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**DRAFT GUIDELINES ON THE
DEVELOPMENT OF A MODEL MIGRANT WELFARE
PROGRAMME/SYSTEM**

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Draft AU Guidelines on the Development of a Model Migrant Welfare Programme/System

I BACKGROUND AND RATIONALE

Rationale

- 1. Barriers and challenges to social security and welfare support.** Significant challenges and restrictions face African migrant workers with regard to their access to social security and welfare support. The barriers they face are not limited to their time in employment abroad, but also affect pre-departure arrangements and their return and reintegration after completion of their time abroad. Migrant women in particular but also the families of migrant workers are affected, including family members who stay behind in the country of origin. Key dimensions of the deficits suffered by migrant workers and their dependants include:¹
 - Limited access to social security generally or to specific branches of social security (e.g., employment injury, maternity or unemployment benefits) and portability of social security benefits specifically
 - Immigration status and other legal barriers – their particular status may not let them qualify for protection, or a social security law may exclude them and/or their family members from coverage
 - Weak protective provisions in bilateral labour agreements and the large-scale absence of bilateral social security agreements
 - Inadequate recruitment arrangements, including significant migration costs leading to indebtedness, exploitation by some recruitment agencies, weak regulation of recruitment and absence of or weak provisions in employment contracts
 - Restrictions flowing from labour market status, with coverage often being denied to domestic workers and (other) workers in the informal economy
 - Administrative and related challenges, such as verified documentation required or forced departure from the country of origin after completion of employment, impacting on the ability to claim benefits
 - Challenges in relation to the nature of social protection schemes, in view of the inability of workers to access long-term benefits, if a rather long period of contributions is required, or migrant workers being able to claim only (inadequate) lump-sum instead of regular benefits upon leaving the country of destination
 - Separate but less beneficial social protection arrangements leaving migrant workers abroad and their dependants in a weaker position than the nationals of the country concerned
 - Exposure to weak civil, labour and welfare conditions abroad, as well as exploitation and abuse, and limited access to justice, including grievance and complaint avenues and procedures

¹ See M. Olivier (assisted by J. Mushomi & C. Kakuba) *Development of a model migrant welfare programme/system for the African Union, Regional Economic Communities and AU Member States* (draft report submitted to the IOM, 2021) paras 6-15; African Union *Report on Labour Migration Statistics in Africa* (Second edition (2017)) (2019) 47-48; Ong, C & Peyron Bista, C *The state of social protection in ASEAN at the dawn of integration* (ILO, 2015) 21, 51-53.

2. **Key ILO, UN and African Union instruments arrange for social protection of migrant workers and their families in countries of destination.** It has been noted that: "[A]ll current ILO social security standards define the personal scope of coverage irrespective of nationality and almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and most of them contain special non-discrimination clauses² Also, ILO *Social Protection Floors Recommendation*, 2012 (No. 202) sets out four basic social security guarantees that should be available to all residents of a country, whether nationals or non-nationals.

UN instruments endorse a *human rights understanding* of the need of migrant workers to be protected by social protection arrangements. This is informed by considerations of migrants' humanity, their vulnerability status, and a human rights approach, reflected in particular in Art. 27 of the UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990 (ICMW). And recently, "... in adopting the *Global Compact for Safe, Orderly and Regular Migration* (2018), many UN Member States committed themselves to ensuring that migrant workers at all skills levels have access to social protection in their countries of destination, and to upholding the portability of applicable social security entitlements and benefits earned by migrant workers in their countries of origin."³

The extension of social protection to all, including migrant workers in the formal and informal economy, is a priority for the AU and its Member States.⁴ The principle of equal treatment of migrant workers is emphasised in, among other, the AU *Agenda 2063* and the AU *Policy Framework for Africa and its Plan of Action 2018-30*. Also, under the *Joint Labour Migration Programme for Africa*, AUC and ILO implemented a project "Extending access to social protection and portability of benefits to migrant workers and their families in selected regional economic communities in Africa". Furthermore, the protective provisions of the *African Charter on Human and Peoples' Rights* (1982) imply that (both regular and irregular) migrant workers are to be regarded as vulnerable and disadvantaged groups. Hence states should recognise and take steps to combat intersectional discrimination based on among others migration status; need to ensure that migrants are covered by the social security system and have physical access to social security services; and shall ensure that members of the families of migrant workers shall enjoy equality of treatment with nationals with regard to access to education, social and health services and participation in cultural life.⁵ Also, provision is made in REC instruments for equal treatment in relation to (contributory) social security and access to, and portability of social security benefits in several RECs instruments.⁶

² Baruah, N & Cholewinski, R *Handbook on establishing effective labour migration policies in countries of origin and destination* (OSCE, IOM & ILO) (2006). See Article 6 of ILO *Migration for Employment Convention (Revised)*, 1949 (No. 97) and Article 68 of the ILO *Social Security (Minimum Standards) Convention*, 1952 (No. 102): however, non-contributory (in particular social assistance) arrangements do not necessarily have to be extended to non-citizens.

³ African Union *Report on Labour Migration Statistics in Africa* (Second edition (2017)) (2019) 48.

⁴ The extension of social protection to migrants is also endorsed in the *Ouagadougou +10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa* (2015), the 2019-2021 AUC-ILO *Joint Operational Plan*, and the ILO 2019 *Abidjan Declaration and Plan of Action*.

⁵ ACHPR *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights* (2010).

⁶ This is apparent, for example in the case of West Africa, from the provisions of the *General Convention on Social Security of Member States of ECOWAS* (2013), and in the case of SADC, from the provisions

3. **Key implications follow as regards access by documented workers, and to some extent undocumented workers, to social protection.** As a result, destination countries should ensure equality of treatment for (documented) migrant workers and their families in relation to access to housing, social housing schemes, social and health services, unemployment benefits and unemployment services, provided conditions are met and subject to immigration terms (Arts. 43 and 45 of the *ICMW*). They should also guarantee equality of treatment of social security provisions for migrant workers for any or all of the nine branches of social security that are in force in their territory and for which they agree to be bound.⁷ Migrant workers who are undocumented, i.e., in an irregular situation, also enjoy limited protection in terms of international standards, including equality of treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits.⁸ Like migrant workers in a regular situation, they and members of their families have the right to receive urgent medical care (*ICMW*, Art. 28).

4. **The reality is often different for African migrant workers, given the absence of sufficient protection and exposure to exploitation and maltreatment.** Yet, despite these clear normative pronouncements, African migrant workers abroad invariably enjoy limited social protection in countries of destination. Within Africa, the vast numbers of African migrant workers in an irregular situation and/or who work in the informal economy lack appropriate protection. Access to (formal) labour market participation is critical for contributory social security coverage but is subject to several restrictions in destination countries, often at odds with free movement and liberalised labour migration regimes.

In particular and with some exception, the Gulf countries largely exclude foreigners from their public social security systems. For citizens of these countries the position is different: they could be covered even if they work outside their country in another Gulf country, on the basis of the *Unified Law of Insurance Protection Extension for GCC state citizens working in other GCC countries* (2006). Migrant workers are routinely also excluded from health benefit schemes unless they are covered under what is known as a family health scheme. Also, African migrant domestic workers are in particular affected by the fact that Gulf countries are yet to ratify *ILO Domestic Workers Convention, 2011* (Convention 189), which requires that essential labour and social security protection be extended to domestic workers. Cases of alleged abuse and maltreatment are reported regularly and have, in case of several African but also Asian countries, led to labour migration bans to the GCC states at one time – reportedly fuelled by unscrupulous practices perpetrated a largely weakly regulated private recruitment agency sector in several African countries. Among others and specifically, the *Kafala* system, which ties migrant workers to their employers, remains entrenched and "continues to contribute to the vulnerability of labour migrants in the Gulf, including to conditions of forced labour and wage exploitation", even though the system has seen some reforms in certain GCC countries.⁹

of the *SADC Code on Social Security* (2007), the *SADC Cross-Border Portability of Social Security Benefits Policy Framework* (2016), the *SADC Guidelines on the Portability of Social Security Benefits in SADC* (2020), the *SADC Labour Migration Action Plan 2013-2015*, renewed for 2016-2019 and again for 2020-2025 and the *SADC Labour Migration Policy Framework*, 2014.

⁷ *Equality of Treatment (Social Security) Convention 1962* (ILO Convention 118): this provision is dependent upon the home country of the migrant also being a party to Convention 118, and to specific conditions regarding use of public funds.

⁸ (Article 9 of *ILO Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143)).

⁹ Atong, K., Mayah, E. & A. Odigie *Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda – An African Trade Union Overview* (ITUC-Africa, 2018) vii- ix, 84.

5. **From the perspective of social protection and welfare support, bilateral and multilateral arrangements involving African countries are inadequately developed and enforced.** The significant endorsement of bilateral labour agreements (BLAs) and bilateral social security agreements (BSAs) in an extensive range of global, AU and REC instruments seemingly thus far has had limited impact on improving access by African migrant workers to social protection and welfare support. Some use is made of BLAs, but these rarely advance the welfare plight and social protection of African migrant workers and their families. There is a developing tendency, in particular in Southern Africa, of countries of destination not being prepared to conclude BLAs, but less exacting memorandums of understanding.¹⁰ African countries of origin have concluded a limited range of BSAs only, mostly with European countries, but rarely with other African countries and not at all with GCC countries. BSAs involving African countries make limited use of the full extent of social protection principles that can usefully be employed in such agreements.¹¹ Migrant workers in the informal economy or in an irregular situation are not covered by these agreements, while limited technical and human capacity exists to fully implement the agreements, a situation aggravated by porous border and weak integrated border management systems. Multilateral social security agreements exist in a growing range of African regions and contain provisions with significant social protection implications, yet they are inconsistently implemented. Like BSAs, these agreements exclude migrant workers in the informal economy and in an irregular situation, and rarely accommodate short-term migrant workers.
6. **Worldwide, country-of-origin unilateral interventions to extend social protection and welfare support to migrant workers abroad are a growing reality.** As a result of the shortcomings in the protection afforded to migrant workers abroad and their families, world-wide (in particular in Asia) several countries of origin have increasingly assumed responsibility for nationals/citizens living and working abroad. This has translated into varying levels and dimensions of protection and support made available to these workers and their families. These unilateral extensions take several forms and include:¹²
- The adoption of *constitutional guarantees and statutory frameworks* facilitating the protection of migrant workers abroad;
 - Establishing *special overseas workers' welfare arrangements* by national and even (as in the case of India) state governments that extend protection to workers and (at times) also their families;
 - Voluntary affiliation in national social insurance schemes;
 - Measures and schemes aimed at supporting the flow of remittances and social insurance contributions to the sending country; and
 - Exportability of social security benefits and the provision of related services (e.g., medical care and legal assistance) abroad.
- These extension mechanisms are often supported by a range of complementary institutional measures and support services, including a dedicated emigrant ministry

¹⁰ See Olivier, M. *Bilateral labour migration arrangements in two Southern African Development Community corridors* (IOM, 2021).

¹¹ ILO *Equality of Treatment (Social Security) Convention, 1962* (No. 118) covers the equality of treatment and portability of benefits principles, while ILO *Maintenance of Social Security Rights Convention, 1982* (No. 157) provides for totalisation of insurance periods and the pro-rated sharing of benefit payments by the countries concerned, based on the ratio of insurance periods. In addition, the maintenance of acquired rights is a key principle of social security coordination.

¹² See M. Olivier (assisted by J. Mushomi & C. Kakuba) *Development of a model migrant welfare programme/system for the African Union, Regional Economic Communities and AU Member States* (draft report submitted to the IOM, 2021) paras 31 & 33 for a summary of these interventions and some country experiences; a more complete discussion is offered in chapter 7 of the report.

and/or specialised statutory bodies to protect the interests of their citizens/residents in the diaspora (e.g., Bangladesh, India, Nepal, the Philippines, Sri Lanka); gather information on recruitment contracts; and provide consular support. Generally, other support services are made available to migrant workers at three stages: pre-departure, at destination (i.e., in the host country), and upon return (e.g., via return settlement programmes); and include lobbying for the protection of migrant workers.

7. African countries of origin are increasingly investing in a wide range of measures to protect, support and liaise with their migrant workers and their families abroad.¹³

Some origin countries have concluded formalised labour exchange arrangements and agreements with other African countries and also countries in Europe and the GCC. However, given the negative experiences of many African migrant workers in certain Gulf countries, several origin countries have introduced temporary bans on employment in certain or all countries of destination. This has been strengthened by the adoption in several African countries of a policy framework and a strengthened legal environment and administrative measures to ensure vetting of recruitment agencies, attestation of employment contracts, pre-departure orientation, the requirement (in the legislation) of a supporting bilateral labour agreement informing deployment of workers abroad, and the appointment of labour attachés. Legal frameworks are incrementally developed to streamline overseas deployment, including the regulation of the recruitment industry. This is often accompanied by a model employment contract, which also provides for some modicum of social security coverage. Also, African countries of origin have adopted a wide range of measures to liaise with and involve the diaspora – including the mapping of the diaspora; setting up a of a dedicated Ministry and other agencies; the development of clarifying policies; support given to investments and entrepreneurial involvement from migrant workers abroad, on a preferential basis; the easing of remittance regulations; skills transfer programmes; tax incentives; and reducing the cost of doing business. Several countries have also adopted anti-human trafficking laws.

8. However, these measures invariably fall short of extending country-of-origin public social security systems and provide insufficient support to returnees and family members of migrant workers who have stayed behind in origin countries.

While some provision is made in the legislative and policy domains of some countries of origin for unilateral portability of certain social security benefits and the conclusion of bilateral social security agreements, and while limited provision is made for seconded workers to be covered by origin country social security systems, many African countries have not (yet) extended the reach of their own public social security systems to capture their migrant workers abroad, although promising exceptions exist.¹⁴ Also, while some policy measures are being adopted or are foreseen to support returnees, also in relation to reskilling, business support and including them into the labour market of countries of origin, these measures are incomplete. Similarly, family members of migrant workers, in particular family members staying behind in countries of origin, are largely neglected in the policy, legal and institutional domains of countries of origin.

¹³ *Ibid*, paras 304-310.

¹⁴ For example, Article 14(4) of the *Law on Social Protection*, Law No. 4 of 2007 (Mozambique) stipulates: "Mozambican workers abroad who are not covered by international agreements may register in compulsory social security and the scheme for self-employed persons will be applicable to them." In Kenya, the *National Social Security Fund Act* regulates the position of Kenyan employees residing in other EAC Member States and emphasises coordination with the social security schemes of such countries, for this purpose.

9. **Country-of-origin unilateral social protection and welfare support measures have significant impact, despite their shortcomings.** These measures cover sizeable numbers of migrant workers – as the experience of many Asian countries testifies. They provide important avenues of coverage, protection and support, where none or little is available in the destination country concerned. They are also easier to adopt than bi- and multilateral agreements. Unlike bilateral agreements, they also, in fact principally, affect the well-being and protection of those involved in circular and temporary migration, and could be defined and strengthened through international migration agreements.¹⁵ Unilateral measures, important as they are, cannot however replace effective measures in the destination countries and, in fact, effective bilateral agreements that provide equal treatment to migrant workers and ensure the transfer of social protection benefits. Unilateral measures should therefore remain measures of last resort, to be available to the extent that bilateral and other arrangements do not make the necessary provision.

10. **Limited provision in international and regional instruments.** International and regional standards and instruments do not (yet) regulate this particular phenomenon.¹⁶ However, reference to these actions by countries of origin is increasingly being made in what can be regarded as "soft law" and explanatory and implementing instruments in regional contexts. At the Asian regional level, the 2007 *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* encourages countries of origin to set up policies and procedures to protect their workers when abroad. In the event of SAARC, the draft *Social Protection Action Plan* encourages action by the countries of origin to provide a basic level of protection to their nationals working abroad through voluntary insurance, to pay benefits abroad, and to ensure safe migration.

Objectives of the Guidelines

11. **(1) A model template and guidelines.** The Guidelines provide a model template and guidelines for policy makers and practitioners in countries of origin to establish a migrant welfare programme (MWP), adopt insurance-based arrangements, extend support services and invest in measures to implement these interventions, based on guiding international (including African) instruments on human and labour rights, labour migration and social protection; global frameworks (SDGs and the *Global Compact for Safe, Orderly and Regular Migration* (2018) (GCM)); as well as relevant tools and good practice experiences. Operationalising the Guidelines may involve collaboration with governments and other role-players in countries of destination too. The Guidelines are by their nature voluntary and flexible; they aim at assisting countries that may wish to consider establishing a MWP, adopt insurance-based arrangements, extend support services and invest in measures to implement these interventions. The Guidelines are therefore not prescriptive, but they document a set of good practices, administrative and operational procedures for Member States who wish to set up such systems.

12. **(2) Address gaps and shortcomings.** The Guidelines suggest ways and means to address gaps and shortcomings in existing law, policy and practice in African countries of origin regarding the treatment and protection, including social protection, of their migrant workers abroad and their dependants.

¹⁵ Van Ginneken, W "Social protection for migrant workers: national and international policy challenges" *European Journal of Social Security* (EJSS), vol 13(5), 2013, 209-221 at 214.

¹⁶ Yet, the ILO *Multilateral Framework on Labour Migration* (ILO, 2006) provides a comprehensive overview of principles and guidelines as to how labour protection for such migrant workers can be improved.

Sources for the Guidelines

13. **Sources for the Guidelines.** The Guidelines are informed by the following sources:

- Universal (i.e., international) and African (pan-African and REC) charters, protocols and other instruments on human and labour rights, labour migration and social protection, as well as associated policy and legal frameworks – including, at the AU level, the *AU Charter on Human and Peoples' Rights* (1981) and the (revised) *AU Migration Policy Framework for Africa and Plan of Action 2018-2030*
- Global and sectoral social development and migration frameworks (e.g., SDGs and the *Global Compact for Safe, Orderly and Regular Migration* (2018); *ILO Multilateral Framework on Labour Migration* (2006); *ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs* (2016/2019); *IOM IRIS (International Recruitment Integrity System)*)
- Perspectives from governments, social partner stakeholders and civil society in AU member countries
- Research/policy reports
- Comparative good practice experiences and tools

Guiding principles

14. **Recognition and the value of social protection as a human right.** Several global instruments recognise social protection, in particular understood in the narrower social security sense, as a right accruing to everyone, including migrant workers and their dependants. See the *Universal Declaration of Human Rights* (1948) (in particular: Arts. 22 and 25), and the *International Covenant on Economic, Social and Cultural Rights* (1966) (in particular: Art. 9). It has also been embedded in the Sustainable Development Goals (SDGs); some SDG targets (e.g., 1.3, 3.8, 5.4, 10.4) refer explicitly to social protection. It is further one of the pillars of the ILO's concept of Decent Work. The right to social security is derived from several human rights acknowledged in the AU's foundational human rights instrument, the *African Charter on Human and Peoples' Rights* (1982) (also known as the Banjul Charter; ratified by all 55 AU Member States). This right imposes on AU Member States the obligation to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education consistent with human life, security and dignity (i.e., minimum core obligations). Member States have to take effective measures to fully realise the right of all persons to social security, including social insurance.¹⁷ Other AU instruments, including the *AU Social Policy Framework for Africa* (2008) and the *Social Protection Plan for the Informal Economy and Rural Workers* (SPIREWORK) (2011), confirm these minimum core obligations, as is the case with a number of recent AU human rights protocols. The 2007 *Code on Social Security in the SADC* is an example of a REC instrument endorsing the right to social protection, also for migrants (Art. 17). The constitutions of several African countries also recognise social protection (in particular in the social security sense) as a human right. Social protection

¹⁷ African Commission on Human and Peoples' Rights (ACHPR) *Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights* (2010): paras 81, 82(a).

has been found to have a consistently positive impact on poverty reduction, nutrition and food security, and other human development outcomes, also in Africa.¹⁸

15. **Diplomatic and consular support.** The *Vienna Convention on Diplomatic Relations* (1961), extensively ratified by AU Member States, describes the functions of a diplomatic mission to include "protecting in the receiving State the interests of the sending State and its nationals, within the limits prescribed by international law" and "negotiating with the Government of the receiving State" (Art. 3(1)(a) & (c)). Diplomatic missions fulfil consular functions (Art. 3(2)) which, according to the *Vienna Convention on Consular Relations* (1963) (ratified by almost all African countries), include protecting in the receiving State the interests of the sending State and of its nationals (within the limits prescribed by international law); helping and assisting nationals of the sending State; and representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, with a view to the preservation of the rights and interests of these nationals (Art. 3(a), (c) & (i)). Consular functions may also be exercised by a sending State on behalf of a third State, upon notification to the receiving State (Art. 8). Consular services for migrant workers and their dependants have been a rising demand, at times supported by inter-governmental consular agreements as well as BLAs and BSAs, for example in the areas of social security, health protection, worker protection, other welfare assistance (e.g., hotlines and safe houses for exploited workers) and diaspora engagement, also on behalf of third countries.¹⁹
16. **Support for orderly migration for employment and development during all stages of the migration experience for all categories of affected migrants.** Country-of-origin measures should respond to the needs of migrant workers and their families during all stages of the migration cycle/experience: before departure, during the time abroad, and upon return. They should ensure the realisation of social protection and welfare assistance of migrant workers and their dependants, simultaneously contributing optimally to the economic, social and human development of countries of origin and countries of destination. Prospective, existing and returned migrant workers, including migrant workers on short-term engagements and active in the informal economy, as well as their family members, should benefit from these measures.
17. **Gender-sensitive and gender-responsive.** All measures introduced by countries of origin should be gender-sensitive and gender-responsive.
18. **Institutional coordination and inter-governmental collaboration, as well as social partner and multi-stakeholder participation.** The successful development and roll-out of country-of-origin measures are dependant on close coordination and collaboration amongst different governmental and other public entities entrusted with implementing social protection and welfare support measures in the countries of origin. Also required is collaboration with social partners (employers' and workers' organisations) and other role-players, including private employment agencies, civil society entities, migrant workers, returned migrant workers, migrant workers' associations, and other concerned agencies. Cooperation with governments of and other stakeholders in countries of destination, including foreign employers, private employment agencies, legal aid clinics and advocacy institutions, may be needed to ensure social protection and welfare assistance (e.g., regarding accessibility of social security schemes and benefits; information on labour

¹⁸ African Union *Report on Labour Migration Statistics in Africa* (Second edition (2017)) (2019) 47.

¹⁹ Haynal, G, Welsh, M, Century, L & S Tyler *The Consular Function in the 21st Century: A report for Foreign Affairs and International Trade Canada* (University of Toronto, 2013) 1-1 – 1-2; 1-11 – 1-17; 2-1 – 2-6; 2-64 – 2.70.

market needs and living and working conditions, inspection of such conditions; provision of legal assistance; establishment of safe houses), and the achievement of development objectives (e.g., diaspora engagement; investment in skills training).

19. **Evidence-based.** Country-of-origin social protection and welfare support measures should be informed by solid evidence generated through accurate, valid, timely, and comparable gender-disaggregated data on labour and skills demand/preference in countries of destination, migrants' skills and employment profiles, migrant stocks and flows, migrants' rights and entitlements (also in the labour law sense), migrant working and living conditions, social protection needs and coverage, legal protection and supervisory mechanisms, as well as normative, legislative and regulatory frameworks. Data collection and treatment should respect personal privacy rights and data protection standards.

II ESTABLISHMENT OF A MIGRANT WELFARE PROGRAMME (MWP)

20. **Description, objectives and operational framework of migrant welfare programmes.** A 2015 ILO publication defines migrant welfare funds (i.e., programmes), lists their objectives and indicates the operational framework of these funds as follows:²⁰

"A Migrant Welfare Fund (MWF) is a self-sustaining mechanism that enables the governments of countries of origin to provide additional welfare benefits and services to their migrant workers at the countries of destination, using a fund grown from the initial capital investments of foreign employers, recruitment agencies and/or migrant workers. In practice, such funds may supplement the social security benefits and compensation of migrant workers; provide access to mediation and conciliation services between foreign employers and migrant workers; compensate for illness, injuries, disability and death sustained by workers while abroad; assist in the successful reintegration of migrant workers; and provide emergency and repatriation services to migrants in distress and/or during crisis situations. The capital contribution to such funds and its management, the disbursement of benefits, the qualifications for membership, as well as the monitoring of the implementation and reinvestment of the fund's capital are subject to the specific laws and policies of a country. Additional benefits may also be extended to the families of migrant workers who are left at the countries of origin."

21. **Need for establishing a Migrant Welfare Programme (MWP).** In considering the need to establish a MWP, careful account of a range of factors has to be taken. The number of migrant workers abroad and whether they are (in)sufficiently covered in social protection terms (e.g., as regards employment injury, health care, sickness, maternity, disability, unemployment, retirement, survivors' and family protection) and/or in respect of welfare assistance in the key countries of destination (CoDs) are two such important considerations. Also important is the need to "... not increasing migration costs to migrants, the need to regulate any private sector actors involved in administration of the funds, and publicity shared with migrants about the funds' existence. Attention should also be paid to the governance of these and review mechanisms established so that funds can

²⁰ ILO *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar* (Policy Brief Issue No. 3, November 2015) 1-2. See also Jones, K. *Recruitment Monitoring and Migrant Welfare Assistance: what works?* (IOM, 2015) 129 and Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 51.

be evaluated and any barriers to their operation (for the benefit of migrants) are identified and rectified at the earliest possible stage."²¹

22. **Design of a MWP and services/benefits to be provided.** Once the need to establish a MWP is confirmed, the attention shifts to a suitable programme design. An existing scheme/fund set up by (for example) government, or recruitment agencies, to assist migrant workers abroad may exist and could be used, or transformed, to fulfil the purposes to be achieved by the MWP. Alternatively, it may be necessary to set up a new or dedicated scheme/fund. Already at the initial stage, it would be necessary to decide which services/benefits will be provided by the MWP, and whether such services or benefits will be introduced incrementally, as the fund/scheme grows, or needs and conditions change. It must be determined which services/benefits need to be available at the pre-departure stage (e.g., information-sharing; skills training; pre-departure orientation); while migrant workers are abroad (e.g., social security support (see also below); medical or legal assistance; protective interventions to help address abusive and/or discriminatory treatment, and lack of decent working and living conditions); and with a view to and upon return (e.g., ensuring access to social security benefits; preparation for return; reintegration of returned migrant workers; reskilling; and access to business support). The circumstances that would give rise to finance the repatriation of migrant workers need to be indicated (e.g., an emergency; loss of employment beyond the control of the worker; repatriation of deceased migrant workers), as is the case with the extent and nature of support to be given to family members abroad (who have joined the migrant workers concerned) or who stay behind in the CoO (e.g., social security, education and health benefits). Particularly important are services/benefits to and involving the diaspora (see below). A key consideration influencing decisions regarding the nature, type and range of services/benefits is the gender dimension. Gender-sensitive and gender-responsive measures imply, for example, that there could indeed be a need to adopt dedicated measures to ensure that women who stay behind are appropriately covered by social security arrangements and enjoy education and other support to ensure their children are appropriately protected.
23. **Sources of funding, contributors and beneficiaries need to be specified.** Apart from initial capital often provided by national governments to help establish a MWP, the ongoing funding source(s) for a MWP could be varied. State practice reveals that the funding could derive from capital investments by governments, foreign employers, recruitment agencies and/or migrant workers. Also, "(P)ivate sector insurance companies are increasingly important to the mix, with contributions often compulsory."²² While the contributory basis of MWP funding would help to spread financial risk and arguably enables a government and a MWP to provide key welfare services, contributory capacity of in particular migrant workers (and especially migrant workers in the informal economy) is critical: setting the level of contributions too high would constitute a disincentive to contribute; yet, an underfunded MWP would not be able to render meaningful support. Therefore, government financial support may be called for. In particular, note has to be taken of developments generally in several countries to incentivise contributions by informal economy workers, among others via providing a government subsidy to contributions by low-income and informal economy workers²³ – extending this to migrant

²¹ Jones, K. *Recruitment Monitoring & Migrant Welfare Assistance: what works?* (IOM, 2015) 15.

²² *Ibid*, 132. Authority omitted. See also Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 52-53.

²³ See among others Nguyen, Q. & Cunha, N. *Extension of social security to workers in informal employment in the ASEAN region* (ILO, 2019) 59.

workers of the CoO abroad could be considered. The source of government (co-) funding needs to be determined – e.g., as a standard budgeted item; through earmarked taxes; or another dedicated funding source (for example, a levy on the licensing fees payable by private employment agencies). The beneficiaries also need to be indicated with precision. Apart from (contributing) migrant workers, family members ought to be included. The issue of whether irregular migrant workers should be supported via CoO funding arrangements requires difficult decision-making, especially in circumstances where the migrant worker in an irregular situation did not/was not able to contribute.

III INSURANCE-BASED ARRANGEMENTS

24. **A dedicated framework for (insurance-based) social protection support may be called for.** CoOs appear to be investing increasingly in extending special scheme arrangements or existing public social security scheme arrangements to migrant workers abroad and, at times, also their families, even those remaining in the CoOs. These include health coverage and portability of benefits. In doing so, CoOs deliberately have to overcome territoriality restrictions – not only by adopting legislation that would ensure the extra-territorial application of these arrangements, but also by establishing institutional and operational measures, including awareness-raising measures and support to access the contributory and benefit claim procedures. Nevertheless, several challenges may impede the extension of CoO social security measures. In particular, public social security schemes in the CoO may be non-existent or weakly developed and therefore not provide meaningful coverage, including for workers in these countries. Also, in addition to overcoming territoriality restrictions, a strong and coordinated institutional framework and effective operational arrangements need to be in place.

Given their broad sweep and limited funding basis, MWPs may not be able to cover many key social security risks (e.g., maternity, sickness and unemployment) and, even where they are covered, the coverage is often minimal. Also, usually the protection is time-bound, normally ending upon or soon after return of the migrant worker to the CoO. Only in some cases is social security support extended to family members, including family members who stayed behind in the CoO. Lack of awareness and problems experienced when claiming benefits are periodically raised as challenges. Therefore, it appears necessary to ensure that all key social security risks encountered by migrant workers and their families are sufficiently covered, even if incrementally; this may require separating social security provisioning from broader welfare and social protection support available to migrant workers abroad.

25. **Consider range and adequacy of social protection (SP) benefits available in CoD(s).** A key consideration concerns the extent and sufficiency of current social security coverage available to migrant workers and their families in key CoDs, bearing in mind that tax-funded non-contributory social security benefits are usually not available to migrant workers in CoDs. This raises the question whether migrant workers of the CoO have access to contributory benefits in key CoDs, the difficulty attached to accessing some of these benefits (e.g., challenges with accessing long-term benefits by short-term migrant workers), and the adequacy of the value and regularity of the benefits.
26. **Decide on the social protection risks that should be provided via insurance-based arrangements.** The decision regarding the range of CoO social protection benefits to be provided to migrant workers of the CoO would also be influenced by factors associated with the CoO itself – including the availability of such benefits to contributors in the CoO and the capacity of the CoO to make available such benefits abroad. The assumption is that, subject to exceptional circumstances (including emergency relief), CoOs would

rarely be able to extend non-contributory benefits, hence the focus on insurance-based arrangements. Responses may differ according to the social security risk involved. The list of social security but also broader social protection benefits to be considered include medical care (including type and level of medical care), sickness benefits, disability cover, survivor's support, family support (including child benefits), benefits associated with occupational injuries and diseases, unemployment benefits, maternity and paternity protection, retirement provision, life insurance, benefits to cover risks to which family members in the CoO and/or abroad may be exposed to (e.g., medical care, children's education), and repatriation costs. Importantly, it may not be possible to immediately extend all envisaged social security benefit types. There may be a need, therefore, to prioritise certain benefits (for example, benefits with immediate impact, such as health care support), and to introduce other social security risk benefits gradually.

A related question concerns the issue of portability of *accrued* social security benefits (e.g., a retirement benefit) by the CoO. Usually, portability of benefits is specifically provided for in BSAs. In most cases, CoO social security laws provide for some measure of portability of accrued benefits, even in the absence of BSAs. This may be in the form of lump-sum instead of regular payments, especially where regular payments may be institutionally or logistically challenging. Nevertheless, regular payments are generally to be preferred and may require adjustment in payment regimes, to ensure ongoing protection. This could be done, for example, through arranging with a CoD social security institution to make payments on behalf of the CoO institution.

27. **Consider the modalities of extending CoO insurance-based arrangements and ongoing social security protection.** Globally, several CoOs initially established dedicated insurance-based schemes to provide social protection benefits to migrant workers. However, to the extent that social security benefits may be provided by a public scheme to beneficiaries generally in the CoO, there has increasingly been a tendency to extend these to migrant workers of the CoO and their dependants, subject to necessary adjustments. In particular, it could barely be expected of the migrant worker to pay additional or double contributions in the absence of contributions by foreign employers. However, this may impact on the value of the benefit to which the migrant worker or their dependants may be entitled.

Appropriately designed and well-managed publicly arranged social security provisioning may have advantages over private insurance-based arrangements. This may imply savings on the part of the contributing migrant worker. Also, it would facilitate streamlining of migrant workers' social security contributions, and compliance with eligibility criteria and benefits withdrawal, irrespective of whether the migrant worker works in the CoO (prior to and after return from the CoD) or in the CoD. In this way, a seamless continuation of social security coverage to the benefit of the worker is ensured.

28. **Compulsory coverage may strengthen social security coverage for migrant workers abroad, but dual coverage challenges need to be overcome.** Some countries have made insurance-based coverage compulsory for their migrant workers. However, in doing so, CoOs have to be mindful of the real possibility that some CoDs oblige migrant workers present in their countries to contribute to CoD social security schemes – especially health insurance schemes. The effect of this may be that, in the absence of a bilateral agreement aimed at avoiding dual coverage, the migrant worker concerned may be required to contribute to a scheme covering the same social security risk in both the CoO and CoD. This can be avoided by stipulating that the obligation to contribute to the CoO scheme only applies to the extent that the migrant worker is not already covered

under a similar arrangement in the CoD and/or by entering into a BSA, which contains an appropriate arrangement aimed at avoiding dual coverage.

29. **Much can be done to provide protection to families of migrant workers abroad, in particular families staying behind in CoOs.** Protection of family members can be strengthened, also in the social security domain. In particular, consideration should be given to ensuring that dependants' and survivors' benefits, as well as family benefits, are appropriately captured in insurance-based social security schemes.²⁴ In the broader social protection domain, much can be learnt from good practice examples of countries providing business start-up support, or education support through migrant welfare funds to children of migrant workers abroad, in the CoO (e.g., access to schools; scholarship programmes). Also, it is important to ensure appropriate health coverage for those staying behind, through health insurance programmes and access to state-provided health care.²⁵

IV SUPPORT SERVICES

30. **MWPs provide a range of services, which (could) include limited social protection insurance-based arrangements.** An extensive range of services are rendered by MWPs. Some but limited insurance-based coverage is extended as part of the core services so rendered. There is no common template of benefits and services provided by MWPs. Much depends on the key needs experienced by migrant workers from a particular CoO and the extent to which these needs are already addressed by either the CoO government (for example, via its embassies), the applicable CoD or otherwise, e.g., by civil society organisations. The ability of the MWP and/or government of the CoO to render these services/benefits, potentially in collaboration with other role-players, is also a consideration. It is, therefore, necessary to clearly determine the evidence base for the social protection and welfare needs experienced by migrant workers and their families, the extent to which these are already provided for, and the feasibility of rolling out benefits and services. Actual and potential services/benefits include, but are not limited to:²⁶ Insurance in case of death and disability, and for health care; Burial expenses; Travel expenses; Repatriation of workers due to contract violations, emergency situations, and repatriation of deceased migrant workers; Reintegration of returned migrant workers, including housing and self-employment start-up support; Re-integration loans upon return; Pre-departure training and information; Vocational training and other training programmes and assistance; Workplace monitoring; Scholarships for university

²⁴ A 2015 IOM study has found that, generally, limited financial and other support is given to families of deceased migrant workers – welfare funds and/or insurance-based arrangements in countries of origin are used to pay for repatriation and burial of the deceased, restricted survivors' benefits and health care. Countries of destination invariably do not provide compensation, but an obligation on employers to pay for repatriation of the deceased and, of course, the payment of outstanding wages and end of service benefits: Jones, K. *Recruitment Monitoring & Migrant Welfare Assistance: what works?* (IOM, 2015) 155-156.

²⁵ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 58-59, 60, 75; see also Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 51.

²⁶ Jones, K. *Recruitment monitoring & Migrant Welfare Assistance what works?* (IOM, 2015) 129 (Adapted from Agunias, D. & N. Ruiz *Protecting Overseas Workers: Lessons and Cautions from the Philippines* (Migration Policy Institute, 2007). Available at: www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf. See also Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 57-59.

education, or education fees for families of migrants; Provision of social and legal assistance; Emergency/calamity assistance to affected workers and their families; Relief support in case of displacement or lay off; Legal, financial and other assistance to exploited/trafficked/abandoned workers (especially women), including shelters for distressed workers, especially domestic and unskilled workers; Counselling services and psycho-social support.

31. **Access to health care.** "Migrant workers often cannot fully access available medical services in the destination country, and they may have access to fewer or more costly services than the local population. Barriers can be legal, administrative, organizational or socio-economic; they may result for migrants' own health beliefs and health-seeking behaviour, or from cultural and linguistic challenges."²⁷ Due to a variety factors, migrant workers and their families are often disproportionately exposed to negative health outcomes. Yet, certain CoDs in particular may deny them access to mainstream (public) medical facilities, except in cases of emergency or, if covered, occupational injuries-related health care. In some cases, migrant workers have to contribute to a segregated medical care scheme, and/or the provision of medical care is indicated as an employer liability. Some CoOs attempt to include (foreign) employer liability for health care within bilateral agreements with destination countries and the associated contracts of employment. Recently, certain CoOs have made membership of and contribution to the national health (insurance) scheme compulsory in an attempt to better protect their migrant workers abroad. However, as noted earlier, in the latter case origin countries must take care not to subject affected migrant workers to dual coverage challenges.²⁸

32. **Access to legal services.** There are several human rights and other considerations which make free or affordable access to justice a paramount requirement. Access to legal services may be required within the CoO prior to departure, or upon return – in the latter case, for example, to assist with claiming social security benefits due to returned migrant workers. In principle, legal services – whether public or private – may be available, although the reality is that such assistance in origin countries remains limited. It is, however, in particular in CoDs that the need for legal assistance arises – among other to resolve disputes with the employer, to deal with visa and related challenges, and to assist migrant workers in the event of alleged employer abuse/exploitation. NGOs are pivotal to the legal assistance migrant workers receive in destination countries. Workers' rights centres also provide useful models of practice. In both cases the need to fund these institutions is a concern. Invariably, migrant workers turn to embassies for assistance. Some CoO embassies hire local lawyers to assist their nationals, or may employ lawyers of their own to do so. Again, costs may be a factor. MWPs could assist in providing the necessary funding, also for migrants at home.²⁹

33. **Repatriation of migrant workers.** Increasingly, the principle evolving, confirmed by global good practice, appears to be that, depending on the specific circumstances, repatriation should be a cost to be borne by: (i) employers, except where the migrant

²⁷ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 65.

²⁸ Jones, K. *Recruitment monitoring & Migrant Welfare Assistance what works?* (IOM, 2015) 145-146.

²⁹ "Available legal help is pivotal to whether or not employees can enforce their contractual rights; it also strengthens the rule of law by increasing transparency within the system of contract migration, makes private and government actors accountable, and often addresses systematic gaps in rights protections. In short, having access to legal services is essential for migrant workers to be able to access justice...": Jones, K. *Recruitment monitoring & Migrant Welfare Assistance what works?* (IOM, 2015) 149 (authorities omitted); 150-151, 159.

worker commits breach of contract or an unlawful act (e.g., overstaying in conflict with visa conditions); and/or (ii) the relevant recruitment agency, especially where the employment abroad does not match the job offer in the employment contract. Repatriation may also be specifically dealt with in a bilateral agreement between the origin and destination country, and also in the employment contract – assuming that the agreement or the contract reflects the evolving principle outlined above, to ensure that the worker is adequately protected. Enforcement may, however, be difficult and needs to be specifically provided for; it would ideally require the cooperation and even legislative intervention on the part of the CoD (as has lately been happening in several CoDs and CoOs). Otherwise, in the absence of clear arrangements in this regard being appropriately enforced, the responsibility to repatriate a migrant worker often becomes a burden on embassies and consulates – i.e., in effect saddling the CoO with ultimate responsibility.³⁰

34. **Migrant worker orientation.** There is a need to ensure sufficient access to key information that prospective and current migrant workers could use to better protect and prepare themselves for the experiences they will have throughout the labour migration cycle. This information is particularly important at specific points during the labour migration cycle: (i) to inform labour mobility decisions of prospective migrant workers; (ii) to prepare migrant workers for their departure and employment abroad; (iii) to support migrant workers to successfully navigate society and the workplace in CODs; (iv) to ensure they are able to successfully access social protection schemes and other assistance when returning to their respective COOs; and (v) to appropriately prepare them for return to and reintegration into the CoO, including through skills training at the overseas destination even before return. Also, "For the most utility, content should also be tailored to individual destination countries. Content should include information about migrants' rights, including access to remedy at home as well as in the destination country. ... governments may wish to consider allowing workers' representatives, including CSOs and trade unions input into designing pre-departure programme content as well as in delivering it. The participation of migrant returnees in programmes has also been highlighted as a model of good practice. The 'one-stop shop' model developed exhibited by the Migrant Resource Centres may be useful in delivering all-round services to migrants."³¹

African countries could benefit from the envisaged partnership between Saudi Arabia, the UAE and the AUC, to work together on implementing a Comprehensive Orientation and Information Programme (CIOP) with the aim of providing migrant workers with accurate information on a range of relevant topics, including rules and regulations related to recruitment, as well as employment contracts and remittances.

35. **Return and reintegration of African migrant workers.** Reintegration programmes "... encourage return migrants to actively contribute to the economy and society, mainly by helping them find business and employment opportunities. Successful reintegration considers the needs of migrants on several levels: economic (business creation, new employment, reskilling or skills upgrading) and psychosocial (adaptation after prolonged absence, reunification of the migrant family)."³² Sustainable reintegration, a concept introduced into the 2018 *Migration Policy Framework for Africa*, can be achieved when returnees can rely on expanded capabilities to attain a stable, safe and dignified life of

³⁰ *Ibid*, 147-148.

³¹ *Ibid*, 15.

³² Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 66, 76. See also <https://www.rabat-process.org/en/document-repository?task=document.download&id=158>.

economic self-sufficiency psychosocial well-being, political, social and civil inclusion, as a result of which they can respond to the drivers of irregular migration.³³ The ability to prepare for return is a key factor to ensure successful reintegration. Also important is the integration of return, readmission and reintegration programming into longer-term development processes in the CoOs. This requires inclusion of returnees in development programmes; data harmonisation and common standards in this area; and the need for sustainable funding and timely administrative programme processes.

Measures adopted by CoOs include preferential access to start-up investment; loans for new businesses, e.g., at the local government level; entrepreneurship training, especially for migrant women; supporting private-sector efforts to provide job-matching services to returnees; and supporting reintegration support services provided by civil society actors. Implementing and making known return employment information platforms could be effective means of providing information and hence improving the match of return migrant workers, in terms of skills use and labour market integration. Yet, several challenges need to be overcome: the need for financial education to manage overseas earnings and entrepreneurship support in origin countries; insufficient attention paid to reskill returnees and enhance placement services for them; limited social security portability possibilities; lack of legal and health support services upon return; and limited and underdeveloped social reintegration services. Also, the efficacy of targeted entrepreneurship and income generating schemes for returnees seems to be dependent on whether the returned migrant worker had already been exposed to business management during migration and could contribute co-financing capital.³⁴

Recommended interventions, to be considered by African CoOs, proposed in the GCM (par 37), include:

- Ensuring return migrant workers' equal access to social protection and supporting services, and utilise their entrepreneurship, skills and human capital; and
- Identifying and addressing the needs of receiving communities, by "including respective provisions in national and local development strategies, infrastructure planning, budget allocations and other relevant policy decisions and cooperating with local authorities and relevant stakeholders."

Public-private partnerships could hold significant value, with the private sector providing skills training, even before return, and subsidies for employment of returnees, as well as inclusion of private sector actors in coordination platforms.

Also important is improving the social protection regime relevant to African migrant workers abroad, also with a view to supporting return migrants. This includes –

- Firstly, assistance required by African workers abroad (assistance in relation to engagement with and claiming benefits from CoD social insurance schemes; and assistance in relation to engagement with CoO social insurance arrangements – e.g., by ensuring that return migrants are enrolled in the applicable social insurance scheme of the CoO);
- Secondly, ensuring coverage of return migrants regardless of the nature of their labour market association in the CoO – as many return migrants become involved in the local

³³ African Union *Study on Return, Readmission and Reintegration Programmes in Africa* (2021).

³⁴ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 66-70; Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 56.

labour market as entrepreneurs, as household business heads, and/or as workers in either the formal or the informal economy;

- Thirdly, providing for benefits that have accrued to be portable; and
- Fourthly, the need for appropriate bilateral labour and social security agreements providing among other for equality of treatment and avoidance of dual contribution obligations; maintenance of acquired rights; accumulation/totalisation of insurance periods, and contribution obligations; and portability of benefits.

V IMPLEMENTATION

Regulation, institutions and operations

36. **Existence of a policy and legal framework; institutional and operational capacity.** World-wide, MWPs are often embedded in guiding policy frameworks. Also, for several reasons, an enabling legal framework is required. Invariably, extending CoO social security and welfare arrangements unilaterally to migrant workers abroad may involve extra-territorial interventions, which would require a legal mandate, especially in the absence of a bilateral agreement to that effect. Also, contribution-based benefits imply an entitlement to such benefits, once the eligibility conditions have been met, and need to be reflected in the legal framework. In fact, the same considerations that inform the need for a legal framework for social security coverage in the national system for workers in the CoO also apply to migrant workers of the CoO while abroad.
37. **Well-designed institutional and operational arrangements are necessary to foster protection.** MWPs have been found to be effective when they are part of an integrated labour migration management system and are linked to a governmental agency monitoring the needs and risks of migrant workers abroad.³⁵ Best practice examples indicate that CoOs succeed in providing meaningful welfare support and social protection to their migrant workers abroad when they have coordinated *institutional structures* in place³⁶ –
- These structures usually involve *different levels of government* (including local governments); *specialist public bodies*, often located within ministries; as well as *diaspora-related private institutions*.
 - Of critical importance are the services rendered by *embassies/consulates*, to which the technical agents of the Labour Administration (Controllers, Attachés and Administrators) and social protection agents should be linked – Colombo Process countries invariably invest in utilising embassies to provide support to migrant workers, which also includes the monitoring of migrants' workplaces, and providing shelters within embassy grounds for migrants in distress. Particularly important in this regard is partnering with service providers, including civil society, to support the work of diplomatic missions.
 - *Labour attachés* fulfil an important role in assisting and protecting migrant workers in destination countries. Their role is also proactive as best practice suggests that they

³⁵ Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 52-53.

³⁶ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 58-59, 60-64, 75-76; Abrar, C., Irudaya Rajan, S., Ruhunage, L. & T. Siddiqui *Institutional Strengthening of the Office of Labour Attaché: Research Findings from Bangladesh, Indian and Sri Lanka* (Migrating out of Poverty, Research Programme Consortium, Working Paper 23, 2014) 6, 31-34.

make employers and recruiters respect the rights accorded to migrant workers, including domestic workers. However, apart from funding constraints, several other challenges are experienced, in particular related to governance and institutional capacities at destination. Key recommendations to strengthen labour attachés include recruitment and training of qualified personnel; improving the capacity of labour attachés to deal with a large number of issues concerning migrant workers and to expand their liaison with these workers; linking with employers and the private sector to enhance recruitment opportunities for interested migrant workers, and to otherwise explore labour market possibilities in the destination country; and improving resource allocation for the labour attaché wing of embassies as well as coordination and coherence between different wings of overseas diplomatic missions.

- Also, maintaining *welfare desks* at the departure and arrival lounges of international airports in the home country is particularly helpful for on-site assistance, services and advice extended to migrant workers.
- Consideration could be given to *joint approaches and cost-sharing* by CoOs in relation to assistance given to migrant workers abroad, ideally complemented by collaborative efforts on the part of CoDs, given the value these countries derive from labour migration.
- Enhancing the capacities of origin countries to render meaningful social protection benefits and other services to their migrant workers abroad requires *capacity-building interventions* following a determination of capacity needed to implement support programmes, and to address *data gaps* and produce the evidence to inform policy and implementation.

In addition, a dedicated *operational framework* of services and tools is necessary to enhance and streamline access to the country-of-origin social security system and benefits, as well as other social protection benefits and services available to migrant workers. This may require the digitisation of operations, processes and interfacing between governments/agencies and migrant workers and their dependants. Reported examples of electronic interfacing and smart card technology are particularly helpful. Also, *monitoring and evaluation* should be included as an integral component of policies and programmes aimed at rendering welfare and other forms of social protection support to migrant workers abroad.

Nevertheless, challenges experienced with the *funding and administration* of in particular migrant welfare funds need to be addressed – among other, by including destination-country governments and foreign employers in providing support, both financially and technically; by implementing formal mechanisms for periodically informing fund members about the fund's financial standing and services offered in a given period; and by more effectively including undocumented migrants, who remain most vulnerable and in need of support, but without jeopardising the system's integrity and the fund's sustainability.³⁷

38. **Civil society institutions play a critical role in supporting migrant workers and fulfilling advocacy roles, but face constraints.** Trade unions and NGOs have been particularly active in providing various forms of assistance to migrant workers and their families, and to highlight the plight of migrant workers prior to and during their stay in the destination country, and upon return to the origin country. A good practice by trade unions is MOUs between unions in origin and destination countries to mutually support and assist migrant workers. However, as has been noted, "With trade unions either banned or facing limitations on their operation, NGOs in destination countries try to fill the gaps in migrant

³⁷ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 75, 78.

welfare, but are however largely limited to providing humanitarian assistance. Yet, NGOs often struggling financially, are usually limited to providing humanitarian assistance in the form of emergency shelter, assistance with repatriation. In more limited circumstances, NGOs at home and overseas also provide access to legal assistance for migrants to seek redress for wrongs – either financial or criminal. Advocacy on the part of individual NGOs is substantially more limited ..."³⁸ It is also important to involve, as far as possible, employers in CoDs, if necessary via recruitment agencies in either the CoO or the CoD. Several countries of origin have in fact recognised the important role of employers in CoDs, and have adopted legal provisions, in terms of which such employers and recruitment agencies are held liable jointly or severally, should migrant workers be abused and/or their conditions of service not be adhered to. Some CoDs have also blacklisted abusive or otherwise uncooperative employers.

39. **Implementing CoO measures may require the cooperation of CoDs.** "All too often, good practices such as minimum wage standards, standard contracts and job descriptions are unilateral efforts not easily enforced at destination. Bilateral or multilateral discussions and agreements on such matters can help ensure that migrant workers rights are effectively protected."³⁹ Modalities for coordination and cooperation include joint committees, joint inspection; and coordination with other CoO embassies in the CoD.
40. **Invest further in Migrant Resource Centres (MRCs).** Migrant resource and similar centres (e.g., employment service centres) play an important information-providing and supportive role. Origin countries should consider establishing MRCs where they do not presently exist and facilitate access by providing mobile services to prospective migrant workers. Enhanced information-sharing could be achieved "... by developing concise destination country profiles that outline employment conditions, required documents, health information and government contacts and services in a language migrants can readily understand." Origin countries bound together in regional frameworks could also work with each other by sharing information among themselves and collating information in one region-wide resource hub.⁴⁰ Efforts should be made to increase their use, to offer some products (also) in digital format and to integrate such Centres in national labour migration services.⁴¹

Roadmap for the establishment of a MWP

41. **Design a Roadmap for the establishment of a MWP.** Utilising the Template accompanying these Guidelines, African countries should design a Roadmap for the establishment of a MWP. Elements of the Roadmap could include:⁴²
- (1) **Assign to an appropriate Ministry the overall responsibility.** The most suitable Ministry (usually, the Ministry for Labour/Employment, unless a separate Ministry for overseas migrant labour has been established) should be tasked with overall responsibility to spearhead the actions and measures to establish a MWP and

³⁸ Jones, K. *Recruitment Monitoring & Migrant Welfare Assistance: what works?* (IOM, 2015) 14.

³⁹ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* 79-80 (IOM, 2011) 56-57.

⁴⁰ *Ibid*, 72-73.

⁴¹ Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 56.

⁴² Adjusted from ILO *Establishing Migrant Welfare Funds in Cambodia, Lao PDR and Myanmar* (Policy Brief Issue No. 3, November 2015) 6-8.

ensure its operationalisation. Assigned duties should include: (a) Act as a coordinator in the national effort to establish the MWP, including closely liaison with Cabinet and the Technical Working Group indicated below; (b) Analyse the labour migration environment; (c) Collect and organise data, gather information on all existing laws, policies and procedures; (d) Prepare a draft of the regulatory instrument informing the establishment and operations of the MWP and associated proposed amendments to existing laws, policies and procedures. National Government should allocate sufficient appropriately-budgeted resources to enable the Ministry to undertake its tasks.

- (2) **Create a Technical Working Group (TWG).** Assign a technical team representative of all key stakeholders in the CoO to support and advise on the establishment and operationalisation of the MWP. The advice should pertain to both policy orientation and technical matters. Stakeholders engaged with migrant workers abroad should be incorporated, and could include: (i) Relevant government Ministries (including Ministries responsible for Foreign Affairs; Finance; Social Development; Enterprise Development), and with particular reference to the Ministry responsible for labour or any other Ministry tasked with overseeing the operationalisation of the MWP; (ii) Affected public institutions, including among other a public entity that may be tasked with managing any particular mandate concerning overseas employment (including public employment services), public social security schemes, national statistics office, and national training institutions; (iii) Social partners, i.e., apex workers' and employers' organisations; (iv) Private sector role-players (e.g., private training institutions or development partners engaged with migrant workers prior to and after return; financial institutions); (v) Apex recruitment industry body representing private employment agencies; (vi) Migrant associations, representing current and/or returned migrant workers – including apex diaspora associations in major CoDs; (vii) Involved civil society organisations, such as advocacy institutions supporting migrant workers prior to and after return, and while abroad; (viii) Senior consular officers from embassies in major CoDs; (ix) Key international organisations supporting the establishment of the MWP; (x) External resource persons/experts. The TWG should meet regularly and consult extensively, on an ongoing basis, with stakeholders involved. It should prepare all materials and draft strategies that will be validated during consultative workshops.
- (3) **Initiate strategic planning sessions.** The objective of strategic planning sessions is to prepare proposals to be submitted to the consultative workshops (see below) *and* to push for the implementation of the outputs of the consultative workshops, as well as to gain the approval of concerned authorities. The planning sessions can be led by the TWG with guidance from external experts. The planning sessions should include:
- The formulation of proposed amendments to laws, policies and procedures that would cover improvements in regulatory processes, licensing of recruitment agencies and management of labour migration data
 - The development and, where relevant, revisions of legal frameworks or ministerial orders to enable the establishment of a MWP that would describe the:
 - Coverage of the MWP, with reference to intended contributors and beneficiaries
 - Required programmes and services
 - Management information system
 - Organizational structure
 - Reporting, supervision, monitoring and evaluation of the MWP
 - Funding mechanisms
 - Management and investment processes for the MWP

- Initiation of contacts with collaborating government agencies and private organizations at the countries of origin and destination
 - Undertake an actuarial and feasibility study towards the establishment of the MWP.
 - Identify a major CoD in which to pilot the delivery of programmes and services pending approval of enabling laws to govern the operation of the MWP.
 - Identify pilot implementing partners such as those among the trade unions and civil society organisations that already provide welfare programmes to migrant workers.
- (4) **Convene consultative workshops.** The assigned Ministry, in coordination with the TWG, should convene a series consultative workshops with the stakeholders indicated above, but also with government more broadly and with parliamentarians. At these workshops the TWG shall present: (i) Its detailed studies; (ii) Reliable migration data; (iii) New laws/policies or revisions to existing laws, policies and procedures; (iv) Proposed institutional and organisational structure to implement the MWP, including the management of the MWP; and (v) Proposed contributory, beneficiary and funding model and proposed menu of social protection and welfare programmes and services. The consultative workshops should end with a joint resolution for the proposed legal and administrative amendments with specific funding mechanisms, organisational structure and key programmes and services. The workshops should be structured to provide ample time for dialogue, the identification of priorities on benefits and services, and the formulation of a work plan with specified actors, targets and timelines. At one of the consultative workshops, the draft policy and legislative framework informing the establishment of the MWP should be validated.
- (5) **Frame and process administrative policies and legislation.** Submit final proposals regarding the policy framework and envisaged legislation informing the establishment of the MWP, including amendments to current policies and laws, to Cabinet for approval and facilitate the passage of new legislation and amendments to laws by Parliament.
- (6) **Issuance of orders.** Prepare and issue specific directives to implement the approved laws, policies and procedures. Ensure the release of the necessary funds for implementation.
- (7) **Organize the Board of Trustees and Secretariat.** Select and appoint the members of the MWP oversight structure (e.g., Board of Trustees) and facilitate the process for the appointment of the head and managers of the MWP, and other staff members. The responsible Ministry should take the lead.
- (8) **Implement programmes and services.** In collaboration with the responsible Ministry, the MWP staff should manage the implementation of programmes and services. Rigorous capacity-building training should be provided to the MWP staff, organised by the MWP management, in collaboration with the Ministry.
- (9) **Pilot the programmes and services.** In collaboration with the responsible Ministry and the Ministry of Foreign Affairs, the MWP should assign the implementing team to an embassy located at the target CoD. Besides piloting the programmes and services, the team must begin strengthening its networks among the migrant workers and look for possible partners such as money transfer organisations and telecommunication companies. Conduct simulated repatriation exercises at the piloted CoD and reception protocols at the CoO. At the end of the pilot, assess the worksite situation and make the necessary adjustments to programmes and services and the organisational structure.
- (10) **Implementation of systems and procedures.** Ensure that necessary systems and procedures are in place, including:
- Welfare Fund management

- Collection of member contributions
 - Fund disbursement
 - Investment protocols
 - Reporting and auditing
 - Management information system covering the delivery of programmes and services and disbursement of the Welfare Fund.
- (11) **Facilitate partnerships.** Establish public institutions, civil society and private sector partnerships for delivering social protection welfare programmes and services, which could include:
- Social security and health insurance institutions
 - Contract and employment mediation
 - Assistance on migrant worker complaints
 - Repatriation services
 - Financial services
- (12) **Assistance protocols.** Identify assistance protocols appropriate to the country of destination as guided by the approved policies and procedures.
- (13) **Migrant networks.** Establish migrant workers networks (e.g., diaspora networks; returned migrant workers' organisations)
- (14) **Monitoring and evaluation.** Monitor performance of the MWP and evaluate its achievements, on the basis of an operational monitoring and evaluation framework.

Strengthening the regulatory environment

42. **Better regulation of the recruitment industry is key to migrant workers' protection, including social protection.** The following needs to be noted:
- **Invest in private employment agencies (PEAs) and public employment agencies.** Given the widespread reporting of abuse and exploitation implicating agents, CoOs have to tighten the regulatory environment and compliance monitoring measures. Furthermore, investing in public employment agencies may be worth considering, provided that governments are able to provide the required skilled human resources and financial means to operate these agencies efficiently.
 - **Adhering to the principle that migration costs should not be for the account of the (prospective) migrant worker.** Failure to adhere to this international norm may result in increased migrant worker debt bondage and in contributing to irregular migration patterns.
 - **Imposing joint and several liability.** Also, holding PEAs and (foreign) employers jointly and severally liable in the event of non-compliance with regulatory requirements, human rights imperatives and contractual obligations needs to be considered.
 - **Self-regulation and fair recruitment principles.** Considerable benefit can be gained from requiring the recruitment industry to self-regulate (e.g., via enforceable codes of conduct, ideally supported by a ranking system), in addition to implementing the public regulatory regime, and adhering to widely endorsed fair recruitment principles, increasingly embedded in a large range of international standards and guidelines.
43. **Significant scope exists for strengthening recruitment monitoring.**
- **Adherence to monitoring standards and guidelines operating at various levels is key to ensuring protection of African migrant workers.** This includes monitoring by international supervisory bodies; monitoring at the state level; and non-state-led monitoring (by trade unions, NGOs, and businesses (PEAs and employers) in 'soft' regulation, including private initiatives.
 - **Learning from the experience of other countries and regions, African governments should contemplate a range of measures to implement**

appropriate recruitment monitoring frameworks.⁴³ Among others, these include: (i) Robust screening of applications from PEAs; (ii) Ongoing monitoring of PEA licensees by their home authorities; (iii) Close monitoring of fees charged to migrants; (iv) Ongoing monitoring of PEAs through emigration clearance processes; (v) Include labour attachés in attesting documents (in particular, the employment contract with the foreign employer); (vi) Systematic bilateral sharing of information about exploitative PEAs between licencing authorities and those of associated destination states; (vii) Deal with the continued existence of unlicensed sub-agents; (viii) Implement rarely-used criminal sanctions, over and above administrative sanctions to cement PEA liability in the event of exploitation of migrant workers, where the exploitation is not beyond the control or influence of PEAs; (ix) Assist migrant workers (including irregular migrant workers) in obtaining restitution and accessing complaints mechanisms both at home and abroad.

- **Adjust national legal and policy frameworks to improve recruitment monitoring.** African CoOs should consider the following:
 - *Regulate relevant business relationships involving PEAs.*
 - *Publicly disclose PEA complaints and sanctions.*
 - *Include monitoring provisions in bilateral labour agreements.*
 - *Capture related migration businesses in the legal framework.* These include pre-departure training centres, medical centres, insurance companies, travel agencies amongst others, some of which might be owned by PEAs.
 - *Provide for incentives.* In addition to penalties for non-compliant agencies and agencies which engage in fraudulent or abusive employment, national legal and policy frameworks should also provide incentives (rewards) for PEAs to either comply or go beyond compliance to act ethically.
- **Involve trade unions and NGOs.** "Trade unions and NGOs are essential contributors to monitoring of international recruitment industries through: a) advocating for individuals, often through facilitating litigation against perpetrators; b) exposing exploitation and campaigning for change; and c) helping recruiters to develop more ethical business practices." In addition, as earlier explained, employers in the CoD should also be involved, either directly or via recruitment agencies in the CoO or CoD.
- **Adopting regional approaches.** Origin country governments should consider working together as a bloc to enhance recruitment monitoring and in particular to abolish recruitment fees, for example by adopting appropriate regional instruments and monitoring institutions. They could also as a bloc engage with associated destination countries on recruitment monitoring in such countries.⁴⁴

44. **Invest in harmonised standard employment contracts which guarantee a minimum of social security and other social protection benefits.** A well-developed standardised employment contract, to which CoOs and CoDs commit and which is enforceable in both countries, appears to be critical prerequisite for the protection of migrant workers. Such a standardised contract is already required, or envisaged, by some origin countries: "Model employment contracts are clearly a cost-effective, easy-to-implement and straightforward way of protecting migrant workers' rights, in particular for most vulnerable, non-skilled migrants, at least in its non-mandatory variety. The registration of contracts of migrant workers in the public employment services of countries of origin is another effective, complementary way of protecting their rights; this is particularly true, if it is also used in

⁴³ Jones, K. *Recruitment Monitoring & Migrant Welfare Assistance: what works?* (IOM, 2015) 4-7. See also Mekong Migration Network *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants' Rights* 2019) 122.

⁴⁴ Jones, K. *Recruitment Monitoring & Migrant Welfare Assistance: what works?* (IOM, 2015) 7-8, 11.

the framework of the recognition of acquired skills or social security rights, as is the case in some countries."⁴⁵

Apart from clear and enforceable terms and conditions of employment (adjustable to the context of the specific work environment), a certain modicum of social security and broader social protection support should appear from the employment contract, adjusted to the context of both the CoO and the CoD. Bilateral social security and even bilateral labour agreements can build on the nature and ambit of the protection but even so, this does not remove the importance of having such provisions included in the contract of employment. Countries bound together in a regional framework could agree on a standardised contract applicable to migrant workers from various countries in the region, both for intra-regional and international labour migration.⁴⁶

45. **Bilateral and multilateral agreements are key to migrant worker welfare support.** Appropriately designed BLAs as well as BSAs and multilateral social security agreements remain the desired avenue to ensure social and welfare protection for migrant workers and their families. There is some evidence of a new generation of progressive BLAs containing worker-centric provisions regarding recruitment and welfare support, including a limited range of social security benefits. In view of the need for an appropriate range of social security-specific benefits to be available to migrant workers and their families, bilateral and multilateral agreements need to be further developed. Bilateral tax treaties may further assist in improving the financial position of migrant workers and hence their ability to access (contributory) social protection and welfare support. Yet, African governments have to understand that it takes time to negotiate such agreements, that dedicated measures need to be included in the agreements to enhance their enforceability and that the weak/unequal bargaining power of African countries has to be appropriately dealt with, for example through welfare outcomes jointly agreed among African origin countries and with their associated destination countries. Furthermore, the impact and effectiveness of many CoO unilateral measures (e.g., skills training, recruitment monitoring, diaspora involvement) could be significantly enhanced if integrated into BLAs between CoOs and CoDs.⁴⁷
46. **Enhance the evidence basis and data environment.** The success and streamlining of CoO social protection and welfare assistance measures are dependent on a sufficient evidence base and an enhanced data environment – as, generally speaking, too little is known of what works and does not work in a particular context. This requires the enhancement of statistical capacity in CoOs in particular and dedicated data capturing and evaluative arrangements, including –
- Labour force surveys in countries of destination and origin that include pertinent questions on participation in migrant support measures;
 - A mandatory information template for all projects and programmes implemented; and

⁴⁵ Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 55.

⁴⁶ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 73-74.

⁴⁷ Martin, I. & S. Makarayan *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus on Countries of Origin* (European Training Foundation, 2015) 59.

- A mandatory post-programme evaluation framework for all programmes and projects funded and implemented.⁴⁸

Supportive arrangements

47. **Diaspora networks and remittance support enhance social protection support and developmental initiatives in the CoO.** Supportive interventions include:

- **Profiling and involving diaspora associations.** A well-organised network of diaspora associations could enhance social protection support, for example of family members in the CoO.
- **Streamline remittance transfer arrangements.** Streamlined and smooth remittance transfer arrangements greatly benefit households and contribute to economic development in CoOs, and strengthen the financial system (in particular, the balance of payments).⁴⁹ This would require attention being paid to moderating the regulatory environment to encourage remittance transfers; taking measures to bring about the lowering of remittance transfer fees, also by enhancing competition between approved remittance transfer operators; and supporting remittance transactions through mobile phones and other electronic means.⁵⁰
- **Enhance diaspora investments.** Favourable opportunities to invest in government and private assets may further enhance the ability of the country of origin to strengthen social protection support.⁵¹ Dedicated institutional arrangements (which could be mainstreamed into national investment institutions) and specialised incentive modalities may need to be developed to serve this purpose. Several countries have developed incentives to attract investments from the diaspora in particular, for example through the issuing of diaspora bonds.
- **Support diaspora skills transfer.** Of particular importance is the integration of qualified migrants in addressing critical labour market skills needs in CoOs – at least on a temporary basis, given the limited success achieved with attempts to ensure the permanent return of high-skilled migrants to African origin countries.

48. **Regional and continental involvement, as well as inter-continental engagement with CoDs, may be required.** Adopting suitable CoO approaches is a matter of regional and African concern. Ways and means should be found to include the work to be done in this regard also within the workplans of African RECs and AU organs, with a view to develop synergies and exchange across the continent. RECs could assist with refining these Guidelines for Member States of the concerned RECs and providing technical support.

There are increasingly good examples of regional institutions providing a platform for jointly investigating social security and welfare support needs and possibilities in relation to migrant workers abroad, to arrange for collaboration in and with countries of

⁴⁸ *Ibid*, 61-62.

⁴⁹ For example, remittance spending in the Philippines is "what keeps the big service industries such as retail, education, real estate...growing despite the sluggish performance of domestic industry and agriculture." See par 4.1 above and Ofreneo, R. & Sale, J. "Social security and migrant workers in the Philippines: Social protection for the country's economic protectors", in R. Blanpain *et al* (eds) *Social security and migrant workers: Selected studies of cross-border social security mechanisms* (Kluwer, 2014), 167-186 at 167.

⁵⁰ Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* (IOM, 2011) 66, 76.

⁵¹ *Ibid*, 66.

destination, and to otherwise exchange good practices. Such platforms also provide a basis for CoOs to develop a common voice and a set of common strategic aims on key issues in migration governance and in particular to advocate for enhanced social protection and welfare support for their migrant workers abroad, also vis-à-vis CoDs. Learning from the Asian experience, in the African context, this could include intra-regional consultations and joint approaches at the level of RECs, continental (AU) structures, and Regional Consultative Processes.⁵² At the continental level, this could be done within the framework of an existing continental platform, such as the Specialized Technical Committee (STC) on Social Development, Labour and Employment.⁵³ Common positions so adopted should feed into inter-continental platforms of engagement with GCC destination countries, in particular the Afro-Arab partnership (involving the AU and the League of Arab States).⁵⁴

ANNEX: KEY GLOBAL AFRICAN UNION AND RECs INSTRUMENTS AND POLICY FRAMEWORKS

Vienna Convention on Diplomatic Relations (1961)

Vienna Convention on Consular Relations (1963)

Global Compact for Safe, Orderly and Regular Migration (2018)

UN (nine) universal human rights instruments (nine) and associated Protocols

ILO (eight) fundamental ILO Core Conventions enshrined in the 1999 ILO *Declaration on Fundamental Principles and Rights at Work* – applicable to all workers including migrant workers

IOM *IRIS (International Recruitment Integrity System)*

(Three) international Conventions on migration for employment and rights of migrant workers and their families⁵⁵

UN 2030 Agenda for Sustainable Development

ILO *Multilateral Framework on Labour Migration (2006)* and ILO *General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs (2016/2019)*

African Charter on Human and Peoples' Rights (1981)

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)

Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment

REC free movement legal instruments

Migration Policy Framework for Africa and Plan of Action 2018 – 2030

⁵² Agunias, D., Aghazarm, C. & G. Battistella *Labour migration for Colombo Process countries: Good practices, challenges and ways forward* 79-80 (IOM, 2011) 79, 80. See generally Jones, K. *Recruitment monitoring and migrant welfare assistance: what works?* (IOM, 2015) 14, 158.

⁵³ Rule 5(1)(e) of the Rules of Procedures of the Specialized Technical Committee on Social Development, Labour and Employment lists the following as a specific function of the STC: "Consider issues relating to migrant workers in accordance with all relevant legal and policy frameworks on migrant workers".

⁵⁴ Proposal made by an African Union representative interviewed for purposes of this Report.

⁵⁵ The three international Conventions are: the ILO Convention on Migration for Employment, 1949 (No. 97); the ILO Migrant Workers Convention, 1975 (No. 143); the UN International Convention of the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. ILO Convention 181 on regulation of recruitment agencies and Convention No. 189 on Decent Work for Domestic Workers can also be considered key migration governance conventions given their relevance to regulation of *fair recruitment* and protection of migrant domestic workers.

