

Capacity-building Manual

Establishment and Implementation of a Migrant Welfare Programme by African Countries



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Capacity-building Manual

Establishment and Implementation of a Migrant Welfare Programme by African Countries



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ACRONYMS AND ABBREVIATIONS

AUC	African Union Commission
BLA	Bilateral Labour Agreement
BLMA	Bilateral Labour Migration Agreement/Arrangement
BSA	Bilateral Social Security Agreement
CEN-SAD	Community of Sahel-Saharan States
CIPRES	Conférence Interafricaine de la Prévoyance Sociale
CoD	Country of destination
COMESA	Common Market for Eastern and Southern Africa
CoO	Country of origin
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EU	European Union
GCC	Gulf Corporation Council
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IOM	International Organization for Migration
JLMP	Joint Programme on Labour Migration Governance for Development and Integration
MW	Migrant Workers
MWP	Migrant Welfare Programme
NGO	Non-governmental organization
RECs	Regional Economic Communities
SADC	Southern Africa Development Community
SDGs	Sustainable Development Goals
SP	Social Protection
UN DESA	United Nations Department of Economic and Social Affairs
UNECA	United Nations Economic Commission for Africa
UNDP	United Nations Development Programme
UNMWC	United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

GLOSSARY: WORKING DEFINITIONS, TERMINOLOGIES AND KEY CONCEPTS

The terms detailed in the Glossary are presented in alphabetical order and are intended to be used for the purpose of this Manual. The main source relied on is the IOM's *Glossary on Migration* (3rd edition, Geneva) (2019). Other sources, where relevant, are separately indicated.

Table 1: Working definitions and terminologies

Terms	Main Characters
Asylum-seekers	Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.
Border control	A State's regulation of the entry and departure of persons to and from its territory, in exercise of its sovereignty, whether this is conducted at the physical border or outside of the territory in an embassy or consulate.
Country of destination	The country that is a destination for migratory flows (regular or irregular).
Country of origin	The country that is a source of migratory flows.
Country of transit	The country through which migratory flows (regular or irregular) move towards their final destination.
Exploitation	The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit (e.g. sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).
Immigration	A process by which non-nationals move into a country for the purpose of settlement.
Irregular migrant	Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country.
Irregular migration	<p>Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination. There is no clear or universally accepted definition of irregular migration.</p> <p>Note: Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. The fact that they migrate irregularly does not relieve States from the obligation to protect their rights. Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children. The fact that they use irregular migration pathways does not imply that States are not, in some circumstances, obliged to provide them with some forms of protection under international law, including access to international protection for asylum seekers fleeing persecution, conflicts or generalized violence. In addition, refugees are protected under international law against being penalized for unauthorized entry or stay if they have travelled from a place where they were at risk (Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Art. 31(1)).</p>

Terms	Main Characters
Labour migration	Movement of persons from one State to another, or within their own country of residence, for the purpose of employment.
Migrant flow	The number of migrants counted as moving or being authorized to move, to or from a country to access employment or to establish themselves over a defined period of time.
Migrant stock	The number of migrants residing in a country at a particular point in time.
Migrant worker	A person who is to be engaged, or is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (Article 2(1)). (For purposes of this Manual, reference to a migrant worker also include migrants engaged in a self-employed capacity, or in informal work, who are not remunerated by an employer or, for that matter, any other person or institution.)
Migration	The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.
Migration cycle	Stages of the migration process encompassing departure from, in some cases transit through one or more States, immigration in the State of destination and return.
Mixed flows	Complex population movements including refugees, asylum-seekers, economic migrants and other migrants.
Mixed migration	A movement in which a number of people are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People travelling as part of mixed movements have varying needs and profiles and may include asylum-seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation,
Non-refoulement ¹	The prohibition on a country to expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
Permanent residence	The right, granted by a host State to a non-national, to live and work therein on a permanent (unlimited) basis.
Permanent settlers	Legally admitted immigrants who are accepted to settle in the receiving country, including persons admitted for the purpose of family reunion.

¹ See Article 33(1) of the 1951 United Nations Convention Relating to the Status of Refugees.

Terms	Main Characters
Refugee	<p>A refugee, according to Article 1(A)(2), Convention relating to the Status of Refugees Article 1A(2), 1951 as modified by the 1967 Protocol, is a person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” In addition, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa defines a refugee as any person compelled to leave his or her country “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality.”</p>
Social protection	<p>According to the IOM Glossary on Migration (third edition) (2019), “social protection” can be defined as “The set of public and private policies and programmes aimed at preventing, reducing and eliminating economic and social vulnerabilities to poverty and deprivation”.</p> <p>“‘Social Protection’ refers to public and private, or to mixed public and private measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs, and includes all forms of social security, and strategies and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social health services and care for all people.” (see Article 1(q) of the <i>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security</i>)</p>
Social security	<p>Social security covers all measures providing benefits, whether in cash or in kind, to secure protection in relation to identifiable social risks (or contingencies) and to prevent poverty and vulnerability throughout the life cycle. (ILO <i>Minimum Standards (Social Security) Convention</i>, Convention 102 of 1952, read with ILO World Social Security Report 2010-2011: Providing coverage in times of crisis and beyond (2010), p. 20)</p> <p>“‘Social Security’ is included in the social protection concept, comprises social assistance, social insurance and social allowances, and refers to public and private, or to mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, poor health, disability, old age, maintenance of children and death of a family member”. (see Article 1(q) of the <i>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security</i>)</p>
Temporary migrant workers	<p>Skilled, semi-skilled or untrained workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise.</p>

Source: IOM Glossary on Migration (3rd edition, Geneva) (2019).



BACKGROUND TO MODULES

Migrant workers in destination countries, including particularly low-paid migrant workers from African countries employed in the informal economy and/or in economic sectors, often face significant economic hardship.² This has been especially true for migrants from developing countries caught in destination countries without social protection systems. African migrant workers face serious challenges and restrictions especially with regards to their access to social security and welfare support. Therefore, African countries of origin are increasingly investing in a wide range of measures to protect, support and liaise with their migrant workers and their families abroad.

In response to this, the African Union *Joint Programme on Labour Migration Governance for Development and Integration* (JLMP) has identified the Establishment of a Model Migrant Welfare Programme/System as one of the tools that could help strengthen protection of the rights of migrant workers. With this in mind the IOM, under the auspices of the JLMP Priority, has developed a Report on Migrant welfare systems in Africa through conducting case studies in selected African Member States, i.e. Côte d'Ivoire, Ethiopia, Ghana, Kenya, Mauritius and South Africa.³ The report interrogates country-of-origin measures to extend social protection and broader-based support services to African migrant workers abroad. It also reflects on the challenges faced by international migrants in accessing social protection and welfare support, and notes that in many respects and for a variety of reasons African migrant workers are not able to access meaningful social protection – despite the human rights framework normatively informing the protection of migrant workers. In addition to other key findings and recommendations, the report reflects on the absence of appropriate social protection for African migrant workers in many countries of destination and recommends the need to adopt innovative social protection extension modalities: in particular, country-of-origin measures in the absence of any other meaningful modality of support. It also reflects on the need to extend country-of-origin public social security systems and to provide sufficient support to returnees and family members of migrant workers who have stayed behind in origin countries. Considering the role that the countries of origin can play regarding social protection of the migrant workers living abroad and their families, during the validation workshop on the report on Migrant welfare systems in Africa, which was conducted in September 2021, the African Union Commission strongly advised that countries of origin seek ways to improve the welfare of their migrant workers.

In further response, and due to the absence of a global normative or guiding framework in this area, the JLMP has identified the development of Guidelines to support the establishment of a model migrant welfare programme as a key priority. Under the framework of the JLMP Priority, IOM has developed *Guidelines on the Development of a Migrant Welfare Programme/System*⁴ for the African Union, Regional Economic Communities and African Union Member States, adopted by African Minister of Labour in April 2022.⁵ It provides guidelines for policymakers and practitioners in countries of origin to establish a migrant welfare programme (MWP), adopt insurance-based arrangements, extend support services and invest in measures to implement these interventions based on guiding international (including African) instruments on human and labour rights, labour migration and social protection; global frameworks (SDGs and the United Nations *Global Compact*

² McAuliffe, M., Freier, L., Skeldon, R. and J. Blower "The Great Disrupter: COVID-19's impact on migration, mobility and migrants globally" in McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022* (IOM, 2021), pp. 151–171 at 165-166.

³ Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Development of a model migrant welfare programme/system for the African Union Regional Economic communities and African Union member states* (submitted to the IOM and JLMP) (Final Report) (October 2021).

⁴ See www.un.org/pga/73/wp-content/uploads/sites/53/2019/07/FINAL-draft-UHC-Political-Declaration.pdf.

⁵ At the occasion of the Fourth Ordinary Session of the Specialised Technical Committee on Social Development, Labour and Employment (STC-SDLE-4), 4–8 April 2022, Addis Ababa, Ethiopia.

for *Safe, Orderly and Regular Migration* (2018)); as well as relevant tools and good practice experiences. The guidelines also suggest ways and means to address gaps and shortcomings in existing law, policy and practice in African countries of origin regarding the treatment and protection, including social protection, of their migrant workers abroad and their dependants.

As a further follow-up measure, and in realizing that building national level capacity is one of the key aspects to the establishment and implementation of a migrant welfare programme and hence effective protection of migrant workers abroad by countries of origin, the JLMP, under its Action and Lead Projects, decided to support and guide the establishment and implementation of a Migrant Welfare Programme by African countries through the design and implementation of dedicated tools. To achieve this, Capacity-Building Modules, together with an associated Compendium of Practices, a Facilitator's Guide, and supporting PowerPoint materials on country-of-origin Migrant Welfare Programmes have been developed. This Manual contains the relevant Capacity-Building Modules, which have to be read with the associated Compendium of Practices. The Manual systematically deals with the following key areas relevant to the development and implementation of a Migrant Welfare Programme (MWP):

- Introduction (conceptual framework and labour migration from African countries: trends and characteristics) ([Module A](#))
- Access to Social Protection (SP) and welfare support: Legal and factual considerations ([Module B](#))
- Guiding principles ([Module C](#))
- Establishment of a MWP ([Module D](#))
- Insurance-based arrangements ([Module E](#))
- Support services ([Module F](#))
- Implementation ([Module G](#))

The following key sources have been relied on in the preparation of the Manual (lists of resources, containing additional sources, are indicated for each module):

African Union [Guidelines on the Development of a Migrant Welfare Programme/System](#).

IOM *Glossary on Migration* (3rd edition, Geneva) (2019).

Olivier, M. (assisted by Mushomi, J. and C. Kakuba) [Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa](#) (IOM, 2022).

United Nations *Global Compact for Safe, Orderly and Regular Migration* (2018).



MODULE A

Introduction: Conceptual framework and labour migration trends and characteristics

I.1. Aims of Module A

- Provide an overview of the conceptual framework relevant to the Manual, with relevance to social protection, labour migration, migrant worker and migrant workers programme or fund.
- Reflect on key social protection and related concepts, including social security, social assistance, social insurance and social protection floors.
- Engage with the modalities of social protection provisioning.
- Provide an overview of (mainly African) labour migration trends and characteristics.
- Reflect on the significance, extent and challenges related to remittances.

I.2. Learning Outcomes for Module A

- Understand the different meanings attached to the social protection concept and their relevance in the African and the (labour) migration context.
- Appreciate the life cycle- and risk-based nature of social protection and its ultimate objective of poverty alleviation.
- Be familiar with other concepts associated with social protection, including social security, social insurance and social assistance.
- Understand the role and place of (national) social protection floors.
- Be appreciative of the unique labour migration trends in the continent.

I.3. Overview of Module A

- Social protection (SP) could be understood in the wide or narrow sense. In the narrow sense SP is often used interchangeably with social security. In the wide sense SP comprehends all transfers, service and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social services and care for all people.

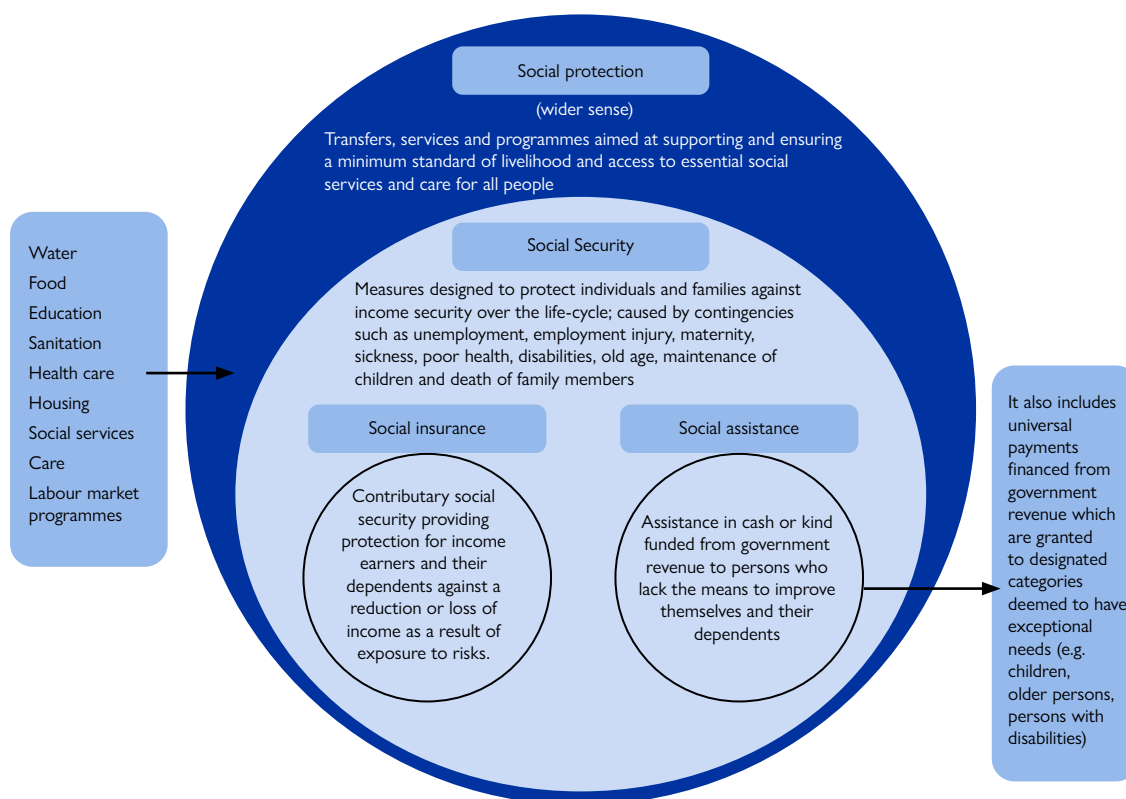
- The SP system (according to the narrow concept) is aimed at addressing poverty and to ensure that risk-based and life-cycle protection is afforded to everybody.
- Different modalities of SP provisioning are available, i.e. contributory (mainly via social assistance) and contributory or insurance-based provisioning.
- Multi-pillar and universal approaches to SP provisioning are increasingly endorsed.
- The term “national social protection floor” refers to nationally defined sets of basic social security guarantees.
- A Migrant Welfare Fund (MWF) is a self-sustaining mechanism that enables the governments of countries of origin (CoOs) to provide additional welfare benefits and services to their migrant workers (MWs) at the countries of destination (CoDs), using a fund grown from the initial capital investments of foreign employers, recruitment agencies and/or migrant workers.
- 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, injuries, 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 number of migrants generally and migrant workers specifically, in/from Africa, have grown exponentially over the last decade.
- Several drivers inform labour migration within and from Africa, including demographic pressures and employment opportunities.
- Key continental-level instruments and frameworks; overarching African and global frameworks; and free movement regimes inform and support labour migration flows and governance.
- International migration in Africa is essentially of a contiguous nature: most of this occurs between African countries.
- Remittances and other migrants’ contributions play a crucial role in terms of household support, savings and economic development, among others.
- The volume of remittances has increased significantly, but is still characterized by challenges, in particular high remittance transfer costs.

I.4. Conceptual framework

Of relevance for the welfare protection of migrants and, in particular, migrant workers from African countries, are two key concepts: (a) social protection; and (b) migrant welfare programme.

I.4.1. Social protection, social security and national social protection floors

Figure 1: Social Protection – Addressing vulnerability and poverty



Source: Author's construct from literature review.

- The term “social protection” is sometimes used interchangeably with the term “social security”. However, for purposes of this Manual, and as understood in the African context as well, it is necessary to understand that these are two different but related concepts.
- Figure 1 above indicates that “social security” refers to “measures designed to protect individuals and families against income security over the life-cycle; caused by contingencies such as unemployment, employment injury, maternity, sickness, poor health, disabilities, old age, maintenance of children and death of family members”. In this sense, “social security” could be understood as social protection in the *narrow* sense.

- In more detail, social security covers all measures providing benefits, whether in cash or in kind, to secure protection in relation to identifiable **social risks (or contingencies)** and to prevent poverty and vulnerability throughout the **life cycle**. These risks include the nine “classical” risks, traditionally included in ILO instruments (and reflected in/coinciding with the nine traditional branches of social security), but operationally extended to also include poverty and social exclusion. The extended operational definition of social security, which is also used for purposes of this Manual, thus comprises ten elements:

Extended operational definition of social security

The extended operational definition of social security comprises ten elements:

- (i) protection in *sickness*, including *medical care*;
- (ii) protection in *sickness*, including *income support* in the form of cash sickness benefits;
- (iii) protection in *disability*, including income support but also medical care, rehabilitation and long-term care;
- (iv) protection in *old age*, including income support and long-term care;
- (v) protection of *survivors* in case of death of a family member;
- (vi) protection in *maternity*, including medical care and income support (in the form of a maternity benefit);
- (vii) protection in “responsibility for the maintenance of *children*”, including the provision in kind to, or in respect of, children of “food, clothing, housing, holidays or domestic help” and of cash income support and family benefits;
- (viii) protection in *unemployment*, including income support in the form of unemployment benefits, and also other labour market policies promoting employment;
- (ix) protection in the case of *employment injury*, including medical care, rehabilitation and income support in the form of sickness, invalidity or survivors’ benefit;
- (x) general protection against *poverty* and *social exclusion* through social assistance that provides protection to all residents without sufficient other means of income from work and not covered (or not covered sufficiently) by the social security branches listed above.

Source: See ILO *Minimum Standards (Social Security) Convention, Convention 102 of 1952*, read with ILO *World Social Security Report 2010–2011: Providing coverage in times of crisis and beyond* (2010), p. 20.

- This also reflects the understanding of “social security” appearing from African Union instruments. The *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security*⁶ contains the following definition of the social security concept: “Social Security” is included in the social protection concept, comprises social assistance, social insurance and social allowances, and refers to public and private, or to mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, poor health, disability, old age, maintenance of children and death of a family member” (see Article 1(q)).

⁶ Adopted by the Thirty-Fifth Ordinary Session of the Assembly, held in Addis-Ababa (Ethiopia), on 6 February 2022.

- Entitlements to social security derive from either the payment of social security contributions for prescribed periods (i.e. *contributory schemes*, usually structured as social insurance arrangements, and as a rule funded through employer and worker contributions, and at times also government contributions), or from *non-contributory schemes*.
 - Non-contributory schemes include *universal* schemes for all residents and some categorical or means-tested schemes – *categorical* schemes target specific groups/categories of the population (e.g. the elderly above a certain age); *means-tested* schemes target people whose means (usually their assets and/or income) fall below a certain threshold. Means-tested social assistance schemes are therefore meant to support those who experience specific resource conditions. Non-contributory schemes are usually financed through tax or other State revenues.⁷
- There is an evident tendency to achieve comprehensive SP through universal and multi-tiered approaches, involving not only public contributory and tax financed mechanisms, but also private and mixed public–private interventions. The rise in **universal** cash transfers, and the establishment of universal (health) insurance programmes in several countries bear testimony to this phenomenon.
- Often the social risk areas indicated above are addressed by a **mix** of contributory and non-contributory arrangements, in particular via a multi-pillar or multi-tier model. **Multi-tiered** approaches reflect an understanding of the importance thereof to address SP risks through a well-coordinated, -calibrated and -integrated constellation of non-contributory provisioning and contributory provisioning (usually in the form of public/national schemes, but also occupational-based and private arrangements). In its simplest form, a multi-pillar or multi-tier regime implies that the non-contributory/tax-financed (social assistance) component constitutes the first tier; the contributory component (which could involve contributions paid by the state as well, also in the form of subsidized contributions) the second tier; and supplementary contributions on a voluntary basis the third tier.

The mixed character of modern social security schemes

“Many social security schemes of the contributory type are presented and described as ‘insurance’ schemes (usually ‘social insurance schemes’), despite being in actual fact of mixed character, with some non-contributory elements to benefits; this allows for a more equitable distribution of benefits, particularly for those with low incomes and short or broken work careers, among others. These non-contributory elements take various forms, being financed either by other contributors (redistribution within the scheme) or by the State.”

Source: ILO, *World Social Security Report 2010–2011: Providing coverage in times of crisis and beyond* (2010), p. 20; see also ILO *World Social Protection Report 2017–2019: Universal social protection to achieve the Sustainable Development Goals* (2017), p. xxix and ILO, *World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future* (2021), p. 126.

- As is depicted in Figure 1 above, social protection in the wide sense refers to all transfers, services and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social services and care for all people. It incorporates but also goes beyond what is covered under the social security concept.
- According to the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security* (2022), social protection “refers to public

⁷ ILO *World Social Security Report 2010–2011: Providing coverage in times of crisis and beyond* (2010), p. 14–16. See also ILO *World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future* (2021), p. 35.

and private, or to mixed public and private measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs, and includes all forms of social security, and strategies and programmes aimed at supporting and ensuring a minimum standard of livelihood and access to essential social health services and care for all people.” (Article 1(p))

- The *Protocol* covers several social protection areas beyond the traditional understanding of “social security”, including education; food and nutrition; water, sanitation and hygiene; housing, shelter and property; environment and climate change; and care and support in other contexts.
- Other forms of protection, understood to be included under the broader **social protection** notion and the notion of support services, affected by the scope of this Manual include, among others, contractual arrangements, working conditions, legal and other forms of assistance rendered by the governments and other role-players, and other arrangements impacting on the welfare of migrant workers and their families (e.g. remittances).
- It is important to recognize the need for a **national social protection floor**. The globally endorsed notion of “(national) social protection floors” has been captured in the ILO *Social Protection Floors Recommendation No. 202 (2012)*, adopted in 2012 by the governments and workers’ and employers’ organizations from all countries. SP floors are **nationally-defined sets of basic social security guarantees** which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion. These guarantees should ensure at a minimum that, over the life cycle, all in need have access to *essential health care* and *basic income security*. The Recommendation indicates that the following guarantees should be provided to *all residents and all children*, as defined in national laws and regulations, and subject to existing international obligations:
 - Access to *essential health care*, including *maternity care*;
 - Basic income security for *children*, providing access to nutrition, education, care and any other necessary goods and services;
 - Basic income security for *persons in active age* who are unable to earn sufficient income, in particular in cases of *sickness, unemployment, maternity and disability*; and
 - Basic income security for *older persons*.
- According to the Recommendation, these guarantees should be extended to *all children* and *all residents*, which should be understood to include all resident non-nationals/migrants. This is relevant in the first place for countries of destination (CoDs), that should ensure that these guarantees should be extended to *all children* and *all residents*, which should be understood to include all resident non-nationals/migrants. In the second place this is relevant for countries of origin (CoO)s as well, as the national social protection floor should provide the (national) basis for the SP treatment of all their nationals/residents, including abroad, and including family members (also children) staying behind in the CoO.
- As explained in more detail in Module C section III.4, social protection floors are closely linked to universal social protection coverage, as is also advocated for in the United Nations *Sustainable Development Goals* and the United Nations *Global Compact for Safe, Orderly and Regular Migration*.

I.4.2. Migrant welfare programme, labour migration and migrant worker

- The terms “migrant welfare programme” (MWP) and “migrant welfare fund” are often used interchangeably, even though the reference to “fund” in the latter instance may emphasize the financial framework of organized welfare support extended by a country of origin (CoO).
- According to a 2015 ILO publication, the objectives and the operational framework of these funds or programmes can be indicated as follows:

Migrant welfare programmes/funds: Objectives and operational framework

“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 at the countries of destination, using a fund grown from the initial capital investments of foreign employers, recruitment agencies and/or migrant workers. 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, injuries, 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 funds and its management, the disbursement of benefits, the 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 at the countries of origin.”

Source: ILO *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar* (Policy Brief Issue No. 3, November 2015), pp. 1–2. See also Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 129 and Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 51.

- Actual and potential services/benefits provided by a MWP include, but are not limited to:⁸
 - Insurance in case of death and disability, and for health care;
 - Burial expenses;
 - Travel expenses;
 - Repatriation of workers due to contract violations, emergency situations, and repatriation of deceased migrant workers;
 - Reintegration of returned migrant workers, including housing and self-employment start-up support;
 - Re-integration loans upon return;
 - Pre-departure training and information;
 - Vocational training and other training programmes and assistance;
 - Workplace monitoring;
 - Scholarships for university education, or education fees for families of migrants;

⁸ Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), p. 129 (Adapted from Agunias, D. and N. Ruiz *Protecting Overseas Workers: Lessons and Cautions from the Philippines* (Migration Policy Institute, 2007). See also Agunias, D., C. Aghazarm and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 57–59.

- Provision of social and legal assistance;
 - Emergency/calamity assistance to affected workers and their families;
 - Relief support in case of displacement or lay off;
 - Legal, financial and other assistance to exploited/trafficked/abandoned workers (especially women), including shelters for distressed workers, especially domestic and unskilled workers; and
 - Counselling services and psychosocial support.
- “Labour migration” is embedded in the support provided by CoOs to their workers abroad. The IOM’s *Glossary on Migration* (2019) defines this concept as the “movement of persons from one State to another, or within their own country of residence, for the purpose of employment”. For purposes of this Manual, the focus is on movement from one State to another.
 - “Migrant worker”, according to the United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), “migrant worker” refers to a “a person who is to be engaged, or is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Article 2(1)). For purposes of this Manual, reference to a migrant worker *also* includes migrants engaged in a self-employed capacity, or in informal work, who are not remunerated by an employer or, for that matter, any other person or institution.

1.5. Labour migration from African countries: trends and characteristics

- *Global snapshot.* Worldwide, the number of international migrants is estimated to be almost 281 million globally, with nearly two-thirds being labour migrants; 48 per cent of the international migrant stock in mid-year 2020 were women.⁹ According to the latest available estimates, there were roughly 169 million migrant workers around the world in 2019, accounting for nearly two thirds (62 %) of the then stock of international migrants. Among international MWs, 99 million are men and 70 million are women. International MWs make up 4.9 per cent of the global labour force of 3.5 billion.¹⁰
- *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, as compared to a figure of 18.5 million in 2015.¹¹ Over the same period, the number of Africans residing in regions outside Africa also rose from 17 million in 2015 to 19 million in 2019.¹² The African countries with the largest number of emigrants tend to be in the north of the region.¹³ International migrant workers in Africa increased significantly from 9.5 million in 2010 to 14.5 million in 2019 – an average annual growth rate of 4.8 per cent, a sharper rise than the average annual growth rate of the total population, but still only constituting 2.8 per cent of the total labour force.¹⁴ To some extent, the sharp rise in African migration mirrors the rapid population growth in Africa. Over the ten-year period 2010–2019 Africa’s population has grown from around one billion to 1.3 billion

⁹ IOM Key Global Migration Figures, 2019-2022 (2022); ILO Global Estimates on International Migrant Workers (2021).

¹⁰ Ibid.; ILO Global Estimates on International Migrant Workers (2021).

¹¹ McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022* (IOM, 2021), p. 60.

¹² Ibid.

¹³ Ibid., p. 62.

¹⁴ African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 67.

in 2019 – an average growth rate of 2.7 per cent over the ten-year period. Even more pronounced has been the net increase in the working-age population (i.e. the number of potential workers in a country's economy). The 2019 figure is 730 million, reflecting an increase of 26 per cent.¹⁵

- *Several drivers give rise to labour migration within and from Africa.* These include:¹⁶
 - Demographic pressures in many destination countries outside Africa, in particular ageing and increasing deficits in labour forces: Africa confronts a growing, educated youthful population.
 - 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.
 - Growing wage and other inequalities between and within countries (rising exclusion).
 - Global skills shortage – which is set to worsen. For example, the shortage of health workers (WHO, 2013), which will reach 12.9 million in 2035.
- *Key continental-level instruments and frameworks inform labour migration governance.* These include:
 - 2006: *Joint Africa–European Union Declaration on Migration and Development*, adopted in Tripoli
 - 2012: *Action Plan for Boosting Intra-Africa Trade* adopted (recognizing the key role of the free movement of persons and the need to regulate flows of migrant workers)
 - 2015: *African Union–ILO–IOM–UNECA Joint Programme on Labour Migration Governance for Development and Integration in Africa (JLMP)* (essentially providing a framework for addressing all aspects concerning labour migration governance)
 - 2018: *African Union Migration Policy Framework for Africa and Plan of Action for 2018–2030*
 - 2018: *African Continental Free Trade Agreement*
 - 2018: *African Union Free Movement of Persons Protocol* (envisaging a gradual extension of free movement, also of labour migrants, emphasizing the protection of the fundamental rights of migrant workers and their families, and providing for portability of social security benefits).
- *Overarching African and global frameworks also impact on labour migration.* The African Union's main visionary document, i.e. *Agenda 2063*, 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 appear 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”).¹⁷ Furthermore, two key international development frameworks, one with a dedicated focus on migration, are currently being implemented in Africa:
 - The 2030 *Agenda for Sustainable Development* enshrines the principle of “leaving no one behind” in the Sustainable Development Goals (SDGs), placing an obligation

¹⁵ Ibid.

¹⁶ AUC. *AUC/ILO/IOM/ECA Joint Labour Migration Programme – Powerpoint presentation: Labour Migration Governance for Development and Integration in Africa: A Bold Initiative* (2015); African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021) 6; African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 11.

¹⁷ African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 9.

on African governments to alleviate the distress of specific population groups such as migrants (and of particularly 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.”¹⁸

- The 2018 *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.
- In several RECs, free movement regimes inform and support labour migration flows and governance. The following regimes are highlighted:¹⁹
 - **COMESA:** The *Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence*, adopted by the Common Market for Eastern and Southern Africa (COMESA) in 2001, seeks to facilitate the free movement of Member States’ citizens with a view to achieving a true common market.
 - **EAC:** The *Common Market Protocol*, adopted by the East African Community (EAC) in 2010, emphasizes the importance of the free movement of goods, people and labour, and also of the rights of establishment and residence, in accelerating economic growth and development.
 - **ECOWAS:** The *Protocol Relating to Free Movement of Persons, Residence and Establishment*, adopted by the Economic Community of West African States (ECOWAS) in 1979, calls on the Member States to eliminate obstacles to the free movement of people, services and capital.
 - **IGAD:** The *Regional Migration Policy Framework*, adopted by the Intergovernmental Authority on Development (IGAD) in 2012, 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 for variations in national policies.
 - **SADC:** The *Protocol on Facilitation of the Movement of Persons*, adopted by the Southern African Development Community (SADC) in 2005, calls for the progressive elimination of obstacles to the movement of people from the region into and within the territories of States Parties.
 - **ECCAS:** Under the Treaty Establishing the Economic Community of Central African States (ECCAS), adopted in 1983, member countries agreed to facilitate the free movement and right of establishment of their citizens within the Community and to eradicate obstacles to the free movement of people, services, goods and capital.
 - **CEN-SAD:** The Treaty Establishing the Community of Sahel-Saharan States (CEN-SAD), adopted in 1998, calls for the introduction of measures to facilitate the free movement of people and capital and to promote freedom of residence, work, ownership and economic activity.

¹⁸ Ibid., p. 11.

¹⁹ Taken from African Union *Report on Labour Migration Statistics in Africa* (Second edition (2017)) (2019), p. 10.

- **AMU:** One of the objectives of the Arab Maghreb Union (AMU), established in 1989, is to achieve the free movement of people, services, goods and capital among its member countries.

However, despite being signatories to these free movement regimes, several African countries have introduced rules restricting free movement.

- *Intraregional migration – an overview.* International migration in Africa is essentially of a contiguous nature: most of this occurs between African countries, even though international migrants represent just 2.1 per cent of the total population in Africa.²⁰ The position of MWs in Africa has been summarized in the following terms:

Migrant workers in Africa

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

Source: ILO *International Labour Migration: A rights-based approach* (2010), p. 17.

- *Intraregional migration – East Africa.* In Eastern and Southern Africa, intraregional migration is driven by the increasing demand for high- and low-skilled workers. East African communities, notably Kenya as well as Rwanda with its expanding technology sector, are increasingly becoming diversified, leading to demand for workers in the services industry, in particular from the United Republic of Tanzania and Uganda. The *East African 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 work permits for East African citizens.²¹ As is the case with Southern Africa, intraregional migration in Eastern Africa has increased over the years, driven in part by the growth of migrant workers in the subregion. This may be further accelerated by the adoption of the *Free Movement and Transhumance Protocol*, endorsed in 2021, and programmes developed by COMESA to further facilitate regular labour migration among Member States. Intraregional irregular migration, including for economic reasons, is also present.²²
- *Intraregional migration – Southern Africa.* Intraregional migration is well established in Southern Africa. South Africa has attracted sizeable numbers of migrants, including also irregular migrants, asylum-seekers and refugees from within and outside Southern Africa – leading to repeated xenophobic attacks. Significant numbers of people have traditionally migrated from countries such as Eswatini, Lesotho, Malawi and Zimbabwe to take up 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.²³ The *IOM World Migration Report of 2022* indicates that the number of international migrant workers within SADC has increased, comprised of labour migrants from within and outside Southern Africa. However, an increasingly large number of people also migrate outside the subregion.²⁴

²⁰ Ibid., p. 8.

²¹ *World Migration Report 2020* (2019), p. 62.

²² McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022* (IOM, 2021), p. 70.

²³ *World Migration Report 2020* (2019), p. 62, 63.

²⁴ McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022* (IOM, 2021), p. 70.

- Intraregional migration – West Africa.* In the period preceding the COVID-19 pandemic, multiple drivers caused the significant measure of intraregional migration in West Africa: the majority of migrants moved within the subregion. One of the key reasons prompting this phenomenon is the visa-free movement among the members of the Economic Community of West African States (ECOWAS). Other reasons include the small size of some of the countries and strong ethnic ties spread out over the sub-region. 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 ...".²⁵ 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 higher-skilled migrant workers aggravates the intense competition for jobs."²⁶ The COVID-19 pandemic and related containment measures have had wide-ranging impacts on migration and mobility in West and Central Africa, disrupting interregional movement and resulting in stranded migrants. Travel restrictions had devastating impacts on trade and on the livelihoods or border communities, including migrants, many of whom are engaged in the informal sector, which employs most people in both West and Central Africa.²⁷
- Intraregional migration – North Africa.* Emigration, particularly from Maghreb countries such as Algeria, Morocco and Tunisia, has long been a feature in North Africa. Europe is the primary destination for migrants from these countries, although the GCC States are the main destination for migrants from Egypt. North Africa remains a major transit hub and point of departure for migrants from the subregion and those from sub-Saharan Africa trying to make their way to Europe and beyond. The subregion also continues to be the origin and destination of a large number of refugees and IDPs. It has been noted that many migrants across the subregion continue to endure a multitude of protection challenges, with women and girls particularly vulnerable to abuse.²⁸
- Remittances and other migrants' contributions play a crucial role.* Remittances are an important source of external finance for African countries.²⁹ In addition, remittances can help increase household incomes, lead to higher household savings and investment, and increase household expenditure on health care and education. Public investment is encouraged, with positive impacts for local, regional and national development.³⁰ Migrants in the labour force make a significant contribution to poverty reduction and socioeconomic development in both countries of origin and destination.³¹ As far as CoOs are concerned, this is in particular achieved via the transfer of financial means to support households and invest into the local economy. These transfers have a positive effect by alleviating poverty and social inequality 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 CoOs: "Many countries have accordingly included in their national development plans measures to ensure that diaspora

²⁵ World Migration Report 2020 (2019), p. 64.

²⁶ African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 32.

²⁷ McAuliffe, M. and A. Triandafyllidou (eds.) World Migration Report 2022 (IOM, 2021), p. 68.

²⁸ Ibid., pp. 72–73.

²⁹ African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 6.

³⁰ IOM Migration and the 2030 Agenda: A Guide for Practitioners (2018), p. 29–30. See also Objective 20 of the Global Compact for Migration.

³¹ African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 11.

savings can be mobilized in a more formal framework and used for public investment.”³² In fact, much can be learnt 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... growing despite the sluggish performance of domestic industry and agriculture. The Philippines has become a service-led economy without going through an industrial revolution.”³³

However, much could be done to enhance the financial inclusion of remittance users, in particular women.³⁴

- *Significant increase in the volume of remittances in Africa.* It has been noted that: “Between 2010 and 2019, there was a substantial increase in the volume of remittances sent by international migrants within Africa and by those living and working outside Africa – namely, from USD 55.6 billion to USD 86.4 billion (an increase of 55 %).” However, these figures do not take account of the prevalence of informal remittance transfers and are, therefore, not reflective of the true volume of remittance flows.³⁵ Northern Africa (43 %) and West Africa (39 %) together received about 82 per cent of the total remittances to Africa in 2019. In the pre-COVID era, between 2018 and 2019, remittances in Africa grew by 2.2 per cent (from USD 84.5 billion to USD 86.4 billion). With the exception of East Africa, all other subregions in Africa experienced an increase.³⁶ Worldwide, remittances to low- and middle-income countries (LMICs) increased by an estimated 5 per cent in 2022, to USD 626 billion, and are expected to grow by 4.9 per cent in 2022.³⁷
- *Several remittance transfer challenges need to be addressed.* According to the World Bank’s Remittance Prices Worldwide Database, the global average cost of sending USD 200 to LMICs was 6 per cent in the second quarter of 2022, not very different from a year ago, and twice as high as the SDG target. Among developing country regions, the cost was lowest in South Asia, at about 4.1 per cent, while sub-Saharan Africa continued to have the highest average cost, about 7.8 per cent.³⁸ The Middle East and North Africa have seen a record 10.5 per cent increase in remittances during 2021, but signs of a slowdown emerged over the course of 2022. Remittance flows to sub-Saharan Africa surged 16.4 per cent to USD 50 billion during 2021, the strongest increase since 2018. Remittance gains are likely to be held to 5.2 per cent in the year, an 11 percentage point reduction in growth from 2021.³⁹

SDG 10.C sets as a goal to reduce, by 2030, to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent. The rationale for this is evident: the higher the remittance transaction costs, the less the impact of remittances. Women migrants are in particular affected, given the smaller amounts of money they usually send, compared with men.⁴⁰

³² Ibid., p. 49–50.

³³ See Ofreneo, R. and Sale, J. “Social security and migrant workers in the Philippines: Social protection for the country’s economic protectors”, in R. Blanpain et al (eds) *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Kluwer, 2014), p. 167–186 at 167.

³⁴ *IOM Migration and the 2030 Agenda: A Guide for Practitioners* (2018) 29–30. See also Objective 20 of the Global Compact for Migration.

³⁵ African Union *Report on Labour Migration Statistics in Africa* (3rd edition, 2021), p. 42.

³⁶ Ibid., p. 43–44.

³⁷ World Bank *Remittances brave global headwinds* (Migration and Development Brief 37), p. vii.

³⁸ Ibid.

³⁹ Ibid., p. 8–9.

⁴⁰ *IOM Migration and the 2030 Agenda: A Guide for Practitioners* (2018), p. 29.

Lowering remittance transfer costs could be achieved by increasing competition through cost-comparison tools and diversifying the supply of providers, and by capping transaction fees.⁴¹ These measures are also endorsed by the Global Compact for Migration, in Objective 20 (“Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants”).

Questions

- (1) Distinguish social protection (SP) in the wide sense from the concept of social security. Is this distinction important for the extension of SP support to migrant workers (MWs) and their families?
- (2) Distinguish a migrant welfare fund from support that a country of origin (CoO) may generally make available to its citizens abroad.
- (3) Consider, in your country, SP provisioning that could potentially and realistically be extended to workers from your country working abroad, and their family members.

Group activity

- (1) Would it be possible to identify key benefits that should be available to migrant workers and their family members, from the perspective of social protection floors? If so, how would you determine whether the CoO would be able to extend these benefits to workers abroad, and their family members?
- (2) In your region, what are the drivers of intraregional migration of MWs?
- (3) Describe the steps that could meaningfully be taken to address remittance challenges and to maximize the potential use of remittances.

Key resources

African Union (2021). *Guidelines on the Development of a Migrant Welfare Programme/System*.

Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM, Geneva.

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⁴¹ Ibid.

Jones, K. (2015). *Recruitment monitoring and Migrant Welfare Assistance what works?* IOM.

McAuliffe, M., L. Freier, R. Skeldon and J. Blower (2021). The Great Disrupter: COVID-19's impact on migration, mobility and migrants globally. In McAuliffe, M. and A. Triandafyllidou (eds.) *World Migration Report 2022*. IOM, Geneva.

Olivier, M. (assisted by Mushomi, J. and C. Kakuba) (2022). *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa*. IOM.

United Nations (2018). *Global Compact for Safe, Orderly and Regular Migration*.

World Bank (2022). *Remittances brave global headwinds* (Migration and Development Brief 37).



MODULE B

Access to social protection and welfare support: Legal and factual considerations

II.1. Aims of Module B

- Provide an overview of the challenges and barriers faced by MWs in accessing SP and welfare support, as well as abuse and exploitation.
- Reflect on CoD obligations in relation to SP for MW, as informed by key global and regional, including African, normative approaches.
- Consider SP provisioning in bilateral labour agreements (BLAs) and bilateral labour migration arrangements (BLMAs), also in view of new pathways aimed at extended SP coverage via BL(M)As, as foreseen in important global and African Union guiding documents.
- Engage with the role of bilateral social security agreements (BSAs) and multilateral social security agreements (MSAs), also in the African context, in extending SP to MWs, informed by key social security coordination principles, considering shortcomings as well.
- Reflect on the rationale for and key SP measures related to their workers abroad unilaterally adopted by CoOs, bearing in mind limitations of this approach.

II.2. Learning Outcomes for Module B

- Be familiar with the different challenges and barriers faced by MWs and their families in accessing SP, as well as the abuse and exploitation suffered by them.
- Appreciate the scope and content of normative approaches emanating from the ILO, United Nations and subregional African entities in relation to the obligations imposed on CoDs to extend SP to MWs and their families.
- Understand the need for and ways and means to regularize the position of MWs in an irregular situation with a view to achieve enhanced SP.
- Gain an understanding of the role played by BLAs and BLMAs to extend some measure of SP to MWs and their family members, bearing in mind the enhanced framework for SP provisioning contained in recent global and African Union guiding frameworks.
- Appreciate the evolving role and impact of BSAs and MSAs in Africa in providing improved SP support for MWs and their families, in view of key social security coordination principles and an incremental approach, while also considering the limitations faced by these interventions.

- Have an understanding of the need for and modalities of unilateral CoO measures to extend SP to their workers abroad and their families, while having regard to limitations posed by such measures.
- Be appreciative of the unique labour migration trends in the continent.

II.3. Overview of Module B

- African MWs, including those engaged in the informal economy, are faced with several challenges and barriers in accessing SP and welfare support. The challenges relate to:
 - Immigration status (in particular if they are found to be in an irregular situation) and other legal challenges;
 - Exclusion in particular of domestic workers from SP coverage;
 - Restricted access to SP in GCC countries, also as a result of weak SP provisioning in the GCC domestic worker model employment contract;
 - Weak provisioning in bilateral labour agreements (BLAs) and the limited range of bilateral social security agreements (BSAs);
 - Labour market status challenges;
 - Administrative and other challenges;
 - Challenges in relation to the nature of SP schemes, including lump-sum as opposed to regular retirement benefit and access to long-term benefits by short-term migrant workers;
 - MW-dedicated voluntary schemes, less beneficial arrangements (in comparison with nationals) and lack of effective coverage;
 - Deficient recruitment arrangements impacting on SP arrangements;
 - Inadequate exit provisions, protection abroad and return arrangements; and
 - Low SP coverage in Africa.
- MW and their families are often exposed to abuse and exploitation. In several key CoDs, this is linked to the operation of the *Kafala* employer-sponsorship system, which has led to the imposition of employment bans on the CoD concerned, and of individual employer bans.
- CoD obligations in relation to SP for MW are informed by key global and regional normative approaches, evident among others from ILO and United Nations instruments and global guiding frameworks (in particular the *Sustainable Development Goals (SDGs)* and *Global Compact for Safe, Orderly and Regular Migration* objectives). Several core principles and key social security implications flow from these instruments and their formulated standards, and the guiding frameworks, including – equality of treatment with nationals; the right to receive urgent medical care (also applicable to migrants in an irregular situation); maintenance of acquired social security rights, linked to portability of contributions and benefits. However, state practice would qualify the operation of these standards and frameworks, through the application of key principles operative in this domain, in particular lawful residence, lawful employment and means of subsistence criteria.
- Continental-level and subregional African instruments and documents support the extension of SP to MWs, in conformity with the global framework.
- Improved SP to be afforded to MWs in an irregular situation would require the implementation of pathways to regularizing the status of these MWs, usually linked to enabling access to the labour market in CoDs.

- BLAs and the broader in scope bilateral labour migration arrangements (BLMAs), which also include non-binding MOUs, rarely provide for SP coverage of MWs in an irregular situation.
- Also, historically, limited provision was made for social security coverage in BLMA; traditionally, normative approaches informing SP provision contained in BLAs made limited reference to SP.
- Lately, however, three critically important global and African guiding documents indicate a new pathway for extended SP coverage via BLAs. These are: (i) *Global Compact for Safe, Orderly and Regular Migration*; (ii) the *United Nations Guidance on Bilateral Labour Migration Agreements (2022)*; and (iii) the *African Union Guidelines on Development Bilateral Labour Agreements (BLAs) (2022)*. Key principles flowing from, in particular, the *African Union Guidelines on Development Bilateral Labour Agreements (BLAs)* concern access to and portability of SP/social security, including health care. More specifically, the following principles are apparent:
 - Equality of treatment and MW access to national SP schemes in respect of all social security branches;
 - Availability of SP floor coverage to all migrants;
 - Provision of health insurance and coverage, and work injury compensation and benefits;
 - Portability of social security entitlements;
 - Facilitation of social security claims and disbursement of social security benefits and assistance; and
 - Equal treatment in the event of pandemics.
- CoOs in the developing world, including in Africa, often are not able to negotiate the incorporation of appropriate SP protective arrangements in BLAs, due to their weak bargaining power.
- Bilateral social security agreements (BSAs), strongly advocated for in international instruments, help to streamline the social security position of an individual who migrate (for work) to another country, and are, together with multilateral social security agreements (MSAs) worldwide seen as the core intervention for extending social security protection to MWs. They are usually informed by some or all of a number of principles, in general referred to as *social security coordination principles*. These include: (i) Identifying the applicable legal system; (ii) Equal treatment; (iii) Aggregation/totalization of insurance periods; (iv) Maintenance of acquired rights/benefits; (v) Portability of benefits; (vi) Administrative cooperation; and (vii) Bilateral pro-rata sharing of liability.
- BSAs involving African countries are evolving: despite a steady increase over the last seven decades, only 89 BSAs have been identified, most of which (59) have been concluded with European countries, and (only) 26 between African countries, mostly on an intraregional basis.
- Informing the conclusion and implementation of BSAs requires an understanding of the labour and social security laws of the CoD and the CoDs, and existing bilateral arrangements.
- BSAs typically develop incrementally in any one or combination of the following areas:
 - The types social security schemes covered
 - The benefits provided for
 - The categories of persons covered
 - The social security principles involved.

- Supporting frameworks enhance the implementation of BSAs. These include: (i) An implementing administrative agreement; (ii) Required changes to the legal framework; and (iii) Strengthening of institutions involved with negotiating, concluding and implementing BSAs.
- BSAs do suffer from certain shortcomings, including numerous and differentiated arrangements with a host of CoDs, implying differing rights and entitlements to migrants. Also, the administrative and technological capacity to support the conclusion and implementation of BSAs may be lacking. Furthermore, not all MW categories are covered by BSAs; informal economy MWs and MWs in an irregular situation are typically excluded.
- MSAs set a standardized framework for coordinated SP for MWs in a given region and are often developed incrementally.
- There are many worldwide examples of MSAs, and some in Africa (e.g. involving ECOWAS and CIPRES states, respectively). A few emerging multilateral social security frameworks are developing, involving SADC and EAC in particular.
- Due to limited CoD extension of SP to MWs and their families, and an inadequate bilateral and multilateral engagement with their SP plight, several CoOs have adopted CoO SP measures to provide better SP for their workers abroad. Welfare services and insurance-based arrangements are typically included. Constitutional, statutory and institutional measures inform the establishment of such measures.
- CoO measures are important to support SP extension of MWs, but also have limitations, including the absence – often – of employer contributions. They are also not explicitly provided for in international and regional instruments, except for the recently adopted African Union guidelines informing the conclusion and implementation of MWPs (2022), and some mention in the Global Compact for Migration objectives.

II.4. **Challenges/barriers faced by African migrant workers, including informal economy migrant workers, in accessing social protection and welfare support⁴²**

- Globally, significant challenges and restrictions face migrant workers with regard to their access to social security and welfare support. The barriers they face are not limited to their time in employment abroad, but also affect pre-departure arrangements and their return and reintegration after completion of their time abroad. Migrant women in particular but also the families of migrant workers are affected, including family members who stay behind in the country of origin.

⁴² Partly taken and adjusted from Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022). For a summary of relevant barriers and challenges, see African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 1. See also Ong, and C. Peyron Bista, *The state of social protection in ASEAN at the dawn of integration* (ILO, 2015), pp. 21, 51–53.

- The following conclusion reached by Tamagno (2008) succinctly summarizes the key challenges – not only in ASEAN 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.”

Source: Tamagno, E. *Strengthening social protection for ASEAN migrant workers through social security agreements* (ILO, 2008), pp. 1–2.

- *Immigration status and legal challenges.* Migrant workers in and from Africa, including those migrating to Gulf countries, are exposed to *legal* barriers, as they are often legally excluded from accessing social security. This could be as a result of their specific *immigration* status (e.g. they may be migrant workers in an irregular situation), which generally makes them ineligible for accessing benefits. In some countries, as a rule only permanent residents or long-term migrant workers have access to most forms of contributory social security. Alternatively, a *social security law* might specifically exclude migrant workers generally or exclude specific categories of migrant workers, and/or 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 *nationality* restrictions. In addition, they may be required to have *resided* in a country for a particular period of time before certain social security benefits can be accessed. Also, due to *territoriality* restrictions, social security arrangements may not apply beyond the borders of a country. As noted in the previous *African Union Report on Labour Migration Statistics in Africa* (2019):

Nationality, territoriality and other restrictions on access to social protection

“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 by the 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.”

Source: African Union *Report on Labour Migration Statistics in Africa* (2nd edition, 2017) (2019), pp. 47–48.

- *Domestic workers in particular are often excluded from social protection coverage.* In several CoDs, in particular in many MENA countries, domestic workers are excluded from the operation of social security laws and often also labour laws. The implication is that these workers – whether national or international domestic workers – do not have access to public social security arrangements contained in national social security laws. Also, the obligations imposed on employers to provide for some social security benefits, typically sickness and maternity benefits, on the basis of labour law provisions, would also not apply. The gender implication of these forms of legal exclusion are evident: women migrant domestic workers are in particular affected, given the reality that in many CoDs migrant domestic workers constitute a sizeable proportion of the migrant labour force. Lately, there have been some attempts in certain MENA CoDs to remove these legal exclusions and/or to adopt separate domestic worker laws that also provide for some measure of labour and social security law coverage.
- *Restricted access to social protection in the GCC countries.* Large numbers of workers from Africa and Asia work Gulf Cooperation Council (GCC) countries. Historically, at least since 2006, GCC countries have restricted access to their social security systems to citizens: as noted by a 2010 ILO publication, these countries exclude foreigners from the public social security system and make no provision for MWs, even on a voluntary basis.⁴³ For this reason, but also due the short-term, temporary nature of the period of employment of regular MWs and, in the case of MWs in an irregular situation, the “illegal” nature of their work, migrant workers do not have access to benefits under the public contributory-based retirement and social insurance schemes of these countries.⁴⁴
 - For citizens of these countries the position is different: they could be covered even if they work outside their country in another Gulf country.⁴⁵ In fact, in 2006 GCC countries 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 Gulf countries’ citizens).⁴⁶
 - MWs would routinely also be excluded from health benefit schemes in GCC countries 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.⁴⁷
 - It also has to be noted that to date none of the Gulf countries have ratified ILO *Domestic Workers Convention, 2011 (Convention 189)*, which requires that essential labour and social security protection be extended to domestic workers.
 - Recently, there have been some attempts in certain Gulf and MENA countries to adopt laws and policies to relax restrictions on migrant workers and to provide some measure of SP for previously excluded categories of MWs, including migrant domestic workers.
- *GCC countries – the domestic worker model employment contract.* The model contract for domestic workers approved by the 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

⁴³ ILO *International labour migration: A rights-based approach* (2010), p. 109.

⁴⁴ International Social Security Association *Civil retirement and social insurance systems in the Gulf Cooperation Council – Reality and challenges* (World Social Security Forum, 31st ISSA General Assembly, Doha, Qatar, 10–15 November 2013), p. 9.

⁴⁵ *Ibid.*, p. 12–13.

⁴⁶ Van Ginneken, W “Social protection for migrant workers: national and international policy challenges” *European Journal of Social Security (EJSS)*, vol 13(5):209-221 at 215-216.

⁴⁷ Rnijssen, A *Migrant workers in the Middle East* (PhD Thesis, University of Tilburg, 2013), p. 23.

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 covered, including maternity protection. The worldwide apex body for trade unions, i.e. the International Trade Union Confederation (ITUC), therefore called upon the GCC countries to revise the model contract⁴⁸ to provide for more extensive social and labour law protection.

- *Weak provisioning in bilateral labour agreements and limited range of bilateral social security agreements.* As discussed in more detail later in this Module (Module BII.7), bilateral labour agreements (BLAs), including MOUs, involving African countries, may extend labour rights protection to (documented) migrant workers, but rarely make provision for any meaningful social security coverage.⁴⁹ Also, with some exceptions, the small (but increasing) number of bilateral social security agreements (BSAs) between African countries and other countries, and often also between African countries, adds to the legal exclusion of African migrant workers. Such agreements invariably provide for equality of treatment of nationals and non-nationals as far as access to those social security benefits covered by the agreement is concerned. In addition, they generally provide for 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 contribution from all their countries of employment. However, where bilateral and multilateral social security agreements exist, they tend to cover only migrant workers in formal employment, leaving migrants working in the informal economy without any significant level of protection.⁵⁰
- *Labour market challenges.* There are also challenges related to the *labour market status* of migrant workers. In several African and other countries of destination, coverage is denied to all workers – including national workers – in a specified category of work. An example would be domestic workers. Informal workers often fall outside the scope of social security laws, as these laws may only cover workers in the formal economy (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.
- *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, if they are 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 country within a short period of time. The result is that these workers invariably fail to access social security benefits because of time constraints, even in instances

⁴⁸ See International Trade Union Confederation (ITUC) *Gulf Countries Should Revise Domestic Workers Contract* (2 July 2013).

⁴⁹ Wickramasekara, P *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (ILO, 2015); Van Panhuys, C, Kazi-Aoul, S and Binette, G *Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements*. (ESS-Working Paper No. 57, ILO 2017), p. 3.

⁵⁰ African Union *Report on Labour Migration Statistics in Africa* (Second edition (2017)) (2019), p. 48.

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.

- *Challenges in relation to the nature of social protection schemes.* In some countries with retirement provident fund schemes (i.e. retirement schemes paying a lump sum benefit upon retirement), and at times also in the case of pension schemes (i.e. retirement schemes paying regular benefits upon retirement), migrant workers who may be eligible to receive benefits may take lump-sum withdrawals of accrued pension contributions upon departure from the country. It needs to be pointed out that this provides for limited protection, as lump sum payments do not ensure regular pension payments.⁵¹
 - Furthermore, access to long-term benefits (such as pensions) usually requires a rather long period of contributions – a requirement which effectively disqualifies many migrant workers. From an African perspective, it has been noted that – “Unlike 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.”⁵²
- *Voluntary schemes, less beneficial arrangements and lack of effective coverage.* Some countries provide voluntary migrant worker coverage arrangements. Of course, voluntary coverage is incomplete coverage – in the absence of compulsion workers, including migrant workers, are unlikely to contribute, among others due to financial considerations; migrant workers are therefore left without appropriate coverage.
 - Also, in some (in particular Asian) countries, separate but less beneficial schemes have been established for migrant workers. This may be the case despite the fact that countries may have ratified the ILO *Equality of Treatment (Accident Compensation) Convention, 1925* (No. 19), or other similarly focused international instruments, which require equal treatment of national and foreign workers.
 - Finally, although equality of treatment may be formally recognized as policy, in reality many migrant workers are often not insured for, among others, occupational injuries and diseases. This may be due to their irregular status, non-compliance by employers, and migrants’ lack of awareness of their rights, language barriers, onerous administrative procedures, and other factors.
- *Deficient recruitment arrangements.* Labour migration within and from Africa is invariably characterized by inadequate recruitment arrangements, including significant migration costs leading to indebtedness, exploitation by some recruitment agencies, weak regulation of recruitment and absence of or weak provisions in employment contracts.
- *Inadequate exit provisions, protection abroad and return arrangements.* Impacting on this is also the inadequate regulation of: (a) exit arrangements (including regulation of private recruitment agencies); (b) protection while abroad; and (c) arrangements for returning migrants. These matters are addressed elsewhere in this Manual.

⁵¹ Ong, C and Peyron Bista, C *The state of social protection in ASEAN at the dawn of integration* (ILO, 2015), p. 21.

⁵² African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 48.

- *Low social protection coverage in Africa.* The ILO's *World Social Protection Report 2020–22* indicates that, as a region, globally Africa has the weakest coverage in terms of SP. Only 17.4 per cent of the African population have access to at least one SP benefit (excluding health-care and sickness benefits), as opposed to the global figure of 46.9 per cent.
- *Conclusion – a double disadvantage.* Migrant workers are doubly disadvantaged because they receive less social protection both at home and in the host country. In destination countries, they are often excluded from tax-financed schemes, such as social assistance programmes or social pension schemes, despite contributing to the host country economy through work, consumption, and taxation.⁵³ Recognizing these issues, several countries have moved to compensate for this shortfall among their often large labour populations working 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 (see also the *Maintenance of Social Security Rights Convention, 1982 (No. 157)*).”⁵⁴

II.5. Exposure to exploitation and maltreatment

- Migrant workers and their families are often exposed to abuse and exploitation. On the one hand, this may be the result of xenophobic reactions, due to the perceived negative impact that migrant labour is alleged to have on job opportunities for the local labour force. On the other hand, this may be the result of systemic discrimination, restriction and abuse. More specifically, exposure to weak civil, labour and welfare conditions abroad, as well as exploitation and abuse, and limited access to justice, including grievance and complaint avenues and procedures have contribute to the vulnerable situation in which many African MWFs find themselves.
 - *Kafala employer-sponsorship system.* Human Rights Watch reported that under the Kafala sponsorship system, the employer controls the entry and exit from the country, residency, and ability to change jobs. This has reportedly resulted in the taking of workers’ passports, forcing them to work excessive hours and deny them 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.”

Impact of the *Kafala* sponsorship system

Among others and specifically, the employer-sponsored *Kafala* system, which ties migrant workers to their employers, remains entrenched and “continues to contribute to the vulnerability of labour migrants in several countries (in particular MENA countries), including to conditions of forced labour and wage exploitation.”⁵⁵ Structurally and factually, the *Kafala* (sponsorship) system puts migrant domestic workers and other foreign workers subject thereto at significant risk of violence, exploitation and abuse. Much of this deficit has strong gender dimensions and inhibit reliance by migrant domestic workers on SP.

Source: Begum, R. *What will it take for Saudi Arabia to abolish abusive sponsorship system?: Migrant workers face abuse and exploitation.*

⁵³ Ong, C and Peyron Bista, C. *The state of social protection in ASEAN at the dawn of integration* (ILO, 2015), pp. 51–52.

⁵⁴ Ibid., p. 53.

⁵⁵ Begum, R. *What will it take for Saudi Arabia to abolish abusive sponsorship system?: Migrant workers face abuse and exploitation*, p. 84.

- Abuse and maltreatment, especially of migrant domestic workers, at times led to labour migration bans, in particular to the GCC states, imposed by several African but also Asian countries – reportedly fuelled by unscrupulous practices perpetrated a largely weakly regulated private recruitment agency sector in several African countries.⁵⁶
 - The ban could take any of different forms, for example: (i) imposing an individual employer ban (i.e. blacklisting of non-compliant employers and/or recruitment agencies); and (ii) an employment ban imposed on the CoD concerned, implying that until such time that the deficiencies in the treatment of MWs by the CoD are sufficiently addressed, MWs from the CoO would not be allowed to work in the CoD.
- There have been some recent attempts to adjust and even reform the *Kafala* sponsorship system. Progress is being made; the results are mixed, also in the absence of a significantly revised unified or model employment contract, which provides for improved SP for MWs, including migrant domestic workers.

II.6. Country-of-destination obligations in relation to migrant workers: global and regional normative approaches

- Key ILO instruments arrange for the provision of social security to MWs and their families.
 - The ILO *Social Security (Minimum Standards) Convention*, 1952 (No. 102) stipulates in Article 68 that: “Non-national residents shall have the same rights as national residents”, and adds the proviso that in the event of benefits paid out of public funds, among others, other rules may apply, implying that non-contributory (in particular social assistance) arrangements do not have to be extended to non-citizens.
 - Other key ILO instruments include the following – the first two place emphasis on migrant workers’ rights, and the last three focus on promoting equal treatment of migrants
 - ILO *Migration for Employment Convention (Revised)*, 1949 (No. 97) (which establishes the principle of equality of treatment in respect of social security (Article 6));
 - ILO *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143) (which addresses the problem of migrant workers in irregular situations and stipulates that they should enjoy equality of treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits (Article 9));
 - ILO *Equality of Treatment (Accident Compensation) Convention*, 1925 (No. 19);
 - ILO *Equality of Treatment (Social Security) Convention*, 1962 (No. 118); and
 - ILO *Maintenance of Social Security Rights Convention*, 1982 (No. 157) (which calls for the maintenance of rights in the course of acquisition by providing for the totalization of qualifying periods completed in different countries, and that acquired rights should be exportable; bilateral and multilateral social security agreements should be designed to support this).

⁵⁶ Atong, K., Mayah, E. and A. Odigie *Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda – An African Trade Union Overview* (ITUC-Africa, 2018), p. vii–ix.

- Also, as mentioned before, 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 instruments that are also relevant include ILO *Domestic Workers Convention*, 2011 (No. 189), given the large numbers of migrant workers who are working as domestic workers.⁵⁷
- Furthermore, ILO *Private Employment Agencies Convention*, 1997 (No. 181) requires that migrant workers recruited via private employment agencies should enjoy adequate statutory social security benefits (Articles 11 and 12).
- *United Nations instruments endorse a human rights understanding of the need of MWs to be protected by SP arrangements.*
 - This is informed by considerations of migrants' humanity, their vulnerability status, and a human rights approach, reflected in particular in Article 27 of the UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990 (ICMW).
 - The United Nations *Sustainable Development Goals (SDGs)*, with its emphasis on “leaving no one behind”, contain several targets that directly reference migration (for others migration is a cross-cutting issue that should be considered):

Migration in the United Nations *Sustainable Development Goals (SDGs)*

Migration, including labour migration, is referenced in several Sustainable Development Goals, either directly, or as a cross-cutting matter to be considered. The following SDG targets are particularly relevant:

- The central reference is made in SDG target 10.7 under the goal “Reduce inequality in and among countries”. It calls on countries to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”, and to implement planned and well-managed migration policies.
- Labour migration and employment is a theme captured under the SDG targets aimed at promoting decent work; combating child labour and the worst forms of child labour; combating trafficking for forced labour; addressing the feminization of migration; and improving labour migration governance (SDG targets 8.5, 8.7 and 16.2). Increasing student mobility is highlighted in SDG target 4.B.
- Remittances are addressed in SDG target 10.c, emphasizing the need to lower remittance transaction costs.
- SDG targets 5.2, 8.7 and 16.2 concern human trafficking and exploitation (with a focus on combating all types of trafficking and exploitation; and addressing trafficking and exploitation of women and children).
- Migration data as an issue is addressed in SDG target 17.18 – with reference to: (i) improving data across migration topics; (ii) increasing disaggregation of data by migratory status; and (iii) increasing disaggregation of migration data by other variables.

Source: IOM *Migration and the 2030 Agenda: A guide for practitioners* (2018), p. 22.

⁵⁷ 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.

- And recently, “... in adopting the *Global Compact for Safe, Orderly and Regular Migration* (2018), many UN Member States committed themselves to ensuring that migrant workers at all skills 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.”⁵⁸
- *Certain core principles emanate from these standards.* Two of the key principles can be summarized as follows:
 - Equality of treatment with nationals is required. 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”.⁵⁹ This is informed by the considerations of migrants’ humanity, their vulnerability status, and a human rights approach, reflected in particular in Article 27 of the *ICMW*.
 - MWs (including MWs in an irregular situation) 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 on the basis of equality of treatment with nationals of the State concerned (*ICMW*, article 28). 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”.⁶⁰
- *Key social security implications follow as regards access by MWs in a regular situation to social protection.*
 - Flowing from the above, States should ensure equality of treatment for (documented) MWs and their families in relation to access to housing, social housing schemes, social and health services, unemployment benefits and unemployment services, providing conditions are met and subject to immigration terms (Articles 43 and 45 of the *ICMW*).
 - States should also guarantee equality of treatment of social security provisions for MWs for any or all of the nine branches of social security that are in force in its territory and for which it agrees to be bound.⁶¹
 - Furthermore, social security rights should be maintained when workers move from one country to another, and acquired rights should be exportable to home countries (or to countries to which migrant workers re-migrate), and bilateral and multilateral social security agreements should be designed to support this.⁶²
 - Nevertheless, 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.*

⁵⁸ African Union Report on Labour Migration Statistics in Africa (Second edition (2017)) (2019), p. 48.

⁵⁹ Baruah, N and Cholewinski, R *Handbook on establishing effective labour migration policies in countries of origin and destination* (OSCE, IOM and ILO) (2006).

⁶⁰ ILO *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (2006) paras 9–10.

⁶¹ *Equality of Treatment (Social Security) Convention 1962* (ILO Convention 118): this provision is dependent upon the home country of the migrant also being a party to Convention 118, and to specific conditions regarding use of public funds.

⁶² *The Maintenance of Social Security Rights Convention 1982* (ILO Convention 157).

Lawful residence, lawful employment and means of subsistence criteria

Lawful residence has been utilized by countries in order to differentiate between (enhanced) protection offered to “lawful residents”, on the one hand, and the lesser recognition afforded to the rights of residents in an irregular situation, on the other. *Lawful employment* is required to ensure continued employment and often also as a precondition before (social insurance) benefits accrue to (categories of) non-citizens. 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 purposes of granting lawful residence status to migrants. Migrants who are unlikely to be able to support themselves and their dependents will be refused admission to that country; similarly, (temporary) migrants who become dependent on state support, may on the basis of this principle be refused continued residence.

- *Protection to be afforded to MWs in an irregular situation – normative considerations.* In practice, (im)migrant workers in an irregular situation enjoy paltry social security protection.⁶³
 - They may at best be entitled to (rarely specifically defined) emergency health care and presumably also basic/essential forms of assistance.
 - Kapuy also remarks that international law explicitly provides for equal treatment with nationals in social security, provided that MWs in an irregular situation fulfil the relevant national and international legal requirements.⁶⁴
 - International law further provides for equal treatment with MWs in a regular situation, but only in respect of social security rights arising out of past employment.⁶⁵
 - 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 – “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...*”.⁶⁶
- *African instruments support the extension of social protection to migrant workers.* The extension of SP to all, including MWs, is a priority for the African Union and its Member States. The principle of equal treatment of MWs is emphasized in, among other, the African Union Agenda 2063 and the African Union Policy Framework for Africa and its Plan of Action 2018–30. Also, under the African Union–ILO–IOM–UNECA 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”.
- *Interpreting the extent of SP available to migrants under the African Charter on Human and Peoples’ Rights.* In interpreting the foundational African Union instrument, i.e. the African Charter on Human and Peoples’ Rights (1982), the key monitoring body, the African Commission on Human and Peoples’ Rights has made it clear that (both regular and irregular) MWs 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; need to ensure that migrants are covered by the social security

⁶³ United Nations (2020). *Social protection responses to the COVID-19 crisis in the MENA/Arab States region*, pp. 4, 6.

⁶⁴ Kapuy, K. *The social security position of irregular migrant workers* (Intersentia, 2011). See also Article 27(1) of the UNMWC.

⁶⁵ See Article 9(1) of ILO *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143).

⁶⁶ Report of the United Nations High Commissioner for Human Rights (1 June 2010) E/2010/89, available at: www.refworld.org/docid/4d904c7c2.html, para 14.

system and have physical access to social security services; shall ensure that members of the families of MWs shall enjoy equality of treatment with nationals with regard to access to education, social and health services and participation in cultural life.⁶⁷

- *Subregional instruments and documents 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, and portability of social security benefits in several RECs 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).
 - In the case of SADC, this is evident from the provisions of the *SADC Code on Social Security* (2007), the *SADC Cross-Border Portability of Social Security Benefits Policy Framework* (2016), the *SADC 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).
- *Protection to be afforded to MWs in an irregular situation – regularization arrangements enhance access to social protection.* Regular/documentated migrant status provides not only in-principle access to the labour market in CoDs, but also pathways towards at least contributory social security and wider SP services in the CoD. It is therefore important to invest in regularization initiatives. Examples of such interventions include Thailand’s National Verification Process (for nationals from Cambodia, Lao People’s Democratic Republic and Myanmar); and South Africa’s special permit regimes for nationals from Angola, Lesotho and Zimbabwe. In Portugal, given the COVID-19 context, the government decided to regularize all foreign workers who had pending residential visa requests, granting them access to the health system and the same social rights available to nationals.⁶⁸ In addition, regularization potentially also ensures access to insurance-/ contributory-based SP arrangements in the CoO, where in existence. CoOs therefore have a significant role to play in assisting their workers abroad in accessing SP both in the CoD and the CoO.

Regularization of undocumented migrants

Regularization of the status of migrants in an irregular situation is key to participation in public and even private SP arrangements in CoDs, as well as (in many cases) benefiting from the full extent of CoO SP support. This may require the dedicated involvement of several stakeholders – including embassies of CoOs, NGOs, and the trade union movement. This may imply implementing dedicated interventions focused on rendering assistance with filling critical labour market skills needs in CoDs and finding suitable employers, as this may result in ensuring access to the contributory SP system of the CoD. This may also necessitate acquiring and processing documentation required for the purpose of regularization. In addition, MWs whose position has been regularized potentially add to the pool of contributors to the national social security scheme, thereby strengthening the resource basis of the scheme. Return and repatriation of undocumented migrant workers should therefore find its rightful place as only one, but not necessarily the only, or even the primary avenue of assisting such workers.

⁶⁷ ACHPR *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples’ Rights* (2010).

⁶⁸ United Nations(2020). *Social protection responses to the COVID-19 crisis in the MENA/Arab States region*, p. 20.

II.7. Bilateral and multilateral arrangements: value and constraints

(1) Bilateral labour agreements (BLAs) and bilateral labour migration agreements/arrangements (BLMAs)

- *Bilateral labour agreements (BLAs) vary significantly in scope and content.* Some regulate high-skilled labour migration; others focus on lower-skilled migrants needed to do physical work. Especially where a developing country is serving as the country of origin (CoO), the main purpose of the agreement often is to arrange for unskilled labour to be available to fulfil the labour market needs of the country of destination. Broad-based BLAs aiming at general labour exchange on a reciprocal basis do not seem to be contemplated often.
 - In Africa, “There has been a shift from traditional BLAs aimed at organizing mass recruitment, such as those concluded in the 1960s by France with Morocco and Tunisia, to much broader frameworks of cooperation addressing a wide range of migration issues besides labour mobility to cover irregular migration, readmission, and migration and development linkages.”⁶⁹
 - Also, in Southern Africa, there is, currently, a tendency not to conclude binding BLAs, but to enter into legally non-binding MOUs instead – thereby limiting the extent of the responsibility and liability that the CoD may otherwise have.⁷⁰
- *BLAs and Bilateral Labour Migration Arrangements (BLMAs).* The term “bilateral labour migration agreement or arrangement (BLMA)” is an overarching term, which includes both bilateral labour agreement (BLA) and memoranda of understanding (MOUs). A BLMA therefore is an overarching term covering all types of agreements or arrangements between two countries regulating labour migration. The exact format of a BLMA will depend on the specific objectives of the Parties involved. The title (e.g. BLA or MOU) could sometimes be misleading – one needs to judge from content of a BLMA whether it is binding or not.

BLAs and Bilateral Labour Migration Arrangements (BLMAs)

According to the United Nations *Guidance on Bilateral Labour Migration Agreements* (2022), the term “bilateral labour agreement” refers “mainly to bilateral labour migration agreements, which are arrangements between two States, or agencies. A BLMA describes in detail the specific responsibilities of each of the Parties and the actions to be taken by them with a view to accomplishing their specific goals in terms of governance of labour migration. It includes legally binding bilateral labour agreements (BLAs) and Memorandums of Understanding (MoUs). It can also include specific bilateral agreements between government ministries or agencies in countries of origin and destination, dealing with different aspects of labour migration. It can also cover framework or cooperation agreements that include labour migration along with other migration topics such as irregular migration, readmission, and migration and development.” It should be noted that some bilateral agreements are of a mixed character, with certain provisions having binding force, and others not.

⁶⁹ Wickramasekara, P *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* 18 (authorities omitted).

⁷⁰ Olivier, M. *Bilateral labour migration arrangements in two Southern African Development Community corridors* (IOM, 2021).

- *With some exception, BLAs rarely provide for SP coverage of MWs in an irregular situation.* In fact, the very essence of BLAs is to create a regime for regular and orderly migration. The key exceptions relate to bilateral arrangements providing a pathway for regularization of MWs in an irregular situation, which could translate into access to SP, to the extent that SP may otherwise be available to MWs in the CoD. South Africa's regularization dispensations, informed by underlying Memoranda of Understanding (MOUs) with the affected neighbouring CoOs and Thailand's National Verification Process (for nationals from Cambodia, Lao People's Democratic Republic and Myanmar) are examples.
- *The same holds true for workers in the informal economy.* BLAs largely fail to address the plight of these workers. Lately, however, increasing provision is made for the coverage of specific categories of informal economy workers, in particular domestic workers in some GCC and Asian countries, in BLAs or other bilateral labour arrangements.
- *The cumulative impact of these two exclusions* is that a very substantial part – in fact, in many instances in developing countries, the majority – of the migrant workforce in the country of destination (CoD) are effectively not covered by these agreements, fuelling exploitation and abuse, and lack of SP.
- *Rationale for including SP provisions in BLMAs.* Cross-border movements have an impact on MWs' access to SP and coverage and on the State's responsibility to ensure that MWs do not lose their acquired entitlement to SP benefits, such as protection in the event of health risks, occupational illnesses, unemployment, or pensions. It often happens that even if MWs contribute to social security schemes, they may not be eligible for SP benefits because they do not meet the relevant legal requirements for accessing such benefits.
 - In that sense BLMAs, while being agreements that do usually target the mechanisms of SP directly, nevertheless need to create the basis for state cooperation, for SP mechanisms being available for MWs and serve as impulse for bilateral social security agreements (BSAs).
 - However, in comparison with BLMAs, relatively few(er) BSAs have been concluded, also by African countries (as explained below). In other words, especially in the absence of BSAs, BLAs are meant to ensure/provide for appropriate social protection.
 - Also, suitable SP arrangements in BLMAs will support/advance labour migration, contribute to/give expression to free movement regimes, and support regional integration.

Key advantages of including SP support/coverage in BLMAs

BLMAs can also specify the participation of MWs in national social security institutions, which would have the effect of ensuring portability of benefits.

- Instead of disbursement of a lump sum upon departure from the COD (host country), the provision could rather be that the contribution to social security benefits could be *maintained* in the CoO and vice versa.
- BLMAs should also ensure access to *national health-care systems* for migrant workers and their families.
 - When doing so, BLMAs should guarantee that social security and health-care benefits are non-discriminatory and available and accessible to all MWs, including those in an irregular situation.
 - The principle of equality of treatment with regard to injury compensation should be applied.
 - Social security provisions should be comprehensive and go beyond injury compensation to cover also availability and accessibility of health-care services.

- Historically, limited provision was made for social security coverage in bilateral labour management arrangements (BLMAs). BLAs, including at times also other bilateral labour management arrangements (BLMAs), such as MOUs, may extend labour rights protection to (documented) MWs, but rarely make provision for any meaningful social security coverage.⁷¹
- Usually, non-binding MOUs make little provision for SP. As noted above, there is a developing tendency in Southern Africa of no longer being prepared to conclude BLAs, but less exacting MOUs or other co-operation arrangements. This may further diminish the possibility and efficacy of social security undertakings contained in such MOUs.
 - For example, South Africa has concluded such arrangements with Lesotho (first in 2006, and again in 2013), Mozambique and Zimbabwe (replacing preceding MOUs of 2004 and 2009). The focus of these arrangements is on co-operation in the fields of employment and labour. Indicated *areas of cooperation* of relevance to labour migration may include limited coverage of social security issues, often specified to relate to occupational injuries and diseases and pension portability, occupational safety and health, and public employment services.⁷²
 - Some MOUs may nevertheless contain significant provisions on SP. A recent example is the MOU between the Niger and Libya on labour mobility exchange (2021), quoted below. The MOU among other provides for the registration of MWs in the social security body of the host country, the regular payment of contributions required by law, and an envisaged dedicated implementation agreement, concerning portability of benefits.
- Traditionally, normative approaches informing SP provision contained in BLAs made limited reference to SP. Several key United Nations and ILO instruments include pertinent provisions regarding the scope and content of BLAs.⁷³ However, the traditional global normative framework is limited. The oft-quoted *Model Agreement* annexed to ILO *Recommendation concerning Migration for Employment, 1949* (No. 86) requires the exchange of info on the social security system of the country of destination (Article 1), and the recognition of documentation needed, concerning participation in social security systems (Article 4). Importantly, Article 21 enjoins Member States to conclude separate BSAs to specifically deal with the “methods of applying a system of social security to migrants and their dependants.” A concerted but necessary effort would be required to let BLAs play a more prominent role in extending SP coverage.⁷⁴

⁷¹ Wickramasekara, P. *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (ILO, 2015); Van Panhuys, C., Kazi-Aoul, S. and G. Binette *Migrant access to social protection under Bilateral Labour Agreements: A review of 120 countries and nine bilateral arrangements*. (ESS-Working Paper No. 57, ILO 2017) 3. See also ILO *Extending social protection to migrant workers, refugees and their families* (2021), p. 105.

⁷² See Olivier, M. *Bilateral labour migration arrangements in two Southern African Development Community corridors* (IOM 2021).

⁷³ See, in particular the United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), and the two ILO migrant worker-specific Conventions and their associated Recommendations – i.e. (i) ILO *Migration for Employment Convention, 1949* (No. 97), and ILO *Recommendation concerning Migration for Employment* (No. 86) (*Model Agreement*), and (ii) ILO *Migrant Workers Convention, 1975* (No. 143), and *Recommendation concerning Migrant Workers* (Recommendation No. 151).

⁷⁴ Subject to exceptions (e.g. in the case of Canada’s bilateral arrangements with Mexico), BLAs and BSAs are usually treated as silo arrangements, with little congruence and synergy. It is perhaps a reflection of the uncoordinated nature of labour and social security law and policy, even though, from a worker perspective, the very same persons (and their dependants) are affected.

- A new dispensation – critical normative and policy developments aimed at ensuring better SP coverage in BLAs. Lately, however, three critically important guiding documents indicate a new pathway for extended SP coverage via BLAs. This should be of particular relevance to both GCC CoDs and CoOs whose workers are employed in GCC countries, and especially to African CoOs. See *par GVII.6(4) below for further elaboration.*
 - Firstly, the legally non-binding *Global Compact for Safe, Orderly and Regular Migration* (2018), which reflects the common commitment of ratifying countries, in Objective 22, supports a more emphatic and extensive inclusion of SP protective measures by suggesting the inclusion in “agreements, such as those on long-term and temporary labour migration”, of “applicable social protection floors in the applicable States, applicable social security entitlements and provisions, such as pensions, health care and other earned benefits”.⁷⁵
 - Secondly, the United Nations *Guidance on Bilateral Labour Migration Agreements* (February 2022) has much to say about what BLMAs should provide for in terms of SP for MWs (see Section IIIA):
 - Non-discrimination and equality of treatment with nationals of the CoD in relation to all social security areas;
 - Portability of SP benefits (which could also be provided for in separate BSAs or MSAs) and maintenance of acquired social security contributions/benefits;
 - Access to national health-care systems, services and benefits, as well as injury compensation, on the basis of equality of treatment with nationals.
 - Thirdly, and taking their cue from universal human rights and international labour standards, including international, African and REC (Regional Economic Community) policy frameworks on migration, SP and development, the African Union’s *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs)* (2022) contain a standard model template for BLAs applicable also to all African BLAs.

Access to and portability of SP/social security: key perspectives from the African Union Guidelines on Developing Bilateral Labour Agreements (BLAs) (2022)

Section 4 of the African Union *Guidelines on Developing Bilateral Labour Agreements (BLAs)* (2022) concerns the core content for rights-based and gender-responsive BLAs. The template standard provision on SP provides key guidelines relating to access to and portability of SP/social security, including health care, appearing from this document:

- Equality of treatment and MW access to national SP schemes in respect of all social security branches;
- Availability of SP floor coverage to all migrants;
- Provision of health insurance and coverage, and work injury compensation and benefits;
- Portability of social security entitlements;
- Facilitation of social security claims and disbursement of social security benefits and assistance; and
- Equal treatment in the event of pandemics.

Source: African Union (2022). *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs)*: Article A.16.

⁷⁵ See Objective 22: Establish mechanisms for the portability of social security entitlements and earned benefits, par 38(b).

- *Weak bargaining power of CoOs and lack of enforceability.* CoOs in the developing world, including in Africa, often are not able to negotiate the incorporation of appropriate SP protective arrangements in BLAs from a position of strength and equality with the CoD. This flows from the fact that CoOs may invariably be dependent on CoDs to grant MWs access to their labour markets. This may also be the result of often weak social security systems in CoOs – there may not be much that the CoO could, on the basis of reciprocity, offer to (migrant workers from) the CoD in terms of social security protection. Reciprocity may therefore not be present, leaving CoOs dependent on the measure of SP the CoD is prepared to grant.⁷⁶

Examples of African BLAs/MOUs containing social security arrangements

France–Tunisia BLA regarding the recruitment of Tunisian workers in France: The 1963 BLA between France and Tunisia regarding the recruitment of Tunisian workers in France, provides in Art. 9 for equality of treatment with regard to entitled to unemployment benefits. (Tunisians comprise 54% of the entire Tunisian community abroad.) The BLA also refers to a future BSA to be concluded, which happened in 1965, replaced in 2003 (and which entered into force in 2007), and is supported by two administrative (implementation) agreements. It covers all branches of social security (sickness and maternity benefits, family benefit, employment injury, old-age, invalidity and survivors' benefits) with the exception of unemployment benefits. All salaried and self-employed workers are covered, and also certain civil servants, and dependants of these categories. The equality of treatment principle is also guaranteed. French social security legislation will apply. Maintenance of acquired rights is also provided for (if the Tunisian worked in both states), as is the case with portability of benefits (but not some family benefits).

Memorandum of Understanding for Cooperation in the Field of Regulating and Facilitating the Mobility of Manpower (Labour) Exchange Cooperation between the Republic of the Niger and the State of Libya (2021): Article 11 of the MOU stipulates: “Employers in the host country have the obligation to respect the laws and regulations on social security. Consequently, they are required to register their employees with the social security body of the host country and to regularly pay the related social contributions in accordance with the regulations in force in both countries. The modalities of implementation of the above paragraph, relating to the portability of services, will be discussed by mutual agreement between the Parties.”

(2) Bilateral social security agreements (BSAs)

- *Core content of BSAs.* Bilateral social security agreements (BSAs) help to streamline the social security position of an individual who migrate (for work) to another country, and are usually informed by some or all of a number of principles, in general referred to as *social security coordination principles*.
 - Coordination principles leave national schemes of the two participating countries intact and only supersede such rules where they are disadvantageous for migrant workers.⁷⁷ In other words, BSAs do not in any way affect the freedom of participating countries to determine the content 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.

⁷⁶ See also ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 71. However, it needs to be added that at times the BSA could be a non-reciprocal agreement, in the event where the social security benefits provided by the two countries differ. The India-Japan BSA serves as an example: *Ibid.*, pp. 76–77.

⁷⁷ *Ibid.*

- The coordination principles include:

Core principles underlying bilateral social security agreements

Bilateral social security agreements (BSAs) are typically informed by the following principles, in general referred to as social security coordination principles:

- the choice of law principle, identifying the legal system that is applicable;
- equal treatment (in the sense that discrimination based on nationality is prohibited) – ensuring access to those social security benefits covered by the agreement, in the destination country;
- aggregation/totalization of insurance periods (in that all periods taken into account by the various national laws are aggregated for the purposes of acquiring and maintaining an entitlement to benefits, and of calculating such benefits);
- maintenance of acquired rights (benefits built up by the person are retained);
- payment of benefits, irrespective of the country in which the beneficiary resides (the “portability” principle);
- administrative cooperation (between the social security institutions of the parties to the agreement); and
- sharing of liability to pay for the benefit (i.e. pro-rata liability of the respective institutions).

Portability must be distinguished from exportability, however. Exportability requires no such cooperation, as the social security institution (supported by the legal framework) of one country alone determines eligibility and the level of benefit, and whether the benefit is payable (i.e. exportable) to other countries.⁷⁸

- *Value of BSAs.* Together with multilateral social security agreements (MSAs), BSAs are worldwide the core intervention for extending social security protection to migrant workers.⁷⁹ In fact, in the absence of such an agreement, a person may not be covered under the social security system of either the host country or the CoO – or may be doubly covered. Coordination arrangements help to resolve this problem.
 - Also, targeted, country-specific cross-border BSAs between States have the advantage of incorporating regulations and standards that pertain specifically to the unique migratory patterns that may exist between the 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 a BSAs is particularly significant given the extended length of time that is generally necessary to develop comprehensive MSAs.
- *Cementing protection.* In addition, the worldwide evidence is that MSAs and BSAs play a profound role in cementing the protection of certain migrants’ social security entitlements. To illustrate the 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 country would have done so.⁸⁰ This has important implications for both CoDs and CoOs in Africa.

⁷⁸ Sabates-Wheeler, R. and Koettl, J. “Social protection for migrants: The challenges of delivery in the context of changing migration flows”. *International Social Security Review*, Vol. 63, Nos. 3–4, 2010, p. 115–144 at 120.

⁷⁹ See also Holzmann, R, Koettl, J and Chernetsky, T *Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices*, (Social Protection Discussion Paper No. 0519) (World Bank, 2005) 32), who 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.”

⁸⁰ Paparella, D. “Social security coverage for migrants: Critical aspects” (Paper presented at ISSA European Regional Meeting: Migrants and Social Protection, Oslo, 21–24 April 2004).

- *BSAs involving African countries: an evolving framework.* Generally speaking, with some notable exceptions, BSAs involving developing countries (with their characteristic weaker social security systems) are less common than BSAs between highly industrialized countries with strong social security systems.⁸¹ The picture regarding African countries engaged in BSAs can be summarized as follows:

Bilateral social security agreements involving African countries: an evolving framework

Key characteristics and trends regarding African countries' engagement with BSAs include:

- According to the International Social Security Association (ISSA) database on social security agreements, there are 89 Bilateral social security agreements (BSAs) in force involving African countries. This represents a steady increase over the last seven decades, although less marked than the increase seen in other regions of the world.
- Most of the BSAs have been concluded with European countries (58), although 26 BSAs have been concluded between African countries, four with the Americas, and one with an Asia/Pacific region country. These agreements mostly involve Francophone countries, thereby matching to a large extent multilateral arrangements in West Africa (i.e. MSAs in the ECOWAS (Economic Community of West African States) and CIPRES (Inter-African Conference on Social Insurance) contexts).
- The 26 intra-African BSAs are mainly organized along regional blocks/Regional Economic Communities (RECs), reflecting the reality that the majority of African migrants move within the subregion of origin, and also reflecting the migration patterns (and corridors) between the contracting countries.
- All of the nine classical branches of social security are covered by these BSAs; however, long-term social security benefits (old-age, disability, work injury and survivors' benefits) are covered in more than 70 per cent of the agreements.

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), pp. 48–50.

- *The importance of evidence-based support.* Informing the conclusion and implementation of BSAs requires an understanding of the labour and social security laws of the CoD and the CoDs, and existing bilateral arrangements. The Filipino legislation requires in this regard the following:⁸²
- “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.”
- *International standards.* BSAs are strongly advocated for in *international* instruments. The first global Convention, which calls upon countries to enter into BSAs, is an ILO Convention widely ratified by African countries, i.e. ILO *Equality of Treatment (Accident Compensation) Convention, 1925* (No. 19).⁸³ ILO *Equality of Treatment (Social Security) Convention, 1962* (No. 118) covers the equality of treatment and portability of benefits principles indicated above, while ILO *Maintenance of Social Security Rights Convention,*

⁸¹ See www.social-protection.org/gimi/gess/ShowProjectWiki.action?id=3267&pid=2657 on BSA info per country (work in progress).

⁸² Article 4 of the *Migrant Workers and Overseas Filipinos Act, 1995* (Republic Act No. 8042), as amended by Article 3 of the *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, 2009* (Republic Act No. 10022).

⁸³ Article 2. See also Article 4(1) of ILO *Maintenance of Social Security Rights Convention, 1982* (No. 157).

1982 (No. 157) provides for totalisation of insurance periods and the pro-rated sharing of benefit payments by the countries concerned, based on the ratio of insurance periods.

- 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).
- 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 JLMP programme 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 a *regional* level, mention could in particular be made of several SADC instruments supporting the conclusion of bilateral arrangements – i.e. *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*.
- *BSAs 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 BSA. In fact, a phased and incremental approach in relation to the following matters may be apposite for African countries to consider, as the worldwide experience with the incremental development of BSAs tends to confirm.

Adopting an incremental approach towards 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 bilateral social security agreements:

- The types of schemes covered – the existence of one or more schemes, such as occupational injury schemes, common to both the country of origin and the country of destination, and the presence of common elements within these schemes, could make them the ideal first candidate for coordination. This could then be extended to include other schemes as well (e.g. pension-oriented public retirement fund schemes).
- The 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 institutional and professional capacity to render these services develops.
- The categories of persons covered by such an agreement – provision could initially be made for extending the benefits of cross-border social security arrangements to certain categories of persons only (for example, lawfully residing/employed migrant workers and their dependants), which could over time be extended to include other categories, such as self-employed workers.

- The 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 this exists. For example, it may be prudent to arrange for the avoidance of double contributions as a first step, and then to extend this to cover totalisation and portability arrangements as well. The experience in this regard reflected in the BSAs of several countries may be particularly helpful.

- *Supporting arrangements required.* Critical measures and interventions are required to ensure that BSAs are properly adopted and implemented. These matters are further discussed in Module G VII.6(4) and relate to:
 - The need for an implementing administrative arrangement/agreement;
 - Required changes to the legal framework to facilitate the negotiation, conclusion and implementation of BSAs; and
 - Strengthening the institutions involved with negotiating, concluding and implementing BSAs.
- *Shortcomings.* Although concluding BSAs is generally seen as the preferred way to guarantee social security entitlements of migrants, this practice, as noted by Holzmann, Koettl and Chernetsky, “necessarily results in a highly complex and hardly administrable set of provisions on the portability of social security benefits”.⁸⁴ In addition, such agreements may end up granting differing rights and entitlements to migrants, which could undermine regional integration. One way to counteract this is to establish common standards in a regional or multilateral framework against which all bilateral agreements can be measured, as discussed below.
- *Required cooperation and complementarity.* Also, in order to achieve full portability, some cooperation between the social security institutions of the CoO and the CoD is required, to ensure a joint determination of benefit levels for a particular migrant. 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 differences that may exist as regards the nature of the social security schemes – a matter which is of considerable importance in the African context.
- *Limited equal treatment guarantee.* Furthermore, while equality of treatment is a core principle, it should be noted that this principle generally operates within the framework of, and for purposes of, giving effect to the bilateral agreement.
 - *Only those (potentially) covered by the terms of the BSA* – 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, bilateral agreements 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 migrants in an irregular situation*. 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.
 - Also in *non-African countries*, in limited instances provision is made in CoD national legal systems for the coverage of migrant workers in the informal economy under – usually separate or dedicated – national social security arrangements.⁸⁵

⁸⁴ Holzmann, R. et al *Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices*, p. 25.

⁸⁵ For the position in Thailand, see Olivier, M “*Social protection for migrant workers in ASEAN: Developments, challenges, and prospects*” (ILO, 2018), p. 87.

- Yet, *self-employed persons* may indeed be included under the scope of BSAs: in the Asian context, this is true, see among others, of Japan's BSAs with Belgium, Ireland, the Kingdom of the Netherlands, and the United Kingdom; India's BSAs with Canada, Denmark, Finland, Portugal, the Republic of Korea and Switzerland (as well a bilateral arrangement with Singapore), and the Republic of Korea's BSAs with Australia, Bulgaria, Canada, Denmark, India and Slovenia.⁸⁶

Examples of African bilateral social security agreements (BSAs) (1)

France–Tunisia BSA

“The France – Tunisia social security agreement, which terminated in 1965 and was subsequently replaced by another agreement in 2003, covers all branches of social security (including sickness, maternity, family, employment injury, old-age, invalidity and survivors' benefits) with the exception of unemployment benefits. It applies to salaried and self-employed workers, certain categories of civil servants, dependents of workers in these categories and “persons who are not undertaking an activity as employed or self-employed” (Art. 2(1c)). By virtue of the principle of equality of treatment, Tunisian workers in France are entitled to the same social security benefits as French citizens. With respect to the applicable legislation, Tunisian workers in France are, in principle, subject to French social security legislation. In the case of workers who are employed in both France and Tunisia, the agreement allows for membership in both countries' social security regimes (Art. 5(1)). Tunisian workers who are temporarily posted to France by their employer for work purposes are subject to the legislation of Tunisia, provided that the period of posting does not exceed three years (Art. 5(2)). For Tunisian workers who have worked in both States, maintenance of rights in the course of acquisition is ensured through aggregation of the contributions applicable in the territory of each States party. Thus, insurance periods completed under the other party's legislation can be taken into account for the purpose of qualifying for benefits. Under this agreement, insurance periods of all contingencies can be totalized except in the case of employment injury benefits. The agreement also provides for the portability of benefits to the territory of the other State party. Hence, employment injury, old-age, survivors' and invalidity benefits acquired while working in France can be exported to Tunisia.”

Source: ILO *Extending social protection to migrant workers, refugees and their families* (2021), p. 75.

Examples of African bilateral social security agreements (BSAs) (2)

Zambia–Malawi BSA

“The social security agreement between Zambia and Malawi, concluded in 2003 in order to address the lack of social protection of Malawian migrant workers in Zambia, is the only instrument in the Southern African Development Community (SADC) region that can be described as a social security agreement. However, it is not based on the principle of reciprocity since its provisions cover only Malawian migrant workers in Zambia, not Zambian migrant workers in Malawi. It provides for the payment of benefits abroad, thus allowing Malawians who have retired and returned to Malawi to receive their benefits in their home country rather than having to claim them in Zambia. The agreement guarantees health-care benefits, including medical examinations, to temporary workers from Malawi – which is particularly important for mine workers – through the Zambian Workers Compensation Fund and includes coordination measures such as visits from the social security officials of both countries. It also provides for the establishment of a Joint Permanent Commission of Cooperation and a mechanism to facilitate the payment of social security benefits through the Malawi High Commission in Zambia.”

Source: ILO *Extending social protection to migrant workers, refugees and their families* (2021), p. 76.

⁸⁶ Olivier, M. “Portability of Social Security for Migrant Workers in Asia” in ABDI-ILO-OECD *Building Partnerships for Effectively Managing Labor Migration – Lessons from Asian Countries* (2019), p. 50.

(3) Multilateral social security agreements (MSAs)

- *Key principles.* As with BSAs discussed above, a key principle in relation to MSAs is the coordination with regard to social security, primarily aimed at eliminating the restrictions that national social security schemes place upon the rights of migrant workers to access such social security.
- *Value of MSAs.* According to Baruah and Cholewinski, 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.”⁸⁷
 - Furthermore, a MSA 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 region.
- *MSA challenges and the relevance of incremental development.* The challenges facing BSAs 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, MSAs are unlikely to extend any meaningful coverage to informal (economy) workers and undocumented migrants.
 - Also, effective MSAs – as is the case with bilateral agreements – would require that the relevant social security schemes forming the subject of entitlements should 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,⁸⁸ 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 may provide for lump-sum payments. Similar considerations apply to health-care benefits.
 - These agreements are time-consuming to develop, as they involve multiple countries, the need to set standards for a whole region, and the need to deal with the coordination of a large number of social security systems.
 - Political determination on the part of all contracting parties is crucial for the successful negotiation, conclusion, and adoption of a multilateral agreement.
 - Finally, MSAs are routinely developed incrementally, as the examples quoted below seem to suggest.
- *Worldwide examples.* MSAs have a more recent origin than BSAs. The first such agreements were entered into soon after the end of the Second World War.⁸⁹ Currently, worldwide a number of multilateral social security agreements exist. The following examples may be of particular relevance:
 - **European Union:** Today, the European Union arrangement is the most comprehensive in the world. The current regulation (EU Regulation 883/2004) 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, i.e. to support free movement of persons. Bilateral arrangements

⁸⁷ Baruah, N and Cholewinski, R *Handbook on establishing effective labour migration policies in countries of origin and destination* (OSCE, IOM and ILO, 2006), p. 156.

⁸⁸ 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 Pasadilla, G and Abella, M *Social Protection for Migrant Workers in ASEAN* (Cefiso Working Paper No. 3914, Category 3: Social Protection) (2012), p. 25.

⁸⁹ Roberts, R “A short history of social security co-ordination”, in Jorens, Y (ed.): *Fifty years of social security co-ordination: Past – present – future* (European Commission, 2009), pp. 8–28.

between individual European States are still 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 – in particular concerning the scope of coverage. The scope of categories of persons and contingencies covered have gradually expanded over the years, as is the case with the type of social security schemes, and range of benefits, falling under the purview of the European Union regulatory framework.

- **Caribbean countries – CARICOM Agreement on Social Security:** 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 essential coordination arrangements indicated above in relation to BSAs. Unlike the European Union regulation, the CARICOM agreement does not cover short-term benefits.
- **Latin America, including the Ibero-American Social Security Convention of 2011:** Latin America countries are involved in several multilateral social security agreements. The *Ibero-American Social Security Convention* of 2011 is particularly noteworthy as it involves 18 Latin American countries and two European countries (and European Union members), Portugal and Spain. This is the first intercontinental agreement in the world aimed at extending SP to MWs. The Convention is applicable to persons who are or were subject to the legislation of one or several Member States, as well as their family members, and including both dependent and non-dependent workers. Regarding the *material scope*, the Convention covers disability, old age, survivors and employee injury benefits (occupational injuries and diseases) benefits, but excludes health-care benefits and non-contributory benefits. Where both the multilateral Convention and a bilateral agreement are applicable, the agreement which is the *most favourable* for the beneficiary will apply. Noteworthy is the fact that the Convention includes countries with vastly different social security models; but also between nations where the coverage, scope or intensity of benefits vary greatly, all of which makes coordination of legislations extremely difficult⁹⁰. For the rest, the Convention employs the different coordination principles earlier discussed.

Examples of African multilateral social security agreements (MSAs) (1)

ECOWAS: General Convention on Social Security (2012)

Established in 1975, ECOWAS (Economic Community of West African States) is a 15-member regional group with a mandate of promoting economic integration in all fields of activity of the constituting countries. Social protection for migrants in ECOWAS is in particular informed by the *ECOWAS Common Approach on Migration* (2008), the *ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment* (1979) and supplementary protocols thereto. Established in 2012 ECOWAS Member States adopted the *General Convention on Social Security* as a binding instrument, not subject to ratification by Member States. The Convention provides for a *comprehensive coordination and portability regime*, although the implementation instrument for the Convention still needs to be developed. It covers a *wide range of long- and short-term benefits*, including health-care benefits, and applies the usual principles of coordination outlined above in relation to the European Union. It applies to *migrant workers* who are *nationals* of any ECOWAS MS and who are or have been subject to the social security laws of the Member States, their family members and survivors, refugee and stateless persons. It therefore effectively excludes informal economy and irregular/undocumented workers.

⁹⁰ Fernández, A “Social security coordination in Ibero-America: Ibero-American Multilateral Agreement on Social Security. Chapter” in Blanpain, R, Arellano Ortiz, P, Olivier, M and Vonk, G (editors) *Social Security and Migrant Workers: Selected Studies of Cross-Border Social Security Mechanisms* (Kluwer, 2014).

Examples of African multilateral social security agreements (MSAs) (2)

CIPRES Multilateral Inter-African Convention on Social Security (2006)

In 1993, 15 French-speaking countries in western and central Africa and the Indian Ocean established the Inter-African Conference on Social Insurance, also referred to as CIPRES. Under the auspices of the Conference, 14 CIPRES member States concluded the *CIPRES Multilateral Inter-African Convention on Social Security* in 2006. A recent ILO report summarizes the scope of and current context in relation to this Convention as follows:

“The Convention covers all workers, members of their families and their survivors who are nationals of a State party to the Convention and are or have been subject to the social security scheme of any of the parties. It includes both in-cash and in-kind benefits and provides for old age, disability, death, employment injury, maternity, sickness and family benefits under all statutory social security schemes. Its Preamble affirms the principles of equality of treatment with the nationals of the host country and maintenance of acquired rights and rights in the course of acquisition. The Convention’s ratification by Senegal, one of the main migrant-receiving countries of the region (together with Gabon and Cameroon), in 2014 was an important milestone in ensuring enhanced access to social security benefits for migrant workers in these countries.

Source: ILO *Extending social protection to migrant workers, refugees and their families* (2021), p. 79.

Selected emerging multilateral social security frameworks in Africa

Southern African Development Community (SADC)

“In March 2020, Southern African Development Community (SADC) Ministers responsible for Employment and Labour and Social Partners (ELS Ministers) adopted the *Guidelines on Portability of Social Security Benefits in SADC*. Five SADC Member States, Eswatini, Lesotho, Malawi, South Africa and Zimbabwe volunteered to pilot implementation of the Guidelines. The Guidelines are informed by International Labour Standards and cover all branches of social security. It also draws on the *SADC Portability of Social Security Benefits Policy Framework*, the *SADC Protocol on Employment and Labour* (article 19), and the *SADC Code on Social Security* of 2007. In adopting the Guidelines, the Ministers and Social Partners noted that while the Guidelines are non-binding, their implementation by Member States will provide the scope for the region to progressively move towards a binding instrument.”

East African Community (EAC)

“Under article 10 of the East Africa Community (EAC) *Common Market Protocol* the EAC Partner States guaranteed the free movement of workers who are citizens of the other Partner States, within their territories. According to the Protocol, EAC Partner States are committed to abolition of discrimination based on nationality in regard to employment, remuneration and other conditions of employment and work. The Protocol entitles citizens of any EAC Partner State to inter alia enjoy the rights and benefits of social security as accorded to the workers of the host Partner State. To operationalize EAC *Protocol* provisions on social security benefits, the Forum of Ministers of Labour and Employment adopted a Model Annex in November 2009 for use in developing a draft Council *Directive on the Coordination of Social Security Benefits*. Later, the EAC Secretariat, in collaboration with ILO developed the draft *Council Directive*. With further support of the ILO, the draft Council Directive was revised in January 2020 and pending EAC review and validation processes.”

Source: African Union *Report on Labour Migration Statistics in Africa* (3rd edition, 2021), p. 51.

11.8. Country-of-origin unilateral measures: a worldwide experience and growing reality

- *Overview – the general framework.*⁹¹ MWs often face a lack of meaningful SP extended by CoDs, invariably accentuated by the absence of bilateral agreements providing for SP for MWs and by their often restrictive migration status and short-term nature of engagement. As a result, in recent years, one of the important and notable developments is that several CoOs have introduced measures to provide some SP, often through establishing a migrant welfare programme (MWP) or fund.
 - In fact, this particular avenue of providing SP is specifically foreseen in the *Global Compact for Safe, Orderly and Regular Migration (2018)*: Objective 22 foresees as a specific action, to which countries commit, with a view to assist MWs at all skills levels to have access to social protection, the establishment of “dedicated instruments, such as migrant welfare funds in countries of origin, that support migrant workers and their families.” (par 38(c))
 - In addition, several CoOs have also utilized *insurance-based programmes*,⁹² either integrated into MWPs or as separate or additional arrangements, to extend SP to their own workers working abroad.
 - These approaches have invariably been strengthened by an extensive raft of supporting measures, including a supportive, dedicated *institutional and operational framework*.⁹³
 - *Furthermore*, CoOs have also otherwise been involved in supporting the enforcement of MWs’ SP rights in CoD, through a range of **interventions and services**, which may differ according to the context of the CoD concerned, the needs of the affected MWs and the capacity of the CoO concerned. The next Modules reflect on these matters in some detail.
- *Worldwide, CoO unilateral interventions have been adopted to extend SP and welfare support to MWs.*⁹⁴ Worldwide (in particular in Asia) several CoOs have increasingly assumed responsibility for nationals/citizens living and working abroad. This has translated into varying levels and dimensions of protection and support made available to these workers and their families. These unilateral extensions take several forms and include, among others (see Module G for further elaboration):
 - The adoption of *constitutional guarantees* guaranteeing the protection of MWs abroad (e.g. Ecuador, the Philippines, Viet Nam);
 - The adoption of *statutory frameworks* facilitating the protection of MWs abroad (e.g. Pakistan, the Philippines, Mexico and Viet Nam);
 - Establishing *special overseas workers’ welfare arrangements* by national and even (as in the case of India) state governments that extend protection to MWs and (at times) also their families;
 - Voluntary affiliation in national social insurance schemes;

⁹¹ In part adjusted from Olivier, M *Extending social protection to Vietnamese workers abroad* (report submitted to the ILO) (2020). See also Olivier, M. “Social Protection for Migrant Workers Abroad: Addressing the Deficit via Country-of-Origin Unilateral Measures?” in McAuliffe, M. and Klein Solomon, M. (Conveners) *Migration Research Leaders’ Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM, 2017), p. 79–90.

⁹² The insurance-based arrangements invariably include health coverage and retirement benefits.

⁹³ https://publications.iom.int/system/files/pdf/social_protection.pdf.

⁹⁴ See also the African Union’s (Draft) *Guidelines on the Development of a Model Migrant Welfare Programme/System* (2021), adopted by the African Minister of Labour at the occasion of the Fourth Ordinary Session of the Specialized Technical Committee on Social Development, Labour and Employment (STC-SDLE-4), 4–8 April 2022 (Addis Ababa, Ethiopia) par 6, from where this paragraph has partly been taken.

- Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the sending country; and
- Exportability of social security benefits and the provision of related services (e.g. medical care and legal assistance) abroad.
- *Complementary institutional arrangements and support services.* These 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/residents in the diaspora (e.g. Bangladesh, India, Nepal, the Philippines, Sri Lanka); gather information on recruitment contracts; and provide consular support.
 - The Philippines, for example, has lately established the Department of Migrant Workers as the overarching **executive department** of the **Philippine government** responsible for the protection of the rights and to promote the welfare of **Overseas Filipino Workers** (OFWs) and their families, preceded by the establishment of the Office of the Undersecretary for Migrant Workers Affairs at the Department of Foreign Affairs; the Philippines Overseas Employment Administration (POEA); the Overseas Workers Welfare Administration (OWWA); the Filipino Workers Resource Center; Social Security System offices in several countries; and an extensive network of labour attachés at diplomatic missions, in addition to investing in the screening of and provision of information to potential migrants.
 - Generally, other support services are made available to MWs 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 MWs.

The Constitution of Ecuador, 2008

- The Constitution essentially provides for a “universal citizenship” irrespective of where a person may reside – every person is equal and shall possess the same rights, duties and opportunities, and nobody shall be discriminated against on any grounds, including his/her migratory condition (*Constitution of the Republic of Ecuador, 2008, Article 11(2)*; see also Articles 416(6) and (7)).
- Article 40 of the Constitution explicitly recognizes the right to migrate and the right of Ecuadorians to support abroad:
 - The right to migrate of persons is recognized. No human being shall be identified or considered as illegal because of his/her migratory status.
 - The State, through the relevant entities, shall develop, among others, the following actions for the exercise of the rights of Ecuadorian persons abroad, regardless of their migratory status:
 - (1) The State shall provide them and their families, whether they live abroad or in the country, with assistance.
 - (2) The State shall provide care, advisory services and integral protection so that they can freely exercise their rights.
 - (3) The State shall safeguard their rights when, for any reasons, they have been arrested and imprisoned abroad.
 - (4) The State shall promote their ties with Ecuador, facilitate family reunification and encourage their voluntary return.
 - (5) The State shall uphold the confidentiality of personal information located in the files of Ecuadorian institutions abroad.
 - (6) The State shall protect transnational families and the rights of their members.

- The constitutional imperative to protect Ecuadorians abroad is further reflected in the *National Plan of Foreign Policy (Plan Nacional de Política Exterior) 2006–2020*, which establishes ‘protection to emigrants’ as one of the priority axes of Ecuadorian foreign policy.

African countries of origin’s investment in measures to protect, support and liaise with their migrant workers and their families abroad

“Some origin countries have concluded formalized labour exchange arrangements and agreements with other African countries and also countries in Europe and the GCC. However, given the negative experiences of many African migrant workers in certain Gulf countries, several origin countries have introduced temporary bans on employment in certain or all countries of destination. This has been strengthened by the adoption in several African countries of a policy framework and a strengthened legal environment and administrative measures to ensure vetting of recruitment agencies, attestation of employment contracts, pre-departure orientation, the requirement (in the legislation) of a supporting bilateral labour agreement informing deployment of workers abroad, and the appointment of labour attachés. Legal frameworks are incrementally developed to streamline overseas deployment, including the regulation of the recruitment industry. This is often accompanied by a model employment contract, which also provides for some modicum of social security coverage. Also, African countries of origin 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. Several countries have also adopted anti-human trafficking laws.” To this could be added that some African countries have extended certain contributory social security arrangements to their workers abroad, while a few African countries have been working on introducing a formal migrant welfare programme regime (e.g. Kenya).

Source: African Union (2021). *(Draft) Guidelines on the Development of a Model Migrant Welfare Programme/System*, par 7.

II.9. Evaluation of achievements and shortcomings of CoO unilateral measures

- *Significant impact of unilateral measures.* Unilateral arrangements emanating from CoOs are of relatively recent origin, but seem to be growing in extent and popularity. They cover sizeable numbers of migrant workers – as the experience of many Asian countries testifies.
 - CoO unilateral arrangements provide important avenues of coverage, protection and support, where none or little is available in the destination country concerned. In fact, as has been noted in a 2021 ILO publication, “No single measure can give migrant workers full access to their social protection rights; a progressive approach combining several unilateral measures is needed in addition to the conclusion of bilateral and multilateral social security arrangements.”⁹⁵
 - They are also easier to adopt than bi- and multilateral agreements. Unlike bilateral agreements, they also, in fact principally, affect the well-being and protection of those involved in circular and temporary migration, and could be defined and strengthened through international migration agreements.⁹⁶

⁹⁵ ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 112, 135.

⁹⁶ Van Ginneken, W “Social protection for migrant workers: national and international policy challenges” *European Journal of Social Security* (EJSS), vol 13(5), 2013, pp. 209–221 at 214.

- *Limitations of CoO unilateral measures.* Unilateral measures, important as they are, cannot however replace effective measures in the destination countries that provide equal treatment in social security to migrant workers and ensure the transfer of benefits. These arrangements and interventions imply a shift of the social security burden to the country of origin and its structures, despite the fact that migrant workers also contribute to the development of the destination country concerned. It is therefore argued that unilateral measures should remain measures of last resort, to be available to the extent that bilateral and other arrangements do not make the necessary provision.

Some, but limited unilateral measures currently adopted by African CoOs

Certain African CoOs make some provision in their legislation and policy frameworks for unilateral portability of certain social security benefits and the conclusion of BSAs. However, while limited provision is made for seconded workers to be covered by origin country social security systems, many African countries have not (yet) extended the reach of their own public social security systems to capture their migrant workers abroad, although promising exceptions exist.⁹⁷ Also, while 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, these measures are incomplete. Similarly, family members of migrant workers, in particular family members staying behind in countries of origin, are largely neglected in the policy, legal and institutional domains of countries of origin.

Source: (Draft) *Guidelines on the Development of a Model Migrant Welfare Programme/System* (2021) par 8.

II.10. Limited provision for CoO unilateral measures in international and regional instruments

- *Some soft law reference is made to CoO unilateral measures.* International and regional standards and instruments do not regulate this particular phenomenon. However, reference to these actions by CoOS is increasingly being made in what can be regarded as “soft law” and explanatory and implementing instruments.
 - At the Asian regional level, the 2007 *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* encourages countries of origin to set up policies and procedures to protect their workers when abroad.
 - In the event of SAARC, the draft *Social Protection Action Plan* encourages action by the countries of origin to provide a basic level of protection to their nationals working abroad through voluntary insurance, to pay benefits abroad, and to ensure safe migration.
 - Of particular relevance is also the (non-binding) *ILO Multilateral Framework on Labour Migration* (2006), which provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved. A recent guide for policymakers and practitioners provide valuable and updated information on CoO measures: see *ILO Extending social protection to migrant workers, refugees and their families* (2021).

⁹⁷ 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.” In Kenya, 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.

- *United Nations Global Compact for Safe, Orderly and Regular Migration (2018)*: Objective 22 of the Global Compact for Migration refers explicitly to the establishment of “... dedicated instruments, such as migrant welfare funds in countries of origin that support migrant workers and their families”.
- *African Union (Draft) Guidelines on the Development of Model Migrant Welfare Programme/System (2021; endorsed 2022)*. The Guidelines, which largely inform the structure and content of this Manual, provide a comprehensive range of guidelines covering:
 - Background and rationale
 - Establishment of a migrant welfare programme
 - Insurance-based arrangements
 - Support services
 - Implementation, with reference to: (i) Regulation, institutions and operations; (ii) Road map for the establishment of a MWP; (iii) Strengthening the regulatory environment; and (iv) Supporting arrangements.
- *Purposes and objectives of the Guidelines*.⁹⁸ The Guidelines suggest ways and means to address gaps and shortcomings in existing law, policy and practice in African CoDs regarding the treatment and protection, including social protection, of their migrant workers abroad and their dependants. The Guidelines provide a model template and guidelines for policymakers and practitioners in CoDs to establish a migrant welfare programme (MWP), adopt insurance-based arrangements, extend support services and invest in measures to implement these interventions, based on guiding international (including African) instruments on human and labour rights, labour migration and social protection; global frameworks (SDGs and the *Global Compact for Safe, Orderly and Regular Migration (2018)*); as well as relevant tools and good practice experiences.
 - Operationalizing the Guidelines may involve collaboration with *governments and other role-players* in countries of destination too. The Guidelines are by their nature voluntary and flexible; they aim at assisting countries that may wish to consider establishing a MWP, adopt insurance-based arrangements, extend support services and invest in measures to implement these interventions. The Guidelines are therefore *not prescriptive*, but they document a set of good practices, administrative and operational procedures for Member States who wish to set up such systems.
 - The Guidelines are informed by the *following sources*: (i) Universal (i.e. international) and African (pan-African and REC) charters, protocols and other instruments on human and labour rights, labour migration and social protection, as well as associated policy and legal frameworks; (ii) Global and sectoral social development and migration frameworks (e.g. SDGs and the *Global Compact for Safe, Orderly and Regular Migration (2018)*; ILO *Multilateral Framework on Labour Migration (2006)*); Perspectives from governments, social partner stakeholders and civil society in African Union member countries; (iii) Perspectives from governments, social partner stakeholders and civil society in African Union member countries; (iv) Research/policy reports; and (v) Comparative good practice experiences and tools.

⁹⁸ African Union (Draft) *Guidelines on the Development of a Model Migrant Welfare Programme/System (2021)* paras 11–13.

Questions

- (1) What are the challenges experienced by migrant domestic workers in accessing SP? What steps have been taken, and could potentially be taken to address these challenges?
- (2) What would you regard as the main value, but also shortcomings of BSAs and MSAs in extending SP for MWs and their families.
- (3) What is it necessary for CoOs to adopt measures to extend SP to MWs and their families, and what are the key characteristics of such measures?
- (4) Do you think the CoO SP measures provide a useful tool for SP extension to workers abroad, and their families?

Group activity

- (1) In your region, what are the main challenges experienced by African MWs in accessing SP and welfare assistance in CoDs. Do these challenges differ in relation to different CoDs and different categories of MWs? What steps have been, or could be taken to address these challenges?
- (2) Consider the SP position of MWs in an irregular situation in your country. Do they have access to SP? What can be done to have their status regularized?
- (3) Traditionally, BL(M)As made limited provision for SP for MWs and their families. Consider the impact of recent global and African guiding frameworks to achieve better SP outcomes for African MWs and their families.
- (4) Advise your government concerning the challenges experienced with BSAs and MSAs and how these could be overcome.
- (5) Bearing in mind African but also other good practice examples, what kind of provisions could be introduced into BSAs and MSAs to enhance SP for MWs and their families?

Key resources

African Commission on Human and Peoples' Rights (ACHPR) (2010). *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights*.

Atong, K., E. Mayah and A. Odigie (2018). *Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda – An African Trade Union Overview*. ITUC-Africa.

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MODULE C

Guiding principles

III.1. Aims of Module C

- Explain why it is necessary to respect SP as a human right, in light of the recognition of SP as a human right in global and African instruments.
- Provide an overview of the relevance of two key overarching policy considerations, i.e. the nexus between migration and development; and the relationship between regional integration and freedom of movement.
- Reflect on the operation of diplomatic and consular support in the context of the provision of welfare assistance and rolling out of SP to workers abroad and their families.
- Indicate the importance of available SP during all stages of the migration experience and to all categories of affected migrants.
- Reflect on the need for and scope of measures to achieve the objective of gender-sensitive and gender-responsive SP.
- Consider the required institutional coordination and intergovernmental collaboration when CoOs extend SP to workers abroad and their families.
- Reflect on the need for a well-developed evidence base to support extending SP coverage to MWs and their families by CoOs.

III.2. Learning Outcomes for Module C

- Evaluate what is meant by respecting SP as a human right when extending CoO SP arrangements to workers abroad and their families by CoOs.
- Understand the operation of two key overarching policy considerations in relation to the extension of SP by CoOs, i.e. the nexus between migration and development; and the relationship between regional integration and freedom of movement.
- Appreciate diplomatic and consular support as critical components of facilitation and providing SP and welfare assistance.
- Appreciate the need for CoO SP interventions to be gender-sensitive and gender-responsive.
- Be familiar with coordination and intergovernmental collaboration in extending CoO SP to workers abroad and their families.
- Appreciate the need for a well-developed evidence base to support extending SP coverage to MWs and their families by CoOs.

III.3. Overview of Module C

- There is a need for respecting SP as a human right, given the weak coverage of SP in Africa and in key destination areas for African migrants.
- SP is recognized as a human right in several United Nations instruments, bearing in mind also the important role of SP floors, and in key African instruments.
- Key overarching policy considerations are also relevant, i.e.:
 - The nexus between migration and development – with a focus on the developmental benefits of migration, and as confirmed in UN and African Union guiding frameworks.
 - The relationship between regional integration and freedom of movement – given Africa’s focus on accelerated regional integration; the enhancement of SP in freedom of movement with a view to serving the cause of regional integration.
- Diplomatic and consular support is key to the provision of welfare assistance and rolling out SP to workers abroad and their families, and may also be exercised on behalf of third countries.
- SP support should be available during all stages of the migration experience, and to all categories of affected migrants.
- SP measures introduced by CoOs have to be gender-sensitive and gender-responsive, as informed by the global and continental normative and guiding framework, and given the specific context of prevailing (discrimination in) SP provisioning.
- CoO SP interventions require institutional coordination and intergovernmental collaboration, as well as the close involvement of the social partners and other key stakeholders, including the recruitment industry, civil society entities, MWs and returned MWs and their representative institutions, legal aid clinics and advocacy institutions; and also with CoD governments and relevant CoD role-players (including foreign employers).
- Extending SP coverage and welfare assistance to MWs and their families by CoOs has to be informed by a well-developed evidence base, also as regards labour migration data, and as aligned with international, continental and regional data frameworks, while addressing data shortcomings.

III.4. Social protection as a human right

- *Need for respecting SP as a human right, given the weak coverage of SP in Africa and in key destination areas for African migrants. As a region, globally Africa has the weakest coverage in terms of SP. Only 17.4 per cent of the African population have access to at least one SP benefit (excluding health-care and sickness benefits), as opposed to the global figure of 46.9 per cent. In the Arab States 40 per cent of the population are so covered, but with significant exclusions for migrants and migrant workers in particular, especially in GCC countries, as was discussed in Module BII.4.⁹⁹*
- *SP is globally recognized as a human right. Several global instruments recognize SP, in particular understood in the narrower social security sense, as a right accruing to everyone, including MWs and their dependants. It has been embedded in *Universal Declaration of Human Rights* (1948) (in particular: Articles 22 and 25), and the *International Covenant on Economic, Social and Cultural Rights* (1966) (in particular: Article 9). It has also been embedded in the Sustainable Development Goals (SDGs); some SDG targets*

⁹⁹ ILO *World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future* (2021), pp. 19, 47.

(e.g. 1.3, 3.8, 5.4, 10.4) refer explicitly to social protection. It is further one of the pillars of the ILO's concept of Decent Work. Also, the United Nations *Political Declaration of the High-level Meeting on Universal Health Coverage (2019)*¹⁰⁰ emphasizes the need to empower those who are vulnerable or in vulnerable situations, including among others migrants, and address their physical and mental health needs which are reflected in the 2030 Agenda for Sustainable Development (par 70); and address the particular needs and vulnerabilities of among others migrants, which may include assistance, health care and psychological and other counselling services (par 71).

United Nations instruments confirming SP as a human right

Universal Declaration of Human Rights (1948)

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 25: 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Economic, Social and Cultural Rights (1966)

Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11(1): The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Article 12(1): The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

- *SP floors are closely linked to universal SP coverage, as is also advocated for in the United Nations Sustainable Development Goals and the United Nations Global Compact for Safe, Orderly and Regular Migration. There is a close correlation between SP floors and the Sustainable Development Goals (SDGs), adopted in 2015, covering the period until 2030. For example, SDG 1.3 reflects the joint commitment of countries to “implement nationally appropriate social protection systems for all, including floors” for reducing and preventing poverty. As suggested by the ILO World Social Protection Report 2017–2019 and elaborated on in the ILO World Social Protection Report 2020–2022, this commitment to universalism reaffirms the global agreement on the extension of social security achieved by ILO Recommendation No. 202.¹⁰¹ Furthermore, Objective 22 of the United Nations Global Compact for Safe, Orderly and Regular Migration (2018) (“Establish mechanisms*

¹⁰⁰ United Nations *Political Declaration of the High-level Meeting on Universal Health Coverage “Universal health coverage: moving together to build a healthier world (2019)*.

¹⁰¹ ILO *World Social Protection Report 2017–2019: Universal social protection to achieve the Sustainable Development Goals (2017)*, p. xxix; ILO *World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future (2021)*, pp. 30–37.

for the portability of social security entitlements and earned benefits”) is of particular relevance. In terms of this Objective, States commit themselves to –¹⁰²

- Non-discriminatory national SP systems, including SP floors for nationals and migrants;
 - Conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits for MWs; and
 - Integrate and implement provisions on the portability of entitlements and earned benefits into national social security frameworks, address the difficulties women and older persons can face in accessing SP, and establish dedicated instruments, such as migrant welfare funds in countries of origin, that support migrant workers and their families.
- *Key African instruments also emphasize SP as a human right and stresses the obligation on countries to ensure access to minimum levels of SP.* 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 Peoples’ Rights* (1982) (also known as 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.¹⁰³
 - The *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Citizens to Social Protection and Social Security* (2022),¹⁰⁴ which essentially focuses on citizens, confirms that SP has to be human rights-based (Article 2(b); see also Article 3(1)(a)), and based on the principle of non-discrimination (Article 2(d)). This implies among others a minimum package of essential SP, which should at least cover the basic needs of all (Article 3(b)(iii)).
 - 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* (SPIREWORK) (2011), confirm these minimum core obligations, as is the case with a number of recent African Union human rights protocols.
 - The 2007 *Code on Social Security in the SADC* is an example of a REC instrument endorsing the right to SP, also for migrants (Art. 17).
 - The constitutions of several African countries also recognize SP (in particular 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, also in Africa.¹⁰⁵
 - *Equality of treatment* in SP (i.e. of migrants and nationals) is recognized in 22 of 31 African countries recently surveyed. Approximately half of these countries also have some legal social security coverage for migrant domestic workers.¹⁰⁶

¹⁰² See par 38 of the United Nations *Global Compact for Safe, Orderly and Regular Migration* (2018).

¹⁰³ African Commission on Human and Peoples’ Rights (ACHPR) *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples’ Rights* (2010): paras 81, 82(a).

¹⁰⁴ Adopted by the Thirty-Fifth Ordinary Session of the Assembly, held in Addis-Ababa (Ethiopia), on 6 February 2022.

¹⁰⁵ African Union Report on *Labour Migration Statistics in Africa* (Second edition (2017)) (2019), p. 47.

¹⁰⁶ African Union Report on *Labour Migration Statistics in Africa* (3rd edition, 2019), p. 47.

Advancing social protection in Africa to achieve human rights outcomes

“Social protection is a fundamental human right enshrined in many national, regional and global instruments. Extending social protection to all, including migrant workers and their families, is key to ensuring income security for all, reducing poverty and inequality, achieving decent work and reducing vulnerability and social exclusion. In times of crisis, solid national social protection systems can act as automatic social and economic stabilizers. In recognition of the critical role of social protection, Africa has articulated the strong desire to advance social protection. These include, the *Yaoundé Tripartite Declaration on the implementation of the Social Protection Floor* (2011), the African Union Commission’s *Ouagadougou+10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development* (2015), the *2015 Addis Ababa Declaration on Transforming Africa through Decent Work for Sustainable Development*, and the *Africa Union Agenda 2063*.”

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 45.

III.5. Key policy considerations

Two of the key policy considerations, which have a direct bearing, also for CoOs, on the rationale for enhancing migrant’s access to SP, but on also the contribution made by SP in these areas, relate to: (1) the nexus between migration and development; and (2) the interrelationship between (labour) migration, regional integration and freedom of movement.

(1) Migration and development

- *Migration and development are strongly linked.* Following the first United Nations High Level Dialogue on Migration and Development in 2006, in its ground-breaking and direction-setting 2009 *Human Development Report*,¹⁰⁷ the UNDP commented comprehensively on the nexus between migration and development, and made specific recommendations on mainstreaming migration into national development planning.

The nexus between migration and development

Regarding the former, i.e. the migration–development nexus, the UNDP indicated that there is a range of evidence about the positive impacts of migration on human development (that is, putting people at the centre of development), through such avenues as increased household incomes and improved access to education and health services. The report indicates that there is further evidence that migration can empower traditionally disadvantaged groups, in particular women. However, at the same time, risks to human development are also present where migration is a reaction to threats and denial of choice, and where regular opportunities for movement are constrained. Generally, the movement of migrant workers is said to be caused by so-called “push” and “pull” factors. The “push” factors include a low standard of living and the lack of work opportunities, while the “pull” factors refer to (among others) the availability of relatively well-paid work in the receiving country. The labour migration process is further aided by ever-improving systems of communication and transportation.

- *Developmental benefits of migration.* The UNDP report suggests that migrants boost economic output, while in their countries of origin, the impacts of movement are felt in higher incomes and consumption, better education and improved health, as well as at a broader cultural and social level. In particular, moving generally brings benefits, most directly in the form of remittances sent to family members.

¹⁰⁷ UNDP *Human Development Report: Overcoming Barriers: Human mobility and development* (2009).

- Furthermore, most internal and international migrants benefit from higher incomes, better access to education and health, and improved prospects for their children. However, barriers to mobility are especially high for people with low skills, despite the demand for their labour. This may stem from the fear that these migrants displace local workers and reduce wages, especially in the absence of a well-managed migration framework and process. Also, many migrants face systemic disadvantages, making it difficult or impossible for them to access local services on equal terms with local people – in particular when they migrate across borders irregularly.¹⁰⁸
 - As has been noted, migration, if properly managed, can contribute to poverty alleviation and the growth and prosperity not only of individuals but also of both countries of origin and destination.¹⁰⁹
 - Indeed, “[D]iasporas contribute to the development of their countries of origin through the promotion of foreign investment, trade, access to technology and financial inclusion.”¹¹⁰
 - Apart from these and other economic contributions (such as driving entrepreneurship and innovation), the 2020 *World Migration Report* also highlights: (i) migrants’ sociocultural contributions (e.g. food and sport): “It has long been observed that migrants bring with them new ideas, values and practices, sometimes referred to as ‘social remittances.’”; and (ii) migrants’ contributions in civil-political terms (such as participation in governance and politics, also in the country of origin, including involvement in peace-building; and engagement in civil support).¹¹¹
 - Therefore, mobility generally brings benefits, most directly in the form of remittances sent to family members. Simultaneously, measures need to be adopted to arrest potential negative developmental consequences that may flow from, among others, uncontrolled irregular migration.
- *United Nations and African Union guiding frameworks stress the importance of recognizing and giving effect to the link between migration and development. Considering these dimensions, the Global Compact for Safe, Orderly and Regular Migration (2018), rooted in the 2030 Agenda for Sustainable Development, builds upon the recognition that migration is a multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination, which requires coherent and comprehensive responses. It acknowledges that migration contributes to positive development outcomes and to realizing the goals of the 2030 Agenda for Sustainable Development, especially when it is properly managed.*
 - *The 2018 Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018–2030) emphatically endorses the critical focus on migration and development, noting that there is ample evidence of the complex linkages between migration and development, and a growing understanding of these linkages.*

¹⁰⁸ UNDP *Human Development Report 2–3*.

¹⁰⁹ https://publications.iom.int/system/files/pdf/iom_migration_and_development.pdf.

¹¹⁰ UN DESA *International Migration 2020 Highlights*.

¹¹¹ IOM *World Migration Report 2020* (2019), p. 161–183.

Mainstreaming migration into development

“Mainstreaming migration in economic development planning entails assessing the implications of migration on the goals, objectives and activities of national/regional development plans, with a view to improving overall development outcomes. It requires integrating migration concerns at all stages of development planning, including design, implementation, monitoring and evaluation. This ensures that migration is viewed as an issue that affects all aspects of human development, and is entrenched in the broader development strategy and therefore fosters a coherent approach rather than piecemeal, uncoordinated actions. This process, in essence, constitutes migration and development.”

Source: *Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018-2030)*, p. 69.

(2) Regional integration and freedom of movement

- *Relationship with regional integration.* Freedom of movement in Africa is closely linked to the idea of Pan-Africanism, and the vision of a united Africa. This has given rise to the development of continental approaches to political and economic integration in Africa.
- *Continental and regional institutions.* In June 1991, the then Organisation of African Unity (OAU) Heads of State and Government signed the *Treaty Establishing the African Economic Community* (the Abuja Treaty). The then existing Regional Economic Communities (RECs) were included in the continental integration agenda, while the remaining regional economic communities – IGAD (formed in 1986), AMU (formed in 1989), CEN-SAD (formed in 1998), and EAC (formed in 1999) – were all recognized as RECs after the Abuja Treaty.

The Abuja Treaty and African regional integration

“The Abuja Treaty is arguably the most important agreement as regards economic, social and political collaboration, coordination and convergence in Africa as it lays out the future of the continent with the establishment of an African Economic Community. The integration process is set to cover a period of 34 years from 1994 to 2028.”

Source: Olivier, M. *Free Movement of Persons in the Common Market for Eastern and Southern Africa (COMESA)* (Trainers Manual, 2017), p. 22.

- *Establishment of the African Union.* In 1999, the Heads of State and Government called for the *establishment of an African Union* (the Sirté Declaration) in conformity with the ultimate objectives of the OAU Charter and the provisions of the *Abuja Treaty*. This gave rise to the *Constitutive Act of the African Union*, in Lome, Togo on 11 July 2000 and the inaugural launch of the African Union in Durban, South Africa on 9 July 2002.
- *Agenda 2063.* In 2015, the African Union adopted *Agenda 2063*. *Agenda 2063* provides a framework for comprehensive and accelerated regional integration and development in Africa. This document prioritizes the integration of the continent, emphasizes the free movement of people, and an African citizenship and passport.

The African Union's Agenda 2063: political unity, seamless borders, free movement of people and an African citizenship and passport

- **Aspiration 2:** An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance.
- The political unity of Africa will be the culmination of the integration process, including the free movement of people, the establishment of continental institutions, and full economic integration.
- The dream of continental unity would be attained.
- Africa shall be a continent of seamless borders.
- There will be an African citizenship and passport.
- Two of the Agenda 2063 flagship programmes meant to be fast-tracked are: (i) the establishment of a Continental Free Trade Area (CFTA), and (ii) the African passport and free movement of people.

Source: African Union's *Agenda 2063: The Africa we want (The Vision for 2063)*; AUC *Agenda 2063: The Africa we want (Framework Document)* chapter 2.

- The *Abuja Treaty*, in Article 43(1), enjoins African Member States to adopt measures aimed at freedom of movement, also at bilateral and regional levels:

The African Union mandate to establish free movement regimes at RECs and bilateral levels

"Member States agree to adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community."

Source: *Treaty Establishing the African Economic Community (AEC)* (1991), Article 43(1).

- The foundational instrument for institutionalizing free movement of people is the *Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, the Right to Residence and the Right of Establishment* (2018) (*Free Movement Protocol*). This is provided for in article 43(2) of the *Abuja Treaty*.
- The *Free Movement Protocol* recognizes and emphasizes the close link between freedom of movement and access to SP benefits. It stipulates in Article 19 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."
- *Equality of Treatment*. In fact, free movement regimes generally require *equality of treatment* for those covered by a free movement instrument.
- *Free movement of labour* has been a core focus of regional integration. The *Free Movement Protocol* stipulates in Article 14:
 - "1. Nationals of a Member State shall have 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."
 - "2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants."

- *REC provisions on free movement of labour and social security.* Several RECs in Africa provide specifically for the movement of workers and associated matters, such as access to social security benefits, within the framework of free/liberalized movement regimes. This is provided for in, among others, the Free Movement Protocols of –
 - EAC (Article 10 of the EAC *Common Market Protocol*)
 - ECOWAS (Article 3 of the ECOWAS *Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, Right of Residence and Establishment*)
 - COMESA (Article 9 of the COMESA *Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence*)
- Also, in the Southern African context, mention should be made of SADC *Labour Migration Action Plan (2020–2025)*, which encourages the promotion of bilateral agreements to ensure the portability of social security benefits.¹¹² Also in the IGAD context, Objective 11.1 of the IGAD *Draft Roadmap for Implementation of the Regional Ministerial Forum on Migration (RMFM)* provides specifically for the development, adoption and implementation of bilateral and multilateral labour migration agreements containing arrangements that would among others incorporate reference to health and well-being of migrants during all phases of migration.
- The *social security/protection-free movement-regional integration nexus* is therefore indispensable for the proper understanding of the protection extended to MWs, also by CoOs, and the role, objectives and interpretation of BLAs, BSAs and MSAs, to the extent that free movement and regional integration imperatives may be applicable to the parties to the agreement.

III.6. Diplomatic and consular support¹¹³

- *A normative framework.* Diplomatic and consular support is informed by a normative framework which is relevant for the adoption of unilateral measures by CoOs.
- The *Vienna Convention on Diplomatic Relations (1961)*, 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” (Article 3(1)(a) and (c)).
- Diplomatic missions fulfil *consular functions* (Article 3(2)).

Countries of Origin’s consular functions in support of MWs’ welfare in countries of destination

- According to the *Vienna Convention on Consular Relations (1963)*, consular functions 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 (Article 3(a), (c) and (i)).

¹¹² SADC *Labour Migration Action Plan (2020–2025)* (2020) par 3.2.2. See also *Guidelines on the portability of social security benefits in SADC* (2020), Guidelines 2 and 5.

¹¹³ Partly taken (and adjusted) from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 15.

- Consular functions may also be exercised by a sending state *on behalf of a third State*, upon notification to the receiving state (Article 8).
- Demand for consular services for MWs and their dependants has been rising, at times supported by intergovernmental consular agreements as well as BLAs and BSAs, 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, also on behalf of third countries.
- SP-specific consular services are varied and include: (i) delivery of indispensable documents to access certain benefits (e.g. life certificates to facilitate accessing pension benefits abroad); (ii) direct provision of benefits (e.g. hardship support); (iii) provision of information on CoD and CoO welfare systems; and (iv) assistance to access SP benefits, whether in the CoO or CoD.
- In the absence of a continuing physical presence, consular services can also be rendered on a mobile basis. Consular services are also rendered electronically.

Source: Vienna Convention on Consular Relations (1963); Haynal, G., Welsh, M., Century, L. and S. Tyler *The Consular Function in the 21st Century: A report for Foreign Affairs and International Trade Canada* (University of Toronto 2013) 1-1-1-2; 1-11-1-17; 2-1-2-6; 2-64-2-70; Lafleur, J.-M. and Vintila, D. "Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27" in Lafleur, J.-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond* vol 2 (Springer 2020) 1-31 at 8, 15-17; Vintila, D and Lafleur, J.-M. "The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlement, Consular Services, and Diaspora Policies" in Lafleur, J.-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond* vol 3 (Springer 2020), pp. 1-38 at 32-33

- "[S]tates tend to leave these concepts [e.g. "consular affairs"] open to interpretation which, *de facto*, leaves significant discretionary power to consulates in dealing with citizens abroad ..."¹¹⁴

III.7. Support during all stages of the migration experience for all categories of affected migrants¹¹⁵

- *Support for orderly migration for employment and development should be available during all stages of the migration experience.* CoO measures should respond to the needs of MWs and their families during all stages of the migration cycle/experience: before departure, during the time abroad and upon return.
 - They should ensure the realisation of SP and welfare assistance of MWs and their dependants, simultaneously contributing optimally to the economic, social and human development of CoOs and CoDs.
- *All categories of affected MWs and their family members should benefit.* Prospective, existing and returned MWs, including MWs on short-term engagements and active in the informal economy, as well as their family members, should benefit from these measures.

III.8. Gender-sensitive and gender-responsive considerations

- The United Nations SDGs recognize that increasing numbers of migrant workers are female (referred to as the "feminization of migration") by highlighting the need to protect migrant domestic workers (target 5.4). Women MWs work in a largely informal and unregulated sector, and are therefore commonly subject to labour exploitation and abuse.

¹¹⁴ Lafleur, J.-M. and Vintila, D. "Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27", p. 8.

¹¹⁵ Partly taken (and adjusted) from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 16.

- For example, as was highlighted in Module BII.5, common practices under the Kafala sponsorship system, such as tying visas and therefore migration status to a single employer, can increase the risk of women workers being exposed to abuse, exploitation and sexual and gender-based violence.¹¹⁶
- The African Union *Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018–2030)* (2018) suggests that the feminisation of migration could contribute to gender equality, as women become economically empowered, gain new skills and take on different roles in the countries of origin, transit and destination.
 - Also, as indicated in the MPFA, the migration of men may also positively affect gender roles, as women who stay behind take on greater responsibility in the household and have increased decision-making power.¹¹⁷
- Yet, many female migrants (and at time men and boys too) face gross violations of their rights as they are exposed to gender-based discrimination, sexual and gender-based violence and other forms of abuse, with no or limited access to effective legal protection.¹¹⁸
- Gender stereotyping and the over-representation of women migrants in the informal economy and irregular work, as well as in the care economy, accentuate their particularly vulnerable position.¹¹⁹

Discrimination in accessing SP: a gendered lens

- “Women workers, especially migrants, face multiple forms of discrimination when attempting to access social protection. In many countries, social insurance schemes are designed around a male breadwinner model based on the assumption that each family has an uninterrupted, full-time worker in the formal economy. Informality and persistent inequality in the earnings of men and women, particularly those from marginalized communities, limits women migrant workers’ ability to meet the qualifying conditions for social insurance schemes. They may also be at higher risk of sexual and gender-based violence, abuse, exploitation and human trafficking, further exacerbating their vulnerability.”
- “The prevalence of insurance schemes based on a male-breadwinner model is largely a result of the fact that women’s child-bearing and -raising activities often remove them from the workforce for extended periods of time and that, once they re-enter the labour market, they are more likely than men to take up part-time employment. Although this has been changing over the past few decades, the male breadwinner model is still common in more conservative countries that follow a patriarchal family model, including those from which many migrants originate.”

Source: ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 200.

¹¹⁶ IOM *Migration and the 2030 Agenda: A guide for practitioners* (2018), p. 26.

¹¹⁷ African Union *Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018-2030)* (2018), pp. 77–78.

¹¹⁸ Ibid.

¹¹⁹ ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), pp. 203, 213–214.

Normative basis for gender-responsive social protection for migrant workers: United Nations/ILO instruments

- A vast number of United Nations and ILO standards and instruments provide the normative basis for promoting *gender-responsive* SP for MWs:¹²⁰
 - The right to social security across all social (security) risk areas (including health care);¹²¹
 - Equality of treatment with nationals, and men, regarding SP entitlements;¹²²
 - Protection against gender-based violence and harassment;¹²³
 - Equality of opportunity and treatment for men and women, responding to discrimination arising from or exacerbated by conflicts or disasters;¹²⁴
 - Regarding women MWs in the informal economy, the promotion of gender equality and non-discrimination, and the progressive extension of social security and maternity protection to all workers in the informal economy, as well as the encouragement of the “provision of access and affordable quality childcare and other care services in order to promote gender equality in entrepreneurship and employment opportunities ...”;¹²⁵
 - Applying certain principles when devising national SP floors: non-discrimination, gender equality and responsiveness to special needs; and social inclusion, including of persons in the informal economy;¹²⁶
 - In relation to domestic workers, conditions not less favourable than those applicable to workers generally in respect of social security protection, including regarding maternity;¹²⁷
 - A period of maternity leave of not less than 14 weeks and cash benefits (at least two-thirds of previous earnings or a comparable amount) should be provided to; women and children should receive medical benefits, including prenatal, childbirth and postnatal care and, where necessary, hospitalization;¹²⁸
 - With a view to the creation of effective equality of opportunity and treatment for men and women workers, all measures shall be taken to take account of their needs in terms and conditions of employment and in social security;¹²⁹ and
 - Equal treatment (with nationals), irrespective of, e.g. nationality or sex, for immigrants lawfully within the territory, in respect of social security.¹³⁰

Source: ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), pp. 205–211.

¹²⁰ Ibid., pp. 205–212.

¹²¹ United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), Articles 1 and 27.

¹²² Ibid.; *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (1979) Articles 11 and 12.

¹²³ ILO *Violence and Harassment Convention*, 2019 (No. 190), Article 11.

¹²⁴ ILO *Employment and Decent Work for Peace and Resilience Recommendation*, 2017 (No. 205), paragraph 15.

¹²⁵ ILO *Transition from the Informal to the Formal Economy Recommendation*, 2015 (No. 204) paragraphs 7, 11, 15 and 21.

¹²⁶ ILO *Social Protection Floors Recommendation*, 2012 (No. 202) paragraphs 3(d) and (e), 8(a) – including as well free prenatal and postnatal medical care for the most vulnerable.

¹²⁷ ILO *Domestic Workers Convention*, 2011 (No. 189) Article 14(1).

¹²⁸ ILO *Maternity Protection Convention*, 2000 (No. 183).

¹²⁹ ILO *Workers with Family Responsibilities Convention*, 1981 (No. 156) Article 4.

¹³⁰ ILO *Migration for Employment Convention (Revised)*, 1949 (No. 97) Article 6.

- *Resulting gender-sensitive and gender-responsive measures.* All SP-focused and -related measures introduced by CoOs should be gender-sensitive and gender-responsive. The measures to be so implemented are vast and partly flow directly from the international standards set out above and the guidance contained in other global and Africa-focused complementary agendas.
- *United Nations SDGs provide comprehensive guidance.* The following should in particular be highlighted:
 - Target 5.4 emphasizes the need to “recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.”
 - Target 5.6 stresses universal access to sexual and reproductive health and reproductive rights, as globally agreed.
 - Target 5.c requires the adoption and strengthening of sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.
 - Target 8.8 concerns the protection of labour rights and the promotion of safe and secure working environment for all workers, including MWs, in particular women migrants, and those in precarious employment. Securing the SP rights of women MWs, and of women dependants of men MWs, would give effect to this SDG target.
- *The Global Compact for Migration gives comprehensive expression to the SDG goals.* It includes under the Global Compact for Migration Vision and Guiding Principles the following overarching framework:

“Gender-responsive: The Global Compact ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood.”
- The Global Compact for Migration advocates for an *extensive range of measures that have a direct or indirect bearing on SP for women MWs and women affected by migration*, several of which are unpacked elsewhere in this Manual. The following, among others, can be highlighted:
 - It argues for minimizing the adverse drivers and structural factors that compel people to leave their CoO, including through gender equality and empowerment. (Objective 2)
 - In order to promote safe, orderly and regular migration for women, gender-responsive pre-departure and on-arrival information should be available (Objective 3)
 - In enhancing the availability and flexibility of pathways for regular migration, there is need to (Objective 5):
 - Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements, and labour mobility schemes;
 - “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”.

- It highlights the application of a gender-responsive approach in addressing vulnerability, and for this purpose to review relevant policies and practices; establish comprehensive policies and develop partnerships; and develop “gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women, girls and boys, which may include assistance, health care, psychological and other counselling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation”. (Objective 7)
- Gender-responsive consular protection, assistance and cooperation throughout the migration cycle should be enhanced. (Objective 14)
- “Empower migrant women by eliminating gender-based discriminatory restrictions on formal employment, ensuring the right to freedom of association, and facilitating access to relevant basic services, as measures to promote their leadership and guarantee their full, free and equal participation in society and the economy.”; and invest in gender-responsive skills development. (Objective 16)
- Objective 20 focuses on the promotion of faster, safer and cheaper transfer of remittances and the gender-responsive financial inclusion of migrants and their families.
- Countries should invest in gender-responsive return and reintegration programmes (Objective 21).
- The African Union *Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018–2030)* (2018) among others emphasizes the strengthening of response to the particular needs of migrant women and girls; the need for knowledge generation and awareness on the tendered dimensions of migration in Africa; support for associations and networks of migrant women, and enhancing their voices in policy dialogue processes at national, regional, continental and global level; effective steps to counter migrant trafficking and smuggling; and ensuring adequate treatment and access to justice.¹³¹

III.9. Institutional coordination and intergovernmental collaboration; social partner and multi-stakeholder engagement¹³²

- *Coordination and collaboration required.* The successful development and roll-out of CoO measures are dependent on close coordination and collaboration amongst different governmental and other public entities entrusted with implementing SP and welfare support measures in the CoO, and in consular offices.
- *Engagement with social partners and other stakeholders.* Also required is collaboration with social partners (employers’ and workers’ organizations) and other role-players, including private employment agencies, civil society entities, MWFs, returned MWFs, migrant workers’ associations, and other concerned agencies.
- *Cooperation with CoD governments and other entities.* Cooperation with governments of and other stakeholders in CoDs, including foreign employers, private employment agencies, legal aid clinics and advocacy institutions, may be needed to ensure SP 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

¹³¹ African Union *Migration Policy Framework for Africa (MPFA) and its Plan of Action (2018–2030)* (2018), pp. 78–79.

¹³² Partly taken (and adjusted) from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 18.

such conditions; provision of legal assistance; establishment of safe houses), and the achievement of development objectives (e.g. diaspora engagement; investment in skills training).

Country of origin government-level institutions engaged with migrant workers' affairs

A range of CoO governmental institutions may be engaged. Some CoOs have dedicated ministries assigned to diaspora affairs and/or migrant workers abroad. The recently established Department of Migrant Workers in the Philippines is an example of the latter. Romania's Ministry for Romanians abroad is an example of the former. More frequently, sub-ministerial institutions or other public agencies answerable to government, would be assigned with these tasks. The fact that these institutions or agencies are often linked to ministries of labour emphasizes the preference given to labour migrants/MWs abroad.

Source: Lafleur, J.-M. and Vintila, D. "Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27" in Lafleur, J.-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond* vol 2 (Springer, 2020) 17–20; Vintila, D and Lafleur, J.-M. "The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlement, Consular Services, and Diaspora Policies" in Lafleur, J.-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond* vol 3 (Springer, 2020) 33–34.

- *Representative institutions.* Several countries provide a legal mandate for the official representation of diaspora affairs (including the plight of MWs) in the CoO or CoD. There are essentially two types of interest-representation so provided for: (i) Legislative-level representation, for example in CoO national parliaments; and (ii) Representation by appointed or elected bodies, for purposes of dialogue and consultation.¹³³
- *Welfare representatives.* Several countries also make use of welfare officers and labour attachés, attached to consulates abroad, to engage with MWs and their families and their welfare/SP need. The Philippines is a country that makes use of both categories of officials.

III.10. Building an evidence base and sharing lessons of global practice and experience¹³⁴

Rationale for data collection, analysis and use

"The 2030 Agenda for Sustainable Development called on policymakers to improve migration governance and to take migration and development linkages into account. To that end, data are required not only for the design of policies but to monitor their impact as well. The 2030 Agenda also emphasizes that no one should be left behind. Yet, many migrants are likely to have been 'left behind' as a result of national policies that do not properly address their concerns or needs. Furthermore, the Global Compact for Safe, Orderly and Regular Migration advocates for the collection and use of accurate and disaggregated data to support evidence based policies."

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 9.

¹³³ Lafleur, J.-M. and D. Vintila. "Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27" 20–21; Vintila, D and Lafleur, J.-M. "The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlement, Consular Services, and Diaspora Policies", p. 34.

¹³⁴ Partly taken (and adjusted) from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 19.

Labour migration data:

The continental approach – Labour Migration Statistics in Africa reports

“Statistics on international migration in Africa, including labour migration, are collected by the organizations comprising the African Statistical System, with the main contributors reporting at the national and regional level.”

“According to the Strategy for the Harmonization of Statistics in Africa 2017–2026, the aim of the African Statistical System is to generate ‘reliable, harmonized and timely statistical information covering all dimensions of [the] political, economic, social, environmental and cultural development and integration for Africa.’”

“African countries have accordingly committed themselves to producing high-quality statistics. National statistical offices (NSOs) have been designated in all African countries and tasked with producing official statistics and making them accessible to governments, the business community and the public.”

“Statistics and data from the NSOs are the main data source for the survey that was conducted to gather information for this report. The data collected by the NSOs originate from population censuses, household surveys and economic surveys. Data are also collected or compiled by other national bodies, such as the government agencies in charge of immigration services and labour market-related matters, central banks and employment service centres.”

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 55.

- *Typical shortcomings.* Data shortcomings experienced by CoOs include: (i) Administrative and statistical data are scattered across a range of departments and agencies and not coordinated; (ii) Many African countries do not yet have a functional Labour Market Information System; and (iii) There is no regular collection and analysis of existing labour migration data.
- *Alignment with international, continental and regional data frameworks.* The gathering and reporting on labour migration statistical data, also for emigration purposes, should be aligned with the migration statistics conceptual framework adopted by the United Nations Statistical Commission in 2021. Also, in accordance with the relevant SDG indicators, there may be a need to coordinate both statistical and administrative analysis and dissemination, standardization of indicators, and disaggregation of indicators per migratory status, but also by race, gender, sector and geographical location, as well as per other relevant SDGs indicators.
- *Evidence-based.* CoO SP 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 CoDs, migrants' skills and employment profiles, migrant stocks and flows, migrants' rights and entitlements (also in the labour law sense), migrant working and living conditions, SP needs and coverage, legal protection and supervisory mechanisms, as well as normative, legislative and regulatory frameworks.
- *Coordinating structure and data collection.* There may be a need to invest in a joint structure, involving the national statistical office and relevant government departments as well as key civil society organizations (including research institutions) to achieve coordinated labour migration data analysis, dissemination, standardization and disaggregation of indicators.
- *Data sources.* The possible introduction of an emigration module into labour force, community and/or census surveys to provide data on MVWs and their dependants residing abroad for purposes of employment could be considered, as well as consultation of and liaison with statistical offices of CODs.

- *Labour Market Information Systems.* The establishment of a Labour Market Information System with clear linkages to labour migration should be contemplated.
- *Data protection.* Data collection and treatment should respect personal privacy rights and data protection standards.
- *Learning from experience.* Increasingly, CoOs in the Global North and the Global South have been investing in designing and implementing CoO welfare support measures for their MWs and their families abroad. There is much that African countries could learn in this regard, in particular from the experiences of key Asian and Latin American CoOs.

Improving statistics on SP for MWs: the JLMP framework

“To enhance social protection for migrant workers, the Joint Labour Migration Programme (JLMP) continues to promote the systemic collection and analysis of statistical information. In addition to the publication of the African Union Labour Migration Statistics report, these include support to the East and Central African Social Security Association (ECASSA) on the inclusion of a migration component on its social protection dashboard, and the inclusion of a migrant module in the ILO Social Security Inquiry (SSI) Questionnaire. The data collection and analysis will serve multiple purposes: (1) enable the production of comparable statistical data between the social security agencies at national and regional levels; (2) inform policymaking and support the administration and delivery of social protection, including the coordination of social security; (3) support countries in monitoring progress made towards the achievement of social protection related SDGs and African Union Agenda 2063 targets.”

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 53.

Questions

- (1) Consider the impact of SP as a human right on the protection of MWs and their families by a CoO.
- (2) Evaluate the SP support needed during the different stages of the migration cycle, and how this support will differ for different MW categories.
- (3) Suggest improvement in the data environment to provide effective support to making available SP support to workers abroad and their families.

Group activity

- (1) Formulate a policy brief for your government on the value of (i) the nexus between migration and development; and (ii) the relationship between regional integration, as key policy considerations for introducing a MWP.
- (2) Develop for your ministry of foreign affairs, a policy position paper on the need for diplomatic and consular support, specifically as regards SP and welfare assistance, for the benefit of workers of your country abroad, and their families. Indicate in the paper what can be done to enhance such support and what lessons can be learnt from comparative experiences.
- (3) Consider the need for and scope of dedicated measures to be adopted to ensure that SP, in particular for workers abroad and their family members, is gender-sensitive and gender-responsive.
- (4) Advise your ministry of labour on the required institutional coordination and intergovernmental collaboration needed for extending SP to workers abroad and their families, also bearing in mind the need to engage with various role-players and stakeholders.

Key resources

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MODULE D

Establishment of a migrant welfare programme

IV.1. Aims of Module D

- Reflect on the achievements of MWP/migrant welfare funds (MWFs) and also the challenges faced by MWP/MWFs.
- Provide an overview of the factors that may be relevant in determining whether there is a need to establish a MWP/MWF.
- Explain the different modalities that are available to be considered for the design of a MWP/MWF.
- Reflect on the different sources of funding, as well the range of contributors and beneficiaries to be specified.
- Consider the good governance, including financial governance, principles that should inform the establishment and implementation of a MWP/MWF.

IV.2. Learning Outcomes for Module D

- Understand the various achievements but also different challenges associated with a MWP/MWF.
- Be able to determine, when the establishment of a MWP/MWF is considered: (i) The factors to be considered; (ii) The design modalities; and (iii) The services/benefits that need to be available at the different stages of the migration experience.
- Appreciate the sources of funding to be considered in establishing and implementing a MWP/MWF, as well as the range of contributors and beneficiaries.
- Understand the good governance, including financial governance arrangements that need to inform the establishment and implementation of a MWP/MWF.

IV.3. Overview of Module D

- MWP/migrant welfare funds (MWFs) are often government-operated and provide a range of services, which include limited SP insurance-based arrangements.
- Achievements of MWP/MWFs include the generation of significant income for the benefit of and provision of much-needed and effective assistance to migrants.
- However, MWFs face several challenges – among others they can be costly, their services may not be well-known, and capacity to implement them may be lacking.

- It is necessary to determine whether there is a need to establish a MWP/MWF. Several factors may be relevant, including among others the number of MWs abroad and their location(s); the impact of dual nationality and/or loss of citizenship of the CoO; and the operation of bilateral or multilateral agreements.
- Different design modalities have to be considered – e.g. whether: (i) An existing scheme/fund will be used, or transformed; or (ii) a new or dedicated scheme/fund will be set up.
- Other critical decisions concern which services/benefits need to be available at the different stages of the migration experience, and whether these services/benefits will be introduced incrementally.
- The gender dimension needs to be factored in to ensure that the services rendered and benefits provided are gender-sensitive and gender-responsive, also for women who stay behind.
- Sources of funding, as well as the contributors and beneficiaries need to be specified. Different funding sources may be considered, including contributions by the affected workers, foreign employers, recruitment agencies and/or government financial support. However, the contributory capacity of workers is a critical matter to be considered.
- MWPs/MWFs must have good governance, including financial governance characteristics, informed by a sound legal and preferably also policy framework; a supervisory institution reflecting multi-stakeholder interests with statutorily well-defined powers, functions and obligations; and financial governance arrangements.

IV.4. Description, objectives and operational framework of a Migrant Welfare Programme (MWP)

- In Module A 1.4.2 of this Manual we stressed that governments of CoOs establish MWPs to provide additional *welfare benefits and services* to their migrant workers at the CoDs, often using a fund (sometimes referred to a *Migrant Welfare Fund (MWF)* for this purpose.
- MWPs/MWFs are often *government-operated*, although *public agencies* answerable to government ministries are also at times established (as in the case of Philippines). There may also be some involvement of *private sector insurance companies*.
- We also indicated that such funds may *supplement the social security benefits and compensation* of migrant workers.
- MWPs, in particular where a dedicated MWF exists, would typically provide an extensive range of *services* to MWs and their families, both abroad and at home.
- *In summary, MWPs therefore provide several services, which include limited social protection insurance-based arrangements.* Despite considerable country-specific differences, a range of core services are rendered by MWPs. 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:

Typical services provided within migrant welfare funds

Core Service	Secondary Service
Insurance against health, disability and health.	Vocational training.
Repatriation of workers due to contract violations, fraudulent job placement, and/or physical violence.	Scholarships for university education, or education fees for families of migrants.
Pre-departure training and information.	Re-integration loans upon return.

Source: Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), p. 129 (Adapted from Agunias, D. and N. Ruiz *Protecting Overseas Workers: Lessons and Cautions from the Philippines* (Migration Policy Institute, 2007). Available at: www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf. See also Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 57–59.

IV.5. Evaluation of MWPs/MWFs: Achievements and challenges

- *Migrant welfare assistance is essentially a human rights issue.* The importance of properly designed migrant welfare funds derives from the reality that this type of assistance is essential in order for MWs and their families to realize their human rights, including rights to social security, health care and access to justice.¹³⁵
- *Migrant welfare funds can generate significant income for the benefit of and provide much-needed and effective assistance to migrants.* An ILO-published *Blueprint to establishing a Migrant Welfare Fund* is contained in Annex 1. A 2011 IOM study concerning the experience of Colombo Process countries remarks as follows, in relation to the Philippines OWWA:¹³⁶

“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 ...”

¹³⁵ See Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), pp. 13, 125–128, 157.

¹³⁶ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), p. 60.

Key characteristics and usefulness of migrant worker funds: Colombo Process Member States experiences

“Overall, the various schemes of the CPMS are funded by mixtures of fees charged to migrants, PRAs, 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.”

and

“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.”

Source: Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 132. Authority omitted.

- *Nevertheless, migrant welfare funds face several challenges.* The 2011 IOM study referred to earlier¹³⁷ and a subsequent 2015 IOM study¹³⁸ 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, one could add, the appointment of labour attachés and other support personnel.
 - MWs 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.
 - MWs continue to face barriers to accessing health services.
 - Providing direct support in the CoD 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.

¹³⁷ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 64–65.

¹³⁸ Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), pp. 132–133, 158–159.

- Private sector actors may provide helpful services; however, the often negative experience with private recruitment agencies in relation to abuse and exploitation of MWs highlights the need for better regulation and monitoring.
- *Financial sustainability a key consideration.* 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.¹³⁹

IV.6. Need for establishing a MWP¹⁴⁰

- *Carefully consider a range of factors.* In considering the need to establish a MWP, careful account of a range of factors has to be taken, including:
 - The number of MWs abroad and whether they are (in)sufficiently covered in SP terms (e.g. as regards employment injury, health care, sickness, maternity, disability, unemployment, retirement, survivors' and family protection) and/or in respect of welfare assistance in the key CoDs.
 - Also important is the need to "... not increasing migration costs to 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."¹⁴¹
- *Other considerations may also be relevant.* These include:¹⁴²
 - The impact of dual nationality and/or loss of citizenship of the CoO – under these circumstances the MWs concerned are likely to benefit from the SP and welfare support system of the CoO, impacting on the rationale for accommodating such workers under CoO arrangements.
 - The operation of a bilateral or multilateral agreement regulating SP for the affected workers, and SP guarantees provided for in free movement regimes.

IV.7. Design of a MWP and services/benefits to be provided¹⁴³

- *Different design modalities are possible.* Once the need to establish a MWP is confirmed, the attention shifts to a *suitable programme design*.
 - An *existing* scheme/fund set up by (for example) government, or recruitment agencies, to assist migrant workers abroad may exist and could be used, or transformed, to fulfil the purposes to be achieved by the MWP.
 - Alternatively, it may be necessary to set up a *new or dedicated scheme/fund*.

¹³⁹ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 52.

¹⁴⁰ Partly taken from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 21.

¹⁴¹ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 15.

¹⁴² See Lafleur, J.-M. and D. Vintila "Do EU Member States Care About their Diasporas' Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27" 3–4; Vintila, D and J.-M. Lafleur, "The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlement, Consular Services, and Diaspora Policies", pp. 32–33.

¹⁴³ Partly taken from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 22.

Services or benefits to be provided by the migrant welfare programme

It is necessary to decide *which services/benefits* will be provided by the MWP. In addition, it must be determined:

- Whether such services or benefits will be introduced *incrementally*, as the fund/scheme grows, or needs and conditions *change*;
 - Which services/benefits need to be available:
 - At the *pre-departure stage* (e.g. information-sharing; skills training; pre-departure orientation);
 - While migrant workers are *abroad* (e.g. social security support or welfare and related services, including medical or legal assistance; protective interventions to help address abusive and/or discriminatory treatment, and lack of decent working and living conditions); and
 - *With a view to and upon return* (e.g. ensuring access to social security benefits; preparation for return; reintegration of returned migrant workers; reskilling; and access to business support).
-
- The circumstances that would give rise to finance the *repatriation* of migrant workers need to be indicated (e.g. an emergency; loss of employment beyond the control of the worker; repatriation of deceased migrant workers).
 - A key consideration influencing decisions regarding the nature, type and range of services/benefits is the *gender dimension*. Gender-sensitive and gender-responsive measures imply, for example, that there could indeed be a need to adopt dedicated measures to ensure that women who stay behind are appropriately covered by social security arrangements and enjoy education and other support to ensure their children are appropriately protected. Gender-sensitive and gender-responsive interventions are further discussed in Module EV.9.

IV.8. Sources of funding, contributions and beneficiaries: specification¹⁴⁴

- *Sources of funding, contributors and beneficiaries need to be specified.* Apart from initial capital often provided by national governments to help establish a MWP, the ongoing funding source(s) for a MWP could be varied.
 - State practice reveals that the funding could derive from capital investments by governments, foreign employers, recruitment agencies and/or migrant workers.
 - Also, “(P)ivate sector insurance companies are increasingly important to the mix, with contributions often compulsory.”¹⁴⁵
- *Contributory capacity* of in particular migrant workers (and especially migrant workers in the informal economy) is critical: setting the level of contributions too high would constitute a disincentive to contribute; yet, an underfunded MWP would not be able to render meaningful support.

¹⁴⁴ Partly taken from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 23.

¹⁴⁵ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015) 132. Authority omitted. See also Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), pp. 52–53.

- Therefore, *government financial support* may be called for. In several countries, there is a tendency to *incentivize* contributions by informal economy workers, among others via providing a government subsidy to contributions by low-income and informal economy workers¹⁴⁶ – extending this to migrant workers of the CoO abroad could be considered.
 - The *source of government (co-) funding* needs to be determined – e.g. as a standard budgeted item; through earmarked taxes; or another dedicated funding source (for example, a levy on the licensing fees payable by private employment agencies).
- The *beneficiaries* also need to be indicated with precision. Apart from (contributing) migrant workers, *family members* ought to be included. The issue of whether *irregular migrant workers* should be supported via CoO funding arrangements requires difficult decision-making, especially in circumstances where the migrant worker in an irregular situation did not/was not able to contribute.

IV.9. Governance, including financial governance

- *The need for good governance, including financial governance.* A strong MWP/MWF governance system, linked to well-defined financial powers, control and accountability, is imperative.
 - A dedicated legal (and preferably also policy) framework should contain explicit provisions regarding the governance of a MWP/MWF.
 - A supervisory institution, which could be a government institution or an institution over which government has significant control, such as a Board or Secretariat, should be in place.
 - Multi-stakeholder interests should be represented in the composition of the supervisory institution.
 - The powers, functions and obligations of the supervisory institution should be well-defined in law, as is the case with the rights and obligations of all affected stakeholders, including MWs.
 - Financial governance arrangements, stipulated by law, should provide for sound financial management and oversight, to ensure financial sustainability of a MWF.

¹⁴⁶ See among others Nguyen, Q. and Cunha, N. *Extension of social security to workers in informal employment in the ASEAN region* (ILO, 2019), p. 59.

The Foreign Employment Welfare Fund of Nepal: governance arrangements

In Nepal, labour migration governance mainly vests in the Ministry of Labor, Employment and Social Security. The *Foreign Employment Welfare Act, 2007* provides for the establishment of the Foreign Welfare Fund (FEWF) under the Foreign Employment Promotion Board (FEPB). In practice and operationally, the functions of the Board are executed by the Foreign Employment Board Secretariat (FEBS), headed by a government-appointed Executive Director; the Government of Nepal provides necessary employees for the Secretariat. The composition of the Board embraces representatives of government institutions and of multiple other stakeholders. Article 39 of the 2007 law stipulates the functions, duties and powers of the Board. The law provides that the FEWF “shall be established under the Board for the social security and welfare of the workers who have gone for foreign employment and return from foreign employment and their families” and stipulates the funding sources of the FEWF, as well as the use and operation of the FEWF (Articles 32 and 33). The accompanying *Foreign Employment Rules (2008)* regulate in detail the deposit of funds into the FEWF and the financial operation of the FEWF – amounts received must be deposited into a commercial bank specified by the Board, the operation of which requires the countersignature of the Executive Director and the accounts chief of the Board. The services for which the deposited funds may be employed, are stipulated in the law.

Questions

- (1) Consider, in your country, the range of factors which are important to be considered with a view to establishing a MWP/MWF
- (2) Reflect on the achievements of but also challenges associated with MWPs/MWFs.

Group activity

- (1) In a policy brief developed for your government, argue the case as to whether a MWP/MWF should be established or should not be established. For this purpose, consider: (i) The need for establishing a MWP/MWF, or otherwise; (ii) The factors that may be relevant in determining whether the MWPMWF should be established; and (iii) The achievements and challenges in other countries and the specific context of your country.
- (2) Provide advice to the technical working group set up to establish and implement a MWP/MWF regarding: (i) The possible and proposed modalities for establishing and implementing the MWP/MWF; (ii) Funding sources to be relied on; (iii) The range of beneficiaries and criteria for benefiting; and (iv) Appropriate governance arrangements.

Key resources

Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM.

African Union Guidelines on the Development of a Migrant Welfare Programme/System

Foreign Employment Welfare Act, 2007 (Nepal).

Foreign Employment Rules (2008) (Nepal).

Jones, K. (2015). *Recruitment Monitoring and Migrant Welfare Assistance: what works?* IOM.

Lafleur, J-M. and D. Vintila (2020). “Do EU Member States Care About their Diasporas’ Access to

Social Protection? A Comparison of Consular and Diaspora Policies across EU27” in Lafleur, J-M. and D. Vintila. *Migration and Social Protection in Europe and Beyond*, 2:1–31. Springer.

Martin, I. and S. Makarayan (2015). *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin*. European Training Foundation.

Nguyen, Q. and N. Cunha (2019). *Extension of social security to workers in informal employment in the ASEAN region*. ILO.

Vintila, D. and J-M. Lafleur (2020). “The Immigration-Emigration Nexus in Non-EU Sending States: A Focus on Welfare Entitlement, Consular Services, and Diaspora Policies” in Lafleur, J-M. and D. Vintila (eds.) *Migration and Social Protection in Europe and Beyond*, 3:1–38. Springer.



MODULE E

Insurance-based arrangements

V.1. Aims of Module E

- Provide an overview of the extension of the public (contributory) social security systems to MWs abroad by the CoO.
- Reflect on the modalities of extending CoO contributory-based social security arrangements to MWs and their dependants.
- Consider whether insurance-based SP provisioning should be delinked from CoO welfare assistance; involve public social security arrangements; and require compulsory participation.
- Reflect on the range of factors to be considered when contemplating the extension of SP to workers abroad and their families.
- Consider the social risks that should attract CoO SP responses when contemplating SP extension.
- Appreciate the gender gaps in accessing SP and effective measures that could be taken to provide context-sensitive gender-responsive interventions.
- Reflect on modalities to ensure a seamless, continued SP coverage for workers abroad, also when they return.
- Reflect on measures to be adopted by CoOs to provide SP to families of MWs abroad, and to migrant workers from the CoO engaged in the informal economy of the CoD.

V.2. Learning Outcomes for Module E

- Understand the available modalities to extend SP to workers abroad and their family members.
- Be able to identify and apply the factors that may influence whether and, if so, to what extent contributory social security arrangements should be extended by CoOs to their workers abroad.
- Appreciate the social risks to which workers abroad and their family members are exposed and the most appropriate SP responses to be adopted for this purpose.
- Understand the gender dimensions in SP provisioning for workers abroad and their dependants and appropriate interventions to be adopted to address these dimensions.
- Be familiar with measures to be adopted to ensure continued, seamless SP coverage, also when MWs return.

- Appreciate the measures that could be adopted by CoOs to provide better SP for family members of workers abroad and for workers from the CoO engaged in the informal economy in the CoD.

V.3. Overview of Module E

- CoOs increasingly, but to limited extent, extend their public social security systems to MWFs abroad and, at times, to their families. These include a limited, but growing number of African CoOs. A well-developed institutional framework usually accompanies the extension of social security benefits to workers abroad and their families. The Philippines provides a good example of these arrangements.
- Comparative studies indicate that while several contributory benefits (in particular, pensions and invalidity benefits) are so extended, non-contributory public social security benefits are rarely extended to MWFs and their families abroad.
- At times, however, special/dedicated 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.
- Currently, CoO insurance-based arrangements rarely extend comprehensive and sufficient social security coverage to MWFs and their families; this may require *delinking* social security extension from broader welfare and SP interventions. This also flows from the fact that, given their broad sweep and limited funding basis, MWFs/MWFs may not be able to cover many key social security risks.
- Nevertheless, several challenges may impede the extension of CoO social security measures. These include the weak development of social security systems in some CoOs, the absence of a mandate to operate extra-territorially, and the need for a strong and coordinated institutional framework and effective operational arrangements.
- Extending CoO social security arrangements requires the consideration of the range and adequacy of SP benefits available in the CoD, so as to avoid dual, or no, social security coverage.
- CoOs have to decide on the SP risks that should be provided for via insurance-based arrangements, bearing in mind the reality of the SP context in the CoO – with reference to the scope of SP provisioning and technical and operational capacity in the CoO.
- Ensuring portability of social security benefits from the CoD, as well as from the CoO, is a critical SP intervention.
- Assistance with paying social security benefits on behalf of the CoO, or verifying conditions for the making of payments by the CoO, may be provided for in a bilateral agreement.
- Appropriately designed and well-managed publicly arranged social security provisioning may have advantages over private insurance-based arrangements.
- Extending the reach of the public, national system of social security to also accommodate MWFs, would facilitate *streamlining* of MWFs' social security contributions, and compliance with eligibility criteria and benefits withdrawal, irrespective of whether the MWF works in the CoO or the CoD. In this way, a seamless continuation of social security coverage to the benefit of the worker is ensured.
- Compulsory coverage may strengthen social security coverage for MWFs abroad, but dual coverage challenges need to be overcome.

- There is an evident need to address gender gaps in accessing SP by adopting carefully designed and context-sensitive gender-responsive interventions. These interventions have to go beyond gender-neutral arrangements, and may require specialized measures to address gender-specific SP deficiencies in the areas of pension provisioning and SP for unpaid care work.
- Also, in concluding and implementing bilateral and multilateral agreements, gender-responsive considerations should be heeded.
- Of particular importance are arrangements aimed at facilitating portability of benefits; other social security coordination principles may also have to be implemented. Retention of membership of CoO social security schemes should also be seen as a priority intervention to ensure seamless, continued SP coverage for workers abroad, also when they return.
- CoOs should also advocate for the inclusion of MWs, including women MWs, in the public social security system of the CoD.
- More can be done to provide protection to families of MWs abroad, and in particular families staying behind in CoOs. In particular, consideration should be given to ensuring that dependants' and survivors' benefits, as well as family benefits are extended to them.
- MWs engaged in the informal economy of the CoD usually lack SP coverage in the CoD and often can also not benefit from CoO SP arrangements, as even informal economy workers in the CoD may not be sufficiently covered. However, on the basis of substantial and growing comparative evidence, CoOs should contemplate introducing SP coverage interventions for informal economy workers, bearing in mind the wide range of measures and supportive arrangements that are available to achieve this outcome.

V.4. A dedicated framework required¹⁴⁷

- *Countries of origin increasingly, but to limited extent, extend their public social security systems to MWs abroad, and at times, to their families.* In many countries, some provision is made in the legislative and policy domains of certain countries of origin for *unilateral portability* of certain social security benefits.
 - Several countries also, in the legal framework, provide for the *conclusion of BSAs*.
 - Furthermore, limited provision is made for *seconded workers* to be covered by the social security system of the CoO.
 - However, many countries have *not (yet) extended* the reach of their own public social security systems to capture their MWs abroad. Yet, promising exceptions exist, also in Africa.

¹⁴⁷ Partly taken from African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 24 as well as Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

African countries providing for unilateral extension of social security coverage to their workers abroad

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.” In Kenya, the *National Social Security Fund Act* (Act 45 of 2013) 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.

- *Recent comparative study outcomes – CoOs outside the European Union framework.* A recent comparative study, reflecting on certain key dimensions of country-of-origin SP involvement,¹⁴⁸ outside the European Union framework, summarizes the position as follows:

Comparative study: CoO SP engagement outside the European Union framework

- Employment status and residence in the country of origin are crucial. Moving abroad usually result in the loss of most social protection benefits, in particular social assistance. The territoriality principle appears to be the paramount consideration.
- However, certain exceptions exist:
 - In certain policy areas, notably pensions and invalidity, provision is made for exportability of benefits.
 - 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.
 - Bilateral and multilateral agreements play a crucial role to extend coverage.

Source: Lafleur, J-M. and Vintila, D. *Migration and Social Protection in Europe and Beyond: A Focus on Non-EU Sending States* vol 3 (IMISCOE Research Series) (Springer 2020)

- *Recent comparative study outcomes – European Union CoOs.* As far as European Union CoOs are concerned, the same study also draws certain conclusions.

Comparative study: European Union CoOs SP engagement

The (same) study notes that, on the basis of European Union social security co-ordination arrangements, access to substantive (i.e. contributory) social security protection is available for European Union migrants.

However, the study concludes that this is not generally true for non-contributory benefits, in particular social assistance: “It is also interesting to note that, in the area of social assistance – which is not covered by the EU social security legislation – most Member States have not implemented any financial assistance scheme for nationals abroad who are facing strong economic hardship beyond mechanisms of consular cash advances (sometimes non-reimbursable) usually designed to help citizens facing emergencies while temporarily abroad (e.g. tourists).”

The same study also remarks (at 29): “There is no EU Member State which has implemented extensive social protection policies for its diaspora without also having a well-developed institutional framework to engage with, consult or represent this population.”

Source: Lafleur, J-M and Vintila, D ‘Do EU Member States Care About their Diasporas’ Access to Social Protection? A Comparison of Consular and Diaspora Policies across EU27’ in Lafleur, J-M and Vintila, D *Migration and Social Protection in Europe and Beyond* vol 2 (Springer 2020), pp. 1–31 at 25–6

¹⁴⁸ (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 – in relation to 13 countries of origin outside the European Union framework.

- *Currently, CoO insurance-based arrangements rarely extend comprehensive and sufficient social security coverage to MWs and their families; this may require delinking social security extension 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 MW to the CoO.
 - Only in some cases is support extended to *family members*, including family members who stayed behind in the CoO.
 - Lack of awareness and problems experienced when *claiming* benefits are periodically raised as challenges.
- *Given their broad sweep and limited funding basis, MWPs/MWFs may not be able to cover many key social security risks.* This applies in particular to maternity, sickness and unemployment benefits, but at times also pension and health benefits.
- Therefore, it appears necessary to ensure that all key social security risks encountered by migrant workers and their families are sufficiently covered, even if incrementally.
 - This may require *delinking* social security provisioning by CoOs from broader welfare and SP support available to MWs abroad.
- *Few countries have started to extend CoO social security measures, either in the form of specialized schemes, or as an extension of national schemes, to MWs abroad and at times foreign nationals who originated from the CoO.* While not all social security benefits may currently be available to migrant workers and their families, CoOs appear to be investing increasingly in extending special scheme arrangements or existing public social security scheme arrangements to MWs abroad and, at times, also their families, even those remaining in the CoOs.
 - These include health coverage, even in CoDs, and portability of benefits. In doing so, CoOs 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 CoO social security measures.* In particular, public social security schemes in the CoO may be 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.

Social security for MWs abroad: the Philippine experience (1)

A particularly important and oft-quoted good practice example is the Philippines, which has incrementally expanded social security coverage for the benefit of Filipino MWs. Measures progressively adopted by the Philippines government over the last few decades include:

- Filipino workers recruited by foreign-based employers abroad may be covered by the Social Security System (SSS), provided for under the *Social Security Act 1997*, on a voluntary basis.¹⁴⁹ However, it is now incumbent on the 2.3 million *Overseas Filipino Workers (OFWs)* to compulsorily contribute to the Filipino Social Security System (SSS).¹⁵⁰
- 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).¹⁵¹ However, in some countries Filipino migrant workers already enjoy comprehensive health coverage; the contribution payable to the Philippine universal health-care system places a significant burden on Filipino MWs abroad.¹⁵²

Social security for MWs abroad: the Philippine experience (2)

Other CoO social security measures, for the benefit of Filipino MWs, progressively adopted by the Philippines over the last few decades, include:

- 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 OFWs¹⁵³ – registration (on a two-yearly basis) is compulsory for OFWs whose employment contracts have been processed at the POEA and voluntary for nationals who left as non-contract workers and later acquired foreign employment. Social security benefits available against the payment of a contribution include among others: (i) death benefits; (ii) disability and dismemberment benefits; (iii) burial benefit; and (iv) health-care benefits.¹⁵⁴
- 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*,¹⁵⁵ amending the *Migrant Workers and Overseas Filipinos Act of 1995*,¹⁵⁶ and include: (i) accidental death; (ii) permanent total disablement; (iii) medical evacuation and medical repatriation; and (iv) subsistence allowance in the course of a case or litigation for the protection of the OFWs' rights in the receiving country.¹⁵⁷

¹⁴⁹ *Social Security Act, 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 that there are limited numbers of land-based OFWs covered under SSS because of the voluntary membership policy. It would appear necessary to address the gap by covering land-based OFWs as compulsory members of SSS.

¹⁵⁰ See section 9-B of the *Social Security Act, 2018 (Republic Act No 11199)*.

¹⁵¹ See sections 4(f), 5 and 9 of the *Universal Health Care Act, 2018 (Republic Act No 11223)*.

¹⁵² See Ople, R *Why Filipinos in Italy strongly oppose the Philippines' Universal Healthcare Law*; Hilotin, J *86% spike in health insurance premium for Filipinos; what you must pay from 2019 to 2024*, 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>.

¹⁵³ The *Overseas Workers Welfare Administration Act, 2015* stipulates in section 34, which deals with 'Guiding Principles' as follows: "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."

¹⁵⁴ *Overseas Workers Welfare Administration Act, 2015* section 35(3).

¹⁵⁵ *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.*

¹⁵⁶ *Republic Act No 8042 of 1995: Migrant Workers and Overseas Filipinos Act of 1995.*

¹⁵⁷ *Ibid.*, section 37A, inserted by section 23 of Republic Act No 10022 of 2009.

- Social security benefits or insurance provided for in the employment contract between the foreign employer/principal and the OFW, again in the event that the OFW has been recruited by a licensed recruitment agency – for which the employer/principal and the recruitment or placement agency incur joint and several liability.¹⁵⁸

V.5. Range and adequacy of social protection benefits available in country of destination to be considered¹⁵⁹

- Consider the range and adequacy of social protection (SP) benefits available in CoD(s). A key consideration concerns the extent and sufficiency of current social security coverage available to MWFs and their families in CoDs concerned, as CoO arrangements should not be seen to duplicate what is provided for in the CoD.
 - This raises the question whether MWFs of the CoO have access to *contributory* benefits in key CoDs, the difficulty attached to accessing some of these benefits (e.g. challenges with accessing long-term benefits by short-term migrant workers), and the adequacy of the value and regularity of the benefits.
 - It has to be borne in mind that tax-funded *non-contributory* social security benefits are usually not available to MWFs in CoDs.
 - A related consideration is whether the SP coverage in the CoD is *compulsory or voluntary*. In particular in the latter case, CoOs may consider extending CoO benefit arrangements if, for example, SP provisioning in the CoD is minimal or otherwise insufficient.
- A proper mapping exercise is indispensable. In order to evaluate the scope, content and adequacy of SP available in key CoDs where workers from the CoO may be employed, it is imperative to undertake a proper mapping of the social security systems of these CoDs. Having undertaken this exercise, CoOs have the evidence base available to design a calibrated CoO SP response framework.

V.6. Social protection risks to be provided for via insurance-based arrangements¹⁶⁰

- Consider the reality of the SP context in the CoO. Many African CoOs have weak, but developing welfare regimes and social security systems – which restricts the extent to which meaningful SP can be extended.
- In addition, the *technical and operational capacity* to make CoO 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 the IOM or the ILO, could prove invaluable.
- Decide on the social protection risks that should be provided for via insurance-based arrangements.

¹⁵⁸ Migrant Workers and Overseas Filipinos Act of 1995, section 10, amended by section 7 of Republic Act No 10022 of 2009.

¹⁵⁹ See also African Union Guidelines on the Development of a Migrant Welfare Programme/System par 25, from where this has essentially been taken.

¹⁶⁰ See also African Union Guidelines on the Development of a Migrant Welfare Programme/System par 26, on which this part is partly based. See also Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

Consider the range and scope of CoO social security measures to be extended

- “The decision regarding the range of CoO SP benefits to be provided to MWs of the CoO would also be influenced by factors associated with the CoO itself – including the *availability of such benefits* to contributors in the CoO and the *capacity* of the CoO to make available such benefits abroad.”
- “The assumption is that, subject to exceptional circumstances (including emergency relief), CoOs would rarely be able to extend *non-contributory benefits*, hence the focus on insurance-based arrangements.”
- “Responses may differ according to the social security risk involved.”
- “The list of social security but also broader SP benefits to be considered include medical care (including type and level of medical care), sickness benefits, disability cover, survivor’s support, family support (including child benefits), benefits associated with occupational injuries and diseases, unemployment benefits, maternity and paternity protection, retirement provision, life insurance, benefits to cover risks to which family members in the CoO and/or abroad may be exposed to (e.g. medical care, children’s education), and repatriation costs.”
- “Importantly, it may not be possible to immediately extend all envisaged social security benefit types. There may be a need, therefore, to prioritize certain benefits (for example, benefits with immediate impact, such as health-care support), and to introduce other social security risk benefits gradually.”

Source: African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 25.

- *Ensuring portability of social security benefits from the CoD is a critical SP intervention.* It has been reported that, with reference to the experience in Colombo Process (CP) countries –¹⁶¹

“Some CP governments have also focused on ensuring that returnees will have access to the social security earned while working abroad – an issue more 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 bilateral social security agreements 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 South Korea.”

 - However, it has been remarked that it remains *difficult to achieve* what is needed – i.e. ensuring that the wages and social security benefits earned abroad can be fully transferred back home with minimal costs.¹⁶² Bilateral and multilateral arrangements, explained in the next point, may be indispensable to achieve this outcome.
- *Ensuring portability of social security benefits from the CoO is also a critical SP intervention.* A related question concerns the issue of portability of *accrued* social security benefits (e.g. a retirement benefit) by the CoO.
 - Usually, portability of benefits is specifically provided for in BSAs.
 - Often, *CoO social security laws* provide for some measure of portability of accrued benefits, even in the absence of BSAs.

¹⁶¹ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), p. 66.

¹⁶² *Ibid.*, p. 72.

- This may be in the form of *lump-sum* instead of regular payments, especially where regular payments may be institutionally or logistically challenging. Nevertheless, regular payments are generally to be preferred and may require adjustment in payment regimes, to ensure ongoing protection.

Unilateral payment of social security benefits by the CoO

In South Africa, the *Compensation for Occupational Injuries and Diseases Act* (Act 130 of 1993) provides that if an employee or a dependant of an employee to whom a pension is payable in terms of the Act is resident outside the country or is absent from the country for a period or periods totalling more than six months, the Director-General of the relevant ministry may award a lump sum as determined by him/her in lieu of such pension. Upon payment of such lump sum the right to the pension shall expire. See section 60.

- *International obligations may require the payment of social security benefits on the basis of reciprocity.* For example, ILO Convention 2 of 1919, the *Unemployment Convention*, 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).
- *Assistance with paying social security benefits on behalf of the CoO, or verifying conditions for the making of payments by the CoO.* A CoO social security institution may rely on a CoD social security institution to make social security payments on behalf of the CoO institution, or to assist the CoO by verifying, in the CoD, whether the beneficiaries qualify for the receipt of benefits by the CoO.

CoOs assisting CoDs with verification of information needed to determine eligibility for a social security benefit

The Netherlands and South Africa concluded a BSA in 2001 regulating assistance with the payment of social security benefits (effectively, payment of such benefits by the Netherlands). In terms of the agreement, the competent institution of the CoD (e.g. the South African social security institution) shall, at the request of the CoO (e.g. Dutch) social security institution, verify the information regarding the beneficiary or members of his/her family. Depending on the benefit type, this could include the submission of proof of identity and/or medical reports and other information provided by the CoD social security institution, regarding a beneficiary residing in the CoO.

Source: *Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa on Social Security of 16 May 2001* (Tractatenblad, 2001-06-22, No 114, 1–9) available at <https://zoek.officielebekendmakingen.nl/trb-2001-114.HTML>.

V.7. Modalities for extending country-of-origin insurance-based arrangements and ongoing social security protection¹⁶³

- *The absence of appropriate SP for African MWs in many CoDs requires the adoption of innovative SP extension modalities.* It is clear that, given the absence of meaningful social (security) protection in several CoDs, innovative solutions need to be found to extend CoO protection to African migrant workers.

¹⁶³ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 27 as well as Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

- *Different modalities present themselves.* These include extending existing in-country social security protection to MWs 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 learnt.
- *Appropriately designed and well-managed publicly arranged social security provisioning may have advantages over private insurance-based arrangements.* Well-designed and -managed public, national social security arrangements applicable to MWs abroad may imply savings on the part of the contributing MW, provided the MW is not required to pay an additional or a double contribution in the absence of an employer contribution.
 - In fact, there has increasingly been a tendency to extend public, national social security schemes to MWs of the CoO and their dependants, subject to necessary adjustments. In the global south context, the Indonesian and the Philippine examples should in particular be indicated.
 - Regarding the payment of double contributions, it could barely be expected of the MW to pay additional or double contributions in the absence of contributions by foreign employers. However, this may impact on the value of the benefit to which the MW or their dependants may be entitled.
- *Seamless continuation of social security coverage: streamlining of MWs' social security contributions.* Extending the reach of the public, national system of social security to also accommodate MWs, would facilitate *streamlining* of MWs' social security contributions, and compliance with eligibility criteria and benefits withdrawal, irrespective of whether the MW works in the CoO or the CoD. In this way, a seamless continuation of social security coverage to the benefit of the worker is ensured.

V.8. Compulsory coverage may strengthen social protection for migrant workers abroad, considering dual coverage challenges¹⁶⁴

- *Compulsory coverage may strengthen social security coverage for MWs abroad, but dual coverage challenges need to be overcome.* Some countries have made insurance-based coverage compulsory for their MWs.
 - However, in doing so, CoOs have to be mindful of the real possibility that some CoDs *oblige* migrant workers present in their countries to contribute to COD 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 MW concerned may be required to contribute to a scheme covering the same social security risk in *both* the CoO and CoD – as is evident from the Philippine experience indicated above.¹⁶⁵
 - This can be avoided by stipulating that the obligation to contribute to the CoO scheme only applies to the extent that the MW is *not already covered* under a similar arrangement in the CoD and/or by entering into a BSA, which contains an appropriate arrangement aimed at avoiding dual coverage.

¹⁶⁴ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 28 as well as Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

¹⁶⁵ See Module E V.4 above.

- *Importantly, requiring migrant workers to mandatorily contribute to welfare/social security schemes providing meaningful coverage increases the costs of migration.*¹⁶⁶ Ways and means need to be found to enable MWs to so contribute, including among other *subsidized schemes/contributions* and the *dedicated use of remittances* to help MWs and their families to contribute to such schemes.

V.9. Gender-sensitive and gender-responsive interventions

- *The need to address gender gaps in accessing SP.* It has been remarked that “Gender gaps in access to social protection arise from the gendered characteristics of the labour market and the structure of the social security system, including social protection and the public services infrastructure. Globally, this system is not gender-neutral; it burdens women and girls with inequality and stereotypes about the division of labour.”¹⁶⁷
- *Gender-responsive SP interventions may have to go beyond gender-neutral SP arrangements.* Carefully designed and context-sensitive gender-responsive interventions may have to be adopted to ensure meaningful SP access and coverage for women affected by migration. As has been noted: “A gender-neutral approach to migration policy ignores the power dynamics and implications of socioeconomic and sociocultural structures and definitions at home, abroad and in gender-segregated labour markets.”¹⁶⁸
 - Many of the required responses have to be adopted at the level of national system reforms, including reforms of CoO labour market and SP systems. Bilateral and multilateral arrangements on their own would be insufficient to achieve a sufficient gender-responsive response.
- *Selected measures that CoOs could adopt to achieve meaningful gender-responsive SP coverage and access for women affected by migration include the following:*

Women MWs and pension provisioning

- *Contributory pension schemes for women engaged in the formal economy need to be appropriately adjusted.* This will be a crucial intervention to improve contributory outcomes for migrant women abroad (assuming the CoO has extended its contributory regime to its workers abroad), also when they return to the CoO, and for women who stay behind in the CoO and are working in the formal labour market. The rationale for this crucial intervention flows from the following:¹⁶⁹

“Women who have worked in the formal economy and have contributed to a pension scheme have a lower average pension income than men, often substantially so. These gaps in pension income reflect the gender gaps in remuneration, working hours and the duration of working life. Differences in wages may be rooted in the underlying variation of education and skill levels and in gender discrimination. In addition, the statutory pension age may be lower for women than for men, resulting in shorter contribution periods and, as a result, lower pension benefits. An additional hurdle that migrant women may face is the absence of a social security agreement ensuring the portability of pension benefits across borders, or of unilateral measures authorizing the exportability of acquired pension benefits.”

¹⁶⁶ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 13.

¹⁶⁷ ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 213.

¹⁶⁸ *Ibid.*, p. 201.

¹⁶⁹ *Ibid.*, pp. 213, 218.

- *Non-contributory pensions may be specifically required when migrant women engaged in the informal economy return to the CoO. Irrespective of whether women MWs in the informal economy had access to CoD or CoO pension arrangements (which would, given current state practice, rarely be the case), there is need to ensure that returning women MWs have access to national SP floor arrangements upon return to the CoO.*

Source: ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 213 (authorities omitted)

- *Unpaid care work poses particular challenges for women affected by migration, and requires dedicated policy interventions. Traditionally, even outside the framework of domestic work arrangements, involvement in the care economy (so-called care work) rarely attracts coverage under SP arrangements. Needed interventions, including for women affected by migration, is a key concern.*

SP for unpaid care workers

“Globally, women spend two to ten times as much time as men on unpaid care work owing to gendered social norms that view unpaid care work as their responsibility. This, in addition to their paid activities, often places a double burden of work on women, especially migrants, as socioeconomic, demographic and environmental transformation increases the demand for care workers. In fact, ‘across regions, sectors and occupations, migrant care workers are mainly women engaged by private households, in informal settings, working in the informal economy without full access to social protection and basic labour rights’. Many of these workers migrate under temporary schemes, leaving their own families in the care of other family members or domestic workers. This creates ‘global care chains’ under which inequality persists since many national policies do not address unpaid care work. Countries should ensure a more equal distribution of this work through flexible working schedules, shared parental leave and the extension of social protection to women, especially migrant women, through SPFs.”

Source: ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 214 (authorities omitted)

- *In concluding and implementing bilateral and multilateral agreements, gender-responsive considerations should be heeded. Among others, the precarious SP position of domestic MWs in many CoDs should prompt their inclusion under the SP system of, in the first place the CoD and, in the second place, the CoO – to be provided for in BL(M)As, BSAs and MSAs. To achieve this outcome, it would be important to obtain information on the (coverage and access dimensions of the) SP systems of both the CoD and CoO to help direct the negotiations about, content of, and implementation of bilateral and multilateral agreements. Also, “[W]here possible, a gender balance in the negotiation team should be ensured.”¹⁷⁰ It has been suggested that a gender-responsive social security agreement should include provisions on:¹⁷¹*
 - Access to health care (including reproductive health care, pre- and post-partum maternity care and gender-specific preventive care);
 - Maternity, paternity or parental benefits, taking into account the specificities of the MWs covered by the agreement; and
 - Survivors’ benefits, using gender-responsive language that takes into account the fact that the breadwinner and the dependent survivors may be women or men.

¹⁷⁰ Ibid., p. 216.

¹⁷¹ Ibid., pp. 217, 218.

- *Portability of benefits and the implementation of other social security coordination principles are key to providing meaningful SP coverage for (women) MWs.* Among others, the payment of maternity benefits in the country concerned (CoD or CoO), to which the women MW contributed, would support migration and allow women MWs to access maternity benefits. The same would apply to other benefit types, such a pension or disability benefits.
- *Retention of membership of CoO social security schemes.* In order to ensure seamless and continuing SP coverage, CoOs should consider allowing MWs, including women MWs, to retain their membership of the CoO social security scheme. In some countries, such provision is indeed made, as is the case with the inclusion of Filipino OFWs in the Filipino Social Security System, even while they are working abroad.
- *Advocate for the inclusion of MWs, including women MWs, in the public social security system of the CoD.* In many instances currently, migrant domestic workers in particular enjoy some SP coverage on the basis of individual employer liability – the foreign employer may be compelled by law or in the contract of employment to provide certain social security benefits to the foreign worker concerned. However, these benefits rarely match those available under public schemes and may enforce the gender-based division of labour in the household.¹⁷²

Complementary measures needed to address practical barriers to women MWs SP coverage and access

- Develop and disseminate in the appropriate languages gender-responsive communication and campaigns and information materials on MWs' SP rights and how to access them and on non-discrimination and compliant mechanisms.
- Consider providing gender-responsive training and education and policymakers and all stakeholders involved in providing SP to men and women MWs.
- Collect gender-disaggregated data and information and build a knowledge base that can be used to advocate for more equitable SP policies.
- Ensure that policies with a direct or indirect impact on women and men MWs' access to SP promote gender equality.

Source: ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), p. 219.

- *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.* CoO measures should respond to the needs of MWs and their families during all stages of the migration cycle/experience: before departure, during the time abroad, and upon return – bearing in mind also the particular gendered experience of migration.
 - They should ensure the realisation of SP and welfare assistance of MWs and their dependants, simultaneously contributing optimally to the economic, social and human development of CoOs and CoDs.
 - Prospective, existing and returned MWs, including MWs on short-term engagements and active in the informal economy, as well as their family members, should benefit from these measures.

¹⁷² Ibid., p. 218.

V.10. Protection for families of migrant workers abroad, and families staying behind in the country of origin¹⁷³

- More can be done to provide protection to families of MWs abroad, and in particular families staying behind in CoOs. Until now, only in some cases is support extended to family members, including family members who stayed behind in the CoO.
- 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 MWs* – welfare funds and/or insurance-based arrangements in countries of origin are used to pay for repatriation and burial of the deceased, restricted survivors' benefits and health care.
 - CoDs invariably do not provide compensation, but invariably impose an obligation on employers to pay for repatriation of the deceased and, of course, the payment of outstanding wages and end of service benefits.¹⁷⁴
- In the broader SP domain, much can be learnt from good practice examples of countries providing *business start-up* support, or *education* support through migrant welfare funds to children of MWs abroad, in the CoO (e.g. access to schools; scholarship programmes) – as, for example, in the case of Pakistan, the Philippines and Sri Lanka.¹⁷⁵
- Also, it is important to ensure appropriate *health coverage for those staying behind*, through health insurance programmes and access to state-provided health care.¹⁷⁶

V.11. Social protection arrangements for informal economy migrant workers

- *Unavailability of mainstream SP responses.* A recent IOM policy paper remarked: “In reality, many migrants invariably resort to informal economy engagement and reliance on informal forms of social protection to ensure economic survival. For the majority of them, mainstream SP responses often may not be available or accessible, especially if they happen to be undocumented.”¹⁷⁷
- *Informal and faith-based SP support.* Due to the limited coverage of formal SP systems, important informal and semi-formal safety net modalities provide a crucial lifeline for individuals and households, and effectively for migrants too: these modalities rely on notions of solidarity and redistribution operating within the framework of kinship-based and mutuality-based forms of support. In some (especially some MENA countries), the most significant source of social protection for vulnerable populations – particularly for those employed in the informal sector – are religious welfare organizations.¹⁷⁸

¹⁷³ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 29 as well as Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

¹⁷⁴ *Ibid.*, pp. 155–156.

¹⁷⁵ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 58-59, 60; see also Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 51.

¹⁷⁶ *Ibid.*, p. 75.

¹⁷⁷ IOM *Social protection: An operational tool for the humanitarian, development and peace nexus – Linkages between cash-based interventions and social protection in humanitarian and non-humanitarian settings* (IOM, 2022).

¹⁷⁸ *Ibid.*

- *Key considerations.* For CoOs to consider extending SP coverage to their workers in the informal economy abroad, two critical matters need to be factored in:
 - Many MWs in the informal economy are in an *irregular status* in the CoD, and may even have left their CoO in contravention of an employment ban. Interventions aimed at regularizing their status may therefore be crucial to ensure improved SP outcomes for them and their families.
 - SP extension to MWs in the informal economy requires first and foremost that the CoO must have SP arrangements in place for *informal economy workers in the CoO*.
- *Invest in SP extension modalities.* Special attention should therefore be paid to extending formalized forms of social protection to migrants in the informal economy, based on the global normative framework informing the extension of SP to informal economy workers.

Comparative experiences informing SP coverage extension

A wide range of measures have been adopted by countries to extend social security coverage for informal economy/informal workers. Some of the key developments are:

- Innovative and at times extensive conceptualization has been introduced to widen the application of social security, so as to also include those in the informal economy (such as India and the United Republic of Tanzania) – via revisions to social security and labour laws.
- Non-contributory schemes have been adapted to ensure inclusion of these workers – for example, through the introduction of universal pension arrangements (such as Namibia and Nepal).
- Contributory schemes have been extended to achieve inclusion, at times even on a compulsory basis (such as domestic workers in South Africa), and are increasingly supported through government incentives, including government subsidies; the introduction of national health insurance schemes also serves this purpose (such as Thailand and Viet Nam).
- Some governments have introduced comprehensive arrangements to cover the whole of the informal economy. Examples include China, India, Indonesia, Ghana and Rwanda.
- Some countries have included informal economy workers sector by sector, usually on the basis of separate or dedicated schemes. Examples include Ecuador, Tunisia and the Indian welfare funds modality.
- Tailor-made design modalities have been introduced, including the following:
 - Specialized contribution modalities (such as flexible options allowing workers to contribute according to their ability and at a frequency that reflects the reality of their income generation, such as in the case of seasonal workers (Ghana, the Philippines and Viet Nam); the setting of realistic income baselines as a basis upon which contributions are calculated (Tunisia); and, importantly, the increasing tendency of government subsidies to support or even replace the contributions of poor informal economy workers (India (proposed), Myanmar, Rwanda, United Republic of Tanzania and Viet Nam));
 - Relaxed entitlement criteria (accessing benefits without complying with lengthy contribution periods or other onerous conditions);
 - Dedicated, context-sensitive benefit arrangements addressing the key short- and long-term needs of informal workers (Ghana and Rwanda).

Source: IOM *Social protection: An operational tool for the humanitarian, development and peace nexus – Linkages between cash-based interventions and social protection in humanitarian and non-humanitarian settings* (IOM, 2022), p. 25. See the Compendium for a more detailed discussion. For an African perspective, see UNDP *Informality and Social Protection in African Countries: A Forward-looking Assessment* (2021).

- *Supporting arrangements.* Several arrangements need to be in place, in order to support the extension of SP to informal economy workers:¹⁷⁹
 - Stakeholder consultation, undertaken preferably by a high-level consultative team;
 - Recognizing the importance to engage with representatives of informal economy workers;
 - Carefully coordinated communication;
 - An enabling environment, enhancing the ability to contribute to and access the new system;
 - Involving cooperatives or unions to achieve coverage inclusion (such as the Dominican Republic);
 - Adopting a unified tax package, which includes both the payment of social security contributions and the payment of taxes (a mechanism used in several Latin American countries); and
 - Providing monetary and/or other incentives.

Questions

- (1) In your view, in your country, which challenges present themselves when the introduction, or extension, of insurance-based social security arrangements for the benefit of workers abroad and their family members is contemplated?
- (2) Consider the advantages and challenges, in your opinion, of establishing a separate, dedicated social insurance scheme versus using the existing national social security scheme to extend SP to workers abroad and their dependants.
- (3) How should the government of your country go about to incorporate gender-sensitive and gender-responsive measures into the social security system of the country, for the benefit of workers from your country abroad and their family members? Which specific social security provisions should be designed, or adjusted, to achieve this objective?

Group activity

- (1) Your government is contemplating the introduction of insurance-based social security arrangements to extend SP to workers from your country abroad and to their family members. Write a report for your government in which you outline the lessons that can be learnt from comparative experiences in this regard, and clearly indicate whether, based on these experiences and the concrete context of your country, it would be advisable to establish separate, dedicated insurance-based arrangements for this purpose or integrate such arrangements in the existing national social security system.
- (2) In a policy brief developed for your ministry of labour, indicate how the ministry should proceed to determine which SP benefits are available in CoDs where workers from your country work.
- (3) Provide advice to your government concerning ways and means to ensure better social security protection for: (i) Families of workers from your country working abroad; and (ii) Workers from your country engaged in the informal economy of the CoD.

¹⁷⁹ Ibid., p. 26.

Key resources

Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa on Social Security of 16 May 2001 (Tractatenblad, 2001-06-22, No 114, 1–9).

Agunias, D., C. Aghazarm, and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM.

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Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No 8042 of 1995) (Philippines)

Olivier, M. (assisted by Mushomi, J. and C. Kakuba) *Migrant Welfare Systems in Africa: Case Studies in Selected African Union Member States: Ethiopia, Côte d'Ivoire, Ghana, Kenya, Mauritius and South Africa* (IOM, 2022).

Overseas Workers Welfare Administration Act, 2015 (Philippines).

Social Security Act, 1997 (Philippines).

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UNDP Informality and Social Protection in African Countries: A Forward-looking Assessment (2021).

Universal Health Care Act, 2018 (Republic Act No 11223) (Philippines).



MODULE F

Support services

VI.1. Aims of Module F

- Provide an overview on SP and related support available to MWs and their dependants prior to migration, during their work abroad and upon return.
- Reflect on the extension of health care, legal assistance and repatriation support to MWs abroad.
- Reflect on appropriate SP responses for the benefit of workers abroad and their family members in the event of a pandemic.
- Consider the integration of appropriate SP provisions in return and reintegration arrangements applicable to MWs.
- Reflect on ways and means to achieve continued coverage by and access to SP for returning MWs.

VI.2. Learning Outcomes for Module F

- Understand the rationale for and modalities of CoO intervention to ensure: (i) Improved health care; (ii) Enhanced legal assistance; and (iii) Suitable repatriation arrangements for MWs abroad and, to the extent relevant, their family members.
- Consider the impact of COVID-19 on SP coverage and access as regards MWs and their families.
- Appreciate lessons that can be learnt from COVID-19 good practice experience relating to the extension of SP and welfare support to MWs and their dependants.
- Be aware of modalities to incorporate (continued) access to and coverage by SP in arrangements concerning the return and reintegration of MWs.

VI.3. Overview of Module F

- MWPs can address critical SP and related support to MWs prior to migration, during their work abroad, and upon return. There is no common template applying to all instances; considerations to be heeded include whether such support is already otherwise rendered in/by the CoD, as well as the outcome of an evidence-based enquiry into the welfare assistance needs of MWs in the CoD and their family members in the CoO or the CoD, and the capacity of the CoO to provide the needed support interventions.

- A critical area of CoO intervention concerns access to health care, including sexual and reproductive health care – given negative health outcomes in CoDs. Consideration could be given to extend CoO national health insurance support, and providing universal access to sexual and reproductive health care.
- Providing or facilitating access to legal services/assistance is yet another critical interventions to be contemplated by CoOs – including assistance in the CoO and, in particular, in the CoD. NGO, embassy and MWF engagement in this area may prove to be critical.
- The recent COVID-19 experience has highlighted the need for SP to be available to workers abroad and their families in the event of pandemics. Migrants have generally, but with notable exemption, experienced little SP support in the course of the COVID-19 pandemic.
- Of particular value in this regard are international law and policy considerations, also the policy guidance provided by the United Nations.
- A snapshot of COVID-19 comparative responses indicates some good examples of what CoDs and CoOs have done to extend health and other assistance to MWs and their families. These responses relate to:
 - Employment protection, including work permit adjustments effectively strengthening employment protection;
 - Access to health care; and
 - SP interventions beyond health care and employment protection.
- However, two caveats need to be raised:
 - Most of the introduced measures were of a *temporary* nature and seemingly may not have a longer-term impact on improved conditions supporting better SP provisioning for MWs.
 - Comprehensive measures have rarely been taken to provide emergency income support to non-national workers through national SP systems.
- Repatriation of MWs is, according to global good practice, meant to be funded by either the employer (except in the case of employee misconduct) or the relevant recruitment agency.
- There is a need to appropriately designed pre-departure and post-arrival orientation of MWs, which should include relevant information of their SP obligations and entitlements.
- Appropriate return and reintegration arrangements are key to support for and protection of returned MWs, including SP beyond the period of migrant work abroad. Much can be learnt from international and African good practice guidelines and experiences.
- In particular, there is a need to ensure MWs' (continued) access to SP upon return and, more generally, the improvement of the SP regime relevant to them. This includes:
 - (i) Assistance in relation to engagement with CoD social insurance schemes;
 - (ii) Assistance in relation to claiming benefits from CoD social insurance schemes;
 - (iii) Assistance in relation to engagement with CoO social insurance arrangements;
 - (iv) Consular and legal assistance;
 - (v) Continued coverage of return migrants regardless of the nature of their labour market association in the CoO;
 - (vi) Exportability of benefits; and
 - (vii) Ideally, the accommodation of these arrangements in appropriate bilateral (labour and social security) agreements.

VI.4. Range of services provided by Migrant Welfare Programmes, including people-centred and gender-responsive support services¹⁸⁰

- **MWPs can address other critical SP and related support to MWs prior to migration, during their work abroad, and upon return.** Key areas of interventions, and building on already existing measures in a range of CoOs, include making contributions towards legal aid and recourse, as well as grievance redressal (e.g. Indonesia; Nepal; the Philippines; Thailand; Sri Lanka), also through involving the services of legal professionals abroad; subsidized medical services and health care (e.g. India; the Philippines); and the financing of pre-departure and related trainings (e.g. Bangladesh; Viet Nam).¹⁸¹
- **MWPs provide a range of services, which (could) include limited SP insurance-based arrangements.** An extensive range of services are rendered by MWPs. See also Module AI4.2 and Module DIV.4 for more details. Some but limited insurance-based coverage is extended as part of the core services so rendered.
 - There is no common template of benefits and services provided by MWPs. Much depends on the key needs experienced by MWs from a particular CoO and the extent to which these needs are already addressed by either the CoO government (for example, via its embassies), the applicable CoD or otherwise, e.g. by civil society organizations.
 - The ability of the MWP and/or government of the CoO to render these services/benefits, potentially in collaboration with other role-players, is also a consideration.
 - It is, therefore, necessary to clearly determine the evidence base for the SP and welfare needs experienced by MWs and their families, the extent to which these are already provided for, and the feasibility of rolling out benefits and services. As indicated in Module AI4.2, actual and potential services/benefits include, but are not limited to:¹⁸² Insurance in case of death and disability, and for health care; Burial expenses; Travel expenses; Repatriation of workers due to contract violations, emergency situations, and repatriation of deceased migrant workers; Reintegration of returned migrant workers, including housing and self-employment start-up support; Re-integration loans upon return; Pre-departure training and information; Vocational training and other training programmes and assistance; Workplace monitoring; Scholarships for university education, or education fees for families of migrants; Provision of social and legal assistance; Emergency/calamity assistance to affected workers and their families; Relief support in case of displacement or lay off; Legal, financial and other assistance to exploited/trafficked/abandoned workers (especially women), including shelters for distressed workers, especially domestic and unskilled workers; Counselling services and psychosocial support.

¹⁸⁰ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 30, from where this part has partly been taken.

¹⁸¹ *Ibid.*, pp. 60, 62.

¹⁸² Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), p. 129 (Adapted from Agunias, D. and N. Ruiz (2017). *Protecting Overseas Workers: Lessons and Cautions from the Philippines*. Migration Policy Institute.). See also Agunias, D., C. Aghazarm and G. Battistella (2011). *Labour migration for Colombo Process countries: Good practices, challenges and ways forward*. IOM, pp. 57–59.

VI.5. Access to health care, including sexual and reproductive health care¹⁸³

- *Exposure to negative health outcomes in CoDs.* Due to a variety of factors, MWFs and their families are often disproportionately exposed to negative health outcomes. Yet, certain destination countries in particular may deny them access to mainstream (public) medical facilities, except in cases of emergency or, if covered, occupational injuries-related health care. As has been 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.”¹⁸⁴
- *Separate CoD schemes and employer liability arrangements.* In some cases (for example, in several MENA countries), MWFs have to contribute to a segregated medical care scheme, and/or the provision of medical care is indicated as an employer liability.¹⁸⁵ In the latter case, some CoOs attempt to include (foreign) employer liability for health care within bilateral agreements with destination countries and the associated contracts of employment. However, the experience with segregated and individual employer liability arrangements invariably has been that MWFs and their families are exposed to less beneficial health protection.
- *Extension of CoO national health insurance support.* 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 MWFs abroad. However, as noted earlier, in the latter case origin countries must take care not to subject affected MWFs to dual coverage challenges.¹⁸⁶
- *Providing universal access to sexual and reproductive health care should be priority.* SDG target 5.6 stresses universal access to sexual and reproductive health and reproductive rights, as globally agreed. To the extent that CoDs do not provide for this satisfactorily, CoOs need to find ways to ensure access by MWFs and their family members to health care (including reproductive health care, pre- and post-partum maternity care and gender-specific preventive care).
 - Arrangements in this regard can be made with CoD government and other public institutions, and/or private sector institutions rendering such services.

¹⁸³ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 31. See also ILO *Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners* (2021), pp. 217, 218.

¹⁸⁴ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), p. 65.

¹⁸⁵ Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), pp. 145–146.

¹⁸⁶ Ibid.

Nepal's extension of health care to its workers abroad

The *National Health Policy, 2019* of Nepal acknowledges that access to basic health is the fundamental right of all citizens. This policy also deals with the making of necessary arrangements for reducing the risks of immigration on public health and providing health protection to Nepalis staying abroad. The *National Health Insurance Act, 2017*, lays down, as a mandatory requirement, life insurance for MWs before they depart for foreign employment. The *Local Government and Operation Act, 2017* includes a provision for setting health-related quality and target standards in alignment with the relevant federal and provincial level laws. The issues of health care and services for returnee migrants are also prioritized by the local governments.

VI.6. Access to legal services¹⁸⁷

- *Human rights considerations.* There are several human rights and other considerations which make free or affordable access to justice a paramount requirement.

Migrant workers' access to legal services is crucial for the protection and enforcement of SP rights

“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...”:

Source: Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), p. 149 (authorities omitted).

- *Access to legal services in the CoO.* Access to legal services may be required within the CoO prior to departure, or upon 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 – may be available, although the reality is that such assistance in origin countries remains limited.
- *Access to legal services in the CoD.* It is, however, in particular in CoDs 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 MWs in the event of alleged employer abuse/exploitation.
- *NGO and workers' rights centres.* NGOs are pivotal to the legal assistance MWs 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.
- *Embassy assistance.* Invariably, MWs 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.
- *MWFs.* MWFs could assist in providing the necessary funding, also for migrants at home.¹⁸⁸

¹⁸⁷ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 32, from where this part has been taken.

¹⁸⁸ Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015), pp. 149–151, 159.

VI.7. Social protection in the light of pandemics¹⁸⁹

The impact of COVID-19 on migrant workers

“COVID-19 has been a stark reminder of the need to ensure adequate social protection coverage across all forms of employment and residence/nationality status. Migrant workers were severely affected by the crisis. They are often concentrated in economic sectors with high levels of temporary, informal or unprotected work, characterized by low wages and lack of social protection, including in care and domestic work - which in many countries is largely carried out by women migrant workers. At the onset of the crisis, reports documented rising levels of discrimination and stigmatization against migrant workers, layoffs, worsening working conditions including reduction or non-payment of wages, cramped or inadequate living conditions, and increased restrictions on movements or forced returns. Migrant workers were often first to be laid-off but last to gain access to testing or treatment compared with nationals. They were often excluded from national COVID-19 policy responses, such as wage subsidies, unemployment benefits or social security and social protection measures.”

Source: African Union Report on Labour Migration Statistics in Africa (3rd edition, 2021), p. 54.

- *The need to move beyond humanitarian-focused responses to longer-term sustainable SP interventions.* One of the key lessons from the COVID-19 pandemic is that there is a need to ensure a timely, effective and inclusive SP response for those in need and help leave no one behind. It is indeed imperative to move beyond an essentially humanitarian and largely donor-funded response to sustainable and longer-term development-oriented SP interventions.
- *International law and policy frameworks require suitable interventions during pandemics, as is evident in the COVID-19 context.*
 - Under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* (1966), economic, social and cultural rights may be subject to lawful restrictions. However, certain core obligations, such as *equal access to primary and emergency health care for all migrants* remains specifically binding.
 - The United Nations Secretary-General's *A United Nations framework for the immediate socioeconomic response to COVID-19* (of April 2020), required the development of Response Frameworks in order to address the impact of COVID-19 in several areas, also in relation to vulnerable groups such as refugees, migrants and internally displaced persons. Three of the areas that should in particular be indicated are: (i) Protecting Health Services and Systems during Crisis; (ii) Protecting People: Social Protection and Basic Services; and (iii) Economic Response and Recovery: Protecting Jobs, Small and Medium-Sized Enterprises, and Informal Sector Workers. In 2021 alone, fifty-six countries were included in country and regional inter-agency plans.
 - *Guidance on COVID-19 and the human rights of migrants.* The United Nations Office of the High Commissioner for Human Rights has issued guidance on the human rights of migrants in the context of the pandemic.

¹⁸⁹ The comparative examples were mostly taken from a recently completed IOM podcast on the extension of social protection to migrants in the COVID-19 context.

Snapshot of COVID-19 comparative responses (1): Employment protection, including work permit adjustments effectively strengthening employment protection

Measures related to employment protection include the following:

- Unilateral short-term measures to ensure *income security* for the unemployed, including migrant workers. Countries such as Italy, Spain, Canada and Costa Rica have made their economic response packages available to migrant workers in a regular situation.
 - The governments of Austria, Cuba, Mauritius, Panama, and Spain among others, extended the duration of employment permits for migrants for up to one year.
 - South Africa: The Unemployment Insurance Fund (UIF) compensated affected workers, including migrant workers who were contributing, through a new “National Disaster Benefit” in addition to existing illness, reduced work time and unemployment benefits.
-
- *Snapshot of responses (2): Access to health care.* The global picture is not consistent. In several countries migrants have been excluded from health care and many countries have understood the need to cover them under public health care. Three approaches can be discerned, and some additional measures can also be indicated
 - **Approach 1:** Removing barriers to health care based on legal status
 - Portugal and various cantons (States) of Switzerland (e.g. the Canton of Geneva) extended access to health care to migrants, even irregular under the same terms as nationals or regular migrants... Urgent care or maternal/child health care for those without documentation is guaranteed.
 - Republic of Korea guaranteed free testing and treatment for COVID-19, irrespective of nationality and legal status.
 - **Approach 2:** Regularizing migrants to ensure broad access to health services
 - Quebec: Migrants with expiring work permits who were unable to extend them due to the pandemic had the possibility to prolong their health coverage by six months.
 - Portugal: Portugal has announced it will be regularizing all migrants who had previously applied for residence permits in order to ensure they will have access to health care and financial support during the pandemic.
 - **Approach 3:** improvement of working and living conditions for migrant workers
 - Regional Government of Campania, in Italy: funded services for migrants who work in agriculture: temporary housing, transport services, mediation services and psychological support, communication and information campaigns, guaranteed medical and nursing services; purchase of hygiene kits.
 - *Sharing of information and other services.*
 - “Sanctuary cities” and mayors primarily located in North America have been actively engaged in supporting migrants during the pandemic. From New York City, Los Angeles, Nashville, and Chicago, to Toronto, support measures for migrants have included the sharing of information on COVID-19, cash payments, access to testing and health care and/or broader access to benefits and services irrespective of their migration status.

- Migrants in Italy, Kuwait and across Africa have been busy translating information into languages to help get clear messages across and avoid confusion. Doctors of the World has translated Coronavirus guidelines into 45 languages for use around the world. In Sweden, message groups on COVID-19 in 15 languages have been set up by migrant associations.
- *Snapshot of responses (3): SP interventions beyond health care and employment protection*
 - Tajikistan: to mitigate the impact of COVID-19, the government introduced one-time emergency cash support to poor families, elderly, persons/children with disabilities, refugees and stateless persons, families left behind by labour migrants, persons living with TB, HIV/AIDS, and those recipients of social pensions. The amount of the cash assistance is equivalent to 35 USD.
 - Ukraine allowed for relaxed eligibility rules of the Guaranteed Minimum Income (GMI) Program allowing for: extending duration of payments; scaling up activities aimed at increasing coverage of the poor; making individuals who have lost their jobs during quarantine, informal sector workers and returning migrants eligible for the GMI benefit.
 - Cash assistance was provided by the United Nations High Commissioner for Refugees to all 80,000 registered urban refugees and asylum seekers in Kampala to contribute towards rent and essential items in 2020.
 - Egypt: WFP provided food assistance through cash (USD 25 each) to about 100,000 registered refugees from different nationalities to help secure their basic food needs.
 - Lesotho: food stamps were given to 9,000–12,000 vulnerable Basotho living in South Africa in Jun 2020.
 - South Africa: A special Covid-19 Social Relief of Distress Grant (R350 – approximately US\$33 – per month) has been introduced only for unemployed citizens, permanent residents and refugees, thereby excluding various categories of non-citizens. More recently, however, this grant was extended to asylum-seekers and foreigners who are holders of special dispensation permits.
 - Thailand and Indonesia extended monetary and other support to returnees.

Scope and sustainability of SP arrangements introduced during the COVID-19 pandemic

From the above description, it is clear that several reforms were adopted by governments across the globe to deal with the impact of the pandemic. However, two caveats have to be borne in mind:

- (i) Most of the introduced measures were of a *temporary* nature and seemingly may not have an impact on improved conditions supporting better SP provisioning for MWs.
- (ii) Also, and importantly, as remarked in an ILO report on the MENA region: “Nowhere in the region have comprehensive measures been taken to provide emergency income support to non-national workers through national social protection systems, and the deteriorating labour protection and economic context has resulted in an increase of outward migration, especially from the GCC. The crisis has also revealed the limited shock-responsiveness of social protection systems, including a lack of coordination between social protection, disaster management and humanitarian actors, and a lack of mechanisms for contingency financing.”¹⁹⁰

¹⁹⁰ ILO World Social Protection Report 2020-22: Regional companion report for the Middle East and North Africa (MENA) region (2021), p. 23.

VI.8. Repatriation of migrant workers¹⁹¹

- A particularly important area covered by MWPs/MWFs concerns *repatriation* of migrant workers.
- *Funding*. Increasingly, the principle evolving, confirmed by global good practice, appears to be that, depending on the specific circumstances, repatriation should be a cost to be borne by:
 - (i) employers, except where the MW commits breach of contract or an unlawful act (e.g. overstaying in conflict with visa conditions); and/or
 - (ii) the relevant recruitment agency, especially where the employment abroad does not match the job offer in the employment contract.
- *Bilateral agreements*. Repatriation may also be specifically dealt with in a bilateral agreement between the origin and destination country, and also 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 challenges*. 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 CoD (as has lately been happening in, for example, Bangladesh, Nepal, Oman and the United Arab Emirates).
- *Burden on embassies and consulates*. Otherwise, in the absence of clear arrangements in this regard being appropriately enforced, the responsibility to repatriate a MW often becomes a burden on embassies and consulates – i.e. in effect saddling the CoO with ultimate responsibility.¹⁹²

VI.9. Migrant worker orientation¹⁹³

- *Pre-departure programmes should be well-planned 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 too:¹⁹⁴

The need for tailored migrant worker orientation

“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.”

Source: Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 15.

¹⁹¹ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 33, from where this part has been taken.

¹⁹² Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), pp. 147–148.

¹⁹³ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 34.

¹⁹⁴ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 15.

- *Key information needs to be available to prospective and current MWs.* There is a need to ensure sufficient access to key information that prospective and current migrant workers could use to better protect and prepare themselves for the experiences they will have throughout the labour migration cycle, including in relation to SP. This information should therefore be available at specific points during the labour migration cycle:
 - (i) to inform labour mobility decisions of prospective migrant workers;
 - (ii) to prepare migrant workers for their departure and employment abroad;
 - (iii) to support migrant workers to successfully navigate society and the workplace in CODs;
 - (iv) to ensure they are able to successfully access social protection schemes and other assistance when returning to their respective COOs; and
 - (v) to appropriately prepare them for return to and reintegration into the CoO, including through skills training at the overseas destination even before return.
- *The Comprehensive Orientation and Information Programme (CIOP).* African countries could benefit from the envisaged partnership between Saudi Arabia, the United Arab Emirates and the AUC, to work together on implementing a Comprehensive Orientation and Information Programme (CIOP) with the aim of providing migrant workers with accurate information on a range of relevant topics, including rules and regulations related to recruitment, as well as employment contracts and remittances.
- *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 in particular 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.¹⁹⁵ 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”.¹⁹⁶ 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.”¹⁹⁷
 - *Risks and requirements.* However, this creates the risk of increasing migration costs for prospective migrant workers, and therefore requires an investment by governments of the origin and destination countries, as well (foreign) employers as the ultimate beneficiaries of a trained foreign workforce. Furthermore, public employment agencies could render a much-needed service through maintaining a job-seeker database to respond to international job offers.¹⁹⁸ In addition, validation

¹⁹⁵ Ibid., pp. 71, 72; Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 159.

¹⁹⁶ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015) 14, 158; Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 55.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

and recognition of migrants' skills and qualifications – including the validation of practical skills – appear to be critical to successful placement subsequent to skills training.¹⁹⁹

- *Skills partnerships between countries of origin and destination.* In their study, Martin and Makarayan record interesting skills partnerships which combine international development cooperation with migration management policies. They remark:²⁰⁰

“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.”

- *Both pre-departure and post-arrival orientation should focus on SP-specific issues and information.* Migrants often have little awareness about SP measures available in the CoD and those emanating from the CoO; social security registration and other obligations imposed on migrants; entitlement to and claiming SP benefits in the CoD and CoO; and to have SP disputes resolved. Pre-departure and post-arrival orientation therefore has to explicitly accommodate these matters.²⁰¹

VI.10. Return and reintegration of migrant workers

- *Appropriate return and reintegration arrangements are key to support for and protection of returned migrants, including SP beyond the period of migrant work abroad.* A 2011 IOM study summarizes the good practice experiences of Colombo Process countries in this regard in the following terms:²⁰²

“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).”

- *Return and reintegration of African migrants: African perspectives.* Sustainable reintegration, a concept introduced into the 2018 *Migration Policy Framework for Africa*, can be achieved when returnees can rely on expanded capabilities to attain a stable, safe and dignified life of economic self-sufficiency psychosocial well-being, political, social and civil inclusion, as a result of which they can respond to the drivers of irregular migration.²⁰³ The ability to prepare for return is a key factor to ensure successful reintegration.

¹⁹⁹ Ibid., p. 56.

²⁰⁰ Ibid., p. 61.

²⁰¹ IOM *Pre-departure Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor* (Background report, 2021), pp. 40, 55; IOM *Post-arrival Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor* (Background report, 2021), pp. 27, 44.

²⁰² Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 66, 76. See also www.rabat-process.org/en/document-repository?task=document.download&id=158.

²⁰³ African Union *Study on Return, Readmission and Reintegration Programmes in Africa* (2021).

- Also important is the integration of return, readmission and reintegration programming into longer-term development processes in the CoOs. This requires inclusion of returnees in development programmes; data harmonization and common standards in this area; and the need for sustainable funding and timely administrative programme processes.
- *Return migrants – international standards and guidelines.* African CoOs could draw extensively from a range of international sources and guidelines. One of these is the recently adopted *ASEAN Guidelines on Return and Reintegration*.²⁰⁴ Also, the most recent, and globally endorsed, set of commitments made by countries are contained in the United Nations *Global Compact for Safe, Orderly and Regular Migration (2018)*. **Objective 21**, headed “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, multi-dimensional objective(s) to be achieved, are formulated in the following terms:²⁰⁵
 - “... 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.”
- *Specific interventions regarding return migrants contained in the United Nations Global Compact for Safe, Orderly and Regular Migration (2018).* Recommended actions, to be considered by African CoOs, proposed by United Nations Member States in the *Global Compact*, include the following:²⁰⁶
 - **Ensure MWs’ 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.”
 - **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.”
- *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*,²⁰⁷ NRCO received initial funding worth USD40 million to undertake a range of support services for the benefit of return migrant workers. These include: (i) Job referral; (ii) Assistance toward entrepreneurship/microenterprise development; (iii) Training and capacity-building; (iv) Counselling; and

²⁰⁴ See Wickramasekara, P. *Effective return and reintegration of migrant workers with special focus on ASEAN Member States* (ILO, 2019).

²⁰⁵ United Nations *Global Compact for Safe, Orderly and Regular Migration (2018)* par 37.

²⁰⁶ Ibid. Emphases added.

²⁰⁷ *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, 2009 (Republic Act No. 10022).*

(v) Reintegration programmes for distressed returnees.²⁰⁸ 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 Korean companies in Viet Nam, among other benefits.²⁰⁹

- *Improving support for African return migrants.* Considering the challenges outlined above and the indicated international standards and guidelines, the following actions could be considered to improve support for African return migrants:
 - Create, populate and popularize a **national database** with helpful supply-side and demand-side information – including information on the skills, qualifications and experience of return migrants (supply side), and on (matching) job opportunities (demand side).
 - 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, in particular to assist with accessing social insurance benefits claimable from institutions in the country of destination; and guidance on use/investment of savings.
 - **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.
 - Provide **financial support** to return migrants, if needed, which could be linked to employment creation/entrepreneurial involvement in national development priorities.
- **Improving the social protection regime relevant to African MWs abroad, with a view to supporting return migrants:** A range of interventions could be considered by the African governments to improve SP outcomes for African return migrants

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.

- **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:

²⁰⁸ Battistella, G. *Return Migration: A Conceptual and Policy Framework* (Center for Migration Studies, 2020), pp. 6–7.

²⁰⁹ ILO, IOM and UN-Women *Making the return of migrant workers work for Viet Nam: an issue in brief* (2014), p. 6. See also See Wickramasekara, P. *Effective return and reintegration of migrant workers with special focus on ASEAN Member States* (ILO, 2019), pp. 20–21.

- **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, upon return, to claim benefits due to them, from social insurance institutions in the country of destination (for example, 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 upon return, as regards the above-mentioned arrangements;
- **Ensure 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;
- **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; and
- **The need for appropriate bilateral (labour and) social security agreements:** Social protection arrangements applicable to migrant workers, in particular with a view to and during their employment abroad and upon return to their countries of origin, should ideally be contained in (in particular) bilateral social security arrangements – among others providing for portability of benefits, accumulation/totalization of insurance periods, and contribution obligations. This is indeed worldwide viewed as best practice; the legal framework of the country of origin should appropriately provide for this.

Questions

- (1) Consider, in your country, the range of services which in your view should be included in a MWP/MWF.
- (2) What lessons can be learnt from the COVID-19 pandemic regarding SP for MWs abroad and their dependants, and the role CoOs could play in ensuring better SP for them in these circumstances?
- (3) How could MW pre-departure and post-arrival orientation programmes be adjusted to make better SP provision for the treatment of SP of MWs abroad and their dependants, and to ensure that MWs are appropriately appraised thereof?

Group activity

- (1) Provide advice to the technical working group set up to establish and implement a MWP/MWF regarding realistic modalities for including in the MWP/MWF: (i) Improved health care; (ii) Extended legal assistance; and (iii) Suitable repatriation arrangements.
- (2) Design a policy brief for your government on adjustments to be made and measures to be adopted to ensure (improved) SP for returning MWs.

Key resources

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, 2009 (Republic Act No. 10022) (Philippines)

Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011)

African Union Guidelines on the Development of a Migrant Welfare Programme/System (2022)

African Union Union Study on Return, Readmission and Reintegration Programmes in Africa (2021)

Battistella, G. *Return Migration: A Conceptual and Policy Framework* (Center for Migration Studies, 2020).

Jones, K. *Recruitment monitoring and Migrant Welfare Assistance what works?* (IOM, 2015)

ILO Extending social protection to migrant workers, refugees and their families: A guide for policymakers and practitioners (2021)

ILO, IOM and UN-Women Making the return of migrant workers work for Viet Nam: an issue in brief (2014)

ILO World Social Protection Report 2020-22: Regional companion report for the Middle East and North Africa (MENA) region (2021)

IOM Post-arrival Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor 27, 44 (Background report, 2021)

IOM Pre-departure Information Needs of Migrant Workers in the East and Horn of Africa-Gulf Corridor (Background report, 2021)

Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015)

United Nations *Global Compact for Safe, Orderly and Regular Migration* (2018)

Wickramasekara, P. *Effective return and reintegration of migrant workers with special focus on ASEAN Member States* (ILO, 2019)



MODULE G

Implementation

VII.1. Aims of Module G

- Provide an overview of the following matters concerning the implementation of a MWP:
 - Regulations, institutions and operations;
 - Road map for the establishment of a MWP;
 - Strengthening the regulatory environment; and
 - Supportive arrangements, in particular: (i) Diaspora networks and remittance support; and (ii) Regional and continental involvement, and intercontinental engagement with CODs.
- Reflect on SP services that are or could be rendered by embassies/consulates and other role-players, in particular CSOs.
- Appreciate the different elements of a Roadmap for the establishment of a MWP.
- Understand the relevance of, need for and scope of, as well as strengthened monitoring of the recruitment industry.
- Appreciate how BL(M)As could provide for enhanced SP coverage of MWs abroad and their dependants.
- Reflect on the role of diaspora associations and remittances to support and enhance SP for MWs abroad and their family members.
- Reflect on the enhancement of the evidence base in support of enhanced SP for MWs abroad and their family members.
- Consider the role of regional and continental involvement, as well as intercontinental engagement with CoDs to ensure improved SP outcomes for MWs abroad and their family members.

VII.2. Learning Outcomes for Module G

- Understand the range and content of services and other forms of support that can be rendered by embassies/consulates of the CoO, as well as CSOs, to support MWs abroad and their dependants.
- Be able to appreciate and give content to the different elements of a Road map for the establishment of a MWP.
- Consider regulatory steps that could be taken to ensure appropriate engagement by the recruitment industry in SP provisioning for MWs abroad and their dependants.

- Be able to incorporate appropriate SP provisions in BL(M)As.
- Be familiar with ways and means in which diaspora networks and remittances can enhance SP for MWs abroad and their family members.
- Understand the contribution made by regional and continental involvement, and engagement with CoDs via intercontinental platforms, to the enhancement of SP for MWs abroad and their family members.

VII.3. Overview of Module G

- Worldwide, MWP are often embedded in guiding policy and legal frameworks, including at times constitutional provisions.
- Well-designed institutional and operational arrangements are necessary to foster protection.
- Of critical importance are the services rendered by *embassies/consulates*, also when partnering with CSOs in the CoD. A helpful practice is that of the appointment of labour attachés and/or welfare officials, including women officials.
- Joint approaches and cost-sharing by CoOs in relation to assistance given to MWs abroad should be considered.
- In addition, a dedicated *operational framework* of services and tools is necessary to enhance and streamline access to the CoO social security system and benefits, as well as other SP benefits and services available to MWs.
- It is important to address challenges in relation to the funding and administration of MWPs/MWFs.
- Civil society institutions, including NGOs, play a critical role in supporting MWs and fulfilling advocacy roles, but face constraints. Trade unions and employers in CoDs in particular should be engaged.
- Implementing CoO measures may require the cooperation of CoDs.
- Invest further in and enhance the use of Migrant Resource Centres (MRCs) as key information-providing institutions.
- Engaging with MWs abroad and their families requires a participatory and inclusive approach.
- It is advisable to design a road map for the establishment of a MWP. Considering global experience in this regard, the following elements should be reflected in the road map:
 - Assign to an appropriate Ministry the overall responsibility
 - Create a Technical Working Group (TGW)
 - Initiate strategic planning sessions
 - Convene consultative workshops
 - Frame and process administrative policies and legislation
 - Issuance of implementing orders
 - Organize the Board of Trustees and Secretariat
 - Implement programmes and services
 - Pilot the programmes and services
 - Implementation of systems and procedures

- Facilitate partnerships
- Assistance protocols
- Migrant networks
- Monitoring and evaluation
- Better regulation of the recruitment industry is key to MWS' protection, including SP. This requires investment in both private recruitment agencies (PRAs) and public employment services. Self-regulation (in addition to public regulation) and fair recruitment are key protective measures.
- Significant scope exists for strengthening recruitment monitoring, building on global, human rights-based recruitment standards and the experience of other countries and regions.
- It is important to invest in harmonized standard employment contracts, which guarantee a minimum of social security and other SP benefits.
- Bilateral and multilateral agreements are key to migrant workers' welfare support and need to be further developed to better provide for SP.
- In particular, regarding BL(M)As, key recent United Nations and African Union instruments suggest the accommodation of core SP measures, including:
 - Equality of treatment and non-discrimination;
 - Access to SP including health care on a par with nationals;
 - Portability of social security benefits for MWS abroad and their family members, and maintenance of acquired social security contributions/benefits;
 - Equal treatment in relation to injury compensation and in the event of pandemics;
 - Availability of SP floor coverage to all migrants; and
 - Facilitation of social security claims and disbursement of social security benefits and assistance.
- Critical changes to the legal framework of CoOs may be required to facilitate the negotiation and conclusion of BSAs.
- There is a need to ensure an appropriate evidence base for CoO measures, and to enhance the evidence basis and data environment.
- Diaspora networks and remittance support enhance SP support and developmental initiatives in the CoO. Interventions include: (i) Profile and involve diaspora associations; (ii) Streamline remittance transfer arrangements; (iii) Enhance diaspora investments; and (iv) Support diaspora skills transfers.
- Regional and continental involvement, as well as intercontinental engagement with CoDs, may be required.

VII.4. Regulations, institutions and operations

(1) Existence of a policy and legal framework²¹⁰

- *Existence of a policy and legal framework.* Worldwide, MWPAs are often embedded in guiding policy frameworks. Also, for several reasons, an enabling legal framework is required.
 - Invariably, extending CoO social security and welfare arrangements unilaterally to migrant workers abroad may involve *extra-territorial* interventions, which would require a legal mandate, especially in the absence of a bilateral agreement to that effect.
 - Also, contribution-based benefits imply a *legal entitlement* to such benefits, once the eligibility conditions have been met, and need to be reflected in the legal framework. In fact, the same considerations that inform the need for a legal framework for social security coverage in the national system for workers in the CoO also apply to MWAs of the CoO while abroad.
- *Examples of constitutional guarantees.*
 - Ecuador – *Constitution of Ecuador*, 2008, Article 40 – see Module B II.8
 - Philippines: *Constitution of the Philippines*, 1987
 - Viet Nam: *Constitution of Viet Nam*, 2013
- *Examples of statutory frameworks*
 - Pakistan: *Emigration Ordinance* of 1979 (updated in 2022) and *Emigration Rules* (1979) (updated in 2021)
 - Philippines: among other, the *Migrant Workers and Overseas Filipinos Act* (1995); the *Filipino Overseas Workers Welfare Administration Act* (215); the *Department of Migrant Workers Act* (2021)
 - Viet Nam: *2020 Law on Contract-Based Vietnamese Overseas Workers* 69/2020/QH14 (Law 69) (also known as the *Law on Vietnamese Guest Workers*)
- *Examples of policy frameworks*
 - Nepal: *Foreign Employment Policy* (2021)
 - Ghana: *National Labour Migration Policy 2020-2024* (2020)
 - South Africa: *National Labour Migration Policy* (draft) (2022)
 - Lesotho: *National Migration and Development Policy* (2022)
 - Bangladesh: *Expatriates Welfare and Overseas Employment Policy* (2016) and its *Action Plan* 2019)

(2) Institutional and operational capacity and arrangements

- *Well-designed institutional and operational arrangements are necessary to foster protection.* Best practice examples indicate that CoOs succeed in providing meaningful support and SP to their MWAs abroad when they have coordinated *institutional structures* in place –
 - These structures usually involve *different levels* of government (including local governments); specialist public bodies, often located within ministries; as well as diaspora-related private institutions.

²¹⁰ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 36.

Embassies/consulates, labour attachés and welfare assistance

- Of critical importance are the services rendered by *embassies/consulates*, to which the technical agents of the Labour Administration (Controllers, Attachés and Administrators) and the SP agents/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.²¹¹ 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, for example, India and Indonesia).²¹²
 - *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.²¹³
 - However, apart from funding constraints, several *other challenges* are experienced, in particular related to governance and institutional capacities at destination. See the Compendium for further elaboration.
 - Key recommendations to *strengthen 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 to otherwise explore 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.²¹⁴
 - The appointment of *women attachés* is critically important in CoDs where migrant women workers experience particular difficulties, or where a large number of them is present in the CoD. In the event of Nepal, the *Foreign Employment Act* (2007) provides for a woman attaché to be appointed in CoDs where more than one thousand women workers are present.
 - Some CoOs also appoint welfare officers to deal specifically with welfare assistance and social protection matters.
- 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 MWs (see, e.g. the examples of Bangladesh and Indonesia).²¹⁵
- Consideration could be given to *joint approaches and cost-sharing by CoOs* 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.²¹⁶
- Enhancing the capacities of origin countries to render meaningful social protection benefits and other services to their migrant workers abroad requires *capacity-building interventions*

²¹¹ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 61–62, 63.

²¹² *Ibid.*, pp. 63–64.

²¹³ Abrar, C., Irudaya Rajan, S., Ruhunage, L. and T. Siddiqui *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, India and Sri Lanka* (Migrating out of Poverty, Research Programme Consortium, Working Paper 23, 2014), p. 6.

²¹⁴ *Ibid.*, pp. 31–34.

²¹⁵ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 58–59, 60–61.

²¹⁶ *Ibid.*, p. 75.

following a determination of capacity needed to implement support programmes, and to address data gaps and produce the evidence to inform policy and implementation.²¹⁷

- *Dedicated operational framework.* In addition, 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 digitisation of operations, processes and interfacing between governments/agencies and migrant workers and their dependants. The Philippines and Bangladesh examples of electronic interfacing and smart card technology are particularly helpful.²¹⁸ 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.²¹⁹
- *Address challenges with funding and administration.* Nevertheless, challenges experienced with the *funding and administration* of in particular migrant welfare funds 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.²²⁰

(3) Role and constraints of social partner and civil society institutions²²¹

- *Civil society institutions play a critical role in supporting MWs and fulfilling advocacy roles, but face constraints.* Trade unions and NGOs have been particularly active in providing various forms of assistance to MWs and their families, and to highlight the plight of MWs prior to and during their stay in the destination country, and upon return to the origin country.
- *Trade union collaboration.* A good practice by trade unions is MOUs between unions in origin and destination countries to mutually support and assist migrant workers.
- *Critical role of NGOs.* 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. Yet, 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 ...”²²²
- *Involving employers in CoDs.* It is also important to involve, as far as possible, employers in CoDs, if necessary, via recruitment agencies in either the CoO or the CoD.
 - Several CoOs have in fact recognized the important role of employers in CoDs, and have adopted legal provisions, in terms of which such employers and recruitment agencies are held *liable jointly or severally*, should migrant workers be abused and/or their conditions of service not be adhered to. Some CoDs have also *blacklisted* abusive or otherwise uncooperative employers. The Philippines provides a good example of both these practices.

²¹⁷ Ibid., p. 76.

²¹⁸ Ibid., p. 75.

²¹⁹ Ibid., p. 78.

²²⁰ Ibid., p. 75.

²²¹ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 38.

²²² Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 14.

(4) Cooperation with CoDs²²³

- *Implementing CoO measures may require the cooperation of CoDs.* A 2011 IOM report comments as follows:²²⁴

“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.”
- *Modalities for coordination and cooperation include joint committees, joint inspection; and coordination with other CoO embassies in the CoD.*

(5) Migrant Resource Centres (MRCs)²²⁵

- *Invest further in Migrant Resource Centres (MRCs).* MRCs 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 MWs.
- *Enhanced information-sharing.* 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.²²⁶
- *Enhance the use of MRCs.* 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 MISMES. 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.”²²⁷

²²³ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 39.

²²⁴ Aguias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* 79–80 (IOM, 2011), pp. 56–57.

²²⁵ See also African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 40.

²²⁶ Aguias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 72-73. See also par 7.7 above.

²²⁷ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 56.

(6) Importance of participatory and inclusive engagement

- A *whole-of-government and whole-of-society approach*. In addition to the emphasis on a coordinated institutional and operational framework (see Module G VII.4 (2)), as well as engagement with CoD governments and their institutions (see Module G VII.4(4)), engaging with MWs abroad and their families requires a participatory and inclusive approach.
 - This implies the deliberate engagement with CSOs, in particular organized labour and employers' organizations, but also NGOs – as discussed in Module G VII.4(3).
 - Of particular importance is the involvement of MWs through their own representative institutions, should these be different from, or addition to the organised trade union movement. These could be diaspora organizations abroad and/or organizations established by, or for, returned MWs.
 - Another important role-player to be consulted is the organized recruitment industry, given the critical role they play as regards labour migration and often also SP provisioning.

VII.5. Road map for establishment of a Migrant Welfare Programme²²⁸

Design a road map for the establishment of a MWP. Utilizing the Template accompanying the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* (2022), African countries should design a road map for the establishment of a MWP. Elements of the road map could include the following 14 elements.²²⁹

- (1) **Assign to an appropriate Ministry the overall responsibility.** The most suitable Ministry (usually, the Ministry for Labour/Employment, unless a separate Ministry for overseas migrant labour has been established) should be tasked with overall responsibility to spearhead the actions and measures to establish a MWP and ensure its operationalisation. Assigned duties should include:
 - Act as a coordinator in the national effort to establish the MWP, including closely liaison with Cabinet and the Technical Working Group indicated below;
 - Analyse the labour migration environment;
 - Collect and organize data, gather information on all existing laws, policies and procedures;
 - Prepare a draft of the regulatory instrument informing the establishment and operations of the MWP and associated proposed amendments to existing laws, policies and procedures.
 - National Government should allocate sufficient appropriately-budgeted resources to enable the Ministry to undertake its tasks.
- (2) **Create a Technical Working Group (TWG).** Assign a technical team representative of all key stakeholders in the CoO to support and advise on the establishment and operationalization of the MWP. The advice should pertain to both policy orientation and technical matters. Stakeholders engaged with migrant workers abroad should be incorporated, and could include:

²²⁸ See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 41, on which this part is based.

²²⁹ Adjusted from ILO *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar* (Policy Brief Issue No. 3, November 2015), p. 6-8.

- (i) Relevant government Ministries (including Ministries responsible for Foreign Affairs; Finance; Social Development; Enterprise Development), and with particular reference to the Ministry responsible for labour or any other Ministry tasked with overseeing the operationalization of the MWP;
- (ii) Affected public institutions, including among other a public entity that may be tasked with managing any particular mandate concerning overseas employment (including public employment services), public social security schemes, national statistics office, and national training institutions;
- (iii) Social partners, i.e. apex workers' and employers' organizations;
- (iv) Private sector role-players (e.g. private training institutions or development partners engaged with migrant workers prior to and after return; financial institutions);
- (v) Apex recruitment industry body representing private employment agencies;
- (vi) Migrant associations, representing current and/or returned migrant workers – including apex diaspora associations in major CoDs;
- (vii) Involved civil society organizations, such as advocacy institutions supporting migrant workers prior to and after return, and while abroad;
- (viii) Senior consular officers from embassies in major CoDs;
- (ix) Key international organizations supporting the establishment of the MWP; and
- (x) External resource persons/experts.

The TWG should meet regularly and consult extensively, on an ongoing basis, with stakeholders involved. It should prepare all materials and draft strategies that will be validated during consultative workshops.

- (3) Initiate strategic planning sessions.** The objective of strategic planning sessions is to prepare proposals to be submitted to the consultative workshops (see below) *and* to push for the implementation of the outputs of the consultative workshops, as well as to gain the approval of concerned authorities. The planning sessions can be led by the TWG with guidance from external experts. The planning sessions should include:
- 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
 - The development and, where relevant, revisions of legal frameworks or ministerial orders to enable the establishment of a MWP that would describe the:
 - Coverage of the MWP, with reference to intended contributors and beneficiaries
 - Required programmes and services
 - Management information system
 - Organizational structure
 - Reporting, supervision, monitoring and evaluation of the MWP
 - Funding mechanisms
 - Management and investment processes for the MWP
 - Initiation of contacts with collaborating government agencies and private organizations at the countries of origin and destination

- Initiation of contacts with collaborating government agencies and private organizations at the countries of origin and destination
- Undertake an actuarial and feasibility study towards the establishment of the MWP.
- Identify a major CoD in which to pilot the delivery of programmes and services pending approval of enabling laws to govern the operation of the MWP.
- Identify pilot implementing partners such as those among the trade unions and civil society organizations that already provide welfare programmes to migrant workers.

- (4) **Convene consultative workshops.** The assigned Ministry, in coordination with the TWG, should convene a series of consultative workshops with the stakeholders indicated above, but also with government more broadly and with parliamentarians. At these workshops the TWG shall present:
- (i) Its detailed studies;
 - (ii) Reliable migration data;
 - (iii) New laws/policies or revisions to existing laws, policies and procedures;
 - (iv) Proposed institutional and organizational structure to implement the MWP, including the management of the MWP; and
 - (v) Proposed contributory, beneficiary and funding model and proposed menu of social protection and welfare programmes and services.
 - (vi) 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. The workshops should be structured to provide ample time for dialogue, the identification of priorities on benefits and services, and the formulation of a work plan with specified actors, targets and timelines. At one of the consultative workshops, the draft policy and legislative framework informing the establishment of the MWP should be validated.
- (5) **Frame and process administrative policies and legislation.** Submit final proposals regarding the policy framework and envisaged legislation informing the establishment of the MWP, including amendments to current policies and laws, to Cabinet for approval and facilitate the passage of new legislation and amendments to laws by Parliament.
- (6) **Issuance of orders.** Prepare and issue specific directives to implement the approved laws, policies and procedures. Ensure the release of the necessary funds for implementation.
- (7) **Organize the Board of Trustees and Secretariat.** Select and appoint the members of the MWP oversight structure (e.g. Board of Trustees) and facilitate the process for the appointment of the head and managers of the MWP, and other staff members. The responsible Ministry should take the lead.
- (8) **Implement programmes and services.** In collaboration with the responsible Ministry, the MWP staff should manage the implementation of programmes and services. Rigorous capacity-building training should be provided to the MWP staff, organized by the MWP management, in collaboration with the Ministry.

- (9) **Pilot the programmes and services.** In collaboration with the responsible Ministry and the Ministry of Foreign Affairs, the MWP should assign the implementing team to an embassy located at the target CoD. 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. Conduct simulated repatriation exercises at the piloted CoD and reception protocols at the CoO. At the end of the pilot, assess the worksite situation and make the necessary adjustments to programmes and services and the organizational structure.
- (10) **Implementation of systems and procedures.** Ensure that necessary systems and procedures are in place, including:
- Welfare Fund management
 - Collection of member contributions
 - Fund disbursement
 - Investment protocol
 - Reporting and auditing
 - Management information system covering the delivery of programmes and services and disbursement of the Welfare Fund.
- (11) **Facilitate partnerships.** Establish public institutions, civil society and private sector partnerships for delivering SP welfare programmes and services, which could include:
- Social security and health insurance institutions
 - Contract and employment mediation
 - Assistance on MW complaints
 - Repatriation services
 - Financial services
- (12) **Assistance protocols.** Identify assistance protocols appropriate to the CoD as guided by the approved policies and procedures.
- (13) **Migrant networks.** Establish migrant workers networks (e.g. diaspora networks; returned migrant workers' organizations)
- (14) **Monitoring and evaluation.** Monitor performance of the MWP and evaluate its achievements, on the basis of an operational monitoring and evaluation framework.

VII.6. Strengthening the regulatory environment

(1) Better regulation of the recruitment industry²³⁰

Better regulation of the recruitment industry is key to MWs' protection, including SP. The following needs to be noted:

- *Invest in private recruitment agencies (PRAs) and public employment agencies.* Given the widespread reporting of abuse and exploitation implicating PRAs, CoOs have to tighten the regulatory environment and compliance monitoring measures.

²³⁰ See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 42.

- 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 –

The value of public employment agencies

“Specialized (public) international placement agencies have proved their effectiveness in different contexts and for different kind of migrants in ... 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 ...”

Source: Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 54, read with 60.

- *Adhering to the employer pays principle.* Failure to adhere to the international norm that migration costs should not be for the account of the (prospective) MW, may result in increased MW debt bondage and in contributing to irregular migration patterns.²³¹
- *Imposing joint and several liability.* Also, imposing joint and several liability on (private) 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 fair recruitment principles, increasingly embedded in a large range of international standards and guidelines.²³²

(2) Strengthening of recruitment monitoring²³³

Significant scope exists for strengthening recruitment monitoring.²³⁴

- *Adherence to monitoring standards and guidelines operating at various levels is key to ensuring protection of African MWs.* A 2015 IOM study indicates the following typology of recruitment monitoring:²³⁵
 - **A. Supranational monitoring:** 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

²³¹ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective* (2015), p. 71.

²³² Ibid., p. 74.

²³³ See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 43.

²³⁴ Drawing largely from Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015).

²³⁵ Ibid., p. 3.

(including redress). State-led monitoring also includes government-to-government agreements.

- **C. Non-State-led monitoring:** 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, and provide a solid basis for protecting African MWs, 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 MWs that these standards are heeded. African governments should invest in drawing from the rich tapestry of human rights standards informing ethical recruitment. These standards have been summarized as follows:

Summary of the key human rights standards relating to recruitment

- “States should provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including providing for penalties for agencies which engage in fraudulent or abusive employment (C181, Protocol on Forced Labour, 2014).
- States should ensure that PRAs do not charge recruitment fees to workers (C181).
- States should ensure that PRAs do not make illegal deductions from workers’ salaries (C188, C189).
- States should ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices” concerning their activities (C188, C189).
- States should ensure that PRAs 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 (R188).
- States should ensure that PRAs 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 (R188).

Source: Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015) 44 (Figure 5). “C” refers to (ILO) “Convention”; “R” to (ILO) “Recommendation”; and “PRA” to Private Recruitment Agency.

- *Learning from the experience of other countries and regions, African governments should contemplate a range of measures to implement appropriate recruitment monitoring frameworks.*²³⁶ Among others, these include:
 - (i) Robust screening of applications from private recruitment agencies (PRAs);
 - (ii) Ongoing monitoring of PRA licensees by their home authorities;
 - (iii) Close monitoring of fees charged to migrants;
 - (iv) Ongoing monitoring of PRAs through emigration clearance processes;
 - (v) Include labour attachés in attesting documents (in particular, the employment contract with the foreign employer);

²³⁶ Ibid., 4–7. See also Mekong Migration Network *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants’ Rights* 2019), p. 122.

- (vi) Systematic bilateral sharing of information about exploitative PRAs between licencing authorities and those of associated destination states;
 - (vii) Deal with the continued existence of unlicensed sub-agents;
 - (viii) Implement rarely-used criminal sanctions, over and above administrative sanctions to cement PRA liability in the event of exploitation of migrant workers, where the exploitation is not beyond the control or influence of PRAs;
 - (ix) Assist MWs (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.*²³⁷ Some of the measures that should appear prominently in the legal and associated policy framework informing recruitment monitoring include:
 - *Regulate relevant business relationships involving PRAs.* Introduce rules that regulate the business (commercial) relationships between PRAs, and between PRAs and sub-agents (usually illegal recruiters).
 - *Public disclosure of PRA complaints and sanctions.* Arrange that complaints made about PRAs and sanctions applied are shared publicly, 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.
 - *Bilateral labour agreements to include monitoring provisions.* Include in BLAs provisions for recruitment monitoring (of PRAs, 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.
 - *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” which work 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, travel agencies amongst others, some of which might be owned by PRAs. 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 inter-relationship 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.”²³⁸
 - *Provide for incentives.* While penalties for non-compliant agencies and agencies which engage in fraudulent or abusive employment are an important deterrent intervention, national legal and policy frameworks should also provide incentives (rewards) for PRAs 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.”²³⁹ In addition, as earlier explained, employers in the CoD should also be involved, either directly or via recruitment agencies in the CoO or CoD.

²³⁷ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), p. 7–8.

²³⁸ Ibid.

²³⁹ Ibid., p. 8.

- *Impose licensing and accreditation requirements on PRAs and employers in destination countries.* The 2015 IOM study alluded to above refers to the following good practice experiences:²⁴⁰
 - “Requiring ‘foreign’ PRAs which recruit workers into a destination country to also be licensed with the destination state authority (e.g. United Kingdom) with the aim of increasing bilateral oversight of international recruiters.”
 - “Requiring ‘foreign principals’ (PRAs 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.”
- *Adopting regional approaches.* Origin country governments should consider working together as a bloc to enhance recruitment monitoring and in particular 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.²⁴¹

(3) Harmonized standard employment contracts and minimum protection²⁴²

- *Rely on the guidance contained in recently adopted guiding frameworks.* Both the United Nations *Guidance on Bilateral Labour Migration Agreements* (February 2022) and the African Union’s *Guidelines on Developing Bilateral Labour Agreements (BLAs)* (2022) suggest the insertion, into BL(M)As, provisions regarding harmonized standard employment contracts that provide for a minimum level of protection, including social protection, for MWs. The *Guidance* document stipulates:

“In addition, the BLMA should envisage an accompanying model employment contract, where appropriate and relevant, containing control mechanisms for contract enforcement and prevention of contract substitution. Agreed employment contracts have to be translated into the language migrant workers understand, so migrants have a clear idea about what is expected from them and their employer. Provisions could be included that prohibit unlawful wage deductions and ensure the swift and final settlement of outstanding wage payments due upon termination of the contract of employment, as well as the provision of legal assistance to claim unpaid or partly paid wages in-country and if the worker has returned to the country of origin.”

- The *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs)* provide as follows:

Standard employment contract: The African Union Guidelines on Developing Bilateral Labour Agreements (2022)

“This Article provides for an employment contract for the migrant worker and terms of employment (wages and other remuneration) and the conditions of work. This Article should specify that the employment contract is concrete and enforceable in the country of destination and is provided to the migrant worker in a language he/she understands. A widely utilized practice with BLAs is to attach a detailed **Standard employment contract (SEC)7** as an annex to the agreement that formalizes the employment relationship between the worker and the employer, provides specifics on work expected, and sets the applicable terms and conditions of employment.

²⁴⁰ Ibid., p. 9.

²⁴¹ Ibid., p. 11.

²⁴² See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 44.

(A model SEC is annexed to this document.) With or without a SEC, this Article should specify that the individual employment contract shall include the details of the employer's obligations concerning the worker's wages and remuneration including overtime pay and paid annual leave; working hours including overtime; rest periods; accommodation and its type, or the payment of accommodation allowance; and the medical treatment and access to social security coverage. Application of minimum international standards for conditions of work and occupational safety and health (OSH) should also be specified. The Article should mandate joint verification of contracts by authorities of the CoO and CoD and specify that migrant workers are "informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner," and the contract be delivered to migrant workers and signed before departure from the country of origin to impede contract substitution."

Source: African Union's *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs)* (2022) recommended Article 9.

- *Invest in harmonized standard employment contracts which guarantee a minimum of social security and other SP 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 (e.g. Bangladesh, Nepal, the Philippines). As remarked by Martin and Makarayan:²⁴³

“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.”
- *Provide for a modicum of SP support.* 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 from the employment contract, adjusted to the context of both the country of destination and the country of origin.
- *BSAs and BLAs.* Bilateral social security and even bilateral labour agreements 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.
- *Collective approaches.* 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.²⁴⁴

(4) Role of bilateral and multilateral agreements

- *Bilateral and multilateral agreements are key to migrant worker welfare support.* Appropriately designed BLAs as well as BSAs and MSAs remain the desired avenue to ensure social and welfare protection for migrant workers and their families. As earlier indicated (Module BII.7(1)), in addition to the specific benefits flowing from BLAs as well as BSAs and

²⁴³ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 55.

²⁴⁴ Agunias, D., Aghazarm, C. and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 73–74.

MSAs described in Module BII.7(1)-(3), there is some evidence of a new generation of progressive bilateral labour agreements containing worker-centric provisions regarding recruitment and welfare support, including a limited range of social security benefits.

- *These agreements need to be further developed.* However, in view of the need for an appropriate range of social security-specific benefits to be available to MWs and their families, bilateral and multilateral agreements need to be further developed and better formalized.²⁴⁵
 - 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/unequal bargaining power of African countries has to be appropriately dealt with, for example through welfare outcomes jointly agreed among African origin countries and with their associated destination countries.²⁴⁶
 - Furthermore, the impact and effectiveness of many of the related issues (e.g. skills training, recruitment monitoring, diaspora involvement) could be significantly enhanced if integrated into bilateral labour agreements between countries of origin and destination.²⁴⁷
- Taking their cue from the relevant provisions of Objective 22 of the *Global Compact for Safe, Orderly and Regular Migration* (2018), as well as the guidance contained in the *United Nations Guidance on Bilateral Labour Migration Agreements* (February 2022) and the African Union's *African Union Guidelines on Developing Bilateral Labour Agreements (BLAs)* (2022), African CoOs would be wise to have the following SP elements included in their BL(M)As with CoDs, in particular in the absence of any associated BSAs (see the Compendium for details on these dimensions/provisions):
 - Equality of treatment and non-discrimination;
 - Access to SP including health care on a par with nationals;
 - Portability of social security benefits for MWs and members of their families, and maintenance of acquired social security contributions/benefits;
 - Equal treatment in relation to injury compensation and in the event of pandemics;
 - Availability of SP floor coverage to all migrants;
 - Facilitation of social security claims and disbursement of social security benefits and assistance.
- *Additional considerations.* African CoOs 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/unequal bargaining power of African countries has to be appropriately dealt with, for example through welfare outcomes jointly agreed among African origin countries and with their associated destination countries.
- *Bilateral tax treaties.* Bilateral tax treaties may further assist in improving the financial position of MWs and hence their ability to access (contributory) SP and welfare support.

²⁴⁵ See also Agunias, D., C. Aghazarm and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011), pp. 79–80.

²⁴⁶ Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015), pp. 128.

²⁴⁷ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), p. 59.

- *Importance of social security agreements.* Social security agreements are essential to the coordination of SP benefits across countries, and thus to the enjoyment of migrants' rights to SP.
- *The need for an implementing administrative arrangement/agreement.* The administrative arrangement is an important subsidiary instrument aimed at supporting the implementation of the BSA.

Implementing social security administrative arrangement/agreement

"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."

Source: Tamagno, E. *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements* (ILO 2008), pp. 25–26.

- *Suggested changes to the legal framework.* In order to facilitate the negotiation and conclusion of BSAs by countries of origin, several adjustments to the legal framework of these countries need to be considered.²⁴⁸

Suggested changes to the legal framework of countries of origin to facilitate the negotiation and conclusion of bilateral social security agreements (BSAs)

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

- (1) Set out the **rationale and main objectives** to be achieved by having BSAs in place – referring to, in particular, the constitutional imperatives; international standards and guidelines; as well as the value of international best practice – aimed at incrementally extending appropriate social security to the various categories of overseas migrant workers and other migrants residing abroad;
- (2) Provide an **explicit mandate** in the law to negotiate, conclude and implement **BSAs and implementing agreements**, and that BSAs and implementing agreements should be context-specific, tailored to the needs and interests of the country of origin in relation to different countries of destination and different categories of workers;
- (3) Indicate the **institutions** mandated to negotiate, conclude and implement appropriately informed BSAs, as well as the need for **inter-institutional collaboration** with other government ministries, departments and institutions, as well as cross-border collaboration with institutions of destination countries;
- (4) Stipulate that BSAs so concluded should contain **specialized arrangements** that will **take precedence** over the provisions of any law in the country of origin regulating the social protection context of affected migrant workers abroad;

²⁴⁸ Adjusted from Olivier, M. *Extending social protection to Vietnamese workers abroad* (Report submitted to the ILO Viet Nam, 2020).

- (5) Provide that BSAs should indicate the extent to which affected migrant workers **remain** covered under the country-of-origin social protection system;
- (6) Include an **undertaking** that (the to be) affected migrant workers are to be **appropriately informed** about the contents and implications of the BSAs applicable to them, and are **entitled** to country-of-origin **government support** to exercise their rights and fulfil their obligations under the BSAs; and
- (7) Importantly, **link to the conditions** under which migrant workers would be allowed to be deployed abroad the existence of **concluded BSAs** – as discussed below in relation to the relevant Filipino laws.

Source: Adjusted from Olivier, M. *Extending social protection to Vietnamese workers abroad* (Report submitted to the ILO Viet Nam, 2020)

- *Institutional strengthening.* Attention also needs to be given to strengthening the institutions involved with negotiating, concluding and implementing BSAs. This may among other entail detailed technical training and advice and building negotiation capacity. Much can be learnt from countries in ASEAN with significant experience in this regard. The IOM and ILO would also be ideally suited to render support.

(6) Enhanced evidence base and data environment²⁴⁹

- *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.
- *Enhance the evidence basis and data environment.* The success and streamlining of many of the measures discussed in this Manual 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 in countries of origin in particular and dedicated data capturing and evaluative arrangements, including:
 - Labour force surveys in countries of destination and origin that include pertinent questions on participation in migrant support measures;
 - A mandatory information template for all projects and programmes implemented; and
 - A mandatory post-programme evaluation framework for all programmes and projects funded and implemented.²⁵⁰

²⁴⁹ See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System* par 46.

²⁵⁰ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015), pp. 61–62.

VII.7. Supportive arrangements

(1) Diaspora networks and remittance support²⁵¹

- *Diaspora networks and remittance support enhance social protection support and developmental initiatives in the country of origin.* The following supportive interventions are importance:
 - Profile and involve diaspora associations. A well-organized network of diaspora associations could enhance SP support, for example of family members in the country of origin.
 - *Streamline remittance transfer arrangements.* 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, also 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).²⁵²
 - *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.²⁵³
 - 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, have developed incentives to attract investments from the diaspora in particular, for example through the issuing 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 high-skilled migrants to African countries of origin. The experience in sub-Saharan Africa in particular has been highlighted as follows:²⁵⁴

“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.”

²⁵¹ See the African Union Guidelines on the Development of a Migrant Welfare Programme/System par 47.

²⁵² Agunias, D., C. Aghazarm and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) pp. 66, 76.

²⁵³ *Ibid.*, p. 66.

²⁵⁴ Martin, I. and S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) p. 55.

(2) Regional and continental involvement, and intercontinental engagement with CoDs²⁵⁵

- *Regional and continental involvement, as well as intercontinental engagement with CoDs, may be required.* Adopting suitable CoO 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 develop synergies and exchange across the continent. RECs could assist with refining these Guidelines for Member States of the concerned RECs and providing technical support.
- *Learn from comparative experiences to design an Africa-specific engagement framework.* There are increasingly good examples of regional institutions providing a platform for jointly investigating social security and welfare support needs and possibilities in relation to migrant workers abroad, to arrange for collaboration in and with CoDs, and to otherwise exchange good practices.
 - Such platforms also provide a basis for CoOs to develop a common voice and a set of common strategic aims on key issues in migration governance and in particular to advocate for enhanced SP and welfare support for their MWs abroad, also vis-à-vis CoDs.
 - Learning from the Asian experience, in the African context, this could include intraregional consultations and joint approaches at the level of RECs, continental (African Union) structures and Regional Consultative Processes.²⁵⁶
 - At the continental level, this could be done within the framework of an existing continental platform, such as the Specialized Technical Committee (STC) on Social Development, Labour and Employment.²⁵⁷ 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).²⁵⁸

VII.8. How to utilize the Template for the Design, Establishment and Implementation of a Migrant Welfare Programme

- *How to use the Template.* Appendix 2 contains a Template for the Design, Establishment and Implementation of a Migrant Welfare Programme by African CoOs.
- The Template is essentially a *self-help Template* and offers flexibility; it does not provide a fixed and final framework for designing, establishing 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.

²⁵⁵ See the African Union *Guidelines on the Development of a Migrant Welfare Programme/System par 48*, from where this part has been taken.

²⁵⁶ Agunias, D., C. Aghazarm and G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* 79-80 (IOM, 2011) 79, 80. See generally Jones, K. *Recruitment monitoring and migrant welfare assistance: what works?* (IOM, 2015), p. 14, 158.

²⁵⁷ Rule 5(1)(e) of the Rules of Procedures of the Specialized Technical Committee on Social Development, Labour and Employment lists the following as a specific function of the STC: "Consider issues relating to migrant workers in accordance with all relevant legal and policy frameworks on migrant workers".

²⁵⁸ Proposal made by an African Union representative interviewed for purposes of this Report.

- 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, the structure is as follows:
 - Firstly, specific thematic areas are indicated (first vertical column).
 - Secondly, 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).
 - Thirdly, the third vertical column requires of countries to decide whether the indicated specific issue/thematic area is of interest to them.
 - Fourthly, 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.
 - Finally, the final (fifth) column allows countries to indicate the institution(s) responsible to take further action.

Questions

- (1) Consider the role of social partners and CSOs in supporting MWs abroad and their family members, and describe how social partners and CSOs could be appropriately included in a participatory and inclusive SP approach.
- (2) Explain, in your country, the measures that need to be adopted to ensure that the recruitment industry is appropriately regulated and monitored.
- (3) Consider strengthening, in your country and region, the role of bilateral and multilateral agreements in achieving improved SP outcomes for workers from your country abroad and their family members. Distinguish in this regard the role of (BL(M)As, BSAs and MSAs respectively.
- (4) Explain how the evidence base and data environment informing SP for MWs abroad can be improved.
- (5) Reflect on the strengthening of diaspora networks and remittance arrangement to enhance SP for MWs abroad and their family members.

Group activity

- (1) Write a policy brief for your government, explaining the need and modalities for: (i) Strengthening the statutory and policy framework informing SP for MWs abroad and their family members; (ii) Enhancing the institutional framework to achieve this purpose; and (iii) Improving the consular framework to achieve this purpose.
- (2) Advise your government and the technical working group set up to establish and implement a MWP/MWF regarding a road map for establishing the MWP/MWF suitable to the context of your country, and elaborate on the different dimensions or elements of the suggested road map. Reflect in particular on the following elements: (i) The different steps to be taken; (ii) The responsible institution(s) for each of the steps; (iii) Strategic planning; (iv) Consultative framework; (v) Governance framework; (vi) Implementation and partnerships; (vii) Piloting and protocols; and (viii) Monitoring and evaluation.
- (3) Consider and advise civil society organizations involved in advocating for improved SP for MWs as to how the model employment contract can be improved to extend better SP to the workers of your country abroad and their dependants.
- (4) Write a position paper for your government, outlining the possibilities regarding and steps to be taken to use regional and continental networks, as well as intercontinental platforms, to engage CoDs with a view to improving SP outcomes for MWs abroad, from your country and region, and their dependants.

Key resources

Abrar, C., S. Irudaya Rajan, L. Ruhunage and T. Siddiqui (2014). *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, Indian and Sri Lanka* (Migrating out of Poverty, Research Programme Consortium, Working Paper 23).

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APPENDIX 1

Blueprint to establishing a Migrant Welfare Fund²⁵⁹

ACTION	ACTIVITY	NOTES
1. Create a Technical Working Group (TWG)	Assign a small technical team (preferably led by the Labour Ministry and composed of other relevant ministries) that will: <ul style="list-style-type: none"> • Act as a coordinator in the national effort to establish the MWF programme analyse the labour migration environment • Collect and organize data, gather information on all existing laws, policies and procedures • 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	The consultative tripartite workshops, to be initiated by the Ministry of Labour, should include: <ul style="list-style-type: none"> • Government actors involved in labour migration issues and social welfare services • Workers and employers organizations • Migrant leaders • Civil society organizations • Consular officers from the embassies in major countries of destination • External resource persons/experts • Private sector actors (e.g. financial institutions) • Parliamentarians • Others involved in labour migration 	TWG to collaborate with experts and prepare all materials and draft strategies that will be validated during the consultative workshops
2. Convene consultative workshops of tripartite partners and other stakeholders	Over a series of workshops, the TWG shall present: <ul style="list-style-type: none"> • Its detailed studies • Reliable migration data • New laws or revisions to existing laws or revisions to existing laws, policies and procedures • Proposed organizational structure to implement a MWF programme • Menu of welfare programmes and services 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	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.

²⁵⁹ Taken from ILO *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar* (Policy Brief Issue No. 3, November 2015), p. 6–8.

ACTION	ACTIVITY	NOTES
<p>3. Initiate strategic planning sessions</p>	<p>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.</p> <p>The planning sessions should include:</p> <ul style="list-style-type: none"> • 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 • The reparation of legal frameworks or ministerial orders to enable the establishment of a Migrant Welfare Fund that would describe the: <ul style="list-style-type: none"> – Coverage of the Fund – Required programmes and services – Management information system – Organizational structure – Funding mechanisms – Management and investment processes for the Welfare Fund – Initiation of contacts with collaborating government agencies and private organizations at the countries of origin and destination • 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 Welfare Fund. • Identify pilot implementing partners such as those among the trade unions and civil society organizations that already provide welfare programmes to migrant workers. 	<p>The planning session can be led by the TWG with guidance from external experts</p> <p>Conduct an externally guided monitoring and evaluation</p>
<p>4. Frame legislative and administrative policies</p>	<p>Ensure the passage of amendments to laws, policies and administrative procedures.</p>	<p>Parliamentarians</p>
<p>5. Issuance of orders</p>	<p>Prepare and issue specific directives to implement the approved laws, policies and procedures. Ensure the release of the necessary funds for implementation.</p>	<p>To be led by the Technical Working Group</p>
<p>6. Organize the Board of Trustees and Secretariat</p>	<p>The Labour Ministry must select and appoint the members of the Board of Trustees and the Secretariat staff.</p> <p>The Secretariat would manage the implementation of programmes and services and monitor the performance of the Welfare Fund.</p>	<p>The staff must be provided with rigorous capacity-building training</p>
<p>7. Pilot the programmes and services</p>	<p>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.</p> <p>Assess the worksite situation and make the necessary adjustments to programmes and services and the organizational structure.</p> <p>Ensure that necessary systems and procedures are in place, including:</p> <ul style="list-style-type: none"> • Welfare Fund management <ul style="list-style-type: none"> – Collection of member contributions – Fund disbursement – Investment protocols – Reporting and auditing • Management information system covering the delivery of programmes and services and disbursement of the Welfare Fund. <p>Establish civil society and private sector partnerships for delivering welfare programmes and services, which could include:</p> <ul style="list-style-type: none"> • Contract and employment mediation • Assistance on migrant worker complaints • Repatriation services <p>Identify assistance protocols appropriate to the country of destination as guided by the approved policies and procedures.</p> <p>Establish migrant workers networks.</p> <p>Conduct simulated repatriation exercises at the countries of destination and reception protocols at countries of origin.</p>	

APPENDIX 2

Template informing the design, establishment and implementation of a migrant welfare programme by African countries of origin

Designing, establishing and Implementing a Migrant Welfare Programme: African countries

Template

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. Need for a 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 a fund? For example, legal support; medical assistance; crisis, including disaster support	Consider services and benefits that may already be available, or lacking, concerning 3.1–3.5			
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				

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>3.5 Insurance cover – for example:</p> <ul style="list-style-type: none"> – Life insurance – Medical assistance – Disability cover – Survivor’s support – Family support, including child benefits – Loss of employment – Occupational injury or diseases – Maternity and paternity – Childrens’ education – Retirement – Other (specify) 				
<p>4. Should the fund be a contributory fund or one funded by government (or a hybrid)?</p>	Consider contributory capacity (see Item 5) and whether government contributions are affordable			
<p>5. If a contributory fund, who should contribute? For example:</p> <ul style="list-style-type: none"> • Benefiting migrant workers • Employers • Recruitment agencies • Government – As a standard budgeted item – Through earmarked taxes – Other dedicated funding sources (specify) 	Consider contributory capacity of mentioned individuals and institutions, including government contributions are affordable			
<p>6. Who should be able to benefit from the fund? For example:</p> <ul style="list-style-type: none"> • (Contributing) migrant workers • Irregular migrant workers? • Family members • Others 	Any exclusions? e.g. professional categories?			
<p>7. Institutional framework and governance arrangements</p>	Consider the technical, human resource and financial capacity, as well as the supporting framework			
<p>7.1 Should this be a public institution?</p>				
<p>7.2 Should this be a government ministry?</p>				
<p>7.3 How should it be composed? Specify.</p>				
<p>7.4 What should be its mandate and powers? Specify.</p>				

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
7.5 Which body/bodies should have oversight over this institution? Specify.				
7.6 How often should the institution report to the oversight body? Specify.				
7.7 How should the institution align/interact with government and other stakeholders engaged with external labour migration? Specify.				
8. Legal framework				
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				
8.3 What should be the obligations on the different stakeholders that should be provided in the law for: <ul style="list-style-type: none"> – Contributors – Beneficiaries – Employers – Recruitment agencies – Government – Other 				
9. Are operational arrangements (for example, systems; electronic interfacing) to manage the fund (specify) <ul style="list-style-type: none"> • Liaison with the public • Awareness-raising • Contribution collection • Consideration of claims • Benefit payments • Need for presence abroad? 				
B. INSURANCE-BASED MECHANISMS				
1. Is the current coverage available to migrant workers and their families in specific countries of destination sufficient?: <ul style="list-style-type: none"> • Country A • Country B • • 	Consider the range of benefits indicated in item 2 below, as well as the value of the benefits?			

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>2. Which social security risks should be provided/covered via insurance-based arrangements?</p>	<p>Consider various risk categories, e.g.:</p> <ul style="list-style-type: none"> - Medical care - Sickness benefits - Disability cover - Survivor's support - Family support, including child benefits - Loss of employment - Occupational injury or diseases - Maternity and paternity - Childrens' education - Retirement - Life insurance - Repatriation - Risks to which family members at home and/or abroad may be exposed to - Other 			
<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? 				
<p>4. Should benefits be portable?</p>	<p>Consider the capacity to pay benefits abroad</p>			
<p>5. Does a legal framework exist to provide such benefits to migrant workers from this country?</p>				
<p>6. Does the institutional and operational capacity exist to provide such benefits?</p>				
<p>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)</p>				

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
C. SUPPORT SERVICES				
1. Should legal assistance be provided: <ul style="list-style-type: none"> – Abroad? – Upon return? 				
2. Should access to health care be provided: <ul style="list-style-type: none"> – Abroad? – Upon return? 				
3. Should training be available (if so, specify which kind of training): <ul style="list-style-type: none"> – Before departure? – Abroad? – Upon return? 				
4. Should education support be extended to family members, e.g. scholarships?				
5. Is provision made for reintegration of returnees: <ul style="list-style-type: none"> – Skills training? – Business advice? – Financial support to start up a business? – Housing support? – Trauma support? – Other? 				
6. Is provision made for any other service for the benefit of migrant workers and/or their family members?				
D. COMMON/CROSS-CUTTING DIMENSIONS/ELEMENTS (applicable to A-C above)				
1. What kind of framework is available or should be in place to ensure the above (any of or a combination of A-C) can be implemented?				
2. Consider the institutional arrangements and coordination that need to be in place to give effect to the above: <ul style="list-style-type: none"> – Role of Government ministries – Dedicated institutions supporting labour exchange – Embassies – mandate and capacity – Labour attachés – Involvement of private sector – Other 				

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
<p>3. Government liaison with country of destination institutions: Consider coordination with governments of Countries of Destination – e.g.</p> <ul style="list-style-type: none"> – Joint committees – Joint inspection – Coordination with other embassies in countries of destination 				
<p>4. Diaspora liaison and involvement: Do arrangements exist to liaise with migrant workers abroad and with diaspora associations of these workers?</p>				
<p>5. Remittance interventions: Are arrangements in place to address:</p> <ul style="list-style-type: none"> – Transfer costs? – Transfer channels, including the availability of transfer service providers? – Strengthening the use of remittances by beneficiaries? 				
<p>6. Do supporting bilateral arrangements/agreements, which could have an impact, exist with the country of destination – e.g.</p> <ul style="list-style-type: none"> – Bilateral labour agreements? – Bilateral social security agreements? – Other? 				
<p>7. Are there existing multilateral arrangements/ commitments that may have an impact – e.g.</p> <ul style="list-style-type: none"> – Binding international and regional standards applicable? – (Impact of) regional integration commitments/ objectives? – (Impact of) of participation in regional structures (e.g. RECs, etc.)? – Other? 				
<p>8. Are awareness-raising mechanisms in place?</p>				
<p>9. Is there a need for improved regulation of the recruitment context in your country? Specify.</p>				

Specific Thematic Area	Indicators	Is this issue of interest/relevance to the country?	Follow-up steps required, including timelines	Responsible institution
10. Are arrangements in place concerning a model employment contract, in connection with: <ul style="list-style-type: none"> – Use of model employment contract by the parties to the employment relationship and recruitment agencies? – Suggested content? – Vetting/attestation by government/another body? – Enforcing and monitoring compliance with the contract? 				
11. Is skills and other training required (if so, specify): <ul style="list-style-type: none"> – Pre-departure? – Prior to return? – After return? 				
12. Does civil society play a role in providing support? Specify.				
13. Is a migrant resource centre providing support? Specify.				
14. Is international/ development partner support needed to make any of the above arrangements (A-D) work? Specify.				
16. Is capacity-building needed to make any of the above arrangements (A-D) work? Specify.				
17. Is a framework in place to monitor and evaluate the above arrangements (A-D), to the extent that they may be relevant?				
18. Are arrangements in place for: <ul style="list-style-type: none"> – Data to support any of the above arrangements (A–D)? – Information-sharing with the country of destination? 				



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