

GUIDANCE ON BILATERAL LABOUR MIGRATION AGREEMENTS

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Abbreviations

ASEAN	Association of Southeast Asian Nations
BLMA	Bilateral Labour Migration Agreement
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
GCM	Global Compact for Safe, Orderly and Regular Migration
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Human Rights of All Migrant Workers and Members of their Families
ILO	International Labour Office/Organization
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NGO	Non-governmental organization
OSH	Occupational safety and health
SDG	Sustainable Development Goal
ToR	Terms of Reference
TWG	Thematic Working Group
WHA	World Health Assembly (WHO)

I. Scope

The purpose of this BLMA guidance is to assist countries of origin and destination to design, negotiate, implement, monitor and evaluate rights-based and gender-responsive BLMAs, based on a cooperative and multi-stakeholder approach. The guidance is developed by the UN Network's Thematic Working Group (TWG) on Bilateral Labour Migration Agreements (BLMAs), co-led by the ILO and IOM. The TWG on BLMAs is comprised of representatives of UN agencies, employers' and workers' organizations, academia, and civil society organizations.

The BLMA guidance sets the criteria against which governments, workers' and employers' organizations, as well as other interested stakeholders, may assess existing practices. The guidance is based on the principles drawn from international human rights law and international labour law and standards, related UN and ILO instruments and other relevant sources and promising practices. As such, it could be used as technical guidance for the policy development and design of regulatory frameworks on BLMAs.

All sources used are listed in Annex 1 of this document.

This guidance is in line with the guiding principles and objectives of the Global Compact for Safe, Orderly and Regular Migration (GCM), in particular objective 5 which calls for promoting regular pathways for migration and actions, including to *"develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders..."*, as well as other relevant GCM objectives.¹

Further, the 2030 Agenda for Sustainable Development provides a strong link between decent work and migration represented by various targets, including target 8.8: "Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment." Other important targets related to labour migration are found in Sustainable Development Goal (SDG) 10 on reducing inequality within and among countries and SDG 17 on strengthening the means of implementation and revitalizing the global partnership for sustainable development. In particular, target 10.7 calls on States to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies" and target 10.c, which commits to "by 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent".

The principles in Section III are intended to cover all aspects linked to labour migration that should be included in a BLMA to ensure effective protection and well-planned policies. These principles are further detailed in Section IV of the document, which provides operational guidelines, addressing the responsibilities of specific actors in the labour migration process and implementation modalities.

The guidance contains a series of extracts from existing BLMAs. It should be noted that these examples are based on textual sources and do not necessarily constitute examples of good practices due to the lack of information and impact evaluations. Their inclusion should not be taken as an endorsement but are presented as practices used by governments as their means of addressing particular issues.

BLMAs are an overarching term used throughout this guidance to cover all types of agreements between two countries regulating labour migration. BLMAs do not cover refugees. The exact format of the BLMA will depend on the specific objectives of the Parties involved. When BLMAs are developed, it is essential that they promote rights-based labour migration and give effect to workers' rights set out in international law

¹ Such as, Objective 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work; Objective 7: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work; Objective 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences; and Objective 22: Establish mechanisms for the portability of social security entitlements and earned benefits.

and labour standards. They are an international implementation tool that can be utilized in support of national labour migration policies but cannot be a substitute for them. There are policy aspects that only national labour migration policy could address, such as modalities for entry, visa and permit systems, pathways to regularization and citizenship, etc. Therefore, BLMAs need to be closely aligned with relevant national policies, promote equal treatment and be grounded in labour market and migration information systems. It should also be noted that policy coherence is crucial at the national and regional levels, with strong mainstreaming of migration in policy frameworks, sectoral policies, cooperation mechanisms, and joint approaches.

Social dialogue plays a key role in the preparation, effective implementation, monitoring and evaluation of BLMAs. BLMAs should cover the entire migration cycle and benefit equally origin and destination countries, local communities, migrant workers and members of their families.

II. Definitions

Some key terms have been defined for the purposes of this guidance:

- The term **BLMA** refers mainly to bilateral labour migration agreements, which are arrangements between two States, or agencies. A BLMA describes in detail the specific responsibilities of each of the Parties and the actions to be taken by them with a view to accomplishing their specific goals in terms of governance of labour migration. It includes legally binding bilateral labour agreements (BLAs) and Memoranda of Understanding (MoUs). It can also include specific bilateral agreements between government ministries or agencies in countries of origin and destination, dealing with different aspects of labour migration. It can also cover framework or cooperation agreements that include labour migration along with other migration topics such as irregular migration, readmission, and migration and development.²
- The term **BLMA cycle** refers to the following phases: preparation; negotiation, including signature and ratification; implementation; monitoring and evaluation of the bilateral labour migration agreement.
- The term **migrant worker** refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.³
- The term **country of destination (employment)** refers to a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be.⁴
- The term **country of origin** refers to the State of which the person concerned is a national.⁵
- The term **country of transit** refers to any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.⁶
- The term **employer** refers to a person or an entity that engages employees or workers, either directly or indirectly (ILO 2019a).
- The term **labour recruiter** refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for-profit or non-profit, or operating within or outside legal and regulatory frameworks (ibid.).

² ILO 2017a., para. 68.

³ UN OHCHR 1990, Art. 2(1).

³ UN OHCHR 1990, Art. 6.

⁵ Ibid.

⁶ Ibid.

III. General principles of human and labour rights

This guidance is organized to identify general principles, which should apply to all BLMAs.

A. HUMAN RIGHTS, INCLUDING LABOUR RIGHTS

A.1 Safeguard human rights and international labour standards for the protection of migrant workers.

All BLMAs should respect, promote and realize all human rights, including those expressed in international labour standards, and in particular fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation, non-discrimination in respect of working conditions, ethical and fair recruitment as well as promotion of decent work in labour migration. BLMAs should include explicit provisions on addressing exploitation and rights abuse of migrant workers, and on providing assistance to trafficked and/or smuggled migrants. The BLMA should also respect and facilitate the enforcement of national laws and regulations governing human and labour rights, and collective agreements.

The example presented in box 1 illustrates how a BLMA can enhance the protection mechanisms of human and labour rights for all migrant workers.

BOX 1. Agreement on Labour Cooperation between Canada and the Republic of Honduras, 5 November 2013 (extracts)

Part one: Obligations

Article 1: General Obligations

1. Each Party shall ensure that its labour law and practices embody, and provide protection for, the following internationally recognized labour principles and rights, particularly bearing in mind its commitments under the ILO 1998 Declaration:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour and a prohibition on the worst forms of child labour;
- (d) the elimination of discrimination in respect of employment and occupation;
- (e) acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;
- (f) the prevention of occupational injuries and illnesses and compensation in cases of such injuries or illnesses; and
- (g) non-discrimination in respect of working conditions for migrant workers.

2. To the extent that the principles and rights stated in the paragraphs above relate to the ILO, sub-paragraphs (a) to (d) refer only to the ILO 1998 Declaration, whereas the rights stated in sub-paragraphs (e), (f), and (g) more closely refer to the ILO's Decent Work Agenda.

Article 2: Upholding Levels of Protection

1. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law in a manner that weakens or reduces adherence to the internationally recognized principles and rights referred to in Article 1 (General Obligations), as an encouragement for trade or to establish, acquire, expand or retain an investment or an investor in its territory.

2. A Party shall not fail to effectively enforce its labour law, through a sustained or recurring course of action or inaction, to encourage trade or investment.

Article 3: Government Enforcement Action

Each Party shall promote compliance with, and effectively enforce, its labour law by taking appropriate and timely government action, including:

- (a) by establishing and maintaining labour inspection divisions, including by appointing and training labour inspectors or officers who monitor compliance and investigate suspected violations, including through on-site proactive inspections;
- (b) by initiating proceedings to seek appropriate sanctions or remedies for those contraventions; and
- (c) by encouraging or supporting mediation, conciliation and arbitration, as well as the establishment of worker-management committees to address labour regulation of the workplace.

Annex 1: Cooperative Activities

1. The Parties have established the following indicative list of areas for cooperative activities that they may develop pursuant to Article 9 (Cooperative Activities):

- (a) information sharing: exchanging of information and sharing of best practices on issues of common interest and on events, activities, and initiatives organized in their respective territories;
- (b) international fora: cooperation within international and regional fora such as the International Labour Organization on labour-related issues;
- (c) fundamental rights and their effective application: legislation and practice related to the core elements of the ILO 1998 Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation);
- (d) worst forms of child labour: legislation and practice related to compliance with ILO Convention 182;
- (e) labour administration: institutional capacity of labour administrations and tribunals;
- (f) labour inspectorates and inspection systems: methods and training to improve the level and efficiency of labour law enforcement, strengthen labour inspection systems, and help ensure compliance with labour laws;
- (g) labour relations: forms of cooperation and dispute resolution to ensure productive labour relations among workers, employers, and governments;
- (h) working conditions: mechanisms for supervising compliance with statutes and

regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;

(i) gender: gender issues, including the elimination of discrimination in respect of employment and occupation;

(j) any other matters that, in the view of the Parties, promote the purposes of the Agreement.

2. In identifying areas for labour cooperation and capacity building, and in carrying out cooperative activities, each Party may consider the views of its worker and employer representatives, as well as those of other members of the public.

Source: Canada, 2014

A.2 Guarantee equality of treatment and non-discrimination. Equality of treatment and non-discrimination should be extended to all migrant workers and members of their families regardless of sex, sexual orientation, gender expression and gender identity, race,⁷ colour, disability, language, religion, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, migration status, birth or other status, including in regard to working conditions, remuneration, social protection, family rights, in respect of trade union rights, legal proceedings, provision of adequate housing and food. BLMAs should incorporate clauses prohibiting mandatory HIV and pregnancy testing in line with relevant ILO standards and human rights. BLMAs should also preserve the cultural identity of migrant workers.

A.3 Provide access to justice and effective, independent and accessible rights protection mechanisms, free of charge, in case of labour disputes and violation of human, labour and civil rights. The provisions should also include clarity on complaints procedures or mechanisms for follow-up on complaints, including those pending after a migrant has returned to their country of origin, particularly for recovering remuneration and other entitlements due, including compensation for other damages suffered (e.g. economic hardship/deprivation in respect of non-payment of wages).

In this context, the right of migrant workers to access consular assistance and protection in dispute resolutions and complaints about rights' violation or crimes committed against them, detention or charges, or expulsion, should be ensured in BLMAs. This assistance could also consist of the establishment of mechanisms in countries of origin, allowing for their nationals working abroad to submit complaints to government representatives in countries of destination. The right to bring legal complaints through judicial and non-judicial procedures, including the right to appeal, should not be illusory because of a fear on the part of migrant workers – founded or not – of expulsion from the country or deprivation of liberty based on migration status. Migrant workers should be protected from retaliation and negative repercussions regarding their status, including through effective firewalls, and provided support to meaningfully be able to pursue complaints with the competent authorities and obtain redress. Migrant workers should receive information in a language and format that is accessible and understandable by them.

Further, the lawful exercise of rights enjoyed in pursuance of principles and rights set out in the BLMA or in national legislation cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

An example of a provision ensuring migrant workers can access justice and remedy through appropriate judicial or administrative remedies is included in box 2.

⁷ ILO. General Observation (CEACR) - adopted 2018, published 108th ILC session (2019). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0:NO-P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3996050,,,2018.

BOX 2. Agreement on Labour Cooperation between Canada and the Republic of Honduras, 5 November 2013 (extract)

Article 4: Private Action

Each Party shall ensure that a person with a recognized interest under its labour law in a particular matter has appropriate access to administrative or tribunal proceedings which can enforce and give effect to the rights protected by that law, including by granting effective remedies for a breach of that law.

Source: Canada, 2014

A.4 Ensure prevention and elimination of violence and harassment, exploitation or abuse, including gender-based, against migrant workers. Migrant workers should have meaningful access to appropriate and effective remedies and safe, fair and effective, gender-responsive reporting and complaint mechanisms and support in cases of abuse, violence and harassment, with protection from retaliation and negative repercussions regarding their status. Legal assistance and legal aid should be available and free of charge and migrant workers should not have to pay fees at a rate which impedes access to justice. This may include allowing migrant workers who are subject to violations at work, to change their workplace and providing continued residence and work authorization in the country, at least until a decision on their case is made. BLMA should include provisions for the involvement of social partners and other stakeholders in countering violence and harassment at work.

A.5 Allow freedom of movement of migrant workers. Migrant workers should be able to freely move and choose their place of residency within the destination country, in accordance with human rights standards. This implies the facilitation of the entry in the destination country and right to leave it, integration measures, geographical mobility and the right to return to the origin country. The withholding or confiscation of a migrant worker's passport, other identity documents or work permit by an employer or a recruitment agency constitutes a violation of human and labour rights and can negatively impact the right to freedom of movement.

A.6 Facilitate admission of family members of migrant workers, and family reunification. Provisions are included for both Parties to exchange updated information on the rules for admission of family members of migrant workers, and family reunification, and pathways to stay, including permanent residence and citizenship. BLMA should consider the best interests of the dependent children of migrant workers and the preservation of the family unit in their family reunification policies. When family accompaniment is not viable or taken up by migrant workers, BLMA should include specific provisions addressing the need to create opportunities for regular reunification between migrant workers and dependent children.

A.7 Ensure protection of migrant workers and their families in case of loss or change of employment, allowing for appropriate flexibility and time to change workplace and employer, or exit the country. Migrant workers should not fall into an irregular situation due to the mere loss of employment and enjoy equality of treatment in respect of particular guarantees of security of employment, protection against dismissal, to seek alternative employment, relief work and retraining receipt of unemployment benefits. If subsequent to the migrant worker's arrival, the job does not materialize (or the authority considers that the job for which the migrant worker has been recruited does not correspond to his or her physical capacity or occupational qualifications) or the contract prematurely ends, he/she should be entitled to alternative employment. Restricting the ability of migrant workers to leave an employment relationship of their own free will can lead to or reinforce exploitation and abuse and shall therefore be explicitly prohibited in the BLMA.

A.8 Duty of care and protection of migrant workers in case of force majeure or emergency situations (e.g. floods, pandemics, conflicts, etc). International labour standards provide flexibility in cases of “force majeure” or acute emergency situations. Provisions may also be included on obligatory support and assistance by national authorities, embassies, employers and recruitment agencies, and workers’ organizations during emergency situations, which should include access to economic, social and cultural rights and related assistance (shelter/housing, food, medical care, social security, etc.).

B. RECRUITMENT

B.1 Ensure fair and ethical recruitment of migrant workers. BLMAs should safeguard migrant workers against abusive and fraudulent recruitment practices, including the prohibition of charging recruitment fees and related costs to migrant workers (ILO 2019a). The conditions and obligations on recruitment should be specified in the agreement, as well as the responsible government institutions and authorized recruitment agencies (e.g. registered/licenced private employment agencies and public employment services of both Parties), and their respective roles and responsibilities. The recruitment and selection procedures should be transparent, and the implementation modalities clearly explained in the BLMA.

Origin and destination countries should adopt all necessary and appropriate measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed by private employment agencies or labour recruiters.

An example of provisions for the oversight of recruitment processes of migrant workers is evident in the agreement between the Philippines and the Province of Manitoba in Canada in box 3.

Box 3. Memorandum of Understanding between the Department of Labour and Employment of the Government of the Republic of the Philippines (the “DOLE”) and the Department of Labour and Immigration of the Government of Manitoba, Canada (“LIM”) concerning co-operation in human resource deployment and development

5. Recruitment and selection of Workers

- (a) The DOLE will register and accredit the Employers to recruit and hire Workers.
- (b) The Philippine-based Recruitment Agencies will provide the Employers with the names and information on the relevant skill, experience and qualifications of pre-qualified Filipino nationals who wish to be employed as Workers and meet the requirements listed in subsection (e) below.
- (c) The Employers may select qualified Workers and provide the names of those Workers to the Philippine-based Recruitment Agencies. These Workers will then apply for Canadian work permits and/or for nomination through the Manitoba Provincial Nominee Program.
- (d) The DOLE, through the Philippine-based Recruitment Agencies, will develop mechanisms to facilitate the deployment of qualified Workers.
- (e) This section does not prohibit employers in Manitoba from selecting and hiring Filipino nationals without using the arrangements or structures developed under this MOU, provided that recruitment and hiring are conducted pursuant to the Philippine Labour Code. This section likewise does not preclude hiring between the Participants’ respective governments.

(f) The recruitment of Filipino temporary workers outside the Philippines shall be coursed through the nearest Philippine Overseas Labour Office.

6. Cost of recruitment of Workers

The Participants intend that Employers will cover the costs related to hiring of Workers. Employers and Philippine-based Recruitment Agencies must not request, charge or receive, directly or indirectly, any payment from a person seeking employment in Manitoba, which contravenes The Employment Standards Code and/or The Worker Recruitment and Protection Act.

Source: Canada, 2014

Other examples include the Agreement of the Philippines and the Federal Republic of Germany concerning the placement of Filipino health professionals in employment positions in the Federal Republic of Germany (signed on 19 March 2013), see *box 11 below*.

C. ACCESS TO INFORMATION

C.1 Promote effective information sharing on up-to-date laws and policies, labour market needs and related skills and qualification gaps, working and living conditions, and social security benefits. The BLMA should define the roles and responsibilities of different institutions and partners in information sharing, both in terms of the BLMA implementation but also informing labour market participants, such as employers and workers to enhance their awareness and knowledge during all phases of the migration cycle.⁸ Where possible, this information should come from formal sources/systems, such as labour market and migration information systems.

C.2 Migrant workers and their families have access to free, comprehensive, understandable and accurate information, including but not limited to, admission requirements, living and employment conditions, rights and obligations under the applicable legislation, including labour law, and complaints and protection mechanisms. Information should be accessible to migrant workers in a format and language they understand in order to prevent fraudulent practices and be made available through a multitude of channels (e.g. websites, online platforms, contact centres, social media). Migrant workers should also have access to legal support and counselling, free of charge if necessary. BLMA provisions may include requiring Parties to the agreement to ensure that the relevant information and service reach potential and recruited migrant workers through pre-departure training and awareness-raising activities, including post arrival. An example of provisions on information sharing is presented in box 4.

BOX 4. Agreement on Labour Cooperation Between Canada and the Republic of Honduras, 5 November 2013 (extract)

Article 6: Public Information and Awareness

1. Each Party shall promptly publish or otherwise make publicly available its labour law, regulations, procedures and administrative rulings of general application

⁸ This includes engaging across those government portfolios that are in contact with children and youth (education, health, welfare, justice) to ensure strengthened and coordinated responses to child protection and welfare when parents migrate, and to prepare families for periods of separation (including establishing formal care arrangements for children during periods of parental absence) (UNICEF 2010).

respecting a matter covered by this Agreement so that interested persons and the other Party are able to become acquainted with them.

2. When required by its law, each Party shall:

- (a) publish in advance a measure that it proposes to adopt; and
- (b) provide interested persons a reasonable opportunity to comment on the proposed measures.

3. Each Party shall promote public awareness of its labour law, including by:

- (a) ensuring the availability of public information related to its labour law and enforcement and compliance procedures; and
- (b) encouraging education of the public regarding its labour law.

Source: Canada, 2014

D. MIGRATION STATUS⁹

D.1 Ensure clear guidelines regarding procedures and processes documenting migrant status on the territory of the country of destination in terms of the entry, exit, stay, employment and residence of migrant workers and their families, including such matters as applications and issuance of visas, issuance of residence and employment permits – all in conformity with national laws and regulations of the country of destination and relevant international arrangements.

D.2 Ensure clear and transparent procedures for the renewal and extension of work and stay permits, wherever applicable, to ensure migrant workers and their families maintain a regular status, including access to immigration support and services, and timely and accurate information.

D.3 Ensure respect for the human and labour rights of migrants in irregular situations. Minimum standards of protection must be upheld for all migrants, including in the case of migrant workers who are covered by the BLMA, and have nonetheless ended up in an irregular situation. These migrant workers should enjoy equality of treatment in terms of rights arising out of past employment with regard to remuneration and social security and related benefits. Clauses may be included in case of death or incapacity for work of a migrant worker allowing dependents (e.g. partner, spouse and children) to claim the assets left behind in the country of destination, and compensation as appropriate.

E. OCCUPATIONAL SAFETY AND HEALTH

E.1 Ensure occupational safety and health (OSH) for migrant workers. In the BLMAs, the respective responsibilities of governments, employers and workers should be specified. The role of governments, public health authorities and the labour inspection, as implementing agencies, is to develop, maintain and monitor the application of laws and regulations on safety and health at work. The responsibility of employers, in cooperation with workers' organizations, is to coordinate, protect and promote the safety and health of all workers.

The BLMAs should incorporate provisions on ensuring safety and health at work for migrant workers. These should include access to information, training, protective measures (including in the case of pandemics),

⁹ The Global Compact for Safe and Orderly Migration (GCM) refers to "legal identity and adequate documentation" (UN 2016).

occupational safety and health services and health surveillance in relation to disease prevention and health promotion (including mental health), treatment, and rehabilitation. The BLMA should also contain clauses for diagnosis, prevention, care, medical leave, rehabilitation and compensation of occupational diseases and injuries, on a par with nationals, through the whole continuum of labour migration.

F. SOCIAL PROTECTION

F.1 Provide access to social protection including healthcare on a par with nationals and facilitate the portability of social security benefits for migrant workers and members of their families. The BLMA provisions on social security are formulated in terms of equal treatment with national workers in the destination country, including with respect to maternity protection, and, where available, access to childcare or care for dependent family member arrangements, and benefits for workers with family responsibilities.

BLMAs can contain provisions for social security, which require the participation of national social security institutions. Access to social security can also be covered in a separate bilateral or multilateral social security agreement. Instead of disbursement of a lump sum upon departure, the provision may be that the contribution to social security benefits could also be maintained in the country of origin.

BLMAs should ensure access to national healthcare systems for migrant workers and their families. Further, BLMAs should guarantee that social security, including healthcare benefits, are non-discriminatory and available and accessible to all migrant workers. Social security provisions should be comprehensive and go beyond injury compensation to cover also availability and accessibility of healthcare services. The principle of equality of treatment with regard to injury compensation should be applied.

G. EMPLOYMENT CONTRACT AND WAGE PROTECTION

G.1 Provide mechanisms for wage protection for all migrant workers, including women (UN Women 2019), and ensure provisions on:

- equal remuneration for work of equal value without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin;¹⁰
- compliance with minimum wage laws and regulations or wage levels set by collective agreements, where applicable. In-kind payments could be included on a limited basis and under strict conditions;
- methods for calculating remuneration that should be transparent and wages should be commensurate with working hours, rest times and leave.

Provisions should be incorporated on compensation for overtime work; allowable deductions; date of payment; and issue of payment receipts into the migrant worker's bank account(s), etc. In addition, the BLMA should envisage an accompanying model employment contract, where appropriate and relevant, containing control mechanisms for contract enforcement and prevention of contract substitution. Agreed employment contracts have to be translated into the language migrant workers understand, so migrants have a clear idea about what is expected from them and their employer. Provisions could be included that prohibit unlawful wage deductions and ensure the swift and final settlement of outstanding wage payments due upon termination of the contract of employment, as well as the provision of legal assistance to claim unpaid or partly paid wages in-country and if the worker has returned to the country of origin.

¹⁰ ILO. *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*.

H. GOVERNANCE STRUCTURE

H.1 Identify responsible institutions for the promotion, implementation and enforcement of the agreed working and living conditions of migrant workers. The BLMA should include indications on the establishment of a governance structure, depending on the specific countries' needs. BLMA provisions should be included for the supervision of working and living conditions of migrant workers, including the specific role of the labour inspection, other relevant institutions and public health services in ensuring effective monitoring and enforcement of agreed commitments. The tasks of labour inspection should not involve engagement in immigration controls for which other special migration procedures and processes need to be in place. The key role of social dialogue should be emphasized for the implementation and monitoring of BLMAs. The BLMA should facilitate access to housing.

BOX 5. Agreement on Labour Cooperation Between Canada and the Republic of Honduras, 5 November 2013 (extracts)

Part Two: Institutional Mechanisms

Article 7: Ministerial Council

1. The Parties hereby establish a Ministerial Council composed of Ministers responsible for labour affairs of the Parties, or their designees, to discuss matters of common interest, to oversee the implementation of this Agreement, including cooperative activities under Article 9 (Cooperative Activities), and to review progress under this Agreement. The Council shall promote transparency and public participation in its work.

2. The Council may consider any matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may jointly decide, including:

- (a) working through the National Points of Contact to coordinate cooperative programs and activities; and
- (b) establishing, and assigning responsibilities to committees, working groups or expert groups.

3. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary. The Council may hold joint meetings with councils established under similar agreements. Unless the Parties otherwise decide, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Agreement.

4. The Council shall review the operation and effectiveness of this Agreement, including the degree to which progress has been made in implementing the objectives of this Agreement, within five years after the date of entry into force of this Agreement and thereafter within such other period as may be directed by the Council. Unless the Council otherwise directs:

- (a) this review shall include a literature review, the views of the national labour advisory or consultative committees or groups referred to in Article 8 (National Mechanisms) and a summary report prepared by the National Points of Contact; and
- (b) this review shall be concluded within 180 days of its commencement, and within 30 days thereafter the report shall be made public and background materials made available to the public upon request, subject to domestic law regarding confidentiality of personal and commercial information.

Article 8: National Mechanisms

1. Each Party shall convene a new, or consult an existing, national labour advisory or consultative committee or group to provide views on an issue related to this Agreement. It shall be composed of members of the public, including a balanced representation of employers, workers and their representative organisations, as well as other non-governmental organisations and relevant stakeholders and local or sub-national levels of government, as appropriate.

2. Each Party shall designate an office within its governmental department responsible for labour affairs that shall serve as a National Point of Contact and provide to the other Party its contact information by diplomatic note.

3. The National Points of Contact shall serve as a point of contact between the Parties and perform such functions as are assigned by the Parties or the Council, as well as:

- (a) coordinate cooperative programs and activities in accordance with Article 9 (Cooperative Activities);
- (b) review public communications in accordance with Article 10 (Public Communications); and
- (c) provide information to the other Party, the Review Panels and the public.

Source: Canada, 2014

I. QUALIFICATIONS AND SKILLS

I.1 Ensure qualifications and skills recognition, matching and development before and after departure in line with labour market demands. Countries of origin and destination should, after consultation with representative employers' and workers' organizations, identify procedures for skills profiling and matching through adequate training and skills and qualifications recognition, as appropriate, including at sector levels. Skills development and recognition need to be part of BLMA clauses. BLMAs should ideally include the provision of access to:

- recognition of foreign qualifications;
- recognition of prior learning and certification;
- services to facilitate skills matching;
- skills development, career progression opportunities and life-long learning.

An example of skills recognition, matching and development is included in box 6.

BOX 6. Examples of skills recognition, matching and development in the BLMAs

A - Qualifications and skills recognition

Migration Agreement between the Republic of Argentina and Ukraine, 29 April 1999 (extracts)

Chapter IV: Recognition of qualifications

Article 15: The Parties undertake to promote the mutual recognition of diplomas and transcripts. The institutions of the Parties shall consider the possibility of drafting a convention on the recognition of diplomas and certificates of study at all levels.

Framework Agreement for Assistance and Cooperation in Immigration Matters between Colombia and Peru, 6 March 2012 (extracts)¹¹

Article 2

1. The Ministry of Labour and Employment Promotion of Peru, through the REVALORA PERU Programme, within the framework of its competences, will provide training services and certification of acquired labour competencies for Colombian nationals who are employed or self-employed in Peru.

2. The Colombian Ministry of Labour, through the National Apprenticeship Service (SENA), within the framework of its competences, will provide professional training actions and certification of acquired labour competencies for Peruvian nationals who work for others or their own account in Colombia.

Article 4

The Parties will implement coordination mechanisms in order to progressively develop processes that allow the certification of labour competencies of their compatriots and the possibility of certifying the technical studies obtained by the beneficiaries in the countries of origin.

B - Skills matching

Agreement between the Kingdom of Spain and the Republic of Ecuador for the Regulation and Control of Migratory Flows, 29 May 2001 (extracts)¹²

Article 4

Evaluation of qualifications and travel of migrant workers shall be governed by the following rules:

1. Pre-screening of qualified candidates shall be done by a Hispano-Ecuadorian Selection Committee in Ecuador. Candidates meeting the skill requirements shall undergo a medical examination and if necessary a training period.

¹¹ Available in Spanish at: https://www.ilo.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/WCMS_382453/lang-en/index.htm. Unofficial translation from the original Spanish.

¹² Available in Spanish at: <https://www.boe.es/boe/dias/2001/07/10/pdfs/A24909-24912.pdf>.

2. The Selection Committee shall be composed of representatives of the contracting parties' governments, and may include the employer or his agents, and shall be responsible for selecting the best qualified workers for the existing job offers, conducting any training courses that may be needed, and advising and assisting workers throughout the process.

3. If both parties so request, representatives of social actors, intergovernmental and nongovernmental organizations active in the field of migration and cooperation for development designated by the contracting parties may participate in the committee as advisors.

4. Workers who are selected shall sign a contract, generally within no more than 30 days, and shall receive travel documents upon request. A copy of the work contract shall be provided to the Ecuadorian authorities. The work contract may be replaced by a similar document depending on the nature of the work, as determined by the joint committee established in Article 21 of this agreement.

5. Requests for temporary or resident visas in the framework of this agreement shall be processed with high priority by the appropriate Spanish consular office. The visa stamped in the passport shall specify its type, purpose, and duration of authorized stay in Spain. When the duration is six months or less, the visa shall suffice to document that stay.

Article 5

1. Ecuadorian officials, together with those of Spain, within their respective areas of competence, shall provide all possible facilitative assistance to the work of the Selection Committee. They shall contribute as far as possible in the processes of training of the selected workers, if needed, and for their travel to Spain by the established deadlines. Administrative procedures in connection with the journey from Ecuador to Spain shall be borne by the interested parties, or, if not, by the contracting companies.

2. Before travelling, the workers shall receive the information needed to reach their destination, and everything they need to know about the conditions of their stay, work, lodging and wages.

C - Skills development

Memorandum of Understanding on the Indonesia–Australia Skills Development Exchange Pilot Project, 4 March 2019 (extracts)¹³

3.1 The primary objective of the Pilot Project is to enable appropriately skilled individuals to travel between Indonesia and Australia to undertake short-term Workplace Placements for the purpose of skills training with businesses or other organisations in specified sectors.

3.2 The cooperative intent outlined in this MOU reflects Australia and Indonesia's shared desire to:

¹³ Available at: <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/iacepa/iacepa-text/Pages/iacepa-mou-indonesia-aus-skills-development-exchange-pilot-project>.

- 1) facilitate exchanges to share skills and practical work experience between Indonesia and Australia;
- 2) strengthen understanding of business, government and cultural practices in Indonesia and Australia;
- 3) strengthen cooperation between Indonesian and Australian government agencies on collaborative skills development;
- 4) and enable business to provide targeted workplace-based training and experience to employees in both Indonesia and Australia to improve skills competencies.

4.12 Exchangees taking part in the Pilot Project may obtain relevant qualifications or certification through participation in relevant courses while on the exchange (for example, formal training for licensing or regulatory purposes for the occupation).

The Host Organisation should encourage Exchangees to take an examination for certification during the program, where feasible. While formal training may be undertaken this is not to be the primary purpose of the exchange.

4.19 To avoid any doubt, the Sending Organisation and Host Organisation will be responsible for any costs associated with an Exchangee's training under the Pilot Project, including the Exchangee's participation in any formal training.

Sources: Ukraine, 2001; Colombia and Peru, 2012; Spain, 2001; Australia, 2019

J. SAVINGS AND REMITTANCES

J.1 Facilitate low or no cost transfer of migrants' savings and remittances. BLMAs should include provisions clearly ensuring that migrant workers shall have the right to transfer such part of their earnings and savings as they may desire. They may also envisage measures for the simplification and acceleration of administrative formalities regarding accessing financial services and banking in the country of destination, the transfer of remittances during migrant workers' stay, at no cost or at a reasonable cost (respecting the relevant SDG targets)¹⁴ and timing. Upon termination of their stay in the country of destination, migrant workers shall have the right to transfer back their earnings and savings, in accordance with the applicable legislation of the States concerned. Forced savings should be strictly prohibited.

K. RETURN AND LABOUR MARKET REINTEGRATION

K.1 Define the modalities to support migrant workers that wish to return to do so in a way that facilitates gender-responsive labour market reintegration. BLMAs should include provisions relating to the safe and dignified return and sustainable reintegration of migrant workers, including in the event of crisis situations occurring, e.g. COVID-19 pandemic, conflict, social unrest, ensuring cooperation between countries of origin and destination in such situations. This should include:¹⁵

¹⁴ SSDG indicator 10.c: By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.

¹⁵ For more details, see the UN Network on Migration Position Paper on Ensuring Safe and Dignified Return and Sustainable Reintegration, 2021, available at: https://migrationnetwork.un.org/sites/default/files/docs/position_paper_-_ensuring_safe_and_dignified_return_and_sustainable_reintegration.pdf.

- Recognition of prior learning;
- Employment services, including training;
- National/specific programmes for return migrants, e.g. entrepreneurship support, financial literacy, etc.;
- Psychosocial support, as appropriate, including for families (namely children, spouses, and alternative caregivers) to support family reunification;
- Gender-based violence essential services including health, police and justice, and social services;
- Addressing the protection needs of returnees throughout the whole return and reintegration process, including in emergency situations and crises. The modalities of the cost of return travel should be clearly defined.

An example of a BLMA addressing the reintegration of migrant workers can be found in box 7.

BOX 7. Agreement between the Kingdom of Spain and the Republic of Ecuador for the Regulation and Control of Migratory Flows (extracts)

CHAPTER V

The migrants' return

Article 13

The contracting parties undertake to adopt coordinated measures to organize voluntary repatriation programs for Ecuadorian migrant workers to their country of origin.

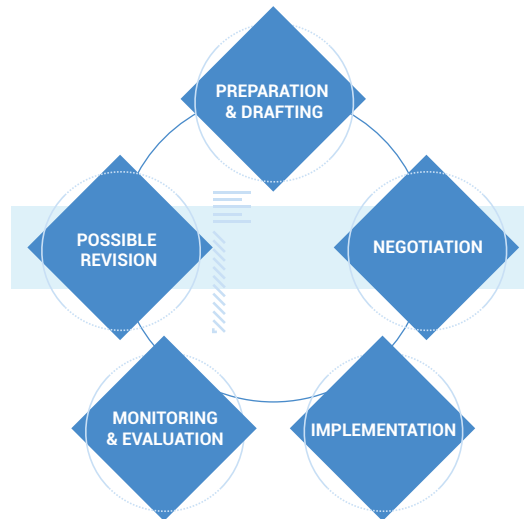
To this end steps shall be taken to promote re-entry of migrant workers in Ecuador with the value added from their immigration experience as a factor for economic, social, and technological development. The contracting parties shall thus encourage the development of projects with their own resources and resources from international cooperation organizations for vocational training of the migrant and recognition of the vocational training received in Spain; to promote the establishment of small and medium enterprises of migrants who return to Ecuador; to create binational corporations linking employers and workers; and in other areas of economic and social development, to encourage activities that promote the training of human resources and the transfer of technology.

Source: Spain, 2001

IV. Operational guidelines

The BLMA could be initiated either by the country of origin or destination. The phases of the BLMA cycle consist of preparation and drafting, negotiation, implementation, monitoring and evaluation, and possible revision (see figure 1).

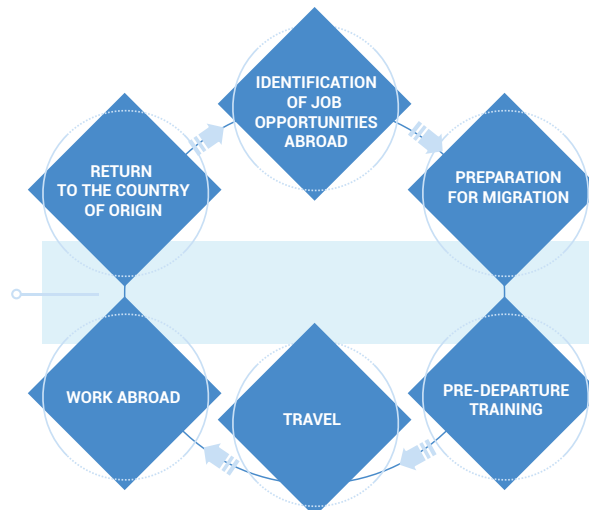
Figure 1. The BLMA cycle



Source: *Tool for the Assessment of Bilateral Labour Migration Agreements* (ILO/IOM 2019).

The BLMA cycle should ideally cover the entire labour migration cycle, which includes identification of job opportunities abroad; preparation for migration, such as receiving information, visa application, document verification, pre-departure training; travel; post-arrival adaptation/orientation, work abroad and return to the country of origin, as appropriate (see Figure 2 and Annex 2).

Figure 2. Indicative stages of the labour migration cycle for migrant workers



Source: *Tool for the Assessment of Bilateral Labour Migration Agreements* (ILO/IOM 2019)

While the negotiation of a BLMA is reserved for State institutions (Ministry of Foreign Affairs, Ministry of Labour, ministry or agency responsible for migration and main line ministries), the other phases of the BLMA cycle should involve social partners, civil society and migrant organizations, regional and local authorities and other relevant stakeholders, including representatives of migrant workers and child protection agencies. The leading institution on BLMA may appoint a specific team to follow the different steps in the BLMA cycle. These possible arrangements vary by country and also depend on the existing structures of policy coordination. These operational guidelines identify the responsibilities of the key stakeholders at each stage of the BLMA cycle.

It should be noted that BLMAs by their nature cover regular migration and are not intended to cover irregular migration or readmission aspects. At the same time, if a BLMA includes a reference to collaboration among the Parties involved in minimising irregular migration, it should include compliance with international law and standards and specify procedures and safeguards to ensure these are upheld, such as 1) the principle of non-discrimination; 2) the principle of non-refoulement; 3) prohibition of collective expulsion; 4) due process and procedural safeguards, 5) right to access effective non-judicial and judicial remedies by the migrant workers; and 6) protection of rights arising out of past employment.

It is recommended that a well-defined BLMA, and any amendments thereto, incorporates a provision requesting its translation in the local languages and its dissemination to all concerned stakeholders, including through publication of the text, in collaboration with representative organizations of employers and workers.

A. PREPARATORY PHASE – ROLES AND RESPONSIBILITIES

1. Consultative Process.

The preparatory phase usually includes the following steps:

- Consultation with social partners and other relevant stakeholders for the identification of challenges and solutions that could be addressed through a BLMA in the context of a migration policy aligned with an employment policy (Popova and Panzica 2017). Consultations should be gender- and child-sensitive, differentiating insights into challenges faced by migrant workers and their family members across the migration cycle by gender and age;
- Gathering of all necessary information for the preparation of the draft agreement;
- Drafting the BLMA that will guide the negotiation team during the negotiation process.

ROLES AND RESPONSIBILITIES IN THE PREPARATORY PHASE

National governments

The leading organization in the negotiation of the BLMA may:

- Convene relevant public and private organizations working on migration issues (social partners, civil society organizations, training centres, public and private employment agencies, child protection agencies etc.) that can help in the identification of the main challenges and solutions to be addressed through BLMAs. This could be done in the form of a consultative group. Consultation meetings can be organized on an ad hoc

or regular basis. Meetings can also be useful for the analyses of labour market needs and implications for the domestic labour market;

- Involve the consultative group in the drafting of the agreement, as appropriate. The consultative group could be activated, if necessary, during the negotiation process, for instance when the counterparts in the negotiation come out with new proposals that need to be carefully evaluated.

Social partners

- Workers' organizations and child protection agencies can provide advice and suggestions on how the rights of migrant workers and their families can be protected through the BLMA;
- Employers' organizations in the destination country can indicate the sectors and skills that are in demand in the labour market. In the origin country, they can point to any labour shortages as a result of labour migration (ILO 2019b).

Civil society organizations

Diaspora and civil society organizations supporting migrant workers and their families can provide information on the main challenges and possible solutions during the migration process.

Social Security Institutions

They can provide advice on the relevance of social protection for migrant workers and their families and the portability of social benefits, if possible. These institutions are directly involved in the negotiation of social security agreements with destination countries.

2. Information gathering

In order to collect the necessary information to prepare the BLMA negotiations, the following institutions should be involved:

IN THE ORIGIN COUNTRY:

Roles and responsibilities

National governments

The ministry/ies or agency, in charge of labour migration, should:

- In consultation with social partners and other relevant organizations, identify the main objectives and added value of signing a BLMA (already existing labour migration to a specific country of destination and potential challenges to ensure its safe, orderly and regular nature; new working opportunities, possibilities to jointly invest in skills development in high potential growth sectors, protecting migrant workers, addressing specific issues concerning migrant workers, etc.);
- Assess the interest and availability of the other Party in negotiating a BLMA or an MoU;
- Collect information on the destination country (labour market, legal frameworks, skills requirements, future labour market needs, living and working conditions, etc.);
- Review the international instruments on human and labour rights ratified by the origin or destination countries, and review other existing bilateral and regional cooperation

- arrangements to ensure obligations are respected in the negotiation of a BLMA or an MoU;
- Analyse the impact of labour migration on the domestic labour market to avoid potential depletion of the workforce in sectors and professions which are already experiencing skills shortages;
- Provide information about the educational attainment and numbers of graduates per profession, and information on the skills certification process so standards can be compared with those of the country of destination;
- Identify strengths and weaknesses that can determine negotiating power;
- Identify regulatory frameworks for entry, residence, sojourn and exit;¹⁷
- Analyse complementarities with existing legal frameworks and participation in international agreements for the recognition of qualifications and skills;
- Analyse complementarities with existing regional integration processes, regional consultative processes, economic, trade and other cooperation frameworks.

Consular officials

Provide information on living and working conditions in the country of destination. Support Ministry of Labour analysis of the situation with migrant workers in the destination country by providing information on living and working conditions in the country of destination, including guidelines regarding immigration and visa-related procedures.

Regional and local authorities

Depending on the structure and distribution of competencies at national level, regional and local authorities can be duly involved in the process of information gathering.

Social partners

Provide advice and support for the identification of possible challenges in the area of protection for migrant workers and their families (including dependent children), possible skills gaps and labour shortages on the national labour market.

Civil society organizations

Diaspora organizations, migrant rights' associations, returnees' associations and academia can provide inside views on challenges and opportunities for migrant workers and their families, including those who might face particular challenges/risks/obstacles, e.g. women migrant workers, migrant workers with disabilities, children of migrant workers who are separated from their parents etc.

DESTINATION COUNTRY: Roles and responsibilities

National governments

The responsibilities of the ministry in charge of labour migration, or other ministries (e.g. Ministry of Foreign Affairs, Ministry of Labour, etc.) in destination countries are similar to those in origin countries, with a few differences highlighted below:

¹⁶ Including also: i) analysing the availability and mainstreaming of support for the dependent children of migrant workers across those sectors that have most contact with children and youth during parental absence (education, health, welfare, justice), and ii) ensuring that children and families of migrant workers are supported through each phase of the migration cycle, and that care arrangements tailored to the needs of children and families are in place, including formal guardianship procedures and strengthening of kinship care.

- The main reasons for negotiating BLMAs include filling labour market needs, promoting labour mobility, etc.;
- Collect information on the origin country (labour market, education systems, living and working conditions, etc.); and
- Review the international instruments on human and labour rights, ratified by the origin and destination countries, and review other existing bilateral and regional cooperation arrangements, to ensure obligations are respected in the negotiation of a BLMA or and MoU.

Regional and local authorities

Depending on the structure and distribution of competencies at national level, regional and local authorities can be duly involved in the process of information gathering.

Social partners

Provide advice and support for the identification of needs and gaps at all skill levels, including for migrant workers.

Civil society, including migrant organizations

Diaspora organizations and migrant rights' associations can provide advice regarding current employment conditions of migrant workers that may be addressed through the BLMA, as well as information and support to migrant workers, taking into account the specific needs of various groups.

Type of information needed

The necessary information for the preparation of BLMAs in origin and destination countries is organized along the principles indicated in Section III. For every principle, the first type of information to be mapped is to check which relevant international instruments on human and labour rights, as well as cooperation frameworks, the countries of origin and destination have already ratified and are engaged in. This is summarized in table 1. Tables 2 through 9 cover recruitment, safety and health, social protection, governance, qualifications and skills, savings and remittances, force majeure and emergency situations and return and labour market reintegration

TABLE 1. Human rights, including labour rights

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Safeguard human rights and international labour standards for the protection of migrant workers	Is equal treatment extended to migrant workers with respect to protection of human rights, such as right to life; non-discrimination and equality before the law; freedom of cruel, inhumane, degrading treatment or punishment; slavery, liberty and security; freedom from arbitrary arrest and/or detention; equality before courts and tribunals; freedom to engage in direct and regular contact with dependent children and families, etc.?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Interior • Ministry of Justice • Employers' Organizations • Workers' Organizations • Child Protection Agencies
	Based upon the national legislation, are migrant workers free to join a workers' organization or to create new ones?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Interior • Ministry of Justice • Employers' Organizations • Workers' Organizations • Official Journal

	<p>Is there national legislation allowing for collective bargaining?</p> <p>Are there any legal barriers to migrant workers joining trade unions or organising?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Justice • Employers' Organizations • Workers' Organizations • Official Journal
	<p>Is there national legislation for the elimination of forced or compulsory labour?¹⁷</p>	<ul style="list-style-type: none"> • Official Journal • Ministry of Interior • National agencies responsible for counter-trafficking • Ministry of Labour • Employers' Organizations • Workers' Organizations • NGOs
Access to justice and complaints mechanisms	<p>Do migrant workers have access to courts and tribunals of general or special jurisdiction as well as administrative complaints mechanisms?</p> <p>Which modalities allow access for migrant workers to justice and complaints mechanisms? Are these procedures free of charge for migrant workers? Or are fees affordable and not at a level to prevent access to justice for migrant workers?</p> <p>Do these procedures resolve complaints or disputes in a timely manner? Will migrant workers be allowed to receive permits of stay and new work permits if required, while waiting for resolution of the complaint/dispute? Will the migrant worker have access to legal aid and interpretation of court procedures, including translated documents at low or no cost?</p>	<ul style="list-style-type: none"> • Ministry of Justice • Ministry of Labour • National courts • Workers' Organizations
	<p>Which are the procedures for follow-up on pending complaints, including after a migrant worker has returned home?</p> <p>Is the migrant worker allowed to go home, while the trial continues? Is the migrant worker allowed to participate from home? Who is allowed to legally represent the migrant worker in the destination country while the migrant worker is back in his/her home country?</p> <p>Which organization is in charge of following up on dispute resolution?</p>	<ul style="list-style-type: none"> • Ministry of Justice • Ministry of Labour • National courts • NGOs operating in the field of protection of migrant workers/Local pro-bono law centres (if relevant) • Diaspora organizations • Consular services of the origin country
Equality of treatment and non-discrimination	<p>Is there national legislation ensuring equal treatment and prohibiting discrimination against migrant workers in respect of employment, social security and occupation?</p> <p>Is there an effective monitoring and enforcement mechanism for ensuring the implementation of national legislation <u>employment, occupation and social protection</u>?</p> <p>Does the legislation prohibit wage discrimination and ensure equal remuneration for work of equal value for all?</p>	<ul style="list-style-type: none"> • Official Journal • Ministry of Labour • Ministry of Justice • Gender equality institutions • National courts • Employers' Organizations • Workers' Organizations

¹⁷ This legislation may cover practices such as: withholding of passport or wages, deception, threats, abuse of authority, confinement, unreasonable salary deductions, contract substitution, signing contract in language unknown to migrant worker, rendering the workers into debt bondage, trafficking in persons, and similarly.

	In the destination country, are mandatory HIV and pregnancy tests forbidden?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Health • Workers' Organizations
	Which measures are in place for ensuring that migrant workers preserve their cultural identity?	<ul style="list-style-type: none"> • Ministry of Interior • Ministry of Labour • Agencies responsible for cultural diversity and cohesion • Diaspora organizations
	<p>Which measures are in place for ensuring the preservation of child-parent relationships between migrant workers and their dependent children?</p> <p>Which measures are in place for the protection and support of dependent children in the absence of parents who are migrating under the BLMA?</p>	<ul style="list-style-type: none"> • Child Protection Authorities • Ministry of Welfare • Ministry of Education • Ministry of Health • Ministry of Justice • Civil society organizations
Prevention and elimination of violence and harassment, exploitation or abuse against migrant workers	What type of legislation and implementation mechanisms exist to prevent violence and harassment, exploitation, abuse or crimes against migrant workers?	<ul style="list-style-type: none"> • Ministry of Interior • Ministry of Labour • Ministry of Justice • Labour Inspectorate • Gender equality institutions • Employers' Organizations • Workers' Organizations • Civil society organizations
	<p>Which mechanisms are available to migrant workers to report cases of abuse, violence, harassment, and crimes?</p> <p>Which mechanisms are available to provide access to justice for migrant workers that have experienced cases of abuse, violence and harassment?</p> <p>Are these supports and procedures available for migrant workers regardless of their cooperation with law enforcement?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Labour Inspectorate • Ministry of Interior • Prosecutor Office • Employers' Organizations • Workers' Organizations • Consular services of the origin country • Civil society organizations
	Are social partners involved in countering violence and harassment at work?	<ul style="list-style-type: none"> • Ministry of Labour • Employers' Organizations • Workers' Organizations
	Are there any gender-responsive measures to counter abuse, violence and harassment, including gender-based violence and sexual harassment crimes against migrant workers?	<ul style="list-style-type: none"> • Ministry of Labour • Agencies responsible for gender family, women and children's affairs • Employers' Organizations • Workers' Organizations

Freedom of movement of migrant workers	<p>What are the entry procedures in the destination country? What are the modalities/pathways for issuance of residence and employment permits? Is geographical mobility allowed to migrant workers?</p> <p>Can migrant workers return to their origin country of their own free will, while respecting the contractual obligations? Are there pathways for family reunification or labour mobility in place?</p> <p>Are there regular opportunities for visits between parents and dependent children when family accompaniment is not viable or taken up?</p>	<ul style="list-style-type: none"> • Ministry of Interior • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Justice • Ministry/agency for migration (if existing) • Border Service • Immigration authorities
	<p>Are there mechanisms in place to prevent withholding or confiscating of a migrant worker's passport, other identity documents or work permit by employers?</p> <p>Is there a possibility to change employer? (Both in case of termination of employment and freely ending the employment relationship)</p> <p>What are the conditions for changing employer?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Labour Inspectorate • Ministry of Interior • Employers' Organizations • Workers' Organizations
Protection of migrant workers in case of loss of employment	<p>Are migrant workers allowed to change employment in case of exploitation or abusive conditions of work?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Labour Inspectorate • Employers' Organizations • Workers' Organizations
	<p>Are migrant workers eligible to receive compensation and do they enjoy equality of treatment with regard to seeking alternative employment, relief work or retraining in case of loss of employment? If yes, what kind of enforcement mechanisms are there?</p> <p>Are migrant workers entitled to appeal against termination of their employment and what are the remedies in case of unfair dismissal?</p> <p>Does national law or the BLMA provide a period of time during which the migrant worker may be entitled to unemployment benefits?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Labour Inspectorate • Employers' Organizations • Workers' Organizations • NGOs operating in the field of protection of migrant workers • Consular services of the origin country
	<p>Are there support mechanisms for migrant workers who have fallen into an irregular situation due to loss of employment? If yes, which ones?</p>	<ul style="list-style-type: none"> • Ministry of Labour, • Ministry of Interior • Workers' Organizations • Consular services of the origin country

TABLE 2. Recruitment

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Fair and ethical recruitment	<p>Does a regulatory and an operational institutional framework exist for fair and ethical recruitment of migrant workers?</p> <p>What are the licensing conditions for recruitment/placement agencies and pre-departure training centres? What are the monitoring and quality assurance compliance mechanisms?</p> <p>What are the complaints mechanisms? Is there a joint and several liability provision for recruitment agencies and employers, with recruitment agencies and employers having placed funds in escrow, to be used when compensation is required? Are all placement agencies and all placements registered with the embassy of the migrant workers in advance of their arrival?</p> <p>Is there a mechanism which requires the prior review and approval of employment contracts by the Ministry of Labour and the labour attaché/embassy of the migrant worker before finalization of the recruitment contract?</p> <p>If yes, are there provisions prohibiting the charging of recruitment fees and related costs to migrant workers?</p> <p>Are there provisions in place ensuring that no deduction of fees and other costs takes place, (incl. flight, accommodation, food, medical assistance, administrative fees, etc.)?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Public Employment Services • Private Employment Agencies • Employers' Organizations • Workers' Organizations

TABLE 3. Safety and health

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Subject Occupational safety and health of migrant workers	<p>Is the legislative framework on safety and health at work extended to migrant workers?</p> <p>Which measures are available for diagnosis, prevention, care, rehabilitation and compensation of occupational diseases and injuries at work?</p> <p>Is there equality of treatment with regard to compensation for work injuries and accidents?</p> <p>Is there any training organized for migrant workers on OSH, including on access to personal and protective equipment?</p> <p>Are the instructions on OSH available in the language of migrant workers?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Health • Labour Inspectorate • Employers' Organizations • Workers' Organizations

TABLE 4. Social protection

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Access and portability of social security benefits for migrant workers	Which are the modalities of access and portability of migrant workers to social protection, including healthcare?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Health • Social Security Institutes • Public Employment Services • National legislation (labour law, social security law)
	<p>Is there a bilateral or multilateral social security agreement ensuring benefit portability for migrant workers?</p> <p>Are migrant workers granted access to medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits?</p> <p>Does the national legislation provide for equality of treatment with respect to social protection?</p>	<ul style="list-style-type: none"> • Ministry of Foreign Affairs • Social Security Institutes • National legislation (labour law, social security law) • Welfare fund (if existing)

TABLE 5. Governance structure

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Responsible institutions for the implementation and enforcement of the agreed working and living conditions of migrant workers	Which are the mechanisms for the supervision of working and living conditions of migrant workers?	<ul style="list-style-type: none"> • Ministries and agencies in charge of migration • Ministry of Interior • Ministry of Labour • Ministry of Health • Labour Inspectorate • Employers' Organizations • Workers' Organisations
	Which is the leading entity responsible for the design and implementation of BLMAs?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Interior • Ministries and agencies in charge of migration
	Which is the leading entity responsible for enforcement and monitoring of the implementation of BLMAs?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Interior • Ministries and agencies in charge of migration

	What are other complementary processes of cooperation between the two countries and how could the new BLMA cooperation be best fitted within these processes?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Interior • Ministries and agencies in charge of migration
	<p>Are social partners involved in the design and implementation of BLMAs?</p> <p>Are civil society organizations and migrant workers themselves involved in the design and implementation of BLMAs?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Interior • Employers' Organizations • Workers' Organizations
	How are living and working conditions of migrant workers monitored?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Interior • Employers' Organizations • Workers' Organizations
	Are migrant workers entitled to workers housing and employer-provided accommodation?	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Interior • Employers' Organizations • Workers' Organizations

TABLE 6. Qualifications and skills

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Ensure qualifications and skills recognition, matching and development before and after departure, and upon return, in line with labour market demands	<p>Are there clear indications on current and future labour market needs, including by sector, and related qualifications and skills gaps?</p> <p>Are there systems in place for qualifications and skills recognition?</p> <p>What programmes for skills development (including to learn the language of the destination country) are available to migrant workers?</p> <p>Are there skills mobility partnerships or joint investments in skills training of workforce?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Education • Public Employment Services • Private Employment Agencies • Employers' Organizations • Workers' Organizations

TABLE 7. Savings and Remittances

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Transfer of migrants' savings and remittances	<p>Are migrant workers allowed to transfer their savings and remittances at their discretion? Are there general policies and frameworks in place regulating personal income and payment transfer between the two countries?</p> <p>What are the general trends on remittances and financial flows between the two countries negotiating BLMAs, in terms of their level of formality; usage of specific monetary transfer operators versus banks?</p> <p>Do migrant workers have access to formal channels to transfer savings and remittances, and under what conditions?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Finance • Ministry of Foreign Affairs • National Central Bank • Consular services • Financial services

TABLE 8. Force majeure and emergency situations

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Protection of migrant workers during force majeure situations	<p>Which types of assistance can be provided to migrant workers during emergency situations? What are the responsibilities of the various entities (employers, recruitment agencies, embassies, national authorities etc.) in presence of force majeure and emergency situations?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Finance • Ministry of Foreign Affairs • Ministry of Interior • Employers' Organizations • Workers' Organizations

TABLE 9. Return and labour market reintegration

SUBJECT	INFORMATION	SOURCES IN COUNTRIES OF ORIGIN AND DESTINATION
Return modalities and gender-responsive labour market reintegration	<p>Is there a policy or a legal framework, specifying return modalities and safeguards for foreigners from the destination country, in line with international standards?</p> <p>Are there specific sustainable reintegration measures that can facilitate labour market reintegration in origin countries? Do these measures address the gender-responsive concerns and needs of all migrant workers, and if so how?</p> <p>Are there measures to ensure protection of wages? Are there legal services available to migrant workers to assist them in claiming their unpaid wages, including after they have returned to their country of origin?</p> <p>Are there specific reintegration measures to support children, families, migrant workers and alternative caregivers through the process of reunification after periods of separation?</p>	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Education • Ministry of Health • Ministry of Interior • Public Employment Services • Private Employment Agencies • Employers' Organizations • Workers' Organizations • Consular services • Ministries/agencies responsible for women, youth, children, etc.

3. Drafting the BLMA

The following institutions participate in the preparation of the drafting of BLMAs.

Roles and responsibilities

National governments

- An inter-ministerial working group/team should be put in place for drafting the BLMA along the general principles illustrated in these guidelines. The team could be created also during the information-gathering stage;
- The team will prepare an initial draft for consultations with relevant line ministries, social partners and other stakeholders, including migrant worker representatives. It should consult the model agreement, included in the ILO's Migration for Employment Recommendation (Revised), 1949 (No. 86). The checklist in Annex 3 could help in assessing if all necessary topics have been duly considered in the draft agreement;
- The team will take on board the feedback received during the consultation process and deliver an updated draft ready to be submitted to the destination country for starting the negotiations. The draft could be accompanied by a draft model employment contract, as appropriate;
- The inter-ministerial team that drafted the agreement could also take part in the negotiations. If not, a designated negotiating team should be appointed;
- The level of compromise in the negotiation should be defined in advance;

- The negotiation strategy should be defined by the leading institution and communicated to the negotiating team;
- The leading institution should allot the financial resources necessary for the negotiations.

Social partners

Employers' organizations can contribute to the identification of skills in demand in the destination countries and the possible skills gap in the origin countries. Workers' organizations can contribute to the identification of areas in which the protection of migrant workers needs to be improved and suggest appropriate solutions. Good practice on social dialogue includes holding consultations with the social partners as BLMAs are being developed. Educational institutions could also be consulted at this stage. Child protection agencies can contribute to the identification of social and protection issues for children and families of migrant workers and suggest appropriate protective measures.

B. NEGOTIATION

The negotiations of BLMAs should focus on implementation modalities, while the principles, based on international human and labour rights, should always be guiding the content of the agreement.

The results are conditioned by the interest of the Parties and their ability to find joint solutions. Since the Parties accept to negotiate a BLMA, there is in principle a mutual interest in concluding an agreement, even if the motivation could be different. For the origin countries, the primary objective could be to find new job opportunities for their citizens, or enhance the protection of migrant workers, or to address specific labour challenges. For the destination countries, the primary objective might be to fill labour market gaps, reduce irregular migration by offering some regular migration opportunities or for other reasons like opening trade opportunities with the origin countries, etc.

The negotiation may progress either through direct meetings of the two Parties' delegations or through an exchange of drafts until a common understanding is reached. The choice of negotiation modality is done with the agreement of the two Parties and depends on political reasons (e.g. to give visibility to the negotiation) or financial, as direct negotiation requires more resources (e.g. travel).

The negotiation can end with the signature of a BLMA or an MoU. The two types of agreement can produce a different impact in respect of the mutual obligations of the Parties. BLMAs create legally binding rights and obligations, governed by international law and are usually more specific and action-oriented. MoUs are non-binding agreements, which set out a broad framework of cooperation to address common concerns.

The negotiation phase should be managed by a team/delegation consisting of high-level officials authorized to negotiate on behalf of the State. The negotiation team is usually composed of representatives from different institutions, e.g. the Ministry of Labour, the Ministry of Migration (if existing), the Ministry of Foreign Affairs and other line ministries (e.g. ministries of justice, interior, education, health, youth, gender/women, sector-specific ministries).

If the negotiation is successful and the Parties agree on a common text, the document is signed by the head of each delegation. In some cases, the signature is done by the head of the government or line ministries, visiting one of the countries involved.

At this stage, the agreement is ready, but not operational. The BLMAs usually need to be ratified by the parliament and published in the Official Journal of the countries involved. The situation is different when

the Parties agree to sign a Memorandum of Understanding (MoU) instead of a BLMA. In this case, the MoU is operational with the signature, unless ratification is requested by the constitutional norms (as is the case, e.g. in Italy). Being less formal than the BLMA, the implementation of the MoU relies on the goodwill of the Parties. A possible challenge may emerge if there are financial implications that need approval by the relevant legislative body. The negotiation phase of the BLMA is summarized in a checklist in Annex 4.

C. IMPLEMENTATION

The implementation of the BLMA will require the active involvement of the social partners and other relevant stakeholders in both origin and destination countries, depending on the topics included in the agreement. It should be noted that coherence across ministries and countries in the implementation of BLMAs should be achieved through strengthened, cross-cutting coordination approaches among the public and private shareholders involved. Table 10 presents the government responsibilities in the implementation of BLMAs. Table 11 presents the suggest role of the social partners, and table 12 presents the role of civil society and other stakeholders.

a. Government responsibilities in the implementation of BLMAs

TABLE 10. The Government's responsibilities in the implementation of BLMAs

TOPIC	INSTITUTION INVOLVED	COUNTRY OF ORIGIN	COUNTRY OF DESTINATION
Information sharing	<ul style="list-style-type: none"> Ministry of Labour Public Employment Services Ministry of Foreign Affairs Ministry of Overseas Employment Child¹⁸ Protection/Family Welfare Agencies 	Awareness-raising: <ul style="list-style-type: none"> on the BLMA to inform potential migrant workers; job opportunities in the destination countries; living and working conditions in the destination countries; useful contacts for advice and assistance in the destination countries; create awareness and better understanding on trafficking and forced labour situations; prepare children, parents and families for periods of separation. 	Awareness-raising on new and existing BLMAs for migrant workers and employers, as well as workers' and employers' organizations, and the public at large; Information on BLMAs should be available in a language migrant workers are familiar with or can understand; Better awareness and better understanding on trafficking and forced labour situations; Better awareness and understanding of implications of familial separation of migrant workers and measures that can help migrant workers to maintain familial relations, including with their dependent children.
	<ul style="list-style-type: none"> Ministry of Labour Public Employment Services Ministry of Foreign Affairs Ministry of Interior/Immigration/Border Service 	Pre-departure and post-arrival orientation training; Border crossing information, issuance of work and residence permits.	Border crossing information, purposes of entry – consolidated, analysed and for use for policy monitoring and evaluation purposes

¹⁸ It should be recalled that some countries of origin, particularly in Asia, have separate ministries of overseas employment that may or may not be affiliated to the Ministry of Labour or the Ministry of Foreign Affairs.

Modalities for entry and residence of migrant workers <i>The issue of different permits can be organized through the establishment of a one-stop shop (integrated service delivery), in different languages, used by the majority of migrant workers. One line ministry should be responsible for managing this arrangement</i>	<ul style="list-style-type: none"> • Ministry of Foreign Affairs • Ministry of Interior or Justice, Immigration or Migration issues • Embassies and Consulates of the country of destination in the country of origin 	Eligibility criteria for migrant workers and, where applicable, children and family members; Documentation needed to apply for a visa; Procedures and processing time; Costs.	Issue of entry visa; Pathways to residency.
	<ul style="list-style-type: none"> • Ministry of Labour • Ministry/agency with migration mandate 		Advice on/Issue of work permits
	<ul style="list-style-type: none"> • Ministry of Interior • Migration service/Immigration service or equivalent 		Issue of entry visa; Pathways to residency.
Fair and ethical recruitment	<ul style="list-style-type: none"> • Ministry of Labour • Ministry/agency with migration mandate • Child Protection/Family Welfare Agencies 	Licensing and monitoring of private recruitment agencies and all other intermediaries or subagents that offer labour recruitment and placement services, to prevent abusive and fraudulent recruitment practices; Prohibition of charging recruitment fees and related costs to migrant workers; Model employment contract, included in BLMA (if relevant), verified and provided to migrant workers for signature before departure.	Protection of migrant workers against abusive and fraudulent recruitment practices; Prohibition of charging recruitment fees and related costs to migrant workers; Employment contract should be provided in a language migrant worker understands; Measures against contract substitution; Ensure equal remuneration for work of equal value; Ensure compliance with minimum wage regulations, if applicable.

	<ul style="list-style-type: none"> • Public Employment Services (also in cooperation with private recruitment agencies) • Technical Vocational Education and Training (TVET) and other educational institutions 	Selection procedures for recruitment; Skills profiling and matching; Delivery of pre-departure training	Skills matching; Skills development; Support for skills recognition.
	Labour Inspectorate		Monitoring contractual obligations at enterprise and individual levels
Equality of treatment and non-discrimination	<ul style="list-style-type: none"> • Ministry of Labour • Social Security Institutions • Ministry of Interior • Ministry of Justice • Prosecutors' Office 	Collect and share information of cases of discrimination and inequality	Ensure implementation of provisions on equality of treatment with national workers; Ensure measures to maintain relations between migrant workers and their families in countries of origin, particularly their dependent children.
	<ul style="list-style-type: none"> • Ministry of Health • Ministry of Labour 		Prohibition of mandatory HIV and pregnancy testing
Freedom of movement of migrant workers	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Interior • Ministry of Justice • Social Services • Consular Services 		Possibility to change employer; The withholding or confiscation of a migrant worker's passport, identity documents or work permit by an employer should be prohibited.
Skills recognition, matching and development	<ul style="list-style-type: none"> • Ministry of Labour • Public Employment Services • Sector Committees (if existing) • Other Ministries in charge of skills development 	<p>Pre-departure vocational training on profiles agreed with the destination countries;</p> <p>Implementation of skills development and recognition, including upon return;</p> <p>Mutual recognition or harmonization of skills standards and/or qualifications;</p> <p>Profiling of return migrants and recognition of skills acquired abroad.</p>	Training and access to skills recognition should be provided to migrant workers to facilitate skills matching; Implementation of skills development and recognition, including upon return; Mutual recognition or harmonization of skills standards and/or qualifications.

	<ul style="list-style-type: none"> Ministry of Education 	Issuance of qualifications and skills documents, necessary for recognition	Procedures for the recognition of skills and qualifications
Occupational safety and health of migrant workers	<ul style="list-style-type: none"> Ministry of Labour Employers' and workers' organizations 		Enforcement of OSH laws and regulations to cover migrant workers; Information and training on OSH for migrant workers.
	<ul style="list-style-type: none"> Labour Inspectorate 		Monitor the application of OSH laws and regulations
	<ul style="list-style-type: none"> Ministry of Health Social Security Institutions 		Provisions for diagnosis, prevention, care, rehabilitation and compensation of occupational accidents and diseases
Integration of migrant workers	<ul style="list-style-type: none"> Ministry of Labour State agency/ministry responsible for migration State Migration Service Local authorities Agency/ministry with the mandate of integration 	Pre-departure orientation and training	<p>Access of migrant workers to decent working and living conditions;</p> <p>Access to workers housing/accommodation; Access of migrant workers to community life, access to community services, cultural life, language, etc.;</p> <p>Access to means to engage in regular and direct contact with dependent children and families in countries of origin.</p>
	<ul style="list-style-type: none"> Ministry of Interior 		Access of migrant workers to decent living conditions
	<ul style="list-style-type: none"> Ministry of Education 		Access of migrant workers and their families to education and training services
Prevent and eliminate violence and harassment, exploitation or abuse, including gender-based, at work against migrant workers	<ul style="list-style-type: none"> Ministry of Labour National institutions in charge of gender equality 		<p>Prevention of violence and harassment, exploitation or abuse at work against migrant workers, in collaboration with social partners;</p> <p>Free access of migrant workers to safe, fair and effective mechanisms to report cases of abuse, and violence and harassment at work.</p>

	<ul style="list-style-type: none"> • Labor Inspectorate 		Prevention and investigation of violence, and harassment, exploitation or abuse at work against migrant workers
	<ul style="list-style-type: none"> • Ministry of Foreign Affairs • Labour attachés 		Consular services of the country of origin provide migrant workers with assistance in case of violence and harassment, exploitation or abuse at work
	<ul style="list-style-type: none"> • Ministry of Interior, Prosecutor's Office, Ombudsman • Specialized equality and human rights bodies (who may have quasi-judicial power) 	Dissemination of information on procedure and resources to be activated in the destination country	Protection, investigation, assistance
Access to justice and complaints mechanisms	<ul style="list-style-type: none"> • Ministry of Labour 		Free of charge access to administrative complaints mechanisms in case of labour disputes
	<ul style="list-style-type: none"> • Ministry of Justice 		Procedures for free access of migrant workers to the appropriate judiciary remedies in case of human and labour rights violations; Application of the principle of equality of treatment with nationals with regard to access to judicial proceedings.
	<ul style="list-style-type: none"> • Ministry of Foreign Affairs 		Consular services of the country of origin provide migrant workers with assistance in dispute resolutions and complaints about rights violations, detention or charges
Admission of family members of migrant workers, and family reunification	<ul style="list-style-type: none"> • Ministry of Labour • Ministry of Foreign Affairs • Ministry of Interior • State Migration Agency (if existing) • Child services/ protection system 	Information and support for the family members of migrant workers for admission to the countries of destination and for family reunification	Procedures for admission of family members of migrant workers, and family reunification, clearly stated, explained, and available in a language that is understandable to migrant workers: Opportunities for regular reunification between migrant workers and dependent children when family accompaniment is not viable or taken up.

Protection of migrant workers and their families in the case of loss of employment, or in the case of abusive conditions of work	<ul style="list-style-type: none"> • Ministry of Labour • Embassies and Consular services • Child Protection/ Family Welfare Agencies 		Procedures for changing workplace by migrant workers exposed to abusive conditions of work or employers, and for appropriate compensation; Migrant workers losing their job should not be considered in an irregular situation but supported to find alternative employment, and benefit from retraining, if necessary; Procedures should allow migrant workers to lodge an appeal against termination of their employment and for them to remain a sufficient time in the country until a decision on the case is reached; in case of unjustified dismissal, remedies should be provided.
Access to and portability of social security benefits to migrant workers	<ul style="list-style-type: none"> • Ministry of Labour • Social Security Institutions 	The contribution to long-term benefits could also be maintained in the country of origin in the case of short-term migration; Bilateral Agreement with the destination countries for pension and other social security benefits (e.g. OSH financial compensation) portability.	Social security and healthcare benefits should be available and accessible to all migrant workers; Pension and other social security benefits (e.g. injury benefits) portability to be implemented according to national legislation and existing agreements between origin and destination countries. Access to national health systems for migrant workers and their families.
	<ul style="list-style-type: none"> • Ministry of Health 		Access to national health systems for migrant workers and their families
Savings and Remittances	<ul style="list-style-type: none"> • Ministry of Labour 	Financial education for migrant workers and their families as part of the pre-departure orientation and return/reintegration support	Sessions of information/awareness-raising campaigns with key messages on financial literacy in the countries of destination
	<ul style="list-style-type: none"> • Ministry of Finance • Central Bank 		Simplification and acceleration of administrative formalities regarding the transfer of remittances, at a reasonable cost and timing
	<ul style="list-style-type: none"> • Ministry of Economy (Economic Development) 	Programmes for the investment of migrant workers' savings to contribute to country's development	

	<ul style="list-style-type: none"> Ministry of Economy (Economic Development) 	Programmes for the investment of migrant workers' savings to contribute to country's development	
	<ul style="list-style-type: none"> Ministry for Child/Family Welfare 	Measures to ensure that children of migrant workers, and alternative caregivers, are included in social protection services (and not excluded based on an assumption that they will be receiving remittances)	
Return and reintegration	<ul style="list-style-type: none"> Ministry of Labour Ministry of Foreign Affairs Ministry of Interior 	<p>Employment services, including recognition of acquired skills and qualifications, skills profiling, orientation and training or re-training, job placement;</p> <p>Specific programmes for return migrants, e.g. entrepreneurship, financial literacy, livelihood and reintegration packages, one-stop reintegration support services, etc.</p>	Assistance to return and reintegration of migrant workers in presence of emergency situations, e.g. COVID-19 pandemic
	<ul style="list-style-type: none"> Ministry of Education 	Recognition of prior learning	
	<ul style="list-style-type: none"> Ministry of Health Child Protection/Family Welfare Agencies 	Psychosocial support, as appropriate, including for children and families reuniting with migrant workers after periods of separation	

b. Suggested role of social partners in the implementation of BLMAs

TABLE 11. Suggested role of social partners in the implementation of BLMAs¹⁹

TOPIC	SOCIAL PARTNERS INVOLVED	COUNTRY OF ORIGIN	COUNTRY OF DESTINATION
Information sharing	<ul style="list-style-type: none"> Employers' Organizations 		Provide information to migrant workers on duties and benefits from the BLMA in the language of migrant workers
	<ul style="list-style-type: none"> Workers' Organizations 	Informing migrant workers, before departure, about their rights and obligations, and need to establish formal care arrangements for dependent children during periods of absence	Provide information to migrant workers on the protection of their rights during their stay in the country of destination
Equality of treatment and non-discrimination	<ul style="list-style-type: none"> Employers' Organizations 		Equal pay for work of equal value; Protection against discrimination; Access to workers housing/accommodation.
	<ul style="list-style-type: none"> Workers' Organizations 	Cooperation agreement with workers' organizations of the destination countries to enhance the protection of migrant workers	Protecting the rights of migrant workers, whether union members or not; Possible agreement with the workers' organizations of the origin country for enhanced protection of rights of migrant workers, the freedom of association.
Prevent and eliminate violence and harassment, exploitation or abuse against migrant workers	<ul style="list-style-type: none"> Employers' Organizations 		Support government efforts to ensure respect for relevant laws and eliminate abuses at work for migrant workers

¹⁹ This is an indicative, and not an exhaustive list. It has the scope to indicate suggested roles which are not prescriptive and do not limit the role that social partners can play in a BLMA.

	<ul style="list-style-type: none"> Workers' Organizations 	Advice to migrant workers on how to deal with violence, exploitation or abuse at work	Advice and assistance to migrant workers victims of violence and harassment, exploitation or abuse at work
Protection of migrant workers in the case of loss of employment, or in the case of abusive conditions of work	<ul style="list-style-type: none"> Employers' Organizations 		Provide information in the case of loss of employment and possible job alternatives
	<ul style="list-style-type: none"> Workers' Organizations 		Assistance to migrant workers in the case of loss of employment, or in the case of abusive conditions of work
Fair recruitment	<ul style="list-style-type: none"> Employers' Organizations 	Transparent selection procedures	Transparent recruitment procedures; Implement human and labour rights due diligence.
	<ul style="list-style-type: none"> Workers' Organizations 	Possible participation in the selection procedures	Advice and assistance to migrant workers during the recruitment process
Employment contract and wage protection	<ul style="list-style-type: none"> Employers' Organizations 		<p>The employment contract is in line with the model agreed in the BLMA (if existing) or the agreed clauses in the agreement;</p> <p>The contract is written in a format and language the migrant workers can understand;</p> <p>The signed contract should not be replaced by others;</p> <p>Wage payment should be regularly transferred to the account of the migrant worker;</p> <p>Payment in kind should be limited and clearly agreed in the contract;</p> <p>Final settlement of unpaid wages due upon termination of employment.</p>
	<ul style="list-style-type: none"> Workers' Organizations 	Advice to migrant workers on the contract model and the related clauses	Advice and support to migrant workers in case of disagreement in the interpretation of clauses or misapplication of agreed obligations

Occupational safety and health of migrant workers	• Employers' Organizations		OSH rules should also apply to migrant workers; Rules should be shared with migrant workers in a language they can understand.
	• Workers' Organizations		Training on OSH to migrant workers in a language they understand; Support to migrant workers in case of occupational diseases or injuries, including advice, legal aid, etc.
Skills recognition, matching and development	• Employers' Organizations	Participation in skills mobility partnerships, if existing, and skills recognition upon return	Vacancies and skills needs identification; Skills development through on-the-job training; Participation in skills mobility partnerships, if existing.
	• Workers' Organizations	Participation in skills mobility partnerships, if existing	Access to training opportunities; Participation in skills mobility partnerships, if existing.

c. The role of civil society and other stakeholders in BLMA implementation

TABLE 12. Role of civil society and other stakeholders²⁰ in the implementation of BLMAs

TOPIC	SOCIAL PARTNERS INVOLVED	COUNTRY OF ORIGIN	COUNTRY OF DESTINATION
Information sharing	<ul style="list-style-type: none"> • Diaspora organizations • Migrant workers' rights protection organizations 	<p>Information and advice on the conditions of entry and residence, employment and support mechanisms;</p> <p>Information and advice on potential social impact and protection issues, which may arise if there is familial separation of children and families.</p>	Encourage migrant workers to join diaspora communities and migrant rights' organizations, which can offer extended protection through their networks, and may facilitate labour and social integration

²⁰ For instance, the role that national human rights institutions can play in promoting and monitoring the effective implementation of international human rights standards at the national level.

Modalities for entry and residence of migrant workers	<ul style="list-style-type: none"> • Diaspora organizations 	Information on the conditions of entry and residence, employment and support mechanisms	Advice and support for dealing with the prescribed procedures
	<ul style="list-style-type: none"> • NGOs 	Pre-departure orientation on the destination countries, training on migrants' rights and obligations, language training	Post arrival orientation and support for dealing with prescribed procedures in destination countries
Integration of migrant workers	<ul style="list-style-type: none"> • Diaspora organizations • NGOs 		Advice and support for accessing the integration measures
Savings and remittances	<ul style="list-style-type: none"> • NGOs 	Pre-departure orientation on the destination countries, training on migrants' rights and obligations, language training	
	<ul style="list-style-type: none"> • Diaspora organizations 		Advice on the country-of-origin development programmes that migrant workers can use for investing their savings
Fair and ethical recruitment	<ul style="list-style-type: none"> • Private Employment Agencies • Labour recruiters 	Support migrant workers in the recruitment process, including the preparation of the employment contract; Assistance to the employers of the destination countries with the profiling and selection of potential migrant workers as part of the BLMA; Delivering occupation-related training, if appropriate; Organize pre-departure language training and cultural orientation.	

The implementation of a BLMA normally does not require changes in the legislation frameworks of the signatory Parties. Usually, the BLMAs make reference to existing legislation. In case of conflicts with existing legislation, a legal amendment has to be approved before the BLMAs are implemented. BLMAs should also be aligned with, and coherent, and in accordance with existing collective agreements. They should also be in accordance with international laws and standards.

Another aspect that needs to be considered is the involvement of other governance levels (e.g. federal, national, or local authorities). If it is not only the central government that has responsibility, the role of the specific authorities should also be envisaged.

The implementation phase can be followed through the checklist in Annex 5.

D. MONITORING

To understand if the objectives of the BLMAs have been achieved, it is necessary to collect appropriate information in order to understand what has worked and what has not worked, and why. This data, analysed by the competent authorities, can create the need for amending or reformulating the agreement to address the identified issues. Monitoring should also be part of the social dialogue in the countries involved in the BLMA.

BLMAs can include the provision of a joint monitoring committee that could be tasked not only with monitoring but also with joint interpretation of the agreement, proposal of amicable solutions to disputes and suggested amendments. However, there is little evidence on the effective functioning of many of these joint committees, especially those lacking effective participation of social partners, or due to lack of financial means for convening regular meetings. One notable exception is the case of the Germany-Philippines BLA on Nurses, where the joint monitoring committee is fully engaged and has positively contributed to the effective, transparent and participatory implementation of the agreement.

To address this issue, a tool has been proposed, and a model terms of reference (ToR) for a joint monitoring committee (see Annex 6). The ToR suggests concrete specifications of the functions and objectives of the joint monitoring committee, membership, chair and secretariat, and operational modalities (ILO/IOM, 2019). The committee should involve government institutions, responsible for the BLMA, and social partners, including workers' organizations. As for the financial implications, it is suggested that a specific allotment of funds is done for the committee already during the preparatory phase of the BLMA.

In addition to the joint monitoring committee, each Party to a BLMA might activate unilateral monitoring, aimed at assessing the state of implementation and collect information on challenges and issues. The results of the unilateral assessment could be shared with the other Party for common understanding and amendment of the agreement, as appropriate. An example of an individual monitoring system is offered by the National Coordinating Committee in Ethiopia that has, according to Article 15 of the Proclamation 923/2016, the role of monitoring the BLMAs and adopting legal actions for protecting migrant workers for rights violations and damages received in the destination countries.

ROLE OF GOVERNMENT IN MONITORING OF BLMAS

Many line ministries and related implementation agencies, can be active in collecting and analysing data. In particular:

- The Ministry of Labour through its established databases and data provided by the National Employment Services, reports of the Private Employment Agencies, Labour Inspectorates, Social Security Institutions, National statistical Office;

- The Ministry of Education provides data on skills recognition;
- The Ministry of Foreign Affairs with data provided by their diplomatic services;
- Ministry of Health provides health services to migrant workers before, during and after the migration process;
- Ministry of Interior with border control data; labour market integration, residence permits and irregular migration; and
- Ministries of Education, Health, Welfare and Justice can collect and provide data on children of migrant workers in countries of origin to ensure programming that is targeted to the support and protection needs of these children during periods of parental absence.

ROLE OF OTHER ACTORS IN MONITORING OF BLMAS

An important source of information for the country of origin is offered by:

- Workers' and employers' organizations;
- The diaspora organizations and migrant rights' organizations or national human rights institutions can offer information on the conditions of migrant workers in the destination country; and
- Migrant workers and national human rights institutions who can have the possibility to inform the competent authorities on possible abuse and violations. The possibility to access embassy services during working time could be challenging. Therefore, a hotline is suggested (possibly free of charge) with a dedicated number linked to the consular services in the destination country. If there is a labour attaché in the embassy, the attaché can adopt the necessary steps to help the migrant worker in difficulty. It is worth noting the critical need for the safeguarding and confidentiality of this information.

Table 13 presents useful information on the preparation of a plan to monitor specific clauses of a BLMA for the country of origin and destination.

TABLE 13. BLMA clauses to be monitored by the country of origin and destination

CLAUSES OF THE BLMA TO BE MONITORED	COUNTRY OF ORIGIN	COUNTRY OF DESTINATION
<p>Modalities for entry and residence of migrant workers</p>		<p>Number of residence permits issued to migrant workers (by age, sex/gender, and duration), before and after signature of the agreement, by permits issued within the BLMAs and other channels;</p> <p>Number of work permits issued to migrant workers (by age, sex/gender, and duration) – before and after signature of the agreement, by permits issued within the BLMAs and other channels; by sector of employment;</p> <p>Number of migrant workers able to be accompanied by their dependent children/spouse;</p> <p>Number of residence and/or work permits renewed (by age and sex/gender);</p> <p>Type of work permits issued (by age and sex/gender);</p> <p>Number of work permits refused to migrant workers (by age, sex/gender, and reason for refusal).</p>
<p>Fair and ethical recruitment</p>	<p>Number of migrant workers participating in the recruitment selection (by age and sex/gender) (if organized);</p> <p>Number of migrant workers who took part in pre-departure training (by age and sex/gender);</p> <p>Number of migrant workers recruited through public employment services (by age, sex/gender, and occupational profile);</p> <p>Number of migrant workers recruited through private employment agencies (by age, sex/gender, and occupational profile);</p> <p>Number of migrants who signed their employment contract before departure (by age, sex/gender, and sector of occupation).</p>	<p>Number of migrant workers recruited through public employment services (by age, sex/gender, and occupational profile);</p> <p>Number of migrant workers recruited through private employment agencies (by age, sex/gender, and occupational profile);</p> <p>Share of formal recruitment versus informal recruitment.</p>

Equality of treatment and non-discrimination	Is there information on complaints from labour attachés or consular officers, workers' organizations?	<p>How many complaints have been filed (by age, sex/gender, and type of complaint)?</p> <p>How many administrative and court cases and decisions have been issued, and on what type of complaint?</p>
Freedom of movement of migrant workers		<p>How many migrant workers have been moved geographically as per the records of local administrations?</p> <p>How many migrant workers have been stranded in the country of destination or forced to return to their country of origin?</p> <p>How many migrant workers have been prevented from visiting dependent children, particularly in times of need, family crisis and/or times of significance for the child?</p>
Skills recognition, matching and development	<p>Number of migrant workers who participated in pre-departure vocational training;</p> <p>Number of return migrant workers who applied for the recognition of skills and qualifications acquired abroad (by age and sex/gender);</p> <p>Number of migrant workers who obtained certificates for skills and qualifications recognition.</p>	<p>Number of migrant workers who accessed training services;</p> <p>Number of migrant workers who applied for the recognition of skills in the destination country (by age and sex/gender);</p> <p>Number of migrant workers who obtained skills and qualifications recognition certificates;</p> <p>Number of skills standards/qualifications that are mutually recognized or harmonized.</p>
Occupational safety and health of migrant workers	<p>How many migrant workers have reported occupational diseases or injuries (by age and sex/gender);</p> <p>How many migrant workers have been able to receive compensation in case of occupational disease or injury (by age and sex/gender)?</p>	<p>How many migrant workers have reported occupational diseases or injuries (by age and sex/gender)?</p> <p>How many migrant workers have been able to receive compensation in case of occupational disease or injury (by age and sex/gender)?</p>

<p>Integration of migrant workers</p>		<p>Number of migrant workers (and family members) accessing education and vocational training systems (by age and sex/gender);</p> <p>Number of migrant workers benefitting from public housing opportunities;</p> <p>Number of migrant workers accessing health services; Number of migrant workers (and family members) accessing social protection schemes;</p> <p>Number of migrant workers benefitting from workers housing/accommodation;</p> <p>Duration of periods of separation of migrant workers and dependent</p>
<p>Prevent and eliminate violence and harassment, exploitation or abuse at work against migrant workers</p>	<p>How many migrant workers were victims of violence and harassment, exploitation and abuse (by age and sex/gender)?</p> <p>How many migrant workers received assistance from the consular services in cases of violence and harassment, exploitation or abuse?</p> <p>How many migrants faced “abuses” (e.g. unpaid or underpayment of wages, unlawful wage deductions, retention of passport, contract substitution, different job than expected, prevented from direct and regular contact with dependent children and families), by age, sex/gender, and sector of occupation?</p>	<p>How many migrant workers were victims of violence and harassment (by age and sex/gender)?</p> <p>How many migrant workers have benefitted from measures (awareness-raising for example) aimed at prevention of and protection against violence and harassment, exploitation or abuse?</p>

Access to justice and complaints mechanisms	<p>How many were able to obtain remedy once back home?</p> <p>How many were able to transfer the remedy/compensation?</p>	<p>Number of cases introduced by migrant workers to the court (by sex/gender and type of complaint); Number of complaints presented to administrative bodies by migrant workers (by sex/gender and type of complaint);</p> <p>How many migrants obtained remedy (including financial or other compensation)?</p> <p>How many migrant workers have been required to leave the country as a result of introducing a complaint against their employer?</p> <p>How many migrant workers were granted legal aid to pursue complaints against their employers?</p>
Admission of family members of migrant workers, and family reunification	<p>What formal guardianship arrangements are in place for the dependent children of migrant workers if both parents migrate and family accompaniment is not viable or taken up?</p>	<p>How many family reunification entry permits have been issued?</p> <p>How frequently have migrant workers had the opportunity to reunify with dependent children?</p>
Protection of migrant workers in the case of loss of employment, or in the case of abusive conditions of work		<p>How many migrant workers who lost their employment have been provided with alternative employment, relief work or retraining, on a par with nationals?</p> <p>How many migrant workers who have lost their employment have retained their residency, at least until the end of the duration of their employment contract?</p>
Access and portability of social security benefits to migrant workers	<p>How many migrant workers have been able to transfer their social security benefits (by age and sex/gender)?</p>	<p>How many migrant workers are registered in national social protection schemes and benefit from social security benefits including health care?</p>
Savings and Remittances	<p>How many migrant workers were able to transfer their remittances and savings under the conditions indicated in the BLMA?</p>	

Return and reintegration	<p>What is the percentage of migrants returning home, under the conditions defined in the BLMA (by age and sex/gender)?</p> <p>Number of migrants receiving reintegration services (by age and sex/gender);</p> <p>Length of separation of migrant workers and their children at time of return.</p>	
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While the monitoring provides continuous feedback on the ongoing implementation of the BLMA, it is necessary to conduct an evaluation to assess the impact, efficiency and relevance of the BLMA. This can be organized jointly by the two Parties or unilaterally. The evaluation provides governments, social partners and other stakeholders with indications if the intended results were achieved, and if not, why. The evaluation, conducted by the competent ministry directly through external experts, will be based on in-depth interviews with social partners and other key stakeholders, as well as on monitoring reports, data analysis and a review of the relevant literature and policy documentation, covering all stages of the BLMA cycle. The evaluation provides lessons learned, indicates the relevant achievements, and provides recommendations for improvement.

V. Sector-specific issues

While the general principles and operational guidelines are applicable to all migrant workers, there are some sector-specific aspects that need to be considered, due to additional labour migration challenges. These concern the following categories of migrant workers:

A. Seasonal workers²¹

In many developed countries, there is high demand for seasonal migrant workers in tourism, hospitality, construction and agriculture. The main issues include:

- Due to deceptive forms of recruitment and short-term nature of work, migrant workers may end up in a situation of informality, which in turn can lead to falling into an irregular status. This can also greatly increase risk of discrimination, exploitation and forced labour;
- The working environment offers scarce OSH protection, and there are multiple risks of being exposed to occupational accidents and diseases, without appropriate protection, as well as poor working and living conditions (e.g. transportation and housing when the workplace is in remote (rural) locations);
- Migrant workers, especially in the agriculture sector, are often located in remote rural areas, and this reduces the possibility of monitoring human and labour rights;
- Lack of clarity on wages, deductions, payment modalities, and working conditions;
- Limited access to social protection, including health services, and pension and other benefits portability;
- Instances of sub-standard employer-provided accommodation (for which there are wage deductions);
- Temporary or casual employment contracts excluding some important benefits;
- Lack of information on trade union rights and opportunities to join;
- Separation from family members;
- Migrant workers in the agriculture sector have been hit hard by the COVID-19 pandemic. Business closures and restrictions to movement, combined with limited access to social protection, increase migrants' vulnerability (FAO 2020).
- Increased risks in the context of the COVID-19 pandemic to remain stranded in the destination countries without any support and services due to high rates of informality and low levels of savings; and

²¹ Most BLMAs are concluded in the context of temporary labour migration, although seasonal workers are recognized as a specific subset of migrant workers in the ICRMW and the European Union Seasonal Workers' Directive 2014/36/EU for example, as well as in specific BLMAs such as the agriculture BLMA between Canada and Mexico and Caribbean countries under the Seasonal Agriculture Worker Program (SWAP), which only allows for a stay of a maximum period of 8 months within one year. See <https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural.html>.

- Scarce or non-existing assistance for return to the country of origin due to gaps in national regulation in countries of destination that make seasonal workers particularly vulnerable, lack of capacity of the state to enforce the employers' obligations, etc.

The above issues might be addressed by strengthened collaboration between origin and destination countries, as well as by involving sector-specific organizations, social partners and migrants' organizations in the effective implementation and monitoring of BLMAs. In this regard, a BLMA can include the following clauses:

- Measures ensuring that migrant workers are aware of and able to access their rights. These include: 1) providing detailed information to migrant workers about their rights at work, and how to enforce them; 2) organizing free language training pre-departure or upon arrival; 3) contact list of organizations that can support migrant workers if needed; 4) procedures for safe reporting of labour abuses; and 5) reaching out, interviewing and assisting migrants in safe and neutral environments (not at the workplace) and with adequate language and cultural mediation;
- Workers' organizations, migrants' associations and NGOs can help ensure that migrant workers are protected, know their rights and provide support in case of complaints;
- Clear identification of authorized labour intermediaries to prevent abusive recruitment procedures;
- Detailed indications on travel and transportation to the workplace, accommodation, etc.;
- Labour inspection mechanisms for ensuring that the rights of migrant workers are effectively implemented, as appropriate;
- Modalities for changing jobs or sectors, especially when migrant workers are subjected to abusive working conditions;
- Mechanism for ensuring the respect of OSH rules in the economic sector of reference and modalities for compensation in case of occupational accidents and diseases;
- Provision of measures to be adopted in specific circumstances, such as the COVID-19 pandemic, offering financial support and health services.

The 2013 Bilateral Labour Migration Agreement between Canada and Mexico²² on seasonal work in agriculture, provides a detailed example of a sample structure, see below box 8.

BOX 8. Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico

(The scope of the Agreement was to set out the key terms and conditions for workers and employers participating in the seasonal employment in agriculture scheme.

²² Available at: http://www.oit.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/WCMS_382417/lang--en/index.htm.

For supporting the implementation of the Agreement, the United Mexican States agreed to appoint a "Government Agent" to be stationed in Canada.

Section I defines the daily duration of work, the conditions for overtime and prescribe a weekly day of rest

Section II indicates that lodging (free of charge), meals and/or cooking facilities should be provided by the employer.

Section III defines the level of wages to apply that should not be less than whatever is the highest amongst the following:

- a. the minimum wage for workers provided by law in the province in which the worker is employed;
- b. the relevant wage agreed for the sector or
- c. the rate being paid by the employer to his Canadian workers performing the same type of agricultural work.

Section IV details the deductions to wages, for medical insurance, meals and utility costs.

Section V provides details on the Insurance for Occupational and Nonoccupational disease, Injury and Death.

Section VI prescribes the maintenance of work records and payslips.

Section VII governs the travel, reception and work permit issue, and the process by which the worker will reimburse these costs.

Sections VIII and IX describe the other obligations of the employer and the worker.

Section X indicates the procedures for premature repatriation, and

Section XI governs the modalities for the workers transferring from one employment to another.

Source: Canada, 2013

B. Migrant health workers

Health professionals are in high demand in many countries. While some developed countries have experienced increasing demand for health workers due to an ageing population, labour shortages particularly vis-à-vis population health needs are prominent in many developing countries. Given these trends, the number of health migrant workers has been growing. Healthcare has also become highly feminized with nursing having the most women among the healthcare occupations (ILO 2018, 175 and 179).

Due to the COVID-19 pandemic, the demand for healthcare services has dramatically increased, creating an additional pull factor for labour migration in the sector. To ensure a fair and balanced approach towards regulating mobility of health professionals, including via BLMA instruments, the following aspects need to be tackled in this respect:

- The growing labour shortages in the health sector of origin countries have a negative impact on the health services that can be delivered to the population;
- Equal treatment of health migrant workers with national health workers;
- Risk of de-skilling in destination countries and brain drain in origin countries due to lack of access to qualifications and skills recognition in destination countries;
- Risk of brain drain in origin countries due to lack of adequate investment in care systems.

Health worker migration is a feature of global health labour markets, driven by working conditions and income differentials across countries. Skills recognition and certification present major obstacles for migrant nurses.²³ To govern labour migration in the health sector, the World Health Organization (WHO) issued a Global Code of Practice on the International Recruitment of Health Personnel in 2010, providing principles on ethical international recruitment and fair treatment of migrant health personnel, and pledges for regional and bilateral agreements to make these principles operational (see box 9).

BOX 9. WHO Global Code of Practice on the International Recruitment of Health Personnel (hereafter “the Code”)

The Code is one of only a handful of international legal instruments under WHO’s stewardship. Unusually for a non-binding international legal instrument, the Code benefits from a robust implementation, monitoring, and effectiveness review mechanism.

Notably, discussion at the 73rd World Health Assembly including in the specific context of the COVID-19 pandemic, led to publication of the WHO Health Workforce Support and Safeguards List 2020. The List 2020 comprises 47 countries identified as facing the most pressing health workforce challenges related to Universal Health Coverage.

Consistent with WHO Global Code principles and articles, the document emphasizes that the listed countries should be both prioritized for health workforce and systems support and provided with active recruitment-related safeguards. As good practices, it is encouraged that additional low- and middle-income countries should also benefit from the support and safeguards approach extended to the listed countries.

An example is the United Kingdom (UK) Code of Practice, which explicitly and consistently aligns itself with the WHO Global Code and associated World Health Assembly decisions, including the WHO Health Workforce Support and Safeguards List, 2020.

²³ ILO 2018, p.165. On average, the respective share of migrant doctors and migrant nurses constitutes 22 and 14.5 per cent, respectively, across OECD countries (page 178).

The following elements of the UK Code are notable:

- For the first time, links the UK's domestic need for health workforce and its Overseas Development Assistance support towards health workforce and health systems;
- Makes explicit that active recruitment of health workers from listed countries by UK commercial entities, their sub-contractors, and UK employers is prohibited;
- Any recruitment from the listed countries is to be done via government-to-government partnership agreements that will:
 - a) Seek to ensure no negative impact on source country health systems: i.e. through analysis of the health labour market, engagement of health stakeholders, and consultation with WHO.
 - b) Aim to support "collaboration and mutual benefit, whether through direct reimbursement, exchange of skills, knowledge and processes, support in the development of training and education and/or the circular migration".

Sources: WHO 2020; United Kingdom 2021a; United Kingdom 2021b.

More specifically, in the health sector, the ILO Nursing Personnel Convention, 1977 (No. 149) and its Recommendation No. 157 outline key labour standards, taking into account the special nature of nursing work. In particular, Recommendation No. 157, paragraph 62 refers to bilateral or multilateral arrangements to:

"(a) harmonise education and training for the nursing profession without lowering standards;

(b) lay down the conditions of mutual recognition of qualifications acquired abroad;

(c) harmonise the requirements for authorisation to practice."

Paragraph 66 states that:

"(1) Foreign nursing personnel should have qualifications recognised by the competent authority as appropriate for the posts to be filled and satisfy all other conditions for the practice of the profession in the country of employment; foreign personnel participating in organised exchange programmes may be exempted from the latter requirement.

(2) The employer should satisfy himself that foreign nursing personnel have adequate language ability for the posts to be filled.

(3) Foreign nursing personnel with equivalent qualifications should have conditions of employment which are as favourable as those of national personnel in posts involving the same duties and responsibilities."

At the regional level, the Association of Southeast Asian Nations (ASEAN) has concluded mutual recognition agreements in eight occupational fields. The initiative indicates procedures that allow professional qualifications to be recognized and certified in another ASEAN country. Mutual recognition agreements exist for eight professional categories, including nurses, medical and dental practitioners. The implementation of the mutual recognition agreements has been challenging, due to different education and testing requirements in the region, and also as movement across borders is still subject to immigration regulations. Despite such difficulties, mutual recognition agreements, such as the ASEAN ones, could be

referred to in BLMAs covering the health sector, to allow for qualifications and skills portability. A similar approach for facilitating the mobility of professionals at regional level was introduced by the European Union in 2005 (see box 10).

An interesting example of BLMA on health workforce migration is illustrated in box 11 and includes some details on how effective implementation has been achieved. It addresses to some extent issues around the brain drain and includes a clause on human resources development with a view to exploring projects to promote training in the Philippines. Recruitment is carried out with the support of the public employment agency in the origin country. It is important to stress that the agreement includes the recognition and participation of trade unions, i.e. Public Services International (PSI) unions, in implementation and monitoring (ILO 2020a).

BOX 10. Free movement of professionals in Europe

Professionals in the European Union (EU) can move across borders and practise their occupation or provide services in other Member States.

The EU Directive 2005/36/EC on the recognition of professional qualifications²⁴ covers all regulated professions, except those for which the recognition of professional qualifications is governed by specific legal provisions (e.g. seafarers, statutory auditors, insurance intermediaries, air traffic controllers, etc.). Special laws also exist for lawyers.

The professions which benefit from automatic recognition on the basis of harmonised minimum training requirements under the directive are: nurses, midwives, doctors (basic medical training, general practitioners and specialists), dental practitioners, pharmacists, architects and veterinary surgeons.

To facilitate the recognition of regulated professions, the EU has introduced an electronic procedure, the European Professional Card (EPC)²⁵ which allows, at the moment, nurses responsible for general care, pharmacists, physiotherapists, real estate agents and mountain guides to apply online for recognition of their qualifications in other EU countries.

Source: Popova, N., 2019.

²⁴ The Directive was amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013. See <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0055>.

²⁵ More information on the EPC is available at: https://europa.eu/youreurope/citizens/work/professional-qualifications/european-professional-card/index_en.htm.

BOX 11. Agreement of the Philippines and the Federal Republic of Germany concerning the placement of Filipino health professionals in employment positions in the Federal Republic of Germany, signed on 19 March 2013.

The Agreement's objective is to:

Regulate the deployment of Filipino health professionals to Germany; Exchanging ideas and information to improve and simplify job placement procedures

Identify modalities for the preservation, promotion and development of Filipino migrant workers' welfare.

The recruitment and deployment of Filipino health professionals was foreseen under existing laws, procedures, guidelines and regulations of each country and taking into account interests of respective labour markets

The employment contract has to be signed before the departure and the working conditions were established to be comparable to German workers. A pre-departure and orientation training was foreseen to provide information on relevant laws, regulations, policies, procedures, norms, culture and practices of the destination country.

Health migrant workers will benefit from the social security coverage under German social security system

The Agreement envisaged the adoption of implementing Guidelines that were signed on 14 June 2013.

The implementation of the Agreement was delegated to the Philippine Overseas Employment Administration, Department of Labor and Employment and for Germany to the Federal Employment Agency (BA) through the International Placement Services (ZAV) and to the Gesellschaft für Internationale Zusammenarbeit (GIZ) for language and professional training and integration program. The monitoring of the Agreement was committed to a Joint Committee which included a Trade Union representative from Philippines and Germany, respectively.

As envisaged by the Agreement and the implementation guidelines, the first step is the identification of suitable candidates through a screening implemented in collaboration with the Philippine Overseas Employment Administration. Preselected candidates are interviewed via Skype by the employers to select nurses for their own institutions.

Before leaving their country, the selected nurses undergo a language preparation up to B1 certificate in German language and a 4-day professional and orientation course, including information on processes and requirements for getting their qualifications recognized in Germany. They will be individually supported in the preparation and submission of documents for recognition to the relevant German authorities before departure.

Nurses receive the labour market admission and entry visa before departure from Philippines.

The project is financially supported by the German employers who:

- a. Pay a lump sum of €5,550 for each nurse placed with them to GIZ that covers the cost of services provided by the project (coordination, language and specialist training in the home country, and advice on integration and recognition of qualifications for employers and nurses in Germany).
- b. Cover the nurses' travel costs and cost of the qualification recognition in Germany and language training to achieve the proficiency certificate in German at level B2."

Source: *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) project "Sustainable recruitment of nurses"*. See: <https://www.giz.de/en/worldwide/41533.html>.

C. Migrant domestic workers

Migrant domestic workers are one of the most marginalized and in a vulnerable situation, often subject to discrimination and abuses at every stage of the migration cycle. As migrant domestic workers often migrate under temporary worker schemes, they might be excluded from social protection, and in many cases even basic health services. In some countries, domestic work is also excluded from certain aspects of labour law coverage, including those related to working time, rest periods etc.

To address the challenges met by migrant domestic workers, the countries of origin and destination can agree on common rules through BLMAs, in particular:

- Fair and ethical recruitment – Clauses can include: i) the identification of licenced recruitment agencies to implement the BLMA. These provisions should also include The prohibition to charge recruitment fees to migrant workers; ii) preparation and signature of the employment contract prior to departure. The contract could possibly be drafted according to the model agreement, annexed to ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), and in conformity with ILO Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.
- Preparation for migration – There is a need to include pre-departure training and orientation in the BLMAs related to the requirements of domestic work. In this context, it is also key to provide training on rights issues and channels to get redress. The preparation might also include language training for the destination country. Given the nature of domestic work, which takes place within private households, there is a need to identify the right legal channels to ensure the provision of advice and support in case of abuse. The regulatory situation varies by country and, as a consequence, the possibilities to monitor the implementation of BLMAs on domestic work. In this regard, the BLMA on domestic work between India and Saudi Arabia presents an interesting example, where a 24-hour helpline is envisaged (see box 12). The example is at the level of the agreement, and not of its implementation.
- Modalities for return – BLMAs should include clauses in case of anticipated return to the country of origin, including in emergency situations. In some destination countries, domestic workers could find themselves unemployed, which often translates into falling into an irregular status, and no means of accessing decent work conditions and enjoying their rights.

BOX 12. Agreement on labour cooperation for Domestic Service Workers (DSW) recruitment between the Ministry of Overseas Indian Affairs of the Republic of India and Ministry of Labour of the Kingdom of Saudi Arabia, signed on 2 January 2014

Article 3 - Areas of cooperation between the Parties

The Parties shall:

- (i) Agree that term DSW shall define the term "Domestic Service Workers" as the employees whose job is wholly or mainly to do domestic work in a dwelling that a household uses mainly to live in, and will include but not limited to, gardeners, drivers of motor-vehicles and people to take care of children, the aged, the sick and the disabled;
- (ii) Endeavour to control recruitment costs in both countries;
- (iii) Ensure the recruitment of domestic service workers directly or through recruitment agencies, offices or companies, which are licensed/registered by their respective governments;
- (iv) Adopt a standard employment contract for DSWs the text of which shall have been accepted by the competent authorities of the two countries, which shall be binding among the contracting parties (Employer, Domestic Workers, Saudi Recruitment Office, Indian Recruitment Agencies);
- (v) Grant contractual parties the right of recourses to competent authorities within a fixed time-frame in case of contractual dispute to be specified by both parties in accordance with applicable laws;
- (vi) Take legal measures against recruitment offices, companies or agencies in violation of laws of either country;
- (vii) Ensure that recruitment agencies, offices or companies of both countries and the employer shall not charge or deduct from the salary of the domestic worker any cost attendant to his/her recruitment and deployment or impose any kind of unauthorized salary deductions;
- (viii) Cooperate to implement this Agreement and endeavour to resolve any issue arising during implementation and enforcement of any provision of this Agreement; and
- (ix) To work toward fostering a harmonious relationship between the employer and the DSWs based on mutual recognition of right to work with dignity and their respective cultures.

Article 4 - Responsibilities of First Party

The First Party shall:

- (i) Ensure that the recruitment, hiring and placement of DSWs under this Agreement shall be in accordance with the relevant laws, rules and regulations;

- ii) Ensure that the welfare and rights of DSWs employed in the Kingdom of Saudi Arabia are promoted and protected in accordance with the applicable laws, rules and regulations;
- (iii) Ensure the authenticity of the employment contract which shall provide among others, the rights and obligations of the employer and DSW and the terms and conditions of employment;
- (iv) Ensure the implementation of the employment contract between the employer and the DSW;
- (v) Endeavour to facilitate the expeditious settlement of labour contract violation cases and other cases filed before appropriate Saudi authorities/courts;
- (vi) Facilitate the opening by the employer of a bank account under the name of the DSW for the deposit of his/her monthly salary as provided in the employment contract;
- (vii) Endeavour to establish a mechanism which shall provide 24-hour assistance to DSWs;
- (viii) Facilitate the issuance of exit visas for the repatriation of DSWs upon contract completion, in an emergency situation or as the need arises.

Article 5 - Responsibilities of the Second Party

The Second Party shall:

- (i) Ensure that the DSW recruited satisfy health requirements and are free of all communicable diseases by virtue of thorough medical examinations through reliable medical centers in India;
- (ii) Ensure that prospective DSWs have no criminal/derogatory record;
- (iii) Perform through Embassy of India verification/authentication of employment contracts by the parties recruiting Indian DSWs;
- (iv) Urge prospective DSWs to observe Saudi laws, morals, ethics and customs while residing in Kingdom of Saudi Arabia;
- (v) Facilitate repatriation of DSWs who violate contractual terms; and
- (vi) Endeavour to put in place procedures/mechanisms to allow and ease departure of prospective Indian DSW for Kingdom Saudi Arabia without delay.

Source: India and Saudi Arabia, 2014

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Annex 1. Main sources for the general principles and operational guidelines for BLMAs

At present, there is no consolidated guidance on BLMAs, although many guidelines already exist. Some are contained in binding standards – in particular, international labour Conventions – some in non-binding standards such as ILO Recommendations and Declarations and the 2006 Multilateral Framework on Labour Migration.

The following table indicates the main sources from which the general principles have been drawn. The list of sources, which is not exhaustive, is based upon the core elements identified by the Thematic Working Group on BLMAs of the UN Network on Migration.

RIGHTS

PRINCIPLES	SOURCES
Human rights, including labour rights of regular and irregular migrant workers	International Human Rights Instruments (ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICRMW, CPED, CRPD); ILO Conventions, Protocols and Recommendations; ILO Declaration on Fundamental Principles and Rights at Work, 1998 (C29, P29; C87; C97 (Art. 10), C98; C100; C105; C111; C138; C182); C143, Art. 1; C155, P155, C187, R203, para Comments3; ICCPR C97, Art 6(1)(d); C143, Art. 9(2); R86 Model Agreement, Art. 16; R151, paras 33 and 34; R201, para 21(1); R203, paras 12 and 13; P029, Arts. 1(1) and 4(1); C189, Art. 16; R203, para 12(e); C190; R206. ICRMW (Art. 81(1.b)). ILO Multilateral Framework on Labour Migration 2006: 2.3; 2.6; 3.4; 5.3
Equality of treatment and non-discrimination	C97, Art. 6(1)(a) (i), (ii) and (iii), (b); R086 Model Agreement, Art. 17, 19, 20; C143, Art. 9, 10, 12 (g R151, para 2; C102, Art. 86.); C189, Art.5, 10(1), 11, 14(1) and 15(1)(d); C111 and R111; C118; R157, para 66(3); C118; ICCPR (Art. 3, 26); ICESCR (Art. 2, 10); ICRMW (Art. 1, 7, 25); CEDAW; ICERD; CRC (Art. 2, 10)
Preventing and combating violence and harassment against migrant workers	C189, Art. 5; R201, para 7; R206, para 10, 23(d); C190, Art. 4; P029 - Protocol of 2014 to the Forced Labour Convention, 1930
Freedom of movement of migrant workers	C189, Art 9(c); C97, Art. 4 and R86, Para. 4, 18(2)(f) and 20; C143, Preamble, Art. 14 (a); Trafficking Protocol; ICRMW (Art. 21, 39) United Nations Convention against Transnational Organized Crime and the Protocols thereto

<p>Admission of family members of migrant workers, and family reunification, if possible</p>	<p>ICRMW, Art. 44; C143, Art. 13; R151, para 13(1-19); R86, Para. 15, 16(1) and (2)(b); CRC (Art. 3 and 10(2))</p> <p>ILO Multilateral Framework on Labour Migration 2006: 2.3</p> <p>Art 9 (1) of C143</p>
<p>Social security and healthcare benefits are non-discriminatory, and available and accessible to all migrant workers</p>	<p>ICRMW Art.28</p> <p>R200, para 25; R201, para 3 (b) and (c)</p> <p>Resolution WHA 70.15 Promoting the health of refugees and migrants;</p> <p>R200 - HIV and AIDS Recommendation, 2010 (No. 200)</p> <p>A72/25 Rev.1 Promoting the health of refugees and migrants. Global action plan, 2019-2023</p> <p>ICRMW Art.28</p> <p>Resolution WHA 70.15 Promoting the health of refugees and migrants;</p> <p>A72/25 Rev.1 Promoting the health of refugees and migrants. Global action plan, 2019-2023</p> <p>ILO Multilateral Framework on Labour Migration 2006: 9.9</p>
<p>Protection in cases of change of employment, or loss of employment</p>	<p>ICRMW Art. 49; C143, Art. 8; R151, paras 30-32; C97, Art.8;</p> <p>R86 Model Agreement, Art. 23 and 24; R203, para 18; R169, para 44</p>

RECRUITMENT

PRINCIPLE	SOURCES
Fair recruitment	<p>ICRMW (Art. 66); C88, Art. 1.1; C97, Art. 3; C97, Annexes I and II Art. 4; C111, C143, Arts. 2-7, C181, Art. 7 (1), Art. 8 (2); C189, Art. 15(1)(d); R201, paras 6(4) and 22; R203, paras 4(j) and 8(a)-(e)); R205, para 27. Maritime Code Convention 2006</p> <p>R86, Paras. 13 and 14; R86 Model Agreement, Art.6(4); P029, Art. 2(d); R151, R169, para 7(b); R88, R201, R204</p> <p>IRIS International Recruitment Integrity System Code of Conduct</p> <p>ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs, 2019</p>

SAFETY AND HEALTH

PRINCIPLE	SOURCES
Occupational safety and health of migrant workers	<p>ICRMW (Art. 25, 28, 43); CEDAW, Art. 11 para. 1f; ICESCR, Art. 7 (b); C87; C98; C155, Art. 16-21; R157, para 69(a) and (b); R164, paras 10-17; C161, Art. 5, 12, 13; R171, paras 11-14, 22; C189, Art. 13; R151, Paras. 20-22</p> <p>Resolution WHA 70.15 Promoting the health of refugees and migrants</p> <p>A72/25 Rev.1 Promoting the health of refugees and migrants. Global action plan, 2019–2023</p>

SOCIAL SECURITY

PRINCIPLE	SOURCES
Access to social security benefits to migrant workers and pension portability	<p>ICESCR (Art. 3, 9, 10), ICRMW (Art. 27); C97, Art. 6(1)(b); R86 Model Agreement, Art. 21; C102, Art. 68; C118, Art. 8; C157, Art 4(1), Arts 7-9 and Art.17; R167, paras 2 and 4-7; R202; R203, paras 4(f), 12(b); C19 and C121</p> <p>ILO Multilateral Framework on Labour Migration 2006: 9.9</p>

EMPLOYMENT CONTRACT AND WAGE PROTECTION

PRINCIPLE	SOURCES
Wage protection and equal remuneration for work of equal value	ICRMW (Art. 25, 54, 61); C100; R111, para 2; C95; C97, Art. 6(1)(a); Annex I, Art. 5 and 7; Annex II, Arts. 6 and 12; C189, Art. 7, 11, 12; R151, para 7(1)(a); R157, para 6; R188, para 8(b); R201; para 6 and 15 (1); R203, para 4(e); R205, para 27(a) R86 para 5(2), Model agreement, Art. 8(1) and 22(2) and (3(d) and (3)(f)

GOVERNANCE STRUCTURE

PRINCIPLE	SOURCES
Responsible institutions for the promotion, implementation and enforcement of the agreed working and living conditions of migrant workers	C97, C143, R86, ILO Resolution concerning fair and effective labour migration governance (2017)
Integration of migrant workers	ICESCR (Art. 6, 13, 14, ICRMW (Art. 12, 30, 43, 45, 51) C143, Art. 14(b); R157, paras 62-64 and 66(1) and (3); R86, Para. 10(b); R86 Model Agreement, Arts. 2 (b), 3, 4(b), and 9; R195, paras 5(h), 12, 21(a) and (e)

SKILLS RECOGNITION, MATCHING AND DEVELOPMENT

PRINCIPLE	SOURCES
Skills matching skills recognition	ICESCR (Art. 6, 13, 14, ICRMW (Art. 12, 30, 43, 45, 51) C143, Art. 14(b); R157, paras 62-64 and 66(1) and (3); R86, Para. 10(b); R86 Model Agreement, Arts. 2 (b), 3, 4(b), and 9; R195, paras 5(h), 12, 21(a) and (e)

SAVINGS AND REMITTANCES

PRINCIPLE	SOURCES
Transfer to the country of origin of migrants' savings and remittances	ICRMW (Art. 32, 47, 48), C97, Art 9; R86 Model Agreement, Art. 13

RETURN AND LABOUR MARKET REINTEGRATION

PRINCIPLE	SOURCES
Return, and gender-responsive labour market reintegration in origin countries	R86, para 20; R86 Model Agreement, Art. 25 and 26; R205

Annex 2. Indicative provisions of BLMAs for each step of the labour migration cycle

At present, there is no consolidated guidance on BLMAs, although many guidelines already exist. Some are contained in binding standards – in particular, international labour Conventions – some in non-binding standards such as ILO Recommendations and Declarations and the 2006 Multilateral Framework on Labour Migration.

The following table indicates the main sources from which the general principles have been drawn. The list of sources, which is not exhaustive, is based upon the core elements identified by the Thematic Working Group on BLMAs of the UN Network on Migration.

LABOUR MIGRATION CYCLE	BLMA AND ACCOMPANYING MEASURES
Identification of job opportunities abroad	<ul style="list-style-type: none"> • Selection process through public employment services (PES) or private employment agencies (PrEAs) • Preliminary skills matching (not a full assessment but preliminary correspondence to skills demanded)
Preparation for migration	<ul style="list-style-type: none"> • Documents (passport, diplomas, skills certificates) • Individual collection of information for the destination country • Visa • Support for children, parents and families to prepare for periods of separation (family readiness) • Recruitment fees and related costs not to be charged to workers
Pre-departure training	<ul style="list-style-type: none"> • Skills matching (through PES, PrEAs, etc.) • Pre-departure and cultural orientation training (delivered through PES, NGOs) • Occupation-related training, according to the BLMA requirements
Travel	<ul style="list-style-type: none"> • Might be organized by the employers from the destination country

Source: Tool for the Assessment of Bilateral Labour Migration Agreements (ILO/IOM 2019)

Work abroad	<ul style="list-style-type: none">• Registration in the destination country• Work permit• Recognition of skills• Post arrival training (if needed) and assistance• Rights at work• Ability to change employer• Social protection• Remittances and savings transfer
Return	<ul style="list-style-type: none">• Recognition of skills acquired abroad• Labour market reintegration/retirement/inactivity/re-migration• Portability of social security entitlements and earned benefits• Support for families reunifying after periods of separation

Annex 3. Checklist for BLMA structure

TOPIC

Authorities in charge of negotiating the BLMA

Authorities in charge of implementing the BLMA

Authorities in charge of monitoring and evaluation of BLMA

Type of labour migration covered by the BLMA (e.g. permanent, temporary, seasonal, etc.)

Migrant workers to be covered by the BLMA by occupation and skill levels

Skills recognition

Skills development

Recruitment/selection procedures

Entry procedures in the destination country, issuance of residence and employment permits

Access of migrant workers to decent working and living conditions (i.e. housing, food, education)

Occupational safety and health for migrant workers

Inclusion of a model employment contract, as appropriate

Clauses for protection of migrant workers' rights, including principles of non-discrimination and equality of treatment with nationals

Clauses to protect family rights, including the right to direct and regular contact and personal relations between migrant workers and their dependent children

Mechanisms to prevent migrant workers falling in an irregular situation due to the loss of employment

Transfer of savings and remittances

Access to social protection and portability of social security benefits

Consideration given to the needs of specific migrant groups in vulnerable situations on the labour market, e.g. women migrant workers, youth

Clauses on filing grievances and on access to justice for migrant workers

Modalities for facilitating labour market sustainable reintegration upon return

Modalities for monitoring the implementation of the BLMA

Mechanisms for revision of the BLMA

Dispute settlement modalities for possible differences in interpretation for the signatory Parties

Duration of the agreement (if appropriate)

Annex 4. Checklist for BLMA negotiation

Is the agreement a BLMA?

Is the agreement an MoU?

Will the negotiation process be conducted directly by the two negotiating delegations?

Will the negotiation process be conducted through the exchange of written drafts?

Will the negotiation process be conducted through an exchange of written drafts and some direct negotiations?

In addition to the ministry responsible for the agreement, will other ministries be consulted or participate in the negotiation phase?

Are line ministries and sector-specific ministries involved in the negotiation and in setting up entry quotas?

Will the social partners and other relevant stakeholders be consulted during the negotiation phase?

Is the responsible ministry for the negotiation, the Ministry of Foreign Affairs?

Is the responsible ministry for the negotiation, the Ministry of Labour?

Will the agreement be signed by the head of the negotiating delegations?

Will the agreement be signed by the ministries in charge?

Will the signed agreement need to be approved by the parliament?

Will the agreement be published in the Official Journal?

Annex 5. Checklist for BLMA implementation

a) Country of origin

Was the national legislation adapted to avoid conflicts with the BLMA?

Were all relevant levels of government authorities (local, regional, national) involved?

Have workers' and employers' organizations been involved in the implementation of the BLMA?

Have NGOs operating in the field of labour migration and migrants' associations been involved in the implementation of the BLMA?

Have agencies engaged in supporting children and families of migrant workers (including child protection agencies) been involved in the implementation of the BLMA?

Were the public employment services involved in the implementation of the BLMA?

Were the private employment agencies involved in the implementation of the BLMA?

Has the information on the BLMA been disseminated, among migrant workers?

Are transparent procedures for selection and placement of candidates in place?

Are measures in place to ensure that the selected candidates comply with health, qualifications, security, insurance, language, documentary and other requirements before migration?

Are there any provisions for pre-departure training, including specifically targeting women migrant workers, and preparing children and families for separation?

Are there provisions for the return of migrant workers and their reintegration back home?

b) Country of destination

Has the national legislation been in compliance with international law and national legislation?

Have all relevant levels of government authorities been involved (local, regional, national)?

Have workers' and employers' organizations been involved in the implementation of the BLMA?

Have relevant stakeholders including NGOs operating in the field of labour migration and migrants' associations been involved in the implementation of the BLMA?

Has there been an awareness-raising campaign on the BLMA?

Have public employment services been involved in the implementation of the BLMA?

Have private employment agencies been involved in the implementation of the BLMA?

Is there provision for post-arrival orientation and professional training for migrant workers, including for women migrant workers?

Are migrant workers free to register in an existing workers' organization or to create new ones?

Are there any social integration programmes for migrant workers and their families, especially for newly arrived migrants that are regulated by the BLMA?

Are migrant workers free and able to engage in direct and regular contact with their dependent children and families in countries of origin?

What procedures are available for recognizing the skills held by migrant workers (acquired through formal, informal or non-formal learning processes)?

Has a supportive regime been developed to ensure portability of social security and other benefits for migrant workers?

Is assistance given to migrant workers to plan their return and reintegration back home?

Annex 6. Model terms of reference for the Joint Monitoring Committee of a BLMA

FUNCTIONS

- Ensure smooth implementation of the Bilateral Labour Migration Agreement (BLMA) through the correct interpretation of clauses that may present a wide range of options for action;
- Resolution of disputes between the Parties;
- Monitor and evaluate the effectiveness of BLMA provisions and suggest amendments and improvements on the basis of lessons learned, and evolving labour migration trends and needs;
- Provide advice to signatory authorities for any necessary modifications and adaptation of the BLMA.

OBJECTIVES

- Monitor and review the implementation of the BLMA, using appropriate indicators and methodologies;
- Identify issues and agree on joint solutions concerning the implementation of the BLMA;
- Collect and disseminate good practices for BLMA implementation;
- Conduct interviews with the social partners, the international community (e.g. UN Agencies), migrant workers and civil society organizations in order to evaluate the implementation of the BLMA and collect suggestions for the improvement of bilateral cooperation in the field;
- Foster collaboration with existing regional frameworks or other international cooperation initiatives, e.g. regional economic communities;
- Disseminate BLMA monitoring and evaluation reports;
- Prepare annual financial reports for the functioning of the Committee in order to request the necessary resources from the signing authorities.

MEMBERSHIP AND CHAIRPERSON

Membership is usually defined by the BLMA and should include senior representatives of each of the signing authorities. The Ministry of Labour should be included, even if it has not been the signing authority, given that the issue covered is employment and labour migration. The Committee should expand its membership to include representatives of other line ministries and implementing agencies and social partners, particularly those who work closely with migrant workers. As far as possible, gender balance should be a priority.

The Committee will be chaired, on an annual basis, by the highest-ranking member of the signatory authority of a given country. At the inception of the activity of the Committee, the Chairperson will be agreed to be from the origin or destination country, which will also host the meetings held over the following year. At the end of the year, the position of Chairperson will be taken over by the other country, which will also host the related meetings.

Any expenditure necessary for participation in the Joint Monitoring Committee will be covered by each country for its own representatives.

Any other expenditure linked to the organization of meetings will be covered by the country, which is currently chairing the Committee.

OPERATIONAL MODALITIES

Meetings will be normally held every six months. The Chairperson will send invitations to members detailing the venue, time and agenda of forthcoming meetings.

To reduce the financial burden, the Committee may wish to hold a videoconference instead of physical meetings.

The minutes of each meeting, including those held by videoconference, should be circulated among members and endorsed.

SECRETARIAT

The country acting as Chairperson will also be responsible for providing secretarial support, including:

- assisting the Chairperson in the organization of meetings;
- circulating meeting invitations;
- organizing meetings in terms of venue, catering and interpretation;
- organizing videoconferences, as appropriate;
- drafting meeting minutes, including for videoconferences;
- keeping a record of endorsed minutes;
- preparing end of year financial report for the use of funds.

Source: Tool for the Assessment of Bilateral Labour Migration Agreements (ILO/IOM 2019)