The Global and African Legal Normative Frameworks and Policy Guidance on protection of migrants and migration governance

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Introduction: Key challenges for migrant protection

Objective structural factors, technological change, and population dynamics are accelerating demand for foreign workers worldwide. However, highly unregulated economies and widespread deregulation encourage recruiting migrant workers but providing little protection nor economic return. That allows exploitative businesses to be "competitive" while creating the conditions for widespread abuse and exploitation characterised by denial of human and labour rights. It also foments divisions amongst workers, both between native-born and immigrant workers and between different groupings of migrant workers.

Abusively exploitative conditions are commonly experienced by migrants. Migrants face the paradoxical situation of being welcomed by businesses and governments due to their high flexibility and minimal access to rights and social protection while facing unease and hostility from anti-immigrant politics, the same governments that welcome them, and portions of the general public.

Global competition, free trade, and the economic *race to the bottom* push against costs of labour and provision of social services and encourage deregulatory approaches on the part of States. For many enterprises in many countries and for some entire economic sectors, low cost foreign labour is the only ticket to survival. Labour dependent agriculture would not be viable in Europe nor in North America nor in the Maghreb --nor could a part of the population afford to eat-- without cheap immigrant labour. Health, home care and schooling for children and care for populations of ageing people are all increasingly depend on migrants in all regions, as were hotel, restaurant and tourist sectors pre-COVID, and once again post recovery.

Countries seeking to rapidly develop with petroleum and gas resources grasped the opportunity to get the most material development at the least cost by *importing* cheap labour while omitting labour and social protection, since several decades from Asian countries and recently from several African counties, notably from the nearby IGAD region.

Keeping some migrants cheap, docile, flexible and removable without social costs becomes imperative to keep jobs at home and economies afloat. Despite rhetoric about controlling migration, migrant workers falling into or remaining in irregular situations are tolerated because they provide that cheap, flexible labour needed to sustain enterprises, employment and competitiveness. At the same time, labour standards are little applied in migrant-dependent sectors and industries, while labour inspection is left with little or no capacity or competence to reach the workplaces and areas where migrant workers are prevalent.

Security and control institutions of States predominate in managing migration and controlling migrants in many countries. Assertion by home affairs/interior ministries of hegemony on migration management and control is generally concurrent with broad redefinition and deregulation of conditions for labour. That treatment imposed on what are growing migrant components of workforces in turn influences treatment of the workforce broadly.

Administration of increasing foreign components of work forces by control institutions has consequences in shifting emphasis of law enforcement regarding work from labour standards to immigration enforcement and in imposing repressive policing to subdue labour conflicts at the expense of social dialogue.

Attention to protection of human and labour rights and of decent work is thus an essential pillar of any good governance approach to international labour mobility, in particular, application of international labour standards and their domestication to all workplaces formal or informal, especially where migrants are employed.

1. Normative framework for protection of migrants and governance on migration

The comprehensive international legal and institutional framework for governance of migration is designed to support good governance and administration at national and local levels, where most responsibilities and issues lie.

The legal framework is provided by complementary legal standards in four areas of international law: 1) the nine core Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the 1951 Convention and 1967 Protocol on the Status of Refugees, and 4) the Vienna Convention on Consular Relations, 1963.

The framework comprises supportive mandates and responsibilities in a range of international and regional agencies and organizations and includes globally applicable policy recommendations elaborated in formal, authoritative international conferences over the last two decades.

1.1 The centrality of human rights including labour rights

The World of Work is a universal domain of power relations between people, requiring regulation and, in particular, legal protections for the rights and dignity of those at risk of abuse and exploitation. 3.5 billion of the world's population of 7 billion are directly involved the major part of their waking hours in work, whether formal or informal, making this domain a direct concern of governance and protection.

Work is the basis of access to the means to well-fare and well being for most people, thus the economic means to realization, however modestly, of economic, social and cultural rights as well as to exercise of civil and political rights. Rights to work and at work are furthermore a question of economic survival for most non-citizens, and conversely, the absence of rights is a key dimension of exclusion and exploitation for those with minimal or non-existent protections in the laws of countries of employment.

Human rights can be defined as entitlements for individuals and groups, guaranteed under international law against interference with fundamental freedoms and human dignity. Human rights entail civil and political rights, economic, social, and cultural rights, and labour rights, which allow for a life of dignity and freedom (encompassing health, work**,** education, social security, food, housing, water, healthy environment and culture). All these rights embody universal norms and values that underpin social and economic welfare, justice, social participation and equality.

They are *universal* in that they apply to everyone, everywhere. Human rights encompass civil, cultural, economic, political and social rights, including labour rights, and are *indivisible*, meaning that the different sets of rights are of equal important for the full development of human beings and their well-being, as stated in the Vienna Declaration and Programme of Action (1993). Human rights are *inalienable*, and consequently cannot be denied to or relinquished by any human being, regardless of any reason including legal or immigration status. Finally, human rights generate three types of obligations for States, namely: to respect, to protect and to fulfil.

Human rights principles have been codified in a number of human rights instruments and have been increasingly accepted over recent decades. The fundamental rights enshrined in these instruments are affirmed in the Universal Declaration of Human Rights (UDHR) (1948), which has acquired the status of customary international law.

The ILO Fundamental Conventions provide a complementary set of standards focused on fundamental principles and rights at work, notably in areas of non-discrimination and equality of treatment, freedom of association and collective bargaining rights, abolition of forced labour, prevention of child labour, and now occupational safety and health. International labour standards establish specific rights and protections in the context of the world of work; labour rights –*rights at work*--are a specific but integral branch of human rights.

Respect for the human rights including labour rights of all persons is an essential and equitable basis for addressing and resolving tensions that arise when groups with different interests interact. Effective protection of the human rights of migrant populations contributes to inclusion, integration, productive societies, and social cohesion. If the right of all persons to live in dignity without discrimination or stigmatization is respected, they will neither be afraid to participate fully nor reticent to effectively contribute to vibrant, sustainable and inclusive communities, cities and nations.

The international binding instruments establish both general and specific principles that provide a foundation for the development of effective national legal and policy frameworks to regulate migration, provide for protection including social protection of migrants, and promote inclusion and integration of migrants and refugees from a rights-based perspective.

International conventions serve to guide national legislation and policy through their ratification by States and domestication in national legislation. They provide legal principles and standards that also can and should serve as benchmarks for relevant local legislation and regulations. The above-mentioned Conventions provide guidance and model text for establishing and reviewing local legislation to ensure consistency with agreed international standards.

Box 1: Normative foundations for protection of migrants and rights-based governance of migration

A range of international and African instruments provide a solid basis for elaborating a rights-based approach to migration.

- **9 Universal human rights instruments and associated Protocols** which apply to all persons including migrant workers.

  - International Convention on the Elimination of all Form of Racial Discrimination (1965)
  - International Covenant on Civil and Political Rights (1966)
  - International Covenant on Economic, Social and Cultural Rights (1966)
  - Convention on the Elimination of all Forms of Discrimination against Women (1979)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
  - Convention on the Rights of the Child (1989)
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
  - Convention on the Rights of Persons with Disabilities (2006)
  - International Convention for the Protection of All Persons from Enforced Disappearance (2006)

- **Fundamental ILO Core Conventions** enshrined in the 1999 ILO Declaration on Fundamental Principles and Rights at Work – are applicable to all workers including migrant workers, without distinction of nationality and regardless of migration status. The P-29 Protocol (2014) to the Forced Labour Convention, 1930 (No. 29) has updated that Convention.

- **3 international Conventions on migration for employment and rights of Migrant Workers and their families**: The two ILO Conventions on migrant workers –Migration for Employment (Revised),

1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) – and the International (UN) Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990;

- The **4 ILO Governance (priority) Conventions** crucial to the functioning of the international labour standards system and the most important instruments for governance: Labour Inspection Convention, 1947 (No. 81); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and Employment Policy Convention, 1964 (No. 122).

- **All other labour standards** apply (with a few specific exceptions in specific conventions) to all workers in the workplace including migrant workers. The Private Employment Agencies Convention, 1997 (No. 181), Domestic Workers Convention, 2011 (No. 189), Social Security (Minimum Standards) Convention, 1952 (No. 102), Equality of Treatment (Social Security) Convention, 1962 (No. 118), and Maintenance of Social Security Rights Convention, 1982 (No. 157), as well as Conventions in the array of conditions of work, including wages, and occupational safety and health standards as well as violence and harassment, are especially relevant.

See section 1.3 below for elaboration on the application of International Labour Standards to protection of all migrant workers. (See also the extensive list at the ILO webpage *International labour standards on labour migration*: https://www.ilo.org/global/topics/labour-migration/standards/lang--en/index.htm)

To ensure cohesion, the human rights of all need to be respected, including the rights of migrants and refugees. The parliamentarians handbook *Migration, Human Rights and Governance* (IPU/ILO/OHCHR, 2015) outlines three overarching reasons to protect human rights of migrants:

1. Most national Constitutions and laws recognize that human rights are applicable to everyone physically present in the territory of the State or subject to its jurisdiction. While there are limitations on some political rights that migrants and their families are accorded in international law, there are no limitations on their human rights, such as: the right to life; the right to be treated as persons everywhere before the law; the right to freedom from slavery, forced or compulsory labour and torture; the right to liberty and security of person; and human rights to education, health and cultural identity. These rights are protected by core international human rights treaties, nearly all ratified by IGAD member States.

2. Just, viable and sustainable migration systems recognize the human rights of migrants and seek to ensure decent working conditions for them. Treating people without respect for their rights places migrants and refugees outside the regulation and protection of the law. Migrants whose rights are unprotected are more likely to be subject to abuse and exploitation and they are also more likely to be perceived as unfair competition for jobs giving rise to social tensions.

3. Well-governed migration and treatment of migrant workers and all international migrants/foreigners in countries of employment and residence contributes to the economic and social development of origin, transit and employment countries, as well as the human development of both migrants and nationals. At the same time, rights-based governance of migration and migrants contributes to work force productivity, economic development, well-fare of all, and social cohesion.

International human rights instruments, along with their interpretation by international courts and treaty bodies, provide standards and guidance across many areas of local as well as national governance. The area of health provides an example: International human rights law recognizes the right to health and health-related rights of everyone, including all migrants, regardless of status, and

refugees. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes everyone's right to enjoyment of the highest attainable standard of physical and mental health, including the availability and accessibility of HIV prevention, treatment, care and support for children and adults (OHCHR/UNAIDS, 2006). The principle of non-discrimination further requires equal access to health facilities, goods and services by nationals and non-nationals, including migrants with irregular status (Pace, 2009).

The Committee on Economic, Social and Culture Rights underlined this point in explicit terms in its General Comment No. 14 of 2000, paragraph 34 of which states:

> In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants (sic) to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs.

A useful exercise is to review existing national and local legislation to check conformity with these standards and to identify areas where new legislation may be important to address gaps in coverage under national or local legislation on protection of migrants and governance of migration.

1.3 International Labour Standards

The world of work and its workplaces are where people of diverse social, class, ethnic, nationality, gender and other identities interact, with very different levels of power, knowledge, competences and abilities.

Long experience has shown that without enactment of carefully designed rules and regulations, and their application and enforcement, exploitation and abuse abound in employment relations and in the conditions and situations of workplaces.

Since 1919, the UN International Labour Organization (ILO), a specialized, tripartite body working with governments, employers (private sector) and representative worker organizations, has elaborated, maintained and supervised a comprehensive set of international labour standards (ILS).

These take the forms of conventions and recommendations establishing fundamental principles and 'rights at work' which aim to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity. These standards cover all aspects of the employment relationship and conditions of work, including occupational safety and health, social security, non-discrimination, labour inspections, and maternity protection as well as specific conditions pertaining to sectors such as agriculture, construction, mining, chemicals, maritime seafaring and other areas (ILO, 2004). Several standards address specific groups of workers outside their country of origin or citizenship, notably migrant and maritime workers.

International labour standards are applicable to all workers, including migrants and refugees, regardless of their status, except for a very few exemptions noted in certain instruments. As highlighted above, the 1998 ILO Declaration on Fundamental Principles and Rights at Work commits all Member States to respect, implement and promote principles and rights in now five broad categories, whether or not they have ratified the relevant Conventions. These categories are: freedom of association and effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour; the elimination of

discrimination in respect of employment and occupation (ILO, 1998), and as of 2022, Occupational Safety and Health.

The ILO webpage *International labour standards on labour migration* provides an extensive list of ILO Conventions including concerning protection of migrant workers rights at work and to *decent work* that are particularly relevant for IGAD countries. The following lists, links and text derive from that ILO webpage.

ILO Migration for employment/migrant workers specific instruments
 Migration for Employment Convention (Revised), 1949 (No. 97)
 Migration for Employment Recommendation (Revised), 1949 (No. 86)
 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
 Migrant Workers Recommendation, 1975 (No. 151)

The ILO Committee of Experts on the Application of Conventions and Recommendation has conducted General Surveys on the application of these four instruments on migrant workers, which were submitted to the International Labour Conference. The Committee also issues observations and direct requests to States parties regarding their application of Conventions Nos. 97 and 143, available from the ILO's International System on International Labour Standards – NORMLEX .

In addition to international labour standards, migrant workers and members of their families are protected by the nine UN core international human rights instruments , which apply to all persons irrespective of their nationality. One of these core instruments is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families , which was adopted by the Un General Asssembly in 1990 and entered into force in 2003. This Convention complements the four ILO instruments on migrant workers but is broader in scope going beyond labour issues. It also sels up the Committee on Migrant Workers which is responsible for monitoring the Convention's application by States Parties. The ILO participates, in a consultative capacity, in the meetings of this Committee.

There are also other mechanisms within the UN system relevant to the protection of migrant workers, including the special procedures mandates' of the UN Human Rights Council, and the UN Special Rapporteur on the human rights of migrants .

International Labour Standards with specific application to migration for employment

Fundamental Rights related Conventions
Abolition of Forced Labour
 Protocol of 2014 to the Forced Labour Convention, 1930
 Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
 Forced Labour Convention, 1930 (No. 29)
 Abolition of Forced Labour Convention, 1957 (No. 105)
Elimination of Child Labour
 Minimum Age Convention, 1973 (No. 138)
 Worst Forms of Child Labour Convention, 1999 (No. 182)
Trade Union Rights
 Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
 Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
Equality and Non-discrimination in Employment and Occupation
 Equal Remuneration Convention, 1951 (No. 100)
 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
 Occupational Safety and Health
 Occupational Safety and Health Convention, 1981 (No. 155)
 Safety and Health in Construction Convention, 1988 (No. 167)
 Safety and Health in Mines Convention, 1995 (No. 176)
 Safety and Health in Agriculture Convention, 2001 (No. 184)

 Conventions and Recommendations of General Application (including Governance Conventions)
 Labour Inspection Convention, 1947 (No. 81)
 Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
 Protection of Wages Convention, 1949 (No. 95)
 Employment Injuries Benefit Convention, 1969 (No. 121)
 Employment Policy Convention, 1964 (No. 122)
 Labour Inspection (Agriculture) Convention, 1969 (No. 129)
 Minimum Wage Fixing Convention, 1979 (No. 131)
 Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
 Nursing Personnel Convention, 1977 (No. 149)
 Maternity Protection Convention, 2000 (No. 183)
 Violence and Harassment Convention, 2019 (No. 190)
 Violence and Harassment Recommendation, 2019 (No. 206)

Selected Conventions and Recommendations containing specific provisions on Migrant Workers
 Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
 Employment Service Convention, 1948 (No. 88)
 Social Security (Minimum Standards) Convention, 1952 (No. 102)
 Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)
 Plantations Conventions, 1958 (No. 110)
 Equality of Treatment (Social Security) Convention, 1962 (No. 118)
 Maintenance of Social Security Rights Convention, 1982 (No. 157)
 Private Employment Agencies Convention, 1997 (No. 181)
 HIV and AIDS Recommendation, 2010 (No. 200)
 Domestic Workers Convention, 2011 (No. 189)
 Domestic Workers Recommendation, 2011 (No. 201)

1.4 The *International Charter* on protection of migrant workers and migration governance

International law provides both general human rights and rights at work protections for all migrant workers and members of their families. All the treaty bodies of the core United Nations human rights conventions listed above have issued findings and interpretations that assert the applicability to migrants of the main provisions in those widely ratified instruments. In most cases, the treaty bodies also refer to migrants in irregular or unauthorised situations.

Under customary international law, States are also accountable for the protection of universal human rights and fundamental rights at work of migrants. In the Human Rights Council, notably through the Universal Periodic Review (UPR), States are often subject to questions on the treatment of migrants and foreigners, aimed at assessing their compliance with international instruments. Similarly, treatment of migrants and non-citizens is a main topic in the reports presented by many Governments in the periodic review of convention implementation in most of the UN Treaty Bodies.

Notably, the Human Rights Committee, the Committee on Economic Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child as well as the Committee on (Rights of) Migrant Workers have all issued *General Comments* as well as specific recommendations on the applicability of provisions in those instruments to migrants/non-nationals and/or all migrant workers and members of their families: Some General Comments have specifically referred to applicability to migrants in irregular or undocumented situations.

Protection of migrant workers rights is frequently featured in the examination of Governments' reports on numerous ILO Conventions by the ILO Supervisory *Committee of Experts on the Application of Conventions and Recommendations* (CEACR) as well as by the ILO *Committee on Freedom of Association.*

Three international instruments were established to specifically recognize the rights at work and the universal human rights to which all migrant workers and their family members are entitled. These three international instruments have been referred to as comprising an *international charter* for the protection of migrant workers and members of their families:

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

These instruments lay out a comprehensive agenda for the elaboration of national – and local – governance legislation, policy and practice on migration overall, in the context in which nearly all migration today –including refugee flight and family reunification, results in employment or other remunerative activity for migrants and refugees who are working age or will be in future years.

ILO Convention No. 97 on Migration for Employment applies to the whole migration continuum from entry to return and calls for measures regulating the conditions in which migration for employment should occur. Of particular significance is the articulation of the principle of equal treatment of migrant workers in a regular situation with national workers regarding working conditions, trade union membership and enjoyment of the benefits of collective bargaining,

accommodation, social security, employment taxes and legal proceedings relating to matters outlined in the Convention.

ILO Convention No. 143, the Migrant Workers (Supplementary Provisions) Convention, complements Convention 97. It calls on States to take measures to prevent and address migration in abusive conditions. Its Article 1 establishes unequivocally that all migrant workers, regardless of their status, enjoy all basic human rights. It furthermore upholds certain migrant workers' rights arising out of past employment, including with respect to remuneration, social security and other benefits. Certain other rights are limited to those in a regular situation. States are to "declare and pursue a national policy designed to promote and to guarantee … equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for person who as migrant workers or as members of their families are lawfully within its territory." Convention 143 also makes explicit the imperative of involvement of social partner organizations in the formulation, implementation and review of legislation and policy concerning migrant workers.

The 1990 International Convention establishes that migrant workers are more than labour or economic entities; they are social entities with families. The definition of 'migrant worker' in that instrument establishes its coverage of nearly all working age migrants –including refugees: a migrant worker is a person who has been employed, is employed or is intending to be employed in a country other than that of birth or citizenship.

Nine points emphasize the importance of the 1990 Convention:

1. Migrant workers are viewed as people, more than just as labourers or economic entities. They are social entities with families and, accordingly, have rights, including that of family reunification.

2. The Convention recognizes that migrant workers and members of their families, being non-nationals residing in states of employment or in transit, are unprotected. Their rights are often not addressed by the national legislation of countries of employment or by their own states of origin.

3. It provides, for the first time, an international definition of migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families.

4. Fundamental human rights of all migrant workers, both documented and undocumented, are recognized, with additional rights being acknowledged for documented migrant workers and their families, notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.

5. The content of the Convention seeks to prevent and eliminate the abusive exploitation of all migrants, in particular by undermining the incentives to mistreat migrants in irregular situations and or retain migrants in unauthorized situations because 'they have no rights' no recourse to protection.

6. It establishes minimum standards of protection for migrant workers and members of their families that are basic, universal human and labour rights, and should be legally protected.

7. It serves as a tool to encourage those States lacking national standards to bring their legislation in close harmony with recognized international standards.

8. For migrant worker origin countries that ratify, it serves as a powerful political and moral example to incentivize countries of employment of their nationals to do the right thing by providing similar levels of protection and, eventually also ratifying.

9. While the Convention specifically addresses migrant workers and members of their families (who are most of today's migrants) national enactment and implementation of its provisions provides a significant measure of protection for the basic rights of all other migrants.

These three Conventions together comprehensively provide for protection of non-national migrant workers and members of their families. Many of their provisions apply to all migrants, both in regular and in irregular situations, as well as to those who are self-employed and in informal and formal employment. The ICRMW reinforces principles enshrined in the ILO Conventions providing for equality of treatment between migrants and nationals of States in a range of legal, political, economic, social and cultural settings.

The three Conventions provide a firm normative foundation for the development and implementation of legislation in countries of employment, transit countries and countries of origin. In effect they cover virtually all migrants and are applicable to refugees and asylees who are engaged in employment or other remunerative activity.

Worldwide, **95** countries, including **35** across Africa, have ratified one or more of these three instruments. As of 20 July 2022, there were **53** ratifications of ILO C-97, including **13** in Africa.[1] The ICRMW counts **57** States Parties plus 11 additional signatories pending ratifications, of which **25** ratifications and **6** additional signatories are by African Union member States.[2] See list of ratifications, accessions and signatories of the three conventions here[3].

Ratifications and domestication of these instruments remain deficient among IGAD countries: to date only Uganda has ratified the ICRMW. Kenya and Somalia have ratified ILO C-97 and Kenya, Somalia and Uganda have ratified ILO C-143.

1.5 Instruments on refugees and asylum seekers

Article 14(1) of the Universal Declaration of Human Rights (1948) affirms that: '*Everyone has the right to seek and to enjoy in other countries asylum from persecution*'. Subsequently, the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol defined who is a refugee, the rights of refugees and the legal obligations of Member States ratifying the Convention. The human rights instruments referenced in the previous sections also safeguard the rights of refugees and asylum seekers.

The 1951 UN Convention prohibits States from returning a person to a country where he or she "owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[4] This principle of '*non-refoulement*' is the cornerstone of international refugee law. All Member States of the European Union are States parties to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.[5]

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[1]   See list at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312242

[2]   List at: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-13&src=TREATY

[3]   http://www.globalmigrationpolicy.org/articles/intStandards/Ratifications%20chart%20ILO%20C97%20&%20C143,%20ICRMW%2020jul2022.pdf

[4]   The 1951 UN Convention on the Status of Refugees, Article 1 A (2). See at: https://www.unhcr.org/3b66c2aa10

[5]   See the list of States parties, reservations and declarations at: https://www.unhcr.org/1951-refugee-convention.html

The Convention Against Torture (CAT) provides an absolute protection from *refoulement* on the grounds of risk of torture and cruel, inhuman or degrading treatment or punishment (CIDTP). This Convention reinforces a key element of international human rights protection for migrants in 'refugee-like' circumstances who may not fall under the category of a refugee.

General interpretation of international law also stipulates 'that there are certain unacceptable grounds of discrimination, such as race, sex, religion or health status (e.g. real or perceived HIV status) concerning who may be admitted; these should also be avoided in migrant selection procedures or quotas' (IPU/ILO/OHCHR, 2015[6]).

1.6 Vienna Convention on Consular Relations

The Vienna Convention on Consular Relations (1963) is the international treaty that codifies consular relations between sovereign states. It incorporates in a binding international instrument consular practices that originated from custom in inter-governmental relations and bilateral agreements between states as well as those negotiated in the treaty drafting. It covers establishment of consular relations, consular functions and posts: classification, appointment and admission of consular officers; performance of diplomatic acts by consular officers; facilities, privileges and immunities of consular posts; inviolability of the consular premise and documents; freedom of movement of consular personnel; freedom of communications of the consular post; information in cases of deaths, guardianship or trusteeship, wrecks and air accidents; consular fees and charges; and other matters.

This convention is especially important in guaranteeing access by consular officers –including labour attaches-- to emigrants, migrant workers and other own-country nationals including those who may be facing legal proceedings and/or abusive treatment and/or who may be in custody. Conversely, it recognizes the right of any non-citizen foreigner in any country to have access to and support from the consular representation of his/her country of citizenship or nationality. These provisions are spelled out in Article 36.

Vienna Convention on Consular Relations:
Article 36, ***Communication and contact with nationals of the sending State***
    1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
    (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
    (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
    (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement.

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[6] *Handbook for Parliamentarians: Migration, Human Rights and Governance.*
http://www.ipu.org/english/handbks.htm#migration

Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

The Vienna Convention on Consular Relations has been ratified by 182 UN member States. Only 9 States have not ratified, among them Ethiopia and South Sudan.

1.7 Gender specificity in migrant protection

The feminization of migration is not about the gender proportions of migration. Female participation has been above 45% for decades and is over 48% today[7]. Indeed, in 2020, the number of female migrants slightly exceeded that of male migrants in Europe, Northern America and Oceania. The difference from previous times is that today most women migrants are economically active rather than dependants of migrant men. They often migrate on their own rather than as dependants, in all regions.

In a global context of stratification of employment and segmentation of labour markets, women migrants hold particular appeal for employers as they are sought after for 'women's work' that, not coincidentally, is usually low paid and unprotected: domestic work, healthcare, agriculture, hotel and restaurant, semi-skilled manufacturing in export processing zones. Common across these sectors is that while some workplaces may be highly socialized, they are not organized, meaning no unions or associations for mutual defence and solidarity, nor any bargaining power to press for decent work conditions.

Women and girl migrants are at high risk of sexual and gender-based abuse, exploitation and violence to a greater or lesser degree in all countries of residence and employment. Adoption of ILO Convention 189 on Decent Work for Domestic Workers brought attention to a sector of activity almost entirely comprised of women workers, while the most recent ILO Convention 190 on harassment at work is especially pertinent to the high risk and often unreported rates of harassment and abuse faced by women migrants.

Promotion of ratification of these conventions should be springboards to highlight and address the generalized lack of effective protection faced by women migrant workers in agriculture, in textile sweatshops, in services, and elsewhere as well as in domestic work. Testimony abounds of women working in these sectors subject to abusive working conditions, sexual harassment, unprotected exposure to dangerous pesticides or chemicals, and other risks. These concerns are particularly pertinent fo women migrant workers from IGAD countries in the Middle East and GCC countries, but also elsewhere and indeed within the IGAD region.

Responses require gender-specific migration legislation and policy. These include:
• Enacting law and policy to ensure non-discrmination, equality of rights, opportunities and protection for all migrant women and girls.
• Obtaining gender specific policy, measures and practices recognizing gender-based risks and ensuring equality in outcomes as well as intent.
• Protecting rights and provide appropriate support measures for LBGTQIA+ migrants and refugees.

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[7] UNDESA (2020). *International Migration 2020 Highlights.* United Nations Department of Economic and Social Affairs, Population Division. https://www.un.org/development/desa/pd/news/international-migration-2020

2. African approaches and instruments on migration and on free movement

(Note: IGAD instruments and the IGAD Free Movement Protocol are discussed in a separate presentation by IGAD at the ITC-ILO IGAD training in Entebbe on migrant worker protection.)

Africa, since the times of post/colonial independence and establishment of the OAU –Organization of African Unity in 1963, has endeavoured to develop a common normative framework for governance with rights, dignity and well-being of its peoples. The normative framework from the outset has sought to obtain development and welfare throughout Africa through upholding rights of all in context of regional –read continental-- economic and social integration.

Notably, the African Convention on Human and People's rights is a foundational instrument for Africa, long since ratified by all now 55 Member States of the African Union. As with many of the regional instruments in the African context, this convention goes considerably further than global normative instruments in recognizing the rights of peoples, not just individuals. That is naturally the case across a continent comprised of thousands of distinct peoples, ethnicities, communities, tribes, each with their own identities, cultures, and languages, all of which must coexist and cooperate in equality and non-discrimination if Africa is to survive, let alone develop and thrive.

The African Union Charter, all other normative instruments and the Vision 2060 all derive from this foundation. All of these instruments as well as those specifically addressing migration and refugees, concern the treatment of African –and other-- people throughout the continent.

They provide the basis for regional and continental economic and social integration, without which Africa goes nowhere despite its human, material and natural riches –distributed differently as they are throughout the continent -and similarly within the different regional economic communities such as IGAD**.**

These instruments comprising an African framework for governance –in complementarity to global human rights conventions and international labour standards-- also provide the basis for effective governance, and legitimacy of government and governance, to the extent they are respected and realized for all people by African governments and other actors. That respect and realization necessarily means the ratification, domestication and national law, and implementation in practice and administration of those normative standards.

2.1 African normative instruments

- The **African Convention on Human and Peoples Rights** ratified by all 55 AU Member States, defines and commits to upholding peoples collective and individual human rights for all persons in African countries, including all migrants.
- **Convention Governing the Specific Aspects of Refugee Problems in Africa (**1969)[8] ratified by 45 AU Member States and signed but not ratified by 4 more.[9] Originally established under the Organization of African Unity, it intends to enhance cooperation and reduce frictions throughout Africa in provision of protection and assistance to refugees. While complementary to the international 1951 Convention and 1967 Protocol on the Status of Refugees, it expanded an African definition of *refugee* applying to "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the

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[8] Text at: https://au.int/sites/default/files/treaties/36400-treaty-0005_-_oau_convention_governing_the_specific_aspects_of_refugee_problems_in_africa_e.pdf

[9] See table of ratifications at: https://achpr.org/ratificationtable?id=50

whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

- **'Abuja'** *Treaty Establishing the African Economic Community (2001)* foresaw progressive achievement of free movement, through the adoption of measures at bilateral and regional levels as well as a continental-level Protocol.
- **The AU** *Agenda 2063*[10] Freedom of movement is identified as a key Agenda 2063 Flagship Project[11].
- The **AU Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment** (AU Free Movement Protocol),2018, lays out the continental legal regime for freedom of movement, and attendant rights of residence and establishment with the protections for persons concerned.

Policy guidance

- **The AU** [**Migration Policy Framework for Africa and Plan of Action (2018-2030)**](#). "As migration involves origin, transit and destination States, inter-State, inter- and intra-regional cooperation is crucial for the management of migration. As a result, governments should look for collective solutions to migration through bilateral, multilateral, regional and REC driven agreements and dialogue, in a manner that benefits all parties affected by migration: origin countries, transit countries, destination countries and migrants... Appropriate regulatory frameworks and inclusive labour migration policies at the continental level are essential to improve the development potential of labour migration and strengthen the protection of migrant workers' rights in Africa, based on international standards."

- [**AU Guidelines on developing bilateral labour agreements (BLAs)**](#) (2021), endorsed by the African Union Specialised Technical Committee (STC) on Social Development, Labour and Employment, Addis Ababa, during its session 4-8 April 2022. These Guidelines are proposd for adoption at the next neeting of the AU Heads of State and Government.

2.2 Skills and labour mobility and development in Africa, including in IGAD

Mobility of people is as crucial for Africa as it is for development worldwide. Mobility of labour and skills is the key to development that in turn depends on bringing capital, labour, skills, technology and resources together to produce and distribute goods and services to meet human needs. Bringing those elements together is also essential to reproducing capital, labour, skills and technology. Africa can only develop by pooling its vast riches differently available in individual countries and by uniting markets to achieve economies of scale, diversity, productivity and competitiveness. Migration for employment provides labour and skills where needed for development of productive means and activities, filling skills gaps and meeting labour market demands. Migration also reduces pressures in national economies lacking opportunities for decent work.

While more than half of the region's migration is within the continent, Africa has experienced significant emigration to Europe and North America in recent years and a significant increase in temporary migration to the Middle East, particularly GCC countries. Long-term trends in industrialised countries indicate ongoing demand for African labour - people – at all skills levels. Population ageing and work force decline is now experienced by a majority of the world's

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[10] AU *Agenda 2063: The Africa we want (The Vision for 2063)*; AUC *Agenda 2063: The Africa we want (Framework Document)* chapter 2.

[11] https://www.nepad.org/agenda-2063/flagship-projects.

countries, including all EU member countries, most of the Americas, and China. Demand and competition for skills has been increasing for a relatively stagnant rather than growing global skills pool. Labour and skills substitution by technology will likely remain constrained by a number of factors, including high costs in face of limited availability of capital, especially in services and labour-intensive agriculture, construction, healthcare and aged-care.

Key concerns include demand for migrant workers under tightly controlled *management* regimes with few rights and decent work protections along with external pressures discouraging African development to retain captive markets, cheap resources of all kinds including people, and a ready supply of flexible, low cost, unprotected labour and skills. These factors leave African countries at risk of pressures to compete between each other in a *race to the bottom* to provide cheap unprotected labour for powerful economic interests in countries elsewhere as well as in Africa.

Increasing need for labour and skills mobility in Africa alongside renewed demand for cheap African labour and skills to sustain economies elsewhere has refocused attention on the imperative of common African approaches to facilitating mobility while ensuring protection of human rights. African agreements on free movement of people and bilateral arrangements on labour and skills mobility between African countries and those abroad are overarching issues of the moment.

2.3 Free Movement

Free movement has long been an explicit aspiration for building an Africa that meets its peoples' needs and expectations. Free movement within RECs and across the African continent has been recognized as key to regional development that itself depends on economic and social integration.

Free movement in principle supersedes the need for BLAs between REC member countries in establishing a comprehensive regime of inter-country mobility with rights to residence and to establish employment or business by nationals of REC member countries in all other community member countries. However, in the absence of inter-REC arrangements and full implementation of the AU free movement protocol, BLAs remain an option between countries in different RECs and within RECs lacking operational free movement regimes.

Free movement regimes have been evolving in RECs since the 1970s. The original EAC emerged at independence of East African British colonies as an area of integrated economic development, administration and movement of people and goods. ECOWAS developed Protocols in the late 70s and gradually operationalized these. Other RECs and country groupings emerging in the 1980s and subsequently included free movement in their founding treaties, including CEMAC, COMESA, EAC, ECCAS, IGAD, and UMA.

Box: REC Free Movement Instruments

The **REC free movement legal instruments in force,** being progressively realized in those RECs with reference to equal protection of human rights including labour/worker rights and non-discrimination for nationals of REC Member States in all countries of the REC:

- o **Communauté économique et monétaire de l'Afrique centrale - CEMAC** (Economic and Monetary Community of Central Africa) *Accord de 2013 sur la libre circulation dans la Communauté économique et monétaire de l'Afrique centrale* (Central African Economic and Monetary Community Free Movement Agreement of 2013) in force since 2017 upon ratification by all six member states.

- o **East African Community - EAC** [Protocol on the establishment of the East African Community Common Market](#)[12] (2009), entered into force in 2010 with ratification by all five then- members of EAC.
- o **Economic Community of Central African States - ECCAS** [Treaty Establishing the Economic Community of Central African States, Annex VII -Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States within the Economic Community of Central African States](#) (1983).
- o **Economic Community of West African States - ECOWAS** [Protocol Relating to Free Movement of Persons, Residence and Establishment](#), 1979.

REC free movement legal instruments pending further member country ratifications to enter into force or be fully implemented across the REC:
- o **COMESA (Common Market for Eastern and Southern Africa)** [Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence](#) adopted in 2001 by the COMESA Authority of Heads and States. 'The Protocol intends to operationalize the COMESA Common Market by removing all restrictions to free movement of persons, labour, and services and provide for the rights of establishment and residence.'[13]
- o **Intergovernmental Authority for Development – IGAD** [Protocol on Free Movement of Persons in the IGAD Region](#) 2021. (signed already by two countries)
- o **SADC - Southern African Development Community** [Protocol on Facilitation of the Movement of Persons](#), 2005. Not yet in force, in effect blocked by two countries.

At the continental level, Article 43 of the 1991 'Abuja' *Treaty Establishing the African Economic Community,* foresaw progressive achievement of free movement, through the adoption of measures at bilateral and regional levels as well as a continental-level Protocol. Free movement was recognized as key to achieving socio-economic and, eventually, political integration of the African continent in Article 3(c) of the Constitutive Act of the African Union (2001).

The AU *Agenda 2063* Aspiration 2 *Concerning an integrated continent, politically united, based on the ideals of Pan Africanism and the vision of Africa's Renaissance* envisages accelerating progress towards continental unity and integration for sustained growth through exchanges of goods and services together with free movement of people as well as capital. Freedom of movement is identified as a key Agenda 2063 Flagship Project with the (revised) AU *Migration Policy Framework and Plan of Action (2018-2030)* serving as guidance and the JLMP itself designed to support facilitating free movement of labour and skills as a crucial means of advancing regional integration and development in Africa.

The *Ouagadougou Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa* (2015) outlines key components of the Africa free movement-development agenda and urges countries to "adopt national employment policies and labour codes that allow free movement of all people and workers at regional and intra-regional level".

The free movement of people and the rights of residence and establishment comprises the fifth phase of the Abuja Treaty that is projected to be realized by 2023. The significant formal step was AU adoption of the *Protocol to the Treaty establishing the African Economic Community relating to*

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[12] See also https://www.eac.int/common-market
[13] See https://www.comesa.int/programme-activities-immigration-and-free-movement-of-persons/

the Free Movement of Persons, Right of Residence and Right of Establishment with the overall objective to facilitate realisation of the *Abuja Treaty*.

The obtaining to date of 33 signatories to the AU Protocol in 4 years is a significant accomplishment for an international instrument concerning free movement of people. An implementation plan for the Protocol was developed along with *Guidelines for implementing actors on the AU free movement Protocol*[14] (African Union, 2019) and popularisation of the Protocol has been undertaken with a view to achieving the requisite 15 ratifications for the Protocol to come into force.

Of particular importance is the fact that existing REC legal regimes in Africa as well as the AU Protocol treat establishing freedom of movement, of residency, of access to employment, and freedom to establish and conduct businesses as enforceable *rights* for nationals of member countries in other member countries – going beyond global normative standards in this regard.

Nonetheless, adoption and full implementation of Free Movement systems in the respective African RECs has been a mixed experience. The EAC and ECOWAS free movement regimes are in force while the free movement instruments in COMESA, ECCAS and SADC await further ratifications to enter into force. The IGAD Protocol was adopted by IGAD in 2021 and put out for signature and ratification: it has now garnered the first three signatories.

Several important factors may explain slow progress and in some cases evident resistance. First and foremost is a widespread lack of understanding of the crucial importance of free movement to economic development and integration, as important as free movement of goods, services, capital and technology. Free movement has been, and remains one of the three pillars of the European Union's successful development into an integrated global economic *power-house*.

A second factor is that "many African leaders subscribe to state-centric notions that privilege territorial sovereignty, reflected in how they perceive and approach migration issues" (MPI, 2021) in contradiction and counterproductive to the logic of and commitments to common markets and regional economic integration communities. Coupled with this, some sectors in governments pose free movement as a security threat while responding to rebellions and/or the rise of jihadist groups by closing themselves off from their neighbours. In contrast, the only way for African countries to overcome the deprivation and human misery fuelling such armed conflict is by spurring development though socio-economic integration providing for needs of all populations.

A compounding factor is huge external resources poured into border control and management among states within RECs and across Africa, coupled with support for national and regional programmes, institutions and cooperation on anti-trafficking, surveillance and migration control; objectively strengthening the migration-security threat paradigm and its proponents while thwarting realisation of free movement in law and practice. "The securitised approach has led to five negative consequences, according to new research by the Institute for Security Studies (ISS). These are the disruption of livelihoods, increased regional destabilisation, continued smuggling, increased violation of migrants' human rights and the erosion of citizen-government relations.[15]

Nonetheless, REC instruments and the AU free movement Protocol set the bar of legal standards for any relevant agreements between REC member countries and among African countries as a whole.

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[14]   https://au.int/en/documents/20190328/guidelines-implementing-actors-au-free-movement-protocol
[15]   *Fewer migrants to Europe, bigger problems for Africa,* by Tsion Tadesse Abebe, Institute for Security Studies (ISS) Africa, 2020. https://issafrica.org/iss-today/fewer-migrants-to-europe-bigger-problems-for-africa

Adoption and effective implementation of free movement regimes in Africa should supersede need for and validity of distinct bilateral arrangements between countries parties to those regimes, as has long been the case in the European Economic Area (EEA), the extended Internal Market and freedom of movement space uniting all the EU Member States and four EEA States – Iceland, Liechtenstein, Norway and Switzerland.

2.4 Transhumance and the IGAD Protocols

The IGAD region includes large nomadic pastoralist populations whose diverse transhumance populations move about regions across Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda to raise and graze livestock. Nomadic pastoralists represent distinct ethno-cultural treasures for the region, with pastoralist communities and ethnicities' histories of cultures and transhumance traceable back thousands of years.

Their contribution to economic development and welfare of IGAD countries is vastly under-recognized and unsupported, despite producing much of the region's meat as well as significant export value, particularly to the Middle East. Two illustrations: while the South Sudan human population is currently about 11.5 million, the UN Food and Agriculture Organization -FAO estimates that the country is home base for some **57** million livestock: 12 million cattle, 20 million sheep, 23 million goats, and over 1 million camel.[16] For Somalia the livestock sector provides 55 percent of employment, some 40 per cent of Gross Domestic Product and its products account for 80 percent of Somalia's exports (In 2015, Somalia exported a record 5.3 million animals to markets in the Middle East.)[17] A large portion of livestock in these countries and elsewhere across IGAD is raised and tended by nomadic pastoralists.

However, in recent times, nomadic movement is increasingly disrupted by border control, warfare, desertification, and sometimes conflicts with sedentary populations. In order to preserve and protect a crucial economic and food self-sufficiency resource for the region, IGAD gave high priority to negotiating common regional transhumance Protocols.

The IGAD Protocol on Transhumance emphasizes the importance of pastoralism in ensuring economic output and productivity and covers cross-border movement under Article 2 which states that "the purpose of this protocol is to exploit the full social and economic potential of the pastoral system by allowing free, safe and orderly cross-border mobility of transhumant livestock and herders in search of pasture and water as an adaptation mechanism to climate change and weather variability within the IGAD region" (ICPALD, 2020).[18]

This IGAD Protocol on Transhumance and the complementary Protocol on the movement of livestock have moved even faster than the Free Movement Protocol. Adopted by IGAD in 2021, **South Sudan** ratified on 17 June 2022, **Sudan** has signed and signatures by Uganda and other IGAD member States are expected soon.[19]

2.5 Bilateral Labour Agreements and other arrangements

There is a common refrain at the international level that BLAs can enhance governance of migration and the protection of migrant workers.

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[16] See for example https://cityreviewss.com/igad-transhumance-deal-explained/
[17] See for example https://somaliainvestor.so/somalias-livestock-and-agricultural-export-on-the-rise/
[18] *IGAD Protocol on Transhumance (2020)*. IGAD Centre For Pastoral Areas And Livestock Development. https://icpald.org/wp-content/uploads/2021/06/IGAD-PROTOCOL-ON-TRANSHUMANCE-Final-Endorsed-Version.pdf
[19] https://www.sawasawanetwork.org/news/juba-ratifies-igad-transhumance-protocol

Africa has experienced BLMAs since the time of the time of slave trade arrangements to recruit – involuntarily – labour to move elsewhere as well as within Africa. Bilateral labour arrangements were utilized in colonial times to move labour from one jurisdiction to another in Africa, for example from Portuguese and British colonies to work in mines in South Africa. While some such bilateral arrangements were superseded post-independence by liberalized mobility regimes between European powers and former colonies, Africa-Europe bilateral labour arrangements have seen a resurgence, while in recent years BLAs between certain African countries and GCC and other Middle East countries have abounded. Our draft AU BLA manual lists 89 BLAs and other bilateral arrangements involving African countries.

However, for African countries, binding BLAs have so far rarely resulted in improving migrant protection. The unequal negotiating power between origin and destination countries and poor follow up and implementation of agreements are major factors. Destination countries attempt to find bilateral partners willing to accept inferior conditions to obtain deployment opportunities for their workers. Government officials in East Africa told GMPA interviewers of situations when Middle East destination countries explicitly played African countries against each other by offering deals to countries that agreed to cheaper wages for migrant workers than those requested by a neighboring country.[20]

Monitoring bodies and Implementation plans are included in some agreements, we found in many cases that joint bodies did not meet regularly and joint plans were as often forgotten as implemented. Main concerns with the region's BLAs and other migration arrangements include:

- limited provisions for the protection and welfare of migrant workers save for some reference to integration in host communities and bilateral meetings to reflect on the welfare of migrant workers;
- absence of adequate information systems and supporting documentation;
- need for an effective and operational regional skills recognition system;
- absence of involvement of trade unions in consideration, conclusion and implementation of BLAs;
- lack of capacity – both in human and technical terms – needed to support the task of negotiating, concluding and implementing bilateral labour arrangements.

Other shortcomings with BLAs include:
- lack of coverage of critical labour market sectors such as domestic, construction and textile workers;
- concerns with discriminatory *deferred pay arrangements* to which destination country workers are not subject;
- unilateral imposition of conditions by country of destination with little attention to protection of migrant workers;
- return and regulation dealt with as measures of removal of unwanted migrant workers; and
- limited attention to social security and portability issues.

Shortcomings of MOUs typically include –in addition to those common to BLAs as mentioned above: restricted scope focused on inter-State bilateral labour movement; largely absent clearly stipulated obligations on the parties; and few measures aimed at protecting rights and interests of migrant workers.

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[20]   As reported in *Background Report for IGAD Guidelines on BLAs.* Taran and Wickramsekara, IGAD-ILO, 2021

The use of BLAs to address regularization of and social protection for migrant workers in irregular situations has not generally been taken up, nor forward-looking migration for employment concerns including anticipation of future skills needs and joint investments in skills development.

However, while a few mention in preambles "recognising the need to respect the dignity and fundamental rights of migrants" or "in respect of rights and guarantees consecrated by respective national legislation and international conventions and treaties," others make no such mention. None mention the specific most-relevant international instruments, namely ILO Conventions (Nos. 97 and 143) on migration for employment. None refer to enforcement of rights and decent work, nor labour inspection, nor access to justice in the operative texts.

Contrasted with little or no reference to protection of human and labour rights, many arrangements include strong specific provisions for migration control, border control, and return and readmission of migrants to the country of origin.

The GMPA-conducted background study[21] of agreements between IGAD countries and GCC or other Middle East countries enumerated about 40 agreements, many of which were MOUs. Most of these agreements cover the recruitment and employment of low-skilled workers for agriculture, construction, manufacturing, and services including domestic work. There are specific domestic worker agreements with several countries, for female household workers, drivers, and gardeners. One agreement refers to reciprocal exchange of employment of skilled and professional citizens.

The agreements tended to have few substantive provisions for protection of migrant workers. Social protection measures in these agreements often addressed only health and injury benefits. There were no provisions for trade union rights or for support mechanisms from civil society in any of the agreements. Protection provisions for women migrant workers were mentioned in only one agreement. None had specific articles dealing with equality of treatment and non-discrimination, nor any dealing with the rights of migrant workers in those agreements.

Common across these arrangements and reports about them were indications of poor outcomes:
- Absence of decent work conditions and protection from risks at work and limited respect for fundamental rights at work;
- Wage discrimination across workers from different origin countries, defaults in wage payments, low wages, and unlawful deductions;
- Lack of effective supervision of working and living conditions of migrant workers due to inadequate labour inspection commitments;
- Limited or no social protection;
- Lack of mobility of workers to leave abusive employers with employer-tied visas and passport confiscation;
- Poor dispute settlement and support mechanisms, and limited access to access to justice;
- Lack of skills recognition and opportunities for skills training/upgrading;
- Limited provisions for dignified return;
- Absence of concrete monitoring and evaluation arrangements;
- Lack of consular representation in countries of destination which impedes support to migrant workers
- Recruitment of migrant workers redeployed from destination countries to conflict situations.

All these were aggravated during the pandemic by severe lockdowns that included sealing off migrant worker residence areas in several destination countries; absence of medical attention,

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[21]   See *Background Report for IGAD Guidelines on BLAs.* Taran and Wickramsekara, IGAD-ILO, 2021.

testing and protective equipment for migrant workers; mass dismissals and deportations; and detention in inhuman conditions of undocumented workers in some destination countries.

Comprehensive, rights-based BLAs anchored in comprehensive national, REC and AU policy

Experience shows that to be effective in protecting migrant workers rights and ensuring decent work, BLAs and other arrangements need to set out clear goals and objectives referring to
– *protection of persons concerned in line with international normative standards*;
– *provision for legally binding rights and obligations*; and they should
– *description in detail of the specific responsibilities of, and actions to be taken by each of the parties*, in order to accomplish the objectives and the goals.

BLAs can<u>not</u> protect migrant workers in the absence of application of international standards as well as good faith by destination countries. They must be complementary to a range of measures:
* adoption of legislation and regulations domesticating international and African standards;
* adoption of national labour migration policies with clear vision and objectives;
* regulation of private recruitment agencies;
* extension of labour law in destination countries to all migrant workers including domestic workers;
* high level missions to and consultations with countries of employment to review welfare of migrant workers;
* restrictions on migration to countries with records of abuse and rights violations;
* unilateral measures such as declaration of minimum wages, extension of national insurance and social security schemes to migrant workers, establishment of migrant welfare funds, and establishment of migrant resource centres.

Achievements of BLAs and other migration arrangements will be limited if they are not linked to efforts, measures and instruments to ensure mutually-reinforcing coherence of national and regional migration policies with other policies, including particularly employment, labour, TVET, non-discrimination/equality, as well as development and regional integration, among others.

The Regional Ministerial Forum on Harmonizing Labour Migration Policies in East and Horn of Africa in Nairobi, Kenya, 20-21 January 2020 agreed to strengthen regional cooperation and to establish a "common approach" to BLAs to ensure that migrant workers' fundamental human, labour, and social rights are upheld in all stages of the migration process. The Forum Call to Action priorities 2020 – 2023 requested the AUC to support Member States and the RECs to develop, adopt and implement BLMAs with destination countries by establishing appropriate institutional, inter-institutional, and cross-border mechanisms and arrangements.

The need is clear for support to IGAD and all AU Member countries for effective development, negotiation and implementation of bilateral labour agreements consistent with full respect for and protection of migrant rights, as well as for informing, advocating and negotiating with destination countries to fully incorporate binding standards of rights and decent work protections for all migrant workers and to ratify relevant international conventions if they have not done so.

Guiding Principles for Development and Implementation of BLAs
Extensive discussion of Bilateral Labour Agreements and their context in IGAD is laid out in the Background Report for the IGAD Guidelines for Rights Based BLAs as well in the IGAD Guidelines and the AU Guidelines on BLAs. Both sets of Guidelines are founded on the following

guiding principles for developing, negotiating, implementing, monitoring and evaluating any and all Bilateral Labour Agreements (BLAs) and other bilateral labour migration arrangements:

➢ Rights-based

All bilateral and multilateral agreements, policies and programmes should be rights-based in the sense of respecting the human and labour rights of women and men migrant workers and their families, including those in irregular situations, in line with African regional and other international instruments. Non-discrimination and equality of treatment irrespective of grounds such as sex, race, colour, ethnic origin, religion, social origin, disability, and/or nationality are key principles embodied in the African Charter on Human and Peoples' Rights, International Human Rights Conventions and international labour standards, including in particular fundamental principles and rights at work.

➢ Gender-sensitive and gender-responsive

All agreements, policies and programmes should be gender-sensitive and gender-responsive.

➢ Knowledge-based

Bilateral agreements should be based on solid evidence generated through research and accurate, valid, timely, and comparable gender disaggregated data on migrants' skills and employment pro-files, labour and skills demand, migrant stocks and flows, migrant working and living conditions, social protection coverage, legal and labour supervisory mechanisms as well as normative, legislative and regulatory frameworks. Data collection and treatment should respect personal privacy rights and data protection standards.

➢ Social partner and multi-stakeholder participation

Involvement of employers' and workers' organizations and relevant civil society organizations in the development, negotiation and implementation of bilateral labour agreements is essential. Migration governance demands multi-stakeholder cooperation in designing and implementing BLAs, involving central and local governments, social partners, relevant civil society entities, migrant workers, returned migrant workers, migrant workers' associations, private employment agencies (PEAs), and other concerned agencies.

➢ Shared responsibility between origin and destination countries

BLAs should reflect the principle of shared responsibility between countries of origin and destination, particularly to ensure that Country of Destination (CoD) responsibilities to provide for the protection of migrant workers be formally recognized to ensure respect by employers and government, as well as enforceability. Country of origin (CoO) responsibilities may be referred to in provisions for pre-departure training, employment contracts, recruitment regulation and consular representation.

➢ Covering all stages of the BLA process

Specific and sufficient attention, resources and stakeholder consultation should be engaged on each and every stage of the BLA cycle: preparation; development and drafting; negotiation and adoption; implementation and follow up – especially enforcement of protection and decent work; and monitoring and evaluation.

3. Ratification, domestication, implementation

Rules and regulation only exists in reality if enacted, implemented, supervised and enforced in law and practice. The very fact of enacting regulation in law sets an enforceable standard and sends an unmistakeable signal to everyone, government, employers, workers, the public at large, of what is ethically as well as legally right and wrong. It further de-legitimizes unlawful behaviour and actions by potential perpetrators, and provides –at least potentially-- recourse for victims to seek justice, redress and possible compensation.

Ratification and domestication of binding norms that may constrain powerful economic interests as well as governments often requires concerted awareness raising and advocacy, both with government executives and with the parliament that ultimately must enact ratification of international instruments and their domestication in national legislation.

The realities of the IGAD region, including reluctance by several countries to adopt and implement international and African standards on protection of migrants as well as free movement protocols, urges concerted efforts across the region to obtain ratification of the key Conventions and international labour standards and their domestic realization and supervision

3.1 Obtaining Ratification

As demonstrated in virtually every country in Africa and elsewhere where the ICRMW has been ratified, the engagement of concerned officials and parliamentarians, social partners –notably unions, and civil society organizations is key and essential to promoting –and achieving-- ratification and domestication of the migrant worker/migration governance instruments referred above. (ICRMW, ILO C-97, C-143 and C-189).

Successful promotion usually involved a concerted effort over time of informing government officials; raising public support through media reports, articles, editorials and op-eds; mobilizing opinion and advocacy through organizational manifestations of support, advocacy with parliamentarians, the latter can also enhance attention and consideration by convening parliamentary hearings.

Establishing joint campaigning or promotional working groups has generally been a vital means to bringing together a 'critical mass' of advocates and organizing and sustaining the often year-long efforts to achieve putting in place these key standards for national governance of migration and protection of all migrant workers and family members, indeed all migrants.

Current realities suggest that deliberate, organized, tripartite promotional efforts are also needed to ensure the ratification by IGAD countries of the complementary AU and IGAD Protocols on Free Movement of Persons. Similarly, ensuring national adherence to the respective AU and IGAD Guidelines on BLAs should be considered a complementary responsibility.

ILO-IGAD focal points on migration would be key actors in convening, supporting and sustaining such efforts. The focal points individually and together would do well to take this advocacy and organizing up as a matter of priority: it should be at the heart of their mandate and activity.

Specific components and activities usually need to include:
- Identifying concerned and potential stakeholders
- Convening concerned government, social partner, civil society, and community partners in a promotional 'campaign steering' body
- Determining key potential procedural steps for ratification (see below)

- ○ executive initiatives and follow-up
- ○ parliamentary initiative
- Identifying Members of Parliament to support and assist in pursuing ratification procedures
- Mobilizing social partner memberships
- Generating promotional activity, public awareness actions, advocacy and publicity
- Contacting, briefing, and supporting sympathetic Members of Parliament, Ministers, and policy advisers
- Mobilizing support from community, business, union, civil society and religious leaders, etc.
- Instigating news media articles and supportive editorials
- Organizing public events with high level speakers
- Getting high level government, business, labour, religious and community leaders to speak up in support

Obtaining Signatures and subsequent Ratification will also require major concerted efforts on the part of IGAD to follow the processes in each country, encourage engagement, remind key actors to keep doing their jobs etc.   For example, stories abound about officials agreeing to signing or parliaments resolving to ratify, but the documents getting stuck or forgotten on someone's desk so the Minister doesn't sign or the instrument of ratification doesn't get sent to the international body responsible, whether the UN, ILO, AU, or IGAD depending on the respective instrument.

That effort merits advisory support and accompaniment from ILO, certainly for International Labour Standards and also for Free Movement Protocols.

Ample awareness-raising and promotional materials available in English and French, some in Arabic. The Steering Committee for the Global Campaign on the migrants rights conventions (for which this author was convenor) produced a *Guide for Ratification* of the conventions on migrants rights[22]: the Office of the UN High Commissioner for Refugees produced *Fact Sheet 24 on the ICRMW*[23]: and the Inter-Parliamentary Union (IPU) produced a ***Parliamentarians Handbook on migration, human rights and governance***.[24] The latter two are available in several languages.

3.2 Parlamentary and Executive consideration of ratification

Executive consideration of ratification may precede or be subsequent to parliamentary initiative. Both may be, and often are, consequences of initiatives by social partners, campaign initiatives, calls in the news media, and/or international initiatives, etc

Parliamentary Consideration will normally follow a standard but often complex process, which, according to each country's parliamentary specificity, may involve:
1. Introduction of a proposal for a legislative bill by a Member of Parliament directly or by a parliamentary committee
2. Referral to or take up of the matter by a committee or committees concerned – such as labour and employment, foreign affairs, regional integration, and possibly others.
3. Holding of hearings to obtain expert testimony and documentation on:
    - contextual situation,
    - need for such legislation,
    - pros and cons of ratification and domestication,

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[22] Available online at: https://www.ohchr.org/sites/default/files/Documents/Press/HandbookFINAL.PDF
[23] Available online in Arabic, Chinese, English, French, Russian and Spanish. English version at: https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf
[24] Available online in English, French and Spanish at: http://www.ipu.org/english/handbks.htm#migration

- costs and benefits of enactment of legislation and its subsequent administration and implementation,
- benefits for the public and for concerned stakeholders
- Contribution to good governance
- Etc.

4. Drafting of actual legislative bill, which can range *from*

– a parliamentary act or resolution authorizing the government to sign and ratify or directly accede to the instrument (which involves the government depositing the '*instrument of ratification'* with the relevant international authority (UN, ILO, AU, or IGAD) *to*

– a legislative act which both authorizes ratification/accession and puts the content provisions of the Convention or Protocol into national legislation.

The latter is usually more complex, as it usually concerns legislation in distinct areas, and often both amending existing law and establishing new legislation/law on specifics for which there is little or no existing law.

5. Once a bill is formulated for consideration, it may go to the *floor* of the Parliament for a first reading, review and referral back to committee(s) for subsequent 'mark-up.'

6. Mark up is revision of the text of the bill, usually in the Committee or committees most concerned and/or assigned, taking into account concerns and modifications suggested by other parliamentarians.

7. When marked up and agreed by Committee(s), the bill would usually be reported back to the floor of the parliament for vote with consideration of possible amendments, or,

8. Depending on procedure, it may be adopted/passed by vote or consensus without amendment**.**

All of these steps merit, indeed require, advocacy, expert support, documentation and external promotion which can generally only be competently provided by the most concerned stakeholders:
- Social partner organizations
- Civil society organizations & experts
- Academic/research institutions and experts
- Professional bodies.
- Supportive Government experts

In parallel, there are similar steps of procedure within the **executive branch of government.**

The first step would be initiation of consideration by a concerned ministry:
- for International Labour Standards/ILO Conventions, usually the Ministry concerned with labour and employment;
- for UN Human Rights instruments, usually Ministry of Foreign Affairs;
- for Regional Protocols – it may be ministries with Africa Union and/or IGAD or EAC portfolios.

A second step is usually referral to **ministerial legal counsel** and/or a central government legal office such as the **Attorney General** for study of both international and domestic legal implications and obligations entailed by ratification.

Subsequently, consultation with other ministries, and ultimately **Cabinet** to obtain support – either for proposing ratification to Parliament or indicating Executive support to parliamentary proposals for ratification.

3.3 Implementation, focus on the IGAD Free Movement Protocol

Preparation:

There is need for **ratification guidance** for the IGAD countries. While specifics vary among countries, overall approaches, promotion, and procedures are common among IGAD countries: stakeholders and decision makers will be assisted and supported by a r*atification guidance manual* tailored to the IGAD Free Movement Protocol. The ***Guide on Ratification***: *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*[25] suppoted achievement of ratification in a number of countries in all regions. Such a guide is essential for the Free Movement Protocols. A *Roadmap* exists for the AU Free Movement Protocol, but not yet a specific ratification guide.

Implementation Prerequisites

Many complex actions, steps, procedures, mechanisms, institutional entities/assignments have to be worked out among the member countries: these issues apply to all member countries. While specific conditions and application may vary among countries, the common parameters and means of cooperation must be worked out in dialogue and negotiation among all the countries concerned, notably on multiple aspects of implementation listed below.

Several among these are:
- Technicalities of a commonly recognized ID document issued to nationals in each of the countries
- Simplified border, residence and establishment procedures with harmonization as possible
- Exchange of information & data for monitoring
- Harmonization of labour code
- Coordination among social security agencies
- Common standards for education, VTET, and for recognition of qualifications, diplomas and experience.

However, many of these need to be worked out over time, often after ratification.

Given overlapping memberships and complementary economic integration and free trade, implementation measures for the IGAD Free Movement Protocol will have to be compatible with if not harmonized to EAC free movement and related regimes –such as social security and labour code.

Furthermore, implementation and administration of the respective REC free movement systems including IGAD's will need to be coordinated with the complementary continental ***African Union Free Movement Protocol*** being simultaneously promoted with expectation of adoption, prompt entry into force and implementation. (33 Signatories to date, 4 ratifications already).

Setting up an IGAD Working Group to address multiple technical and procedural questions that require harmonization and or coordination among the countries is a key early step.

In parallel, preparing an Implementation Guide will vastly assist the member State governments, social partners and all other stakeholders. Implementation guides were prepared for all of the main international human rights conventions and for some ILO Conventions.

Initial concrete steps of implementation, preferably starting at signature

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[25] Available online at: https://www.ohchr.org/sites/default/files/Documents/Press/HandbookFINAL.PDF

- Informing staff, memberships, constituents of specific ministries, agencies, entities, organizations concerned.
- Informing social partners –not just organizations, but all employers and all workers/employees.
- Informing recruitment agencies
- Media announcements to inform general public
- Communications to international partners and diplomatic missions,
- particularly other African countries and destination countries of IGAD emigrants, migrant workers
- Setting up mechanisms and conducting ongoing orientation and training for all concerned:
  - Government ministries and agencies
  - Immigration/migration services
  - Border authorities
  - Diplomatic personnel, including labour attaches
  - TVET and other training institutions
  - Employers and their organizations
  - Workers and their unions
  - Migrant workers and their associations
  - Communications media
  - Education personnel, for inclusion in school curricula

Actual Implementation - some essential aspects:
- Setting up, issuing a commonly recognized ID document
- Putting in place simplified border, residence and establishment procedures in each country with cross IGAD harmonization as possible
- Putting in place and operationalizing information & data collection and IGAD sharing of data on movement, residence, and establishment under free movement.
- Establishing a mechanism and guidelines for coordination among IGAD national social security agencies and systems
- Provision for health care coverage –at least emergency health care-- for IGAD country citizens in other IGAD countries.
- In each country, enabling registration/enrollment of IGAD country citizens in national social security, as applicable (social security coverage may apply at present only to certain sectors, employers or occupations; that varies by country.)
- Establishing mechanisms for social security portability across IGAD, as and where applicable.
- Initiating a process for harmonization of labour codes
- Achieving common Technical and Vocational Education & Training (TVET) standards, curriculum and content.
- Establishing/strengthening harmonized standards in technical, vocational and scientific fields, including in specific occupational/job types and categories.
- Establishing/strengthening systems and procedures for mutual recognition of qualifications, diplomas, and professional/technical experience-acquired skills.
- Harmonizing rules and regulations for establishment of businesses and commercial operations accessible for IGAD nationals in any IGAD member country.
- Other aspects.

The aspects above include engaging in processes that will inevitably be long term. For example, the EU, EAC, ECOWAS, and *Mercosur* are still striving to achieve full harmonization on all of these.

However, even initiating some of these processes requires ratification as a per-requisite to enable establishing the domestic and regional legal basis to take formal measures of cooperation and harmonization; those measures usually involve adjusting or amending national legislation.

The same holds for implementing the AU free trade regime under the [African Continental Free Trade Agreement](26) – AfCFTA (2018) to which the AU Free Movement Protocol is explicitly twinned and interdependent. At May 2022, 43 of the 54 signatories (80%) had deposited their instruments of AfCFTA ratification!

4. Supervision of standards

4.1 Labour Inspection

Labour inspection is key! Supervision of workplaces is the role and responsibility of national and in some cases local *labour inspection*. This is so important that it is the subject of two of the four ILO Priority Governance Conventions, [Labour Inspection Convention, 1947 (No. 81)](#) , and [Labour Inspection (Agriculture) Convention, 1969 (No. 129)](#)

Without supervision and workplace inspection, labour standards may be rendered meaningless. The starting point is building up and training an adequate and effective labour inspection that reaches or potentially reaches all work places over a two year period.

The essential complement today is ensuring that labour inspection includes training and guidelines –and language capability-- for inspectors to visit workplaces where foreign workers are employed, This is an especially important consideration in discussion of BLAs, particularly with Middle Eastern including GCC countries where the vast majority of workers in many sectors –especially those subject to high OSH risks such as construction -- are foreigners, indeed many from IGAD countries.

Most GCC countries have in fact ratified the ILO priority convention on Labour Inspection. A priority concern for IGAD countries is to press for labout inspection in employment countries to include workplaces and sectors employing migrant workers, and to advocate for proper preparation of labour inspection to be African migrant worker sensitive and responsive. That means:
- identifying and knowing where IGAD workers are deployed,
- having training and capacity to recognize and review the specific risks and violations of labour standards migrants may be subjected to,
- including inspectors or if necessary interpreters with language capacity to engage directly with workers concerned, and
- having specific means of registering complaints and carrying them forward to adjudication bodies to ensure compliance with standards as well as access to justice and redress for worker victims of violations and/or abusive treatment.

These same concerns need to be addressed by IGAD country domestic labour inspections, as foreign workers are ever more present across labour forces, certainly in specific sectors, in these countries. Djibouti provides an example of excellent practice with its labour inspection empowered, trained and supported to review conditions in workplaces where migrant workers are employed and to pursue and resolve cases of violations faced by unauthorized as well as 'regular' migrant workers.

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26   https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf

Supervision is also needed regarding such as housing conditions and public health. These may be covered by different supervisory agencies –such as public health and housing authorities, and fire safety inspections. In all cases the need for specialized training for addressing the specific risks and challenges facing migrants/migrant workers and their families is needed. Providing for this super-vision is a key element required in rights-based BLAs, but in reality absent in all the nearly 100 BLAs of IGAD and other African countries my team reviewed.

4.2 International supervision

International Human Rights Conventions

All international human rights conventions have their respective treaty supervisory body, whose purpose is to review states' parties implementation and compliance and to suggest approaches to im-proving compliance with the principles and provisions in the Conventions.

These treaty bodies are not critical review forums to criticize poor performance but rather they are expert bodies with the competence and experience among members to review and analyse reporting to formulate comments, observations and recommendations to support ever more effective imple-mentation of the instruments and thus protection of rights and well-fare of persons concerned. The periodic reporting process provides a mandated opportunity for states parties to review their do-mestication and implementation, and concerns raised to the treaty committees sharpen attention to where implementation and compliance should be improved.

Nearly all if not all of the treaty supervisory bodies now request information and review States ap-plication of the Conventions to non-nationals/international migrants on their territories. This is not-ably the case for the Committee on Economic Social and Cultural Rights CESCR, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Dis-crimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), as well as the Committee on (Rights of) Migrant Workers (CMW).

International Labour Standards/ILO Conventions and Recommendations

The ILO *Committee of Expert on the Application of Conventions and Recommendations* (CEACR) does in effect review just that –the extent and nature of application of the ILO Conven-tions ratified by countries and lacuna thereof –as well as all ILO Member States application of the Fundamental Conventions of the ILO (except C-87 and C-98 monitored by the CFA, see below).

Member States are expected to present detailed reports on their compliance with Fundamental Con-ventions every two years, while all other conventions –such as C-97 and C-143, are reviewed on five year cycles. ILO legislation permits social partners –national employers organizations and trade union federations to submit official reports as well as raise concerns or complaints in the process of reviewing national reporting on application of ratified ILO Conventions.

The ILO Committee on Freedom of Association (CFA) specifically reviews application of the Fun-damental Conventions C-87 on Freedom of Association and C-98 in Collective Bargaining Rights: it also takes up complaints of violations or non-application of provisions of those two instruments. Those rights, namely to join, participate in and hold positions in unions and for workers to engage in collective bargaining for decent work conditions, remuneration, etc, are explicitly applicable to all migrant, workers, regardless of migratory status or formal or informal employment. Absence of their application to foreign workers in many countries is a major concern, despite the mandated uni-

versal application in all member countries of the ILO. They are a particular concern for establish-ment of BLAs –where at present few if any make explicit mention despite absence of application in destination/employment countries where migrant workers are deployed.

5. Global policy guidance agreements

5.1 Agenda 2030: SDGs addressing migration

The 2030 Agenda for Sustainable Development is a globally agreed upon guide for governance, relevant at all levels. Grounding sustainable development and governance in international human rights standards, with equality and non-discrimination at the centre of efforts, the declaration sets 17 Sustainable Development Goals (SDGs), 169 targets and 230 indicators as guidelines to national governments, which can adapt the priorities in accordance to their needs. SDG 11 ('Make cities and human settlements inclusive, safe, resilient, and sustainable') refers to the urban aspects of other SDGs, asserting that cities are co-responsible for global achievements in the international agenda.

Agenda 2030 recognizes 'the positive contribution of migrants for inclusive growth and sustainable development' (United Nations, 2015, para 29). At the same time, the text argues that international migration is of major relevance for the development of countries of origin, transit and destination. It commits to human rights and humane treatment of migrants regardless of migration status, and of refugees and displaced persons. It seeks to address the needs of the most vulnerable, including internally displaced persons, so as to support Member States in achieving the SDGs.

'Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable

11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums

11.3 By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries.'

(The 2030 Agenda for Sustainable Development, SDG 11)

Global Migration Policy Associates (GMPA) expert group determined that at least 45 targets across 16 of the 17 SDGs apply or should be applied specifically addressing refugees, migrants and migration. (GMPA, 2016). The *SDG migration matrix* prepared by GMPA reflects five premises:

1. **All migrants, refugees, potential migrants, returning migrants and stateless individuals are rights holders,** subject to the formal international framework of human rights, labour standards and refugee protection. That normative framework constitutes the universal and inalienable foundation for coherent, effective, accountable governance under the rule of law.
2. **Migrants and refugees are actors in inclusive, participatory terms**. They are, and should be recognized as participant social, economic and cultural actors wherever they are at all times. Conversely, they should never be excluded from opportunities for social and economic activity, and never be confined in camps or detention facilities.
3. **Development and its reference to migrants and refugees is holistic and multidisciplinary,** grounded in human development in human rights terms. This compels actors to comprehensively address causes, consequences, effects and opportunities of human mobility.
4. **The term *development* encompasses social development, human development** and **cultural heritage** integrated with and complementary to economic development.

5. Application of the 2030 Sustainable Development Agenda to migration, migrant and refugee concerns provides a comprehensive **agenda for governance of migration** overall, and specifically of *migration and development* at local, national and international levels.

Table 1: SDG Goal 11 and its application to migrants and migration

SDG/Target	Notes/rationale	Explicit action related to migrants/migration	Relevant indicators
Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable	Approximately 80% of the world's migrants/immigrants and refugees reside in urban areas. Most major cities worldwide count large migrant/ immigrant populations. Urban and human settlement governance thus requires taking migrants and migration into account in all relevant policies and administrative entities.	General: Establish and implement at city level legislation, policy and administrative practice addressing migrants, including regarding basic services, employment, social protection, integration, housing, etc. Foster exchanges between newcomers and local inhabitants through the public space. (*See also specific targets for Goal 11 below*)	Indicators to identify and assess: a) number, origin and proportion of the migrant/ immigrant/refugee population in cities; b) existence and nature/extent of city policy and administrative practices addressing migrant populations; and c) accessibility, equity of treatment and impact of city policy and practice regarding migrant residents.
11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums	Due to their recent arrival, their usually low incomes, and absence of access to decent housing, im/migrants and refugees tend to be concentrated in areas of substandard housing and slums. The localities are usually characterized by absent or deficient public services.	Include addressing needs of migrant populations specifically, explicitly and equitably in policy and programmes to: – provide affordable housing; – assure basic services; – improve conditions in and/or replace slums with decent housing.	Indicators to identify and assess: a) population and housing situations of migrant/ immigrant/refugee residents; b) existence and nature/ extent of migrant inclusion in policy and measures addressing safe, adequate and affordable housing; and c) impact of policy and practice addressing migrant housing.
11.3 By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries	The process of urbanization and urban development directly and indirectly contributes either to socio-spatial segregation of migrants and refugees or to their inclusion and integration in cities. The absence of these populations in policy-making reduces their visibility and exacerbates their exclusion from policy concerns.	Promote sustainable planning for migrants and refugees that avoids and counters segregation. Create activation and support mobilization channels that encourage participation of migrants in urban planning and development. Promote policies that encourage diversity in local governments.	Disaggregated and evaluated data at neighbourhood level for households: 1) *Quantitative data on*: a) per capita income; b) socio-professional categories; and c) urban displacement. 2) *Qualitative data on:* a) urban architecture; b) access to services; c) public transportation; and d) public spaces.
Source: GMPA, 2018. http://www.globalmigrationpolicy.org/articles/development/SDGs%20Migration%20actions,%20indicators%20V3.4%20GMPA%202018.pdf			

5.2 New Urban Agenda: a welcoming cities approach

While more than half of the world's population currently resides in cities, an even larger proportion of the world's migrants are located in cities and urban settlements –including in Africa. Much of the day-to-day global governance concerning migrants and refugees also takes place in cities.

The New Urban Agenda (NUA) adopted in October 2016 at Habitat III in Quito, Ecuador is a 20 year framework and guiding principles for governance, development and welfare of the world's cities. It builds on the commitments of the 2030 Agenda for Sustainable Development and localizes the broad issues covered by the SDGs, filling gaps and establishing complementarities between both agendas (Gomes da Silva, 2018).

Specific 'inclusive' language on migrants, refugees and internally displaced persons appears in eleven different paragraphs across the New Urban Agenda. It refers consistently to 'all inhabitants, all persons', clearly including refugees, migrants, returnees and internally displaced persons.

The New Urban Agenda offers comprehensive guidance to achieve human and labour rights protection, social protection and inclusion for all migrants and refugees as well as all other denizens. The Agenda and its guidelines provide an authoritative platform for orienting or reorienting city governance legislation, policy and practice, addressing nearly all aspects of urban governance, including planning, legislation, administration, implementation and monitoring, not to mention communications and public discourse.

Much of that guidance is fully relevant for national and regional governments.

'By readdressing the way cities and human settlements are planned, designed, financed, developed, governed and managed, the New Urban Agenda will help to end poverty and hunger in all its forms and dimensions; reduce inequalities; promote sustained, inclusive and sustainable economic growth; achieve gender equality and the empowerment of all women and girls in order to fully harness their vital contribution to sustainable development; improve human health and well-being; foster resilience; and protect the environment.'

(New Urban Agenda, 2016, para. 5)

The New Urban Agenda explicitly commits 'to ensuring full respect for the human rights of refugees, internally displaced persons and migrants, regardless of their migration status, and support their host cities in the spirit of international cooperation' (ibid., para 28). It commits 'to strengthening synergies between international migration and development at the global, regional, national, sub-national and local levels' (ibid.).

The NUA commits to leaving no one behind 'by ensuring equal access for all ... to physical and social infrastructure and basic services' with people-centred policies. It explicitly links to the 2030 Sustainable Development Agenda, calling for the complementary and mutually reinforcing implementation of both agendas by cities, and at all levels of government and society.

The NUA commits to promoting employment and decent work, as well as non-discriminatory access to legal income-earning opportunities with special attention to the needs *inter alia* of refugees, IDPs and migrants, particularly the poorest and those in vulnerable situations (ibid., para 57). Accordingly, key roles are recognized of 'trade unions, employer organizations and migrant

organizations' in encouraging 'effective participation and collaboration among all relevant stakeholders' (ibid., para 48).

The Agenda calls for policy and action in cities to achieve gender equality, to empower all women and girls, to enable women's full participation and equal rights in all fields as well as leadership, and to ensure decent work and equal pay for equal work, or work of equal value, for all women (New Urban Agenda, 2016, para 13.c). It emphasizes preventing and eliminating all forms of discrimination, violence and harassment against women and girls in private and public spaces.

5.3 The Global Compacts

The Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR) are inter-governmentally negotiated agreements to enhance international cooperation, covering international migration governance and refugee response in a comprehensive and holistic manner. Both policy framework documents acknowledge the key implementation roles of national governments and of local authorities as first receivers of migrants and refugees.

The Global Compact for Safe, Orderly and Regular Migration (GCM) adopted at an intergovernmental conference in 2018 is an explicitly non-binding guidance document comprising a range of principles and good practice action guidelines for *management* of migration. It emphasizes executive action with a 'whole-of-government approach' across all levels of executive branches to address the multidimensional aspects of migration and e*nhance the positive contribution of migration*. It also supports a 'whole-of-society approach', calling for broad multi-stakeholder partnerships involving, inter alia, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, National Human Rights Institutions, the media and other relevant stakeholders in migration governance.

The GCM calls upon national and local authorities to assist migrants by applying a human rights-based, gender and disability-responsive as well as an age and child-sensitive approach. The document also calls for policies that address the particular needs of migrant women, girls and boys. At the same time, the GCM calls for eliminating all forms of discrimination, 'including racism, xenophobia and intolerance against migrants and their families' (UNGA, 2018*a*, para. 15).

The GCM urges States to integrate migration into development planning and sectoral policies at all levels. In particular, ensuring 'safe access to basic services' in places where privacy, liberty and security are respected is presented as key to protect the human rights of all migrants. Furthermore, and in line with 'leaving no one behind', the GCM asserts that migration 'contributes to positive development outcomes' (ibid.) as well as to the attainment of the 2030 Agenda for Sustainable Development and the SDGs.

However, the GCM represents 'regime change' away from a global framework of normative regulation, binding legal obligations and the accountability of formal public reporting on compliance. While providing what it asserts is comprehensive guidance on all aspects of migration, it diverges from upholding binding standards of human rights protection and the legal accountability of States under international law by establishing in their place a non-binding set of policy recommendations, many of which articulate lower and more narrow expectations than those in existing human rights Conventions and International Labour Standards. Instead of overseeing domestication and implementation of international legal standards in national law and practice coupled with regular international reporting and expert review, the GCM engages a discursive

process of meetings and review of *good practices* taken up by governments to implement non-binding commitments to general policy options and practice recommendations.

As a pact of non-binding guidelines explicitly addressed to executive *migration management*, the Compact undermines participation in governance by the legislative branch of government, and it dismisses the review and supervisory role of the judiciary. By omission it relegates these to sidelines while posing migration as primarily a matter for the executive branch of government, with the latter's arbitrary discretion unfettered by legislative definition and judicial review.

The GCM also incorporates, for the first time in a formal UN-related policy framework, language and policy notions of repressive control of mobility. It commends measures that effectively criminalize irregular migration as well as migrants in irregular situations and, in contrast, legitimize deportation and involuntary return and 'reintegration' as seemingly UN-consented. The GCM furthermore calls on States to strengthen surveillance and control over national borders, objectively constraining universal rights to leave and return freely to one's own country and undermining free movement essential for development across regional communities in Africa and elsewhere.

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This training text edition is not intended for publication. Material has been drawn from a variety of sources, and considerable text herein draws on published text prepared by this author. Sources for some material in this brief may inadvertently not yet be properly credited. Corrections and suggestions are welcome.

Please contact the author with any questions, suggestions and/or corrections.

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