



# Guidelines for implementing actors on the AU free movement protocol

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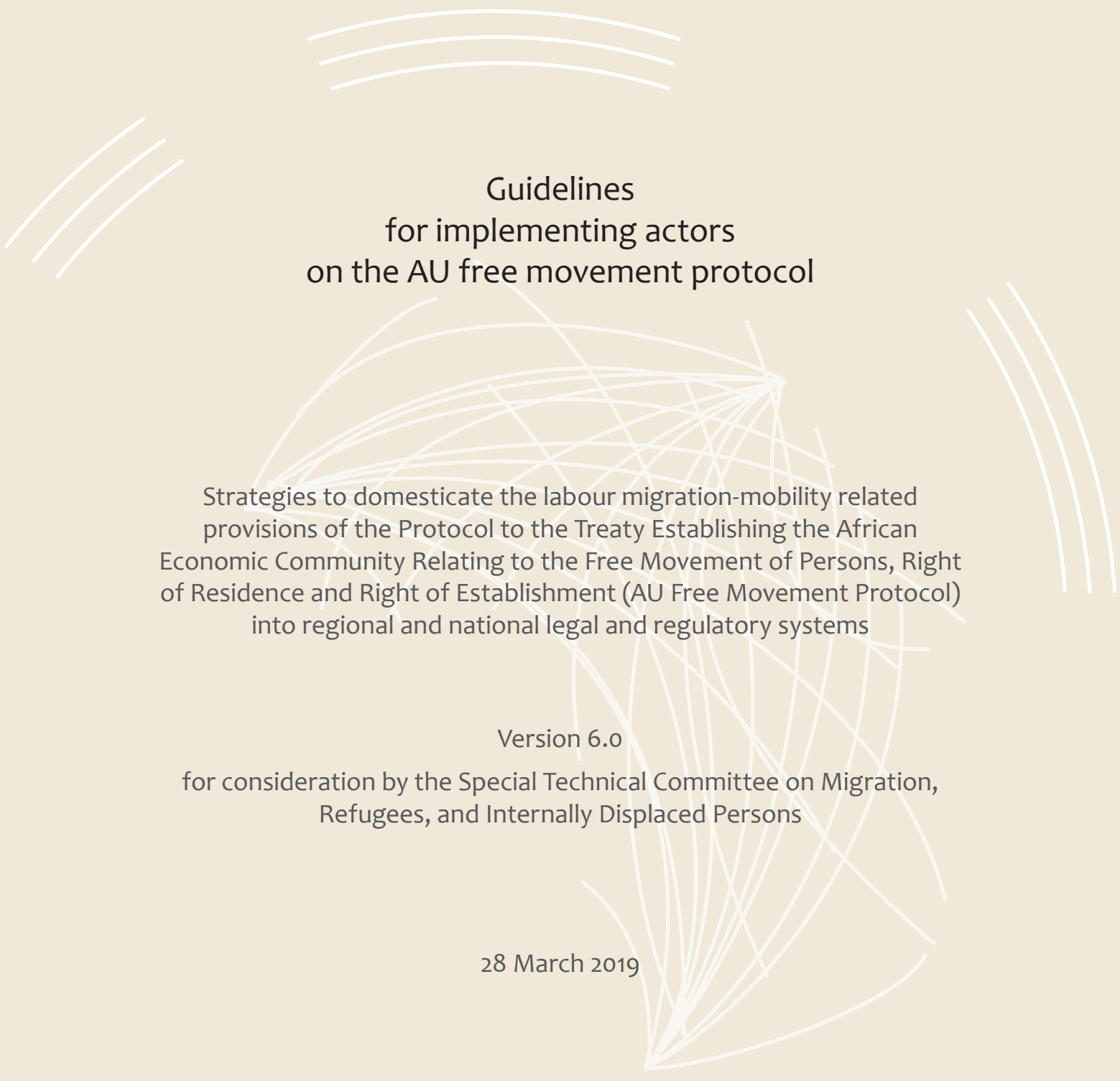


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# Guidelines for implementing actors on the AU free movement protocol

Strategies to domesticate the labour migration-mobility related provisions of the 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) into regional and national legal and regulatory systems

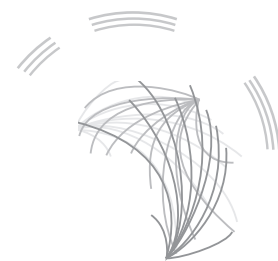
Version 6.0

for consideration by the Special Technical Committee on Migration,  
Refugees, and Internally Displaced Persons

28 March 2019

## List of acronyms

|          |   |
|----------|---|
| AfCFTA   | African Continental Free Trade Area   |
| AIR      | African Institute for Remittances   |
| AMU      | Arab Maghreb Union  |
| AU       | African Union   |
| AUC      | African Union Commission  |
| CEN-SAD  | Community of Sahel-Saharan States   |
| COMESA   | Common Market for Eastern and Southern Africa   |
| CQF      | Continental Qualifications Framework  |
| CSOs     | Civil Society Organisations   |
| EAC      | East African Community  |
| ECA      | United Nations Economic Commission for Africa   |
| ECCAS    | Economic Community of Central African States  |
| ECOWAS   | Economic Community of West African States   |
| IATMPP   | Intra-Africa Talent Mobility Partnership Programmes   |
| ICRMW    | International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, 1990 |
| IGAD     | Intergovernmental Authority on Development  |
| ILO      | International Labour Organization   |
| IMWG     | Inter-Ministerial Working Group   |
| IOM      | International Organization for Migration  |
| IOM-MIDA | IOM Migration in Development for Africa Programme   |
| JLMP     | Joint Labour Migration Programme  |
| LMAC     | Labour Migration Advisory Committee   |
| MPFA     | Migration Policy Framework for Africa, 2018   |
| MPFA-POA | Migration Policy Framework for Africa and Plan of Action, 2018  |
| NEPAD    | New Partnership for Africa's Development  |
| NLC      | Labour Code   |
| NLMP     | National Labour Migration Policy  |
| NQF      | National Qualifications Framework   |
| OAU      | Organisation of African Unity   |
| OECD     | Organisation for Economic Co-operation and Development  |
| RQF      | Regional Qualifications Framework   |
| SADC     | Southern African Development Community  |
| SDGs     | Sustainable Development Goals   |
| STC      | Special Technical Committee   |
| UN       | United Nations  |
| UNAIDS   | Joint United Nations Programme on HIV/AIDS  |
| UNDP     | United Nations Development Programme  |
| UN-HLPF  | United Nations High-Level Political Forum on Sustainable Development  |
| WHO      | World Health Organization   |



# Table of contents

|  |           |
|--|-----------|
| <b>List of acronyms</b> .....                                    | <b>4</b>  |
| <b>Preamble</b> .....  | <b>6</b>  |
| <b>I. INTRODUCTION</b> .....                                     | <b>8</b>  |
| Purpose and objective .....                                      | 8         |
| Legal basis .....  | 8         |
| Application .....  | 9         |
| <b>II. LABOUR MIGRATION-MOBILITY RELATED PROVISIONS</b> .....    | <b>10</b> |
| A. The four categories .....                                     | 10        |
| Category 1: Implementing provision .....                         | 10        |
| Category 2: Six core provisions .....                            | 11        |
| Category 3: Two facilitating provisions .....                    | 14        |
| Category 4: Two remedial provisions .....                        | 15        |
| B. The rights of migrant workers and their families .....        | 17        |
| International law .....  | 17        |
| AU Free Movement Protocol .....                                  | 18        |
| <b>III. GUIDELINES FOR IMPLEMENTING ACTORS</b> .....             | <b>21</b> |
| A. Member States .....   | 21        |
| B. Regional Economic Communities .....                           | 30        |
| C. African Union Commission .....                                | 35        |
| Provide technical assistance .....                               | 35        |
| Establish a continental coordinating mechanism .....             | 36        |
| Monitor and evaluate implementation .....                        | 36        |
| <b>IV. RETENTION OF SKILLED NATIONALS AND THE DIASPORA</b> ..... | <b>37</b> |
| <b>V. REMITTANCES</b> .....                                      | <b>38</b> |
| <b>VI. LABOUR MIGRATION DATA AND RESEARCH</b> .....              | <b>39</b> |
| IMPLEMENTATION, FOLLOW-UP AND REVIEW .....                       | 39        |
| <b>Annexes</b> .....   | <b>40</b> |
| ANNEXURE 1: EXTENDED LIST OF DEFINITIONS .....                   | 40        |
| ANNEXURE 2: RATIFICATION TABLES .....                            | 47        |
| ANNEXURE 3: IMPLEMENTATION CHECKLIST FOR MEMBER STATES .....     | 54        |

## Preamble

**Bearing in mind** the United Nations 2030 Agenda for Sustainable Development's Target 8.8 which aims at "Protecting labour rights and promoting safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment; and Target 10.7 which seeks to "[f]acilitat[e] orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies."<sup>1</sup>

**Mindful** of the adoption by the UN General Assembly and African States on 19 December 2018 of the Global Compact on Safe, Orderly and Regular Migration which includes an important focus on decent work for migrant workers.

**Evoking** the adoption by African States of the 2017 International Labour Conference's Resolution and Conclusions on Fair and Effective Labour Migration Governance and its follow-up Plan of Action, as well as the 2004 International Labour Conference's Resolution and Conclusions concerning a Fair Deal for Migrant Workers in a Global Economy and its follow-up Plan of Action.

**Recalling** the objectives and principles of the Constitutive Act of the African Union of 2000 which emphasises valuing solidarity, socio-economic integration, international cooperation, sustainable development, policies, coordination and harmonisation, gender equality, social justice to ensure balanced economic development, and sanctity of human life.

**Encouraged** by the adoption of the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment of 2018 and the Agreement Establishing the African Continental Free Trade Area of 2018.

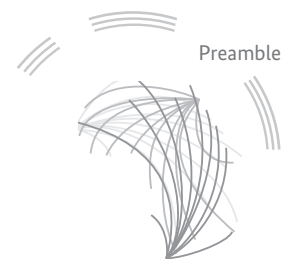
**Recalling** the 2014 African Union Commission's Ouagadougou +10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa that includes labour migration as one of its six components, as well as by the adoption of the African Union's Revised Migration Policy Framework (2018-2030) which also includes a significant labour migration component.

**Reminded** that Article 15 of the African Charter on Human and Peoples' Rights of 1981 provides that "[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for work of equal value."

**Recalling** the Treaty Establishing the African Economic Community of 1991 and the decision to establish on a continental scale, a framework for the development, mobilisation, and utilisation of the human and material resources of Africa in order to achieve a self-reliant development.<sup>2</sup>

<sup>1</sup> United Nations (UN) Sustainable Development Goal (SDG) 10.7.

<sup>2</sup> Article 4(1)(b) of the *Treaty Establishing the African Economic Community, 1991 (Abuja Treaty)*.



**Recognising** the contribution and building on the achievements of the Regional Economic Communities and other intergovernmental organisations towards progressively achieving the free movement of persons and ensuring the enjoyment of the right of residence and the right of establishment by citizens of Member States.<sup>3</sup>

**Aware** of the challenges of implementing the free movement of persons in the regional economic communities which are at different levels of implementing the frameworks providing for free movement of persons.<sup>4</sup>

**Mindful** of the decision of the Assembly adopted in July, 2016 in Kigali, Rwanda (Assembly/AU/Dec.607(XXVII)) welcoming the launch of the African Passport and

urging Member States to adopt the African Passport and to work closely with the African Union Commission to facilitate the processes towards its issuance at the citizen-level based on international, continental, and national policy provisions and continental design and specifications.<sup>5</sup>

**Mindful** of the important role that World of Work actors (Ministries of Labour, and workers' and employers' organisations) play in improving labour migration governance, the role of labour market institutions and the existence of the AUC-ILO-IOM-UNECA Joint Labour Migration Programme for Development and Integration in Africa (JLMP) which serves as the main anchor to implement the Global Compact on Safe, Orderly and Regular Migration in Africa.

<sup>3</sup> Preamble to the *Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment, 2018 (AU Free Movement Protocol)*.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## I. INTRODUCTION

*“Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State”.*<sup>6</sup>

### Purpose and objective

The purpose of these *Guidelines* is to provide guidance to Member States and Regional Economic Communities (RECs) on human rights-based strategies and recommendations on implementation and domestication of the labour migration-mobility related provisions of the AU Free Movement Protocol, with an emphasis on the rights that are consolidated in the Protocol for migrant workers and their families. In particular, these *Guidelines* place the human (including labour) rights of migrant workers and their families, including the absolute prohibition on child labour and the elimination of all forms of forced or compulsory labour, at the centre of the proposed implementation and domestication strategies; enjoining Member States and RECs to ensure that the fundamental human rights which must be afforded to migrant workers and their families are protected and promoted, and balanced with the dictates of economic integration and development.<sup>7</sup> In their effect, these *Guidelines* seek to facilitate inclusive growth and sustainable development in harmony, and at a rate commensurate, with the full protection and promotion of human rights, including labour rights.

The objective of these *Guidelines* is to provide practical guidance to Member States and RECs on:

1. The eleven labour migration-mobility related provisions of the AU Free Movement Protocol.
2. The human (and labour) rights that the Protocol consolidates at the continental level for migrant workers and their families.
3. The role of Member States, RECs, and the African Union Commission (AUC) in implementing the Protocol, including practical strategies and recommendations to domesticate and harmonise the labour migration-mobility related provisions of the Protocol into regional and national legal and regulatory systems.

### Legal basis

The legal basis for these *Guidelines* is underpinned by the AUC’s *Agenda 2063*, particularly Goal 8 “United Africa”<sup>8</sup> as detailed in its First 10Year Implementation Plan (2014-2023),<sup>9</sup> read in conjunction with Article 43 of the Abuja Treaty and Articles 2 and 26(2) of the AU Free Movement Protocol. Goal 8 of *Agenda 2063*’s indicative strategies provide that Member States are to domesticate all protocols leading to free movement of persons within their RECs; domesticate all the ILO Conventions on Labour Migration<sup>10</sup> as appropriate to each Member State; develop or implement policies that will lead to the gradual abolishment of visa requirements or the granting of visa on arrival to Africans; grant equal opportunities to non-REC African citizens; review all labour bilateral agreements with other member

<sup>6</sup> Article 14(1) of the AU Free Movement Protocol.

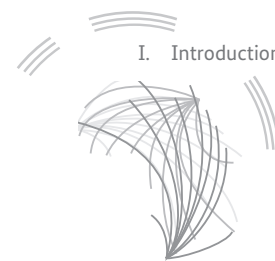
<sup>7</sup> Article 4(n) of the Constitutive Act of the African Union, 2001, provides for the “promotion of social justice to ensure balanced economic development”.

<sup>8</sup> AUC ‘Agenda 2063: The African We Want (2015)’ (Agenda 2016).

<sup>9</sup> AUC ‘Agenda 2063: First 10-Year Implementation Plan (2014-2023)’.

<sup>10</sup> The *Migration for Employment Convention (Revised)*, 1949 (No. 97); and, the *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143).





### Overview of RECs with free movement or related protocols

| AMU | CEN-SAD | COMESA       | EAC      | ECCAS        | ECOWAS   | IGAD  | SADC         |
|-----|---------|--------------|----------|--------------|----------|-------|--------------|
| X   | X       |              |          |              |          | X     |              |
| –   | –       | Not in force | In force | Not in force | In force | Draft | Not in force |

states and non-member states; and develop capacity to manage the flow of cross border migration with attention to the concerns of women, youth and vulnerable groups.”<sup>11</sup>

Article 26 of the Protocol, which is of direct relevance, enjoins Member States to harmonise their “laws, policies, systems and activities of [RECs] of which they are members which relate to the free movement of persons with laws, policies, systems and activities of the Union.” In addition, the Protocol dictates that Member States are required to harmonise their national policies, laws, and systems with the Protocol, including provisions related to labour migration-mobility.

In terms of on-going processes to ensure implementation of the Global Compact on Safe, Orderly and Regular Migration as well as labour migration and labour mobility provisions included in the free movement protocols, the *Labour Migration Programme for Development and Integration in Africa*,<sup>12</sup> annexed to the *Report on the Ouagadougou +10 Summit: Employment, Poverty Eradication and Inclusive Developments in Africa* provides that the JLMP,<sup>13</sup> in implementing the 5th Key Priority Area of the *Declaration*

and Plan of Action on Employment, Poverty Eradication, and Inclusive Development<sup>14</sup> seeks to, among others, “increase domestication of key international standards on labour migration” as an immediate response to increasing cross-border labour and skills mobility challenges in Africa.<sup>15</sup>

### Application

Once it enters into force, the AU Free Movement Protocol creates benefits, roles, and responsibilities for:

- Member States;<sup>16</sup>
- RECs;<sup>17</sup>
- The AUC;<sup>18</sup> and
- “Nationals” or “citizens” of Member States and their spouse and dependants,<sup>19</sup> including residents of border communities and students and researchers.<sup>20</sup>

<sup>11</sup> AUC ‘Agenda 2063: First 10-Year Implementation Plan (2014-2023)’ at pages 645.

<sup>12</sup> Assembly/AU/20(XXIV), Annex 3.

<sup>13</sup> A joint undertaking by the AUC, the ILO, the IOM, and the UNECA, working alongside the UNDP.

<sup>14</sup> 2015.

<sup>15</sup> *Labour Migration Governance for Development and Integration in Africa Brief*, Assembly/AU/20(XXIV), Annex 3, at page 1.

<sup>16</sup> See Article 27, read with Article 25, of the AU Free Movement Protocol.

<sup>17</sup> See Article 28 of the AU Free Movement Protocol.

<sup>18</sup> See Article 29 of the AU Free Movement Protocol.

<sup>19</sup> Article 1 of the AU Free Movement Protocol defines “Dependant” to mean “a child or other person who, a national of a Member State is required to support and maintain as defined by the laws of the host Member State.”

<sup>20</sup> See, for example, Articles 4, 6, 10, and 14 of the AU Free Movement Protocol.

## II. LABOUR MIGRATION-MOBILITY RELATED PROVISIONS

The AU Free Movement Protocol contains eleven labour migration-mobility related provisions, which can be separated in four interrelated categories:

### A. The four categories

**Category 1:** One implementing provision (Article 5).

1

**Category 2:** Six core labour migration-mobility provisions (Articles 14, 15, 18, 19, 23, and 24).

2

**Category 3:** Two facilitating labour migration-mobility provisions (Articles 25 and 26).

3

**Category 4:** Two remedial provisions applicable to labour migration-mobility (Articles 30 and 31).

4

#### Category 1: Implementing provision

1

##### 1. Article 5 Progressive Realisation

1. The free movement of persons, right of residence and right of establishment shall be achieved progressively through the following phases:
  - i. phase one, during which States Parties shall implement the right of entry and abolition of visa requirements;
  - ii. phase two, during which States Parties shall implement the right of residence;
  - iii. phase three, during which States Parties shall implement the right of establishment.
2. The Roadmap annexed to this Protocol serves as a guideline to help, as appropriate, with the implementation of the above phases.
3. Nothing in this Protocol shall:
  - i. affect more favourable provisions for the realisation of the free movement of persons, right of residence and right of establishment contained in national legislation, regional or continental instruments; or
  - ii. prevent the accelerated implementation of any phase of free movement of persons, right of residence and right of establishment by a regional economic community, sub-region or Member State before the time set by this Protocol or the Assembly for the implementation of that phase.

The Protocol follows a phased-implementation approach to progressively realise its implementation. In *phase one*, Member States must progressively implement the right of entry and abolition of visa requirements. In *phase two*, Member States must implement the right of residence. Lastly, in *phase three*, Member States must implement the right of

establishment.<sup>21</sup> In addition, an *Implementation Roadmap* is annexed to Protocol. It serves as a guideline to assist, as appropriate, with the implementation of the above phases. It is referred to in Articles 5(2), 26(1), and 26(2) of the Protocol. It is important to note that the free movement of workers is

<sup>21</sup> Article 5(1) of the AU Free Movement Protocol.



contingent on the progressive realisation of the phased-implementation approach.

Importantly, Article 5(3) provides that “more favourable” provisions than those contained in the Protocol can be afforded to migrant workers through national legislation, regional, or continental instruments and that the implementation of any of the phases can be accelerated. Further, the *Implementation Roadmap* provides for the “use of variable geometry in the implementation of the Protocol”<sup>22</sup> which permits the implementation of any provision of the Protocol at different speeds and at different times. As a result, the Protocol should be seen as a minimum commitment in relation to labour migration-mobility, affording Member States a wide discretion in its implementation.

## Category 2: Six core provisions

2

### 2. Article 14

#### Free Movement of Workers

1. Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws and policies of the host Member State.
2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependants.

The Protocol’s primary provision on labour migration-mobility is Article 14. It expressly provides for the free movement of migrant workers, and establishes “the right to seek

and accept employment”.<sup>23</sup> Importantly, it provides that a person taking up employment in another Member State “may be accompanied by a spouse and dependants”. In terms of Article 14, the presence of foreign nationals for the purposes of employment within the territory of another Member State is permissible and must be facilitated in terms of the Protocol.

In addition, Article 13 provides for the free movement of students and researchers<sup>24</sup> through “student permits or passes”<sup>25</sup> and directs Member States to “develop, promote and implement programmes to facilitate exchange of students and researchers among member states”.<sup>26</sup> The free movement of students and researchers, in particular, is relevant to labour migration-mobility, as is the free movement of self-employed persons.

In realising the right to seek and accept employment, the *Implementation Roadmap* suggests that Member States, with technical assistance from RECs and the AUC, should classify the priority of skills (skills gaps) and workers that they require; share information on the skills and workers required in each Member State; share and disseminate information relating to the conditions and procedures for employment and work permits in each Member State; establish transparent and accountable labour recruitment and admission systems based on clear labour laws; and promote respect for, and the protection of, the rights of migrant workers and their families through combating discrimination and xenophobia.<sup>27</sup>

<sup>22</sup> Implementation Roadmap, No. 2, at page 1.

<sup>23</sup> Article 14 of the AU Free Movement Protocol.

<sup>24</sup> Article 13 of the AU Free Movement Protocol.

<sup>25</sup> Article 13(2) of the AU Free Movement Protocol.

<sup>26</sup> Article 13(3) of the AU Free Movement Protocol.

<sup>27</sup> Implementation Roadmap, No. 13, at pages 12-4.

### 3. Article 15 Permits and Passes

1. A host States Party shall issue residence permits, work permits, or other appropriate permits or passes to nationals of other Member State seeking and taking up residence or work in the host Member State.
2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host Member State.
3. The procedures referred to in paragraph 2 shall include the right of a national of another Member State to appeal against a decision denying them a permit or pass.

To facilitate “the right to seek and accept employment” contained in Article 14 of the Protocol, Article 15 provides for the issuance of “work permits” to migrant workers “taking up . . . work” in a host Member State. Article 15 further provides for “other appropriate permits or passes”, which may refer to permits and passes for the spouse and dependants of a migrant worker and student permits and passes, neither or which are expressly defined in this Article.

Additionally, Article 15 provides that permits and passes shall be issued in accordance with the immigration procedures in the host Member State but that these “immigration procedures” must include “the right of a national of another Member State to appeal against a decision denying them a permit or pass.” In addition to the “right to seek and accept employment”, this right of appeal offers an additional protection to migrant workers and their families.

### 4. Article 18

#### Mutual Recognition of Qualifications

1. States Parties shall individually or through bilateral, multilateral or regional arrangements, mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States.
2. States Parties shall establish a continental qualifications framework to encourage and promote the free movement of persons.

In facilitating labour migration-mobility, and flowing from Article 16 (rights of residence) and Article 17 (right of establishment), the Protocol mandates Member States to “individually or through bilateral, multilateral or regional arrangements, mutually recognise academic, professional and technical qualifications of their nationals to promote the movement of persons among Member States”<sup>28</sup> and to “establish a continental qualifications framework to encourage and promote the free movement of persons.”<sup>29</sup>

As a central component to the free movement of migrant workers and their families, the mutual recognition of qualifications is an important tool to facilitate labour migration-mobility and may be best achieved through regional arrangements (in the form of Regional Qualifications Frameworks (RQFs)) and thereafter through the establishment of a Continental Qualifications Framework (CQF). Member States, assisted by RECs and the AUC, should facilitate this process. As a preliminary step, the *Implementation Roadmap* suggests that Mem-

<sup>28</sup> Article 18(1) of the AU Free Movement Protocol.

<sup>29</sup> Article 18(1) of the AU Free Movement Protocol.



bers States should ratify the African Union Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, 2014.<sup>30</sup>

#### 5. Article 19 Portability of Social Security Benefits

States Parties shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.

Article 19 of the Protocol directs Member States to “facilitate the portability of social security benefits to a national of another Member State residing or established in that Member State” through “bilateral, regional or continental arrangements”.<sup>31</sup> In addition to the mutual recognition of qualifications, the portability of social security benefits is a central component to facilitating labour migration-mobility.

The *Implementation Roadmap* suggests that Member States should ensure equality of treatment classify and categorise social security benefits, such as pension, unemployment benefits, and health or medical benefits; establish social security schemes to which non-nationals working in a host Member State may contribute; adopt social security measure that prevent

abuse and exploitation of social security benefits by non-nationals in Member States and nationals of Member States; promote the regional integration and collaboration of social security schemes in Member States in consultation with RECs; and establish mechanisms for migrant workers and their families to access their social security benefits in their own countries and in other Member States.<sup>32</sup>

#### 6. Article 23 Remittances

States Parties shall through, bilateral, regional, continental or international agreements facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.

Of direct relevance to labour migration, Article 23 of the Protocol directs Member States “through bilateral, regional, or continental agreements” to “facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.”<sup>33</sup> Remittances are a key component to labour migration-mobility. Working alongside RECs, the AUC, and the African Institute for Remittances (AIR), Member States should, among others, establish mechanisms for migrant workers and their families to transfer earnings or saving within their region and within the continent.<sup>34</sup>

<sup>30</sup> Implementation Roadmap, No. 16, at page 17.

<sup>31</sup> Article 19 of the AU Free Movement Protocol.

<sup>32</sup> Implementation Roadmap, No. 17, at pages 17-9.

<sup>33</sup> Article 23 of the AU Free Movement Protocol.

<sup>34</sup> Implementation Roadmap, No. 20, at page 20.



**7. Article 24**

**Procedure for the Movement of Specific Groups**

1. States Party may in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups including refugees, victims of human trafficking and smuggled migrants, asylum seekers and pastoralists.
2. Procedures established by a Member State under this article shall be consistent with the obligations of that Member State under the international, regional and continental instruments relating to the protection of each group of persons referred to in paragraph 1.

**Category 3: Two facilitating provisions**

**8. Article 25**

**Cooperation between Member States**

1. States Parties shall in accordance with the African Union Convention on Cross-Border Cooperation coordinate their border management systems in order to facilitate the free and orderly movement of persons.
2. States Parties shall record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory.
3. States Parties shall through bilateral or regional arrangements-cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol.

The Protocol provides protection for specific vulnerable groups, including refugees, victims of human trafficking and smuggled migrants, asylum seekers, and pastoralists.<sup>35</sup> This protection is in addition to, and must be consistent with, measures provided for in international, regional, and continental instruments and should therefore be seen as a minimum commitment. For reference, applicable international instruments are detailed in Section IIB and Annexure 2 below.

In facilitating cooperation, Article 25 directs Member States, assisted by RECs, to coordinate their border management systems in accordance with the African Union Convention on Cross Border Cooperation, 2014 (Niamey Convention) in order to facilitate the free and orderly movement of persons, which includes migrant workers and their families. The Article dictates further that Member States “shall record, document . . . and make available all forms of aggregated migration data” at its points of entry and cooperate with one another by information-sharing and exchange related to the free movement of persons.<sup>36</sup>

<sup>35</sup> Article 24(1) of the AU Free Movement Protocol.

<sup>36</sup> See Implementation Roadmap, No. 20, at page 21.



### 9. Article 26

#### Coordination and Harmonisation

1. In accordance with article 88<sup>37</sup> of the Abuja Treaty and guided, as appropriate, by the implementation Roadmap annexed to this Protocol, States Parties shall harmonise and coordinate the laws, policies, systems and activities of the regional economic communities of which they are members which relate to free movement of persons with the laws, policies, systems and activities of the Union.
2. States Parties shall harmonise their national policies, laws and systems with this Protocol and guided, as appropriate, by the Implementation Roadmap annexed to this Protocol.

In addition to the required cooperation detailed in Article 25, Article 26 enjoins Members States to harmonise their “laws, policies, systems and activities of [RECs] of which they are members which relate to the free movement of persons with laws, policies, systems and activities of the Union.” Additionally, Member States are required to

37 Article 88 of the Abuja Treaty provides:

- “1. The Community shall be established mainly through the coordination, harmonization and progressive integration of the activities of regional economic communities.
2. Member States undertake to promote the coordination and harmonization of the integration activities of regional economic communities of which they are members with the activities of the Community, it being understood that the establishment of the latter is the final objective towards which the activities of existing and future regional economic communities shall be geared.
3. To this end, the Community shall be entrusted with the coordination, harmonization and evaluation of the activities of existing and future regional economic communities.
4. Member States undertake, through their respective regional economic communities, to coordinate and harmonize the activities of their sub-regional organizations, with a view to rationalizing the integration process at the level of each region.”

harmonise their national policies, laws, and systems with the Protocol, including provisions related to labour migration-mobility.

Articles 25 and 26 therefore require Member States, assisted by RECs, to facilitate cooperation and ensure coordination and harmonisation of their laws, policies, and systems in relation to the free movement of persons. For the purposes of these *Guidelines*, these obligations placed on Member States equally apply to the labour migration-mobility related provisions of the Protocol and act as facilitating provisions for the free movement of migrant workers and their families.

#### Category 4: Two remedial provisions

4

### 10. Article 30 Remedies

1. States Parties shall provide appropriate administrative and judicial remedies in their national laws for nationals of other Member States affected by decisions of a Member State relating to the implementation of this Protocol.
2. A National of a Member State who is denied the enjoyment of the right of entry, residence, establishment or other related rights provided in this Protocol, having exhausted all legal remedies in the host Member State, may refer the matter to the African Commission on Human and Peoples Rights.

Article 30 of the Protocol provides for the right to a remedy for migrant workers and their families. It directs that Member States shall provide appropriate administrative *and* judicial remedies in their national laws for nationals of other Member States, including

migrant workers and their families, affected by decisions of a Member State relating to the implementation of the Protocol. It provides further that the African Commission on Human and Peoples' Rights (ACHPR) is the final arbiter of issues in terms of violations of the Protocol which pertain to nationals, once nationals have exhausted all legal remedies in a host Member State.

The mandate of the ACHPR is detailed in Article 45 of the *African Charter on human and Peoples' Rights*<sup>38</sup> (African Charter) and provides, among others, that the ACHPR shall "formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation"<sup>39</sup> and "[i]nterpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU, or an African Organisation recognised by the OAU." With the addition of this Article, the Protocol establishes a direct right to a remedy, through the ACHPR, for individual rights violations, including violations of the rights of migrant workers and their families.

### 11. Article 31

#### Cooperation between Member States

1. Any dispute or difference arising between States Parties with regard to the interpretation, application and implementation of this Protocol shall be settled by mutual consent between States concerned, including through negotiations, mediation, conciliation or other peaceful means.
2. In the event of failure by the disputing parties to settle the dispute or difference, the disputing Parties may:
  - a. By mutual consent, refer the dispute to an Arbitration Panel of three (3) Arbitrators whose decision shall be binding on the Parties; or
  - b. Refer the dispute to the African Court of Justice, Human Rights and Peoples' Rights, when operational.
3. The appointment of the Panel of Arbitrators shall be as follows:
  - a. The Parties to the dispute shall each appoint one arbitrator; and
  - b. The Chairperson of the Commission shall appoint the third Arbitrator who shall be the President of the Panel.
4. Pending the operationalization of the Court referred to in sub article (2) (a) above, the decision of the Panel of Arbitrators shall be binding.

Lastly, Article 31 of the Protocol provides for the settlement of disputes between Member States. It directs that disputes and differences should be settled by mutual consent, including negotiations, mediation, conciliation, or other peaceful means, failing which disputes should be referred to arbitration or the African Court of Justice, once operationalised. Pending the operationalisation of the African Court of Justice, the arbitral decision is final.

<sup>38</sup> 1981.

<sup>39</sup> Article 45(1)(b) of the African Charter.





## B. The rights of migrant workers and their families

### International law

International law recognises a multiplicity of human rights for migrant workers,<sup>40</sup> which Member States should ratify and domesticate in addition to the rights for migrant workers and their families contained in the Protocol. The African Charter on Human and Peoples' Rights<sup>41</sup> (African Charter) provides that "every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work." Additionally, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*<sup>42</sup> (ICRMW) provides an extensive charter of human rights for migrant workers and their families, including vulner-

able groups, as well as the two apposite ILO migrant workers conventions: *The Migration for Employment Convention (Revised)*, 1949 (No. 97)<sup>43</sup> and the *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143),<sup>44</sup> and specific conventions on migrant workers' social security protection<sup>45</sup>. Additionally, the Fundamental Conventions of the ILO provide for, among others, the rights to freedom of association and the effective recognition of the right to collective bargaining;<sup>46</sup> the elimination of all forms of forced and compulsory labour;<sup>47</sup> the effective abolition of child labour;<sup>48</sup> and the elimination of discrimination in respect of employment and occupation.<sup>49</sup> The *SADC Protocol on Employment and Labour*<sup>50</sup> is an example of a regional instrument which captures migrant workers' rights and can serve as a useful framework of reference for Member States and RECs as they develop, harmonise, and domesticate their regional and national laws.

<sup>40</sup> The applicable international standards for the protection of migrant workers included (at fn 16, page 15 of the 2018 *Migration Policy Framework for Africa and Plan of Action (20182027) (MPFA-POA)*:

- The 18 fundamental international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICRMW);
- The 8 ILO Fundamental (Core) Conventions;
- ILO Conventions 97 and 143 and related recommendations;
- The 2014 *Protocol (P029) to the Forced Labour Convention of 1930* (No. 29);
- *ILO Private Employment Agencies Convention*, 1997 (No. 181); and the
- *ILO Convention on Domestic Workers*, 2011 (No. 189) and associated recommendation No. 201.

<sup>41</sup> 1980.

<sup>42</sup> 1990.

<sup>43</sup> ILO Convention No. 97 has been ratified by the following 10 African countries: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Tanzania, Zanzibar, and Zambia. See Annexure 2 for further information.

<sup>44</sup> ILO Convention No. 143 has been ratified 7 African countries: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Togo, and Uganda. See Annexure 2 for further information.

<sup>45</sup> Of particular relevance are the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Social Security (Minimum Standards) Convention, 1952 (No. 102); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Maintenance of Social Security Rights Convention, 1982 (No. 157).

<sup>46</sup> ILO Convention No. 87 and No. 98.

<sup>47</sup> ILO Convention No. 29 and No. 105.

<sup>48</sup> ILO Convention No. 138 and No. 182.

<sup>49</sup> ILO Convention No. 100 and No. 111.

<sup>50</sup> 2014. The *SADC Protocol on Employment and Labour* has been adopted but not ratified.

## 25 African States which have ratified the ICRMW <sup>52</sup>

|                   |                           |
|-------------------|---------------------------|
| 1. Algeria        | 14. Mali                  |
| 2. Benin          | 15. Mauritania            |
| 3. Burkina Faso   | 16. Morocco               |
| 4. Cabo Verde     | 17. Mozambique            |
| 5. Congo          | 18. Niger                 |
| 6. Egypt          | 19. Nigeria               |
| 7. Gambia         | 20. Rwanda                |
| 8. Ghana          | 21. Sao Tome and Principe |
| 9. Guinea         | 22. Rwanda                |
| 10. Guinea-Bissau | 23. Senegal               |
| 11. Lesotho       | 24. Seychelles            |
| 12. Libya         | 25. Uganda                |
| 13. Madagascar    |                           |

In addition to these pre-existing rights, the Protocol consolidates existing rights for migrant workers and their families at the continental level. While this consolidation of rights should be viewed as a welcome development, they are not dispositive of the pre-existing rights in national, regional, and international instruments which must be afforded to migrant workers and their families. These rights should, in addition to pre-existing rights, be included in any processes, instruments, or laws which Member States and RECs produce to align their labour migration-mobility regimes with the Protocol.

## AU Free Movement Protocol

### Article 4: Non-discrimination and equal protection of the law

As a point of departure, Article 4(1) of the Protocol provides that Members States “shall not discriminate against nationals of another Member State entering, residing, or established in their territory, on the basis of their nationality, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status as provided by Article 2” of the African Charter. Article 4 provides further that a national of another Member State entering, residing, or established in a Member State in accordance with the provisions of this Protocol, shall enjoy the protection of the law of the host Member State, in accordance with the relevant national policies and laws of the host Member State. In turn, these national policies and laws should align with international law.

### Article 14: Right to seek and accept employment

Of primary importance to labour migration-mobility, Article 14 dictates that migrant workers have “the right to seek and accept employment *without discrimination* in any other Member State” in accordance with laws and policies of the host Member State. Additionally, in terms of Article 14(2), this right extends to a migrant workers’ spouse and dependants. As discussed above, the “laws and policies” of the host Member State should align international and regional law in terms of protecting and promoting the rights of migrant workers and their families. This may include, but is not limited to, freedom of association and collective bargaining, decent work and fair remuneration, suit-

<sup>51</sup> See <https://indicators.ohchr.org>, last accessed on 4 December 2018.



able working and living conditions, social security benefits, occupational health and safety, health care, retirement protection, unemployment protection, minimum leave periods, maternity and paternity leave, and education, training, and skills development.

#### **Article 15: Right of appeal in terms of permits and passes**

Related to the right to seek and accept employment, Article 15(3) affords migrant workers the right to appeal against a decision denying them a permit or pass, which should be issued in accordance with the immigration procedures in the host Member State and must be premised on the principle of non-discrimination and equal treatment expressed in Article 4 of the Protocol. While a more extensive right to remedy is detailed in Article 30 and discussed below, this right of appeal in relation to adverse decisions against migrant workers in relation to the granting of permits and passes is a welcome addition to the body of rights afforded to migrant workers.

#### **Article 20: Prohibition on mass expulsion**

By way of security for migrant workers and their families, Article 20 of the Protocol provides that the mass expulsion of persons, including migrant workers and their families, based on national, racial, ethnic, or religious characteristics, is expressly prohibited and is a welcome addition in the Protocol. Article 21 however provides for the expulsion, deportation, and repatriation of migrant workers but such a decision is subject to judicial review in terms of Article 30.

#### **Article 22: Property rights**

Article 22 establishes property rights for migrant workers “entering, residing, or established in the territory of another Member State”<sup>52</sup> and provides that property that is lawfully acquired “shall not be nationalised, expropriated, confiscated or acquired by the host Member State except in accordance with the law and after fair compensation”<sup>53</sup> is paid to that national. Further, Member States are enjoined to protect property acquired by a non-national in the event of a dispute between the Member State where the national originates and the host Member State. While Article 22 does not expressly recognise migrant workers, the right applies to persons “entering” the territory of another Member State and therefore includes migrant workers and their families.

#### **Article 24: Vulnerable groups**

In consolidating a new body of rights for migrant workers and their families, Article 24 pays particular attention to specific vulnerable groups. It directs that, in addition to and consistent with, international, regional, and continental instruments, Member States may provide additional measures to specific vulnerable groups, including refugees, victims of human trafficking and smuggled migrants, asylum seekers and pastoralists.<sup>54</sup> In line with their international obligations, Member States should seek to prioritise vulnerable groups and should consider cross-cutting themes in labour migration-mobility such as, among others, gender, poverty, children, adolescents, youth, and older persons, the rural-urban divide, the digital divide, and education.<sup>55</sup>

<sup>52</sup> Article 22(1) of the AU Free Movement Protocol.

<sup>53</sup> Article 22(2) of the AU Free Movement Protocol.

<sup>54</sup> Article 24(1) of the AU Free Movement Protocol.

<sup>55</sup> See the MPFA-POA from page 68.

### **Article 30: Right to an effective remedy**

As discussed above, Article 30 of the Protocol provides a welcome addition to the body of rights for migrant workers and their families in providing for the right to an effective remedy at the national and continental level. It directs that Member States shall provide appropriate administrative and judicial remedies in their national laws for nationals of other Member States, including migrant workers, affected by decisions of a Member State relating to the implementation of the Protocol. It provides further that the ACHPR is the final arbiter of issues in terms of violations of the Protocol which pertain to nationals, once nationals have exhausted all legal remedies in a host Member State. Article 30 is a useful mechanism for migrant workers who face discrimination or rights violations in a host Member State and permits the filing of a communication to the ACHPR in the event that a migrant worker does not receive suitable redress at the national, or regional level.



## III. GUIDELINES FOR IMPLEMENTING ACTORS

### A. Member States

#### Article 27

#### Role of Member States

1. States Parties shall be responsible for implementing this Protocol.
2. States Parties shall adopt necessary legislative and administrative measures to implement and give effect to this Protocol.
3. States Parties shall harmonize all laws, policies, agreements and immigration procedures and other procedures to ensure compliance with this Protocol.

Member States, also defined as States Parties in the Protocol, play the central role in implementing and operationalising the Protocol. As a result, the role of Member States, which is underpinned by Article 27, is multifaceted and includes three separate but interrelated processes:

- **Cooperation.** Article 25 provides that Member States are to: (1) coordinate their border management systems in order to facilitate the free and orderly movement of persons in terms of the African Union Convention on Cross-Border Cooperation;<sup>56</sup> (2) record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory;<sup>57</sup>

and (3) cooperate with each other by exchanging information related to the free movement of persons and the implementation of the Protocol through “bilateral or regional arrangements”.<sup>58</sup>

- **Coordination and harmonisation.** Article 26 requires Member States to: (1) harmonise and coordinate the laws, policies, systems, and activities of the RECs of which they are members which relate to the free movement of persons with the laws, policies, systems, and activities of the Union;<sup>59</sup> and harmonise their national policies, laws, and systems with the Protocol.<sup>60</sup>
- **Implementation.** Article 27 directs that Member States are responsible for implementing the Protocol. It provides further that Member States shall: (1) adopt necessary legislative and administrative measures to implement and give effect to the Protocol;<sup>61</sup> and (2) harmonise all laws, policies, agreements and immigration procedures and other procedures to ensure compliance with Protocol.<sup>62</sup>

In terms of Articles 25, 26, and 27 of the Protocol, read with the Implementation Roadmap, Member States should consider the following implementation strategies and recommendations, cognisant of the eleven labour migration-mobility related provisions of the Protocol which are detailed above and summarised below.

<sup>56</sup> Article 25(1) of the AU Free Movement Protocol.

<sup>57</sup> Article 25(2) of the AU Free Movement Protocol.

<sup>58</sup> Article 25(3) of the AU Free Movement Protocol.

<sup>59</sup> Article 26(1) of the AU Free Movement Protocol.

<sup>60</sup> Article 26(2) of the AU Free Movement Protocol.

<sup>61</sup> Article 27(2) of the AU Free Movement Protocol.

<sup>62</sup> Article 27(3) of the AU Free Movement Protocol.

| Category | Function                                  | Article | Purpose   |
|----------|---|---------|---|
| 1        | Implementation provisions                 | 5       | Progressive realisation and implementation of the three phases of the Protocol, particularly the right of entry and the abolition of visa requirements. |
| 2        | Core labour migration-mobility provisions | 14      | The free movement of workers and the right to seek and accept employment.   |
|          |   | 15      | The granting of permits and passes, including work permits for migrant workers and their families.  |
|          |   | 18      | The mutual recognition of qualifications and the development of RQFs and a CQF.   |
|          |   | 19      | The portability of social security benefits, including pension, unemployment benefits, and health or medical benefits.                                  |
|          |   | 23      | Remittances and the transfer of earnings and savings.   |
|          |   | 24      | Procedures for facilitating the movement of specific vulnerable groups.   |
| 3        | Facilitating provisions                   | 25      | Cooperation between Member States in terms of border management systems.  |
|          |   | 26      | Coordination and harmonisation by Member States of laws, policies, and systems in line with the Protocol.   |
| 4        | Remedial provisions                       | 30      | The right to administrative and judicial remedies.  |
|          |   | 31      | Dispute resolution between Member States.   |

In line with the eleven labour migration-mobility related provisions of the Protocol, the implementation strategies and recommendations relevant to Member States are broadly divided as follows and are subject to variable geometry, as appropriate to each Member State:

- Ratify, domesticate, and effectively implement relevant instruments.
- Ensure systems development and capacity-building.
- Facilitate technical cooperation.
- Enable the right of entry and the right to seek and accept employment.
- Monitor compliance with fair labour recruitment systems.
- Provide for the recognition of academic, professional, and technical qualifications and skills transfer.
- Abolish discrimination and promote equal treatment and opportunities in terms of working conditions.

- Allow for the portability of social security benefits.
- Promote education and civic awareness.
- Ensure and promote decent work.
- Establish dialogue mechanisms.
- Ensure access to effective remedies.

### **Ratify, domesticate, and effectively implement relevant instruments**

1. In order to effectively implement the AU Free Movement Protocol and relevant instruments, Member States should establish and capacitate an Inter-Ministerial Working Group (IMWG) or similar entity. The IMWG should:
  - 1.1. Be comprised of focal points in each Ministry and organ of state working directly or indirectly on labour migration-mobility and on the alignment of national laws,



policies, and regulations in terms of the four categories identified in the AU Free Movement Protocol.

- 1.2. Assist with ratifying, as appropriate to each Member State, the Abuja Treaty, the AU Free Movement Protocol, the fundamental ILO Conventions on Labour Migration,<sup>63</sup> the ILO *General principles and operational guidelines for fair recruitment*,<sup>64</sup> the Niamey Convention,<sup>65</sup> the African Union Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States,<sup>66</sup> and harmonising national laws and regulations with international labour standards.<sup>67</sup>

- 1.3. Update, harmonise, and develop National Labour Migration Policies (NLMPs), National Labour Codes (NLCs), market policies, and other relevant laws, frameworks, and policies in line with international human rights law, norms and standards, including:

- 1.3.1. Frameworks on Labour Migration Governance for Development and Integration and Public-Private Partnerships for Jobs Creation and Inclusive Development.<sup>68</sup>

- 1.3.2. Policies that enhance the relevance, efficiency, and effectiveness of labour market institutions. 69

- 1.3.3. Policies that develop capacity to manage the flow of cross-border labour migration, with due regard to the challenges faced by women, the youth, and vulnerable groups.<sup>70</sup>

- 1.3.4. Policies that create transparent, open, and accountable labour recruitment and admission systems, based on clear legislative categories and immigration policies that are harmonised with labour laws.<sup>71</sup>

- 1.3.5. Policies that would lead to better and more responsible labour migration flows, including adequate protection and promotion of the rights of migrant workers and their families.<sup>72</sup>

- 1.4. Ensure that all relevant stakeholders, including civil society, social partners, business development organisations, employers, trade unions, women's rights organisations, training institutions, private sector actors, and migrant workers and their families, are consulted in developing NLMPs

<sup>63</sup> Indicative Strategy 2 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 68.

<sup>64</sup> Recommended Strategy (iv) of the MPFAPOA at page 35. Implementation Roadmap, No. 22, at page 12.

<sup>66</sup> 2014.

<sup>67</sup> See note 40 above.

<sup>68</sup> Indicative Strategy 6 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 47.

<sup>69</sup> Indicative Strategy 6 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 47.

<sup>70</sup> Indicative Strategy 13 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 69.

<sup>71</sup> Recommended Strategy (ii) of the MPFAPOA at page 36.

<sup>72</sup> Indicative Strategy 7 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 47.

and labour migration-mobility related policies and strategies.<sup>73</sup>

- 1.5. Incorporate “good practice” strategies in managing labour migration in the NLMPs to recognise the vulnerability of migrant workers to unemployment, at times when national economies experience a reduction in the requirement of labour. (Consequently, Member States which have made arrangements to recruit migrant workers are urged to ensure that migrant workers experiencing job losses are adequately permitted to stay in a Member State for a reasonable period of time and seek employment; are given equality of opportunity in terms of vocational training and retraining; or as a final recourse receive financial assistance to return to their states of origin.)<sup>74</sup>
- 1.6. Be responsible for promoting and garnering support for the effective implementation of the Protocol.

### Ensure systems development and capacity-building

- 1.7. Consider and identify, as appropriate to each Member State, capacity-constraints and develop systems and capacity to ensure that the Protocol is progressively realised in accordance with the phased-implementation approach

detailed in category 1, and the *Implementation Roadmap*.<sup>75</sup>

- 1.8. Promote a human rights-based approach to labour migration in systems development, capacity building, and training, with a particular emphasis on the families of migrant workers,<sup>76</sup> women, the youth, and other vulnerable groups which include, but are not limited to, refugees, victims of human trafficking and smuggled migrants, asylum seekers, persons with disabilities and older persons, and pastoralists.

### Facilitate technical cooperation

- 1.9. Ensure collaboration and technical cooperation with other Member States, RECs, and the AUC in the ratification and implementation of the Protocol and the development of labour migration-mobility related policies and practices which correspond to the eleven labour migration-mobility related provisions detailed in categories 1-4 above.<sup>77</sup>
- 1.10. Facilitate technical cooperation activities with the JLMP and international agencies, including the ILO, the IOM, the World Health Organization (WHO), UNAIDS, the UNDP, the Organisation for Economic Co-operation and Development (OECD), and other interested entities, in order

<sup>73</sup> Recommended Strategy (xii) of the MPFAPOA at page 36.  
<sup>74</sup> Recommended Strategy (xxv) of the MPFAPOA at page 37.

<sup>75</sup> Article 5 of the AU Free Movement Protocol.  
<sup>76</sup> Article 14(2) of the AU Free Movement Protocol.  
<sup>77</sup> See Article 26(1) of the AU Free Movement Protocol and the Implementation Roadmap.





to enhance the developmental effects of labour migration.<sup>78</sup>

### **Enable the right of entry and the right to seek and accept employment**

- 1.11. Provide pre-departure training to immigration officials, including information relevant to the AU Free Movement Protocol.
- 1.12. Provide access to accurate labour market information related directly or indirectly to labour migration policies and legislation, particularly on migrant workers' rights at pre-departure and post-arrival stages, including:
  - 1.12.1. Clear, consistent, and transparent criteria or admission into a Member State for migrant workers and their families.<sup>79</sup>
  - 1.12.2. Terms and conditions of work, remedies, and access to legal advice in the event of rights violations in the host Member State.<sup>80</sup>
  - 1.12.3. Advice on national and regional administrative and judicial review mechanisms in the event that migrant workers are denied entry into a host Member State.

1.13. Publication and information sharing on official points of entry and exit with other Member States.<sup>81</sup>

1.14. Production and issuance of the African Passport to citizens of Member States, including migrant workers and their families, and harmonise laws, policies, and procedures to accommodate the issuance and use of the African Passport.<sup>82</sup>

### **Monitor compliance with fair labour recruitment systems**

- 1.15. Establish fair and ethical recruitment systems and monitor and enforce compliance with recruitment regulations, including standardised contracts of employment which are free, fair, fully consented to, transparent, and enforceable,<sup>83</sup> and enhance the capacity of labour inspection services.
- 1.16. Incorporate the laws and rules of host Member States when recruiting and employing migrant workers for employment, and ensure that copies of contracts of employment are supervised and retained by the governments of the host and sending Member States.<sup>84</sup>
- 1.17. Promote consolidation, professionalisation, and fair and ethical recruitment in the recruitment industry and adequate protection

<sup>78</sup> Recommended Strategy (xviii) of the MPFAPOA at page 36.

<sup>79</sup> Implementation Roadmap, No. 4, at page 4.

<sup>80</sup> Recommended Strategy (iii) of the MPFAPOA at page 36.

<sup>81</sup> Implementation Roadmap, No. 6, at page 5.

<sup>82</sup> Implementation Roadmap, No. 9, at page 7.

<sup>83</sup> Recommended Strategy (vi) of the MPFAPOA at page 36; Implementation Roadmap, No. 13, at page 13.

<sup>84</sup> Recommended Strategy (xxiv) of the MPFAPOA at page 37.

in terms of the *ILO Private Employment Agencies Convention*, while limiting the role of sub-agents, with the aim of turning (public and private) recruiters into comprehensive “one-stop shops” for employers and migrant workers, offering comprehensive services, including training and skills certification, job placement, and travel arrangements.<sup>85</sup>

### Provide for the recognition of academic, professional, and technical qualifications and skills transfer

- 1.18. Promote skills transfer and portability of qualifications at all skill levels; encourage the conclusion of mutual recognition agreements; and establish bodies and procedures, including Accreditation Boards, in compliance with these agreements.<sup>86</sup>
- 1.19. Develop National Qualifications Frameworks (NQFs), Regional Qualifications Frameworks (RQFs) at the level of RECs, and a Continental Qualifications Framework (CQF) at the continental level to facilitate migrant workers’ portability of qualifications.<sup>87</sup>
- 1.20. Create Minimum Standards in Targeted Qualifications at all skill levels<sup>88</sup> and implement policies

and processes that facilitate student and academic mobility.<sup>89</sup>

- 1.21. Implement the *AU Higher Education Harmonisation Strategy for Africa (2016-2025)* and the *Continental Education Strategy for Africa (2016 – 2025)*.<sup>90</sup>
- 1.22. Develop and apply TVET Quality Assurance standards in order to facilitate skills and competencies-mobility within RECs and at continental level.<sup>91</sup>

### Abolish discrimination and promote equal treatment and opportunities in terms of working conditions

- 1.23. Abolish any discrimination based on nationality between migrant workers and their families as regards employment, remuneration, and other conditions of work and employment,<sup>92</sup> and promote the human dignity of migrant workers in the workplace.
- 1.24. Put in place legislative, policy, and other mechanisms to guarantee protection and promotion of the labour rights of migrant workers and their families to address, among others, abuse of migrant workers, unethical recruitment, and human trafficking.<sup>93</sup>

<sup>85</sup> Recommended Strategy (vii) of the MPFAPOA at page 36.  
<sup>86</sup> Recommended Strategy (xxviii) of the MPFAPOA at page 19; Implementation Roadmap, No. 16, at page 17.  
<sup>87</sup> Recommended Strategy (xxx) of the MPFAPOA at page 37.  
<sup>88</sup> Implementation Roadmap, No. 16, at page 17.

<sup>89</sup> Recommended Strategy (xxxi) of the MPFAPOA at page 37.  
<sup>90</sup> Recommended Strategy (xxix) of the MPFAPOA at page 37.  
<sup>91</sup> Recommended Strategy (xxxii) of the MPFAPOA at page 37.  
<sup>92</sup> Implementation Roadmap, No. 13, at page 14.  
<sup>93</sup> Study on the Benefits and Challenges of Free Movement of Persons in Africa (2018), Phase II(d), at page 71.



- 1.25. Ensure that national laws, including constitutional, administrative, and civil law, and labour codes, provide women migrant workers, in particular women migrant domestic workers, with the same rights and protection that are extended to all workers.<sup>94</sup>
- 1.26. Strengthen or make provision for adequate supervision of working conditions for all migrant workers by the competent labour market authorities or duly authorised bodies.<sup>95</sup>
- 1.27. Promote the standardisation of bilateral labour migration agreements to ensure the protection of migrant workers and their families, and facilitate remittance transfers.<sup>96</sup>
- 1.28. Incorporate equality of opportunity and treatment measures that ensure equal access for migrant workers and nationals in the areas of employment, occupation, working conditions, remuneration, social security, basic healthcare, education, and geographical mobility.<sup>97</sup>
- 1.29. Promote equality of opportunity and treatment and the protection of the rights of women migrant workers by ensuring that labour migration policies and practices are gender-sensitive and non-discriminatory, in rec-

ognition of the increasing feminisation of labour migration.<sup>98</sup>

- 1.30. Facilitate the integration of all migrant workers, women and men, in the labour market including in the education and training sector, removing gender-based barriers that restrict women from being recruited, as well as the right to join trade unions, to form community organisations, and to freedom of association and collective bargaining.<sup>99</sup>
- 1.31. Ensure that an indigent regular migrant worker who may lose their job is not returned to their Member State, unless there is an interstate agreement to this effect and that the right of residence and work or other permits of the indigent regular migrant worker are not withdrawn. (These migrant workers should receive equality of treatment regarding security of employment, alternative employment, relief work, and return.)<sup>100</sup>

### **Allow for the portability of social security benefits**

- 1.32. Establish or ensure access to social security systems and portability of social security benefits for all migrant workers, including women migrant workers, while working in another Member State and upon their return.<sup>101</sup>

<sup>94</sup> Recommended Strategy (v) of the MPFAPOA at page 36.  
<sup>95</sup> Recommended Strategy (viii) of the MPFAPOA at page 36.  
<sup>96</sup> Recommended Strategy (xi) of the MPFAPOA at page 36.  
<sup>97</sup> Recommended Strategy (xxvii) of the MPFAPOA at page 37.

<sup>98</sup> Recommended Strategy (xiv) of the MPFAPOA at page 36.  
<sup>99</sup> Recommended Strategy (xx) of the MPFAPOA at page 36.  
<sup>100</sup> Recommended Strategy (xxvi) of the MPFAPOA at page 37.  
<sup>101</sup> Recommended Strategy (xxii) of the MPFAPOA at page 36; Implementation Roadmap, No. 19, at page 18.

1.33. Establish or ensure access to social security schemes to which non-nationals working in a host Member State may contribute<sup>102</sup> and adopt social security measures that prevent abuse and exploitation of social security benefits by non-nationals working in host Member States<sup>103</sup> and nationals of host Member States.

1.34. Establish systems for data exchanges and mutual support between Member States and categorise and classify migrant workers and the social security benefits attached to each of the below categories:

- Persons working for less than 3 months;
- Persons working for more than 3 months; and
- Self-employed persons and others.<sup>104</sup>

### Promote education and civic awareness

1.35. Promote public awareness to popularise the free movement of persons, the AU Free Movement Protocol, and the African Passport.<sup>105</sup>

1.36. Sensitise representatives of Member States, businesses, media, and citizens in general to the benefits of labour migration, including debunking negative

perceptions that fuel prejudice, discrimination, racism, stigmatisation, xenophobia, violence, hatred, crime and intolerance.<sup>106</sup>

1.37. Promote respect for, and protection of, the rights of migrant workers and their families, including combating discrimination, labour exploitation, abuse and xenophobia through civic education and awareness-raising activities.<sup>107</sup>

1.38. Promote awareness raising and prevention campaigns on notifiable diseases targeted towards migrant workers and their families, with participation of social partners, in order to combat the spread of these diseases, including HIV/AIDS, within the migrant labour community.<sup>108</sup>

### Ensure and promote decent work

1.39. Establish fair and ethical recruitment practices and incorporate mechanisms that monitor and evaluate decent working conditions, including labour inspection with respect to daily and weekly working hours and rest periods, payment and non-retention of wages, fair wages respecting minimum wages legislation, non-retention of passports and other identification documentation, and occupational safety and health conditions for all migrant workers.

<sup>102</sup> Implementation Roadmap, No. 19, at page 18.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Implementation Roadmap, No. 9, at page 7.

<sup>106</sup> Study on the Benefits and Challenges of Free Movement of Persons in Africa (2018), Phase I(d), at page 71.

<sup>107</sup> Recommended Strategy (xv) of the MPFAPOA at page 36.

<sup>108</sup> Recommended Strategy (xvii) of the MPFAPOA at page 36.



- 1.40. Facilitate migrant workers' access to grievance and redress mechanisms as well as legal protection under NLMPs and NLCs and other provisions on labour and social protection.<sup>109</sup>
- 1.41. Prevent and combat forced labour and child labour in international migration processes.
- 1.42. Ensure that domestic workers are given the necessary labour and social protection under NLMPs and NLCs.

#### Establish dialogue mechanisms

- 1.43. Establish national and sub-regional social dialogue mechanisms including representatives of IMWGs as well as workers' and employers' organisations to address migrant labour issues, including the challenges faced by women migrant workers and specific vulnerable groups.<sup>110</sup>

#### Ensure access to effective remedies

- 1.44. Establish effective complaints mechanisms in terms of the Protocol and ensure that migrant workers, especially women migrant workers, have recourse

to timely, accessible, affordable, and effective remedies.

- 1.45. Ensure that migrant workers are able to lodge complaints against their employers, private recruiters or labour exploiters, including on the grounds of sexual, physical, and psychological harassment, abuse, and violence in the workplace, and have access to remedies including for unpaid wages and compensation for violations of labour rights, without fear of reprisals and expulsion.<sup>111</sup>
- 1.46. Provide appropriate administrative and judicial remedies in national laws for persons affected by decisions of a Member State relating to the implementation of the Protocol.<sup>112</sup>
- 1.47. Adopt policies, laws, and procedures that provide migrant workers aggrieved by decisions of any administrative body relating to the right to seek and accept employment to have recourse to appellate administrative or judicial bodies, including regional appeal mechanisms.<sup>113</sup>
- 1.48. Ensure that available administrative or judicial mechanisms are brought to the attention of migrant workers and their families affected by decisions relating to exercise of their rights under the Protocol.<sup>114</sup>

<sup>109</sup> Recommended Strategy (xvi) of the MPFAPOA at page 36.  
<sup>110</sup> Recommended Strategy (xxi) of the MPFAPOA at page 36.

<sup>111</sup> Recommended Strategy (ix) of the MPFAPOA at page 35.  
<sup>112</sup> Implementation Roadmap, No. 25, at page 24.  
<sup>113</sup> Implementation Roadmap, No. 25, at page 25.  
<sup>114</sup> *Id.*

## Miscellaneous provisions

- 1.49. Domesticcate, as appropriate to each Member State, the Implementation Plan on Ouagadougou+10 and the Labour Market Information System. <sup>115</sup>
- 1.50. Domesticcate, as appropriate to each Member State, the *AU Social Protection Plan for the Informal Economy and Rural Workers*. <sup>116</sup>

## B. Regional Economic Communities

### Article 28

#### Role of Regional Economic Communities

1. Regional Economic Communities shall be the focal points for promoting, following up and evaluating implementation of this Protocol and reporting the progress towards free movement of persons in their respective regions.
2. Each Regional Economic Community shall submit periodic reports to the Commission on the progress of implementation of this Protocol within their respective region.
3. Regional Economic Communities shall harmonise their protocols, policies and procedures on free movement of persons with this Protocol.

RECs are important enablers of the free movement of migrant workers and their

families. In terms of Article 28 of the Protocol, read with the Implementation Roadmap, RECs are directed to be “focal points” for promoting, following up, and evaluating implementation of the Protocol and they are mandated to “harmonise their protocols, policies, and procedures relating to the free movement of [migrant workers and their families] with the Protocol.”

As building blocks in continental integration, RECs, enabled by Member States, play a central role in developing and harmonising regional legal instruments, policies, frameworks, and regulations relating to the free movement of migrant workers and their families. In regions where regional free movement protocols already exist, those RECs should seek to amend their protocols to align them with the eleven labour migration-mobility related provisions contained in the Protocol. Where free movement protocols are currently being developed or are not yet in existence, the applicable RECs should incorporate all relevant labour migration-mobility related provisions contained in the Protocol for more effective harmonisation and alignment.

In line with the eleven labour migration-mobility provisions of the Protocol, the harmonisation and implementation strategies and recommendations relevant to RECs are divided as follows:

- Promote harmonisation and development of policy and legal instruments at the RECs level.
- Protect and promote human (including labour) rights.
- Facilitate the provision of safe, orderly, and regular labour migration opportunities.

<sup>115</sup> Recommended Strategy (xxxiii) of the MPFAPOA at page 37.

<sup>116</sup> Recommended Strategy (xxxiv) of the MPFAPOA at page 19.



- Facilitate technical cooperation and training.
- Monitor and evaluate.

### Promote harmonisation and development of policy and legal instruments at the RECs level

2. RECS should:
  - 2.1. Designate and capacitate internal focal points or harmonisation divisions to act as point persons and liaison officers with IMWGs for the harmonisation and development of regional instruments in line with the eleven labour migration-mobility related provisions of the Protocol.
  - 2.2. Design and develop regional strategies based on these Guidelines for the accelerated implementation of the Protocol in the respective regions.
  - 2.3. Revise and harmonise existing ratified RECs free movement protocols with the Protocol, with particular reference to ECOWAS and the EAC, and with a particular emphasis on the eleven labour migration-mobility related provisions of the Protocol.
  - 2.4. Revise existing protocols which have not yet been ratified to align them with the eleven labour migration-mobility related provisions of the Protocol, with particular reference to Common Market for Eastern and Southern Africa (COMESA) and SADC.
  - 2.5. Revise and consider NLMPs and NLCs in order to provide guidance to Member States on how they may align their NLMPs and NLCs with the provisions of the Protocol,<sup>117</sup> and develop a comprehensive checklist and monitoring mechanism to ensure regional compliance with applicable international and regional instruments which relate to labour migration. (See Annexure 3 for guidance.)
  - 2.6. Promote the regional integration and collaboration of social security schemes between Member States.<sup>118</sup>
  - 2.7. Develop a common mechanism to monitor compliance and implementation of the Protocol, other relevant instruments, and labour migration-mobility provisions contained in regional free movement protocols<sup>119</sup> through collaborative efforts by the appointed focal points or harmonisation divisions.
  - 2.8. Develop resources and materials for Members States to facilitate the accelerated implementation of the Protocol, other relevant instruments, and regional free movement protocols, which may include:
    - 2.8.1. Draft model laws on labour migration in terms of the Protocol.
    - 2.8.2. Draft regulations on labour migration.

<sup>117</sup> Recommended Strategy (vi) of the MPFA-POA at page 38.

<sup>118</sup> Implementation Roadmap, No. 19, at page 19.

<sup>119</sup> Study on the Benefits and Challenges of Free Movement of Persons in Africa (2018), Phase I(d), at page 72.

2.8.3. Draft regulations on justifiable limitations to the free movement of persons, including migrant workers and their families, on the grounds of public health, public order, and national security.

2.8.4. Draft technical implementation frameworks and administrative processes for labour mobility agreements. <sup>120</sup>

### Protect and promote human (including labour) rights

2.9. In harmonising existing free movement protocols and in developing arrangements for regional integration, ensure that the human rights of migrant workers and their families are protected and promoted by supporting domestication of all relevant international, continental, and regional instruments. <sup>121</sup>

2.10. In harmonising and developing existing free movement protocols or preparing new free movement protocols, specifically ensure that:

2.10.1. Adequate provisions on non-discrimination and equal protection of the law for migrant workers and their families are included in regional instruments, with the families of migrant workers receiving all relevant

legal protections afforded to migrant workers.

2.10.2. Clear and realisable timeframes are specified for progressive implementation of the right of entry, including the right to seek and accept employment and the issuance of work permits for migrant workers and other appropriate permits or passes for the families of migrant workers.

2.10.3. The mutual recognition of qualifications is developed, including through RQFs and a CQF. <sup>122</sup>

2.10.4. Regional arrangements are made for the portability of social security benefits.

2.10.5. The transfer of earnings and savings of migrant workers and their families is facilitated through regional arrangements.

2.10.6. Procedures for the free movement and protection of specific vulnerable groups, including, but not limited to, refugees, victims of human trafficking and smuggled migrants, asylum seekers, persons with disabilities and older persons, and pastoralists are expressly recognised. <sup>123</sup>

<sup>120</sup> Recommended Strategy (iv) of the MPFAPOA at page 38.  
<sup>121</sup> See note 42 above.

<sup>122</sup> Article 18(2) of the AU Free Movement Protocol.  
<sup>123</sup> Article 24(1) of the AU Free Movement Protocol.





2.10.7. There is an absolute prohibition on the mass expulsion of migrant workers and their families.

2.10.8. Property is protected and is only expropriated in accordance with law and after fair compensation is paid.

2.10.9. Provisions suspending the free movement of migrant workers and their families, on the basis of public health, public order, or national security are detailed in law, carefully circumscribed, and are not arbitrary or irrational in their nature.

2.10.10. Migrant workers and their families have the right to a speedy and effective remedy for violations of provisions of free movement protocols through access to national courts or appropriate fora, regional economic community courts, and the ACHPR.

### **Facilitate the provision of safe, orderly, and regular labour migration opportunities**

2.11. Facilitate the provision of work permits or passes to migrant

workers and the issuing of the African Passport to citizens of Member States, including migrant workers and their families.<sup>124</sup>

2.12. Promote public awareness to promote and popularise the African Passport.<sup>125</sup>

2.13. Facilitate and engage with employers' organisations, workers' organisations, including representatives of rural, informal, and women migrant workers' organisations, professional associations, and other relevant stakeholders to facilitate holistic and considered labour migration.

2.14. Develop or implement policies that will grant equal opportunities to non-REC African nationals<sup>126</sup> and promote the right to seek and accept employment for the Diaspora and foreign nationals who are not nationals of Member States.

### **Facilitate technical cooperation and training**

2.15. Through focal points, facilitate inter-REC cooperation and enhance cooperation and coordination amongst Member States in sub-regions and regions, with a view to facilitating the free movement of migrant workers and their families at bilateral, sub-regional, and regional levels.<sup>127</sup>

<sup>124</sup> Implementation Roadmap, No. 9, at page 7.

<sup>125</sup> *Id.*

<sup>126</sup> Indicative Strategy 12 of the Agenda 2063, First Ten-Year Implementation Plan 2014-2023 at page 69.

<sup>127</sup> Recommended Strategy (ii) of the MPFAPOA at page 38.

- 2.16. Maintain open and continued contact and communication between Member States in order to ensure fair working conditions, and decent work, for nationals working in other Member States. <sup>128</sup>
- 2.17. Coordinate with the JLMP and establish Intra-Africa Talent Mobility Partnership Programmes (IATMPP) and Youth, Gender, and Diaspora Mobility Partnership Programmes (YGDMP) to facilitate labour mobility, education, integration, and contribute to economic development. <sup>129</sup>
- 2.18. Facilitate technical cooperation with the JLMP and interested institutions, in order to enhance the developmental effects of labour migration. <sup>130</sup>
- 2.19. Facilitate regional cooperation and the development of regional policies and frameworks on justifiable limitations to the free movement of migrant workers and their families, based on the grounds of public health, public order, and national security.

### Monitor and evaluate

- 2.20. Convene annual dialogues and consultations with Member

States and the AUC to reflect and monitor progress, and determine challenges and opportunities for the free movement of migrant workers and their families, <sup>131</sup> including on the implementation of the Protocol.

- 2.21. Develop regional mechanisms for monitoring and evaluating implementation of the labour migration-mobility related provisions of the Protocol by Member States, <sup>132</sup> and identify activities and policies which can enhance implementation. <sup>133</sup>
- 2.22. Undertake research which highlights the economic gains of labour migration-mobility, including labour market analysis to identify imbalances in labour markets and opportunities for skills matching, and use the findings to promote the implementation of free movement of migrant workers regimes. <sup>134</sup>
- 2.23. Undertake skills gaps analyses and skills forecasting to determine the skills that will be necessary in the short-, medium-, and long-term for the economic development of the regions, and support Member States in adapting their education systems and training courses toward qualifications that will be needed across the region. <sup>135</sup>

<sup>128</sup> Recommended Strategy (iii) of the MPFAPOA at page 38.

<sup>129</sup> Study on the Benefits and Challenges of Free Movement of Persons in Africa (2018), Phase II(a), at page 72.

<sup>130</sup> Recommended Strategy (xviii) of the MPFAPOA at page 36.

<sup>131</sup> Study on the Benefits and Challenges of Free Movement of Persons in Africa (2018), Phase II(c), at page 72.

<sup>132</sup> Implementation Roadmap, No. 23, at page 22.

<sup>133</sup> Recommended Strategy (vii) of the MPFAPOA at page 38.

<sup>134</sup> Recommended Strategy (viii) of the MPFAPOA at page 38.

<sup>135</sup> Recommended Strategy (ix) of the MPFAPOA at page 20.



## C. African Union Commission

### Article 29

#### Role of the Commission

3. The Commission shall follow up and evaluate the implementation of this Protocol by the Member States and shall through the relevant Specialised Technical Committees submit periodic reports to the Executive Council on the status of implementation of this protocol.
4. The Commission shall in coordination with Member States develop and apply a continental follow up and coordinating mechanism for assessing the status of implementing this Protocol.
5. The follow up and coordinating mechanism shall include the collection and analysis of data nationally and regionally in order to assess the state of the free movement of persons.

Alongside Member States and RECs, Article 29 of the Protocol directs the AUC, in collaboration with Member States, to follow up and evaluate the implementation of the Protocol by Member States and through relevant Special Technical Committees (STCs) submit periodic reports to the Executive Council on their implementation of the Protocol. Additionally, the AUC is enjoined to develop and apply a continental “follow up and coordinating mechanism”, which includes the collection and analysis of national and regional free movement data, for assessing the status of implementing the Protocol.<sup>136</sup>

The *Implementation Roadmap* suggests additional roles for the AUC in terms of

the eleven labour migration-mobility related provisions in the Protocol. These roles are broadly divided as follows:

- Provide technical assistance.
- Establish a continental coordinating mechanism.
- Monitor and evaluate implementation.

#### Provide technical assistance

3. The AUC should:
  - 1.1. Assist Member States to strengthen their capacity to implement the Protocol.<sup>137</sup>
  - 1.2. Provide technical assistance to Member States in identifying and assessing existing categories of migrant workers in accordance with the MPFA-POA.<sup>138</sup>
  - 3.3. Support Members States and RECs in classifying skills gaps and migrant workers required in Member States,<sup>139</sup> and facilitate information-sharing on the skills and migrant workers required in each Member States.<sup>140</sup>
  - 3.4. Assist Member States and RECs with sharing and disseminating information relating to the conditions and procedures for employment and work permits in each Member State.<sup>141</sup>

<sup>137</sup> Implementation Roadmap, No. 24, page 23.

<sup>138</sup> *Id.*, No. 13, page 12.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at page 13.

<sup>141</sup> *Id.*

<sup>136</sup> Article 29(3) of the AU Free Movement Protocol.

- 3.5. Develop the CQF in coordination with Member States and RECs. <sup>142</sup>
- 3.6. Assist Member States and RECs with the development of regional and continental mechanisms for the transfer of earnings and savings within the regions, and coordinate engagements with the AIR. <sup>143</sup>

### Establish a continental coordinating mechanism

- 3.7. In conjunction with the African Labour Migration Advisory Committee and the Pan-African Forum on Migration, develop and apply a continental monitoring and coordinating mechanism for assessing the status of implementation of the Protocol, <sup>144</sup> and

collect and analyse national and regional data to assess the state of the free movement of migrant workers and their families. <sup>145</sup>

### Monitor and evaluate implementation

- 3.8. Monitor and evaluate the implementation of the Protocol by Member States, <sup>146</sup> and submit periodic reports to the Executive Council through the relevant STCs on the status of implementation: identifying challenges to implementation and success stories and case studies; and making recommendations on measures to improve implementation of the Protocol.

<sup>142</sup> *Id*, No. 16, page 17.

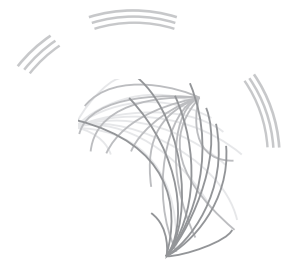
<sup>143</sup> *Id*, No. 20, page 20.

<sup>144</sup> *Id*, No. 24, page 23.

<sup>145</sup> *Id* at page 24.

<sup>146</sup> *Id*.

## IV. RETENTION OF SKILLED NATIONALS AND THE DIASPORA



The retention of skilled workers, and the mitigation of “brain drain”, remains of high importance to Member States and the continent as a whole. In promoting “brain gain” and in seeking to develop the role of the Diaspora, Member States and RECs, supported by the AUC, should:

1. Promote the retention of skilled nationals, particularly health professionals, by promoting the New Partnership for Africa’s Development (NEPAD) strategy for retention of Africa’s human capacities and generating gender-responsive economic development programmes to provide gainful employment, professional development, and educational opportunities to qualified nationals in their home countries.<sup>147</sup>
2. Promote “brain gain” by encouraging nationals abroad to contribute to the development of their Member State, through financial and human capital transfers, such as short and long-term return migration; the transfer of skills, knowledge, and technology, including in the context of programmes such as the IOM Migration in Development for Africa (IOM-MIDA) Pro-

gramme, and activities of the ILO, WHO, and other relevant agencies.<sup>148</sup>

3. Standardise and establish policies for the replacement of qualified persons who have left their Member State of origin, including strategies to attract the Diaspora, retention policies, and programmes for training foreign nationals.<sup>149</sup>
4. Implement strategies for the retention of skilled nationals that encourage:
  - The development of skills of migrant workers through international education and work opportunities, and their return to their countries of origin.<sup>150</sup>
  - The temporary return of qualified nationals in the Diaspora to alleviate skill shortages in their countries of origin.<sup>151</sup>
  - The contribution of human resources on the continent by facilitating regional and continental mobility of skilled professionals.<sup>152</sup>

<sup>147</sup> Recommended Strategy (i) of the MPFAPOA at page 21.

<sup>148</sup> Recommended Strategy (ii) of the MPFAPOA at page 21.

<sup>149</sup> Recommended Strategy (iii) of the MPFAPOA at page 21.

<sup>150</sup> Recommended Strategy (iv) of the MPFAPOA at page 21.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

## V. REMITTANCES

In addition to provisions on remittances provided in these *Guidelines*, Member States and RECs should:

1. Establish affordable mechanisms for migrant workers and their families to transfer earnings or savings to their countries of origin. <sup>153</sup>
2. Coordinate regional and international mechanisms for the transfer of earnings or savings within Africa's regions. <sup>154</sup>
3. Reduce the cost of transferring remittances by fostering competition in remittances markets, <sup>155</sup> and promote web-based remittance transfer technologies.
4. Encourage the transfer of remittances by adopting sound macro-economic policies conducive to investment and growth and appropriate financial sector policy that encourages financial institutions and their outreach, such as post-office networks, supporting credit unions, and rural financial service providers. <sup>156</sup>
5. Strengthen collaboration with AIR, relevant stakeholders in civil society, the donor community, and financial sector to create incentive strategies and investment opportunities for remit-

ters in commercial, entrepreneurial, and other productive activities. <sup>157</sup>

6. Promote the effective mobilisation and utilisation of the Diaspora Funds for Investment and development of the public and private sector, which in the long term will improve the macro-economic environment and reduce outflows or emigration of African professionals. <sup>158</sup>
7. Make it easier for migrant workers and their families to access financial services, including by extending financial literacy training to remittance senders and receivers. <sup>159</sup>
8. Enhance the use and security of technology, such as mobile money, for cross-border remittances. <sup>160</sup>

The AIR should:

9. Collect and disseminate data on the remittances within the African regions. <sup>161</sup>
10. Provide guidelines on improving the policy on remittances within the African regions with specific focus on reducing transaction cost and encouraging more remittances through safe and secure financial systems. <sup>162</sup>

<sup>153</sup> Implementation Roadmap, No. 20, at page 20.

<sup>154</sup> *Id.*

<sup>155</sup> Recommended Strategy (i) of the MPFAPOA at page 22.

<sup>156</sup> Recommended Strategy (ii) of the MPFAPOA at page 22.

<sup>157</sup> Recommended Strategy (iii) of the MPFAPOA at page 22.

<sup>158</sup> Recommended Strategy (v) of the MPFAPOA at page 23.

<sup>159</sup> Recommended Strategy (vi) of the MPFAPOA at page 23.

<sup>160</sup> Recommended Strategy (vii) of the MPFAPOA at page 23.

<sup>161</sup> Implementation Roadmap, No. 20, at page 21.

<sup>162</sup> *Id.*



## VI. LABOUR MIGRATION DATA AND RESEARCH

In addition to provisions on data collection provided in these *Guidelines*, Member States and RECs should:

Enhance capacity-building support to Member States to increase significantly the availability of high-quality, timely, and reliable data; disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location, and other characteristics relevant in national contexts.<sup>163</sup>

Enhance national and regional labour migration data collection, analysis, and exchange to document the conditions and needs of migrant women and men workers and their families.<sup>164</sup>

Improve the quality of data reporting on remittance and migration statistics and generate qualitative evidence, including on the gender dimensions of remittance flows, to create a strong basis for future gender-responsive policy action on remittances. Data should be disaggregated by sex, age, and other relevant factors of migration.<sup>165</sup>

### IMPLEMENTATION, FOLLOW-UP AND REVIEW

These *Guidelines* should be disseminated as widely as possible, in particular to Member States and their IMWGs, RECs and their focal points, departments within the AUC, organs of the AU, international organisations, civil society organisations and interest groups, and other relevant stakeholders. They should be reviewed, when appropriate, by relevant Specialised Technical Committees, stakeholders and experts in labour migration.

At the national level, Member States are encouraged to take these *Guidelines* into account in aligning their national laws, policies, and regulations with the AU Free Movement Protocol. On a regional level, RECs are encouraged to take these *Guidelines* into account in harmonising free movement regimes within their geographical areas taking into account the labour migration-mobility related provisions of the Protocol.

<sup>163</sup> UN SDG 17.18.

<sup>164</sup> Recommended Strategy (xix) of the MPFAPOA at page 18.

<sup>165</sup> Recommended Strategy (iv) of the MPFAPOA at pages 22-3.

## Annexes

### ANNEXURE 1: EXTENDED LIST OF DEFINITIONS

**“Abuja Treaty”** means the *Treaty Establishing the African Economic Community*, 1991.

**“AfCFTA Agreement”** means the *Agreement Establishing the African Continental Free Trade Area*, 2018, and its Protocols, Annexes and Appendices.

**“African Charter”** means the *African Charter on Human and Peoples’ Rights*, 1981.

**“Assembly”** means the Assembly of Heads of State and Government of the African Union.

**“Asylum-seeker”**<sup>166</sup> refers to a person who is awaiting a status determination as a refugee in accordance with national and international law.

**“AU Free Movement Protocol”** or **“Protocol”** means the *Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment*, 2018.

**“Brain drain”** means the “emigration of trained or qualified persons, resulting in a depletion of skilled labour in a given country”.<sup>167</sup>

**“Brain gain”** means the “immigration of trained or qualified persons to a given country”,<sup>168</sup> including a destination country.

**“Brain waste”** is a term commonly used in migration terminology in relation to other terms such as “brain drain” and “brain

gain”. It refers to the lack of, or bad, utilisation of potential foreign human resources available in the labour market. It relates to migrant workers’ skills, qualifications, and job experience acquired in the country of origin that are not properly utilised in the labour market of the country of destination.

**“Categories of international migrant workers”**<sup>169</sup> (general):

- a. **long-term international migrant workers**, that is, international migrant workers whose duration of stay in the country of labour attachment has been one year or more (12 months or more). Where relevant, long-term international migrant workers may be sub-divided to distinguish between those with duration of stay of less than 5 years, and those with duration of stay of 5 years or more;
- b. **short-term international migrant workers**, that is, international migrant workers whose cumulative duration of stay in the country of labour attachment has been of limited duration, i.e., less than 12 months;
- c. **seasonal international migrant workers**, whose work by its character is dependent on seasonal conditions and is performed during only a part of the year; and
- d. Similar considerations for separate identification may also apply to **frontier workers** and **itinerant workers**.

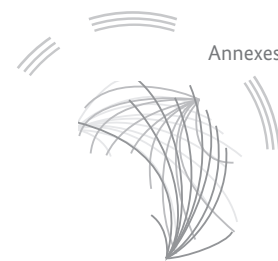
<sup>166</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 1951.

<sup>167</sup> UNCTAD ‘Economic Development in Africa Report: Migration for Structural Transformation’ (2018) at page xix.

<sup>168</sup> *Id.*

<sup>169</sup> ILO *Guidelines concerning statistics of international labour migration*, ICLS/20/2018/Guidelines, 20th International Conference of Labour Statisticians, Geneva, 10-19 October 2018.





**“Categories of international migrant workers<sup>170</sup> (specific)”:**

- a. **frontier workers**, who are not usual residents of the country of measurement but have been granted permission to be employed on a continuous basis in that country provided they depart at regular and short intervals (daily or weekly) from the country;
- b. **seasonal workers**, who are not usual residents of the country of employment, whose work by its character is dependent on seasonal conditions and is performed during part of the year;
- c. **itinerant workers**, who are not usual residents of the country of measurement but travel to the country for short periods for work-related reasons;
- d. **project-tied workers**, who are admitted to the country of employment for a defined period of employment solely on a specific project being carried out in that country by their employer;
- e. **specified-employment workers**, who have been sent by their employer, such as a multinational enterprise, for a restricted and defined period of time to the country of employment to undertake a specific assignment or duty, or to undertake work that requires professional, commercial, technical or other highly specialized skills or work that is transitory or brief, and who are required to depart from the country of employment either at the expiration of their authorized period of stay or earlier if they no longer undertake that specified assignment or duty or engage in that work;
- f. **self-employed workers**, who are engaged in a remunerated activity otherwise than under a contract of employment and who earn their living through their activity normally working alone or together with members of their family, also including any other migrant worker recognized as self-employed by applicable legislation of the country of employment or bilateral or multilateral agreements;
- g. **workers employed on an offshore installation** that is under the jurisdiction of the country of measurement, of which the workers are not nationals;
- h. **foreign domestic workers** engaged by resident employers;
- i. **foreign students** who entered the country on the declared purpose of studying but then were working or seeking work or combining work and study;
- j. **international travellers on tourism trips whose main purpose is to be employed** in the country of visit and receive compensation for the labour input provided;
- k. **working or seeking work refugees and asylum-seekers**, irrespective of authorization to work during processing of refugee status or sanctuary request;
- l. **forcibly displaced persons across borders** due to natural or human-made disasters working or seeking work in the country of displacement; and
- m. **persons trafficked across international borders** for forced labour or labour exploitation.

“**Deskilling**” is a labour market-related term that describes the phenomenon experienced by semi-skilled or highly-skilled work-

<sup>170</sup> ILO *Guidelines concerning statistics of international labour migration, 2018.*

ers who enter the labour market and obtain a lower-skilled job (compared to their acquired qualifications) and are considered to be “over-qualified” for the job they occupy. The longer they stay in that lower-skilled job, the harder it is for them to obtain a job in accordance with their qualifications.

**“Destination / receiving country”** means “a country that has received a certain number of refugees and migrants on a yearly basis by presidential, ministerial, or parliamentary decision.”<sup>171</sup>

**“Diaspora”** or **“African Diaspora”** consists of peoples of African origin living outside the continent, irrespective of their citizenship and nationality and who are willing to contribute to the development of the continent and the building of the African Union.<sup>172</sup>

**“Domestic work”** refers to work performed in or for a household or households.

**“Domestic workers”** means any person engaged in domestic work within an employment relationship. A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

**“Forced labour”**<sup>173</sup> refers to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

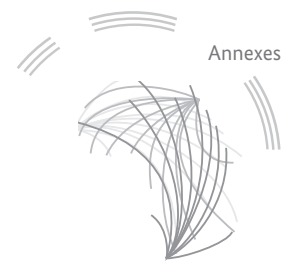
**“Forcibly displaced persons across borders”**: There is no globally agreed upon definition of “displaced persons” who move across borders. The *ILO Migration for Employment Recommendation (Revised)*, 1949 (No. 86), refers to displaced persons, but provides no definition. Paragraph 2 states “[f]or the purpose of this Recommendation, references to the Government or competent authority of a territory of emigration should be interpreted as referring, in the case of migrants who are refugees or displaced persons, to anybody established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.” Paragraph 21(2) provides that in concluding bilateral agreements “Members should take into account the provisions of the Model Agreement annexed to the present Recommendation in framing appropriate clauses for the organisation of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons”. The Constitution of the International Refugee Organisation (predecessor to UNHCR) noted that, the term “forcibly displaced persons”<sup>174</sup> has been widely recognised as a term to constitute “a person who has been deported from, or has been obliged to leave, his country of nationality or of former habitual residence, such as persons who were compelled to undertake forced labour or who were deported for racial, religious, or political reasons.”

<sup>171</sup> UNCTAD ‘Economic Development in Africa Report: Migration for Structural Transformation’ (2018) at page xix.

<sup>172</sup> Executive Council Decision EX.CL/221 (VII) (2005) on the Definition of the African Diaspora, adopted in Sirte, Libya in July 2005.

<sup>173</sup> Article 21 of the ILO Forced Labour Convention, 1930 (No. 29).

<sup>174</sup> Constitution of the International Refugee Organization and Agreement on Interim Measures to be Taken in Respect of Refugees and Displaced Persons. Section B, Definition of Displaced Persons. General Assembly, 15 December 1946.



**“Free movement of persons”** means the right of nationals of a Member State to enter, move freely, and reside in another Member State in accordance with the laws of the host Member State and to exit the host Member State in accordance with the laws and procedures for exiting that Member State.<sup>175</sup>

**“Implementation Roadmap”** means the *Implementation Roadmap to the Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment*, 2018.

**“Inter-regional migration”** means “the temporary or permanent movement of persons between regional economic communities”.<sup>176</sup>

**“Intra-regional migration”** means “the temporary or permanent movement of persons within a given regional economic community.”<sup>177</sup>

**“Intra-African migration”** means “the temporary or permanent movement of persons within the continent of Africa”.<sup>178</sup>

**“International migrants”**<sup>179</sup> include all those residents of a given country who have ever changed their country of usual residence. International migrants may be measured as “all persons who are usual residents of that country and who are citizens of another country (foreign population) or whose

place of birth is located in another country (foreign-born population)”. In particular:

- a. **the foreign-born population of a country** includes all persons who have that country as the country of their usual residence and whose place of birth is located in another country. They correspond to the stock of international migrants who have migrated at least once in their life and currently reside outside their country of birth. People born outside their country of current residence but who are citizens of that country at birth (e.g. born abroad of national parent(s) living abroad) are sometimes excluded from the count of foreign-born population. The recorded country of birth refers to the geographical entity at the time of data collection. Native born persons can be nationals or foreign citizens or both; or
- b. **the foreign population of a country** includes all persons who do not have citizenship of the country of their usual residence. It includes resident stateless persons. It excludes international migrants who have acquired citizenship of their country of usual residence. The foreign population can be foreign-born or native-born.

**“International Labour Migration”**<sup>180</sup> is used as a generic term to refer, in general, to concepts related to the process and outcome of international labour migration and, in particular, to the following three concepts:

- a. international migrant workers;
- b. for-work international migrants; and
- c. return international migrant workers.

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<sup>175</sup> Article 1 of the AU Free Movement Protocol.

<sup>176</sup> UNCTAD ‘Economic Development in Africa Report: Migration for Structural Transformation’ (2018) at page xxi.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> ILO *Guidelines concerning statistics of international labour migration*, ICLS/20/2018/Guidelines, 20th International Conference of Labour Statisticians, Geneva, 10-19 October 2018.

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<sup>180</sup> *Id.*

International labour migration may take the form of **international labour mobility**, as temporary or short-term movement of persons across countries for employment-related purposes in the context of the free movements of workers in regional economic communities. The latter are considered migrant workers if they meet the criteria listed above under the definition of international migrant workers: (a) usual residents; and (b) not usual residents, or non-resident foreign workers.

**“International Migrant Workers”**<sup>181</sup> measures the current labour attachment of international migrants in a country, irrespective of the initial purpose of migration, and of others who are not usual residents of the country but have current labour attachment in the country of measurement. In this context, the terms “international migrant workers” and “international migrant and non-resident foreign workers” are equivalent. Workers moving abroad under Free Movement Protocols fall under this definition. They are defined, for statistical purposes, as all persons of working age present in the country of measurement who are in one of the following two categories:

- a. **usual residents:** international migrants who, during a specified reference period, were in the labour force of the country of their usual residence, either in employment or in unemployment; or
- b. **not usual residents, or non-resident foreign workers:** persons who, during a specified reference period, were not usual residents of the country but were present in the country and had a labour attachment to the country,

i.e., were either in employment supplying labour to resident producer units of that country or were seeking employment in that country.

**“International Migrant Workers may be classified by country of labour attachment and country of origin”**<sup>182</sup>. In particular:

- a. **country of labour attachment** is the country in which the international migrant worker was supplying labour to resident producer unit(s) during the specified reference period used for measurement; or
- b. depending on the definition used for measurement purposes, the **country of origin** of the international migrant worker may refer to the country of birth, the country of citizenship or the country of previous usual residence.

**“Migrant workers in an irregular situation”**<sup>183</sup> means were a migrant worker is unauthorised to enter, to stay, and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to any international agreement to which that State is a party.

**“Niamey Convention”** means the *African Union Convention on Cross-Border Cooperation*, 2014.

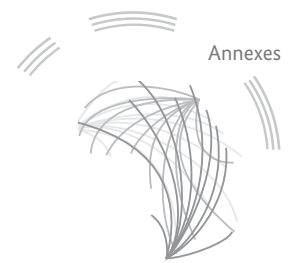
**“Origin / sending country”** means the “country that is a source [or the origin] of migratory flows (regular or irregular)”.<sup>184</sup>

<sup>182</sup> *Id.*

<sup>183</sup> Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

<sup>184</sup> UNCTAD ‘Economic Development in Africa Report: Migration for Structural Transformation’ (2018) at page xxii.

<sup>181</sup> *Id.*



**“Permanent and temporary international migrant workers”**<sup>185</sup> are classified on the basis of the nature of intended stay in the country of labour attachment at the time of entry, as follows:

- a. **permanent international migrants**, that is, international migrants with the intention of settling for a lifetime in the country of labour attachment or country of destination. For practical purposes, in the case of employees with labour contracts, permanent international migrants may be defined on the basis of the duration of the labour contract, such as those with labour contracts with a duration of 5 years or more. From the perspective of the country of citizenship, when different from the country of labour attachment or country of destination, permanent international migrants may be regarded as “citizens working abroad with no intention of returning to the country of citizenship”. Similarly, from the perspective of the country of birth, when different from the country of labour attachment or country of destination, permanent international migrants may be regarded as “native-born persons working abroad with no intention of returning to the country of birth”; or
- b. **temporary international migrants**, that is, international migrants entering the country of labour attachment or country of destination with the intention of stay for a limited period of time period, which may be less or more than 12 months. The time restriction may be voluntary on the part of worker or due to the needs of the employing organiza-

tion. For practical purposes, in the case of employees with labour contracts, temporary international migrants may be defined on basis of the duration of the labour contract. From the perspective of the country of citizenship, when different from the country of labour attachment or country of destination, temporary international migrants may be regarded as “citizens working abroad with the intention of returning to the country of citizenship”. Similarly, from the perspective of the country of birth, when different from the country of labour attachment or country of destination, temporary international migrants may be regarded as “native-born persons working abroad with the intention of returning to the country of birth”.

**“Persons excluded as international migrant workers”**<sup>186</sup> include:

- a. foreign military and diplomatic personnel;
- b. international travellers on tourism trips undertaking work in the country of visit that is incidental to the trip (i.e. not its main purpose); and
- c. staff of call centres in non-resident production units and others providing services from a foreign location.

**“Portability of skills”**<sup>187</sup> refers to:

- a. Employable skills which can be used productively in different jobs, occupations, and industries; and

<sup>185</sup> ILO Guidelines concerning statistics of international labour migration.

<sup>186</sup> ILO Guidelines concerning statistics of international labour migration.

<sup>187</sup> ILO Recommendation No. 195 concerning human resources development: education, training and lifelong learning, 2004.

- b. Certification and recognition of skills within national and international labour markets.

**“Portability of social security and portability of earned benefits”:** It is noted that there is no internationally agreed definition for the ‘portability’ of social security benefits. In literature, authors often use the term portability to refer to measures aimed at the maintenance of acquired rights and rights in the course of acquisition as well as payments of benefits abroad.<sup>188</sup> Others however use the term more broadly to refer collectively to all coordination principles (including equality of treatment and administrative assistance).<sup>189</sup> ILO Conventions and Recommendations relevant to migrant workers’ social protection<sup>188</sup> do not refer to portability. The only international labour standard that uses the term portability is the *Domestic Workers Recommendation*, 2011 (No. 201).<sup>189</sup> Furthermore, the *Guiding principles on the access of refugees and other forcibly displaced persons to the labour market*, 2016<sup>190</sup> as well as the *Multilateral Framework on Labour Migration*, 2006<sup>191</sup> also refer to portability without clarifying or defining its meaning. ILO Conventions and Recommendations recognise and address the specific disadvantages faced by migrant workers in accessing social security. Consequently, these documents call, amongst others, for increased social security coordination between countries through bilateral and multilateral agreements providing for the equality of treatment with the nation-

als of the host country, as well as embodying appropriate arrangements for the maintenance of migrants’ acquired rights and rights in course of acquisition (also commonly referred to as ‘portability’).

**“RECs”** means the Regional Economic Communities recognised by the African Union, namely, the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); and the Southern African Development Community (SADC).

**“Skills recognition”**<sup>192</sup> refers to the evaluation and recognition of credentials and skills earned outside the country of employment (in the case of migrants), or country of origin (in the case of returning migrants). Recognition of qualifications covers both academic and professional titles, while professional recognition covers regulated and non-regulated professions.

**“Refugee”**<sup>193</sup> refers to someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.

<sup>188</sup> ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118), ILO Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128), ILO Maintenance of Social Security Rights Convention, 1982 (No. 157), ILO Social Security (Seafarers) Convention (Revised), 1987 (No. 165), ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), and ILO Maintenance of Social Security Rights Recommendation, 1983 (No. 167).

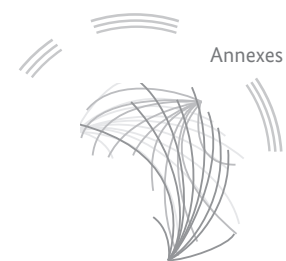
<sup>189</sup> At para 22.

<sup>190</sup> At para 19.

<sup>191</sup> At para 9.9.

<sup>192</sup> ILO Report of the Discussion, Tripartite Technical Meeting on Labour Migration, November 2013.

<sup>193</sup> UN General Assembly, Convention Relating to the Status of Refugees, 1951.



## ANNEXURE 2: RATIFICATION TABLES (AS OF 18 FEBRUARY 2019)

### A. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICRMW)

#### 25 African States which have ratified the ICRMW <sup>194</sup>

|                 |                   |                |                           |
|-----------------|-------------------|----------------|---------------------------|
| 1. Algeria      | 8. Ghana          | 14. Mali       | 20. Rwanda                |
| 2. Benin        | 9. Guinea         | 15. Mauritania | 21. Sao Tome and Principe |
| 3. Burkina Faso | 10. Guinea-Bissau | 16. Morocco    | 22. Rwanda                |
| 4. Cabo Verde   | 11. Lesotho       | 17. Mozambique | 23. Senegal               |
| 5. Congo        | 12. Libya         | 18. Niger      | 24. Seychelles            |
| 6. Egypt        | 13. Madagascar    | 19. Nigeria    | 25. Uganda                |
| 7. Gambia       |                   |                |                           |

### B. ILO Forced Labour Convention, 1930 (No. 29)

#### 54 African States which have ratified ILO Convention 29 <sup>195</sup>

|                             |                                  |                |                                  |
|-----------------------------|----------------------------------|----------------|----------------------------------|
| 1. Algeria                  | 14. Democratic Republic of Congo | 27. Lesotho    | 41. Sao Tome and Principe        |
| 2. Angola                   | 15. Djibouti                     | 28. Liberia    | 42. Senegal                      |
| 3. Benin                    | 16. Egypt                        | 29. Libya      | 43. Seychelles                   |
| 4. Botswana                 | 17. Equatorial Guinea            | 30. Madagascar | 44. Sierra Leone                 |
| 5. Burkina Faso             | 18. Eritrea                      | 31. Malawi     | 45. Somalia                      |
| 6. Burundi                  | 19. Eswatini                     | 32. Mali       | 46. South Africa                 |
| 7. Cabo Verde               | 20. Ethiopia                     | 33. Mauritania | 47. South Sudan                  |
| 8. Cameroon                 | 21. Gabon                        | 34. Mauritius  | 48. Sudan                        |
| 9. Central African Republic | 22. Gambia                       | 35. Morocco    | 49. Tanzania, United Republic of |
| 10. Chad                    | 23. Ghana                        | 36. Mozambique | 50. Togo                         |
| 11. Comoros                 | 24. Guinea                       | 37. Namibia    | 51. Tunisia                      |
| 12. Congo                   | 25. Guinea-Bissau                | 38. Niger      | 52. Uganda                       |
| 13. Côte d'Ivoire           | 26. Kenya                        | 39. Nigeria    | 53. Zambia                       |
|                             |                                  | 40. Rwanda     | 54. Zimbabwe                     |

<sup>194</sup> See <https://indicators.ohchr.org>, last accessed on 4 December 2018.

<sup>195</sup> See [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174:NO), last accessed on 18 February 2019.

**C. ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**

**49 African States which have ratified ILO Convention 87** <sup>196</sup>

|                             |                                  |                           |                                  |
|-----------------------------|----------------------------------|---------------------------|----------------------------------|
| 1. Algeria                  | 14. Democratic Republic of Congo | 27. Libya                 | 39. Senegal                      |
| 2. Angola                   | 15. Djibouti                     | 28. Madagascar            | 40. Seychelles                   |
| 3. Benin                    | 16. Egypt                        | 29. Malawi                | 41. Sierra Leone                 |
| 4. Botswana                 | 17. Equatorial Guinea            | 30. Mali                  | 42. Somalia                      |
| 5. Burkina Faso             | 18. Eritrea                      | 31. Mauritania            | 43. South Africa                 |
| 6. Burundi                  | 19. Eswatini                     | 32. Mauritius             | 44. Tanzania, United Republic of |
| 7. Cabo Verde               | 20. Ethiopia                     | 33. Mozambique            | 45. Togo                         |
| 8. Cameroon                 | 21. Gabon                        | 34. Namibia               | 46. Tunisia                      |
| 9. Central African Republic | 22. Gambia                       | 35. Niger                 | 47. Uganda                       |
| 10. Chad                    | 23. Ghana                        | 36. Nigeria               | 48. Zambia                       |
| 11. Comoros                 | 24. Guinea                       | 37. Rwanda                | 49. Zimbabwe                     |
| 12. Congo                   | 25. Lesotho                      | 38. Sao Tome and Principe |                                  |
| 13. Côte d'Ivoire           | 26. Liberia                      |                           |                                  |

**D. ILO Migration for Employment Convention (Revised), 1949 (No. 97)**

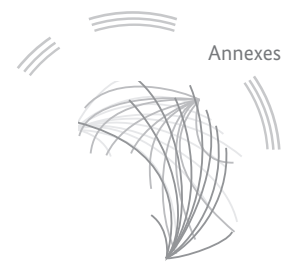
**11 African States which have ratified ILO Convention 97** <sup>197</sup>

|                 |               |              |              |
|-----------------|---------------|--------------|--------------|
| 1. Algeria      | 4. Kenya      | 7. Mauritius | 10. Zambia   |
| 2. Burkina Faso | 5. Madagascar | 8. Nigeria   | 11. Zanzibar |
| 3. Cameroon     | 6. Malawi     | 9. Tanzania  |              |

<sup>196</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312232:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO), last accessed on 18 February 2019. Guinea-Bissau, Kenya, Morocco, South Sudan, and Sudan have not ratified ILO Convention 87.

<sup>197</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312242:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242:NO), last accessed on 13 December 2018.





## E. ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

### 54 African States which have ratified ILO Convention 98 <sup>198</sup>

|                             |                                  |                           |                                  |
|-----------------------------|----------------------------------|---------------------------|----------------------------------|
| 1. Algeria                  | 14. Democratic Republic of Congo | 28. Liberia               | 42. Senegal                      |
| 2. Angola                   | 15. Djibouti                     | 29. Libya                 | 43. Seychelles                   |
| 3. Benin                    | 16. Egypt                        | 30. Madagascar            | 44. Sierra Leone                 |
| 4. Botswana                 | 17. Equatorial Guinea            | 31. Malawi                | 45. Somalia                      |
| 5. Burkina Faso             | 18. Eritrea                      | 32. Mali                  | 46. South Africa                 |
| 6. Burundi                  | 19. Eswatini                     | 33. Mauritania            | 47. South Sudan                  |
| 7. Cabo Verde               | 20. Ethiopia                     | 34. Mauritius             | 48. Sudan                        |
| 8. Cameroon                 | 21. Gabon                        | 35. Morocco               | 49. Tanzania, United Republic of |
| 9. Central African Republic | 22. Gambia                       | 36. Mozambique            | 50. Togo                         |
| 10. Chad                    | 23. Ghana                        | 37. Namibia               | 51. Tunisia                      |
| 11. Comoros                 | 24. Guinea                       | 38. Niger                 | 52. Uganda                       |
| 12. Congo                   | 25. Guinea-Bissau                | 39. Nigeria               | 53. Zambia                       |
| 13. Côte d'Ivoire           | 26. Kenya                        | 40. Rwanda                | 54. Zimbabwe                     |
|                             | 27. Lesotho                      | 41. Sao Tome and Principe |                                  |

## F. ILO Equal Remuneration Convention, 1951 (No. 100)

### 53 African States which have ratified ILO Convention 100 <sup>199</sup>

|                             |                                  |                           |                                  |
|-----------------------------|----------------------------------|---------------------------|----------------------------------|
| 1. Algeria                  | 13. Democratic Republic of Congo | 27. Libya                 | 40. Senegal                      |
| 1. Angola                   | 14. Djibouti                     | 28. Madagascar            | 41. Seychelles                   |
| 2. Benin                    | 15. Egypt                        | 29. Malawi                | 42. Sierra Leone                 |
| 3. Botswana                 | 16. Equatorial Guinea            | 30. Mali                  | 43. Somalia                      |
| 4. Burkina Faso             | 17. Eritrea                      | 31. Mauritania            | 44. South Africa                 |
| 5. Burundi                  | 18. Eswatini                     | 32. Mauritius             | 45. South Sudan                  |
| 6. Cabo Verde               | 19. Ethiopia                     | 33. Morocco               | 46. Sudan                        |
| 7. Cameroon                 | 20. Gabon                        | 34. Mozambique            | 47. Tanzania, United Republic of |
| 8. Central African Republic | 21. Gambia                       | 35. Namibia               | 48. Togo                         |
| 9. Chad                     | 22. Ghana                        | 36. Niger                 | 49. Tunisia                      |
| 10. Comoros                 | 23. Guinea                       | 37. Nigeria               | 50. Uganda                       |
| 11. Congo                   | 24. Guinea-Bissau                | 38. Rwanda                | 51. Zambia                       |
| 12. Côte d'Ivoire           | 25. Kenya                        | 39. Sao Tome and Principe | 52. Zimbabwe                     |
|                             | 26. Lesotho                      |                           |                                  |

<sup>198</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312243:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO), last accessed on 18 February 2019.

<sup>199</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312245:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245:NO), last accessed on 18 February 2019. Liberia has not ratified ILO Convention 100.

## G. ILO Abolition of Forced Labour Convention, 1957 (No. 105)

### 54 African States which have ratified ILO Convention 105 <sup>200</sup>

|                                  |                       |                           |                                  |
|----------------------------------|-----------------------|---------------------------|----------------------------------|
| 1. Algeria                       | 15. Djibouti          | 29. Libya                 | 42. Senegal                      |
| 2. Angola                        | 16. Egypt             | 30. Madagascar            | 43. Seychelles                   |
| 3. Benin                         | 17. Equatorial Guinea | 31. Malawi                | 44. Sierra Leone                 |
| 4. Botswana                      | 18. Eritrea           | 32. Mali                  | 45. Somalia                      |
| 5. Burkina Faso                  | 19. Eswatini          | 33. Mauritania            | 46. South Africa                 |
| 6. Burundi                       | 20. Ethiopia          | 34. Mauritius             | 47. South Sudan                  |
| 7. Cabo Verde                    | 21. Gabon             | 35. Morocco               | 48. Sudan                        |
| 8. Cameroon                      | 22. Gambia            | 36. Mozambique            | 49. Tanzania, United Republic of |
| 9. Central African Republic      | 23. Ghana             | 37. Namibia               | 50. Togo                         |
| 10. Chad                         | 24. Guinea            | 38. Niger                 | 51. Tunisia                      |
| 11. Comoros                      | 25. Guinea-Bissau     | 39. Nigeria               | 52. Uganda                       |
| 12. Congo                        | 26. Kenya             | 40. Rwanda                | 53. Zambia                       |
| 13. Côte d'Ivoire                | 27. Lesotho           | 41. Sao Tome and Principe | 54. Zimbabwe                     |
| 14. Democratic Republic of Congo | 28. Liberia           |                           |                                  |

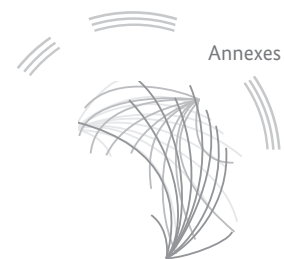
## H. ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

### 54 African States which have ratified ILO Convention 111 <sup>201</sup>

|                                  |                       |                           |                                  |
|----------------------------------|-----------------------|---------------------------|----------------------------------|
| 1. Algeria                       | 15. Djibouti          | 29. Libya                 | 42. Senegal                      |
| 2. Angola                        | 16. Egypt             | 30. Madagascar            | 43. Seychelles                   |
| 3. Benin                         | 17. Equatorial Guinea | 31. Malawi                | 44. Sierra Leone                 |
| 4. Botswana                      | 18. Eritrea           | 32. Mali                  | 45. Somalia                      |
| 5. Burkina Faso                  | 19. Eswatini          | 33. Mauritania            | 46. South Africa                 |
| 6. Burundi                       | 20. Ethiopia          | 34. Mauritius             | 47. South Sudan                  |
| 7. Cabo Verde                    | 21. Gabon             | 35. Morocco               | 48. Sudan                        |
| 8. Cameroon                      | 22. Gambia            | 36. Mozambique            | 49. Tanzania, United Republic of |
| 9. Central African Republic      | 23. Ghana             | 37. Namibia               | 50. Togo                         |
| 10. Chad                         | 24. Guinea            | 38. Niger                 | 51. Tunisia                      |
| 11. Comoros                      | 25. Guinea-Bissau     | 39. Nigeria               | 52. Uganda                       |
| 12. Congo                        | 26. Kenya             | 40. Rwanda                | 53. Zambia                       |
| 13. Côte d'Ivoire                | 27. Lesotho           | 41. Sao Tome and Principe | 54. Zimbabwe                     |
| 14. Democratic Republic of Congo | 28. Liberia           |                           |                                  |

<sup>200</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312250:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO), last accessed on 18 February 2019.

<sup>201</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO), last accessed on 18 February 2019.



## I. ILO Minimum Age Convention, 1973 (No. 138)

### 52 African States which have ratified ILO Convention 138 <sup>202</sup>

|                                  |                       |                           |                                  |
|----------------------------------|-----------------------|---------------------------|----------------------------------|
| 1. Algeria                       | 15. Djibouti          | 29. Madagascar            | 42. Seychelles                   |
| 2. Angola                        | 16. Egypt             | 30. Malawi                | 43. Sierra Leone                 |
| 3. Benin                         | 17. Equatorial Guinea | 31. Mali                  | 44. South Africa                 |
| 4. Botswana                      | 18. Eritrea           | 32. Mauritania            | 45. South Sudan                  |
| 5. Burkina Faso                  | 19. Eswatini          | 33. Mauritius             | 46. Sudan                        |
| 6. Burundi                       | 20. Ethiopia          | 34. Morocco               | 47. Tanzania, United Republic of |
| 7. Cabo Verde                    | 21. Gabon             | 35. Mozambique            | 48. Togo                         |
| 8. Cameroon                      | 22. Gambia            | 36. Namibia               | 49. Tunisia                      |
| 9. Central African Republic      | 23. Ghana             | 37. Niger                 | 50. Uganda                       |
| 10. Chad                         | 24. Guinea            | 38. Nigeria               | 51. Zambia                       |
| 11. Comoros                      | 25. Guinea-Bissau     | 39. Rwanda                | 52. Zimbabwe                     |
| 12. Congo                        | 26. Kenya             | 40. Sao Tome and Principe |                                  |
| 13. Côte d'Ivoire                | 27. Lesotho           | 41. Senegal               |                                  |
| 14. Democratic Republic of Congo | 28. Libya             |                           |                                  |

## J. ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

### 7 African States which have ratified ILO Convention 143 <sup>203</sup>

|                 |             |          |           |
|-----------------|-------------|----------|-----------|
| 1. Benin        | 3. Cameroon | 5. Kenya | 7. Uganda |
| 2. Burkina Faso | 4. Guinea   | 6. Togo  |           |

## K. ILO Private Employment Agencies Convention, 1997 (No. 181)

### 7 African States which have ratified ILO Convention 181 <sup>204</sup>

|             |            |                          |           |
|-------------|------------|--------------------------|-----------|
| 1. Algeria  | 3. Mali    | 5. Niger                 | 7. Zambia |
| 2. Ethiopia | 4. Morocco | 6. Rwanda <sup>205</sup> |           |

<sup>202</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO), last accessed on 18 February 2019. Liberia and Somalia have not ratified ILO Convention 138

<sup>203</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312288:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO), last accessed on 13 December 2018.

<sup>204</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312326:NO), last accessed on 13 December 2018.

<sup>205</sup> The Convention will enter into force for Rwanda on 29 June 2019.

## L. ILO Worst Forms of Child Labour Convention, 1999 (No. 182)

### 53 African States which have ratified ILO Convention 182 <sup>206</sup>

|                             |                                  |                           |                                  |
|-----------------------------|----------------------------------|---------------------------|----------------------------------|
| 1. Algeria                  | 14. Democratic Republic of Congo | 27. Liberia               | 41. Senegal                      |
| 2. Angola                   | 15. Djibouti                     | 28. Libya                 | 42. Seychelles                   |
| 3. Benin                    | 16. Egypt                        | 29. Madagascar            | 43. Sierra Leone                 |
| 4. Botswana                 | 17. Equatorial Guinea            | 30. Malawi                | 44. Somalia                      |
| 5. Burkina Faso             | 18. Eswatini                     | 31. Mali                  | 45. South Africa                 |
| 6. Burundi                  | 19. Ethiopia                     | 32. Mauritania            | 46. South Sudan                  |
| 7. Cabo Verde               | 20. Gabon                        | 33. Mauritius             | 47. Sudan                        |
| 8. Cameroon                 | 21. Gambia                       | 34. Morocco               | 48. Tanzania, United Republic of |
| 9. Central African Republic | 22. Ghana                        | 35. Mozambique            | 49. Togo                         |
| 10. Chad                    | 23. Guinea                       | 36. Namibia               | 50. Tunisia                      |
| 11. Comoros                 | 24. Guinea-Bissau                | 37. Niger                 | 51. Uganda                       |
| 12. Congo                   | 25. Kenya                        | 38. Nigeria               | 52. Zambia                       |
| 13. Côte d'Ivoire           | 26. Lesotho                      | 39. Rwanda                | 53. Zimbabwe                     |
|                             |                                  | 40. Sao Tome and Principe |                                  |

## M. ILO Domestic Workers Convention, 2011 (No. 189)

### 3 African States which have ratified ILO Convention 189 <sup>207</sup>

|           |              |                 |
|-----------|--------------|-----------------|
| 1. Guinea | 2. Mauritius | 3. South Africa |
|-----------|--------------|-----------------|

## N. ILO Protocol of 2014 to the Forced Labour Convention, 1930

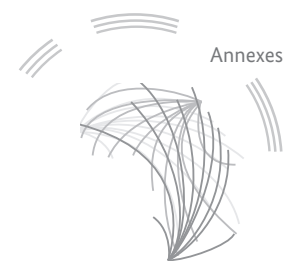
### 6 African States which have ratified the Protocol of 2014 <sup>208</sup>

|             |               |            |          |
|-------------|---------------|------------|----------|
| 1. Djibouti | 3. Mauritania | 5. Namibia | 6. Niger |
| 2. Mali     | 4. Mozambique |            |          |

<sup>206</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO), last accessed on 18 February 2019. Eritrea has not ratified ILO Convention 182.

<sup>207</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:2551460:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO), last accessed on 13 December 2018.

<sup>208</sup> See [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:3174672:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672:NO), last accessed on 18 February 2019.



## O. Treaty Establishing the African Economic Community, 1991 (Abuja Treaty)

### 50 African States which have ratified the Abuja Treaty <sup>209</sup>

|                             |                                  |                           |                                      |
|-----------------------------|----------------------------------|---------------------------|--------------------------------------|
| 1. Algeria                  | 14. Democratic Republic of Congo | 27. Libya                 | 39. Sahrawi Arab Democratic Republic |
| 2. Angola                   | 15. Egypt                        | 28. Malawi                | 40. Sudan                            |
| 3. Benin                    | 16. Equatorial Guinea            | 29. Mali                  | 41. Senegal                          |
| 4. Botswana                 | 17. Eswatini                     | 30. Mauritania            | 42. Seychelles                       |
| 5. Burkina Faso             | 18. Ethiopia                     | 31. Mauritius             | 43. Sierra Leone                     |
| 6. Burundi                  | 19. Gabon                        | 32. Morocco               | 44. South Africa                     |
| 7. Cabo Verde               | 20. Gambia                       | 33. Mozambique            | 45. Tanzania, United Republic of     |
| 8. Cameroon                 | 21. Ghana                        | 34. Namibia               | 46. Togo                             |
| 9. Central African Republic | 22. Guinea                       | 35. Niger                 | 47. Tunisia                          |
| 10. Chad                    | 23. Guinea-Bissau                | 36. Nigeria               | 48. Uganda                           |
| 11. Comoros                 | 24. Kenya                        | 37. Rwanda                | 49. Zambia                           |
| 12. Congo                   | 25. Lesotho                      | 38. Sao Tome and Principe | 50. Zimbabwe                         |
| 13. Côte d'Ivoire           | 26. Liberia                      |                           |                                      |

## P. African Union Convention on Cross-Border Cooperation, 2014 (Niamey Convention)

### 4 African States which have ratified the Niamey Convention <sup>210</sup>

|          |                 |          |         |
|----------|-----------------|----------|---------|
| 1. Benin | 2. Burkino Faso | 3. Niger | 4. Togo |
|----------|-----------------|----------|---------|

## Q. AU Free Movement Protocol, 2018

### 1 African State has ratified the AU Free Movement Protocol <sup>211</sup>

|           |
|-----------|
| 1. Rwanda |
|-----------|

<sup>209</sup> See [au.int/sites/default/files/treaties/7775-sl-treaty\\_establishing\\_the\\_african\\_economic\\_community.pdf](http://au.int/sites/default/files/treaties/7775-sl-treaty_establishing_the_african_economic_community.pdf), last accessed on 18 February 2019. Djibouti, Eritrea, Madagascar, Somalia, and South Sudan have not ratified the Abuja Treaty.

<sup>210</sup> See [au.int/sites/default/files/treaties/7803-sl-african\\_union\\_convention\\_on\\_cross-border\\_cooperation\\_niamey\\_convention\\_1.pdf](http://au.int/sites/default/files/treaties/7803-sl-african_union_convention_on_cross-border_cooperation_niamey_convention_1.pdf), last accessed on 18 February 2019.

<sup>211</sup> See [au.int/sites/default/files/treaties/34244-sl-protocol\\_to\\_the\\_treaty\\_establishing\\_the\\_african\\_economic\\_community\\_relat-ing\\_to\\_free\\_movement\\_of\\_persons\\_right\\_of\\_residence\\_and\\_right\\_of\\_establishment.pdf](http://au.int/sites/default/files/treaties/34244-sl-protocol_to_the_treaty_establishing_the_african_economic_community_relat-ing_to_free_movement_of_persons_right_of_residence_and_right_of_establishment.pdf), last accessed on 18 February 2019.

## ANNEXURE 3: IMPLEMENTATION CHECKLIST FOR MEMBER STATES

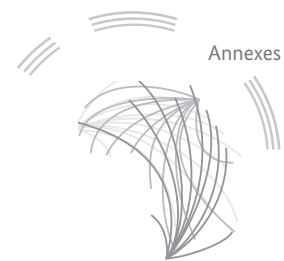
### Labour migration-mobility implementation checklist

#### **Ratify international instruments, including:**

|    |  |        |
|----|--|--------|
| 1  | International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. | yes/no |
| 2  | ILO Forced Labour Convention, 1930 (No.29).  | yes/no |
| 3  | ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).                        | yes/no |
| 4  | ILO Migration for Employment Convention (Revised), 1949 (No. 97).  | yes/no |
| 5  | ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98).   | yes/no |
| 6  | ILO Equal Remuneration Convention, 1951 (No. 100).   | yes/no |
| 7  | ILO Abolition of Forced Labour Convention, 1957 (No. 105).   | yes/no |
| 8  | ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).   | yes/no |
| 9  | ILO Minimum Age Convention, 1973 (No. 138).  | yes/no |
| 10 | ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).   | yes/no |
| 11 | ILO Private Employment Agencies Convention, 1997 (No. 181).  | yes/no |
| 12 | ILO Worst Forms of Child Labour Convention, 1999 (No. 182).  | yes/no |
| 13 | ILO Domestic Workers Convention, 2011 (No. 189).   | yes/no |
| 14 | ILO Protocol of 2014 to the Forced Labour Convention, 1930.  | yes/no |
| 15 | ILO General Principles and Operational Guidelines for Fair Recruitment.  | yes/no |

#### **Ratify continental instruments and implement continental frameworks, including:**

|    |   |        |
|----|---|--------|
| 16 | Treaty Establishing the African Economic Community, 1991 (Abuja Treaty).  | yes/no |
| 17 | African Union Convention on Cross-Border Cooperation, 2014 (Niamey Convention).   | yes/no |
| 18 | African Union Revised Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States, 2014.                | yes/no |
| 19 | Protocol to the Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment, 2018 (AU Free Movement Protocol). | yes/no |
| 20 | African Union Higher Education Harmonisation Strategy for Africa (20162025)   | yes/no |
| 21 | Continental Education Strategy for Africa (20162025)  | yes/no |
| 22 | Migration Policy Framework for Africa and Plan of Action, 2018  | yes/no |



| <b>Establish and capacitate Inter-Ministerial Working Groups (IMWGs), which should:</b> |   |
|---|---|
| 23  | Be comprised of focal points in each Ministry working directly or indirectly on labour migration-mobility and on the alignment of national laws, policies, and regulations in terms of the four categories identified in the AU Free Movements Protocol.  |
|   | yes/no  |
| 24  | Be responsible for ratifying, as appropriate to each Member State, the above international and regional instruments.  |
|   | yes/no  |
| 25  | Develop National Labour Migration Policies (NLMPs), National Labour Codes (NLCs), market policies, and other relevant frameworks and policies in line with international human rights law, norms and standards.   |
|   | yes/no  |
| 26  | Ensure that all relevant stakeholders, including civil society, social partners, business development organisations, employers, trade unions, women's rights organisations, training institutions, and migrant workers and their families, are consulted in developing NLMPs and labour migration-mobility related policies and strategies. |
|   | yes/no  |
| 27  | Be responsible for promoting and garnering support for the effective implementation of the AU Free Movement Protocol.   |
|   | yes/no  |
| 28  | Ensure collaboration and technical cooperation with other Member States, RECs, and the AUC in the ratification and implementation of the Protocol and the development of labour migration mobility related policies and practices.  |
|   | yes/no  |
| 29  | Facilitate technical cooperation activities with the JLMP and international agencies, including the ILO, the IOM, the WHO, UN-AIDS, the UNDP, the OECD, and other interested entities, in order to enhance the developmental effects of labour migration.   |
|   | yes/no  |

# Notes

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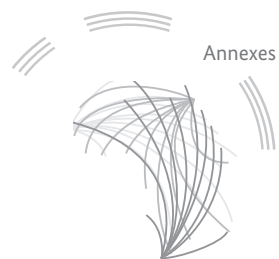
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