEAs;
- iii. Conduct awareness-creation orientation for foreign employers.

(d) Expenses and service fees

A distinction is drawn between expenses for which the foreign employer and the worker respectively is responsible (per art. 10):

- i. *Employer*. Visa fee, return transport costs, work permit and resident permit fees, insurance premiums,⁷³⁴ visa and associated document authentication fees, and employment contract approval service fee.
- ii. *Worker*. Passport issuance fee, employment contract authentication and crime clearance certificate fees, medical examination and vaccination fees, birth certificate issuance fees, and expenses for certification of occupational competence.
- iii. *Service fee*. To be paid by the employer to the relevant ministry, associated with the approval of the employment contract.

(e) Bilateral agreements

A worker may only be deployed to a country if the Government of Ethiopia has concluded a bilateral agreement with that country (art. 12).

(f) Institutional framework (arts. 13–15)

- i. The necessary organizational structure will be established by MoLSA, which will also appoint labour attachés to ensure the protection of the rights, safety and dignity of workers employed overseas.
- ii. The Proclamation also covers the establishment of a National Coordinating Committee and Task Force accountable to the Committee (reflected in the main text of this report).

(g) Model employment contract and conditions of work

According to article 16 of the Proclamation, MoLSA may issue a directive on working conditions regarding prevailing overseas labour market and social services. Furthermore, MoLSA has to prepare a model employment contract, which must include a minimum range of matters, including working time, wages, annual leave, free transportation to and

⁷³⁴ Ibid., art. 62. (According to the article, the employer shall buy life and disability insurance from the domestic insurance market; the PEA or worker has to present this insurance policy document to MoLSA, together with the employment contract.)

from work; free medication, food and accommodation, life and disability insurance cover; and valid termination grounds. It must also consider the laws, customs and culture of the receiving country, as well as relevant bilateral and multilateral treaties (art. 17). Parties remain free to agree on more favourable terms, conditions and benefits (art. 18).

(h) Inspection

In order to promote the legality of migration, provision is made for the issuing of special identification cards for migrant workers whose contracts of employments have been approved (art. 20(1)). MoLSA and the relevant regional government organ are given the mandate to assign labour inspectors to monitor compliance of PEAs with the Proclamation. Extensive powers and duties are ascribed to these inspectors to ascertain, among others, that PEAs have the required office facilities and automated database system and provides the necessary pre-departure and pre-employment orientation and counselling services (arts. 20(2) and (3)).

(i) Licensing of private employment agencies

Comprehensive provision is made regarding the licensing of PEAs:

- i. *Eligibility.* A PEA has to obtain a licence for every country that it wishes to operate in (art. 21). Only Ethiopian citizens (or a business organization whose members are all Ethiopian citizens) are eligible to obtain a licence (art. 22). In both cases a sizeable operating capital (of not less than ETB 1 million) is set as an eligibility condition. Not eligible are those whose licence was revoked or suspended on more than three occasions, under the previous Proclamation, or those sentenced for engagement in certain crimes, or an official or employee in leadership position in certain government institutions (or their families) (i.e. to avoid a conflict of interest) (arts. 22 and 23).
- ii. *Licence requirements.* An eligible applicant has to submit a range of documents, confirming the applicant's organizational and operational structures and details, an official office presence, a police clearance and a tax clearance certificate, a suitable presence in the country of destination (which could be via a delegated representative), including a facility for providing temporary food and sheltering services to the workers in the country of destination), confirmation of the applicant's qualifications and security bond, as well as authorization to freely enter into and exit from the receiving country; and a receipt showing payment of the licence fee (art. 24).
- iii. *Related matters.* An issued licence is valid for one year and must be displayed in a conspicuous place (arts. 26 and 27)). Except in the case of death, a licence is not transferable; a person may also not operate in more than one agency as owner or a member of a relevant institution (art. 28). Changes in governance/managing structures must be notified and published through public media (arts. 29 and 30). A licence has to be renewed annually, one month prior to the expiry of the one-year period and is dependent on compliance with several requirements – including that a security bond has been deposited, an audited financial statement confirms settled tax liability, a police clearance certificate has been obtained and a general report indicating the status of deployed and returned overseas workers (art. 33). Article 34 empowers the labour minister to issue a directive in connection with an incentive scheme to evaluate and reward PEAs for good performance.

(j) Employment exchange abroad

Several matters concerning the actual employment exchange abroad are regulated by the Proclamation:

- i. *Advertisement.* A PEA must obtain approval from MoLSA or the relevant regional government body before advertising any overseas job vacancy. In addition, the advertisement, through mass media, must contain certain information, relating to the agency itself, details about the vacant job positions, and a declaration that a service charge will not be collected from the worker (art. 35).
- ii. *Recruitment.* This has to take place on the office premises of the agency, unless authorization has been obtained from MoLSA or the relevant regional government organ to use a temporary recruitment venue in the event of the recruitment of a substantial workforce (art. 36).
- iii. *Approval of the employment contract.* The contract, signed by the foreign employer, the PEA and the worker, must comply with the model contract and other conditions specified in a ministerial directive, and be submitted for approval. If MoLSA is satisfied, after verification of the employer's signature and other attached documents, that these conditions have been met, it shall approve and register the contract (art. 37).
- iv. *Deployment of worker and reporting.* The PEA is required to deploy the worker within one month after approval of the contract; notify the Ethiopian mission or consular office in the country of destination and cause registration of deployed workers within 15 days; ensure that the worker has obtained a work and a residence permit; and report same to MoLSA (art. 38).
- v. *Revocation of contract of employment.* Failure to deploy the worker within one month, must be notified to MoLSA, together with reasons therefor; the contract will be revoked (art. 39).

(k) Non-compliance by a PEA, the lodging of complaints and corresponding administrative measures

- i. *The power to impose administrative measures.* MoLSA or the relevant regional government organ has the power to take administrative measures in respect of violations of the Proclamation by a PEA (art. 42(1)). Depending on the nature of the violation, the licence of the PEA may be either suspended or revoked:

Suspension. Contraventions which could give rise to a suspension of the PEA licence⁷³⁵ include, among others (as per art. 42(2)):

1. Obstruction or attempted obstruction of the activities of an assigned labour inspector;
2. Failure to give notice to the MoLSA or the relevant regional government organ of the appointment of a general manager, members of the board of directors or the recruitment of an employee;
3. Recruitment of a worker who does not meet the educational or professional competence described above;
4. Failure, without good reason, to deploy the worker within one month;

⁷³⁵ The period of suspension ranges from 3 to 12 months, depending on whether the violation is for the first, second or third time. On a fourth violation, the licence has to be revoked (ibid., art. 47(1) and (2)).

5. Failure to provide a remedy for applications pertaining to violations of workers' rights, safety and dignity;
 6. Failure to submit periodic reports to MoLSA or the relevant regional government organ, as required;
 7. Failure to submit a report on the list of workers terminated from employment and other related information; failure to provide adequate service in accordance with the Proclamation; withholding of a worker's wage or remittances;
 8. Failure to refund a worker not deployed for reasons not imputable to him;
 9. Failure to provide pre-departure orientation and counselling;
 10. Failure to immediately verify and report to MoLSA on employment bodily injury sustained by or death of workers on overseas employment, on the reasons thereof and the remedial measures taken.⁷³⁶
- ii. **Revocation.** Contraventions which could give rise to a revocation of the PEA licence include, among others (as per art. 42(3)):
1. Direct or indirect engagement of a PEA-associated owner, general manager or employee with a travel agency or air ticket office management;
 2. Failure to renew licence within the stipulated time period;
 3. Recruitment and deployment of a worker:
 - a. Who is below the age of 18 years;
 - b. To a destination in the absence of a bilateral agreement involving Ethiopia and that country, or where a destination has been indicated as prohibited;
 - c. To a service that adversely affects public health or morality or damages the country's image;
 4. Transferring or changing ownership of a licence in contravention of the Proclamation;
 5. Receiving a fee from the worker in return for overseas employment exchange service;
 6. Deploying a worker before approval of the employment contract;
 7. Sending a worker to a destination other than the stipulated destination in the approved contract, or to engage in a type of service, place of work or country different from those stipulated in the licence;
 8. Assigning a worker to a different employer than the one mentioned in the approved contract;
 9. Engaging a person in its business, if the person is prohibited from overseas employment exchange service;
 10. Substituting or replacing the approved contract by another without notifying to and approval of MoLSA;

⁷³⁶ Other violations giving rise to a suspension include the influencing or attempt to influence an employer to employ only a worker registered by the particular PEA; disregard of orders and notices issued by MoLSA or the relevant regional government organ; failure to display its licence as required; and failure to replenish the amount the PEA has to pay towards a financial guarantee, where the amount has been used in accordance with the provisions of the proclamation (art. 42(2), read with art. 60(4)).

11. Withholding travel document and other information of the worker before or after deployment;
 12. Compelling a worker to relinquish his rights and benefits through fraudulent practice or duress.⁷³⁷
- iii. *Legal consequence of a licence suspension or revocation.* The PEA has to cease engagement with overseas employment exchange services in the event of a licence suspension or revocation. The suspension or revocation will be publicly notified by MoLSA but does not relieve the PEA from responding to lawful requests of the workers it sent abroad. In the case of revocation, the licence shall be returned to MoLSA within five working days (art. 48).
 - iv. *Complaints.* A worker or his representative may submit an oral or written complaint to MoLSA or the relevant regional government organ in the event of a contravention of the Proclamation or any relevant law. The complaint should include relevant particulars, as prescribed. MoLSA or the relevant organ must open a file and issue a summon order, directing the PEA to present a statement of defence within 10 working days. Following a hearing, MoLSA or the relevant organ must give its decision within one month and shall issue an execution order to the PEA to execute its decision within 15 days (arts. 43–45 and 49–51). Pending finalization of the decision, no employment contract may be approved; the PEA licence may be suspended in certain circumstances. Criminal liability may also follow (arts. 46 and 47(3)).

(I) Non-compliance by an employer, a PEA representative or a worker, and corresponding administrative measures

- i. *The power to impose administrative measures.* MoLSA or the relevant regional government organ has the power to take administrative measures in respect of violations of the Proclamation by a foreign employer, a PEA representative or a worker (art. 52).
- ii. *Violations by an employer or a PEA representative.* This report already reflected on the principle of imposing liability on a foreign employer or PEA representative. The said violations include (as per art. 53):
 1. Failure to discharge its obligations in the employment contract or (in the case of the representative) as per its delegated powers;
 2. Withholding or denying access to a worker's legal travel documents, or his wage or remittances;
 3. Negligently causing serious injury, health problems or death of the worker;
 4. Committing an act that violates the worker's human dignity and morals;
 5. Sexual harassment of the worker;
 6. Contravention of the Proclamation, its regulations or directives.
- iii. *Complaints and decision.* A complaint may be submitted by the victim or any person; MoLSA or the relevant regional government organ will conduct proceedings (which it can also do on its own accord); pending the outcome the employer or PEA representative may temporarily be barred from participating in

⁷³⁷ Other violations that may give rise to a revocation include furnishing falsified evidence or document or advertisement in order to recruit or deploy a worker; and intentionally falsifying or changing a worker's travel document (ibid., art. 42(3)).

overseas employment exchange service (art. 54). If the complaint is upheld, the employer and/or PEA representative shall be prohibited from engaging in overseas employment exchange and may be ordered to pay reasonable compensation (art. 56).

iv. *Violations by a worker.* Worker violations include (as per art. 57):

1. Failure to discharge his obligations according to the employment contract;
2. Commission of crimes punishable in Ethiopia or the country of destination;
3. Failure to respect the religion, custom or customary practices of the country of destination;
4. Unwillingness to be deployed, without good cause, after approval of the contract;
5. Unauthorized use of the employer's or colleague's money or property;
6. Production of falsified evidence for overseas employment;
7. Terminating the contract for no good reason;
8. Administrative measures to be taken against the worker include suspension from overseas employment for six months or one year (depending on whether this is a first- or second-time violation), or disqualification from overseas employment, if the contravention is committed for the third time (art. 58).

v. *Right to appeal.* A party aggrieved by the decision of MoLSA or the relevant regional government organ may within 15 days lodge pleadings with the Federal High Court or a regional court with jurisdiction. The decision of the court will be final (art. 59).

vi. *Welfare service.* Several matters are provided for in the Proclamation:

1. **Financial guarantee.** A PEA has to deposit USD 100,000 or its equivalent in Birr in a blocked bank account for purposes of guaranteeing the protection of the rights and safety of deployed workers. Failure to comply with its duty to transport the worker and his personal belongings back when the contract terminates, or where the worker sustains serious bodily injury or dies, empowers MoLSA to withdraw the required amount from this Fund, upon which the PEA must replenish the Fund within 10 working days. The financial guarantee will only be released when the PEA ceases operations, if there is no claim against the PEA (art. 60).
2. **Foreign Employer's Guarantee Fund.** In order to cover claims of workers arising from breach of the employment contract, a foreign employer has to allocate USD 50 to this Fund.
3. **Assistance provided to workers.** This report already reflected on the liability of the GoE and PEAs to ensure the rights, safety and dignity of workers deployed in overseas employment.

vii. *Conciliation and repatriation of workers.* MoLSA or the relevant regional government organ is mandated to receive and conciliate any complaint submitted to it by a worker, a PEA or a foreign employer relating to overseas employment. Should this be unsuccessful, the complainant may submit the case to the adjudication office of MoLSA. Failure on the part of the PEA to participate in the conciliation or to abide by the terms of the approved settlement will cause MoLSA not to approve any employment contract until compliance has been achieved (arts. 66–68). Also, a PEA has the duty to transport back a worker and his

belongings (see above), and to cover medical expenses to a worker who has been repatriated due to serious bodily harm. Expenses may be reclaimed from the worker, if the worker terminates the contract without good cause (art. 69).

Conclusions and recommendations

Building on the discussion above, and in addition to certain proposals already made, the following conclusions and recommendations are drawn:

- (a) **In accordance with international standards and guidelines, identify and stipulate in policy and regulatory instruments the obligations and responsibilities of the different role-players involved, in order to ensure fair and ethical recruitment.**

This should be done on the basis of well-developed international standards and guidelines, as well as good practice examples, alluded to above. Of particular assistance in this regard are the operational guidelines contained in the ILO General principles and operational guidelines for fair recruitment (2016). As indicated, these operational guidelines distinguish between the responsibilities of governments, enterprises and public employment services. These guidelines are summarized in Boxes A2 to A5.

Box A2. Responsibilities of governments

Governments bear the ultimate responsibility for advancing fair recruitment, both when acting as employers and when they are regulating recruitment and providing job-matching and placement services through public employment services. To reduce abuses practised against workers, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued.

1. Governments have an obligation to respect, protect and fulfil internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, in the recruitment process. This includes respect for, and protection of, the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
2. Governments should protect workers against human rights abuses in the recruitment process by employers, labour recruiters and other enterprises.
3. Governments should adopt, review and, where necessary, strengthen national laws and regulations, and should consider establishing, regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.
4. Governments should ensure that relevant legislation and regulations cover all aspects of the recruitment process, and that they apply to all workers, especially those in a vulnerable situation.
5. Governments should effectively enforce relevant laws and regulations and require all relevant actors in the recruitment process to operate in accordance with the law.
6. Governments should take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers.
7. Governments should take steps to ensure that employment contracts are clear and transparent and are respected.
8. Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.
9. Governments should promote cooperation among relevant government agencies, workers' and employers' organizations, and representatives of recruiters.

10. Governments should effectively enforce relevant laws and regulations and require all relevant actors in the recruitment process to operate in accordance with the law.
11. Governments should take measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers.
12. Governments should take steps to ensure that employment contracts are clear and transparent and are respected.
13. Governments should take steps to ensure that workers have access to grievance and other dispute resolution mechanisms, to address alleged abuses and fraudulent practices in recruitment, without fear of retaliatory measures including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred.
14. Governments should promote cooperation among relevant government agencies, workers' and employers' organizations, and representatives of recruiters.
15. Governments should seek to ensure that recruitment responds to established labour market needs.
16. Governments should raise awareness of the need for fair recruitment in both the public and private sectors and ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
17. Governments should respect human rights and promote fair recruitment in conflict and crisis situations.
18. Governments should ensure that bilateral and/or multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers, are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international labour standards, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively.
19. Governments should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that they own or control, or that receive substantial support and contracts from government agencies.
20. Governments should take steps to protect against recruitment abuses within their own workforces and supply chains, and in enterprises that they own or control, or that receive substantial support and contracts from government agencies.

Box A3. Responsibilities of enterprises and public employment services

Enterprises and public employment services bear special responsibility for preventing abusive or unfair recruitment

1. Enterprises and public employment services should respect human rights when recruiting workers, including through human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved.
2. Enterprises and public employment services should undertake recruitment to meet established labour market needs and never as a means to displace or diminish an existing workforce, lower wages or working conditions, or otherwise undermine decent work.
3. No recruitment fees or related costs should be charged to, or otherwise borne by, recruited workers and jobseekers.
4. Enterprises and public employment services should not retain passports, contracts or other identity documents of workers.
5. Enterprises and public employment services should respect workers' confidentiality and ensure protection of data pertaining to them.
6. Enterprises may work to develop schemes that drive professional recruitment standards.

Box A4. Responsibilities of employers

There are different kinds of employers involved in recruitment and each should be responsible according to the circumstances.

1. Employers should ensure that written contracts of employment are concluded, and that they are transparent and are understood by the worker.
2. Employers should provide or facilitate effective access to grievance and other dispute resolution mechanisms in cases of alleged abuses in the recruitment process, and to appropriate remedies.
3. Employers should provide all workers, whatever their employment status, with the protection provided for in labour law and international labour standards as concerns recruitment.
4. Employers should ensure that the right to freedom of association and collective bargaining of recruited workers is respected in the recruitment process.
5. Employers should not resort to labour recruiters or to temporary work agencies to replace workers who are on strike.
6. Employers should respect the freedom of migrant workers to leave or change employment or to return to their countries of origin.

Box A5. Responsibilities of labour recruiters

1. A distinction is made in these guidelines between labour recruiters serving as intermediaries to place workers in employment, including those involved in multiple layers of the recruitment process, and employment agencies employing workers and placing them at the disposal of user enterprises.
2. Labour recruiters should respect the applicable laws and fundamental principles and rights at work.
3. When labour recruiters recruit workers in one country for employment in another country, they should respect human rights, including fundamental principles and rights at work, in compliance with international law and the law in the country of origin, the country of transit and the country of destination, and with international labour standards.
4. Labour recruiters acting across borders should respect bilateral or multilateral migration agreements between the countries concerned which promote human rights, including workers' rights.
5. Labour recruiters should take steps to ensure that the working and living conditions into which workers are recruited are those that they have been promised.
6. Temporary employment agencies and user enterprises should agree on the allocation of responsibilities of the agency and of the user enterprise, and ensure that they are clearly allocated with a view to guaranteeing adequate protection to the workers concerned.

(b) There is a need to regulate private recruitment agencies.

The need for proper regulation of private recruitment agencies and its connection with the protection of migrant workers has been highlighted by the ILO (see also the part on the responsibilities of labour recruiters in [Box A5](#).)

The need to regulate private recruitment agencies

“... the regulation of private recruitment agencies is closely related to worker protection. In many developing countries migration costs are high, as a result of such factors as excessive fees levied by recruitment agencies, costly bureaucratic procedures and corrupt practices of administrators. The undesirable alliance between local agents and foreign employment agencies, as occurs in migration to the Gulf region, results in high migration costs being passed on to migrant workers. A major task of good governance is to identify these issues and reduce the costs of migration for individual workers, not only for their sakes, but because it will increase their savings and remittances, benefiting their countries as well.”

– ILO, *International Labour Migration: A Rights-based approach*, p. 175

(c) Self-regulation is important.

In addition to the need for public regulation, there is much that PEAs themselves could do to ensure compliance with legal and ethical requirements pertaining to operations and behaviour. Kenya provides an important example of a country experience – in terms of both public regulation, and self-regulation through **KAPEA (Kenya Association of Private Employment Agencies)**. KAPEA serves as an umbrella body for a large number of PEAs in Kenya and has among others adopted a Code of Conduct for Private Employment Agencies in 2006. This is a valuable instrument, as it systematically provides for important matters:

- i. The objective of the organization;
- ii. Its status;
- iii. Compliance with legal and basic business requirements;
- iv. Integrity and professionalism;
- v. Knowledge and application of national policies, laws and best practices;
- vi. Non-discrimination and gender sensitivity;
- vii. Anti-trafficking and prevention of unethical employment of children and persons with disability;
- viii. Efficient provision of services;
- ix. Dealings with members of KAPEA and other PEAs;
- x. Dealings with employers/principals;
- xi. Dealings with jobseekers;
- xii. Breach of the Code.

A second umbrella body, aimed at skilled migrants, has been established in Kenya. This is **ASMAK (Association of Skilled Migrant Agencies in Kenya)**.⁷³⁸ ASMAK has similarly developed a Code of Professional Practice, binding on all its corporate members. The following principles are embedded in the Code:

- i. Respect for law;
- ii. Respect for honesty and transparency;
- iii. Respect for work relationships;

⁷³⁸ For more information, visit the ASMAK website at www.asmak.co.ke.

- iv. Respect for diversity;
- v. Respect for safety;
- vi. Respect for professional knowledge;
- vii. Respect for certainty of engagement;
- viii. Respect for prompt and accurate payment;
- ix. Respect for ethical international recruitment;
- x. Respect for confidentiality and privacy.

(d) Utilize a dedicated and enhanced public employment service framework.

There is considerable scope and need for **enhanced public employment service intervention** as regards the recruitment of migrant workers. African governments could be seen to play a more active and **promotional role**. In particular, care should be taken to ensure that an appropriate facilitative and supportive framework is in place for persons departing for work in other countries who go abroad on their own or under government-to-government agreements.

It is important to note that in terms of the provisions of article 2(1) of ILO Unemployment Convention, Convention 2 of 1919, ratified by 10 African countries,⁷³⁹ these countries are **obliged** to set up such a system on the following basis:

Each Member which ratifies this Convention shall establish a system of free public employment agencies under the control of a central authority. Committees, which shall include representatives of employers and of workers, shall be appointed to advise on matters concerning the carrying on of these agencies.

(e) Ensure proper linkages between public employment services and private employment agencies

Building on the previous point, there should be a **co-ordinated framework** in relation to the recruitment and selection of foreign workers. This can among others be achieved through **common regulation** (see below) and the development, maintenance and utilization of a **common database**. It should be noted that African countries that have ratified ILO Unemployment Convention (1919), are bound to develop a co-ordinated framework. Article 2(2) of the Convention stipulates: “Where both public and private free employment agencies exist, steps shall be taken to co-ordinate the operations of such agencies on a national scale.”

Regard should in this regard be had to the importance of strengthening linkages between African governments and national umbrella bodies.⁷⁴⁰ These bodies invariably implement a Charter or a Code of Conduct that is relevant also to the area of the recruitment of migrant workers.

⁷³⁹ For a list of countries that have ratified the Convention, see: ILO, “Ratifications of C002 - Unemployment Convention, 1919 (No. 2)”, webpage. Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312147.

⁷⁴⁰ Except for the Kenyan examples referred to earlier. (For examples in the South African context, visit the Confederation of Associations in the Private Employment Sector (CAPES) website at www.capes.org.za.)

(f) **Strengthen private sector engagement with fair and ethical recruitment.**

Again, building on the previous issue, and bearing in mind international guidelines in this regard, indicated above, it is necessary to encourage and strengthen the private sector to engage responsibly with fair and ethical recruitment. Particular mention can be made of an IOM project to this effect, currently operating in Asia, but of relevance for the South African context too. This is the **CREST programme (Corporate Responsibility in Eliminating Slavery and Trafficking)**, which is designed to help unlock the potential of the private sector to drive positive change for the protection of migrant workers and their communities.⁷⁴¹ It is among others aimed at:

- i. Building business commitment and partnerships to maximize impact in eliminating modern slavery and human trafficking;
- ii. Providing tools and methodologies to support companies in addressing the vulnerabilities of migrant workers;
- iii. Facilitating multi-stakeholder dialogue and collaboration among governments, business, and civil society towards sustainable solutions.

⁷⁴¹ For more information, visit the CREST programme website at <https://crest.iom.int>.

Appendix 2 Remittances, the diaspora and return migrants⁷⁴²

1. Remittances

(a) The social protection value of remittances

As explained in Box A6, there are several dimensions of the social protection value that remittances may hold.

Box A6. The social protection value of remittances

Three dimensions of the value that remittances may hold from a social protection perspective, can be indicated. Firstly, remittances can be actively used to **pay for contributions to countries of origin social insurance schemes**, including for African migrant workers abroad who are not currently covered under the social insurance system of their origin country and/or may not be covered, or sufficiently covered, by the social insurance system of the country of destination. This could assist African migrant workers abroad who wish to return to, and eventually, retire in the African country of origin. Two interesting examples of countries that have extended social insurance coverage to persons who originated from the countries concerned, but who live and/or work overseas, include Ethiopia⁷⁴³ and Rwanda.⁷⁴⁴ Achieving this outcome may require a change to the current legal framework of most of the African countries of origin.

Secondly, remittances play a critical role in providing much-needed social protection to **vulnerable households**, especially in view of the currently rather weak non-contributory social assistance framework of support in most African countries of origin.

Thirdly, the impact that remittances have in enhancing economic growth may enable African governments to make further investments in **expanding the non-contributory part** of the social protection system, and to potentially increase the much-needed subsidy component to enhance affiliation of African migrant workers abroad to and effectiveness of the contributory social insurance regime.

(b) International standards and guidelines regarding remittances, of relevance in the social protection domain

There are numerous sets of standards and guidelines concerning remittances, emanating from among others the United Nations generally, as well as IOM, the ILO and the World Bank, which could be of assistance to African countries of origin in the further development of the remittance regime, and its role in extending social protection – as cash inputs for vulnerable households, contributions to the social insurance system of the countries of origin, and strengthening economic growth to support larger-scale

⁷⁴² Adapted from: Olivier, “Extending social protection to Vietnamese workers abroad” (see footnote 43).

⁷⁴³ Government of Ethiopia, Proclamation Providing Foreign Nationals of Ethiopian Origin with certain Rights to be Exercised in their Country of Origin (No. 270/2002) of 5 February 2002. (The Proclamation guarantees foreign nationals of Ethiopian origin certain rights and privileges, such as, among others, the right not to be subjected to the exclusion that applies to foreign nationals regarding the coverage of pension schemes under the relevant pension law.)

⁷⁴⁴ A recently introduced, digital-based national pension scheme aims to provide every Rwandan citizen and all Rwandans living outside Rwanda with equal rights and opportunities to achieve dignified retirement in a secure, affordable, convenient and well-regulated environment. (See, for example: Eric Rwigamba, “An inclusive and integrated pension model for informal sector workers in Rwanda”, in: *Saving the Next Billion from Old Age Poverty: Global Lessons for Local Action* (P.S. Khana, W. Price and G. Bhardwaj, eds.) (Singapore, Pinbox Solutions, 2018), p. 157.)

social protection investments by governments. The most recent, and globally endorsed, set of commitments made by countries are contained in the Global Compact for Safe, Orderly and Regular Migration (2018). **Objective 20** (“Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants”) formulates the overall, multidimensional objective(s) to be achieved, in the following terms:

We commit to promote faster, safer and cheaper remittances by further developing existing conducive policy and regulatory environments that enable competition, regulation and innovation on the remittance market and by providing gender-responsive programmes and instruments that enhance the financial inclusion of migrants and their families. We further commit to optimize the transformative impact of remittances on the well-being of migrant workers and their families, as well as on sustainable development of countries, while respecting that remittances constitute an important source of private capital, and cannot be equated to other international financial flows, such as foreign direct investment, official development assistance, or other public sources of financing for development.⁷⁴⁵

(c) Specific interventions regarding remittances contained in the Global Compact for Safe, Orderly and Regular Migration (2018)

The following actions, to be considered by African countries of origin, are among other proposed by United Nations Member States in the Global Compact for Migration (emphases added):⁷⁴⁶

i. Abiding by international targets

Develop a roadmap to reduce the transaction costs of migrant remittances to less than three per cent and eliminate remittance corridors with costs higher than five per cent by 2030.

ii. Supportive policy and regulatory environment

Establish conducive policy and regulatory frameworks that promote a competitive and innovative remittance market, remove unwarranted obstacles to non-bank remittance service providers in accessing payment system infrastructure, apply tax exemptions or incentives to remittance transfers, promote market access to diverse service providers, incentivize the private sector to expand remittance services, and enhance the security and predictability of low-value transactions by bearing in mind de-risking concerns, and developing a methodology to distinguish remittances from illicit flows, in consultation with remittance service providers and financial regulators.

iii. Technological innovation

Develop innovative technological solutions for remittance transfer, such as mobile payments, digital tools or e-banking, to reduce costs, improve speed, enhance security, increase transfer through regular channels and open up gender-responsive distribution channels to underserved populations, including for persons in rural areas, persons with low levels of literacy, and persons with disabilities.

⁷⁴⁵ United Nations General Assembly resolution 73/195 on the Global Compact for Safe, Orderly and Regular Migration, adopted on 19 December 2018 (A/RES/73/195), para. 36.

⁷⁴⁶ Ibid.

iv. **Enhance transparency and competition**

Provide accessible information on remittance transfer costs by provider and channel, such as comparison websites, in order to increase the transparency and competition on the remittance transfer market and promote financial literacy and inclusion of migrants and their families through education and training.

2. **The diaspora**

(a) **The value of the diaspora, including in the social protection domain: underlying principles**

The value of the diaspora for the development and benefit of not only the country of destination, but also the country of origin, is increasingly appreciated. The value lies among other in the transfer of knowledge and skills, investments and the transfer of remittances. It is for this reason that governments have gone to great lengths to establish legal, policy, institutional and operational frameworks to recognize, support, engage with and utilize diaspora for the development of the countries concerned. To this extent, the diaspora have taken centre stage in the debate around migration and development – with specific reference to harnessing the potential embedded in the diaspora for the development of (also) the country of origin. This has several consequences in the social protection domain. Firstly, through remittances – as indicated above, as cash inputs for vulnerable households, contributions to the social insurance system of the country of origin and strengthening economic growth to support larger-scale social protection investments by government. Secondly, the presence of the diaspora in countries of destination should prompt the conclusion of bilateral social security agreements, potentially to be supported by multilateral arrangements, on the basis of which social protection for overseas workers is appropriately streamlined – also when they return to their country of origin. These agreements in turn support labour migration initiatives and objectives, and the social protection of migrants, including migrant workers, both abroad and in the country of origin (i.e. at return).

(b) **The value of the diaspora: international standards and guidelines**

Also in this area, the most recent, and globally endorsed, set of commitments made by countries are contained in the Global Compact for Safe, Orderly and Regular Migration (2018). **Objective 19**, headed “Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries” formulates the overall, multi-dimensional objective(s) to be achieved, in the following terms:

We commit to empower migrants and diasporas to catalyse their development contributions, and to harness the benefits of migration as a source of sustainable development, reaffirming that migration is a multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination.⁷⁴⁷ [emphasis added]

(c) **Specific interventions regarding the diaspora contained in the Global Compact for Safe, Orderly and Regular Migration (2018)**

Recommended actions, to be considered by countries of origin, proposed by United Nations Member States in the Global Compact for Migration, include the following (emphases added):

⁷⁴⁷ Ibid., para. 35.

- i. **The need for a supporting institutional framework.** Facilitate the contributions of the diaspora, including by establishing or strengthening government structures or mechanisms at all levels, such as dedicated diaspora offices or focal points, and a diaspora policy advisory board for governments of African countries of origin to account for the potential of the diaspora in migration and development policymaking, and dedicated diaspora focal points in diplomatic or consular missions.
- ii. **An integrated policy framework.** Promote migration policies that optimize the benefits of diasporas and integrate migration into development planning and sectoral policies at the local and national levels.
- iii. **Further support for diaspora investments and entrepreneurship.** “Develop targeted support programmes and financial products that facilitate migrant and diaspora investments and entrepreneurship, including by providing administrative and legal support in business creation, granting seed capital-matching, establish diaspora bonds and diaspora development funds, investment funds, and organize dedicated trade fairs.”
- iv. **Utilize the diaspora professional expertise and invest in knowledge transfer.** Enable migrants and diasporas, especially those in highly technical fields and in high demand, to carry out some of their professional activities and engage in knowledge transfer in their home countries, without necessarily losing employment, residency status or earned social benefits.
- v. **Strengthen links with the diaspora, including through mapping endeavours.** Build partnerships between local authorities, local communities, the private sector, diasporas, hometown associations and migrant organizations to promote knowledge and skills transfer between their countries of origin and countries of destination, including by mapping the diasporas and their skills, as a means to maintain the link between diasporas and their country of origin.⁷⁴⁸

3. Return migrants

(a) Return migrants: international standards and guidelines

It is suggested that African countries of origin could draw extensively from a range of international sources and guidelines. One of these is the recently adopted ASEAN Guidelines on Return and Reintegration.⁷⁴⁹ Also, the most recent, and globally endorsed, set of commitments made by countries are contained in the Global Compact for Safe, Orderly and Regular Migration (2018). **Objective 21** (“Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration”) emphasizes, among others, safe and dignified return. Some of the overall, multidimensional objective(s) to be achieved, are formulated in the following terms: “...We also commit to create conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities, in order to ensure that reintegration of migrants upon return to their countries of origin is sustainable.”⁷⁵⁰

⁷⁴⁸ Ibid.

⁷⁴⁹ Piyasiri Wickramasekara, *Effective Return and Reintegration of Migrant Workers with Special Focus on ASEAN Member States* (Bangkok, ILO, 2019).

⁷⁵⁰ United Nations General Assembly resolution 73/195 on the Global Compact for Safe, Orderly and Regular Migration (see footnote 745), para. 37.

(b) **Specific interventions regarding return migrants contained in the Global Compact for Safe, Orderly and Regular Migration (2018)**

Recommended actions, to be considered by African countries of origin, proposed by United Nations Member States in the Global Compact for Migration, include the following:⁷⁵¹

- i. **Ensure return migrant workers' equal access to social protection and supporting services, and utilize their entrepreneurship, skills and human capital.** Facilitate the sustainable reintegration of returning migrants into community life by providing them equal access to social protection and services, justice, psychosocial assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, and financial services, in order to fully build upon their entrepreneurship, skills and human capital as active members of society and contributors to sustainable development in the country of origin upon return.
- ii. **Address the needs of receiving communities.** Identify and address the needs of the communities to which migrants return by including respective provisions in national and local development strategies, infrastructure planning, budget allocations and other relevant policy decisions and cooperating with local authorities and relevant stakeholders.

(c) **The examples of the Philippines and the Republic of Korea**

Return migration in the Philippines is addressed by several government agencies, with a focus on the welfare and humanitarian needs of returning Overseas Filipino Workers (OFWs). Of particular importance is the **National Reintegration Center (NRCO) for OFWs**. Established in 2007 and institutionalized in Republic Act No. 10022 of 2009,⁷⁵² NRCO received initial funding worth USD 40 million to undertake a range of support services for the benefit of return migrant workers. These include: (i) job referral; (ii) assistance toward entrepreneurship/micro-enterprise development; (iii) training and capacity-building; (iv) counselling; and (v) reintegration programmes for distressed returnees.⁷⁵³ Furthermore, return migration preparation is also addressed by the Government of Philippines. For example, under the so-called **Tulay Project**, a public-private partnership between Microsoft and the Government, skills training is provided for Filipino migrants in information technology, while they are still working abroad – a highly transferable skill set enhancing migrants' employability at home. To similar effect is the **Happy Return Programme** of the Government of the Republic of Korea – which offers skills training and job-matching with companies originating from the Republic in Korea and operating in Viet Nam, among other benefits.⁷⁵⁴

(d) **Improving support for African return migrants**

Considering the challenges outlined above and the indicated international standards and guidelines, the following actions may have to be taken to improve support for African return migrants:

- i. Create, populate and popularize a **national database** with helpful supply-side and demand-side information – including information on the skills, qualifications and

⁷⁵¹ Ibid.

⁷⁵² Government of the Philippines, Republic Act No. 10022 of 2009 (see footnote 584).

⁷⁵³ Battistella, Return Migration (see footnote 589), pp. 6–7.

⁷⁵⁴ ILO, IOM and UN-Women "Making the return of migrant workers work for Viet Nam: an issue in brief", policy brief (Geneva, IOM and ILO; UN-Women, New York, 2014), p. 6; Wickramasekara, *Effective Return and Reintegration* (see footnote 749), pp. 20–21.

experience of return migrants (supply side), and on (matching) job opportunities (demand side).

- ii. Provide a range of **needed support services** – among others, occupational counselling support; (re)training and skills development; access to services, facilities and credit; (free) legal aid, particularly to assist with accessing social insurance benefits claimable from institutions in the country of destination; and guidance on the use or investment of savings.
- iii. **Prepare migrant workers for their return** – firstly, sufficient guidance and information on returning to the country of origin after work overseas should be contained in pre-departure orientation training modules; secondly, skills training should be available at the overseas destination even before return (with the Philippines and the Republic of Korea serving as examples); and, thirdly, overseas employers should ideally be involved in preparing African overseas migrant workers for return home.
- iv. Provide **financial support** to return migrants, if needed, which could be linked to employment creation/entrepreneurial involvement in national development priorities.

(e) Improving the legal, institutional and policy framework, including in relation to social protection interventions

A range of interventions could be considered by the African governments to improve the legal, institutional and policy framework in relation to return migrants, impacting on the social protection domain as well.

Box A7. Improving the legal, institutional and policy framework in relation to return migrants

Interventions in the legal, institutional and policy domains may be called for to improve the regime African return overseas migrants and migrant workers are exposed to:

- **Modifications in the legal framework.** There is an evident need to adjust the legal framework to specify in detail the commitments made by countries of origin, with reference to the roles of the different institutional stakeholders, and to provide for access to the range of support services indicated above, as a matter of right and not discretion.
- **Institutional improvement.** It is recommended that, firstly, as is the case in other countries with sizeable numbers of overseas migrant workers (such as the Philippines), the establishment of a dedicated single agency, which could be a government unit, to engage effectively with return migrants and their reintegration into the origin country's labour market and society, should be considered. Secondly, there is need to ensure clarity is indicated, also in the legal framework, regarding the respective roles and responsibilities of the different institutions and entities involved in supporting return migrants and their integration – including also local authorities, intermediary institutions (such as recruitment agencies) and foreign employers. Thirdly, dedicated consular services should be focusing on supporting return and reintegration of migrant workers while they are still in the countries of destination, with information points established at, among other, large-scale employers.

- **A policy and implementing framework.** It is suggested that a stronger policy framework should inform and support the legal, institutional and operational arrangements concerning the improvement of the regime to which return migrants, in particular return migrant workers, are exposed to. A dedicated policy and accompanying strategic plan may be of particular assistance in this regard.
- **Inclusion of return and reintegration arrangements in bilateral labour and social security agreements.** Return and reintegration provisions and measures are currently weakly developed in the African bilateral instruments. Yet the return to the country of origin and reintegration of these workers into the origin country's labour market and society could be supported by introducing provisions into bilateral agreements with countries of destination provisions, which contain arrangements indicated above, and below – with reference to, among other, preparation for return, portability of social protection benefits, engagement with the national social security system at return, and available assistance to facilitate return and reintegration.

Box A8. Improving the social protection regime relevant to African migrant workers abroad, with a view to supporting return migrants

Modifications of the legal, policy and institutional domains may be required in order to address social protection shortcomings to which return migrants are exposed. This may require changes to national social security laws and laws that specifically deal with the plight of migrant workers abroad.

- **Knowing the assistance required by African workers abroad**
Based on the available evidence, it is clear that these workers require assistance at different stages of their engagement with the social protection systems of both the country of destination and the country of origin, and that these forms of assistance should be reflected in both the policy domain and legal framework:
 - Assistance in relation to engagement with country of destination social insurance schemes.** There is scope for introducing an obligation on, for example, recruitment agencies and/or employers, even foreign employers, to ensure that these workers are, firstly, enrolled in the social insurance scheme of the country of destination and, secondly, enabled to claim benefits when necessary; and to monitor that agencies and/or employers are complying with these obligations to render assistance, and that employers comply with their obligation to contribute to the social insurance scheme of the country of destination.
 - Assistance in relation to claiming benefits from country of destination social insurance schemes.** Also, in similar vein, there is scope for introducing an obligation on, for example, recruitment agencies, to ensure that migrant workers are enabled, at return, to claim benefits due to them, from social insurance institutions in the country of destination (e.g. pension, unemployment or employment injury benefit claims).
 - Assistance in relation to engagement with country-of-origin social insurance arrangements.** Furthermore, the dedicated single agency, which it is proposed (above) should be involved in rendering support to return migrants, should be tasked with ensuring that the return migrants are enrolled in the applicable social insurance scheme of the country of origin – where an employment relationship exists, employers in the country of origin also bear this duty.
 - Consular and legal assistance.** To the extent needed, consular and legal assistance should be available to assist African migrant workers, while abroad and at return, as regards the above-mentioned arrangements.

- **Ensuring coverage of return migrants regardless of the nature of their labour market association in the country of origin**

Many return migrants become involved in the local labour market as entrepreneurs, as household business heads, and/or as workers in either the formal economy or the informal economy. Arrangements should be in place to ensure that return migrants are personally covered by the African country of origin social insurance system in all of these capacities.

- **Allowing for the exportability of benefits**

Irrespective of whether (but subject to) the provisions of a bilateral (social security) agreement arranging for the portability of benefits to African migrant workers while abroad, the country of origin's social insurance legal system should also provide for benefits that have accrued to the member to be portable.

- **Recognizing the need for appropriate bilateral (labour and) social security agreements**

As discussed in more detail in the main part of this report, social protection arrangements applicable to migrant workers, particularly during their employment abroad and at return, are ideally contained specifically in bilateral social security arrangements – among others, providing for portability of benefits, accumulation/totalization of insurance contribution periods, and contribution obligations. This is indeed world-wide viewed as best practice, as was explained earlier in this report; the legal framework of the country of origin should appropriately provide for this.

Appendix 3 Blueprint for establishing a Migrant Welfare Fund⁷⁵⁵

Action	Activity	Notes
1. Create a technical working group (TWG)	<p>Assign a small technical team (preferably led by the labour ministry and composed of other relevant ministries) that will:</p> <ul style="list-style-type: none"> (a) Act as a coordinator in the national effort to establish the Migrant Welfare Fund programme, analyse the labour migration environment; (b) Collect and organize data, gather information on all existing laws, policies and procedures; (c) Prepare a draft of proposed amendments in existing laws, policies and procedures. 	Resources should be provided by the labour ministry or national government.
2. Convene consultative workshops of tripartite partners and other stakeholders	<p>The consultative tripartite workshops, to be initiated by the ministry of labour, should include:</p> <ul style="list-style-type: none"> (a) Government actors involved in labour migration issues and social welfare services; (b) Workers and employers organizations; (c) Migrant leaders; (d) Civil society organizations; (e) Consular officers from the embassies in major countries of destination; (f) External resource persons/experts; (g) Private sector actors (e.g. financial institutions); (h) Parliamentarians; (i) Others involved in labour migration; 	TWG collaborates with experts and prepares all materials and draft strategies that will be validated during the consultative workshops.
	<p>Over a series of workshops, the TWG shall present:</p> <ul style="list-style-type: none"> (a) Its detailed studies; (b) Reliable migration data; (c) New laws or revisions to existing laws or revisions to existing laws, policies and procedures; (d) Its proposed organizational structure to implement a Migrant Welfare Fund programme; (e) A menu of welfare programmes and services. <p>The consultative workshops should end with a joint resolution for the proposed legal and administrative amendments with specific funding mechanisms, organizational structure and key programmes and services.</p>	The workshops should be structured to provide ample of time for dialogue, the identification of priorities on benefits and services, and the formulation of a work plan with specified actors, targets and timelines.

⁷⁵⁵ ILO, *Establishing Migrant Welfare Funds* (see footnote 2), pp. 6–8.

Action	Activity	Notes
3. Initiate strategic planning sessions	The objective of strategic planning sessions is to push for the implementation of the outputs of the consultative workshops and to gain the approval of concerned authorities.	The planning session can be led by the TWG with guidance from external experts.
	<p>The planning sessions should include:</p> <ul style="list-style-type: none"> (a) The formulation of proposed amendments to laws, policies and procedures that would cover improvements in regulatory processes, licensing of recruitment agencies and management of labour migration data; (b) The reparation of legal frameworks or ministerial orders to enable the establishment of an Migrant Welfare Fund that would describe the: <ul style="list-style-type: none"> i. Coverage of the Fund; ii. Required programmes and services; iii. Management information system; iv. Organizational structure; v. Funding mechanisms; vi. Management and investment processes for the Fund; vii. Initiation of contacts with collaborating government agencies and private organizations in countries of origin and destination; (c) Identify a major country of destination in which to pilot the delivery of programmes and services pending approval of enabling laws to govern the operation of the Fund; (d) Identify pilot implementing partners such as those among the trade unions and civil society organizations that already provide welfare programmes to migrant workers. 	Externally guided monitoring and evaluation must be conducted.
4. Frame legislative and administrative policies	Ensure the passage of amendments to laws, policies and administrative procedures.	This activity is to be carried out by Parliament.
5. Issue orders	<ul style="list-style-type: none"> (a) Prepare and issue specific directives to implement the approved laws, policies and procedures. (b) Ensure the release of the necessary funds for implementation. 	To be led by the TWG.
6. Organize the Board of Trustees and Secretariat	<ul style="list-style-type: none"> (a) The Labour Ministry must select and appoint the members of the Board of Trustees and the Secretariat staff. (b) The Secretariat manages the implementation of programmes and services and monitor the performance of the Migrant Welfare Fund. 	The staff must be provided with rigorous capacity-building training.

Action	Activity	Notes
7. Pilot programmes and services	<ul style="list-style-type: none"> (a) Assign the team to an embassy located at the target country of destination. Besides piloting the programmes and services, the team must begin strengthening its networks among the migrant workers and look for possible partners such as money transfer organizations and telecommunication companies. (b) Assess the worksite situation and make the necessary adjustments to programmes and services and the organizational structure. (c) Ensure that necessary systems and procedures are in place, including: <ul style="list-style-type: none"> i. Welfare Fund management <ul style="list-style-type: none"> - Collection of member contributions; - Fund disbursement; - Investment protocols; - Reporting and auditing; ii. Management information system covering the delivery of programmes and services and disbursement of the Fund. 	
	<ul style="list-style-type: none"> (a) Establish civil society and private sector partnerships for delivering welfare programmes and services, which could include: <ul style="list-style-type: none"> i. Contract and employment mediation; ii. Assistance on migrant worker complaints; iii. Repatriation services; (b) Identify assistance protocols appropriate to the country of destination as guided by the approved policies and procedures; (c) Establish migrant workers networks; (d) Conduct simulated repatriation exercises at the countries of destination and reception protocols at countries of origin. 	

Appendix 4 Completed questionnaires received

No.	Country	Institution	Respondent and designation
1	Côte d'Ivoire	Directorate of Employment of Employment and Directorate of the Employment and Trade Observatory (<i>Direction de l'Observatoire de l'Emploi et des Métiers Direction Générale de l'Emploi</i>) (DGE, MEPS)	Mr Dakouri Gnalega, Assistant Director of Studies and Statistical Analysis
2	Côte d'Ivoire	General Union of Workers of Côte d'Ivoire (<i>Union Générale des Travailleurs de Côte d'Ivoire</i>) (UGTCI)	Mr Tano Honorat
3	Côte d'Ivoire	National Union of Agents and Placement Agencies of Côte d'Ivoire (<i>Syndicat National des Agentes et Agences de Placement de Côte d'Ivoire</i>)	Mr M. Coulibaly
4	Côte d'Ivoire	National Office for Civil Status and Identification (<i>Office National de l'État Civil et de l'Identification</i>)	Mr Armelle Josiane Donwahi epse Amich
5	Ethiopia (as country of origin and destination)	Jigjiga University – Institute for Migration Studies	Prof. Tingirtu Gebretsadik Tekle, Director
6	Ethiopia (as country of origin and destination)	Addis Ababa University	Prof. Tekalign Ayalew, Asst Professor
7	Ethiopia (as country of origin and destination)	Addis Ababa University – Centre for African and Asian Studies	Prof Getahun Fenta Kebede, Asst Professor and Head
8	Ethiopia (as country of origin and destination)	Confederation of Ethiopian Trade Unions (CETU) – Women Affairs Department	Ms Rahel Ayele
9	Ghana (as country of origin and destination)	Ministry for Employment and Labour Relations – Labour Department	Mr Eugene Narh Korletey, Chief Labour Officer
10	Ghana (as country of origin and destination)	University of Ghana – Regional Institute for Population Studies	Prof. Delalia Badasu, Research Fellow and Lecturer
11	Ghana (as country of origin and destination)	International Organization for Migration	Eric Akomanyi and David Darko
12	Ghana (as country of origin and destination)	Scholars in Transit	Mr Frank Peprah, Chief Executive Officer
13	Ghana (as country of origin and destination)	Migration Solutions Ltd	Mr Kwaku Tardieh, Chief Executive

No.	Country	Institution	Respondent and designation
14	Kenya (as country of origin)	State Department for Labour	Ms Winnie Karingithi, Director of Planning
15	Kenya (as country of origin)	Ministry of Labour and Social Protection, State Department of Labour	Ms Lucy Kibiru, Principal Economist
16	Kenya (as country of origin)	National Employment Authority	Mr Edith Okoki, Acting Director-General
17	Kenya (as country of origin and destination)	National Employment Authority	Mr Festus Mutuse, Acting Director for Strategy and Quality Management
18	Kenya (as country of origin)	Ministry of Foreign Affairs	(Name withheld), Foreign Service Officer
19	Kenya (as country of origin and destination)	Department of Immigration Services	(Name withheld), Principal Immigration Officer
20	Kenya (as country of destination)	Kenya National Commission on Human Rights (KNCHR)	Ms Veronica Mwangi, Deputy Director
21	Kenya (as country of origin)	National Diaspora Council of Kenya (NADICOK) Kenyans in Japan Association (KIJA)	Mr Emmanuel Mutisya, Chairperson
22	Kenya (as country of origin)	Alshifaa Investment Agency	Mr Mwalimu Mwanguzo, Director
23	Kenya (as country of origin)	Silver Ray HR Company Ltd	Ms Margaret Mugwanja, Managing Director
24	Mauritius (as country of origin and destination)	Ministry of Labour, Human Resource Development and Training – Employment Division (Director Employment Services)	Mr Ajit Bantoo
25	Rwanda (as country of destination)	Director General of Immigration and Emigration (DGIE)	Ms Doriane Ange, Head of International Cooperation
26	Rwanda (as country of destination)	Ministry of Public Service and Labour	(Name withheld), Director of Labour Administration

Appendix 5 Key informant interviews

No.	Country	Institution	Interviewee and designation
1	African Union	African Union Citizens and Diaspora Directorate (AUC-CIDO)	Mr Eiman Kheir, Head of the Diaspora Division
2	Côte d'Ivoire	National Union of Agents and Placement Agencies of Côte d'Ivoire	Mr M. Coulibaly, General Secretary
3	Egypt	Ministry for Migration, Refugees and Counter-trafficking	Ambassador Neveen Elhousseiny, Assistant Deputy Minister
4	Ethiopia	Jigjiga University	Prof. Tingirtu Tekle, Assistant Professor of sociology
5	Ghana	Diaspora African Forum	Princess Ocancey, PhD, Migration expert
6	Ghana	Centre for Migration Studies/Regional Institute for Population Studies – University of Ghana, Legon	Prof. Delali Badasu, Research fellow and lecturer
7	Ghana	AHASPORA Professionals Network	Ms Christabel Dadzie, Director
8	Ghana	Department of Labour	Mr Lawrence Simpi, Senior Labour Officer
9	Ghana	Scholars in Transit	Rev. Frank Peprah, Chief Executive Officer
10	Ghana	Migration Solutions	Mr Kwaku Tardieh, Chief Executive Officer
11	Mauritius	Prime Minister's Office	Mr Nawoor, Migration analyst
12	Mauritius	Ministry of Labour	Mr Bhantoo, Director of Employment Services
13	Rwanda	Rwanda Directorate General of Immigration and Emigration	Ms Ange Doriane, Head of International Cooperation
14	South Africa	Scalabrini Institute for Human Mobility in Africa (Cape Town Centre)	Fr Filippo Ferraro, Executive Director
15	South Africa	Scalabrini Institute for Human Mobility in Africa (Cape Town Centre)	Ms Sally Govender, Head of Advocacy and legal adviser
16	South Africa	Scalabrini Institute for Human Mobility in Africa (Cape Town Centre)	Mr James Chapman, Project manager
17	South Africa	Scalabrini Institute for Human Mobility in Africa (Cape Town Centre)	Simona Gallo-Mosala, PhD, Consultant

No.	Country	Institution	Interviewee and designation
18	South Africa	Department of Employment and Labour	Mr Sam Morotoba, Deputy Director-General
19	South Africa	Department of Employment and Labour	Ms Esther Tloane, Chief Director of Public Employment Services
20	South Africa	Department of Employment and Labour	Ms Mantombi Bobani, Director of Labour Migration
21	South Africa	Department of Employment and Labour	Prof. Vimla Singh, Chief Director of Legal Services
22	South Africa	Department of Social Development	Ms Brenda Sibeko, Deputy Director-General
23	South Africa	Department of Social Development	Mr Anthony Makwiramiti, Chief Director of Social Insurance
24	South Africa	Department of Social Development	Mr Brenton van Vrede, Chief Director of Social Assistance
25	South Africa	Department of Social Development	Mr Thomson Sithole, Deputy Director of Disability and Older Persons Benefits
26	South Africa	Department of Social Development	Mr Thabiso Modise, Deputy Director of Economic Opportunities Liaison

Appendix 6 Template informing the design and implementation of a migrant welfare programme for African countries of origin

Designing and Implementing a Migrant Welfare Programme: African countries (draft template)

How to use this template

This self-help template does not provide a fixed and final framework for designing and implementing a migrant welfare programme. It does, however, highlight key issues that could usefully be considered by African countries, learning from the experience of several countries around the world that have successfully implemented such programmes. Four key overall thematic areas/dimensions are covered; a country could decide which combination of these overall thematic areas/dimensions it would want to invest in: A. Establishment of a Welfare Fund; B. Insurance-based Mechanisms; C. Support Services. The fourth key overall thematic area/dimension contains components or elements which are cross-cutting or common to all of the three overall thematic areas/dimensions already indicated (D. Common/cross-cutting Dimensions/ Elements).

For each of the overall thematic areas/key dimensions, specific thematic areas are indicated (first vertical column). At times, indicators to help inform an understanding of the breadth and scope of and benchmark for certain specific thematic areas are mentioned (second vertical column). The third vertical column requires of countries to decide whether the indicated specific issue/thematic area is of interest to them. The fourth column requires of countries interested in the particular issue/specific thematic area to indicate, for themselves, follow-steps to be taken as well as associated timelines. The final (fifth) column allows countries to indicate the institution(s) responsible to take further action.

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
A. ESTABLISHMENT OF A WELFARE FUND				
1. Is there a need for a Migrant Welfare Fund?	Consider, for example, number of migrant workers abroad; nature and extent of social protection coverage abroad.			
2. Is there an existing scheme/fund that could be used/transformed to fulfil the purpose of a welfare fund?	For example, an existing scheme set up by government, or recruitment agencies, to assist migrants abroad.			
3. Which services and benefits should be covered by the Fund? (e.g. example, legal support, medical assistance and crisis (including disaster) support)	Consider services and benefits that may already be available, or lacking, concerning 3.1–3.5.			

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
3.1. Coverage/protection prior to migration?				
3.2. Coverage/protection during period of work abroad?				
3.3. Coverage/protection upon return?				
3.4. Repatriation				
3.5. Insurance coverage Examples of items that may be covered: - Life insurance; - Medical assistance; - Disability cover; - Survivor's support; - Family support, including child benefits; - Loss of employment; - Occupational injury or diseases; - Maternity and paternity; - Children's education; - Retirement; - Others (please specify).				
4. Should the Fund be a contributory type or government-funded (or a hybrid)?	Consider contributory capacity (see item 5) and whether government contributions are affordable.			
5. If a contributory fund, who should contribute? Contributions may come, for example, from: - Benefiting migrant workers; - Employers; - Recruitment agencies; - Government: • As a standard budgeted item; • Through earmarked taxes; • Other dedicated funding sources (please specify).	Consider contributory capacity of mentioned individuals and institutions, including government contributions are affordable.			

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
6. Who should be able to benefit from the Fund? Beneficiaries may include: - (Contributing) migrant workers; - Irregular migrant workers(?); - Family members; - Others (please specify).	Are there any exclusions (e.g. professional categories)?			
7. Determine the framework and governance arrangements.	Consider the technical, human resource and financial capacity, as well as the supporting framework.			
7.1 Should this be a public institution?				
7.2 Should this be a government ministry?				
7.3 How should it be composed? Please specify.				
7.4 What should be its mandate and powers? Please specify.				
7.5 Which body/bodies should have oversight over this institution? Please specify.				
7.6 How often should the institution report to the oversight body? Please specify.				
7.7 How should the institution align/interact with government and other stakeholders engaged with external labour migration? Please specify.				
8. What does the legal framework consist of?				
8.1 Is there a need to create a mandate in the law?				
8.2 Confirm whether the law needs to create entitlements for beneficiaries.				

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
8.3 What obligations should there be on the different stakeholders that the law should provide for? Stakeholders include: - Contributors; - Beneficiaries; - Employers; - Recruitment agencies; - Government; - Others (please specify).				
9. What operational arrangements (e.g. systems and electronic interfacing) are necessary to manage the Fund? (Please specify.) Some aspects to considering in such arrangements: - Liaison with the public; - Awareness-raising; - Contribution collection; - Consideration of claims; - Benefit payments; - Need for a presence abroad(?)				
B. INSURANCE-BASED MECHANISMS				
1. Is the current coverage available to migrant workers and their families in specific countries of destination sufficient?	Consider the range of benefits indicated in item 2 below, as well as the value of the benefits.			
2. Which social security risks should be provided/covered via insurance-based arrangements?	Consider various risk categories: - Medical care; - Sickness benefits; - Disability cover; - Survivor's support; - Family support, including child benefits; - Loss of employment; - Occupational injury or diseases; - Maternity and paternity; - Children's education; - Retirement; - Life insurance;			
	- Repatriation; - Risks to which family members at home and/or abroad may be exposed to - Others (please specify).			

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>3. Consider the possibility of extending country-of-origin measures.</p> <ul style="list-style-type: none"> - In the form of specialized schemes? - As an extension of national schemes? - Public or private insurance-based arrangements? - Compulsory or voluntary coverage? - Is there a need to introduce such coverage gradually, and if so, which risk areas should be prioritized? 				
4. Should benefits be portable?	Consider the capacity to pay benefits abroad.			
5. Does a legal framework exist to provide such benefits to migrant workers from this country?				
6. Does the institutional and operational capacity exist to provide such benefits?				
7. Can membership in a scheme providing these benefits be linked to membership to a national social security scheme before the migrant worker leaves and when the migrant worker returns? (i.e. continued membership)				
C. SUPPORT SERVICES				
1. Should legal assistance be provided abroad or upon return?				
2. Should access to health care be provided abroad or upon return?				
3. Should training be available?				
<p>If so, specify what kind(s) of training and when:</p> <ul style="list-style-type: none"> - Before departure; - Abroad; - Upon return. 				
4. Should education support (e.g. scholarships) be extended to family members?				

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>5. Is provision made for the reintegration of returnees? Reintegration assistance may take the following forms:</p> <ul style="list-style-type: none"> - Skills training; - Business advice; - Financial support to start up a business; - Housing support; - Trauma support; - Others (please specify). 				
<p>6. Is provision made for any other service for the benefit of migrant workers and/or their family members?</p>				
D. COMMON/CROSS-CUTTING DIMENSIONS/ELEMENTS (applicable to A–C above)				
<p>1. What kind of framework is available or should be in place to ensure the above (any of or a combination of A to C) can be implemented?</p>				
<p>2. Consider the institutional arrangements and coordination that need to be in place to give effect to the above. Such arrangements and coordination relate to the following:</p> <ul style="list-style-type: none"> - Role of government ministries/bodies; - Dedicated institutions supporting labour exchange; - Mandate and capacity of embassies; - Labour attachés; - Involvement of the private sector; - Others (please specify). 				
<p>3. Government liaison with country-of-destination institutions: Consider coordination with governments of countries of destination. Types of coordination that may be undertaken:</p> <ul style="list-style-type: none"> - Joint committees; - Joint inspection; - Coordination with other embassies in countries of destination. 				

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
4. Diaspora liaison and involvement: Do arrangements exist to liaise with migrant workers abroad and with diaspora associations of these workers?				
5. Remittance interventions: What arrangements are in place? Are arrangements in place to address: - Transfer costs? - Transfer channels, including the availability of transfer service providers? - Strengthening the use of remittances by beneficiaries?				
6. What impactful supporting bilateral arrangements/agreements, exist with countries of destination (bilateral labour agreements, bilateral social security agreements, among others)?				
7. Are there potentially impactful existing multilateral arrangements/commitments? Specifically, are there: - Binding international and regional standards applicable? - Regional integration commitments/objectives?				
- Participation in regional structures (e.g. RECs)? - Others? (Please specify.) - What are the impacts of these arrangements/commitments?				
8. Are awareness-raising mechanisms in place?				
9. Is there a need for improved regulation of the recruitment context in your country? Please specify.				

Specific thematic area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>10. Are arrangements in place concerning a model employment contract, in connection with:</p> <ul style="list-style-type: none"> - Use of the model employment contract by the parties to the employment relationship and recruitment agencies? - Suggested content? - Vetting/attestation by the government or another body? - Enforcement and monitoring compliance with the contract? 				
<p>11. Are skills and other training required? If so, please what type and when:</p> <ul style="list-style-type: none"> - Pre-departure; - Prior to return; - After return. 				
<p>12. Does civil society play a role in providing support? Please specify.</p>				
<p>13. Is a migrant resource centre providing support? Please specify.</p>				
<p>14. Is international/development partner support needed to make any of the arrangements in A to D work? Please specify.</p>				
<p>16. Is capacity-building needed to make any of the arrangements in A to D work? Please specify.</p>				
<p>17. Is a framework in place to monitor and evaluate the arrangements in A to D, to the extent that they may be relevant?</p>				
<p>18. Are arrangements in place for:</p> <ul style="list-style-type: none"> - Data to support any of the arrangements in A to D? - Information-sharing with countries of destination? 				



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