

**TRAINING OF TRAINERS  
MANUAL**

**NATIONAL LABOUR MIGRATION  
MANAGEMENT: ETHIOPIA**



International Organization for Migration (IOM)  
The UN Migration Agency



Federal Democratic Republic of Ethiopia

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Kirkos Sub-city, Kebele 17/18  
Behind Zequala complex (Near UNECA)  
Addis Ababa  
Ethiopia  
Tel: +251 11 661 10 96  
E-mail: [SLOAddisAbaba@iom.int](mailto:SLOAddisAbaba@iom.int)  
Website: [www.iomethiopia.org](http://www.iomethiopia.org)

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This report was prepared for IOM by

**Marius Olivier**

*Consultant*

Director, Institute for Social Law and Policy



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# ACRONYMS AND ABBREVIATIONS

<b>AORAE</b>	Association of Overseas Recruitment Agencies of Ethiopia
<b>AUMPF</b>	Migration Policy Framework (African Union)
<b>BLA(s)</b>	Bilateral labour agreement(s)
<b>CETU</b>	Confederation of Ethiopian Trade Unions
<b>CIETT</b>	Confederation of Private Employment Agencies
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>EAC</b>	East African Community
<b>IGAD</b>	Intergovernmental Authority for Development
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>IRIS</b>	International Recruitment Integrity System
<b>ITUC</b>	International Trade Union Confederation
<b>JLMP</b>	Joint Labour Migration Programme
<b>KAPEA</b>	Kenya Association of Private Employment Agencies
<b>MoFA</b>	Ministry of Foreign Affairs
<b>MoLSA</b>	Ministry of Labour and Social Affairs
<b>PEA</b>	Private employment agency
<b>PES</b>	Public employment service
<b>RCP</b>	Regional Consultative Process
<b>REC</b>	Regional Economic Community
<b>RMCC</b>	Regional Migration Coordination Committee
<b>RMMS</b>	Regional Mixed Migration Secretariat
<b>RMPF</b>	Regional Migration Policy Framework (IGAD)
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>ToT</b>	Training of trainers
<b>UN DESA</b>	United Nations Department of Economic and Social Affairs
<b>UNECA</b>	United Nations Economic Commission for Africa



# BACKGROUND TO THE MANUAL

Through the International Organization for Migration (IOM) Development Fund: Strengthening Labour Migration Management in Ethiopia project, IOM is working with the Government of Ethiopia to strengthen the Government's capacity and that of other stakeholders engaged in labour migration management to systematically manage and regulate labour migration in Ethiopia and prevent irregular migration to other countries, in particular to those in the Middle East. One of the ways in which this will be achieved is through the provision of intensive training of trainers' (ToT) workshops for selected technical experts from federal and regional government institutions working on labour migration management. The trainings will be conducted in order to foster the sustainability of the project's capacity-building initiatives. Accordingly, with the view to facilitate the ToT, this customized ToT Manual has been prepared.

This Manual responds to the demand to provide trainers with a comprehensive, interactive, practical and flexible training guide for effective labour migration management in Ethiopia (as a country of origin), as well as how to ensure protection of migrant workers in the destination countries. The ToT is targeted at helping policymakers and practitioners to design, revise and implement more effective labour migration policies and programmes.

The Manual contains a training guide for effective labour migration management in Ethiopia (as a country of origin), as well as how to ensure protection of migrant workers in the destination countries. It focuses on the following key areas:

- Introduction to labour migration terminology, trends, characteristics and policies;
- International legal and cooperation framework for the development of labour migration policies, which aims to provide an overview of international and regional law for the protection of migrant workers in the context of their fundamental human rights, as well as an overview of the principal forms of inter-State cooperation in managing labour migration including multilateral, regional and bilateral mechanisms; and
- Developing labour migration policies in country of origin and destination with the view to ensure protection of migrant workers in the destination countries.

The structure of this Manual follows that of the similar modules contained in the publication titled IOM and Organization for Security and Co-operation in Europe (OSCE) *Training Modules on Labour Migration Management* (2010), although specific additions have been made to capture the regional and Ethiopia-specific context. For the latter, reliance has essentially been placed on M. Olivier, *National Labour Migration Management Assessment: Ethiopia* (Revised final report prepared for the IOM, November 2016). Most of the materials contained in this Manual that are not regional or Ethiopia-specific, as is the case with group activities and case studies contained in this Manual, have either been extracted from or are based on the IOM and OSCE *Training Modules on Labour Migration Management* (2010).

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, *The Migration Policy Framework for Africa*, EX.CL/276 (IX) (Banjul, the Gambia, 2006).

African Union Commission-Regional Economic Communities-International Labour Organization-International Organization for Migration-United Nations Economic Commission for Africa, AUC/ILO/IOM/ECA Joint Labour Migration Programme – Powerpoint presentation on *Labour Migration Governance for Development and Integration in Africa: A bold initiative* (February 2015).

AUC-RECs-ILO-IOM-UNECA, *Labour Migration Governance for Development and Integration in Africa: A bold initiative* (2014).

AUC-RECs-ILO-IOM-UNECA, *Labour Migration Governance for Development and Integration in Africa: A bold initiative*, Programme brief (2014).

ILO, *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (ILO, Geneva, 2010).

Intergovernmental Agency on Development (IGAD), *IGAD Regional Migration Policy Framework*, adopted by the 45th Ordinary Session of the IGAD Council of Ministers (Addis Ababa, 2012).

IOM, *National Labour Migration Management Assessment: Ethiopia*. Final revised report prepared for the IOM (IOM Addis Ababa, 2017).

IOM and OSCE, *Training Modules on Labour Migration Management: Trainer's Manual* (IOM and OSCE, Geneva and Vienna, 2010).

OSCE, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies* (Mediterranean Edition) (OSCE, IOM and ILO, Vienna, (2007). Available from [https://publications.iom.int/system/files/pdf/osce\\_iom\\_ilo\\_medhandbook\\_en.pdf](https://publications.iom.int/system/files/pdf/osce_iom_ilo_medhandbook_en.pdf)

World Bank, *Migration and Remittances: Recent Development and Outlook; Special Topic: Financing for Development*, Migration and Development Brief 24 (April 2015). Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief24.pdf>

World Bank, *Migration and Remittances: Recent Developments and Outlook*, Migration and Development Brief 26 (April 2016).

World Bank, *Migration and Remittances Factbook 2016*. Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>

# I

## MODULE A

# INTRODUCTION: LABOUR MIGRATION TERMINOLOGY, TRENDS, CHARACTERISTICS AND POLICIES





## I.1. Aims of Module A

Module A aims to achieve the following objectives:

- Provide an overview of the course.
- Allow participants to express their expectations for the course.
- Allow facilitator and attendees to understand the range of points of view likely to arise during the course.
- Provide an overview of relevant terminology.
- Provide an overview of the evolution of labour migration flows and driving forces.
- Present the basic guiding principles of labour migration policies that are common to countries of origin and countries of destination.
- Present region- and country-specific labour migration trends.

## I.2. Learning outcomes for Module A

By the end of this module, participants will:

- Agree on shared expectations for the course outcomes, including a baseline understanding of what issues the training should cover and of what rules and norms the participants should follow.
- Understand background information on labour migration policies, including relevant terminology, labour migration trends and characteristics, and guiding principles for the development of labour migration policies.

## I.3. Labour migration terminology, trends and characteristics

### I.3.a. Introduction of the theme

This session aims to present a broad overview of the labour migration phenomenon, including the following two issues:

- Terminology and the difficulty of reaching a consensus on clear definitions of the main concepts.
- Evolution of labour migration flows during the past decades, including specific mention of the feminization of migration.

### I.3.b. Terminology

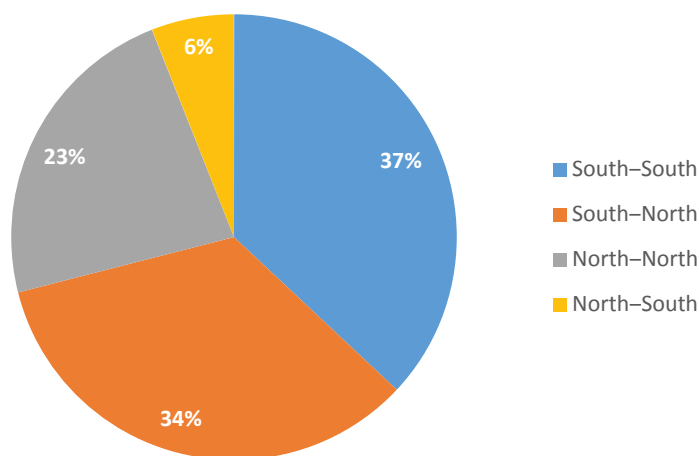
- The notion of international migration.
  - When referring to “migration” throughout the training, this refers to “international migration”.
  - There is no internationally accepted definition of international migration.
  - The usual definition is the following:
    - Movement of persons who leave their country of usual residence to establish themselves, either permanently or temporarily, in another country.
    - An international frontier is therefore crossed.

- The notion of extraneity (foreign character):
  - The concept of extraneity is central to the notion of international migration:
    - Migration policies deal mainly with the status, rights, obligations and advantages granted to foreigners.
  - Although central to migration policies, the notion of extraneity is too narrow to capture the full spectrum of migration policies, i.e.:
    - Migration policies should take into account the entire migration cycle; not only the situation of migrants abroad, but also the pre-departure and return phases of migration.
- The notion of labour migration:
  - This notion has both a broader and a more restrictive definition:
    - In the broadest sense, “labour migration” includes all foreigners who are currently in the labour force, including refugees and family members of migrants admitted for the purpose of employment.
    - In a more restrictive sense, “labour migration” includes only those who entered a country for the explicit purpose of employment (regular or irregular migrants).
  - The training will follow the second, more restrictive definition. Nevertheless, specific attention will be given to the status of family members.
- The notion of migrant worker:
  - As with the notions of international migration and labour migration, there is no generally accepted definition of “migrant worker”.
  - Nevertheless, the following definition can be found in the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (the UN Migrant Workers Convention):
    - “The term ‘migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Art. 2 (1)).
  - During the training, mainly in the context of legal developments, the term “foreigner” or “foreign worker” will be sometimes be preferable to “migrant worker”, as both international and domestic law establish a summary division between nationals and foreigners.
  - Mention should also be made of the explicit and restricted notion of (migrant) worker for purposes of employment abroad, as used by the recently adopted Ethiopian Overseas Employment Proclamation No. 923/2016. Article 1(4) defines “worker” as an individual who has a contractual relation with a foreign employer or a private employment agency (PEA) in accordance with the Proclamation and it may, as the case may be, include a job seeker. It therefore presupposes regular/lawful employment based on an (approved) employment contract, concluded with a foreign employer. It excludes, therefore, not only irregular migrant workers, but all migrant workers who are self-employed or who work in the country of destination on the basis of a contract that has not been approved by the Ethiopian authorities.

### I.3.c. Labour migration trends and characteristics

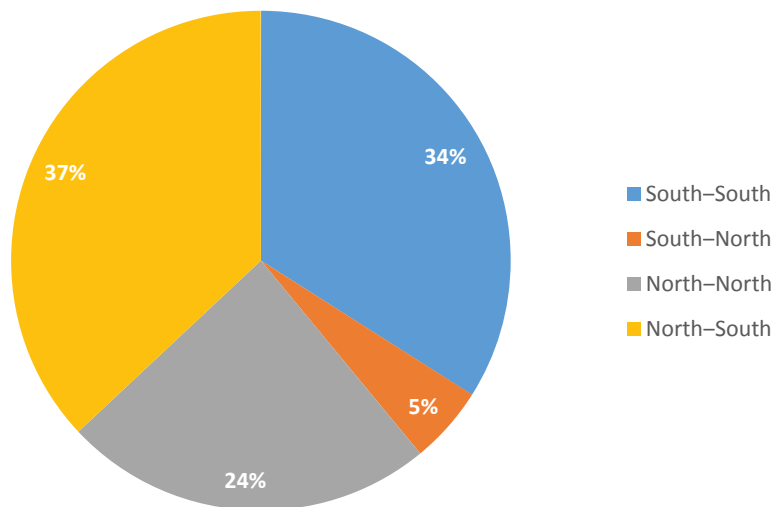
- Outline the following data on the evolution of migration flows:
  - According to the World Bank’s Migration and Remittances Factbook 2016, more than 250 million people, or 3.4 per cent of the world population, live outside their countries of birth.
  - By comparison, international migrants were estimated to be 75 million in 1960.
  - The pace of international migration’s increase in the past decades well exceeds the global population growth rate over the same period.
  - International migration statistics lack precision due to a series of factors, including the lack of an internationally accepted definition of international migration (and thus diversity in national approaches), limited data collection systems in numerous States, and the difficulty of measuring irregular migration flows.
- The great diversity of migration flows:
  - While the majority of migrants originate from developing countries, it not only a South–North or an East–West phenomenon.
  - Today most countries are, to one extent or another, simultaneously countries of origin, of transit and of destination.
  - As indicated by the list below, based on the recently following data provided by the World Bank, migrants are rather equally distributed among three key types (south–north; south–south and north–north):
    - 34 per cent are from the south and live in the north.
    - 37 per cent are from the south and live in the south.
    - 23 per cent are from the north and live in the north.
    - Only 6 per cent are from the north and live in the south.
- According to the most recent World Bank data, the top five migrant destination countries remain the United States, Saudi Arabia, Germany, the Russian Federation and the United Arab Emirates (World Bank, 2016:17); two of these, i.e. Saudi Arabia and United Arab Emirates have been receiving large number of Ethiopian migrant workers.

Figure 1: Migration (% share)



Source: World Bank, *Migration and Remittances Factbook 2016*, p. 28.

Figure 2: Remittances (% share)



Source: World Bank, *Migration and Remittances Factbook 2016*, p. 28.

- Driving forces of labour migration:
 

The following three key factors fuel labour migration:

  - *Pull factors* include labour market needs in destination countries and demographical factors in high-income countries.
  - *Push factors* include unemployment and wage differentials in countries of origin.
  - Established inter-country networks are based on family, culture and history.
- Feminization of labour migration:
  - The term “feminization of migration” must not be misunderstood:
    - Women have always migrated.
    - Moreover, the proportion of women in global migration flows did not significantly fluctuate during the past decades (around 46.6% in 1960; 49% in 1990; 49.4% in 2000; and 49% in 2010).
    - However, when examined on a country basis, there are more significant differences.
  - What has changed is the share of women in labour migration flows, which has increased since the 1970s.
    - This rise in autonomous female migration is referred to as the “feminization of migration”.
    - Push factors include the lack of access and control over productive resources, the role of women changing from merely household carers to breadwinners in their own right, and gender-based violence.
    - More women now have economic and career development motives similar to those of men.
    - There is a demand for foreign female labour in a variety of labour market sectors, including skilled occupations (frequently welfare and social professions, teachers, social workers, doctors and nurses) and less-skilled occupations (mainly as domestic and home-care workers, entertainers and garment workers, and, to a lesser extent, as agricultural workers).



- There are gender differences in the labour migration experience:
  - Women migrants tend to be more vulnerable to discrimination, exploitation, abuse and trafficking, while in the process of moving (the transit phase), at arrival, at the workplace and upon return.
  - In this respect, they often suffer from double discrimination, as women and as migrants.
  - This situation also reduces the socioeconomic contributions that female migrant workers can make to their societies.
- Such gender differences must be taken into account when crafting and implementing labour migration policies.

#### Resources for facilitator preparation

Federal Republic of Ethiopia (FDRE), Ethiopia's Overseas Employment Proclamation (Proclamation No. 923/2016).

IOM, *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy* (IOM, Geneva, 2008), pp. 1–20; 239. Available from [https://publications.iom.int/system/files/pdf/wmr\\_1.pdf](https://publications.iom.int/system/files/pdf/wmr_1.pdf)

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OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (OSCE, Vienna, 2009), pp. 13–18.

OSCE, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (OSCE, IOM and ILO, Vienna, 2006), pp. 11–25; 97.

Organisation for Economic Co-operation and Development (OECD), "International Migration and the Economic Crisis: Understanding the Links and Shaping Policy Responses", in: *International Migration Outlook: SOPEMI 2009* (OECD, Paris, 2009), pp. 11–76.

R. Perruchoud and K. Redpath-Cross (eds.), *Glossary on Migration*, 2nd edition (IOM, Geneva, 2011).

World Bank, *Migration and Remittances: Recent Development and Outlook; Special Topic: Financing for Development*. Migration and Development Brief 24 (April 2015). Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief24.pdf>

World Bank, *Migration and Remittances: Recent Developments and Outlook*, Migration and Development Brief 26 (April 2016).

World Bank, *Migration and Remittances Factbook 2016*. Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>

### I.3.d. Labour migration terminology, trends and characteristics: African Union, Regional and Ethiopian country context

#### African labour migration trends and characteristics

See AUC-RECs-ILO-IOM-UNECA, 2015 and World Bank, 2015.

- There were 18.6 million migrants in Africa in 2013.
- 31.3 million African people are living in countries other than their birth place.
- Half of African migrants stay in Africa.
- 65 per cent of sub-Saharan Africa migrants remain in sub-Saharan Africa:
  - 71–80 per cent in West Africa
  - 66 per cent in Southern Africa
  - 52 per cent in East Africa
  - 23 per cent in Central Africa
  - 6 per cent in North Africa
- Several drivers inform labour migration within and from Africa:
  - Demographic pressures, in particular ageing and increasing deficits in labour forces: Africa confronts a growing, educated youthful population.
  - Jobless growth and a dearth of decent work opportunities.
  - Growing inequalities between and within countries (rising exclusion).
  - Fragility of States – breakdown of effective governance.
  - Globalized access to information.
  - Global skills shortage, which is set to worsen:
    - In 2006, 4.3 million shortage of health workers (World Health Organization (WHO)) and will reach 12.9 million in 2035.
    - McKinsey Global Institute study calculated that by 2020, global shortages of high-skilled professionals will reach “38 million to 40 million fewer workers with tertiary education (college or postgraduate degrees) than employers will need”
- Several factors support an emphasis on labour migration within and from Africa:
  - Resurgence of an endogenous and Pan-African development paradigm (see the African Union Agenda 2063).
  - Enhanced focus on regional integration agenda at subregional and regional levels.
  - Regional economic development depends on circulation of people, services and technology.
  - Africa’s youthful population and its potential to help fill the gaps within the context of a global ageing.
  - Recognition that effective labour migration governance is one of the sustainable means for reducing trafficking in persons.
  - Increasing recognition and documentation of the developmental dividends/benefits of labour migration for sending and receiving countries.

- Developmental benefits for destination countries:
  - Renders traditional sectors like agriculture and domestic services viable.
  - Develops and sustains sectors like mining, petroleum, health, education and commerce.
  - Meets specific skills gaps in managerial, technical, information and communications technology and industrial.
  - Fosters enterprise growth.
- Developmental benefits for countries of origins:
  - Transfer of skills acquired by return migrants.
  - Remittances – both social remittances, including education and gender equality, and financial inflows:
    - Migrants’ remittances to developing countries are estimated to have reached USD 436 billion in 2014.
    - Remittances to sub-Saharan Africa are estimated to have increased to USD 34.5 billion in 2014, with particularly strong growth in Kenya, South Africa and Uganda.
    - Nigeria alone accounts for around two thirds of total remittance inflows to the region.
    - In some countries, remittances constitute a large percentage of GDP: Remittances in the Gambia, Lesotho, Liberia and the Comoros equal about 20 per cent of GDP.
    - Remittances financed one third of imports in Nigeria in 2013.
- Benefits for migrant workers, in terms of decent work, self-actualization and professional fulfilment.
- Yet, challenges remain:
  - The security agenda often limits the broader understanding of labour migration as a fundamental issue for development, regional integration and the labour market.
  - Inadequate reliable, accurate and comprehensive data on labour migration.
  - Absence of/lethargic implementation of free movement protocol rights and mechanisms developed by the Regional Economic Communities (RECs).
  - Limited political will, capacity gaps and poor institutional coordination at all levels.
  - Lack of comprehensive labour migration strategies and policy frameworks; some countries are moving in this direction.
  - Ineffective talent management strategies; hence, emigration of skilled Africans contributing to total “brain drain” and “brain waste”.
  - Inadequacies concerning the recognition of qualifications and competencies across borders.
  - Lack of or inadequate protection for migrant workers and their families from exploitation and hostility.
  - Limited or non-access to and portability of social security benefits.
- A recent (2013) African Union consultation agreed on seven main findings concerning labour migration common across all RECs:
  - Paucity of data on characteristics and conditions of labour migrants, data required for economic, labour, enterprise development, investment, education and social protection policies.

- Lack of implementation of free circulation regimes and generalized absence of coherent national labour migration policy.
- Growing gaps between skills needs versus numbers and types produced in Africa.
- Absence of social protection and social security for many migrants.
- Prevalence for migrants of substandard, abusive employment relations and conditions of work.
- Absence of capacity, coordination and policy involvement on migration by labour institutions.
- Lack of dialogue and coordination on labour migration among labour actors and institutions.

### Regional labour migration framework and characteristics

- Migration to, from and within the Horn of Africa, more precisely Intergovernmental Authority for Development (IGAD), is in nature complex and multifaceted in nature. IGAD Member States are countries of origin, transit and destination for migrants.
- Migration in the IGAD context is therefore often referred to as *mixed migration*.
- According to the IOM, mixed migration means “complex population movements including refugees, asylum seekers, economic migrants and other migrants [and]...concern irregular movements, frequently involving transit migration, where persons move without the requisite documentation, crossing borders and arriving at their destination in an unauthorized manner.”
- A large measure of international migration from IGAD is irregular, comprising migrant workers migrating irregularly, mainly for better improved living and working environments, essentially via four routes, according to the 2012 IGAD Regional Migration Policy Framework (RMPPF) (although this state of affairs fluctuate, in view of conditions in, for example, Libya and Yemen):
  - East Africa route – from the Horn of Africa and heads north to Italy and Malta via the Sudan, Libya and/or Egypt;
  - Mediterranean Sea routes – from the shores of Libya and Egypt to Malta, Italy, Cyprus and Greece;
  - Gulf of Aden route – from Somalia to Yemen crossing the Gulf of Aden via Bossaso, Puntland; and
  - Red Sea route – via the Red Sea and the Suez Canal to Italy and Malta and also through Djibouti to Yemen via Obock.
- Regarding average net migration, all IGAD Member States are net emigration countries, which underlines why increasing attention is being paid to the diaspora and remittances.
- According to the IGAD Migrant Rights Monitoring Project, several challenges can be identified.
  - IGAD Secretariat has an insufficient institutional framework to steward efforts in migration management.
  - IGAD Member States have different institutions in government that are responsible for diverse forms of migration management; these include ministries in charge of foreign affairs, interior/home affairs, and labour, as well as sectoral ministries.

- In the absence of coordination, each ministry pursues its own policy with inconsistent laws and regulations, resulting in policy incoherence.
- Third, both the IGAD Secretariat and IGAD Member States have limited capacity to manage migration; they require institutional and staff capacity-building before going it alone in migration management.
- Migration is an ambiguous concept for most stakeholders who perceive and respond to it differently – a shared understanding and common framework for cooperation, stakeholders are expected to strengthen effective regional migration management and/or take action in a concerted manner.
- Also, a freedom of movement instrument has not yet been adopted in IGAD.
- Despite the ongoing security situation in the Horn of Africa, the IGAD Council of Ministers adopted its RMPF in 2012, based on the African Union’s Migration Policy Framework of 2006 (in fact, IGAD is the first REC to do so).
  - The ultimate objective of the RMPF is to realize the well-being and protection of migrants in all IGAD Member States and to facilitate the developmental potential of migration.
  - It also aims at giving Member States a coherent and common approach to migration management.
  - It is essentially a non-binding reference document, providing the necessary guidelines and principles to assist governments in the formulation of their own national migration policies and their implementation in accordance with their own priorities and resources.
- The broader context within which (labour) migration occurs is also acknowledged by the RMPF.
  - It identifies the porous nature of Member States’ borders as a core reason for the adoption of appropriate border management interventions and associated data gathering and sharing measures.
  - It further advocates for a range of interrelated strategies to deal with all forms of irregular migration, in particular human trafficking and smuggling, calling for national coordinated approaches based on universally accepted international instruments, regional coherence via the Regional Consultative Process (RCP), tracking via reliable data, the protection of victims and awareness creation.
  - Return, readmission and reintegration are also provided for.
  - It contains extensive provisions and recommendations on migration data, emphasizing the need for national migration profiles and for standardization, comparability and coordination at the national and regional level.
  - Migration development, with reference to diaspora engagement and remittances, are highlighted.
  - It stresses the need for inter-State and interregional cooperation, through regular RCP engagements, the development of common strategies (including the harmonization of migration policies) and the adoption of action plans (an IGAD RMFP Action Plan was adopted in 2013).

- The challenges posed by labour migration appear, among others, from the IGAD RMPF recommendations concerning a number of key strategies to effectively manage labour migration in the IGAD region:
  - Ratification and domestication of international instruments relating to labour, and aligning national legal provisions with international standards, also in relation to employment.
  - Establishment of mutually acceptable transparent and accountable labour recruitment and admission systems based on clear legislative criteria and intended to harmonize emigration–immigration policies in general and labour laws in particular.
  - Enhancement of capacity-building and inter-institutional cooperation at the national level, and the strengthening of regional cooperation.
  - Consultation with and participation of the social partners and civil society and the promotion of social dialogue.
  - Recognition of the relevance and importance of the feminization of labour, and the need for protection of women in human trafficking contexts – linked to the criminalization of trafficking.
  - Efforts to promote the integration of migrant workers into labour markets and in countries of destination.
  - The extension of labour law and social security protection to migrant workers.
  - The elimination of child labour and abuse.

### **Ethiopian country context**

- Ethiopia is a country of origin, destination and transit for migrants.
- Labour migration, however, especially from Ethiopia, is a fairly recent phenomenon and mainly informed by economic considerations.
- Over the past two decades, there has been significant growth in international flows of labour from Ethiopia, mostly of low-skilled persons, fuelled by both pull and push factors, including:
  - The oil boom in the Gulf countries has caused the rapid growth of the economies of these countries and a corresponding demand for migrant workers – in particular the demand for care and domestic work, in the wake of a labour shortage in the countries concerned.
  - Push factors include the lack of appropriate employment opportunities, poverty despite high economic growth, wage differentials in Ethiopia and countries of destinations, and a range of cultural factors, among which the expectation that young women should migrate in order to support their family.
  - In fact, a “culture of migration” has developed, resulting in a total of about 180,000 migrant workers – by far the vast majority being females – who had processed their migration through PEAs.
- According to 2013 figures quoted by the United Nations Department of Economic and Social Affairs (UN DESA), Ethiopia has an international migration stock of 718,241 for 2013, and an indicated total number of migrants from Ethiopia of 585,853, the net migration is effectively 132,388. The majority of migrants to Ethiopia are refugees.

- The 2013 UN DESA figures suggest that there were 585,853 migrants who had gone from Ethiopia by 2013; in broad terms, they had migrated to the following regions/groups of countries:
  - Most developed regions: 331,158.
  - Less developed regions: 254,695.
    - Least developed countries: 92,139.
    - Less developed regions minus least developed countries: 162,556.
  - sub-Saharan Africa: 116,098.
  - Africa: 119,282.
- Reflection on labour migration in the Ethiopian context is hampered by inadequate collection of data and shortcomings in the analysis thereof.
- The majority of Ethiopians who migrate for work purposes to the Middle Eastern and certain African countries do this in irregular fashion. Numbers are difficult to determine.
  - More than three quarters of the recent 168,000 returnees from Saudi Arabia had irregular status by the time they were deported.
  - Close to 60 per cent of these migrated irregularly from the beginning, whereas 15.4 per cent entered Saudi Arabia regularly and then turned into irregular migrants due to various reasons including overstaying of visas.
  - By far, the majority of the estimated 100,000 Ethiopians in South Africa have entered South Africa as asylum seekers.
- Migration for employment purposes is therefore, from an Ethiopian perspective, both regular and irregular in nature. Consequently, a differentiated yet coordinated response is called for.
- Irregular migrants from Ethiopia in search for job opportunities and improved well-being use different routes aided by smugglers, traffickers or travelling on forged documents. The main routes that are used are:
  - The *Eastern route* whereby migrants go through Djibouti and Northern Somalia towards the Arabian Peninsula with some staying in either Yemen, Saudi Arabia while others proceed onward to Europe.
  - The *Northern route* (also referred to as the Western route at times) that extends through the Sudan, Chad, Niger, Libya and Egypt for migrants who aim at Europe or Israel as their final destination (sometimes countries like Libya and Sudan can also become the final destination).
  - The *Southern route* through Kenya, United Republic of Tanzania, Zambia and Malawi, Mozambique at times with the final destination being South Africa.
  - However, these routes are in constant flux, in view of security and other constraints facing migrants.
- Irregular migration in particular is closely associated with hardship and abuse, people smuggling and even human trafficking – both during the journey and in the destination countries.
  - Ill treatment includes denial of freedom (usually within the context of the employer-sponsorship or kafala system prevalent in most Gulf countries), denial of salary, food, forced to work for long hours without payment, physical and verbal abuses, and retention of passports by the foreign employers – a matter again discussed later in this report.

- There have been reports of savage killings of 30 Ethiopians in Libya, torture in Libyan prisons and those killed or injured in the course of xenophobic attacks in South Africa, as well as Ethiopians who drowned while making the trans-Mediterranean journey to Europe.
- Irregular migration in particular is prompted by certain demographic considerations, including youth unemployment; youth unemployment (covering those between 15 and 29 years of age) exceeds 20 per cent.
- There is therefore need for a migration, and in particular a labour migration policy in Ethiopia.
  - It appears that, despite significant recent developments, there is currently still limited reflection on and accommodation of migration issues in the policy and development planning domains of Ethiopia. This applies also to (international) labour migration issues.
  - Also, there have been some developments, relating to, among others:
    - The adoption of a diaspora policy;
    - The recently completed review of the regulatory framework pertaining to PEAs (in relation to recruitment for overseas employment), and the adoption of a new instrument, i.e. Ethiopia's Overseas Employment Proclamation No. 923/2016;
    - A well-organized and well-capacitated Diaspora Engagement Affairs Directorate within the Ministry of Foreign Affairs (MoFA);
    - A suggested comprehensive institutional framework tasked with overseas employment issues, within the Ministry of Labour and Social Affairs (MoLSA) – in principle provided for in Proclamation 923/2016; and
    - A new proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants – Proclamation 909/2015.

### I.3.e. Introduction to labour migration policies

 **Note to the trainer:** For customization to the Ethiopian context, see Module D.

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module A ("Introduction"), Session 3, in relation to:

- Establishing the policymaking team;
- Crafting the policy; and
- Data collection.

#### Introduction of the topic

- Highlight the importance of labour migration management and present a general definition:
  - Given the magnitude of labour migration, outlined in the previous session, its management is crucial.
  - Labour migration management refers to a planned and thoughtful approach to policy development. It includes the careful selection and implementation of appropriate policy responses to key questions facing individual States, as well as the international community as a whole.



- Recall the general objectives of the training:
  - Improve the knowledge of participants about labour migration policies in countries of origin and of destination, as well as about the relevant international and regional legal and cooperation framework; and
  - Assist policymakers in designing or revising labour migration policies by providing guiding principles, international norms, and examples of good and effective practices at the national and international level.
- Underline that the structure of the training is based around the distinction between countries of origin and countries of destination:
  - Module D is dedicated to policies in countries of origin, while Module E is dedicated to policies in countries of destination (Module B deals with the international and regional legal and cooperation framework).
  - While there are vast differences among countries of origin, as well as among countries of destination, the different countries of origin share similar concerns and interests, and so do the different countries of destination.
  - However, it is important to recall that in practice, most countries are, to one extent or another, at the same time both countries of origin and countries of destination.
- Indicate that the present session will introduce labour migration policies by presenting a series of guiding principles and fundamental elements for the following areas, which apply to both countries of origin and countries of destination:
  - Establishing the policymaking team;
  - Crafting the policy; and
  - Collecting data.

### Summary

- The development of a successful labour migration policy supposes a number of priorities that are common to countries of origin and countries of destination.
  - Cooperation and coordination between relevant national administrations, as well as consultation and cooperation with other stakeholders, including social partners and civil society organizations.
  - A labour migration policy should present the following characteristics: (a) consistency with the national development plan; (b) protection of migrant workers; (c) effectiveness and efficiency; and (d) gender sensitivity.
  - Despite the constraints and limitations mentioned, policy should be based on the objective ground of data collected.
- Labour migration is by nature a transnational phenomenon and therefore cannot be managed or addressed solely at the national level. The development of effective, fair and durable labour migration policies and practices requires cooperation among all States involved in the process.

**Resources for facilitator preparation**

- African Union, *The Migration Policy Framework for Africa*, EX.CL/276 (IX) (Banjul, the Gambia, 2006).
- AUC-RECs-ILO-IOM-UNECA, AUC/ILO/IOM/ECA, Joint Labour Migration Programme – Powerpoint presentation on *Labour Migration Governance for Development and Integration in Africa: A bold initiative* (February 2015).
- AUC-RECs-ILO-IOM-UNECA, *Labour Migration Governance for Development and Integration in Africa: A bold initiative* (2014).
- AUC-RECs-ILO-IOM-UNECA, *Labour Migration Governance for Development and Integration in Africa: A bold initiative*, Programme brief (2014).
- W.R. Böhning, *Employing Foreign Workers: A Manual on Policies and Procedures of Special Interest to Middle- and Low-Income Countries* (ILO, Geneva, 1996), pp. 15–18.
- IGAD, *Regional Migration Policy Framework*, adopted by the 45th Ordinary Session of the IGAD Council of Ministers (Addis Ababa, 2012).
- IGAD, *Regional Migration Policy Framework Action Plan* (2013).
- ILO, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers. Booklet 1 – Introduction: Why the focus on women migrant workers*. An Information Guide (ILO, Geneva, 2005). Available from [www.ilo.org/wcmsp5/groups/public/@ed\\_emp/documents/instructionalmaterial/wcms\\_116360.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/instructionalmaterial/wcms_116360.pdf)
- IOM, *Irregular Migration and Mixed Flows: IOM's Approach*, MC/INF/297 (2009). Available from [www.iom.int/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/98/MC\\_INF\\_297.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_INF_297.pdf)
- IOM, *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy* (IOM, Geneva, 2008), pp. 1–20; 237–256. Available from [https://publications.iom.int/system/files/pdf/wmr\\_1.pdf](https://publications.iom.int/system/files/pdf/wmr_1.pdf)
- IOM, *National Labour Migration Management Assessment: Ethiopia*. Final revised report prepared for the IOM (IOM Addis Ababa, 2017).
- OECD, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (OSCE, IOM and ILO, Vienna, 2006), pp. 85–99.
- OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (OSCE, Vienna, 2009), pp. 13–26.
- World Bank, *Migration and Remittances: Recent Development and Outlook; Special Topic: Financing for Development*, Migration and Development Brief 24 (April 2015). Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief24.pdf>
- World Bank, *Migration and Remittances: Recent Developments and Outlook*, Migration and Development Brief 26 (April 2016).
- World Bank, *Migration and Remittances Factbook 2016*. Available from <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>

# II

## MODULE B

# INTERNATIONAL AND REGIONAL MIGRATION LAW FRAMEWORK FOR THE PROTECTION OF MIGRANT WORKERS





## II.1. Aims of Module B

Module B aims to provide an overview of international and regional law for the protection of migrant workers, in the context of their fundamental human rights.

## II.2. Learning outcomes for Module B

By the end of this module, participants will:

- Understand the position of migrant workers under international human rights law;
- Be familiar with International Migration Law for the protection of migrant workers;
- Be able to broadly assess national practices with reference to existing international and regional standards; and
- Be able to apply existing international and regional standards to a concrete national context.

## II.3. Introducing Module B

### II.3.a. Introduction of the topic


- Explain aims and outcomes for Module B.
  - Module B aims to provide an overview of international and regional law for the protection of migrant workers, in the context of their fundamental human rights.
  - Learning outcomes:
    - To understand the position of migrant workers under human rights law.
    - To be familiar with International Migration Law for the protection of migrant workers.
    - To be able to broadly assess national practices with reference to existing international and regional standards.
    - To be able to apply existing international and regional standards to a concrete national context.
- Highlight the importance of Module B; the elements presented and discussed within the module will appear throughout the whole training.
- Highlight the fact that the present module is concerned with both foreign workers in a lawful and regular situation, as well as those who are in an irregular situation.

### II.3.b. Group activity

- Divide the participants into three groups. Designate one group a government of a country of origin, one group a non-governmental organization representing migrant workers and one group a trade union that predominantly represents workers who are nationals of the country of destination.
- With reference to Ethiopia, ask them to identify the following:
  - The key interests that they represent;
  - Legal regimes and rules that aid them in promoting their interests; and
  - Legal regimes and rules that challenge their interests.

- Ask each group to present just their findings and briefly explain the rationale behind them.
- Summarize the session, and indicate that the training will be exploring points raised, setting aside any issues the course will not be dealing with.

### II.3.c. State's powers regarding admission and expulsion of foreigners

 **Trainer note:** The aim of the presentation is to explain to participants that while human rights impose important obligations to States regarding the treatment of foreigners, States possess broad powers with regards to the admission and expulsion of foreigners. Human rights norms mostly address the rights of migrants after they enter a State's territory.

- Introduce the presentation:
  - Before considering the norms protecting migrants after their entry into a State's territory, it should be recalled that States possess broad sovereign powers with regards to the admission and residence of foreigners.

### II.3.d. Admission

Outline the following elements:

- States possess very broad sovereign powers in terms of the admission of foreigners into their territory.
- Although the principle of freedom of movement is recognized by international law, its scope is relatively narrow:
  - Quote article 12 of the International Covenant on Civil and Political Rights (ICCPR):
 

*“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

*2. Everyone shall be free to leave any country, including his own.*

*[...]*

*4. No one shall be arbitrarily deprived of the right to enter his own country.”*
  - In other words, there is no general right of the individual to enter a State's territory unless he/she is a national of the said State.
    - However, regarding article 12(4) of the ICCPR, it is arguable that this right may also be applicable to long-term foreign residents of a country.
- Moreover, legitimate grounds for refusal of admission are very broad:
  - Most of these grounds are included in the notions of public order (e.g. grounds based on earlier criminal convictions, earlier violations of immigration legislation, risk of irregular immigration, economic grounds), national security and public health.

### II.3.e. Expulsion

Outline the following elements:

- The right to expel can be seen as corollary to the rights of the State regarding admission.
- As with the non-admission of foreigners, the grounds used by States to justify expulsion are very broad.

- States have nevertheless fewer grounds available for expulsion than for the rejection of admission.
  - In other words, it is easier for a considered State to refuse admission than to expel a foreigner.

### II.3.f. The State is subjected to International and Regional Migration Law


- Highlight the fact that while State’s powers are wide, these powers are nevertheless subject to the rules of International and Regional Migration Law.
- If the presence of international and regional norms in matters related to the admission and the sojourn of foreigners is limited, it is nevertheless existent.
- We will see that refusals of admission and decisions of expulsion can be challenged through the “indirect” use of a number of human rights (such as the right to family life, the right not to be subjected to inhuman or degrading treatment, and, regarding refugees, the principle of non-refoulement).

#### Resources for facilitator preparation

See bibliography at the end of Module B.

## II.4. International Migration Law

### II.4.a. Universal instruments

 **Note to the trainer:** The aim of this session is to provide an overview of the International Migration Law framework for protecting migrant workers with reference to general international human rights law, international labour standards and specific international instruments protecting migrant workers, such as ILO Conventions No. 97 and 143 and the UN Convention on Migrant Workers.

**Make sure to pose questions to the group regularly, in order to ensure that they are following the material and in order to reinforce learning.**

**Remember that there is a lot of information to get through in a short period of time. Ensure that you keep a decent pace throughout.**

### II.4.b. Introduction of the topic

The International Migration Law framework protecting migrant workers is found in essentially three places:

- International human rights law;
- The international labour standards of the ILO that apply to all persons regardless of nationality or legal status;
- Specific instruments protecting migrant workers:
  - Specific ILO instruments concerned (Conventions No. 97 and 143); and
  - International Convention on the Rights of All Migrant Workers and Members of Their Families (1990).

### II.4.c. International human rights law

- Present the instruments using the following distinction:
  - On the one hand, those general instruments that constitute the International Bill of Rights, including the Universal Declaration of Human Rights (which, while non-binding, still contains provisions that constitute customary international law), the ICCPR and the International Covenant on Economic, Social and Cultural Rights.
  - On the other hand, those conventions concerned with the protection of persons against specific forms of ill treatment, for example, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), or those conventions concerned with the protection of particular groups of persons (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Rights of the Child (CRC)).
- Summarize the philosophy of international human rights law:
  - The international human rights instruments identified above protect all human beings, regardless of their nationality.
  - Therefore, the starting point for a discussion on the application of human rights to migrant workers is that migrant workers, though non-nationals, are generally entitled to the same human rights as local citizens.
- Highlight the importance of the principle of non-discrimination regarding the application of human rights to foreigners. Outline the following elements (Depending on time/level/interest of participants, this part can be shortened and simplified):
  - The principle of non-discrimination is twofold, meaning that it implies both an indirect and an autonomous right.
    - As an indirect right, it applies complementarily with the rights recognized by international instruments, reinforcing their effectiveness.
    - As an autonomous right, it takes into consideration national legislation and imposes on the State the duty of not adopting and implementing a discriminatory law. This duty is imposed by international law even when no other internationally recognized human right is concerned.
  - The content of the principle of non-discrimination:
    - All discrimination is illegal, no matter what the ground (for instance, nationality).
    - This does not mean that every distinction of treatment imposed by a State on an individual or a group constitutes discrimination.
    - According to the Human Rights Committee, a distinction of treatment constitutes discrimination when it is not based on “reasonable and objective criteria”.
  - The application to foreigners of the principle of non-discrimination:
    - The distinction of treatment between nationals and foreigners is strictly limited.
    - First, the permissibility of such a distinction will depend on the international instrument involved. Arguably, no distinction of treatment is acceptable under the ICERD, CEDAW, CAT and CRC.
    - Second, the distinction’s permissibility depends on the rights protected. No distinction of treatment is acceptable in the area of civil rights. Regarding economic, social and cultural rights, the question is more complex as the non-discrimination principle appears to operate more weakly than with regards to civil rights.



- Third, the legality of a distinction of treatment may depend on the foreigner's migration status – regular or irregular.
- Highlight the fact that at the national level, the applicability of anti-discrimination laws to distinctions on the grounds of nationality is often limited.

#### II.4.d. International labour standards

- Highlight that there are two principal ILO instruments concerned specifically with the labour rights and legal status of migrant workers:
  - Migration for Employment Convention (Revised) No. 97 of 1949; and
  - Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975.
  - Both conventions are accompanied by non-binding Recommendations (Nos. 86 and 151) that contain clarifications and further guidelines.
- Highlight the following elements regarding the first ILO instrument, Convention No. 97:
  - Concerns mainly State-organized labour migration, rather than spontaneous movements.
  - Contains no safeguards for irregular migrant workers.
  - Can serve as a reference for bilateral arrangements. Additionally, an annex to the accompanying Recommendation No. 86 contains a model bilateral labour agreement (BLA).
  - Ratified by 49 States.
- Highlight the following elements regarding the second ILO instrument, Convention No. 143:
  - Covers broader personal and material scope than Convention No. 97.
  - Affords specific protection to irregular migrants, particularly with regard to the protection of their basic human rights (article 1) and their rights arising out of past employment.
  - Ratified by 23 States.
  - Some of the more liberal provisions, particularly article 14(a) concerned with access to the labour market, may be regarded by governments as obstacles to its ratification.
- Highlight the fact that in addition to the specific ILO standards safeguarding the rights of migrant workers, other important ILO instruments are applicable:
  - All the conventions and recommendations adopted by the International Labour Conference to date cover nationals and non-nationals, unless otherwise specified in the instruments concerned.

#### II.4.e. The International Convention on the Rights of All Migrant Workers and Members of Their Families (UN Convention on Migrant Workers)

- Highlight that the UN Convention on Migrant Workers, despite its low level of ratification by States (48 States parties as of 15 July 2016), is important for the following reasons:
  - It can serve as a comprehensive model for the laws of countries of destination by clearly identifying the rights and benefits to which migrants, vis-à-vis nationals, should be entitled.
  - It explicitly underlines that all migrant workers and their families should be protected, including irregular migrants.

- Some differences in treatment may be acceptable and the Convention does draw a number of distinctions in this respect (Parts III and IV).
- The Convention also recognizes the principle that lawfully resident migrant workers should be treated on equal terms with nationals in some key areas, such as conditions of employment and the provision of accommodation, including in social or public housing.

#### II.4.f. Summary

- At the universal level, international human rights law is composed of the following:
  - General instruments:
    - Universal Declaration of Human Rights
    - ICCPR
    - International Covenant on Economic, Social and Cultural Rights
  - Specific instruments:
    - CAT
    - CEDAW
    - CRC

The above instruments are by principle applicable to all persons, regardless of nationality (and, regarding foreigners, regardless of their legal status, regular or irregular).

While distinctions of treatment may be acceptable regarding specific rights and specific instruments, the legality of such distinctions is strictly limited.

- ILO standards:
  - Two conventions are concerned specifically with the labour rights and legal status of migrant workers: Convention No. 97 and Convention No. 143.
  - Unless otherwise specified, all ILO Conventions and Recommendations cover nationals and non-nationals.
- UN Convention on Migrant Workers:
  - Although not widely ratified, this Convention can serve as a comprehensive model for the laws of countries of destination by clearly identifying the rights and benefits of migrants.

## II.5. Regional Migration Law

### II.5.a. African Union labour migration framework

- A united and integrated Africa is an African Union priority and provides the backdrop against which the African Union treatment of labour migration must be seen. Binding standards, contained in a protocol at the African Union level, have not yet been developed. Nevertheless, the following framework contains important pointers towards the provision for and regulation of labour migration at the level of RECs and Member States.
  - The African Union Commission's Strategic Plan 2014–2017 contains the promotion of labour migration as a specific strategy.
  - The African Union's 2014 Declaration on Employment, Poverty Eradication and Inclusive Development in Africa (also known as the Ouagadougou + 10 Declaration), adopted in 2015, also views labour migration for regional integration as a key priority area, to be supported by free movement.

- The African Union’s Migration Policy Framework of 2006 (AUMPF) is an important guiding document, also as regards labour migration. The same applies to the African Union Position on Migration and Development of 2006, which largely reiterates the thematic areas covered by the AUMPF.
- The AUMPF calls for a rights-based approach to labour migration based on ILO Conventions No. 97 and 143, as well as the International Convention on the Rights of All Migrant Workers and Members of their Families.
- The AUMPF, which contains a chapter on labour migration, places the focus, among others, on the following key objectives:
  - Enhance data collection, analysis and exchange on labour needs and supply in States of origin and destination in order to match labour skills with labour demand through comprehensive regional approaches.
  - Maintain open and continued contact and communication between States of origin and destination in order to ensure, for example, adequate work conditions for nationals working abroad.
  - Enhance national and regional labour migration data collection, analysis and exchange to document, among others, the conditions and needs of migrant workers and their families.
  - Incorporate mechanisms that monitor the provision of decent work for migrants and enable them to access legal provisions for social protection.
  - Provide social protection and social security benefits, particularly unemployment insurance, compensation for employment injury and old age pension for labour migrants while working abroad and/or upon their return.
  - Ensure that indigent regular migrants who may lose their job should not be returned to their State of origin unless there is an interstate agreement to this effect and they shall not have their right of residence and work permit withdrawn. They should receive equality of treatment regarding security of employment, alternative employment, relief work and returning.
- The African Union Social Policy Framework of 2008 recommends regional integration and collaboration of social security schemes to ensure benefits of labour circulation.
- In June 2015, the African Union Heads of State and Government adopted a Declaration on Migration, which reaffirms the African Union’s commitment at accelerating mobility and integration on the continent, as well as migration in development, while addressing regular and irregular migration. The Heads of State and Government commit to undertake the following actions:
  - Speed up the implementation of continent-wide visa-free regimes.
  - Offer all Africans equality of treatment within RECs by 2018.
  - Expedite the operationalization of the African passport that would initially facilitate free movement of persons.
  - Establish a harmonized higher education mechanism that will facilitate transferability of knowledge, skills and expertise.
  - Strengthen efforts to combat human trafficking and smuggling of migrants through the implementation of the relevant UN instruments – the Declaration endorses the Horn of Africa Initiative on Human Trafficking and Smuggling by the African Union Commission, as well as the Terms of Reference, Declaration, Strategy and Plan of Action adopted by the Regional Conference on Human Trafficking and Smuggling held in Khartoum, Sudan in October 2014.

- The 2015 Declaration on Migration also urges the consideration by the African Union Executive Council of:
  - Mobility and free movement of people in Africa.
  - Development of a Protocol on Free Movement of Persons.
  - Engagement in the process of developing capacity to manage migration flows in the continent, in collaboration with Member States.
- Jointly with the RECs and with three international organizations – i.e. the ILO, IOM and UNECA – the African Union developed a programme that is intended to operationalize the AUMPF and strengthen the effective governance and regulation of labour migration and mobility in Africa, under the rule of law, at the RECs and national levels.
  - Known as the AU-RECs-ILO-IOM-UNECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative* (also known as the AU-RECs-ILO-IOM-UNECA Joint Labour Migration Programme), this initial four-year programme with a ten-year vision was adopted by the Twenty-fourth Summit of the African Union in January 2015.
  - The Programme will contribute to obtaining the development potential of labour and skills mobility in Africa by supporting effective governance of labour migration and protection of migrants.
  - At the regional level, the RECs, and at national level, the following key stakeholders will be involved:
    - All relevant government ministries/departments (such as Labour, Employment, Interior and Education);
    - Private Employers, Workers' Organizations; and
    - Migrants/Diaspora.
  - The programme is organized in two major complementary parts (i.e. specific objectives).
  - Component/specific objective 1 on strengthening effective governance of labour migration in Africa entails the following:
    - Increase domestication of key international standards on labour migration.
    - Achieve wider elaboration, adoption and implementation of harmonized free circulation regimes and coherent national labour migration policy in the RECs.
    - Enable labour institutions and social partners in RECs and national governments to facilitate labour migration governance, policy and administrative responsibilities.
    - Establish regional mechanisms for tripartite policy consultation and coordination on labour migration issues, and consultation and technical cooperation with other regions.
  - Component/specific objective 2 on supporting implementation of labour migration standards and policy implies:
    - Enhance collection of gender- and age-disaggregated data on migrants' economic activity, employment, skills, education, working conditions and social protection situations.
    - Initiate/support efforts to resolve skills shortages and skill-education mismatches while increasing recognition of harmonized qualifications across Africa.
    - Promote decent work for migrants with the effective application of labour standards to migrant workers.

- Facilitate measures to extend social security to migrants through access and portability regimes compatible with international standards and good practice.
- The Programme intends achieving these objectives through the following:
  - Collection of gender- and age-disaggregated data on migrants' economic activity, employment, skills, education, working conditions and social protection;
  - Resolution of skills shortages and increased recognition of harmonized qualifications across Africa;
  - Strengthened capacity of labour institutions in the African Union Commission, RECs and selected national governments on labour migration;
  - Regional tripartite policy coordination and cooperation with other regions; and
  - Extension of social security to migrants through access and portability regimes.

### II.5.b. Regional Economic Communities labour migration framework

- Ethiopia is a member of two RECs, i.e. the 19-member Common Market for Eastern and Southern Africa (COMESA) (Ethiopia currently holds the chair of the COMESA Authority) and the 7-member IGAD.
- Ethiopia is not a member of the East African Community (EAC). However, it has been attending EAC-related meetings as an observer, in the wake of increasing and strengthening trade links with the EAC.

#### Common Market for Eastern and Southern Africa

- The COMESA migration, and for that matter labour migration framework, is poorly developed.
- The 1998 COMESA Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (adopted in 2001) envisaged the progressive achievement of free movement.
  - However, the Protocol has been ratified by only two Member States, and signed by three others.
- A joint inter-RECs programme impacting on migration as well, namely the Regional Political Integration and Human Security Support Programme has been developed, involving COMESA, the EAC and IGAD.
  - This programme, under the overall leadership of the EAC, intends to enhance political integration, good governance and human security.
  - One of the foreseen result areas of this programme is the development and/or implementation of key regional frameworks on migration management and forced population displacements.

### Intergovernmental Authority for Development

- The IGAD Council of Ministers adopted its RMPF in 2012, based on the AUMPF (in fact, IGAD is the first REC to do so).
- The ultimate objective of the RMPF is to realize the well-being and protection of migrants in all IGAD Member States and to facilitate the developmental potential of migration. It also aims at giving Member States a coherent and common approach to migration management.
- The RMPF is essentially a non-binding reference document, providing the necessary guidelines and principles to assist governments in the formulation of their own national migration policies and their implementation in accordance with their own priorities and resources.
- The RMPF has to be understood against the background of associated structures and programmes at the regional and interregional levels that impact on labour migration, even inter-continentially (see Module C for further details):
  - In 2008, a regional dialogue platform was established through the IGAD RCP.
  - Since 2011, Chiefs of Immigration from IGAD Member States established the Regional Migration Coordination Committee (RMMC).
  - Since 2014, with the support of the IOM and within the framework of the IGAD-RCP, a three-year programme on Building Member States' Capacity for Enhanced Migration Governance in the IGAD Region has been implemented.
  - Information on mixed migration flows is collected by the Regional Mixed Migration Secretariat (RMMS), based in Nairobi.
  - Several initiatives aimed at combating human trafficking have been introduced. These include the 2010 the Ouagadougou Action Plan (OAU) to combat trafficking, especially in women and children, the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, and the European Union-Horn of Africa Migration Route Initiative, also known as the Khartoum Process.
  - The Africa-Arab Partnership on Migration and IGAD's cooperation with the Gulf Cooperation Council (GCC).
- Noting the benefits as well as the challenges posed by labour migration, the IGAD RMPF recommends a number of key strategies to effectively manage labour migration in the IGAD region. These include:
  - Ratification and domestication of international instruments relating to labour, and aligning national legal provisions with international standards, also in relation to employment.
  - Establishment of mutually acceptable transparent and accountable labour recruitment and admission systems, based on clear legislative criteria and intended to harmonize emigration–immigration policies in general and labour laws in particular.
  - Enhancement of capacity-building and inter-institutional cooperation at the national level, and the strengthening of regional cooperation.
  - Consultation with and participation of the social partners and civil society and the promotion of social dialogue.
  - Recognition of the relevance and importance of the feminization of labour, and the need for protection of women in human trafficking contexts – linked to the criminalization of trafficking.

- Efforts to promote the integration of migrant workers into labour markets and in countries of destination.
- The extension of labour law and social security protection to migrant workers.
- The elimination of child labour and abuse.
- The RMPF also stresses the need for regional cooperation, in particular the adoption of an IGAD protocol on free movement of persons, labour, goods and capital (see Module C for further details).
- The RMPF reflects on human rights issues and emphasizes the need to ratify and domesticate international instruments.
- It identifies the porous nature of Member States' borders as a core reason for the adoption of appropriate border management interventions and associated data gathering and sharing measures.
- It further advocates for a range of interrelated strategies to deal with all forms of irregular migration, in particular human trafficking and smuggling, calling for national coordinated approaches based on universally accepted international instruments, regional coherence via the RCP process, tracking via reliable data, the protection of victims and awareness creation.
- Return, readmission and reintegration are also provided for in the RMPF.
- The RMPF further contains extensive provisions and recommendations on migration data, emphasizing the need for national migration profiles and for standardization, comparability and coordination at the national and regional level.
- It stresses migration development, with reference to diaspora engagement and remittances and the need for inter-State and interregional cooperation, through regular RCP engagements, the development of common strategies (including the harmonization of migration policies) and the adoption of action plans.
- Migration priorities were identified by IGAD Member States in May 2013. These can be summarized as follows, as far as they potentially relate to (labour) migration:
  - IGAD needs to develop a comprehensive Action Plan on Migration, to be adopted by the IGAD decision-making organs.
  - Conduct National Consultative Conferences in each Member State jointly with Member States, to assist them to develop a comprehensive national migration policy, based on the RMPF.
  - Establish a strong national consultative coordination (e.g., an interministerial task force) mechanism for effective migration management.
  - Build migration management institutional capacity at national and regional level – conduct capacity need assessments for Member States and IGAD architecture as regards migration.
  - Promote the gradual and progressive implementation of Free Movement of Persons within a specific time frame.
  - Migration of non-skilled labour should be managed carefully; IGAD should work with Member States to ensure a better management of labour migration to avert xenophobic policies and attacks against migrants in the region and beyond.
  - Build the capacity of Member States to establish a national data system e.g. through the development of national migration profiles.

- Build IGAD's capacity to implement its migration policies – through establishing the IGAD Migration Fund.
- Subsequently, an IGAD-Migration Action Plan was developed (in 2013).

### East African Community

- The RMPF emphasizes the need to have regard to contiguous RECs.
- Ethiopia is increasingly engaged with the EAC.
- The EAC Treaty of 1999 provides a regulatory basis for, among others, labour migration within the EAC region.
  - Chapter 17 of the Treaty (article 104) explicitly provides for the free movement of persons, labour, services, right of establishment and residence, and envisages the adoption of a protocol to give effect to this undertaking. Partner States are enjoined to harmonize their labour policies, programmes and legislation; the Council of the Community is given the power to adopt binding instruments to ensure the implementation of this provision.
- The Common Market Protocol of 2009 gives concrete effect to the treaty provisions and links the free movement principle to equal treatment. Article 10 of the Protocol requires in the regard:
  - A guarantee by the Partner States to grant free movement of workers, who are citizens of the Other Partner States, within their territories;
  - A commitment by Partner States to ensure non-discrimination of workers of the other Partner States; and
  - An entitlement granted to workers, based on the free movement principle, to enjoy labour and social security rights and benefits on the basis of equality with workers of the host State; the Council has to issue directives and make regulations on social security benefits.
- An Annex to the Protocol, in the form of binding regulations, implements the provisions of article 10 of the Protocol, stipulating, among others, that Partner States must ensure equality of treatment to citizens of other EAC Partner States.
- One of the most pronounced developments in the EAC context has been the establishment of a political process serving the so-called Northern Corridor countries, i.e. the five EAC countries and Southern Sudan. This process involves, among others, political direction being given by regular Summits of Heads of States of these countries.
  - Decisions taken at this level include the liberalization of labour migration and trade in services (in particular, the removal of barriers to freedom of movement of labour and services) and the conclusion (by 1 July 2015) of a memorandum of understanding (MoU) to negotiate and establish the transferability (portability) of social security benefits.
  - Again, at the occasion of the recent Ninth Northern Corridor Integration Project Summit, in 2015, the Heads of State directed the Ministers for Labour and Services to finalize the agreements on total liberalization of labour and services. This is accompanied by a process of approximation and harmonization of national laws, in view of the Protocol.

### Resources for facilitator preparation

See bibliography at the end of Module B.



## II.6. Ethiopian legal framework in relation to International and Regional Migration Law

- Ethiopia’s adherence to international legal norms and standards is informed not only by its obligations flowing from, among others, ratified international agreements, but also the provisions of its Constitution (Constitution of the Federal Democratic of Ethiopia, 1995).
- The Constitution provides the basis for the domestication of ratified international instruments in the Ethiopian legal system and a tool for the interpretation not only of the applicable legislation, but also the fundamental rights and freedoms enshrined in the Constitution.
  - Article 9(4) of the Constitution stipulates that all international agreements ratified by Ethiopia are an integral part of the laws of the country.
  - Equally important are the provisions of article 13(2), according to which the “...fundamental rights and freedoms enumerated in this Chapter shall be interpreted in a manner consistent with the Universal Declaration of Human Rights, international human rights covenants and conventions ratified by Ethiopia”.
- Ethiopia has been progressive in committing itself towards the respect of internationally recognized human rights through the ratification of several international and regional regulations to govern migration issues. The table below lists the international and regional human rights instruments that have been ratified or adopted.

**Table: Ratified international and regional human rights instruments governing migration issues**

Key international and regional legal instruments	Ratified/ acceded
UN Convention against Transnational Organized Crime (2000)	✓ (2007)
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2004)	✓ (2012)
UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime (2000)	✓ (2012)
ILO Convention No. 29 concerning Forced or Compulsory Labour, 1946 as modified by the Final Articles Revision (1946)	✓ (2003)
ILO Convention No 105 concerning the Abolition of Forced Labour (1956)	✓ (1999)
ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	✓ (2003)
ILO Convention No. 138 concerning Minimum Age for Admission to Employment (1973)	✓ (1999)
ILO Convention No. 97 concerning Migration for Employment (1949)	×
ILO Convention No. 143 – Migrant Workers (Supplementary Provisions) Convention (1975)	×
ILO Convention No. 181 concerning Private Employment Agencies (1997)	✓ (1999)
ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce (1947)	×
UN Slavery Convention of 1926 and amended by the Protocol of 1953	✓ (1969)
UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	✓ (1981)

Key international and regional legal instruments	Ratified/ acceded
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	✓ (1969)
UN Convention on the Elimination of All Forms of Discrimination against Women, CEDAW (1979)	✓ (1981)
UN Convention on the Rights of the Child, CRC (1989)	✓ (1991)
UN Convention on the Rights of Persons with Disabilities, CRPD (2006)	✓ (2010)
UN International Covenant on Economic, Social and Cultural Rights, ICESCR (1966)	✓ (1993)
UN International Covenant on Civil and Political Rights, ICCPR (1966)	✓ (1993)
OHCHR Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)	✓ (2014)
OHCHR Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	✓ (2014)
UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Articles (1990)	×
Convention on the Status of Stateless Persons (1960)	×
Convention on the Reduction of Statelessness (1975)	×
UN Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees (1951)	✓ (1969)
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	✓ (1994)
UN International Convention on the Elimination of All Forms of Racial Discrimination, CERD (1963)	✓ (1976)
Constitutive Act of the African Union (2000)	✓ (2001)
African Union Convention Governing Specific Aspects of Refugee Problems in Africa (1969)	✓ (1973)
African Charter on Human and Peoples' Rights (1981)	✓ (1998)
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (1998)	×
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005)	×
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)	✓ (2009)
African Charter on the Rights and Welfare of the Child (ACRWC) (1990)	✓ (2002)

Sources: Adapted from R. Messele and M. Gebeyehu, *Baseline Assessment on Human Trafficking Prevention and Response in Ethiopia* (IOM Special Liaison Office Addis Ababa, 2013), pp. 52–53, and compiled on the basis of Office of the High Commissioner for Human Rights, Status of ratification - Interactive dashboard Available from: Ethiopia (available from <http://indicators.ohchr.org/>, accessed on 30 May 2015); United Nations High Commissioner for Refugees, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (available from [www.unhcr.org/3b73b0d63.pdf](http://www.unhcr.org/3b73b0d63.pdf) on February 2017); African Commission on Human and Peoples' Rights, Legal instruments: Ethiopia ratifications (available from [www.achpr.org/states/ethiopia/ratifications/](http://www.achpr.org/states/ethiopia/ratifications/) accessed on 30 May 2015); and F. Gessesse, Overview of International Instruments and Global Initiatives on Migrant Children and the Status of International Instruments in Ethiopia, Presentation for the Advocacy Workshop to Enhance the Protection of Migrant Children, Addis Ababa, 1 December 2014.

- The instruments ratified or acceded to by Ethiopia relate to the status and treatment of refugees, human trafficking and smuggling, the protection of children, the abolition of slavery and forced labour, and the general human rights instruments of the UN and African Union covering civil, political, social, cultural and economic rights and concerning the protection of women, children, persons with disabilities and outlawing racial discrimination.
- Important UN and ILO migration-related conventions that impact directly on labour migration have not yet been ratified by Ethiopia. These include the UN International Convention on the Rights of all Migrant Workers and Members of their Families, and ILO Conventions 97 of 1949 (Migration for Employment Convention) and 143 of 1975 (Migrant Workers (Supplementary Provisions) Convention). However, it has been indicated that Ethiopia's ratification of the International Convention on the Rights of All Migrant Workers and Members of their Families is underway.
- Ethiopia has also not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.
- In addition, Ethiopia has not accepted the individual complaints procedures under any of the UN or African Union treaties listed above; it is therefore not possible for individuals to lodge complaints with the relevant UN or African Union supervisory bodies in the event of alleged non-compliance by Ethiopia with its obligations under any of these treaties.
- Ethiopia has accepted the inquiry procedure under one of the UN treaties listed above, i.e. the Inquiry procedure under the Convention against Torture (in 1994).
- As is discussed in Module C below, Ethiopia has concluded a number of BLAs with particular destination countries for the exporting of labour, while similar BLAs/MOUs with other countries are currently being considered. At times, these agreements contain reciprocal clauses, allowing also for the importing of labour.
- The welfare of migrant workers is in particular affected by labour and social security laws, and laws in relation to human trafficking and smuggling.
- Provision is made in the Ethiopian legal framework for the labour law protection of migrant workers, both within Ethiopia and those intent on working abroad.
  - The Labour Proclamation (currently being revised) contains important provisions concerning non-citizens working in Ethiopia, and Ethiopians intent on working abroad. In an overarching provision, it prohibits discrimination between workers on the basis of, among others, nationality (Proclamation No. 377/2003: article 14(1)(f)).
  - Regarding Ethiopians intent on working abroad, mention should be made of article 176 of the Labour Proclamation, which provides that no person or entity shall perform employment exchange activities for consideration. This is a clear confirmation of the guarantee in this regard embedded in international standards, in particular ILO Convention 181 of 1997, the Private Employment Agencies Convention, ratified by Ethiopia in 1999.
- Ethiopian social security laws, with regard to membership of the public sector and private sector public social security, applies only to Ethiopian nationals, subject to two exceptions – i.e. (i) where international agreements (that could include bilateral agreements) provide for the coverage of foreigners; and (ii) foreign nationals of Ethiopian origin (see article 3(1) of both the Public Servants Pension Proclamation 714/2011 and Proclamation to provide for Pension of Private Organization Employees 715/2011).

- No provision is made (i.e. in Proclamation 715) for the possibility of extending social security coverage to Ethiopian workers who may work abroad for a foreign employer. The new proclamation on overseas employment, Proclamation 923/2016, stipulates that the foreign employer has to take out life and disability insurance for the worker concerned.
  - A complicating factor in this regard is the fact that domestic workers are excluded from coverage under article 3(3)(a) of Proclamation 715; however, they are covered under Proclamation 923/2016 and may therefore enjoy life and disability insurance.
  - While their exclusion also affects domestic workers within Ethiopia, it also impacts negatively on the large numbers of Ethiopian domestic workers abroad.
  - Note should, in this regard, be taken of the provisions of article 14(1) of the ILO's Domestic Workers Convention<sup>1</sup> (not ratified by Ethiopia), which stipulate: "Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity."
- Much can be gained from the practice of concluding bilateral social security agreements with countries where large numbers of Ethiopians work. Such agreements could contain favourable provisions regarding, among others, cross-border exportability of benefits.
- The need for a properly regulated and streamlined labour migration framework has to take into account the impact of the apparently widespread prevalence of human trafficking and smuggling affecting Ethiopian migrant workers – and the corresponding need to ensure that this area (i.e. human trafficking and smuggling) is also properly addressed.
- A new comprehensive law on human trafficking (Proclamation 909 of 2015), developed in close collaboration with IOM, Ministry of Justice and MoLSA, has been officially endorsed (see the discussion later in this module).
- In addition, a national action plan and national referral mechanisms for victims of human trafficking are being developed, in collaboration with IOM and MoLSA.
- Currently, under the auspices of the National Anti-Trafficking Task Force and the regional counterpart Task Forces and on the basis of annual plans developed by the National Anti-Trafficking Council, endorsed by the regions, Ethiopia has put in place several measures to address human trafficking:
  - These include the promotion of local employment opportunities and access to vocational training.
  - Another key intervention involves a dialogue at community level, informed by a manual developed by the IOM.
    - The community conversation manual has been translated into three widely spoken languages in the country.
    - This manual, the Community Conversation Manual, focuses on irregular migration, human trafficking and smuggling in response to the challenges of irregular migration. It was developed in close consultation with major stakeholders including the MoLSA, the Ministry of Women and Children Affairs, UNICEF and other intergovernmental organizations and local partners.

<sup>1</sup> Convention 189 of 2011.

## II.7. Migrants' civil rights, employment-related rights and other rights

### II.7.a. Introduction

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module B ("International Migration Law framework for the protection of migrant workers"), Session 3, in relation to:

- Civil rights, in particular –
  - Freedom of slavery, forced labour, degrading or inhuman treatment;
  - Freedom of arbitrary arrest and detention;
  - Freedom of movement and the right to leave; and
  - Effective protection from violence, threats and intimidation, xenophobia and discrimination.
- Employment and other economic and social rights, in particular –
  - Access to employment (Right to work)
  - Employment rights
  - Other economic and social rights of particular importance – including access to medical care, access to unemployment benefits, access to housing, access to education, and the right to family life/family reunion.

### II.7.b. Ethiopian legal framework

- The 1995 Constitution provides for several fundamental rights, which are of relevance to the migrant workers to:
  - Right to life, liberty and the security of the person (article 14)
  - Right to life (article 15)
  - Right to liberty (article 17)
  - Right to human treatment (article 18)
  - Right of persons arrested (article 19), accused (article 20) and detained (article 21)
  - Right to equality (article 25)
  - Freedom of association (article 31)
  - Freedom of movement (article 32)
  - Marital, personal and family rights (article 33)
  - Rights of women (article 35)
  - Rights of children (article 36)
  - Rights of access to justice (article 37)
  - Rights of labour (article 42)
- The position of migrant workers under Ethiopian labour and social security laws is indicated above.
- Anti-trafficking legislation regulates the area of human trafficking and smuggling.
  - Article 18 of the Ethiopian Constitution prohibits slavery or servitude, trafficking in persons and forced or compulsory labour.
  - Until recently, the fragmented provisions of the Criminal Code of 2005 provided some basis for the prosecution of human traffickers and migrant smugglers.

- However, a new comprehensive anti-trafficking law has now been adopted (a proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants, Proclamation 909 of 2015).
- This law attempts to align the Ethiopian legal framework with international standards adopted by Ethiopia in this area, and essentially provides for:
  - Core definitions (see article 2), including the following:
    - “Human trafficker” or “migrant smuggler”;
    - Organized criminal group;
    - “Transnational crime”;
    - “Exploitation” including sexual and labour, as well as other forms of exploitation, such as slavery and debt bondage; and
    - “Victim”.
  - The establishment of a range of crimes of trafficking in persons and smuggling of migrants (Part two of the law):
    - The crime of “trafficking in persons” (article 3), emphasizing that a person can be trafficked for the purpose of exploitation within or outside Ethiopia.
    - The crime of assisting and facilitating trafficking in persons (article 4).
    - The crime of smuggling a migrant (article 5).
    - Aggravated circumstances leading to a more severe penalty (article 6) – i.e. where the offences mentioned in articles 3–5 result in severe bodily injury or death, where the offender commits the offence as being a member, a leader or coordinator of an organized criminal group or where the crime is committed “in large scale”.
    - Offences related to identity card or travel documents (article 7).
    - Assisting smuggling of migrants or smuggled migrant to stay in the territory of Ethiopia (article 8).
    - Assistance to illegal stay in any country (article 9).
    - Destroying of evidence and blocking testimony (article 10).
    - Concealing crime and the suspected criminal (article 11).
    - Failure to disclose criminal acts (article 12).
    - Criminal liability of legal persons (article 13).
    - Consent of the victim (article 14) – indicating, among others, that the consent given by any child or his/her guardian shall not be taken into account.
  - Prevention, investigation and other procedural provisions, including (Part three of the law):
    - Duty to report (article 16).
    - Protection of vulnerable victim (article 17).
    - Applying special techniques of investigation (article 18).
    - Arrest and detention (article 20).
    - Burden of proof (article 21) – allowing the court, where necessary, to shift the burden of proof to the defendants.
    - Inapplicability of the Statute of Limitations (article 25).
  - Protection, repatriation and compensation for victims (Part four of the law):
    - Identification and rescue of victims (article 26).

- Repatriation and return of the victim (article 27).
- Repatriation of foreign nationals to their country (article 28).
- Protection of witness and victim (article 29).
- Immunity from criminal liability (article 30).
- Compensation (article 31).
- Establishment of Fund (to prevent, control and rehabilitate victims of crime of trafficking in human and smuggling of migrants) (Part five of the law) (articles 32– 38).
- Stakeholders cooperation (Part six of the law) –
  - Establishment of National Coordinating Committee (article 39).
  - Establishment of Task Force (article 40).
  - Responsibilities of the MoJ (article 41), MoFA (article 42) and the Police (article 43).
- International cooperation (Part seven of the law).

#### Resources for facilitator preparation

See bibliography at the end of Module B.

## II.8. Group activity and conclusion

### II.8.a. Group activity

- Introducing the activity
  - Introduce the activity by dividing participants into their groups.
  - Provide the participants with a copy of the new proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants, 2015.
  - Distribute worksheets to each participant.
  - Ask participants to examine the case study in the Annex and consider the following question within their groups:
    - Are any human rights being violated in the situations described? If so, which ones? Explain.
    - With reference to what we covered in the session on Universal and Regional Frameworks, do you know in which instruments those rights are enshrined?
  - Tell the groups that they have 25 minutes to discuss.
  - Explain that each group will report back on one phase of the case study.
- Feedback from groups
  - Ask each group to present briefly their responses to one phase (five minutes each), ensuring each scenario is covered.
  - Invite comments from other groups after each phase is presented.
- Complement the responses from the participants using Answers and Trainer notes accompanying the case study in the present Trainer Manual.

### II.8.b. Conclusion: Establishing an equitable legal status for migrant workers

- Highlight the fact that establishing an equitable legal status for migrant workers serves the interests of countries of origin, as well as countries of destination.
  - By ratifying these standards, countries of origin underline the importance of protecting their workers.
  - Moreover, ensuring equality between national workers and migrant workers with respect to employment, work conditions and trade union rights protects both sets of workers.
  - Exploitation of migrant workers can only result in worse working and employment conditions for national workers as well.
- Highlight the fact that establishing an equitable legal status for migrant workers enhances good relations between the countries concerned.
  - The mistreatment of workers in the destination country is hardly conducive to the maintenance of good relations with countries of origin.
  - Highlight the fact that establishing an equitable legal status for migrant workers sends a clear message to employers and others who may wish to exploit migrant workers or indeed the whole of their workforce.

#### Resources for facilitator preparation

See bibliography at the end of Module B.



### Case study: Almaz Kebede's journey in search of employment

Almaz Kebede resides in a poor rural village in Ethiopia. She is 19 years of age, and is frustrated by the fact that she has not been able to find stable employment. She lives with her mother and siblings in a small house; there is barely enough food on the table to sustain the family.

One day, Almaz mentions to a friend that she is looking for employment to sustain both herself and make a contribution to the well-being of the family. Her friend introduces her to a man who often visits the village. His name is Haile. Haile informs her that he can find her a well-paid job in another country. He said he would make all the arrangements, including transport to the country and a passport. As she is not able to pay him, he will be reimbursed by the employer in the foreign country. Almaz is happy with the arrangement, and tell Haile that her 14-year-old brother also wants to come with to work with her.

A few weeks later, Almaz and her brother are loaded in a truck by Haile together with a group of other migrant workers. Haile's friend, Kubil, is the driver of the truck. Haile also gives Almaz a passport that he organized for her. They leave Ethiopia by crossing the border informally and not via an emigration point. After a long and treacherous journey, they arrive in the foreign country. Upon arrival, they are taken to the house of Abdullah, a rich citizen of the country. He told Almaz that he will employ her as a domestic worker, and that her brother will go and work on a farm of his friend, about 200 km away. Abdullah tells Almaz that he had to pay a substantial amount of money to bring Almaz and her brother to the country, and that they will not get paid for the first two years – as the remuneration that they would have received would serve as payment for these expenses. He also takes Almaz's passport away from her, and says that he will keep this until she has worked for the two-year period.

Almaz and her brother work long hours under difficult circumstances. In addition, Almaz is sexually abused by Abdullah. Almaz is too afraid to try and make contact with the Ethiopian embassy in the country concerned to obtain assistance, fearing that this will lead to reprisals. One day, a friend of hers who came to know about her and her brother's plight approaches the police of the country. Shortly thereafter, Almaz and her brother are deported to Ethiopia.

### Group assignment:

- (a) In terms of the treatment that Almaz and her brother received since she made contact with Haile, indicate whether any provisions of (i) international conventions to which Ethiopia is a party; and (ii) the new proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants, 2015, have been breached and, if so, what steps can be taken to address the various breaches.
- (b) Would Almaz and her brother be entitled to any support and compensation upon return to Ethiopia, under these international conventions and in terms of the new Ethiopian law referred to above?

### Answers and Trainer notes

- (1) Consult also the generic Trainer’s Manual on Training Modules on Labour Migration Management (IOM and OSCE, 2010), Module B (“International Migration Law framework for the protection of migrant workers”) in relation to the applicable international conventions, to indicate to the participants the various breaches that has occurred, and the remedies and steps that could be taken.
- (2) Consult the specific provisions of the new proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants, 2015 (mentioned in brief above) to indicate to the participants the various breaches that has occurred, and the remedies and steps that could be taken.

### Resources for facilitator preparation

African Union, Declaration on Migration, 2015, Doc. Assembly/AU/18(XXV).

African Union, *The Migration Policy Framework for Africa*, EX.CL/276 (IX) (Banjul, the Gambia, 2006).

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# III

## MODULE C

# INTERNATIONAL COOPERATION FOR THE FACILITATION OF LABOUR MIGRATION

A stylized globe is depicted in the lower half of the page, rendered in a light purple color. The globe is overlaid with a complex network of thin black lines and small black dots, creating a web-like structure that suggests global connectivity and migration. The lines and dots are scattered across the globe's surface, with some dots appearing as larger, semi-transparent blue circles. The overall aesthetic is modern and digital.



### III.1. Aims of Module C

Module C aims to achieve the following objectives:

- Provide an overview of the principal forms of inter-State cooperation in managing labour migration, including multilateral, regional and bilateral arrangements, as well as formal and less formal mechanisms;
- Consider the contours or the regional framework for labour mobility impacting on Ethiopia; and
- Present and discuss in some detail the objectives, content and efficiency of BLAs.

### III.2. Learning outcomes for Module C

By the end of this Module participants will be able to:

- Understand the principal forms of cooperation between countries of origin and countries of destination in managing labour migration, and the importance of such cooperation in developing effective, successful and equitable managed labour migration systems.
- Gain an understanding of the specific regional framework for facilitating labour mobility impacting on Ethiopia.
- Acquire knowledge of the different types of BLAs, as well as best practices in concluding and implementing such agreements.

### III.3. Introducing Module C

Please note that this module has to be read with the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module C ("International cooperation for the facilitation of labour migration"), which may be in need of updating.

#### III.3.a. International cooperation: The context

- In summing up, highlight the following factors explaining the need for international cooperation:
  - Migration is by nature a transnational process.
    - The migration process involves complex relationships between the migrant and a variety of public and private stakeholders in countries of origin, transit and destination.
    - Policies adopted by other countries may have an influence on the migration flows towards a considered country, as well as the effectiveness of its domestic policies.
  - There is no comprehensive international migration regime.
    - The admission of persons to States for the purpose of employment is regulated principally by national laws and policies.
    - Recall the broad powers of the State regarding admission of foreigners on their territory (see Module B on International legal framework for protection of migrant workers).
  - The efficiency of unilateral approaches is limited:
    - Dialogue and cooperation are needed in order to develop policies that benefit all – countries of origin, countries of destination and the migrants themselves.
    - This need for international cooperation has been increasingly acknowledged within the international community.

- International intergovernmental cooperation can take a variety of forms:
  - Formal or less formal mechanisms:
    - *Formal mechanisms* of international cooperation refer to the conclusion of legally binding agreements between States.
    - *Less formal mechanisms* of international cooperation refer to non-binding arrangements and consultative mechanisms.
  - Cooperation at the global, regional and bilateral levels:
    - Indicate that the present module will follow this tripartite structure – global, regional and bilateral cooperation.
    - Indicate that with regards to regional frameworks for labour mobility, the present module will examine, in some detail, the free movement of workers in the European Union.
- Point out that while the present module focuses on intergovernmental cooperation, attention must also be paid to other important forms of international cooperation on migration, particularly those involving trade unions and employer bodies.

### III.3.b. International cooperation: Activity

#### Activity:

- Aim of the activity:
  - To enable participants to reflect on why international cooperation in migration is needed.
- Ask select individuals to list some reasons why, in their opinion, international cooperation is important in the context of labour migration management.

#### Resources for facilitator preparation

OSCE, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (OSCE, IOM and ILO, Vienna, 2006), pp. 187–213.

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### III.4. Global-level cooperation

See the generic Trainer’s Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module C (“International cooperation for the facilitation of labour migration”), Session 2, in relation to:

- Global-level instruments, with reference to:
  - Intergovernmental cooperation in international conventions.
  - General Agreement on Trade in Services.
  - Global less formal mechanisms, with reference also to:
    - Global Forum on Migration and Development; and
    - International Dialogue on Migration.
  - Summary.



### III.5. Regional cooperation: General framework

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module C ("International cooperation for the facilitation of labour migration"), Session 3, in relation to:

- Global-level instruments, with reference to:
  - Introduction of the topic.
  - RCPs, with emphasis also on the Colombo Process.
  - Summary.

### III.6. Regional cooperation: Ethiopia

#### III.6.a. African Union framework

- As indicated in Module B, binding labour migration standards, contained in a protocol at the African Union level, have not yet been developed, nor has a protocol on free movement of labour come into existence yet.
- However, a framework for regional cooperation in respect of labour migration clearly arises from a number of instruments and processes (see Module B for further details), including:
  - The African Union Commission's Strategic Plan 2014–2017, promoting labour migration as a specific strategy.
  - The African Union's 2014 Declaration on Employment, Poverty Eradication and Inclusive Development in Africa (also known as the Ouagadougou + 10 Declaration), adopted in 2015, indicating labour migration as a key priority area for regional integration, to be supported by free movement.
  - The AUMPF, being the lead document in the area of migration in Africa, is supported by the African Union Position on Migration and Development of 2006. The AUMPF stresses, among others, the following actions:
    - Enhance analysis and exchange on labour needs and supply in States of origin and destination in order to match labour skills with labour demand through comprehensive regional approaches.
    - Maintain open and continued contact and communication between States of origin and destination, also for the sake of the protection of migrant workers abroad.
- The African Union Social Policy Framework of 2008.
- The 2015 African Union Declaration on Migration, with its focus on accelerating mobility and integration on the continent, as well as migration in development, while addressing regular and irregular migration, and its support for continent-wide visa-free regimes, equality of treatment, the African passport, combating human trafficking and smuggling, and fostering mobility and free movement (including the development of a Protocol on Free Movement of Persons).
- The joint AU-RECs-ILO-IOM-UNECA *Labour Migration Governance for Development and Integration in Africa: A bold new initiative* framework (also known as the AU-RECs-ILO-IOM-UNECA Joint Labour Migration Programme (JLMP), aimed at operationalizing the AUMPF and strengthening the effective governance and regulation of labour migration and mobility in Africa, under the rule of law, at the RECs and national levels.

- The JLMP foresees, among others:
  - The establishment of regional mechanisms for tripartite policy consultation and coordination on labour migration issues, and consultation and technical cooperation with other regions; and
  - Regional tripartite policy coordination and cooperation with other regions.

### III.6.b. Regional framework

- Although there is not yet a binding set of labour migration standards, nor a freedom of movement protocol available in IGAD, several other structures and processes in support of labour migration and building on regional cooperation have already developed in the IGAD region.
- IGAD-RCP: In 2008, and supported by the IOM, a regional dialogue platform was established through the RCP.
  - “[T]he RCP has offered member states a platform for dialogue and cooperation in various aspects of migration. Decisions and recommendations that emanate from the RCP are endorsed by IGAD policy organs ensuring action is taken on them as member states report whatever actions they have implemented in follow up RCP meetings. Since the launch of the RCP, migration has gained prominence at IGAD although much still needs to be done on implementing recommendations emanating from discussions.” (IGAD, *Building Regional and National Capacities for Improved Migration Governance in the IGAD Region* (2014)).
- Since 2011, Chiefs of Immigration from IGAD Member States established the RMMC, among others, tasked with being a forum for exchange on information regarding migration-related issues – in particular in relation to border management and labour migration – in the IGAD region.
- Since 2014, with the support of the IOM and within the framework of the IGAD-RCP, a three-year programme on Building Member States’ Capacity for Enhanced Migration Governance in the IGAD Region has been implemented. The programme consists of three components:
  - Increasing the frequency of regional RCP dialogue meetings from one to two per year, the one meeting at the technical and the other at the political level;
  - Strengthening national approaches to migration, in view of weak and fragmented institutional and operational frameworks, through the setting up of a National Coordinating Mechanism – this will effectively be an inter-agency task force tasked with, among others, cascading down and domesticating the RMPF, and undertaking a desk review of existing mechanism and structures; and
  - Addressing mixed migration through the involvement of the RMMS.
- Information on mixed migration flows is collected by the RMMS, based in Nairobi.
  - The information so collected is meant to inform policy discourse and decision-making in an area that has not yet gained prominence at the level of IGAD decision-making organs, despite the predominance of mixed migration in the region.
- In 2010, the OAU to combat trafficking, especially in women and children, was launched in IGAD in a joint effort with the EAC.

- Closely linked to this is the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants.
  - This initiative, representing a number of affected countries, adopted the Khartoum Declaration in 2014, which enumerates various measures, steps and strategies to deal with human trafficking and smuggling in the Horn of Africa, recognizing, among others, the close association of this phenomenon with other forms of migration (e.g. refugees).
- In November 2014, the European Union-Horn of Africa Migration Route Initiative, also known as the Khartoum Process, was established as a joint initiative of the European Union and the African Union to tackle trafficking and smuggling between the Horn of Africa and Europe. The Horn of Africa countries involved include most of the IGAD Member States, as well as Eritrea (suspended Member State), Egypt and Tunisia.
- Cooperation with the GCC, despite its crucial importance for matters related to regular labour migration and irregular migration, has generally been weak.
  - Nevertheless, engagement has taken place, for example within the context of regional conferences – such as the Regional Conference on Asylum and Migration, called for by Yemen and held in November 2013, leading to the adoption of the Sana’s Declaration of 2013 with its emphasis on collaboration and measures to address nine key areas affected by mixed migration.
- The IGAD RMPF also stresses the need for regional cooperation, emphasizing the following:
  - The need for appropriate bi- and multilateral arrangements;
  - The adoption of an IGAD protocol on free movement of persons, labour, goods and capital, including the right to residence and establishment, involving contiguous RECs as well;
  - Routine data collection of, analysis and exchange on labour flows, stock and need in labour supply vis-à-vis labour demand countries in IGAD to eliminate (regional) skills mismatch and maintain proper skills;
  - Harmonizing national migration policies and legislation; and
  - Respect for remittance inflows.
- The IGAD-RMPF further emphasizes migration development, with reference to diaspora engagement and remittances and the need for inter-State and interregional cooperation, through regular RCP engagements, the development of common strategies (including the harmonization of migration policies) and the adoption of Action Plans.
- It is evident that common themes have been identified, and certain basic structures and processes been put in place to deal with the challenges and dynamics and labour migration.
  - These were reinforced during a special ad hoc meeting of the IGAD RMMC in 2015 on the return of migrants and refugees to the Greater Horn of Africa from Yemen. The meeting, among others, stressed:
    - The role that the diaspora play in the development of their countries of origin and more specifically in the reintegration of returning migrants;
    - Cooperation among Member States on migration management, in addition to national coordination among agencies with migration management functions;
    - Addressing the challenges of human trafficking and smuggling of migrants, irrespective of category of migrant;
    - Improvement of border management to facilitate border management;

- Addressing the root causes of migration; and
- Urging the IGAD Secretariat to spearhead the regional coordination of migration management; to support capacity-building on migration management; to engage effectively with the Khartoum Process; and to implement provisions of the RMPF in regard to addressing emerging migration realities and challenges.

### III.7. Bilateral labour agreements

#### III.7.a. Introduction of the topic

- Present the broad definition of BLAs proposed by OECD (2003):
  - “All forms of arrangements between States, regions and public institutions that provide for the recruitment and employment of foreign short- or long-term labour.”
  - This broad definition goes beyond classic, binding intergovernmental bilateral agreements and also includes:
    - Non-legal arrangements, such as MoUs; and
    - “Non-governmental” agreements, for example, arrangements between national employment agencies.
- Summarize the rationale behind the conclusion of BLAs and inform the participants that this issue will be further developed through a group activity:
  - Economic reasons: to organize the match between offer and demand for labour;
  - Political reasons: to promote friendly relations among States by encouraging orderly movements of labour; and
  - Development reasons: to prevent the “brain drain” phenomenon.
- Highlight the variety of BLAs by presenting the following, non-exhaustive examples:
  - BLAs as recruitment schemes:
    - The most common categories are as follows:
      - Seasonal workers schemes;
      - Contract workers and project-tied workers’ agreements;
      - Trainee agreements; and
      - Working holidays agreements, to promote cultural ties and international exchanges by giving young adults access to work while on holiday.
  - Bilateral agreements facilitating or addressing the consequences of mobility:
    - Agreements designed to control/prevent irregular migration;
    - Visa facilitation agreements;
    - Mutual recognition agreements (such as recognition of diplomas and right to practice a profession); and
    - Social security and double taxation agreements.

These bilateral agreements are not necessarily BLAs per se but include elements related to labour migration issues. (For example, readmission agreements can be coupled with the opening of channels for legal labour migration.) Bilateral social security agreements are crucial for the welfare protection of migrant workers.

### III.7.b. Objectives of countries of origin and countries of destination and impediments to the conclusion of bilateral labour agreements (presentation complementary to exercise)

- Outline the following objectives of countries of destination:
  - To satisfy their labour market needs and better manage the labour migration process;
  - To prevent or reduce irregular migration by affording regular migration opportunities;
  - To promote and support broader economic relations with countries of origin; and
  - To preserve or strengthen ties between countries sharing historical and cultural links.
- Outline the following objectives of countries of origin in concluding BLAs:
  - To offer their workers wider, facilitated access to the international labour market and prevent criminal activities involving the smuggling and trafficking of human beings;
  - To support the link between labour migration and development by:
    - Regulating outflows, including the reduction of brain drain;
    - Facilitating transfer of remittances and transfer of know-how and technology;
    - Building confidence between communities of origin and destination;
  - To promote and protect the welfare and rights of migrant workers.
- Highlight the fact that many destination countries have declined offers from countries of origin to negotiate such agreements.
- Outline the following factors explaining such difficulties:
  - A number of countries adopt a position of principle not to conclude BLAs.
    - Some countries favour a unilateral approach.
    - This can be explained by the refusal of some States to limit their sovereignty on such issues.
    - This can also be explained by the choice of a universal immigration policy.
    - The conclusion of BLAs may be regarded as discriminatory by privileging nationals of certain countries over others.
    - The conclusion of BLAs can also be seen as a source of political tension, as they are likely to create similar expectations from other countries.
  - Other countries have concluded BLAs but do not want to expand the number of such arrangements.
    - Countries of destination enter into BLAs for two main reasons:
      - To normalize a pre-existing situation with a country of origin; and
      - To encourage/facilitate new recruitment channels in sectors which are in high demand;
    - Countries of origin that are outside the scope of these interests experience difficulties in entering into bilateral cooperation.
  - The lack of institutional capacity can also be a source of difficulty in pursuing negotiations, mainly for countries of origin. (Negotiating a BLA is often a lengthy and time-consuming process.)
  - Countries of origin may also be reluctant to accept a bilateral arrangement requiring, in exchange for some limited market access, the return of nationals in an irregular situation in the destination country.

### III.7.c. The content of a comprehensive bilateral agreement, specifically with a view to the recruitment of foreign labour (presentation complementary to exercise)

- Explain that this presentation is based on the 24 core elements identified by ILO to be part of BLAs. Distribute to participants the corresponding chart.

#### 24 basic elements of a bilateral labour agreement

1. Competent government authority
2. Exchange of information
3. Migrants in an irregular situation
4. Notification of job opportunities
5. Drawing up a list of candidates
6. Pre-selection of candidates
7. Final selection of candidates
8. Nomination of candidates by the employers (possibility for the employer to provide directly the name of a person to be hired)
9. Medical examination
10. Entry documents
11. Residence and work permits
12. Transportation
13. Employment contract
14. Employment conditions
15. Conflict resolution mechanism
16. Role of trade unions and collective bargaining rights
17. Social security
18. Remittances
19. Provision of housing
20. Family reunification
21. Activities of social and religious organizations
22. Establishment of a joint commission (to monitor the agreement's implementation)
23. Validity and renewal of the agreement
24. Applicable jurisdiction

- These 24 core elements can be simplified as follows:
  - Admission
  - Recruitment and departure
  - The employment contract and other provisions concerning the migrant's legal status in the destination country
  - Return to the country of origin
  - Administration of the agreement and its implementation

- Nationals of countries of origin may be provided preferential admission under BLAs in three different ways:
  - Special categories of workers:
    - Employment of certain categories of workers (especially the low- or semi-skilled) is organized through BLAs.
  - Preferential admission for employment:
    - Workers covered by a BLA can benefit from preferential admission or employment over other foreigners.
  - Preferential quota:
    - A special quota can be attributed to countries having signed a BLA.
- Recruitment and departure
  - The responsibility for selection and recruitment of migrant workers under BLAs is of vital importance.
    - Should recruitment be carried out solely or mainly by public recruitment agencies, or also by private ones?
    - This issue, as well as other related ones, will be covered in Module D: Protection of migrant workers: policy options for countries of origin.
  - BLAs should cover the departure stage and reception in the country of destination.
    - The agreement should stipulate who is responsible for organizing and paying for the migrant worker's travel arrangements, i.e. the employer or the worker?
    - The agreement may also stipulate the post-arrival services available to the migrant worker.
- Employment contract
  - An employment contract is central to ensuring that migrant workers benefit from fair treatment.
  - BLAs should outline in some detail the principal provisions that such a contract should contain.
  - This issue will be covered in details in Module D: Protection of migrant workers: policy options for countries of origin.
- Legal status
  - Social security is usually regulated by additional bilateral agreements between the countries concerned.
    - If there are no such arrangements, BLAs should stipulate which country's social security system is applicable.
  - In practice, project-linked bilateral agreements normally provide that the company of the country of destination makes social security contributions to the system of the home country.
  - The agreement may contain a provision facilitating the transfer of remittances (the migrant worker's earnings or savings).
  - Trade union rights should be guaranteed in the agreement.
  - Family reunification may be regulated in the agreement.
  - The agreement may also include provisions concerning the cultural and religious welfare of migrant workers; for example, that the freedom of migrant workers to practice their own religion in the country of employment is recognized.

- Return
  - The agreement should stipulate who is responsible for the cost of the migrant worker's return transportation (i.e., the employer or the worker).
  - The agreement may also contain clauses providing incentives for migrant workers to depart with a view to preventing illegal overstaying.
- Administration and implementation
  - BLAs should contain provisions for their administration and implementation.
    - These provisions should not establish an overly bureaucratic system that would only hamper the agreement's effective implementation.
  - BLAs should specify the competent authority in each country (usually the labour ministries or offices) responsible for the implementation of the agreement and also outline a procedure for coordination of their respective tasks and activities.
  - The role of cooperative agencies should also be specified.
    - For example, IOM acts as a cooperative agency under some agreements with a view to facilitating their implementation.
    - With regard to the agreements between Spain and Ecuador, the IOM office in Quito conducts the pre-selection of migrant workers, generates a database of prospective migrant workers for Spanish employers, and helps migrants travel to Spain.
  - BLAs may also set up special bilateral commissions to resolve problems and disputes.

### III.7.d. Bilateral labour agreements: Ethiopia

- Ethiopia has, in recent years, concluded a range of bilateral agreements and MOUs providing for the employment of Ethiopians abroad, or has prepared draft arrangements in this regard. Some of these agreements provide for bilateral exchange of manpower.
- These arrangements have been concluded and/or negotiated with Bahrain, Jordan, Lebanon, Kuwait, Oman, Saudi Arabia, Qatar, South Sudan, the Sudan and the United Arab Emirates.
- These instruments contain partly similar but also partly different provisions, presumably reflecting the differentiated context of the affected country of destination and the particular outcome of the negotiations with these countries. As a rule, the instruments indicate the following:
  - Purpose/scope of the arrangement/agreement concerned, the affected workers (e.g. skilled and professional workers, domestic workers);
  - Information to be provided by the employer(s) and/or government of the destination country regarding required manpower skills;
  - Involvement of the Ethiopian and foreign government concerned in respect of recruitment, also in terms of monitoring the control of recruitment;
  - Prevention of illegal recruitment and human trafficking;
  - A set of key matters required to be covered in the employment contracts meant to be concluded between the employer and employee;
  - Transfer of income (remittances) to Ethiopia – the applicability of the domestic legal framework of the country of destination;
  - Protection of the labour rights of Ethiopian migrant workers; and



- Establishment of a joint bilateral commission, joint working group or other institutional framework to give effect to and monitor compliance with the instrument concerned.
- Possibilities for further improving Ethiopia’s bilateral instruments in this area exists. Readers are referred to the report titled *National Labour Migration Management Assessment: Ethiopia* (2017, prepared for the IOM for further information).

**III.7.e. Group activity: Africana and Gulforia negotiating a bilateral labour agreement to provide for the recruitment of domestic workers (see the complementary annex)**

**Duration: 35 minutes**

- Aims:
  - To discuss the content of a BLA; and
  - To reveal the difficulties of the negotiation process.
- Outline the activity:
  - Inform participants that they will act as representatives of two countries, Africana and Gulforia, entering into the negotiation process of a BLA that deals specifically with the recruitment of domestic workers.
  - Inform participants that they will have to draft the main points of four articles of the BLA:
    - Article 1 (Recruitment and departure);
    - Article 2 (Terms of employment, protection and social benefits);
    - Article 3 (Return); and
    - Article 4 (Administration and implementation).
  - Divide participants into two groups and distribute the worksheets.
  - Inform participants that each group has 10 minutes to prepare the elements they want included in the BLA, as well as the corresponding arguments for the negotiation simulation.
- Negotiation simulation and full group discussion (20 minutes):
  - The spokespersons of each group have 15 minutes to discuss, using the arguments they have prepared.
  - Write down on a flip chart the items that the two parties have agreed upon, as well as the ones they have disagreed on.
  - Full group discussion on the outcomes of the group activity for 5 minutes.
- Complement the outcomes of the exercise by:
  - Recalling relevant elements of the objectives of countries of origin and countries of destination and impediments to the conclusion of BLAs; and
  - Presenting the content of a comprehensive bilateral agreement for the recruitment of foreign labour (presentation complementary to this exercise).

### III.7.f. Group activity: Countries A and B negotiating bilateral labour agreements

You are representatives of Country B, a country of origin. Your country has expressed the wish to conclude BLAs with Country A.

Two successive meetings with representatives of Country A have been organized, in order to discuss the possibility of concluding BLA between the countries.

Your priorities within the negotiation are the following:

- You want clear guarantees from Country A for the opening of legal channels for the labour migration of your nationals; and
- You want clear guarantees from Country A regarding the protection of the rights of your national workers who reside in the territory of the two countries.

#### Background

There have been a number of complaints by trade unions and other bodies that nationals from your country have been mistreated when they have gone to work in third-party countries. In particular, there have been allegations of poor wages, long hours, sexual harassment and a refusal to let workers join trade unions. In relation to Country A, you have heard of growing xenophobia and allegations that foreign workers are “stealing” jobs.

#### Your task:

- Prepare relevant arguments in order to defend your position during the successive meetings with representatives of Country A.
- You have 15 minutes to prepare your arguments for the negotiation simulation.
- Negotiation with Country A will last 10 minutes.

### III.7.g. Efficiency of bilateral labour agreements?

- Beyond the already-mentioned difficulties in entering into negotiations and concluding BLAs, the very efficiency of BLAs is questionable:
  - The effectiveness of BLAs is difficult to assess due to the rarity of research on the issue.
  - Nevertheless, some 25 per cent of BLAs in OECD countries are not implemented.
- The interests of entering into BLAs must still be highlighted:
  - In the absence of a global regime for international labour migration, BLAs are an important mechanism for inter-State cooperation in protecting migrant workers, matching labour demand and supply, managing irregular migration and regulating recruitment.
  - Regarding, more specifically, the protection of migrant workers:
    - It can be argued that the provisions to be included in BLAs just repeat international human rights standards.
    - However, in the absence of wide-ranging acceptance of specific international standards relating to the legal status of migrant workers, bilateral agreements may fill an important gap in their protection.

- Outline the following reasons that seem to lead to a successful implementation of BLAs:
  - They target specific sectors with a severe labour shortage.
  - There is a quota or ceiling.
  - Recruitment is organized.
  - Institutional coordination is ensured, and employers are engaged.
  - The implementation phase of the BLA is organized with sufficient flexibility.

#### Resources for facilitator preparation

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FDRE, Labour Proclamation (Proclamation No. 377/2003) (2003).

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ILO, Recommendation concerning Migration for Employment (Revised 1949) (R86), 1 July 1949. Available from [www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312424](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312424)

IOM, *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy* (IOM, Geneva, 2008), pp. 355–392. Available from [https://publications.iom.int/system/files/pdf/wmr\\_1.pdf](https://publications.iom.int/system/files/pdf/wmr_1.pdf)

IOM, *National Labour Migration Management Assessment: Ethiopia*. Final revised report prepared for the IOM (IOM Addis Ababa, 2017).

OSCE, *Guide on Gender-Sensitive Labour Migration Policies* (OSCE, Vienna, 2009), pp. 13–26.

OSCE, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination* (OSCE, IOM and ILO, Vienna, 2006), pp. 27–36, 85–99.

OSCE, IOM and ILO, *Handbook on Establishing Effective Labour Migration Policies* (Mediterranean Edition) (OSCE, IOM and ILO, Vienna, 2007), pp. 187–213. Available from [https://publications.iom.int/system/files/pdf/osce\\_iom\\_ilo\\_medhandbook\\_en.pdf](https://publications.iom.int/system/files/pdf/osce_iom_ilo_medhandbook_en.pdf)

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P. Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (ILO, Geneva, 2015).

## Exercise 2: Participant worksheet

### **Bilateral labour agreement between the Africana and Gulforia**

The Government of Africana and the Government of Gulforia, hereinafter referred to as the Parties, inspired by their shared desire to reaffirm their special cultural and regional bonds to regulate the ongoing migration flows between the two countries on the basis of equality and mutual benefit, and wishing to enhance cooperation in the field of domestic workers being sent to Gulforia, hereinafter referred to as “domestic workers,” have agreed as follows:

#### Article 1

*(Recruitment and departure)*

#### Article 2

*(Terms of employment, protection and social benefits)*

#### Article 3

*(Return)*

#### Article 4

*(Administration and implementation)*

This Agreement shall be valid for three (3) years. It shall enter into force on the date of the later notification by the Parties, indicating compliance with their respective internal legal requirements for its entry into force.

This Agreement shall be automatically renewed for the same period unless one Party notifies the other in writing its wish to renounce 100 days prior to the expiration.

Signed in Africana Ville this (date) in two equally valid copies in both originals in Africanian and Gulforian, both texts being equally authentic.

For Africana,  
*(name of official and title)*

For Gulforia,  
*(name of official and title)*

# IV

## MODULE D

# PROTECTION OF MIGRANT WORKERS: POLICY OPTIONS FOR COUNTRIES OF ORIGIN

A stylized globe is positioned in the lower right quadrant of the page. It is composed of a grid of thin black lines representing latitude and longitude. Overlaid on this grid is a network of black dots of varying sizes, connected by thin black lines, suggesting a global network or migration patterns. The globe is partially obscured by the large white text.



## IV.1. Aims of Module D

Module D covers some of the fundamental policies and actions that countries of origin can develop and implement to protect their nationals abroad:

- What can countries of origin do in order to protect their nationals who go abroad for employment?
- More specifically, what can countries of origin do in order to prevent and end violations of their nationals' rights?

## IV.2. Learning outcomes for Module D

By the end of this module, participants will:

- Understand the need to take protection measures at an early stage of the migration process.
- Know the complexities and constraints of regulating recruitment agencies and implementing employment standards.
- Be familiar with the types of information to disseminate, through which channels and to what social groups, in order to protect migrant workers.
- Be familiar with the mechanism of consular assistance and protection and the role of labour attachés.

## IV.3. Introducing Module D

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D ("Protection of migrant workers: policy options for countries of origin"), Session 1, in relation to:

- Contextualize Module D.
- Outline particular points regarding the means countries of origin have at their disposal in order to protect their national going abroad for employment.
- Group activity.
- Resources for facilitator preparation.
- Prompting participants to answer the following questions:

### Questions:

- Identify the types of social and economic disadvantage and abuses that migrant workers are likely to face.
- Prioritize the five abuses in most urgent need of attention.
- Propose to the governments of migrants workers' countries of origin actions that can be taken in order to reduce the severity of such abuses, or to eradicate them completely.
- Identify the prerequisites that need to be in place to maximize the chances that their proposals will be successful.

#### IV.4. Management of the recruitment of migrant workers

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D ("Protection of migrant workers: policy options for countries of origin"), Session 2, in relation to:

- Introducing the topic
- The role of recruitment agencies
- The need for regulation
- International standards
- Registration and licensing
- Licensing standards
- Recruitment fees
- Implementing regulation of private recruitment agencies: controls and incentives.
  - Outline the rationale behind implementing regulation of private recruitment agencies.
  - Monitoring activities.
  - Administrative and/or penal sanctions to be imposed if a violation of the law is found.
  - Incentives for agencies that meet the criteria for good governance aside from controls and sanctions.
  - Alternative means to manage and regulate recruitment of migrant workers, with reference to the following:
    - Self-regulation, including the Confederation of Private Employment Agencies (CIETT) Code of Conduct; and
    - Involvement of public authorities.
- Summary
- Resources for facilitator preparation
- Annex 1: Standards and proof for licensing recruitment agencies
- Annex 2: CIETT Members' Commitment Towards a Well-functioning International Labour Market
- Annex 3: Covenant of Ethical Conduct and Good Practices of Overseas Employment Service Providers

#### IV.5. Employment contracts and minimum employment standards

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D ("Protection of migrant workers: policy options for countries of origin"), Session 3, in relation to:

- Introducing the topic
- Content of minimum employment standards and employment contracts:
  - What minimum standards may include; and



- Points that should be taken into account when drafting employment contracts and standards.
- Efficiency for minimum employment standards and employment contracts:
  - Group discussion
  - Policy options for countries of origin
  - Summary
  - Resources for facilitator preparation
  - Annex: Sample employment contract from the Philippine Overseas Employment Administration

#### IV.6. Information dissemination

See the generic Trainer’s Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D (“Protection of migrant workers: policy options for countries of origin”), Session 4, in relation to:

- Introducing the topic
- Group activity and presentation complementing the group activity
- Points to be highlighted
- Pre-employment programmes, with reference to:
  - Types of information
  - How to convey the information, with reference to the following:
    - Pre-employment orientation seminar in the Philippines; and
    - Migrant resources centres: the example of Tajikistan
  - Who should be targeted?
- Pre-departure orientation seminar
- Summary
- Resources for facilitator preparation
- Annex 1: Worksheet for individual activity
- Annex 2: Pre-departure orientation curriculum outline for low-skilled labour migrants

#### IV.7. Protection activities in countries of destination – consular and diplomatic protection

See the generic Trainer’s Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D (“Protection of migrant workers: policy options for countries of origin”), Session 5, in relation to:

- Introducing the topic
- Consular assistance, with reference to:
  - Rights and duties under the consular assistance system
  - How to improve the protection of migrant workers in countries of destination

- Diplomatic protection
- Group activity
- Summary
- Resources for facilitator preparation

#### IV.8. Migrant welfare funds

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module D ("Protection of migrant workers: policy options for countries of origin"), Session 6, in relation to:

- Introducing the topic
- Migrant welfare funds: generalities
- The experience of the Philippine Overseas Workers Welfare Administration (OWWA)
- Summary and lessons learned from the OWWA experience
- Resources for facilitator preparation

#### IV.9. Protection of migrant workers' rights and the need to regulate private recruitment agencies

- In view of the treatment to which many Ethiopian workers are exposed to and the current limited protection available to them, significant concrete measures need to be taken to ensure enhanced protection. This is a task that cannot be satisfactorily fulfilled by PEAs alone.
- The National Human Rights Action Plan notes as a challenge the fact that a satisfactory level of cooperation has not been established with foreign governments in order to ensure respect for human rights of Ethiopian citizens abroad (FDRE, *National Human Rights Action Plan*, 2013:30).
- Although the role that Ethiopian embassy staff should play in this regard is important, their capacity to do so may for all sorts of reasons be limited.
- Consideration could be given to the establishment of a dedicated body, which could be a joint body comprising Ethiopian representatives and representatives from the host country, to undertake this task. This should be provided for in an appropriately formulated bilateral agreement between Ethiopia and the country of destination concerned. This is an area in respect of which enforcement agencies in destination countries could be sensitized and made to play an emphatic role.
- Also, trade unions could play a major role in the protection of migrant workers. Historically, the Confederation of Ethiopian Trade Unions (CETU) had minimal interaction with migrant workers, including those who have left for work abroad. Lately, however, CETU was involved in discussions with a trade union in Lebanon, aimed at extending protection to Ethiopian migrant workers.

- The ILO refers in this regard to the following experience of trade unions in Sri Lanka (*International labour migration: A rights based approach* (ILO, Geneva, 2010):175):  
“In 2009, trade unions from Sri Lanka and their counterparts in Bahrain, Jordan and Kuwait signed three separate bilateral cooperation agreements on the protection of the rights of Sri Lankan migrant workers in the three countries. These agreements state the signatories’ commitment to certain key principles, including that the ILO Multilateral Framework applies equally to all migrant workers, and their commitment to undertake actions to promote migrant workers’ rights. These trade union agreements represent good practice in promoting the protection and rights of migrant workers.”
- Proclamation 923/2016 is intended to bring about a comprehensive overhaul of the regulatory context informing overseas employment. Careful attention needs to be given to implementing this important instrument, which should be supported by the range of regulations and directives explicitly foreseen in the provisions of the Proclamation.
- It is necessary to attend to several recruitment contexts, in order to strengthen the protection of job seekers and workers, and curb possible abuses by agencies, foreign agents and foreign employers.
- Costs, particularly as far as placement services are concerned, is one such issue in need of stringent regulation. Training and orientation is another. Enhanced enforcement and sanctions may yet be another.
- The Government of Ethiopia has taken steps to substantially overhaul the legal framework applicable to PEAs in Ethiopia, since the ban on the recruitment of labour for overseas employment was imposed in October 2013. A new proclamation was recently adopted, known as Ethiopia’s Overseas Employment Proclamation No. 923/2016.
- In fact, the need for proper regulation of private recruitment agencies has been highlighted by the ILO.

#### **The need to regulate private recruitment agencies**

“... the regulation of private recruitment agencies is closely related to worker protection. In many developing countries migration costs are high, as a result of such factors as excessive fees levied by recruitment agencies, costly bureaucratic procedures and corrupt practices of administrators. The undesirable alliance between local agents and foreign employment agencies, as occurs in migration to the Gulf region, results in high migration costs being passed on to migrant workers. A major task of good governance is to identify these issues and reduce the costs of migration for individual workers, not only for their sakes, but because it will increase their savings and remittances, benefiting their countries as well.”

*(International labour migration: A rights based approach (ILO, Geneva, 2010):175).*

#### IV.10. Promotion of ethical recruitment in Ethiopia: The value of international standards and comparative guidelines

- ILO Convention 181 of 1997 (Private Employment Agencies Convention) is important for Ethiopia in the area of recruitment, also because Ethiopia ratified this instrument in 1999.
- The Convention provides, among others, for the protection of migrant workers, the prohibition of discrimination, reporting procedures, the specification of their responsibilities by government, implementation and enforcement. Ratifying countries also undertake to review conditions to promote cooperation between the public employment service (PES) and PEAs.
- In its preamble, the Convention acknowledges the role that PEAs play in a “well-functioning” labour market, but also notes the need to protect workers against abuses, to guarantee the right to freedom of association, and to promote collective bargaining and social dialogue.
- Three types of labour market services are covered by the Convention, namely:
  - Services for matching offers of and applications for employment, without the PEA becoming a party to the employment relationships;
  - Services consisting of employing workers with a view to making them available to a third party – or “labour broking”; and
  - Services related to job seeking.
- It stipulates that PEAs shall not, as a rule, charge directly or indirectly, in whole or in part, any fees or costs to workers.
- The Convention further provides for ratifying member countries to ensure the following, among others:
  - Extension of freedom of association and collective bargaining rights to migrant workers, and more generally adequate protection for and the prevention of abuse of recruited and placed migrant workers (ILO, 1997: articles 4 and 8). The Convention specifically stipulates that in the event of overseas employment, the conclusion of BLAs should be considered to prevent abuses and fraudulent practices in recruitment, placement and employment (ILO, 1997, article 8). This stresses the importance of making sufficient provision in BLAs for these matters.
  - Penalties to be contained in laws or regulations, including prohibition of those PEAs that engage in fraudulent practices (ILO, 1997: articles 8 and 14(3)).
  - Measures to ensure the prevention of child labour (ILO, 1997: article 9). For this, one would have to look beyond the Proclamation, which does not specifically provides for this.
  - Adequate mechanisms, which involve apex employer and trade union bodies, for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of PEAs (ILO, 1997, article 10). See the discussion above.

- Note should be taken of other ILO Conventions specifically relevant to PEAs that have not been ratified by Ethiopia. It is suggested that by ratifying and implementing these instruments, Ethiopia will ensure enhanced protection, including welfare protection, of its migrant workers. The instruments include the following:
  - ILO Convention 97 of 1949 (Migration for Employment Convention, Revised);
  - ILO Convention 143 of 1975 (Migrant Workers (Supplementary Provisions) Convention); and
  - ILO Convention 168 of 1988 (Employment Promotion and Protection against Unemployment Convention).
- The recently announced International Recruitment Integrity System (IRIS), spearheaded by IOM. IRIS will effectively provide a platform for addressing unfair recruitment and bridge international regulatory gaps governing labour recruitment in countries of origin and destination.
- IRIS will develop a voluntary accreditation framework so that its members can be recognized as bona fide fair recruiters and distinguish themselves from unscrupulous intermediaries. Accreditation will be based on adherence to common principles for ethical recruitment and a code of conduct that will include the following policies:
  - No fee charged to job seekers;
  - No retention of workers' passports and other identity documents; and
  - A requirement for transparency in their labour supply chain.
- IRIS will also provide an information portal and a publicly available roster of accredited IRIS members around the world, and will administer a complaints and referral mechanism to assist victims of unethical or illegal recruiters with filing grievances with the appropriate authorities.
- The Code of Conduct developed by the CIETT is also of particular importance, as referred to earlier in this module.
- Kenya provides an important example of a country experience – in terms of both public regulation and self-regulation through Kenya Association of Private Employment Agencies (KAPEA). KAPEA serves as an umbrella body for a large number of PEAs in Kenya and has, among others, adopted a Code of Conduct for Private Employment Agencies in 2006. This is a valuable instrument, as it systematically provides for important matters:
  - The objective of the organization
  - Its status
  - Compliance with legal and basic business requirements
  - Integrity and professionalism
  - Knowledge and application of national policies, laws and best practices
  - Non-discrimination and gender sensitivity
  - Anti-trafficking and prevention of unethical employment of children and persons with disability
  - Efficient provision of services
  - Dealings with members of KAPEA and other PEAs
  - Dealings with employers/principals

- Dealings with job seekers
- Breach of the Code
- In the end, the focus is on ethical recruitment, as provided for in the above-mentioned instruments.

#### **IV.11. The regulation of PEAs in Ethiopia: Proclamation 923/2016, providing for overseas employment**

- Since October 2013, a ban has been imposed on all overseas recruitment by private overseas employment agencies. This was accompanied by a licence suspension notification, issued by MoLSA, which indicated that the Government had decided to put a ban “on all overseas employment services to any destination countries which are facilitated both individually and through private employment agencies; until the observable legal, operational and structural gaps are reviewed and the necessary adjustments are made available”.
- Alleged malpractices on the part of PEAs and the conditions under which Ethiopian migrant workers, in particular domestic workers in the Gulf countries had to work, prompted the strong response on the part of the Government of Ethiopia, evidenced by the imposed ban.
  - The conditions related to the mistreatment of domestic workers. Migrant domestic workers in countries like Kuwait and Saudi Arabia reportedly become trapped in exploitative or abusive employment because of the sponsorship system: “They face criminal penalties if they try to leave a job without their employer’s permission, facing detention by government authorities if they are reported as ‘absconding’ and deported, even if they have been abused and are seeking redress. In countries like Lebanon, a lack of accessible complaint mechanisms, lengthy and costly judicial procedures, and restrictive visa policies discourage migrant domestic workers from reporting abuse and exploitation.” (Y. Abiye, Ethiopia: MoLSA to Lift Year-Long Travel Ban to Middle East, 27 December 2014, The Reporter (Addis Ababa)).
  - Apparently, and according to an earlier IOM report, 7.5 per cent of all Ethiopian migrants who had left their country for certain Middle Eastern countries for employment and other purposes were underage, i.e. between the ages of 13–17 years at the time of migration: the study indicated that 87.1 per cent of these migrants were illegally trafficked (quoted by Abiye, 2013).
- The ban was meant to be in place for a specific period of time. According to the licence suspension notification letter, the rationale for the imposed ban related to the fact that this regular overseas employment channel, is being abused to conduct unlawful overseas employment practices which has intensified human trafficking and resulted in human rights violations, labour abuse, physical and psychological damage of citizens.
- A revised regulatory instrument has been finalized and recently adopted – known as Ethiopia’s Overseas Employment Proclamation No. 923/2016.
- Even though this comprehensive new Proclamation has been adopted, the implementing directives and regulations are in the making, hence the ban is still in place and movement for overseas employment has not yet commenced.
- The regulatory framework in this regard provided for in Proclamation 923/2016 is summarized in the attached annex.

## IV.12. Other policy options to enhance the protection of Ethiopian migrant workers

Several other measures and mechanisms provide policy options to the Government of Ethiopia in its endeavour to enhance the protection of Ethiopian migrant workers:

- Investigate the contractual framework and beyond, as well as the prevailing context in the destination country.
  - It may be advisable, from time to time, to review and revise the model contract applicable to migrant workers earmarked for work in Middle Eastern countries in particular, to ensure optimal alignment with applicable international standards. The model employment contract provides for limited social welfare measures only – namely, free medical service and facilities (including medicine), and personal life and accident insurance (see Module E for a further discussion on this).
  - It would be necessary to have a sense of the actual working conditions to which the worker will be, or is exposed.
  - Finally, the prevailing labour, welfare and social security systems and the occupational environment in the destination country may need to be investigated, to gain a sense of the legal boundaries of the protection applicable to the worker concerned. This may help to inform the nature and scope of support in this regard which the worker may need, both while abroad and upon return.
    - See, for example, Module E below in relation to the welfare protection available in Gulf countries.
- Seek employment opportunities abroad in a proactive manner.
  - It may be helpful to explore specific job opportunities in labour markets abroad other than to rely primarily on letters of demand coming from foreign employers.
  - This would be of assistance in finding suitable candidates in Ethiopia and encouraging young job seekers, in particular, to become involved. These workers need to be provided with sufficient skills and other training in Ethiopia, prior to departure.
  - This issue should be appropriately accommodated in a migration policy to be adopted by the Government of Ethiopia.
- Utilize a dedicated and enhanced PES framework.
  - There is considerable scope and need for enhanced PES intervention as regards the externalization of labour in Ethiopia. In the year 2012/2013, whereas 169,255 migrant workers were recruited via PEAs, only 13,441 were recruited by the PES (MoLSA, 2013c:25).
  - Government should play an active and promotional role in this regard. In particular, care should be taken to ensure that an appropriate facilitative and supportive framework is in place for persons departing for work in other countries who go abroad on their own or under government-to-government agreements.
- Self-regulation
  - There is much that PEAs themselves could do to ensure compliance with legal and ethical requirements pertaining to operations and behaviour. International standards and comparative best practice in this regard are reflected on below. Two areas could in particular be mentioned:

- Much can be achieved through self-regulation by PEAs, in addition to public regulation. The Ethiopian PEAs established an umbrella organization, the Association of Overseas Recruitment Agencies of Ethiopia (AORAE). Apparently, the Association adopted a Code of Conduct, which is in view of the ban suspended. However, the Code reportedly did not contain enforceable penalties.
- MOUs or agreements between AORAE and apex organizations of PEAs in destination countries could also be of value. Such an agreement was concluded with the Jordanian Recruiting Agency Association in 2012. The agreement contains important provisions in an attempt to control behaviour of PEAs, provide guidance on core matters such as migrant workers' rights, and streamline administrative and other arrangements. However, there are some areas of concern that can, by way of illustration, be mentioned:
  - The prohibition effectively on recruiting pregnant female workers (article 7) runs counter to basic human rights embedded in international instruments and the protection afforded in Ethiopian law.
  - Several provisions guarantee certain basic rights of migrant workers, particularly in relation to their treatment in the destination country (e.g., articles 11 and 17). However, there is no indication how these provisions would be enforced, especially as the foreign employer, who is not a party to the agreement, is in the first place supposed to provide these guarantees.
  - While there may be some role to play by these organizations to help resolve conflicts that may arise between the migrant worker and the recruiting PEA, or the migrant worker and the foreign employer (see, e.g., article 18.4), an independent institution that does not have a monetary or personal interest in the matter may be better suited to undertake this task.
  - Article 21 provides for the payment of commission – set at USD 1,000 per worker. This is indicated as the rate applicable across the board to all PEAs. However, the commission is said to cover, among others, also medical expenses. It is difficult to understand how this should be reconciled with the provision in article 10(2)(c) of Proclamation 923/2016 (and until now article 15(2) of Proclamation 632/2009), which indicates that this is an employee liability.
- Additional measure to support the welfare protection of migrant workers: Pro-active and innovative possibilities can be introduced, such as allowing migrant workers to contribute to a welfare scheme via their remittances, or to impose an exit tax on the PEA when a migrant worker leaves for work abroad.
- Development of a migration policy: A Migration Policy framework would assist with giving direction and guidance to the recruitment of migrant workers and the overall objectives to be attained with labour exporting. These objectives need to be clarified.



### Case study: Almaz Kebede's search for employment overseas

Almaz Kebede resides in a poor rural village in Ethiopia. She is 19 years of age, and is frustrated by the fact that she has not been able to find stable employment. She lives with her mother and siblings in a small house; there is barely enough food on the table to sustain the family.

One day Almaz mentions to a friend that she is looking for employment abroad to sustain both herself and make a contribution to the well-being of the family. Her friend tells her that the Government of Ethiopia has adopted a regulatory framework that enables Ethiopians to make use of the services of a PEA to go abroad for work and that there are also important international standards in this regard. Her friend refers Almaz to you for advice.

### Group assignment

Explain the following to Almaz:

- (1) The criteria she has to meet to qualify as a candidate whose services can be procured for employment abroad;
- (2) The required steps and procedures she and the private PEA have to comply with before she departs for employment abroad, including the costs that she and the agency, or the foreign employer, respectively have to bear;
- (3) The protection that would be available to her once she works in the country of destination; and
- (4) The support that would be available to her once she returns home after the period of employment abroad.

### Answers and Trainer notes

- (1) Consult also the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module I ("Protection of migrant workers: policy options for countries of destination") in relation to the applicable international conventions.
- (2) Consult the specific provisions of the new regulatory instrument providing for the employment exchange services.



V

**MODULE E**

**PROTECTION OF  
MIGRANT WORKERS:  
POLICY OPTIONS  
FOR COUNTRIES  
OF DESTINATION**





## V.1. Aims of Module E

Module E aims to provide an overview of the following:

- Relation between admission and residence regimes and the protection of migrant workers;
- Protection needs of migrant workers in destination countries, including their rights in the employment context and rights guaranteeing their social welfare and access to social security; and
- Measures related to the social cohesion and integration of migrant workers in destination countries.

## V.2. Learning outcomes for Module E

By the end of this module, participants will:

- Have a better understanding of the relation between admission and residence regimes and the protection of migrant workers.
- Be able to identify best practices regarding protection and integration of migrant workers in destination countries.

## V.3. Introducing Module E

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module I ("Protection of migrant workers and integration: policy options for countries of destination"), Sessions 1 and 2, in relation to:

- Highlighting particular elements regarding the relation between admission or residence regimes and the protection of migrant workers;
- Resources for facilitator preparation;
- Group activity; and
- Exercise.

## V.4. Protection in employment

See the generic Trainer's Manual on *Training Modules on Labour Migration Management* (IOM and OSCE, 2010), Module I ("Protection of migrant workers and integration: policy options for countries of destination"), Session 3, in relation to:

- Introducing the topic;
- Brain waste and lack of recognition of diplomas;
- Highlighting three main notions contained in international law;
- Highlighting areas of particular concern regarding the protection of employment rights.
- Highlighting the importance of the rights of freedom of association and the potential positive benefits that trade unions may bring;
- Highlighting the importance of the role of labour inspection;
- Highlighting the importance of effective legislation and policy on non-discrimination in the workplace;

- Social security, also with reference to the following:
  - Access to social security benefits in Spain; and
  - Portability of social security benefits – the example of Austria and Germany.
- Summary.
- Resources for facilitator preparation.

### V.5. Social protection for Ethiopian migrant workers in receiving Middle East countries

- Particularly in recent times, large numbers of Ethiopians went abroad to work in Middle East, in particular Gulf countries.
- While the labour laws of these countries do apply to migrant workers, historically, the Gulf 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 migrant workers, even on a voluntary basis (*International labour migration: A rights based approach* (ILO, Geneva, 2010):109).
  - For this reason, but also due to the short-term, temporary nature of the period of employment of regular migrant workers and, in the case of irregular migrant workers, 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 (International Social Security Association (ISSA), Civil retirement and social insurance systems in the Gulf Cooperation Council – Reality and challenges, World Social Security Forum, Thirty-first ISSA General Assembly, Doha, Qatar, 10-15 November 2013, p. 9).
  - For citizens of these countries, the position is different; they could be covered even if they work outside their country in another Gulf country.
  - In fact, in 2006, the GCC adopted the Unified Law of Insurance Protection Extension for GCC State *citizens* working in other GCC countries. This law has resulted in better pension protection and greater labour mobility (for Gulf countries' citizens).
- Migrant workers would routinely also be excluded from health benefit schemes unless they are covered under what is known as a family health scheme; however, in that case, they consequently do not have access to independent and confidential health-care services.
- It also has to be noted that to date, none of the Gulf countries have ratified ILO Domestic Workers Convention (Convention 189) of 2011, which requires that essential labour and social security protection be extended to domestic workers.
- 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 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 contract (see ITUC, "Gulf Countries Should Revise Domestic Workers Contract", 2 July 2013, available from [www.ituc-csi.org/gulf-countries-should-revise](http://www.ituc-csi.org/gulf-countries-should-revise)) to provide for more extensive social and labour law protection.

- No provision is made for the portability of social security benefits. Portability would, in any event, hardly be relevant if the migrant worker concerned is not allowed to contribute to and access a public social insurance scheme of a particular Gulf country.
- Also, there is currently no bilateral social security agreement in place between Ethiopia and any of the Gulf countries – such agreements typically provide for portability of social (security) benefits. Portability is also not covered in the current or envisaged BLAs/MOUs between Ethiopia and these countries.
- The above analysis stresses the need for the adoption of explicit arrangements to ensure that proper welfare arrangements for migrant workers employed in Gulf countries are in place and operational.
  - Ideally, these are matters to be contained in bilateral agreements.
  - In the absence of such agreements, and to the extent that migrant workers do not have access to social security protection in Gulf countries, resort has to be had to unilateral arrangements, stemming from the country of origin (i.e. Ethiopia). See Module D above in this regard.
- The broader context of migrant workers' employment in the Gulf countries reveals what the ILO calls "widespread and blatant abuse and exploitation of foreign workers" (*International labour migration: A rights based approach* (ILO, Geneva, 2010):153).
- The kafala or employer-sponsorship system under which migrant workers are invariably employed, has been widely criticized, and is apparently under review in certain Gulf countries, such as Qatar.

### **The kafala or employer-sponsorship system in Gulf countries**

"The sponsorship or *kafala* system common in the Gulf States has also led to labour inflows not matched by actual employer demand, resulting in irregular status for the migrants. It has been pointed out that 'Working under the actual sponsorship system transforms a worker to a forced servant who lives at the mercy of his employer, and in fear of forced deportation at any time' (Bahrain Human Rights Society, 2003, p. 29). Thus, it has been recommended that the sponsorship system be repealed and replaced with a fair system that secures the human rights of migrant workers. Gulf countries have started to reconsider the sponsorship system. In Bahrain, Act No. 19 of 2006 established a new authority, the Labour Market Regulatory Authority, to oversee the labour market, recruitment of foreign workers, and employment and training of native workers. The Act also introduced reforms regarding the employment and recruitment of foreign workers: of particular note is article 25, which allows migrant workers to change employers without the consent of their existing employer. Subcontracting of temporary and seasonal workers through labour brokers in many sectors has been carried out at the expense of worker benefits and entitlements such as holidays, bargaining rights and social protection. As an ICFTU–APRO report noted, 'Employment agencies caught for their malpractices and even illegal work are quite often found escaping any punishment. If at all a punishment is given, the penalty imposed is far less than the crime and damage inflicted on the concerned migrants'.

For all these reasons, the manner of recruitment and placement has far-reaching consequences for the working conditions and general treatment of migrant workers. Some may be forced to endure situations of virtual debt bondage or near-slavery to pay off debts owed to recruiters and traffickers."

(*International labour migration: A rights based approach* (ILO, Geneva, 2010):78–79).

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- ILO, Private Employment Agencies Convention (Convention 181 of 1997).
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# ANNEX: SUMMARY ANALYSIS OF THE REGULATORY FRAMEWORK IN PROCLAMATION 923/2016

- **Three envisaged modes of employment of migrant workers abroad:** Employment abroad of a migrant worker (which includes per definition also a job seeker) from Ethiopia via an Ethiopian private employment agency (PEA) constitutes one avenue of overseas employment regulated by the Proclamation; the Proclamation also covers the employment of a migrant worker via a government-to-government arrangement or through direct employment (Article 2(3), definition of “employer”).
  - Regarding government-to-government arrangements, the Ministry of Labour and Social Affairs (MoLSA) is mandated to provide recruitment and placement services to governmental organizations in receiving countries based on a government-to-government agreement (Article 4).<sup>2</sup>
  - Direct employment by a foreign employer is regarded as an “exceptional” category, as the Proclamation stipulates that “[N]o employer shall directly recruit and employ a worker except through the Ministry or an Agency” (Article 6(1)). Notwithstanding this provision, allowance is made for direct employment of staff of an Ethiopian mission, where the employer is an international organization, or where the job seeker acquires a job opportunity by his/her own accord in job positions *other than* house maid service (Article 6(2)). However, in this last-mentioned case (not involving an Ethiopian mission or an international organization), the direct employment by a foreign employer must be “permitted” by the MoLSA if a range of conditions have been met (Article 6(3)).<sup>3</sup>
- **Educational and medical requirements:**
  - Education: A worker interested in taking up overseas employment must have completed at least the eighth grade of education. In addition, the worker must have obtained a certificate of occupational competence for the work he/she is to be employed (i.e. a certificate indicating that the worker is capable of performing a particular task). Once other requirements set by the employer are met, the certificate has to be presented (Article 7).
  - Medical examination: Regarding the medical examination, the Government of Ethiopia will select the medical institution to which the PEA must refer the worker once the employer requirements have been fulfilled (Article 9).

<sup>2</sup> The services to be provided by the MoLSA “shall include interviewing and selection; causing medical examinations; approval of employment contracts, provision of pre-employment and pre-departure orientations, facilitation of departure of employed workers and other similar services)” (FDRE, 2016, Article 5).

<sup>3</sup> These conditions comprise the following: (a) an assurance has been secured that the worker’s basic rights and dignity will be respected in the country of destination; (b) life and disability insurance coverage has been bought from the domestic insurance market by the foreign employment, the contents of which may be subject to a MoLSA directive; (c) appropriate air or land transport arrangements have been submitted together with the contract of employment; and (d) an advertisement to vacant positions permitted for direct employment “shall only be conducted through the Ministry or the appropriate authority” (FDRE, 2016: Article 6(3) and (4), read with Article 62).

- **Awareness-raising:** MoLSA or the relevant regional government organ (entrusted with the power to implement labour laws) have to (Article 8):
  - Undertake regular pre-employment and pre-departure awareness-raising for interested citizens;
  - Conduct continuous national awareness-raising activities for the public at large, as well as for those responsible for governing and managing, and working for, PEAs; and
  - Conduct awareness-creation orientation for foreign employers.
- **Expenses and service fee:** A distinction is drawn between expenses for which the foreign employer and the worker respectively is responsible (Article 10):
  - Employer: Visa fee, return transport costs, work permit and resident permit fees, insurance coverage,<sup>4</sup> visa and associated document authentication costs, and employment contract approval service fee.
  - Worker: Passport issuance fee, authentication of employment contract and crime clearance certificate fees, medical examination and vaccination fees, birth certificate issuance fees, and expenses for certificate of occupational competence.
  - Service fee: To be paid by the employer to the Ministry, associated with the approval of the employment contract.
- **Bilateral agreements:** A worker may only be deployed to a country if the Government of Ethiopia has concluded a bilateral agreement with that country (Article 12).
- **Institutional framework:** (Articles 13–15)
  - The necessary organizational structure will be established by the Ministry, while the Ministry will also appoint labour attachés to ensure the protection of the rights, safety and dignity of workers employed overseas.
  - The Proclamation also covers the establishment of a National Coordinating Committee and Task Force accountable to the Committee; this was reflected on earlier in the report.
- **Model employment contract and conditions of work:** According to Article 16 of the Proclamation, MoLSA may issue a directive on working conditions regarding prevailing overseas labour market and social services. Furthermore, MoLSA has to prepare a model employment contract that must include a minimum range of matters, including working time, wages, annual leave, free transportation to and from work; free medication, food and accommodation, life and disability insurance cover; and valid termination grounds. It must also consider the laws, customs and culture of the receiving country, as well as relevant bilateral and multilateral treaties (Article 17). Parties remain free to agree on more favourable terms, conditions and benefits (Article 18).
- **Inspection:** In order to promote the legality of migration, provision is made for the issuing of special identification cards for migrant workers whose contracts of employments have been approved (Article 20(1)). MoLSA and the relevant regional government organ are given the mandate to assign labour inspectors to monitor compliance with the Proclamation by PEAs. Extensive powers and duties are ascribed to these inspectors, among others, to ascertain that the PEA has the required office facilities and automated database system, and provides the necessary pre-departure and pre-employment orientation and counselling services (Article 20(2) and (3)).

<sup>4</sup> According to Article 62, the employer shall buy life and disability insurance from the domestic insurance market; the PEA or worker has to present this insurance policy document to MoLSA, together with the employment contract.

- **Licensing of a PEA:** Comprehensive provision is made regarding the licensing of PEAs.
  - **Eligibility:** A PEA has to obtain a licence for every country that it wishes to operate in (Article 21). Only Ethiopian citizens (or a business organization whose members are all Ethiopian citizens) are eligible to obtain a licence (Article 22). In both cases, a sizeable operating capital (of not less than 1 million Birr) is set as an eligibility condition. Not eligible are those whose licence was revoked or suspended on more than three occasions, under the previous proclamation, or those sentenced for engagement in particular crimes, or an official or employee in leadership position in certain governmental institutions (or their families) (i.e. to avoid a conflict of interest) (Articles 22 and 23).
  - **Licence requirements:** An eligible applicant has to submit a range of documents, confirming the applicant's organizational and operational structures and details, an official office presence, a police clearance and a tax clearance certificate, a suitable presence in the country of destination (which could be via a delegated representative), including a facility for providing temporary food and sheltering services to the workers in the country of destination), confirmation of the applicant's qualifications and security bond, as well as authorization to freely enter into and exit from the receiving country; and a receipt showing payment of the licence fee (Article 24).
  - **Related matters:** An issued licence is valid for one year and must be displayed in a conspicuous place (Articles 26 and 27)). Except in the case of death, a licence is not transferable; a person may also not operate in more than one PEA as owner or a member of a relevant institution (Article 28). Changes in governance/managing structures must be notified and published through public media (Articles 29 and 30). A licence has to be renewed annually, one month prior to the expiry of the one-year period, and is dependent on compliance with several requirements – including that a security bond has been deposited, an audited financial statement confirms settled tax liability, a police clearance certificate has been obtained, and a general report indicating the status of deployed and returned overseas workers (Article 33). Article 34 empowers the Minister to issue a directive in connection with an incentive scheme to evaluate and reward PEAs involved in the sector and achieving good performance.
- **Employment exchange abroad:** Several matters concerning the actual employment exchange abroad are regulated by the Proclamation:
  - **Advertisement:** A PEA must obtain approval from MoLSA or the relevant regional government organ before advertising any overseas job vacancy. In addition, the advertisement, through mass media, must contain certain information relating to the PEA itself, details about the vacant job positions, and a declaration that a service charge will not be collected from the worker (Article 35).
  - **Recruitment:** This has to take place at the premises of the office of the PEA, unless authorization has been obtained from MoLSA or the relevant regional government organ to use a temporary recruitment venue in the event of the recruitment of a substantial workforce (Article 36).
  - **Approval of the employment contract:** The contract, signed by the foreign employer, the PEA and the worker, must comply with the model contract and other conditions specified in a ministerial directive, and submitted for approval. If MoLSA is satisfied – after verification of the signature of the employer and other attached document – that these conditions have been met, it shall approve and register the contract (Article 37).
  - **Deployment of worker and reporting:** The PEA is required to deploy the worker within one month after approval of the contract; notify the Ethiopian Mission or Consular

office in the country of destination and cause registration of deployed workers within 15 days; ensure that the workers has obtained a work and a residence permit; and report same to MoLSA (Article 38).

- Revocation of contract of employment: Failure to deploy the worker within one month, must be notified to MoLSA, together with reasons therefore; the contract will be revoked (Article 39).
- **Non-compliance by a PEA, the lodging of complaints and corresponding administrative measures:**
  - The power to impose administrative measures: MoLSA or the relevant regional government organ has the power to take administrative measures in respect of violations of the Proclamation by a PEA (Article 42(1)). Depending on the nature of the violation, the licence of the PEA may be either suspended or revoked:
    - Suspension: Contraventions that could give rise to a suspension of the PEA's licence<sup>5</sup> include, among others (Article 42(2)):
      - Obstruction or attempted obstruction of the activities of an assigned labour inspector;
      - Failure to give notice to the MoLSA or the relevant regional government organ of the appointment of a general manager, members of the board of directors or the recruitment of an employee;
      - Recruitment of a worker who does not meet the educational or professional competence described above;
      - Failure, without good reason, to deploy the worker within one month;
      - Failure to provide a remedy for applications pertaining to violations of workers' rights, safety and dignity;
      - Failure to submit periodic reports to MoLSA or the relevant regional government organ, as required;
      - Failure to submit a report on the list of workers terminated from employment and other related information; failure to provide adequate service in accordance with the Proclamation; withholding of a worker's wage or remittances;
      - Failure to refund a worker not deployed for reasons not imputable to him;
      - Failure to provide pre-departure orientation and counselling; and
      - Failure to immediately verify and report to MoLSA on employment bodily injury sustained by or death of workers on overseas employment, on the reasons thereof and the remedial measures taken.<sup>6</sup>
    - Revocation: Contraventions that could give rise to a revocation of the PEA's licence include, among others (Article 42(3)):
      - Direct or indirect engagement of a PEA-associated owner, general manager or employee with a travel agency or air ticket office management;
      - Failure to renew licence within the stipulated time period;
      - Recruitment and deployment of a worker:

<sup>5</sup> The period of suspension ranges from 3 months to 12 months, depending on whether the violation is for the first, second or third time. If it is fourth-time violation, the licence has to be revoked: (Article 47(1) and (2)).

<sup>6</sup> Other violations giving rise to a suspension include the influencing or attempt to influence an employer to employ only a worker registered by the particular PEA; disregard of orders and notices issued by MoLSA or the relevant regional government organ; failure to display its licence as required; and failure to replenish the amount the PEA has to pay towards a financial guarantee, where the amount has been used in accordance with the provisions of the Proclamation (Article 42(2), read with Article 60(4)).

- Who is below the age of 18 years;
  - To a destination in the absence of a bilateral agreement involving Ethiopia and that country, or where a destination has been indicated as prohibited; and
  - To a service that adversely affects public health or morality or damages the country's image.
- Transferring or changing ownership of a licence in contravention of the Proclamation;
  - Receiving a fee from the worker in return for overseas employment exchange service;
  - Deploying a worker before approval of the employment contract;
  - Sending a worker to a destination other than the stipulated destination in the approved contract, or to engage in a type of service, place of work or country different from those stipulated in the licence;
  - Assigning a worker to a different employer than the one mentioned in the approved contract;
  - Engaging a person in its business, if the person is prohibited from overseas employment exchange service;
  - Substituting or replacing the approved contract by another without notifying to and approval of MoLSA;
  - Withholding travel document and other information of the worker before or after deployment; and
  - Compelling a worker to relinquish his/her rights and benefits through fraudulent practice or duress.<sup>7</sup>
- Legal consequence of a licence suspension or revocation: The PEA has to cease engagement with overseas employment exchange services in the event of a licence suspension or revocation. The suspension or revocation will be publicly notified by MoLSA, but does not relieve the PEA from responding to lawful requests of the workers it sent abroad. In the case of revocation, the licence shall be returned to MoLSA within five working days (Article 48).
  - Complaints: A worker or his/her representative may submit an oral or written complaint to MoLSA or the relevant regional government organ in the event of a contravention of the Proclamation or any relevant law. The complaint should include relevant particulars, as prescribed. MoLSA or the relevant organ must open a file and issue a summon order, directing the PEA to present a statement of defence within 10 working days. Following a hearing, MoLSA or the relevant organ must give its decision within one month, and shall issue an execution order to the PEA to execute its decision within 15 days (Articles 43–45, 49–51). Pending finalization of the decision, no employment contract may be approved; the PEA's licence may be suspended in certain circumstances. Criminal liability may also follow (Articles 46 and 47(3)).

<sup>7</sup> Other violations giving rise to a revocation include furnishing falsified evidence or document or advertisement in order to recruit or deploy a worker; intentional falsifying or changing a worker's travel document (Article 42(3)).

- **Non-compliance by an employer, a PEA representative or a worker, and corresponding administrative measures:**

- The power to impose administrative measures: MoLSA or the relevant regional government organ has the power to take administrative measures in respect of violations of the Proclamation by a foreign employer, a PEA representative or a worker (Article 52).
- Violations by an employer or a PEA representative: This report already reflected on the principle of imposing liability on a foreign employer or PEA representative. The said violations include the following (Article 53):
  - Failure to discharge its obligations in the employment contract or (in the case of the representative) as per its delegated powers;
  - Withholding or denying access to a worker's legal travel documents, or his/her wage or remittances;
  - Negligently causing serious injury, health problems or death of the worker;
  - Committing an act that violates the worker's human dignity and morals;
  - Sexual harassment of the worker; and
  - Contravention of the Proclamation, its regulations or directives.
- Complaints and decision: A complaint may be submitted by the victim or any person; MoLSA or the relevant regional government organ will conduct proceedings (which it can also do on its own accord); pending the outcome, the employer or PEA representative may temporarily be barred from participating in overseas employment exchange service (Article 54). If the complaint is upheld, the employer and/or PEA representative shall be prohibited from engaging in overseas employment exchange, and may be ordered to pay reasonable compensation (Article 56).
- Violations by a worker: Worker violations include the following (Article 57):
  - Failure to discharge one's obligations according to the employment contract;
  - Commission of crimes punishable in Ethiopia or the country of destination;
  - Failure to respect the religion, custom or customary practices of the country of destination;
  - Unwillingness to be deployed, without good cause, after approval of the contract;
  - Unauthorized use of the employer's or colleague's money or property;
  - Production of falsified evidence for overseas employment; and
  - Terminating the contract for no good reason.

Administrative measures to be taken against the worker include suspension from overseas employment for six months or one year (depending on whether this is a first- or second-time violation), or disqualification from overseas employment, if the contravention is committed for the third time (Article 58).

- **Right to appeal:** A party aggrieved by the decision of MoLSA or the relevant regional government organ may, within 15 days, lodge pleadings with the Federal High Court or a regional court with jurisdiction. The decision of the court will be final (Article 59).



- **Welfare service:** Several matters are provided for in the Proclamation:
  - Financial guarantee: A PEA has to deposit USD 100,000 or its equivalent in Birr in a blocked bank account for purposes of guaranteeing the protection of the rights and safety of deployed workers. Failure to comply with its duty to transport the worker and his/her personal belongings back when the contract is terminated, or where the worker sustains serious bodily injury or dies, empowers MoLSA to withdraw the required amount from this Fund, upon which the PEA must replenish the Fund within 10 working days. The financial guarantee will only be released when the PEA ceases operations, if there is no claim against the PEA (Article 60).
  - Foreign Employer's Guarantee Fund: In order to cover claims of workers arising from breach of the employment contract, a foreign employer has to allocate USD 50 to this Fund.
  - Assistance provided to workers: This report already reflected on the liability of the Government of Ethiopia and PEAs to ensure the rights, safety and dignity of workers deployed in overseas employment.
- **Conciliation and repatriation of workers:** MoLSA or the relevant regional government organ is mandated to receive and conciliate any complaint submitted to it by a worker, a PEA or a foreign employer relating to overseas employment. Should this be unsuccessful, the complainant may submit the case to the adjudication office of MoLSA. Failure on the part of the PEA to participate in the conciliation or to abide by the terms of the approved settlement will cause MoLSA not to approve any employment contract until compliance has been achieved (Articles 66–68). Also, a PEA has the duty to transport back a worker and his/her belongings (see above), and to cover medical expenses to a workers who has been repatriated due to serious bodily harm. Expenses may be reclaimed from the worker, if the worker terminates the contract without good cause (Article 69).





TRAINING OF TRAINERS  
MANUAL

**NATIONAL LABOUR MIGRATION  
MANAGEMENT: ETHIOPIA**



International Organization for Migration (IOM)  
The UN Migration Agency



Federal Democratic Republic of Ethiopia