



Bilateral Labour Arrangements in African Union Member States: Taking stock and the way forward

Based on a forthcoming report and tools jointly produced by the ILO and IOM

Towards Global Guidance on Developing and Implementing Bilateral Labour Migration Arrangements: Unpacking Obstacles to Implementation in the African Region

This joint ILO-IOM project builds on the complementary strengths and experiences of the two organizations to develop regionally relevant analysis, guidance, and capacity building tools on bilateral labour arrangements in Africa. The project's objective are to enhance the capacity of governments of the African Union and other stakeholders, including social partners, to develop and implement effective bilateral labour arrangements, as well as to take steps towards developing comprehensive guidance on bilateral arrangements grounded in country experiences. In doing so, the project is expected to contribute to achieving labour migration governance objectives and targets embodied in the Global Compact on Safe, Orderly and Regular Migration, the Sustainable Development Goals, and the African Union's Agenda 2063, and the AU Revised Migration Policy Framework for Africa.

SETTING THE SCENE

In recent decades, labour migration dynamics in and from the African region have evolved rapidly. While the underlying drivers of labour migration have remained relatively constant, including labour market imbalances, income differentials between countries, and demographic pressures, governments now also contend with the development of new and more complex migration routes, a burgeoning private recruitment sector and demand for temporary migrant workers concentrated in poorly regulated sectors such as agriculture, domestic work, and other service-sector jobs.

Improving the governance of labour migration is high on the global political agenda, as reflected in the recent Global Compact on Safe, Orderly and Regular Migration (GCM). The GCM stresses

the importance of international cooperation and the conclusion of bilateral, regional or multilateral agreements.¹ While consensus on the need for greater multilateral cooperation is growing, progress has been slow and uneven to date.² In the meantime, governments have moved ahead with bilateral approaches to labour migration governance.



1 See for example : Objective 5 on enhancing pathways for regular migration (action (a)); objective 18 on promoting skills development and recognition (action (c)); and objective 22 on establishing mechanisms for the portability of social security entitlements and benefits (action (b)).

2 Betts, A. and Kainz, L. (2017). "The history of global migration governance," Refugee Studies Centre, University of Oxford, Working Paper Series No. 122.

While bilateral labour arrangements are not new to the Africa region, they have experienced a resurgence since the 1990s. These arrangements vary widely in their objectives, scope, and level of formality, though some general categories can be identified. The first are broad framework cooperation agreements with European countries, covering a range of issues in addition to labour migration, including readmission, return, technical cooperation and development issues. Second, African countries have increasingly entered into bilateral arrangements with Arab countries to meet demand in low-skilled sectors such as domestic work and construction. Finally, to a lesser extent, bilateral arrangements are used by African countries to fill specific skills gaps, usually of highly skilled workers, such as education and health professionals.

When solidly rooted in international human rights and labour standards, bilateral labour arrangements can provide concrete means to improve the governance of labour migration and strengthen the protection of migrant workers based on shared responsibility. Yet experiences with bilateral labour arrangements have often fallen short of these expectations. Previous³ ILO research indicates that the contents of arrangements in the Africa region are often deficient in regard to provisions on gender, social dialogue, wage protection measures, and skills recognition, among others.

Building on previous research, the joint ILO-IOM study focuses on the implementation of bilateral labour arrangements by taking stock of existing challenges and promising practices tested in the Africa region. Based on these country experiences, regionally relevant recommendations are provided for achieving better outcomes from bilateral arrangements.

Box 1.

What are bilateral labour arrangements?

Bilateral labour arrangements refer to cooperation arrangements between countries of origin and destination to ensure that migration takes place according to agreed principles and procedures. The most frequently used formats in Africa are bilateral labour agreements (BLA) and Memoranda of Understanding (MOUs), but they also include Framework Agreements, Protocols, and Inter-agency Understandings, among others.

BLAs create legally binding rights and obligations. They describe in detail the specific responsibilities of, and actions to be taken by each of the parties, to accomplish their goals. Memoranda of Understanding (MOU), are usually non-binding agreements, which may be more general in contents, referring to broad principles of cooperation, concepts of mutual understanding, goals, and plans shared by the parties.

ASSESSMENT METHODOLOGY FOR BILATERAL LABOUR ARRANGEMENTS

Drawing on rapid assessment research methodology, the ILO and IOM have developed an assessment tool intended for use by governments of origin and destination countries, as well as other stakeholders including employers' and workers' organizations, and experts from regional and international organizations. The tool guides users in assessing existing bilateral arrangements. It can also serve as "standard operating procedures" for preparing new BLAs or MOU, providing practical checklists for each step of the BLA/MOU cycle, and ready-to-use data collection tools.

³ Wickramasekara, P. (2015) Bilateral agreements and memoranda of understanding on migration of low skilled workers: a review, International Labour Office, Geneva.

The assessment methodology describes the various phases of the bilateral labour arrangement process:



(1) Preparations and drafting: Successful preparation of BLAs/MOUs requires data collection on labour market and migration dynamics as well as broad stakeholder consultation, including of social partners. In drafting or revising existing agreements, the ILO Model Agreement, annexed to the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) can serve as a key reference for assessing the quality and comprehensiveness of the contents. The contents of BLAs/MOUs should also reflect the principles and protections contained in internationally recognised human rights instruments and relevant international labour standards.

(2) Negotiations: A delegation with clear authority to negotiate on behalf of the government can be named, usually composed of both technical and negotiation expert representatives from the Ministries of Labour, Foreign Affairs, and other line ministries.

(3) Implementation and accompanying measures: Aligning legislative and regulatory frameworks with the provisions of the BLA/MOU is a key government priority to operationalise the agreement. Social partners and civil society organisations can also play key roles in ensure that the arrangements accurately reflect labour market needs and migrant workers benefit from protections and support services.

(4) Monitoring: Active joint monitoring committees are essential to regularly follow up on implementation progress, as well as interpret the text of the arrangement, propose amendments, and seek amicable solutions to disputes. In parallel to joint monitoring, each country may rely on a network of government institutions such as embassies and consulates, as well as social partners, and civil society actors, including diaspora networks to monitor decent working conditions of migrant workers unilaterally.

(5) Revision or updates: Given the dynamic nature of labour markets and potential for changes in the surrounding context, to ensure that bilateral arrangements remain relevant, periodic revisions or updates should be considered based on findings of regular monitoring.

PICTURE

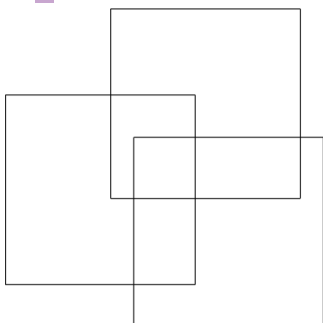
PRELIMINARY FINDINGS AND RECOMMENDATIONS

These initial findings and recommendations are drawn from assessments of two labour migration corridors using the assessment methodology described above, one intra-African and one Africa-Europe. They also reflect consultations with other labour migration stakeholders in the African region on country experiences in developing and implementing bilateral labour arrangements.

- Before entering into bilateral arrangements, limited analysis is conducted on supply and demand of skills in both origin and destination countries. Strengthening the collection of key labour market indicators and systematically including employers' and workers' representatives in the preparatory phase are essential to ensuring that arrangements accurately reflect labour market realities and receive support from social partners during implementation.
- Building capacity of recruitment actors in countries of origin - both public employment services and private recruitment agencies - to ethically recruit and place qualified candidates in jobs abroad within a reasonable time frame is key to effective skills matching and filling quotas for foreign workers. This can build confidence among employers and migrant workers in BLA/MOU-facilitated recruitment channels, potentially reducing the use of unregulated recruitment channels.
- Including provisions for mutual skills and qualifications recognition in bilateral arrangements can be useful to ensure that origin and destination countries have a common understanding of skills requirements for certain job categories, essential to the quality of recruitment. Greater attention to skills recognition can also potentially reduce "deskilling" of migrant workers in destination countries, and allow them to better leverage skills and qualifications acquired abroad upon return.
- While most bilateral arrangements cover pre-existing labour migration flows, rather than initiate new flows between countries, origin countries often lack data on their nationals working abroad. Sex-disaggregated baseline data on the number of workers in the destination country, their occupation or sector of activity, and the protection issues they currently face, is needed to develop context-appropriate bilateral arrangements and accompanying measures, as well as to monitor their outcomes.
- The situation of the existing stock of irregular migrant workers already present in a destination country needs to be considered when developing bilateral arrangements to avoid undercutting demand for new workers from abroad, and to ensure protection benefits are extended to all migrant workers.
- As is the trend in other regions, use is increasingly made of less formal MOU formats for bilateral arrangements, rather than binding BLAs. Countries of destination in particular may prefer broader, more flexible frameworks of cooperation, but such arrangements, if too vague, may pose additional difficulties in implementing and enforcing protection of workers.

PICTURE

- A number of bilateral arrangements refer to “applicable national legislation” in destination countries rather than setting out specific protection provisions. Yet, national legislation may not sufficiently cover (if at all) the sectors in which migrant workers are concentrated, or discriminatory legal provisions may exist. Preliminary analysis of relevant legal frameworks is needed to ensure that bilateral arrangements do not have the effect of weakening protections afforded by international standards.
- In the absence of coverage under national labour legislation, some countries have entered into individual negotiations on minimum labour standards applicable only to specific country nationals, without reference to objective wage-setting criteria or social partner involvement. These practices may lead to wage discrimination between migrant workers on the basis of nationality, and risk introducing competition between countries of origin to ensure employment of their nationals abroad.
- African countries are increasingly seeking to conclude dedicated bilateral arrangements on domestic workers and care workers to address their rights, welfare, and security to fill protection gaps in existing national legislation.
- In parallel to concluding bilateral labour arrangements, African countries of origin have initiated a number of unilateral protection measures. These include establishing welfare funds and emergency housing for migrant workers abroad, posting labour attachés in embassies of destination countries to monitor worker protection issues, and developing compulsory pre-departure orientation and training programmes for migrant workers. Strengthening the regulation of private recruitment agencies is also a priority for several countries, through registration, licensing and monitoring schemes.
- Countries of origin have also experimented with unilateral bans on migration to countries of destination, until bilateral arrangements can be concluded or regulation of private recruitment actors can be strengthened. However, the capacity of origin countries to effectively control the outflows of workers is limited, and such bans may lead to increased irregular migration, further exposing workers to abuse and exploitation. In addition, as in practice, such bans often disproportionately affect migrant women, they risk having the effect of impairing gender equality with respect to employment opportunities abroad.
- Bilateral cooperation has been developed between trade union organizations in origin and destination countries, such as South Africa and Zimbabwe, to protect migrant workers’ rights through organizing and support, and to increase information exchange and support services to migrants. The ILO ACTRAV Model Trade Union Agreement on Migrant Workers’ Rights can be used as a template to formalize this type of cooperation. Trade unions in the region are also increasingly involved in international cooperation networks on migration, such as Réseau Syndical Migrations Méditerranéennes – Subsahariennes (RSMMS), created in 2014 by unions from North Africa, Sub-Saharan Africa, and the European Union to promote the rights of migrants in the Mediterranean area and African continent.
- Negotiations of bilateral arrangements can take several years to conclude and operationalize. During this time, shifts in labour markets, turnover of relevant decision-making authorities, and broader social and political events can occur which ultimately reduce the salience of the concluded agreements, weakening the political will to implement them. Regular monitoring of labour market and migration contexts, as well as joint mechanisms to monitor implementation are needed to ensure that arrangements remain relevant and operational.



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AREAS FOR FURTHER WORK AND COOPERATION

Given the broad range of bilateral labour arrangements and the variety of contexts to which they are applied, further research is needed to build a more representative knowledge base on current practices. In particular, additional case studies of migration corridors in other regions including Asia and Latin America, as well as further case studies from the Africa region, including concerning feminized flows and highly-skilled migration flows are needed to build a fuller picture and contribute to the development of global guidance.

In addition, demand among ILO and IOM Member States for technical assistance on BLA/MOU development and implementation is on the rise.

Specific areas to strengthen assistance include:

- ◇ Capacity building on bilateral labour agreement implementation for public employment services and private recruitment agencies, as well as government officials, including labour attachés. This can include the dissemination of practical tools such as assessment methodology and e-learning toolkit, as well as offering regular regional training courses;
- ◇ Facilitating greater social dialogue and strengthening social partner capacity to participate more substantially in all bilateral labour arrangement phases;
- ◇ Continuing to provide direct technical assistance to governments and stakeholders in drafting, negotiating, and implementing bilateral arrangements, with particular attention to improving skills anticipation and matching, social protection, fair recruitment practices, and attention to gender aspects.
- ◇ Building on initial findings in the framework of the joint ILO-IOM project, and existing expertise and experiences, develop comprehensive global policy guidance on bilateral labour arrangements.