Module 2:
Legal, Institutional and Policy Frameworks on Labour Migration

Learning objectives
1. Introduction
2. Definitions
3. Global Instruments
4. Regional and bilateral Instruments
5. BLAs and MOUs
6. National instruments: some examples in Africa

Key learning points
Knowledge Assessment
Individual/Group Exercise
Learning Objectives

At the end of this module, participants will have an understanding of:

1. The different types of instruments that are of relevance to labour migration governance
2. The obligations that arise out of each type of instrument
3. Key global and regional instruments (frameworks, conventions and protocols) with specific reference to labour migration
4. The difference between signing and ratifying a particular instrument
5. How different instrument can be incorporated into multilateral and bilateral agreements and national policies
1. Introduction

In this module we discuss a range of international, regional and bilateral instruments that are of relevance to the management and governance of labour migration. Some of these instruments are specifically about labour migration, whereas others are about migration in general, but have sections that are of relevance to labour migration.

We start by defining the different types of, and then we briefly summarize and reflect on the significance of various global, regional and bilateral instruments, including examples of how different instruments have been incorporated into regional frameworks and national policies.

2. Definitions

We use the term ‘instruments’ as a collective term to refer to various type of agreements and documents. In this module, we specifically discuss labour migration instruments – in other words, global, regional, multilateral, bilateral and national level agreements and documents that have an impact on the management and governance of labour migration.

It is important to understand the implications of, and obligations that arise out of a specific type of instrument and in this section, we provide brief definitions of different types of instruments and related terminology.

(a) Signature, Ratification and Accession

Depending on the type of instrument, governments indicate their agreement with, and support for it by signing and ratifying or acceding to it in order for it to come into effect.

**Signature:** When a government signs a particular instrument, this is an indication that they agree with and support its provisions and it is an undertaking that they will engage in the necessary legal processes in their own country to give effect to the provisions of the instrument.

**Ratification:** This means that a government has taken the necessary legal steps required by their own national laws and processes to endorse the instrument that was previously signed and usually means that they have to create or modify domestic legislation to give them the legal authority to implement the provisions of the instrument. Usually an instrument comes into legal effect when it has been ratified by a specified minimum number of countries.

**Accession:** Accession has a similar meaning to ratification, except that the domestic legal process is undertaken after an instrument has already come into effect.

(b) State Parties

A ‘state party’ refers to a government that has signed and ratified a specific instrument and is legally bound to implement the provisions of the instrument.

(c) Binding and Non-Binding Instruments

This refers to the legal obligation that arises out of a particular instrument. A binding instrument means that once it has been signed and ratified, a government has the legal obligation to
implement the provisions of a particular instrument. A non-binding instrument means that governments may have signed it as an indication of agreement and support, but are not legally obliged to implement its provisions. Non-binding instruments are often preferred when the provisions of an instrumented are supported and agreed to in principle, but would be difficult or impossible for governments to legally implement, given the differences between national contexts. However, it can be argued that non-binding instruments place a moral obligation on governments to adhere to the provisions of the specific instrument, and it provides a guideline/framework for future national policies and laws.

(d) Frameworks
A framework is a set of principles and a conceptual structure that guides and supports the contents of (and in some cases, the processes to develop) a specific policy. Frameworks are comprehensive and elaborate on all the different components/elements of a specific policy. The intention is that when governments develop national policies, the framework serves as a guide in terms of the contents of such a policy. Frameworks are usually developed on the basis of broad-based consultations and once signed and adopted, become non-binding instruments.

(e) Declarations
These are statements agreed to by governments in which support for a specific set of principles or actions, or a particular perspective on a specific set of issues are expressed. A Declaration is a non-binding instrument.

(f) Conventions
A Convention is an agreement between States that regulates their response to a specific matter that affects all of them. Conventions are legally binding on State Parties and come into effect when it has been ratified by the required number of States. As explained above, the authority for implementing the provisions of a Convention comes from domestic/national law. Conventions are usually negotiated and agreed to under the auspices of an international organisation such as the United Nations.

(g) Protocols
Protocols are supplementary to Conventions and are usually used to modify the original Convention when there are significant changes to the original convention, for example, when a new chapter is added. When Conventions are amended in this manner, the amendments are only binding on the States that ratify the new protocol.

(h) Bilateral and Multilateral Instruments
Some instruments are bilateral. This means that it is an agreement between two countries and its provisions only apply to those two specific countries. Other instruments are multilateral, which means that it involves three or more countries and its provisions apply to all the countries that signed/ratified the instrument.

In the following sections of this module, we will briefly summarise and discuss key global and regional frameworks, conventions and agreements that are relevant to the management and governance of labour migration.
3. Global Instruments

(a) The 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development (more commonly referred to as the Sustainable Development Goals or SDGs) was adopted by all United Nations Member States in 2015. It is the global framework for development during the period 2016 – 2030 and was developed in response to the challenges and opportunities in achieving balanced and sustainable global development and eradicating extreme poverty, inequality and injustice. It defines global sustainable development priorities and aspirations for 2030 and seeks to mobilize global efforts around a common set of goals and targets. The SDGs call for worldwide action among governments, business and civil society to end poverty and create a life of dignity and opportunity for all.

There are 17 SDGs that reflect the inter-relatedness of economic, social and political dimensions in achieving sustainable development. Of the 17 SDGs, 5 goals and their indicators are related to migration broadly and labour migration specifically, as follows:

Goals and Indicators Specific to Migrants and Migration

Goal 5 (Gender Equality)

5.2.1 Proportion of ever-partnered women and girls (aged 15-49) subjected to physical and/or sexual violence by a current or former intimate partner, in the last 12 months

5.2.2 Proportion of women and girls (aged 15-49) subjected to sexual violence by persons other than an intimate partner, since age 15.

Goal 8 (Decent Work & Economic Growth)

8.7.1 Percentage and number of children aged 5-17 years engaged in child labour, per sex and age group (disaggregated by the worst forms of child labour)

8.8.1 Frequency rates of fatal and non-fatal occupational injuries and time lost due to occupational injuries by gender and migrant status

8.8.2 Number of ILO conventions ratified by type of convention
Goal 10 (Reduced Inequalities)

10.7.1 Recruitment cost born by employee as percentage of yearly income earned in country of destination.

10.c.1 Remittance costs as a percentage of the amount remitted.

Goal 16 (peace, Justice and Strong Institutions)

16.2.1 Percentage of children aged 1-17 years who experienced any physical punishment and violent disciplinary measures, in the past 12 months

16.2.2 Number of detected and non-detected victims of human trafficking per 100,000; by sex, age and form of exploitation

16.2.3 Percentage of young women and men aged 18-24 years who experienced sexual violence by age 18

Goal 17 (Partnerships)

17.18 Proportion of sustainable development indicators with full disaggregation produced at the national level.
The UN Global Compact for Safe, Orderly and Regular Migration (also known as the Global Compact on Migration or GCM) is a non-binding instrument that was approved by 164 nations during the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration on 10 December 2018 in Morocco and endorsed by the United Nations General Assembly on 19 December 2018 with 152 countries voting in favour of the resolution. The GCM provides a comprehensive set of objectives and commitments related to a range of aspects pertaining to international migration. While all of the objectives and commitments contained in the GCM may be of value in terms of the management and governance of labour migration, Objectives 5 and 6 are specifically relevant. Below is a shortened version of Objectives 5 and 6 and the actions required to realise these objectives:

**OBJECTIVE 5:** Enhance availability and flexibility of pathways for regular migration: commitment to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.

To realize this commitment, these are some of the actions, specific to labour migration, that are proposed:

- Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders;
- Facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements;
Review and revise existing options and pathways for regular migration, with a view to optimize skills matching in labour markets, address demographic realities and development challenges and opportunities;

Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels;

Promote effective skills matching in the national economy by involving local authorities and other relevant stakeholders, particularly the private sector and trade unions, in the analysis of the local labour market, identification of skills gaps, definition of required skills profiles, and evaluation of the efficacy of labour migration policies;

Foster efficient and effective skills-matching programmes by reducing visa and permit processing timeframes for standard employment authorizations, and by offering accelerated and facilitated visa and permit processing for employers with a track record of compliance; and,

Facilitate access to procedures for family reunification for migrants at all skills levels through appropriate measures that promote the realization of the right to family life and the best interests of the child.

**OBJECTIVE 6:** Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work: commitment to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination. To realize this commitment, the following actions are proposed:

- Promote signature, ratification, accession and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour;
- Build upon the work of existing bilateral, subregional and regional platforms that have overcome obstacles and identified best practices in labour mobility; Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices; Establish partnerships with all relevant stakeholders, including employers, migrant workers organizations and trade unions; Enact and implement national laws that sanction human and labour rights violations; Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors; Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law;
- Take measures that prohibit the confiscation or non-consensual retention of work contracts, and travel or identity documents from migrants, in order to prevent abuse, all forms of exploitation, forced, compulsory and child labour, extortion and other situations of dependency, and to allow migrants to fully exercise their human rights;
- Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector; Ensure migrants working in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace;
Review relevant national labour laws, employment policies and programmes to ensure that they include considerations of the specific needs and contributions of women migrant workers, especially in domestic work and lower-skilled occupations; and

- Develop and improve national policies and programmes relating to international labour mobility, including by taking into consideration relevant recommendations of the ILO General Principles and Operational Guidelines for Fair Recruitment, the United Nations Guiding Principles on Business and Human Rights, and the IOM International Recruitment Integrity System (IRIS).

In addition, the GCM has two further objectives that are of relevance to labour migration, as follows:

**Objective 18:** Invest in skills development and facilitate mutual recognition of skills, qualifications and competences and

**Objective 22:** Establish mechanisms for the portability of social security entitlements and earned benefits.

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(c) ILO Conventions and Multilateral Framework

The International Labour Organization's (ILO) strategy on labour migration and mobility in the African region is guided by its International Labour Standards (ILS) and Decent Work Agenda. In addition to the SDGs and GCM, the ILO’s work in Africa is also steered by:

- The ILO's 2018 Guidelines Concerning Statistics of International Labour Migration
- The ILO/World Bank 2018 Guidelines on Measuring Recruitment Costs
- The 2017 International Labour Conference's Resolution and Conclusions on Fair and Effective Labour Migration Governance and its Follow-up Plan of Action
- The ILO's 2016 Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market
- The ILO's 2016 General Principles and Operational Guidelines for Fair Recruitment

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Do you want to know more?

To find out more about the GCM, take a look at the following links:

- https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf
- https://www.iom.int/global-compact-migration
- https://refugeesmigrants.un.org/migration-compact
The ILO’s labour mobility strategy in Africa is informed by the following continental policy frameworks:

- The ILO’s 2014 Fair Migration Agenda
- The ILO’s 2006 Multilateral Framework on Labour Migration
- The 2004 International Labour Conference’s Resolution and Conclusions Concerning a Fair Deal for Migrant Workers in a Global Economy and its Follow-up Plan of Action
- Africa’s Agenda 2063
- The 2014 African Union Commission’s (AUC) Ouagadougou + 10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa
- The AU’s Revised Migration Policy Framework for Africa and Plan of Action (2018–2030)
- The AU’s Free Movement of Persons Protocol or “Protocol to the Treaty establishing the African Economic Community relating to the Free Movement of Persons, Right of Residence and Right of Establishment”

Do you want to know more?

To find out more about global and continental policy frameworks that guide the ILO’s labour migration and labour mobility strategies in Africa, take a look at the following links:

The ILO promotes a rights-based approach to the management and governance of labour migration. This is reflected in the International Labour Standards (ILS) that set out the basic principles and rights at work. ILS establish the essential legal framework that is the first step towards achieving progress in promoting rights at work, creating decent jobs, improving working conditions, extending social protection and supporting sustainable enterprises. ILS reflect the outcome of negotiations among the three ILO constituents: governments, workers’ and employers’ organisations, and are adopted by vote by a plenary sitting of the International Labour Conference (ILC). ILS take the form of conventions, which are legally binding on the ILO member States that have ratified them, and recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented and the related recommendation supplements it by providing more detailed guidelines on the application.

In principle, all international labour standards, unless otherwise stated, are applicable to migrant workers. There are, however, two specific conventions pertaining to labour migration and migrant workers, as follows:

**Convention 97:** *Migration for Employment Convention (Revised), 1949*

This Convention provides a number of measures that member states should take in order to safeguard the rights of migrant workers. It provides that migrant workers should not be treated less favourable than nationals at law and specifically in remuneration, collective bargaining, accommodation and accesses to social security.

**Convention 143:** *Migrant Workers (Supplementary Provisions) Convention, 1975*

This Convention is aimed at protecting migrant workers from working in abusive conditions. It seeks to promote equality of opportunity and treatment of migrant workers.

There are several other ILS that do not specifically address labour migration and migrant workers, but that are of relevance and applicable to migrant worker, unless otherwise stated. These are:

- **CO19:** Equality of Treatment (Accident Compensation) Convention, 1925
- **CO29:** Forced Labour Convention
- **CO100:** Equal Remuneration Convention, 1951
- **CO102:** Social Security (Minimum Standards) Convention, 1952
- **CO118:** Equality of Treatment (Social Security) Convention, 1962
- **CO121:** Employment Injury Benefits Convention, 1964
- **CO157:** Maintenance of Social Security Rights Convention, 1982
- **CO181:** Private Employment Agencies Convention, 1997
- **CO189:** Domestic Workers Convention, 2011
- **P29:** Protocol to the Forced Labour Convention, 2014

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**Do you want to know more?**

To find out more about the ILS Conventions and Recommendations, please click here:

The ILO Multilateral Framework on Labour Migration was published in 2006 sets out 15 non-binding principles and accompanying guidelines for implementation, to work towards the achievement of a rights-based approach to labour migration. The Framework draws on a range of international instruments and specifically, on the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143), and the accompanying Recommendations Nos. 86 and 151.

The 15 principles and guidelines cover the following areas:

- Decent Work;
- Means for International Cooperation on Labour Migration;
- Global Knowledge Base;
- Effective Management of Labour Migration;
- Expanding avenues for regular labour migration;
- Social Dialogue;
- Consultations with civil society and migrant associations;
- Protection of migrant workers;
- The applicability of International Labour Standards and other international instruments to migrant workers;
- The application and enforcement of national laws and regulations to protect the rights of migrant workers;
- Prevention of and protection against abusive migration practices;
- The promotion of orderly and equitable labour migration processes;
- Licensing and supervision of recruitment and placement services for migrant workers;
- Social Integration and Inclusion; and,
- Migration and Development.

(d) The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Migrant Workers Convention – ICRMW)

The ICRMW is a United Nations multilateral treaty governing the protection of migrant workers and families. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003. In accordance with article 7 of the Convention, States parties undertake to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction, the rights provided for in the ICRMW without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (the right to non-discrimination). Other rights which are applicable to all migrant workers and members of their families include:

Do you want to know more?

To find out more about the ILO Multilateral Framework on Labour Migration, click here:

The right to life;
the right to not be subjected to torture or cruel, inhuman or degrading treatment or punishment;
freedom of expression;
the right to property;
the right to a fair trial;
the right to receive urgent medical care; and,
the right to not be treated less favourably than nationals of the State of employment in respect of remuneration and other conditions of work and terms of employment.

The ICRMW provides for further rights, which are only applicable to migrant workers and members of their families who are documented or in a regular situation, which include:

- the right to free movement;
- the right to enjoy equality of treatment with nationals in relation to access to educational/vocational guidance and training institutions and services, housing, social and health services, and to participation in cultural life;
- the right to transfer earnings and savings from the State of employment to any other State; and,
- equality in treatment in regard to dismissal and the enjoyment of unemployment benefits.

Reflection

The above are some of the key global instruments that are of specific relevance to the management and governance of labour migration. Do you know which of these instruments have been signed and ratified by your government? Do you know to what extent the provisions of these instruments have been incorporated into your domestic/national legislation?

Do you want to know more?

To find out more about the core human rights instruments, click here:

Visit https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx
4. Regional and Bilateral Instruments

In this section, we look at relevant instruments in the context of the African continent. As with the above global instruments, some of the frameworks referred to here may not be specifically about the management and governance of labour migration, but they do have provisions that are of relevance.

(a) African Common Position on Migration and Development

The African Common Position on Migration and Development states that

"...migration can be an effective tool for development by enhancing income distribution, promoting productive work for growth in Africa, enhancing women empowerment and gender equality, combating HIV/AIDS, Malaria and Tuberculosis amongst migrant population and improving partnership amongst the developed and African countries and other stakeholders."

The Common Position identifies eleven priority issues that need to be addressed to enhance the positive impact of migration on development. Specifically, in terms of labour migration, the Common Position notes that

"...labour migration is a current and historical reality in Africa impacting directly the economies and societies of African countries in important ways. Establishing regular, transparent and comprehensive labour migration policies, legislation and structures at the national and regional levels can result in significant benefits for States of origin and destination. For countries of origin, for example, remittances, and skills and technology transfers can assist with overall development objectives. For countries of destination, labour migration may satisfy important labour market needs. Labour
migration policies and legislation that incorporate appropriate labour standards also benefit labour migrants, members of their families, and can have a positive impact on society generally.

The Common Position further notes that

Bilateral and multilateral efforts aimed at strengthened co-operation on labour migration assist in:
- ensuring systematised and regular movements of labourers;
- responding to the supply and demand needs of domestic and foreign labour markets;
- promoting labour standards; and
- reducing recourse to illegal and irregular movements.

The need for all parties to work together for the success of the new understanding contained in the common position is also emphasized.

(b) AU Revised Migration Policy Framework for Africa and Plan of Action (2018-2030)

The African Union Revised Migration Policy Framework for Africa (MPFA) is a non-binding document that does not impose any obligations on Member States. Its purpose is to guide Member States and Regional Economic Communities (RECs) in the management of migration, and the Framework together with its accompanying Plan of Action is formulated as a comprehensive set of policy guidelines and principles to assist Member States and RECs in the formulation and implementation of their own national and regional migration policies.

Specifically, in terms of labour migration, the MPFA calls for:
- the establishment of regular, transparent, comprehensive and gender-responsive labour migration policies, legislation and structures at national and regional levels;
- accountable labour recruitment and admission systems;
- the promotion of standardised bilateral labour agreements to ensure the protection of migrant workers and facilitation of remittance transfers;
- the integration of migrants into the labour market and the education and training sector; and,
- the provision of social protection and social security benefits for migrants while working abroad, as well as upon their return.

The MPFA confirms that regional cooperation and harmonization of labour migration policies can foster regular labour migration to meet the supply and demand of domestic and foreign labour markets, promote the enforcement of labour standards, and

Do you want to know more?

To find out more about the African Union frameworks related to migration, please click here:

reduce recourse to irregular migration. The MPFA recommends the harmonization and strengthened implementation of AU and REC free movement provisions related to residence and establishment, as well as enhanced cooperation among Member States with regard to the facilitation of free movement.

(c) SADC Example

The Southern African Development Community (SADC) has several instruments that are of relevance to the management and governance of labour migration. We will look briefly at three of these instruments.

(i) SADC Protocol on the Facilitation of Movement of Persons

The SADC Protocol on the Facilitation of Movement of Persons was adopted in 2005 and seeks to “develop policies aimed at the progressive elimination of obstacles to the movement of persons generally into and within the territories of State Parties.” A Protocol is a legally binding document committing Member States to the objectives and specific procedures stated within it.

Specifically, the Protocol promotes the following objectives:

- entry for a lawful purpose and without a visa, into the territory of another State Party for a maximum period of 90 days per year for bona fide visits and in accordance with the laws of the State Party concerned;
- permanent and temporary residence in the territory of another State Party; and
- establishment of oneself and working in the territory of another State Party.

To come into effect, the Protocol requires ratification by at least 9 SADC Member States and to date only 6 Member States have ratified it: Botswana, Lesotho, Mozambique, South Africa, Swaziland and Zambia. This falls short of the nine countries required for the Protocol to enter into force.

(ii) SADC Labour Migration Policy Framework and Plan of Action

A Draft SADC Labour Migration Policy (LMP) was published in 2013 “to reflect, contribute to, and refine existing legal frameworks at regional, bilateral and national level, and international and regional legal instruments and obligations relating to migration and labour.” Its specific objectives are to:

- achieve legal and policy convergence in the region in the area of labour migration;
- establish, maintain, and disseminate a system of sub-regional data collection in key areas of labour migration including but not limited to migration stocks & flows; labour market data, legislations; comparative sector based qualitative research; impact assessments (discussed above in 3.3.1);
- develop an integrated and evidence-based strategy aimed at retaining existing skills within the sub-region, improving and expanding the skills pool within SADC and attracting new skills from outside the region that will contribute to the development of the region’s economy;
- improve understanding of low-skilled migrant workers’ mobility strategies; and to design pro-poor labour migration policies assisting and protecting this category of workers towards increased and more sustainable income generating activities;
ensure the mainstreaming of self-employed migrants in migration, labour, rural and urban development strategies;
ensure the full integration of migrant workers into national and sub-regional workers’ organisations without discrimination based on their citizenship or length of residence;
create a harmonised social protection regime across SADC for migrant workers and nationals that takes into consideration a minimum floor of social security for migrant workers; and
create mechanisms for monitoring and evaluation of labour market integration.

The SADC LMP is accompanied by a Draft SADC Labour Migration Action Plan (2020-2025) that has three strategic objectives, as follows:

To strengthen labour migration policies and regulatory systems for better labour migration outcomes;
To protect migrant workers’ rights and improve advocacy and awareness of their contribution to development and regional integration; and
To enhance the participation of migrant workers in socio-economic development processes in countries of origin and destination.

The Protocol sets out the following specific objectives:

(a) setting minimum standards on employment and labour, social security, safety and health at workplace and related matters;
(b) providing a framework for harmonization of policies and legislation on employment, labour, social security, safety and health standards at the workplace and enhancing cohesion and common approaches to labour market challenges;
(c) providing a framework for regional cooperation in the collection and dissemination of labour market information;
(d) promoting gender equality in the employment and labour sector, in particular equal treatment and opportunities for men and women;
(e) promoting the development of institutional capacities and vocational and technical skills in the Region; and
(f) promoting employment and income-generating opportunities for all, and in particular for vulnerable groups as a basis for achieving full, freely chosen, productive and decent employment within the Region.

Following a review pertaining to the challenges experienced with the ratification of the Protocol, the SADC Summit held in August 2020, made a decision to withdraw the 2014 Protocol and to begin the process of drafting a new one.

(d) Examples from other regions

COMESA:
There are two primary legal instruments governing the free movement of people in COMESA (Common Market for East and Southern Africa):
1. The Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (Visa Protocol) and

The Visa Protocol was signed by the Heads of COMESA Member States in 1984. The Protocol provides for a ninety-day visa free regime and access to visas on arrival. It recognizes that two or more Member States can maintain existing bilateral or multilateral arrangements (or enter into new ones) among themselves in respect of free movement of persons which provide for more favourable treatment for their nationals than are provided for in the protocol and these measures are encouraged.

The Free Movement Protocol was adopted in 2001 and was developed with the vision towards the operationalization of the COMESA Common Market and its objective is to remove all restrictions to the free movement of persons, labour, and services and provide for the right of establishment and right of residence.

A COMESA Model Law on Immigration was set up in 2006 in order to harmonize national laws and practices. The Model Law provides directives on both regular and irregular migration, regulating the entry and stay of persons within the region as well as the removal of irregular migrants. However, no specific provisions on free movement of citizens of COMESA member states are included.

ECOWAS:
The Economic Community of West African States (ECOWAS) adopted a Protocol on the Free Movement of People and Goods in 1979 that is aimed at ensuring free mobility of the citizens of member states. It provides citizens of ECOWAS Member States the right to enter and reside in the territory of any member state, provided they possessed a valid travel document and international health certificate. However, the Protocol allows member states the right to refuse admission to any Community citizens who were inadmissible under the member state’s own domestic law.

Between 1985 and 1990, four supplementary protocols were adopted that committed member states, among other things, to:

- provide valid travel document to their citizens,
- grant citizens of ECOWAS Member States the right of residence for the purpose of seeking and carrying out income-earning employment,
- ensure appropriate treatment for persons being expelled,
- not to expel citizens of ECOWAS Member States en masse, and
- limit the grounds for individual expulsion to reasons of national security, public order or morality, public health or non-fulfilment of an essential condition of residence.
5. Bilateral Labour Agreements and Memoranda of Understanding

(a) Differences between Bilateral Labour Agreements (BLAs) and Memoranda of Understanding (MOUs)

BLAs and MOUs are perhaps the most direct instruments that govern labour migration between two countries. But how is a BLA different from an MOU?

The United Nations Treat Handbook describes a bilateral agreement as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”. In this context, a Bilateral Labour Agreement is an agreement between two States which describe in detail the specific responsibilities of, and actions to be taken by each of the parties, in relation to managing and regulating the flow of migrant labour. As an international treaty, BLAs create legally binding rights and obligations that come into force and effect when ratified through the appropriate legal mechanisms.

The UN Treaty Glossary states that “A Memorandum of Understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification”. As an alternative to a BLA, an MOU is a softer, often non-binding option, generally providing a broad framework through which to address common concerns. MOUs usually do not require ratification and come into force and effect upon signature.

Why choose an MOU as opposed to a BLA?

Many countries prefer to sign MOUs to manage and regulate labour migration flows because they are:

- Easier to negotiate and implement compared to a BLA
- A “softer” option with minimum obligations, particularly with regard to the responsibilities of the destination country
- Usually more flexible to modify with changing economic and labour market conditions since they do not require additional processes of ratification when changes are made

(b) The evolution of BLAs and MOUs

The 1950s and 1960s are regarded as the golden age of bilateral labour agreements, supporting the demand for reconstruction of post-war Europe. Given the demand and competition for migrant workers, BLAs became important instruments to ensure better working conditions. These BLAs are often described as the ‘first generation’ of BLAs.

Following the oil crisis of 1973, there was a reduction in the demand for migrant workers and a corresponding decline in the use of BLAs. At the same time, there was also an increase in the growth of irregular migration as migration admissions regimes became more restrictive. From the 1990’s onwards, beginning with the economic boom in the Gulf Cooperation Countries (GCC) there has been an increase in the use of BLAs to facilitate the recruitment of temporary workers.
In Africa, as in other parts of the world, we have seen a resurgence of BLAs and MOUs since the 1990s. These agreements vary widely in their objectives, scope, and level of formality, but recent agreements can be broadly categorized as follows:

(1) Broad framework cooperation agreements with European countries, covering a range of issues in addition to labour migration, including readmission, return, technical cooperation and development;

(2) MOUs or BLAs, with Arab States to meet demand in low-skilled sectors such as domestic work and construction; and

(3) Labour agreements between African countries to fill specific skills gaps, such as in education and health, as well as in labour intensive sectors such as mining.

It should be noted that other forms of bilateral and multilateral cooperation in place in Africa (such as those discussed above) can potentially impact the conditions of labour migration and employment abroad. These include international trade agreements, skills recognition frameworks, social security agreements, and trade union cooperation agreements.

(c) Examples of BLA/MOU

Here are some examples of BLAs/MOUs entered into by African countries:

- Qatar-Sudan, Qatar-Morocco, Qatar-Tunisia Labour Agreements
- Kuwait-Egypt Cooperation Agreement on Labour Force Movement
- Spain-Morocco Labour Agreement
- Italy-Morocco and Italy-Egypt Bilateral Agreements on Labour
- Italy-Mauritius Joint Declaration on cooperation in circular migration
- Uganda-Jordan Bilateral agreement on domestic workers

Many of the agreements above are referred to as ‘second generation’ BLAs and are often part of a broader cooperation framework agreement entered into by the countries involved. Some of the BLAs/MOUs are general agreements that provide for migrant workers in general to be recruited and to take up employment in the country of destination (for example, the Kuwait-Egypt Cooperation Agreement on Labour Force Movement), whereas others, such as the Uganda-Jordan Bilateral agreement on domestic workers are designed to facilitate the recruitment of specific categories of migrant workers in designated economic sectors.

In the Southern African context, BLAs and MOUs have become key instruments in the management of labour migration between countries, often linked to the establishment of Joint Permanent Commissions for Cooperation (JPCC) or Joint Bilateral Commission of Cooperation (JBCC). South Africa is particularly active in this regard and has signed JPCCs and JBCCs with six other SADC Member States (Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zimbabwe). South Africa also has BLAs to facilitate labour migration in the mining sector, dating back to the 1960s and 1970s with countries like Botswana, Lesotho, Mozambique and Swaziland. Efforts are underway to ‘modernise’ these BLAs.
6. National Instruments

As explained in Module 1, national labour migration policies are at the core of labour migration governance frameworks. In this section, we briefly provide examples of a national labour migration policy; labour market institutions and how migration has been integrated into employment and national development policies.

(a) Example of a National Labour Migration Policy – Zimbabwe

Zimbabwe adopted a National Labour Migration Policy (NLMP) in 2016. The following sets out the Vision, Mission and Strategic Objectives of the NLMP:

Vision
A well-managed and sustainable labour migration management system that promotes good governance on labour migration, effective regulation of labour migration, and protects the rights of labour migrants and their families and the various stakeholders involved.

Mission
Maximisation of benefits of both inward and outward labour migration through safe migration, provision of decent working conditions for labour migrants especially female labour migrants and protection of their fundamental human and labour rights and those of their families.

Strategic Objectives

1) To strengthen governance of labour migration and management of labour migration in line with international norms;

2) To promote provision of decent working conditions for both male and female labour migrants and protection of their fundamental human and labour rights and those of their families;

3) To develop mechanisms to inform labour migrants and potential labour migrants on migration options, risks of irregular migration and opportunities for regular migration;

4) To enhance effective mechanisms for harnessing remittances for investment and development in line with the Migration and Development Strategy;

5) To strengthen and engender the Labour Migration Information System;

6) To strengthen dialogue on labour migration at national level;

7) To strengthen effective participation in regional and international dialogue on labour migration;

8) To strengthen Migration Resource Centres (MRC) that will provide educative, informational material and awareness programmes to migrant workers; and,

9) Harmonise existing efforts and initiatives that have been undertaken to harness the positive benefits from labour migration.

The Zimbabwe NLMP identifies four broad policy areas and the action plan that accompanies the NLMP sets out the challenges that need to be addressed and actions to be undertaken. The four broad policy areas are:

1. Governance of Labour Migration,

2. Protection and Empowerment of Migrant Workers,

3. Harnessing Labour Migration for Development,

4. Migration data
(b) Example of Labour Market Institutions – Tanzania

To regulate their labour markets, national governments establish various administrative and regulatory bodies and institutions. Here is the example from Tanzania:

In Tanzania, the President appoints a Labour Commissioner and Deputy, responsible for administration of labour laws. The Minister of Labour appoints a Registrar of Organisations and Deputy responsible for regulation of trade unions and employer organisations in Act. The Minister of Labour also appoints Assistant Labour Commissioners to head up Labour Relations, Labour Inspection and Social Security sections.

Labour officers have wide powers of entry, search, questioning and seizure. Where the labour officer has reasonable grounds to believe there has been non-compliance, the labour officer may issue a compliance order on the employer, registered trade union and each affected employee. The Labour Commissioner may confirm, modify or cancel the order or specify compliance. If the employer fails to comply the issuing labour officer or Labour Commissioner may apply to the Labour Court for enforcement. The Court may impose or suspend the order pending appeal.

The Labour Court is established as a division of the High Court. It consists of a number of Judges and a Chief Justice. There are also two panels of assessors – one from the employers and one from the employees. Decisions are made by the Judge after taking into account the opinions of the assessors and if not in agreement with the opinions, reasons must be given. The Labour Court has exclusive civil jurisdiction over labour matters with all the powers of the High Court. The Labour Commissioner is able to refer any point of law to the Labour Court or Court of Appeal if there are conflicting decisions of the Court on the same point of law; and parties to the dispute have not appealed. Any registered organisation or federation may in relation to issues of law request to be joined as parties to the proceedings.

(c) Migration integrated in National Employment Policy

The Republic of Seychelles, under the auspices of the Ministry of Labour and Human Resource Development (MLHRD), published a National Employment Policy and Strategies document, which has a specific section on Migration, Foreign Labour and Localisation, that provides for the following:

i. The government should set up a taskforce in collaboration with the MLHRD, the Ministry of Finance and other partners, to undertake future reviews of the minimum wage regulations so as to ensure meaningful consultation and effective application of the mechanism stipulated in the relevant ratified international labour Conventions;

ii. Any organisation breaching the minimum wage regulations to be prosecuted in accordance with the Employment Act;

iii. To consider introducing sectoral wage schemes in areas of demand through collective bargaining;

iv. Attestation of contract for migrant workers to be well scrutinised and contracts of employment of migrant workers must be translated by the employer into the national language of the migrant workers;

v. Terms and conditions of employment for migrant workers must be complied with and penalties are to be imposed on employers failing to abide by such practices;

vi. To ensure that all workers receive a payslip, regardless of nationality;

vii. The MLHRD must ensure that important information about Seychelles labour law is translated by the employer into the different languages necessary according to the different nationalities of migrant workers in Seychelles;
viii. Terms and conditions of employment of migrant workers must be clearly stipulated;

ix. Promoting equal pay for work of equal value regardless of nationality at all levels.

Under the heading ‘Localisation Strategies’, the Seychelles Policy and Strategies document also provides for the establishment of a Committee on Employment of non-Seychellois to ‘discuss recruitment and management of migrant workers and to recommend strategies to effectively manage the employment on non-Seychellois in specific occupations and specific sectors, based on labour market needs, notably through review of the quota system and continual update of the list of occupations reserved for Seychellois.’

(d) Migration integrated in National Development Plan

The need to mainstream migration into national development plans has become a priority for many governments. The following is an extract from the South African National Development Plan (Vision 2030) that recognises the importance of the mainstreaming process:

South Africa, like most other African countries, has done little to increase the benefits of migration or reduce the risks migrants face. The potential economic benefits of migration are constrained by the lack of support for migrants in key markets. South Africa’s immigration policy has sought to respond to the need for skilled immigrants through amendments to the Immigration Act, which facilitate the arrival of scarce skills.

Required steps to better facilitate migration include:

- Improving data collection, coordination and analysis as a matter of urgency;
- Easing the entry of skilled migrants;
- Countering xenophobia by conducting sustained campaigns;
- Effectively addressing the rights and vulnerabilities of migrants;
- Introducing support programmes to regularise migrant residence;
- Ensuring better and more consistent law enforcement (by protecting victims and prosecuting perpetrators);
- Strengthening transnational infrastructure (transport, electronic communications, banking services); and,
- Addressing the specific need of migrants in South Africa.

Interventions are also required at a municipal level. The most pressing need is for reliable data. Statistics South Africa must work with municipalities to better disaggregate data at local level while imposing standardisation at national level; build the capacity of municipalities to collect data, do research and analyse the results; and develop institutional frameworks that entrench collaboration between municipalities and specialised research institutions.

Though it is not significantly elaborated on in the National Development Plan, this example from South Africa does recognise the significant impact that well-managed migration can have on national development. It is also indicative of the cross-cutting nature of migration and the importance of mainstreaming migration into both national development plans and sectoral policies.
1. There is a wide range of instruments at global, regional and national level that are of relevance to the management and governance of labour migration. The guidelines and obligations contained in these frameworks, conventions and protocols should be incorporated into national labour migration policies.

2. Some instruments, such as the core human rights instruments, may not directly address labour migration concerns, but they are important because they determine the rights of all persons, regardless of their nationality, citizenship or migration status.

3. It is important to understand the different obligations that arise out of different types of instruments. In particular, a distinction should be made between non-binding, and legally binding instruments. The latter requires that a national government should create a new law (or modify an existing law) because they are legally obliged to give effect to the provisions of the specific instrument.

4. The International Labour Standards (ILS) as reflected in the various ILO Conventions and Protocols, as well as the ILO Multilateral Framework on Labour Migration are particularly important instruments, since they deal directly with the management and governance of labour migration and have national, regional and global scope of application.
5. Labour migration and mobility is linked to broader cooperation and integration efforts between States and in particular, those related to the free movement of goods, capital and persons, trade facilitation and economic integration. Ideally, national labour migration policies and governance frameworks should be aligned to, and consistent with the broader cooperation and integration efforts.

6. Bilateral Labour Agreements (BLAs) and Memoranda of Understanding (MOUs) are particularly important and useful instruments to manage labour migration flows between two specific countries. Care should be taken that BLAs and MOUs are aligned to, and consistent with ILS and other relevant instruments.

7. Labour migration policy should also be aligned with national development plans and other sectoral policies to ensure coherence and enhance coordination and cooperation between different entities/stakeholders. This may require amendments to existing sectoral policies.
Knowledge Assessment

1. The term ‘State Party’ refers to:
   (a) A social event organised by a national government
   (b) A government that has signed and ratified a specific instrument and is legally bound to implement the provisions of the instrument
   (c) An event to celebrate the Independence Day of a specific country

2. When a government has signed and ratified a specific instrument, it means that it is legally obliged to implement the provisions of that instrument.
   (a) True
   (b) False

3. International Labour Standards are binding when:
   (a) A specific convention is adopted by the International Labour Conference
   (b) A specific convention is signed and ratified by a Member State of the ILO
   (c) A specific convention is signed by a Member State of the ILO

4. The Global Compact on Migration (GCM) is an international instrument that is binding on all Member States of the United Nations.
   (a) False
   (b) True

5. All international labour standards, unless otherwise stated, are applicable to migrant workers. There are, however, two specific conventions pertaining to labour migration and migrant workers. They are:
   (a) Convention 143 and Convention 100
   (b) Convention 29 and Convention 97
   (c) Convention 97 and Convention 143
   (d) Convention 102 and Convention 157

6. There is no difference between a BLA and an MOU.
   (a) True
   (b) False

7. A Multilateral Agreement or Framework involves an agreement between:
   (a) Two countries
   (b) Three or more countries
   (c) The Ministries of Labour, Foreign Affairs and Immigration of a specific country

8. Labour migration and mobility has nothing to do with Protocols on the Free Movement of goods, capital and persons.
   (a) False
   (b) True
9. Choose the correct answer:
Agreements between African and other countries can be broadly categorized as follows:

(i) Broad framework cooperation agreements with European countries, covering a range of issues in addition to labour migration, including readmission, return, technical cooperation and development

(ii) MOUs or BLAs to meet demand in low-skilled sectors such as domestic work and construction

(iii) Labour agreements to fill specific skills gaps, such as in education and health, as well as in labour intensive sectors such as mining.

(a) All of the above
(b) Only (i) and (iii)
(c) Only (ii) and (iii)
(d) Only (i) and (ii)

10. In the Southern African context, the management of labour migration between countries (in the form of BLAs and MOUs) is often linked to the establishment of a Joint Permanent Commission for Cooperation (JPCC) or a Joint Bi-lateral Commission of Cooperation (JBCC).

(a) False
(b) True

Correct answers: 1b, 2a, 3b, 4a, 5c, 6b, 7b, 8a, 9a, 10b.
Individual / Group Exercise

The International Convention on the Rights of All Migrant Workers and Members of the Families (ICRMW) draws together a range of international human rights instruments and International Labour Standards into a single Convention that is binding on State Parties.

Summarize the key provisions of the ICRMW and divide it into two categories, as follows:

(a) Rights and entitlements that apply to all migrant workers, regardless of their immigration status; and,

(b) Rights and entitlements that apply only to migrant workers who are in a regular situation i.e. they are legally authorised and have the necessary documentation to work and live in the country of destination.

Draw and complete a table to reflect your summary. Examples are provided in the table below:

<table>
<thead>
<tr>
<th>ICRMW Provision</th>
<th>Applicable to ALL migrant workers</th>
<th>Applicable only to migrant workers in a regular situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The right to non-discrimination</td>
<td>✔</td>
<td></td>
</tr>
<tr>
<td>The right to free movement</td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>

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