



2022 RAPID ASSESSMENT ON BILATERAL LABOUR MIGRATION AGREEMENTS (BLMAs)

CORRIDOR: SOMALIA TO KENYA.

MAY 2022

Regional Office for East and Horn of Africa
Sri Aurobindo Avenue
off Mzima Springs Road
Lavington
P.O. Box 55040 - 00200 Nairobi, Kenya
RONairobi@iom.int
www.ronairobi.iom.int
www.iom.int

Foreign Commonwealth and Development Office of the United Kingdom
King Charles Street, London
SW1A 2AH or
Abercrombie House, Eaglesham Road
East Kilbride, G75 8EA
United Kingdom
fcdo.correspondence@fcdo.gov.uk
<https://www.gov.uk/government/organisations/foreign-commonwealth-development-office>

Graphic Design/Layout: Angela Njuguna
(Media and Communication Unit (RO East and Horn of Africa
Photo Credits: @IOM SOMALIA

This publication has been produced by the International Organization for Migration (IOM)/UN Migration, within the framework of the “The Better Regional Migration Management Programme (BRMM)” Labour Mobility and Regional Integration for Safe, Orderly and Humane Labour Migration in East and Horn of Africa: East Africa Migration Management”, a regional, multi-partner, pilot project funded by the Foreign Commonwealth and Development Office of the United Kingdom. The BRMM programme aims to enhance labour migration governance and protection of migrant workers and their family members’ human, social and labour rights through intra and inter-regional cooperation on a whole-of-government and whole-of-society approach, to support regional integration and facilitate mobility for transformative inclusive and sustainable economic growth as well as youth and women empowerment.

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM)/UN Migration. The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

TABLE OF CONTENTS

1. Acknowledgements.....	4
2. Acronyms.....	5
3. Glossary.....	7
4. Executive Summary.....	11
5. Introduction and Purpose of the Study.....	12
6. Background.....	13
7. Scope.....	15
8. Methodology and Tools.....	16
Data Collection Methods.....	16
Limitations.....	17
Intent.....	17
Labour Migration Dynamics in the Region.....	17
Youth and Unemployment.....	19
9. Findings.....	20
Labour Migration and Migration Dynamics in Somalia and Kenya.....	20
Migrant Worker Profile and Vulnerabilities on the Move.....	21
Impact of the COVID-19 Pandemic on the Somalia to Kenya Labour Migration Route.....	21
Systemic characteristics of labour migration between Kenya and Somalia.....	22
10. BLMAs Assessment Findings.....	23
BLMAs Implementation Cycle and Cycle of Migration.....	23
Key Findings.....	23
Overview of current BLMAs and other umbrella agreements in Somalia and Kenya.....	23
Drafting and Implementation.....	24
Ethical Recruitment and Skills and Pre-Departure Training.....	25
Joint Monitoring Committees and Review.....	27
Emerging Trends.....	27
Why should countries enter into inter-State cooperation on labour mobility?.....	28
11. Key Areas of Rapid Assessment Recommendations.....	28
12. Annex.....	30
Annex A. RECs and Labour Migration Policy Initiatives.....	30

1. ACKNOWLEDGEMENTS

The Rapid Assessment of the Somalia to Kenya Labour Migration Corridor has been developed in close coordination and partnership between the IOM/UN Migration Regional Office for the East and Horn of Africa as well as IOM Country Offices in Somalia and Kenya.

We wish to thank the following people for their contributions to the assessment:

CONTRIBUTIONS

Vassily Yuzhanin, Head of International Migration Law (IML) Unit

Jason Theede, Senior Regional Specialist, Labour Mobility and Social Inclusion (LMI), IOM Regional Office South Africa

IOM REGIONAL OFFICE FOR THE EAST AND HORN OF AFRICA

Tatiana Hadjiemmanuel, Senior Regional Specialist, Labour Mobility and Social Inclusion (LMI)

Addishiwot Gebrewold, BRMM Regional Programme Management Officer (LMI)

Brennan Winter, Regional Programme and Monitoring and Evaluation Officer and BLMAs Expert, (LMI)

Janet A. Adongo, Media and Communications Officer

IOM MISSIONS IN THE EAST AND HORN OF AFRICA

Sikhulile Dhlamini (IOM Somalia), Zeffira Zanfagna (IOM Somalia), Farhan Omer (IOM Somalia), Ayan Hassan Rabi (IOM Somalia), Pravina Gurung (IOM Kenya), Roy Opon (IOM Kenya), Philip Nyange (IOM Kenya).

2. ACRONYMS

AEC	African Economic Community
AU	African Union
BLMAs	Bilateral Labour Migration Agreements
CMP	Common Market Protocol
CoD	Country of Destination
CoO	Country of Origin
CSO	Civil Society Organization
EAC	East African Community
EHoA	East and Horn of Africa
FGD	Focus Group Discussion
FGS	Federal Government of Somalia
FMP	Free Movement Protocol
FMP	Flow Monitoring Point
GCC	Gulf Cooperation Council
GCM	Global Compact for Safe, Orderly and Regular Migration
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IML	International Migration Law
IP	Implementing Partner
IMRF	International Migration Review Forum
EU-IOM JI	European Union-IOM Joint Initiative
JLMP	Joint Labour Migration Programme
JTC	Joint Technical Committee
KII	Key Informant Interview

KSA	Kingdom of Saudi Arabia
LMIS	Labour Market Information System
MOU	Memorandum of Understanding
MPFA	Migration Policy Framework for Africa
MRA	Mutual Recognition Agreement
MS	Member State
NCM	National Coordination Mechanism on Migration
NEA	National Employment Authority (Kenya)
NITA	National Industrial Training Authority (Kenya)
PEAs	Private Employment Agency
PPE	Personal Protective Equipment
REC	Regional Economic Community
RDH	Regional Data Hub
RLMP	Regional Labour Migration Policy
RMFM	Regional Ministerial Forum on Migration
RMG	Regional Monitoring Group
RMMS	Regional Mixed Migration Secretariat
SADC	Southern Africa Development Community
SDGs	Sustainable Development Goals
TVET	Technical and Vocational Education and Training
UAE	United Arab Emirates
UN	United Nations
UNAIDS	The Joint United Nations Programme on HIV/AIDS

3. GLOSSARY¹

Assisted Voluntary Return

Administrative, logistical, financial and reintegration support to rejected asylum seekers, victims of trafficking in human beings, stranded migrants, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin.

Asylum Seeker

An individual who is seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum seeker.

Bilateral Labour Migration Agreements (BLMAs)

Bilateral labour migration agreements are arrangements between two States. They describe in detail the specific responsibilities of each of the parties and the actions to be taken by them with a view to accomplishing their goals. The ILO Migration for Employment Recommendation (Revised), 1949 (No. 86) contains in its Annex a Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons.

Bilateral Labour Arrangements (BLAs)

All forms of bilateral arrangements between States, regions and public institutions that provide for the recruitment and employment of foreign short- or long-term labour. Note: Bilateral labour arrangements is a broader term, compared to bilateral labour agreements, encompassing non-legal arrangements such as memorandums of understanding (MoUs), as well as “non-governmental” arrangements, for example arrangements between national employment agencies in different countries.

Country of Destination

In the migration context, a country that is the destination for a person or a group of persons, irrespective of whether they migrate regularly or irregularly. May also be referred to as host country, receiving country, or State of employment.

Country of Origin

In the migration context, a country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly. See also home country and State of origin.

¹ IOM, 2019. https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.

Country of Transit

In the migration context, a country through which a person or a group of persons pass on any journey to the country of destination or from the country of destination to the country of origin or the country of habitual residence.

Circular Migration

A form of migration in which people repeatedly move back and forth between two or more countries.

Ethical Recruitment

Ethical recruitment means hiring workers lawfully and in a fair and transparent manner that respects and protects their rights.

Facilitated Migration

Regular migration that has been encouraged or supported by State policies and practices or by the direct assistance of international organizations to make the act of migration and residence easier, more transparent and more convenient.

Freedom of Movement

A human right comprising three basic elements: freedom of movement within the territory of a country (Art. 13(1), Universal Declaration of Human Rights, 1948: "Everyone has the right to freedom of movement and residence within the borders of each state."), the right to leave any country and the right to return to his or her own country (Art. 13(2), Universal Declaration of Human Rights, 1948: "Everyone has the right to leave any country, including his own, and to return to his country").

Human Trafficking

The "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." (Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, of the United Nations Convention against Transnational Organized Crime, 2000, art.3).

Internally Displaced Persons

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Irregular Migration

Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term “illegal migration” to cases of smuggling of migrants and trafficking in persons.

Labour Mobility

Labour mobility – or mobility of workers – can be either occupational (movement along the occupational ladder) or geographic (movement across geographic locations). In the context of migration, geographic labour mobility is implied. Note: The term “labour mobility” has the same meaning as “labour migration” but is more frequently used nowadays to reflect the dynamic and multi-directional nature of modern migration, indicating that those who move for employment purposes may do so more than once, may move across different countries of destination and that their employment abroad may not necessarily result in settlement in another country, keeping their prime place of residence in their country of origin.

Memorandum of Understanding

A type of bilateral labour migration agreement – but a non-binding agreement that sets out a broad framework of cooperation to address common concerns.

Migrant

IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM concerns itself with migrants and migration-related issues and, in agreement with relevant States, with migrants who are in need of international migration services.

Migration

The movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.

Migrant Worker

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.

Refugee

A person, who “owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol).

Relocation

In the context of humanitarian emergencies, relocations are to be considered as internal humanitarian evacuations and are understood as large-scale movements of civilians, who face an immediate threat to life in a conflict setting, to locations within the same country where they can be more effectively protected.

Repatriation

The personal right of a prisoner of war, civil detainee, refugee, or of a civilian to return to his or her country of nationality under specific conditions laid down in various international instruments.

Resettlement

The relocation and integration of people (refugees, internally displaced persons, etc.) into another geographical area and environment, usually in a third country. In the refugee context, the transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them.

Return Migration

In the context of international migration, the movement of persons returning to their country of origin after having moved away from their place of habitual residence and crossed an international border. In the context of internal migration, the movement of persons returning to their place of habitual residence after having moved away from it.

Smuggling

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000). Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

Undocumented Migrant

A non-national who enters or stays in a country without the appropriate documentation.

Vulnerability

IOM defines vulnerability in a migratory context as “the reduced ability of an individual or group to resist or recover from violence, exploitation, abuse and violations of their rights. It is determined by the presence, absence and a mix of factors and circumstances that (a) increase the risk and exposure to, or (b) protect against violence, exploitation, abuse and rights’ violations”.

4. EXECUTIVE SUMMARY

The Bilateral Labour Migration Agreements (BLMAs) Somalia to Kenya Rapid Assessment provides a snapshot of the current situation for migrant workers travelling from Somalia to Kenya for economic reasons as well as the current operational status of BLMAs, and all agreements that fall under this umbrella, throughout the corridor.²

This rapid assessment provides additional evidence that governments may utilize in improving labour migration governance structures. Evidence-based decision-making in labour migration governance strategies should ultimately lead to increased protection of migrant workers and benefits for both countries of origin and countries of destination. Somalia and Kenya have a demonstrated flow of movement between the two countries. This is characterized largely by mixed migration movements, meaning people moving for various reasons, including seeking new economic opportunities. This rapid assessment largely focuses on migrant workers moving from Somalia to Kenya for work without legal documentation.

This rapid assessment seeks to contribute to the strengthening of regional guidance and architecture to govern labour migration through BLMAs as a tangible step towards effective implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM), Sustainable Development Goals (Targets 8.8 and 10.7), African Union's Vision 2063, EAC and IGAD Protocols on Free Movement of Persons and Regional Ministerial Forum on Migration (RMFM)³ Objectives and other relevant regional cooperation and development frameworks. The study builds on the Rapid Assessment of Migrant Workers' Vulnerability in the East and Horn of Africa: The Case of Ethiopia, Somalia and Djibouti, a research study on existing vulnerabilities of EHoA migrant workers' status and rights in destination countries (GCC) conducted from 1 August to 15 November 2020 with the financial support of BMM. It also both builds upon and utilizes data collected for the Rapid BLMAs Assessment of the Southern Corridor and seeks to portray a more complete picture of labour migration movements throughout the EHoA.

The harmonization of labour migration laws across the region, which will allow for the free movement of people locally and beyond, will also ignite economic development and boost transfer of skills within the region. Harmonizing these regulations would also serve to increase migrant worker protection and prevent the exploitation of labour through unfair practices such as excessive working hours, passport and document forging and confiscation, confinement, denial of salary, and physical and/or sexual abuse.

The COVID-19 crisis presents us with an opportunity to reimagine human mobility for the benefit of all while advancing the commitment of the 2030 Agenda of leaving no one behind and the Agenda 2063 aspirations for a prosperous Africa.

² Bilateral labour migration agreements (BLMAs) is the overarching term used throughout this report. It is an "umbrella" term or is inclusive of bilateral labour agreements (BLAs), memorandums of understanding (MoUs), other bilateral agreements addressing labour migration, and framework agreements or cooperation agreements addressing labour migration and other migration topics.

³ Regional Ministerial Forum on Migration on Harmonizing Labour Migration Policies in East and Horn of Africa – A United Approach on Safe, Regular and Humane Labour Migration.

5. INTRODUCTION AND PURPOSE OF THE STUDY

As recognized by the Global Compact for Migration (GCM), bilateral and multilateral cooperation remains essential for promoting human and labour rights of migrants and decent work. BLMAs are instruments that can be used to achieve this if they are drafted and implemented in a manner that both protects migrant workers as well as includes them in the socioeconomic development goals of both countries of origin and destination. Migration can be a powerful tool to foster personal growth as well as to drive sustainable development and reduce poverty. Migration can meaningfully contribute to economic development in countries of origin (CoOs), countries of transit and countries of destination (CoDs) through remittances, investment, trade and transfer of knowledge and skills. BLMAs, when used correctly, can provide a concrete means to improve governance of labour migration.

There is a dearth of quality data on the labour migration route from Somalia to Kenya as much of the focus on migration between the two countries lies on refugees or asylum seekers. This corridor, however, is characterized by mixed migration, meaning that movement may consist of a number of people travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. This may include asylum seekers, refugees, trafficked persons, unaccompanied or separated children, and migrant workers.⁴ By the end of 2019, Somalia was still one of the top 10 countries of origin for refugees after decades of severe conflict and more recent forms of displacement such as climate change.

Labour migration, or the movement of persons from one State to another, or within their own country of residence, for the purpose of employment is still relatively unexplored in the context of this corridor.

There is little labour migration data showing who is moving and why, and with few paths for regular labour migration. This study is a snapshot of the Somalia to Kenya Corridor, looking at who is migrating and why they are migrating.

The study is double-pronged. The first avenue is aimed at understanding the characteristics of the Somalia to Kenya Corridor as they currently stand and how the COVID-19 pandemic may have affected labour migration along this route. The second avenue of the study seeks to examine the existing infrastructure of bilateral labour migration agreements, the process of their negotiation and on-the-ground implementation, including all agreements falling under this umbrella, i.e. MoUs and bilateral labour agreements. The study then seeks to make recommendations for future implementation of agreements intended to formalize migrant workers pathways both within the region and beyond, ultimately leading to a decrease in overall vulnerabilities for migrant workers and their families within the region.

BLMAs are purportedly enacted to formalize labour migration pathways in order to yield increased migrant worker protection. On the ground, though, BLMAs are not always implemented in an effective manner. In order to assist governments and governing bodies in enacting meaningful agreements aimed at bettering the facilitation of movement between countries of origin and countries of destination, more information is needed both in obtaining a snapshot perspective of the current Somalia to Kenya labour migration route as well as barriers to establishing and enacting BLMAs and other bilateral and multilateral arrangements that fall under this umbrella.

⁴ IOM Glossary, 2019.

6. BACKGROUND

The East and Horn of Africa (EHOA) region remains highly mobile, with almost 820,000 movements tracked at 70 flow monitoring points in the region between January and June 2021, the majority of which (67%) were motivated by economic reasons.⁵ The second largest reason given for migrating stated by 10 per cent of respondents was due to forced movements for assorted reasons. In Somalia, political insecurity and environmental factors such as drought and famine still force Somalis to leave their homes. Somali migration patterns are complex. The Protection Return and Monitoring Network (PRMN) and IOM estimated that as of May 2018, 2.6 million Somalis were internally displaced due to conflict and climate-related events. By May 2020, UNHCR reported that 761,276 Somalis had sought refuge in neighbouring countries, including Kenya (35%), Yemen (34%), Ethiopia (26%) and Uganda (5%). As of 29 February 2020, Somalia also hosted 35,499 refugees and asylum seekers, mostly from Ethiopia and Yemen.⁶ In January 2022, movements increased by 245 per cent when compared to December 2021, with a total of 310,313 people displaced.⁷

Approximately 55 per cent of all Somalis live outside of Somalia, almost two-thirds of Somalis abroad living in neighbouring countries. Kenya hosts the largest numbers of Somali migrants, both refugees and non-refugees, with approximately 660,000 Somalis living in this country.⁸

The Somalia to Kenya Corridor has long been characterized by mixed migration flows as migrants migrating for economic reasons travel alongside asylum seekers. Kenya, as a more affluent African country, is perceived to be a beneficial destination for migrant workers looking for greater economic opportunities and higher pay and finding employment at the destination is facilitated by the robust networks that exist between communities both in Somalia and Kenya.⁹ Somali labour migration is primarily geared towards neighbouring countries as well as the Southern Corridor, with the Republic of South Africa being a major country of destination. Somalis are known as extremely entrepreneurial and often run small businesses in the countries of destination. Somalis also work as casual labourers and domestic workers throughout the EHOA and the Middle East. Over the last few years, returns of Somalis have become increasingly more frequent, often causing significant disruption to the labour market over the course of return and reintegration.

Strong and long-established Somali networks with their homeland link the Somali migrant communities in Kenya. Most migrants are aided in their travel in some manner, either through smugglers, recruiters, family, or community members. Nairobi, the Kenyan capital, is considered a major hub for migration. Nairobi's Eastleigh neighbourhood is widely used as a transit centre for refugee and migrant communities, predominantly from Somalia and Ethiopia, who desire to migrate further to South Africa for work or business.¹⁰

A major challenge in the EHOA region is the fact that a significant part of labour migration occurs outside of regulated channels. As a result, migrant workers face violence, harassment and abuse during their journey, on arrival in the countries of destination and upon their return. This violence is perpetrated by both local and foreign brokers or smugglers, recruitment agencies as well as by their employers.

5 IOM. Mid-year Mobility Overview January-June 2021 (Nairobi, 2020). Available from: https://reliefweb.int/sites/reliefweb.int/files/resources/IOM_EHOA_RoMR_Mid-2021.pdf.

6 UNHCR, 2022. Available from: <https://data2.unhcr.org/en/situations/horn>.

7 Somalia June 2021 Humanitarian Bulletin, OCHA. Available from: <https://reliefweb.int/sites/reliefweb.int/files/resources/June%202021%20humanitarian%20bulletin%20final.pdf>.

8 UNHCR, 2021. Available from: <https://reporting.unhcr.org/sites/default/files/PRM%20Snapshot%20May%202021.pdf>.

9 IOM. Mid-year Mobility Overview January-June 2021 (Nairobi, 2020). Available from: https://reliefweb.int/sites/reliefweb.int/files/resources/IOM_EHOA_RoMR_Mid-2021.pdf.

10 Ibid.

EHOA countries have been increasingly adopting BLMAs among Member States (MS) and externally to better regulate and manage labour migration and enhance benefits of migration through greater cooperation. Several countries (Kenya, Somalia and Ethiopia) have concluded or begun negotiating bilateral agreements and MoUs with the GCC and Middle Eastern countries. BLMAs have also been used by the EHOA countries to fill structural shortages in specific sectors of the economy, particularly shortages of highly skilled workers. For example, Rwanda entered into a cooperation agreement with Kenya to supply English teachers following the change in its official language policy from French to English. Ethiopia has a MoU/BLA with Djibouti, Sudan, and South Sudan on free movement of people and goods. Tanzania also has a MoU with South Sudan for secondment of civil servants. Although the existing BLMAs and MoUs now provide a much-needed legal framework, these and other national, regional, and international frameworks and instruments still must prove their potential to govern labour migration and to substantively advance the protection of migrant workers' rights, as development and implementation of these agreements is still limited in the region. There is considerable movement to harmonize labour migration policies across the region, implement the Free Movement Protocol, and eventually to bargain as a Regional Economic Community in the establishment of BLMAs.

On a larger scale, the Regional Ministerial Forum for Migration (RMFM) seeks to bring together the IGAD and the EAC to take steps towards the harmonization of labour policies across both economic blocs and the region.

The RMFM's objectives are in line with:

- Sustainable Development Goal 8 (SDG 8 — Promote inclusive and sustainable economic growth, employment and decent work for all, including Target 8.8. that establishes protection of labour rights and promotion of safe and secure working environments for all workers, including migrant workers, in particular women migrants) and SDG 10 that urges countries to reduce inequality within and among countries by facilitating safe, orderly and regular migration and mobility of people, including through planned and well-managed migration policies.
- Agenda 2063 for Africa.
- Revised Migration Policy Framework for Africa; and
- Global Compact for Migration (GCM), particularly Objective 23 (strengthening international cooperation and global partnership for safe, orderly, and regular migration) as well as Objective 6 (facilitation of fair and ethical recruitment and safeguarding conditions that ensure decent work), also resonates with the above-mentioned key themes and is supplemented by the Migration Governance Framework (MiGoF).

Furthermore, the RMFM is aligned with the African Union Constitutive Act 2000, which recognizes the right to free movement of people as a fundamental part of integration at the continental level and is operationalized at the regional level through the EAC Common Market Protocol and the recently endorsed IGAD Free Movement Protocol.

To build on this Road Map and the RMFM Draft Road Map for the Implementation of the Regional Ministerial Forum on Migration and other initiatives undertaken by the Governments, IOM and other implementing partners aim to regularize labour migration and improve protection of migrant workers along the southern route, the IOM EHOA Regional Office recognized the need to conduct a study to assess the characteristics of labour migration between Somalia and Kenya and labour migration governance frameworks at regional and national levels, including BLMAs,

and to identify challenges encountered in drafting, negotiating, and implementing these migration governance instruments or frameworks using the IOM/ILO Assessment Tool for BLMAs.¹¹ The purpose of the BLMAs Rapid Assessment is to contribute to the strengthening of regional guidance and architecture to govern labour migration through BLMAs as a tangible step towards effective implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM), Sustainable Development Goals (Targets 8.8 and 10.7), African Union's Vision 2063, and EAC and IGAD Protocols on Free Movement of Persons and Regional Ministerial Forum on Migration (RMFM)¹² Objectives and other relevant regional cooperation and development frameworks.

It must also be noted that the ongoing COVID-19 pandemic has severely disrupted mobility between Somalia and Kenya, Kenya having completely closed the border with neighbouring countries in May 2020. These restrictions have notably pushed towards more informal movement yet still severely limit migration as a livelihood option for thousands of people, narrowing its potential as an engine for socioeconomic growth. These restrictions could, over time, come to undermine free movement protocols in the region and potentially reverse earlier gains. For this reason, the study also posed the question of how the pandemic had altered the Somalia to Kenya Corridor migration pathways or the perspectives of government stakeholders.

7. SCOPE

The scope of the rapid assessment focused on BLMAs in drafting, development and negotiation processes or those already concluded by Kenya and Somalia covering labour migration outside of the continent as there are no current BLMAs between Kenya and Somalia.

The rapid assessment examined a broad range of bilateral cooperation tools for labour migration governance, including bilateral labour agreements (BLAs), memorandums of understanding (MOUs) or other framework agreements or protocols for cooperation. The rapid assessment took stock of emerging trends, challenges and promising practices in the preparation and drafting, negotiating, implementing, monitoring, evaluating and revision of such (labour migration related) agreements. The rapid assessment analysed the main obstacles and roadblocks for successful implementation of BLMAs and provided the basis for preliminary recommendations or guidance for achieving greater impact from BLMAs in relation to improving the governance of labour migration and strengthening the protection of migrant workers and members of their families.

The rapid assessment is expected to:

- strengthen national and regional migration governance in accordance with the global and regional frameworks.
- provide a basis for implementing partners and government stakeholders to strengthen their existing BLMAs.
- be combined with the African Union BLA Guidance to form a solid base for the establishment of new BLMAs.
- and increase national and cross-border cooperation on trafficking and smuggling cases between investigation, prosecution, judiciary and other state as well as non-state actors.

¹¹ Tool for the Assessment of Bilateral Migration, 2019. Available from: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_722208.pdf.

¹² Regional Ministerial Forum on Migration on Harmonizing Labour Migration Policies in East and Horn of Africa – A United Approach on Safe, Regular and Humane Labour Migration.

8. METHODOLOGY AND TOOLS

The study sought to address the following questions:

- **Research question 1:** What are the characteristics of labour migration in the Somalia to Kenya Corridor and labour migration governance frameworks including BLMAs or potential for BLMAs at regional and national levels?
- **Research question 2:** What are the challenges encountered in preparation and drafting, negotiating, implementing, monitoring and evaluation and revision of BLMAs using the IOM/ILO BLMA assessment tool from the perspectives of both countries of origin and destination?
- **Research question 3:** How has the COVID-19 pandemic affected migrant movement along this corridor and access to health services in countries of origin and destination?

The research was centred around collecting additional qualitative data along the Somalia to Kenya Corridor in addition to gaining a greater understanding of the challenges and bottlenecks affecting both the negotiation and implementation of existing and future BLMAs. It seeks to examine how governments may functionally re-examine existing BLMAs or enter into different kinds of arrangements in order to facilitate safe and secure labour migration for its citizens.

The study utilizes the [2019 IOM/ILO BLMA Assessment Tool](#). The tool is a joint endeavour of ILO and IOM that was piloted in the Egypt to Italy migration corridor as well as the Southern African Development Community (SADC) region to assess labour migration agreements between Zimbabwe, Lesotho and South Africa. This report follows on the Southern Corridor Assessment (Ethiopia through Kenya and Tanzania down to South Africa) and the 2022 Rapid Assessment on Bilateral Labour Migration Agreements (BLMAs) - CORRIDOR: Ethiopia to South Sudan. Some of the data used in prior assessments are used in this report.

Data Collection Methods

The study used qualitative methods based on the IOM/ILO BLMA Assessment tool, including standard key informant interview (KII) questionnaires for CoOs and CoDs. The questionnaires focused on the experiences of government and non-government stakeholders in the migration context in the countries of focus in order to understand the challenges that host country governments face in providing services to migrant workers, both formal and informal. The questionnaires also sought a more holistic understanding of stakeholder experiences when developing and implementing BLMAs. Each questionnaire was individually tailored to the interviewee to ascertain their insights into the Somalia to Kenya labour migration corridor and additional information pertinent to the study. Most key informant interviews were held in person in Mogadishu, Somalia. In total, 9 key informant interviews were held with representatives from the Ministry of Labour and Social Affairs, Ministry of Education, the National Committee for Refugees and IDPs (NCRI), Ministry of Foreign Affairs, Sahar Research and Development Organization (NGO), Save Somali Women (NGO), the Federation of Somali Trade Unions (FESTU), the Ministry of Health, Somali Chamber of Commerce, and IOM experts in Immigration and Border Management and the Displacement Tracking Matrix (DTM). Due to the COVID-19 pandemic and other factors, researchers were not able to interview returned migrant workers from Kenya in Mogadishu or elsewhere.

In addition, in December 2021 IOM held BLMAs and International Migration Law training events in both Hargeisa and Mogadishu. The report on this training is available from the IOM Regional Office and data from conversations during these sessions have also been incorporated into the findings and recommendations.

Limitations

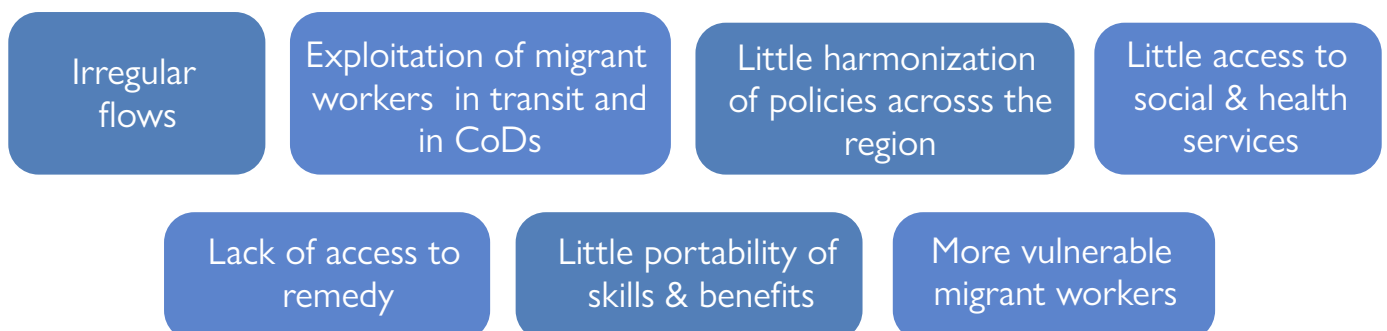
Some of the limitations of the study included a short time frame in which to collect data, and low responsiveness and availability of government officials for informational interviews, in particular considering various restrictions on meetings and movement due to the COVID-19 pandemic, and the difficulty in identifying the right stakeholders for the questions from the data collection tool. Many stakeholders did not have first-hand knowledge of BLMAs. Additionally, many organizations in Somalia work primarily with IDPs, refugees and returnees, etc., so the identification of migrant workers separately from these populations proved difficult. Focus group discussions (FGDs) with returnees from Kenya were sought out by IOM but only returnees from Yemen and Libya were identified so FGDs were not held for this assessment. In the future, this kind of data collection should be at the forefront in order to better understand migrant vulnerabilities.

Intent

The study then seeks to make recommendations for future implementation of agreements that ideally are meant to formalize migrant workers pathways between Somalia and Kenya as well as other countries of destination. The main goal of the study is to decrease vulnerabilities for migrant workers and their families within and outside of the region through inter-institutional cooperation and data collection. The continuous data collection on informal migrant workers going from Somalia to Kenya as a destination and transit country is very limited. In order to assist governments and governing bodies in enacting meaningful agreements aimed at bettering the facilitation of movement between countries of origin and countries of destination, more information is needed both in obtaining a snapshot perspective of the current situation of Somali labour migrants going to Kenya as well as current barriers to establishing and enacting bilateral labour migration agreements (BLMAs) and other bilateral and multilateral arrangements that fall under this umbrella. The assessment, conducted from November to December 2021, looked at the current country experience with BLMAs in actuality, identifying gaps in implementation and areas for improved facilitation.

Labour Migration Dynamics in the Region

It is essential to examine BLMAs and potential BLMAs as policy responses to labour migration challenges in the region, some of which are listed below:



To understand the study analysis of how BLMAs are currently being implemented in both Somalia and Kenya, first, it is necessary to lay the groundwork on the ways the regional economic communities (RECs) are set up in their migration governance framework, how they interact with each other and how this may affect the future implementation of BLMAs or other types of agreements. The African Union recognizes 8 different RECs.¹³ The EAC is viewed as the most integrated regional economic bloc. Table 1 outlines some of the REC approaches to labour migration challenges.

Table 1: REC Responses to labour migration

Regional Entity	Regional Framework	Areas of Focus
African Union (AU)	African Union Agenda 2063	A common approach across AU membership that promotes rights based BLMAs that ensure protection and decent work for all Africans
	AU Free Movement of Persons Protocol	To assist MSs in concluding appropriate BLMAs (33 out of 55 countries currently signed, 4 ratified)
	AU Migration Policy Framework	Draft Guidelines on Developing Bilateral Labour Agreements validated and currently being translated
	Revised Migration Policy Framework	Provides for establishment of regular, transparent, comprehensive, and gender-responsive labour migration policies, legislation, and structures at the national and regional levels
East African Community (EAC)	Free Movement Protocol (FMP)/Common Market Protocol (CMP)	Provides for the free movement of labour and helps to facilitate labour mobility within the subregion Rolled out by a majority of partner states

¹³ Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel-Saharan States (CEN-SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Southern African Development Community (SADC).

Intergovernmental Authority on Development (IGAD)	Protocol on Free Movement of Persons in the IGAD Region	Art. 3 states that citizens of IGAD MS shall enjoy the protection of the law of the host MS guided by the fundamental principles and rights at work and equal treatment regarding work conditions. It further states that such protection under the law shall be gender-responsive and child-sensitive regarding rights to education, health and other services and calls for MS to devise instruments and mechanisms for protection of migrant workers against unfair recruitment practices.
	IGAD Regional Migration Policy Framework (IGAD-RMPF)	
	IGAD Regional Migration Action Plan (MAP) 2015-2020	
Regional Ministerial Forum on Migration (RMFM)	Communiqué and Call for Action Priorities (2020-2023)	Calls for harmonized labour migration policies throughout the region, accelerates free movement agendas, and provides a platform for a dialogue intraregionally and interregionally, establishes Draft Road Map setting priority actions

Youth and Unemployment

Somalia is one of the youngest countries in the world, with 70 per cent of the population under the age of 30. With so many young people entering the workforce and few opportunities, many seek economic empowerment elsewhere in informal sectors at home and abroad. According to the World Bank, the unemployment rate in Somalia was 19.7 per cent in 2020, up from 18.8 per cent in 2018.¹⁴ This rise is likely due to repercussions of the COVID-19 pandemic. Lack of economic opportunities also increases risk of radicalization and extremism.¹⁵ Youth is identified as one of the most vulnerable groups that should be prioritized for employment opportunities in the Somalia National Development Plan (2020-2024). The National Youth Policy (2017-2021) also emphasizes the important role of youth as change makers for the economic development and stabilization of the country and is an

¹⁴ World Bank, 2020. Available from: <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=SO>.

¹⁵ Youth Strategy for East and Horn of Africa: 2021-2024. IOM, 2022.

“Affirmation of commitment from the Federal Government of Somalia to its youth population that it is setting and meeting the priorities and development needs of its youth both men and women. The national youth policy defines objectives, strategies, actual steps, target groups, key government institutions which will play vital roles in implementation mechanisms. It defines the role of the youth in their country and the responsibility of our society to its youth.”¹⁶

Young women are at a particular risk of being left behind in economic participation and, in addition to youth, are a targeted group in the National Employment Plan. Lack of opportunity, safety and security are still a major migration push factor for Somalis. Many Somalis seek opportunity elsewhere in the Horn of Africa, in Gulf countries, South Africa and beyond to places like Europe and North America. Similar to other EHoA countries, large numbers of domestic workers are leaving Somalia to work in Gulf countries. Many migrant workers travelling along these routes are moving informally and without documentation. This leaves them more vulnerable to human trafficking, abusive smugglers and employers. There is not a great deal of information on the labour migration of Somalis as so much of it is informal and takes place through familial networks. Somalis are known for their entrepreneurship and business acumen, often starting small and medium enterprises in their host communities.

9. FINDINGS

Labour Migration and Migration Dynamics in Somalia and Kenya

Sharing land borders with Djibouti, Ethiopia, and Kenya, Somalia’s migration dynamics have largely been driven by conflict and displacement since the collapse of Mohamed Siad Barre’s regime in 1991 and steady drive towards stabilization. The Federal Government of Somalia (FGS) was established in 2012, with the presidential elections expected to take place on 15 May 2022. Violent extremism, conflict driven by insurgency, climate change, drought, lack of economic opportunities and access to social services, and weak governance structures continue to drive migration within and outside of Somalia. It is still in the top 5 countries of origin for refugees. Eighteen per cent of the Somali population, or 2.6 million people, are internally displaced.¹⁷ With the protracted conflict, many Somalis have been pushed into neighbouring countries. As of 2019, Somalia to Ethiopia and Somalia to Kenya are both in the top 20 migration corridors in Africa, Somalia to Kenya being the 16th major corridor in Africa.¹⁸ Somalia also hosts refugees and asylum seekers from Yemen, Ethiopia, Syria, Eritrea, and Tanzania.

Due to weak governance, few resources and protracted conflict, Somalia’s borders are extremely porous, even when purportedly closed due to the COVID-19 pandemic. This leaves opportunities for both transnational organized crime units, trafficking in persons and smuggling and general undocumented mobility. In January 2022, IOM’s Displacement Tracking Matrix (DTM) monitored 31,960 movements in and out of Somalia. Of these movements, 51 per cent were outgoing while 49 per cent were incoming. Tracked movements were up by 34 per cent from December 2021, a sign that mobility is increasing.¹⁹

¹⁶ National Youth Policy of the Federal Government of Somalia:2017-2021. Available from: <https://somalia.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Somalia%20National%20Youth%20Policy%20Eng%20fa.pdf>.

¹⁷ World Migration Report 2020. IOM 2020. Available from: https://publications.iom.int/system/files/pdf/wmr_2020.pdf.

¹⁸ Ibid.

¹⁹ DTM, January 2022. Available from: https://displacement.iom.int/sites/default/files/public/reports/IOM_DTM_Somalia_Cross-Border_Movements_January%202022..pdf.

Like most of the region, Kenya and Somalia are countries of origin, countries of destination and countries of transit. This means that both countries face diverse migration and mobility challenges. Mixed migration is movement in which a number of people are travelling together, often in an irregular manner, using the same routes and means of transport, but for different reasons. People travelling as part of mixed movements have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation.²⁰ Without formalized labour mobility systems and pathways, migrant workers travel under oftentimes dangerous conditions to work in low-skilled, low-paid and most often undocumented positions. They often may be placed in situations of forced labour or may fall into the hands of human traffickers. In countries of destination, their lack of documentation (such as a work permit) makes them more vulnerable to exploitation amid host community unscrupulous actors, working as government agents or in the criminal sector. Kenya also hosts the largest number of Somali migrants (480,000), both refugees and non-refugees.

Migrant Worker Profile and Vulnerabilities on the Move

As of March 2022, the border between Kenya and Somalia remained closed from May 2020 due to the COVID-19 pandemic, so from an immigration perspective, there is “no movement”. There are 21 formal and informal points of entry between Somalia and Kenya with no One-Stop Border Posts or Single Window Systems and many gaps in border coverage. Somalia has adopted a new Immigration Act, but this has been in review for the past 3 years, according to interviewed key informants. It is currently languishing seeking approval from the Parliament, but progress is slow-going given the intense focus on the now delayed presidential election.

While the study was not able to examine in depth vulnerabilities faced by Somalis migrating to Kenya for economic reasons, many in the East and Horn of Africa face similar vulnerabilities. In the Southern Corridor Assessment, migrants from neighbouring countries residing in Nairobi’s Eastleigh neighbourhood were interviewed via focus group discussion. Most of those interviewed were not documented (unless holding refugee or asylum seeker status) and had paid smugglers or brokers to help them move across borders, but the amounts paid varied widely depending on the route and the year of travel. Many travel informally and without a specific place of employment or contract in their destination, relying on familial networks, general camaraderie amongst Somalis abroad, and the connections in the Somali community in destination countries to help them locate opportunities.

Impact of the COVID-19 Pandemic on the Somalia to Kenya Labour Migration Route

The COVID-19 pandemic is likely to be the most drastic disruptor of migration patterns worldwide in modern history. It has dramatically changed the broader context in which people travel and considerations for what a “protected” border entails. It has also magnified the importance of cross-border travel for migrant workers and the role of formal and informal intermediaries, such as smugglers, brokers and employment agencies.²¹ By mid-July 2020, IOM estimated that the pandemic had left nearly 3 million people stranded (likely to be an underestimate). In Sub-Saharan Africa, the restrictions on movement coupled with detention and quarantine measures have left thousands of stranded migrant workers in precarious situations.²²

Many migrant workers have seen severe effects on their wage potential as well as the price of goods within the region. They have noted fewer jobs because of economic hardship and lack of opportunity, particularly at the height of regional lockdowns. Personal protective equipment (PPE) is barely accessible for informal migrants, and conditions along the way, especially for

²⁰ IOM Glossary, 2019.

²¹ Benton, Meghan, Jeanne Batalova, Samuel Davidoff-Gore and Timo Schmidt. 2021. COVID-19 and the State of Global Mobility in 2020. Washington, D.C., and Geneva: Migration Policy Institute and International Organization for Migration.

²² Ibid.

men and women travelling in crowded spaces, are often extremely conducive to the spread of COVID-19. Migrant workers are inherently more at risk of exposure to the disease and less likely to be tested or offered a vaccine.

As the COVID-19 pandemic has upended many migration routes, pushing migrants into irregular flow patterns, it is even more important to collect data on this route as it becomes more commonly used. Often travelling in groups, migrants are more likely to be exposed to the conditions and circumstances in which COVID-19 easily spreads, including living in poorer and makeshift locations and/or overcrowded settings. Migrant groups are more at risk from exploitation and are often undocumented, making them less likely to have access to medical care, PPE and the COVID-19 vaccines being distributed. They are also among the most heavily impacted by the economic repercussions of the COVID-19 pandemic, particularly those working in hospitality, restaurants or other businesses. In Eastleigh, a neighbourhood in Nairobi popular with Somalis, movement was restricted in and out of the area in May 2020 as a response to rising COVID-19 infections.

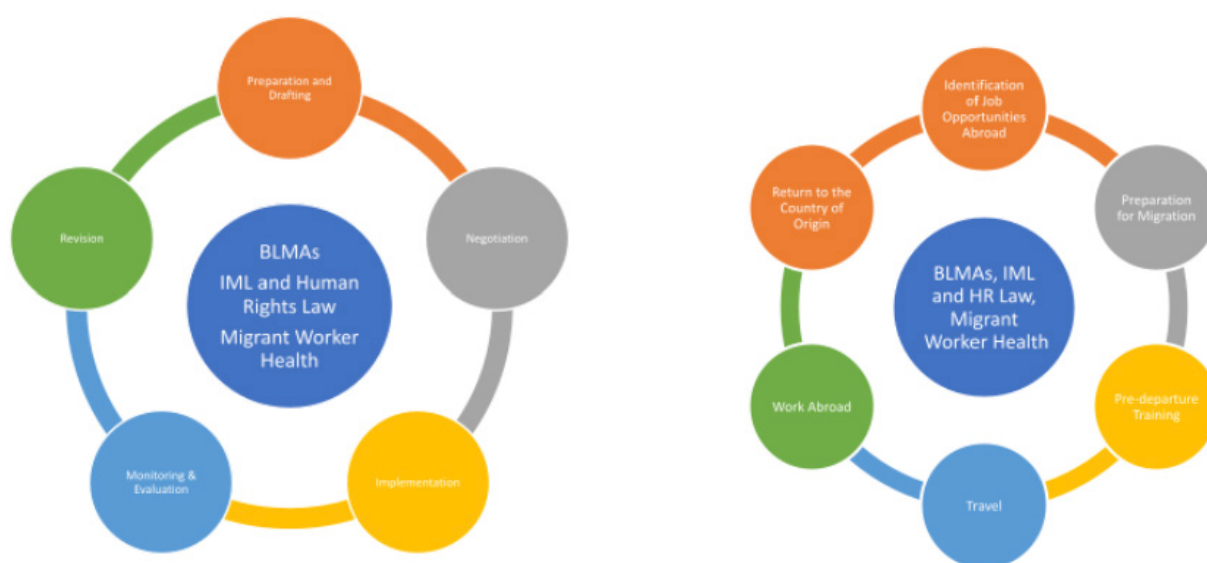
Systemic characteristics of labour migration between Kenya and Somalia

Somalia and Kenya are both members of Intergovernmental Authority on Development (IGAD) and the Common Market for Eastern and Southern Africa (COMESA). Somalia bid to become an East African Community (EAC) member in 2012 but this membership has been frozen due to instability. In December of 2020, Somalia cut diplomatic ties with Kenya accusing Kenya of meddling in local politics. Somalia hosts thousands of Kenyans working in the countries corporate, aid, service and hospitality sectors, and prior to December 2020 offered visa-on-arrival services to Kenyans that would allow for greater ease of business. Kenya has not, however, followed through with visa-on-arrival services for Somalis, a point of great contention. Diplomatic relations were restored in May 2021 under the high-level mediation of Qatar, but relations remain strained.

10. BLMAS ASSESSMENT FINDINGS

Given that no current agreements are in motion between Somalia and Kenya, an examination of BLMA implementation as it currently stands will be instructive as to what barriers exist for the future implementation of BLMAs and how to best address these barriers. It is also instructive to lay the groundwork through the presentation of both the BLMAs Cycle and the Migration Cycle in concurrence with one another.

BLMAs Implementation Cycle and Cycle of Migration



Key Findings

Overview of current BLMAs and other umbrella agreements in Somalia and Kenya

There is no agreement between Kenya and Somalia on labour migration matter, but both countries have several agreements with countries of destination outside of the region. The table below outlines existing arrangements, as well as those in process of development, for Kenya and Somalia.

Country	BLMAs	State of Implementation
Kenya	BLAs with Qatar, KSA, UAE, Rwanda for sending teachers, and new health care worker BLMA with the UK	<p>BLAs with GCC countries are currently in implementation with workers travelling abroad, even during COVID-19.</p> <p>There are insufficient mechanisms to ensure adherence to migrant worker protection measures and correct implementation of provisions within the BLAs.</p> <p>The new agreement with the UK was facilitated by the MoH and MoL and has fairly extensive provisions for migrant worker protection.</p>

Somalia	Turkey	Turkey and Qatar are most active
	Qatar	Qatar recently finalized
	KSA	KSA Agreement is for mostly domestic workers and is currently being revised. Agreement was originally signed in the 1980s.
	Kuwait	Has provisions for salary based on contract review before travel and access to health care

Drafting and Implementation

It is a general opinion of the informants that BLMAs in Somalia are not operationalized to their potential and purpose. The Southern Corridor BLMAs Rapid Assessment findings showed that most of the issues arise at the time when the “rubber meets the road”, i.e., when bilateral agreements are being implemented and monitored. As it is almost always the case with African countries, and Somalia is no exception, there has been unequal negotiating power between CoOs and CoDs, resulting in poor terms for sending countries and little recourse for governments to ensure adherence to the protocol that was intended to protect their citizens abroad. In some cases, countries have accepted substandard conditions for their workers in an effort to send willing migrant workers abroad. This has resulted in extremely abusive and exploitative conditions experienced by African migrant workers, most often in the Middle East and Europe. Some of the conditions mentioned by CoOs’ officials were physical and sexual abuse, garnishing or confiscation of wages, confiscation of documents, unlawful dismissal, movement to another employer without the employee’s consent, and refusal of communications. This has led to some migrant workers or members of their families taking to social media and, in the instance of Kenya, a complete moratorium on sending domestic workers to the Gulf countries in 2014.

In previous corridor assessments of countries with established and implemented BLMAs, informants identified a lack of a clear, coordinated approach to how these agreements are being negotiated. Somalia has the opportunity to learn from these challenges within the region and apply them within their own context in future.

Key informants in Somalia were not always able to speak either about the content of existing BLMAs or the number of people that had travelled under them. One key informant noted that while the KSA agreement is currently under revision, at least 200 people had previously travelled under this agreement. No one interviewed had seen the agreements, which points to the widely regional challenge of transparency and availability of BLMAs documents. This transparency does not at the moment extend to the BLMAs design and negotiation process. Greater communication between agencies and stakeholders, including those coming from a migrant worker rights perspective, will be essential during the implementation phase of newly signed or revised BLMAs.

Given the current dearth of modern BLMAs as well as lack of collaboration throughout the process, many informants felt ill-equipped and not competent to discuss BLMAs freely, either because they felt it was not within their purview or because they did not have knowledge of these processes.

Transparency is one of the main challenges identified in examining how current BLMAs are being implemented throughout the East and Horn of Africa region. Based on interviews from the Southern Corridor Assessment, many stakeholders felt their organizations were purposely left on the outskirts of negotiations, perhaps intentionally so as to facilitate the forward movement and quick signing of the agreements with the idea that organizations with migrant worker protection interests at the forefront may slow down the signing process.

As frontline Government bodies, the Ministry of Foreign Affairs and the Ministry of Labour and Social Affairs may set the stage for enhanced collaboration moving forward that is inclusive of all stakeholders. Social partners may in future agreements be brought in at the earliest stages to ensure inclusion of migrant workers AND their families into BLMAs consideration. There are provisions that these entities may be consulted in an advisory capacity. For instance, are workers able to join schemes in order to pay their school fees to ensure that their needs and the needs of their families are met?

MOLSA could bring in actors well versed in the human rights-based approach during negotiation in order to ensure this approach is included and given an appropriate monitoring mechanism. These organizations are meant to act as a sort of watchdog to ensure migrant workers' rights and can do so more effectively and hand-in-hand with government counterparts if they have a seat at the table from the very beginning.

Since some countries often felt that other regional partners were occasionally undercutting each other in terms of agreeing to lower wage standards or protection requirements, collaboration between MSs and discussions around negotiating as REC blocs may be useful in the future for conferring additional negotiation parity to all MSs within RECs that will have benefits for all CoOs and thus the migrant workers themselves.

The BLMAs Assessment tool will be more useful in future implementation, as many of the questions in the current tool would not apply to many stakeholders given the current status of BLMAs implementation. There is great promise that this tool can serve as a guideline for future agreements.

Additionally, there are several entities working on the completion of BLMAs resources that countries may use as reference.²³ Perhaps most valuable, however, is the experience of other countries in the region. There have been several initiatives to foster enhanced collaboration between REC MSs that serve as benchmarking exercises where MSs with relatively little experience in the drafting, negotiating, and implementing of BLMAs are able to learn from countries with more experience.

Ethical Recruitment and Skills and Pre-Departure Training

In laying the groundwork for future labour migration governance infrastructure in Somalia, all areas of the labour migration cycle should be included in consideration, in particular those policies governing recruitment agencies and the recruitment pipeline that might fall under potential BLMAs in the future.

Recruitment oversight is an area of focus for the Federal Government of Somalia and the Ministry of Labour and Social Affairs (MOLSA) in particular. MOLSA representatives had noted the adoption of the National Recruitment Policy by the Council of Ministers in 2020 that will implement policies governing those going abroad. Additionally, there are guidelines to regulate operations of private recruitment agencies (PRAs). MOLSA is the governing body for oversight of recruitment agencies and has plans to disseminate the guidelines to recruitment agencies

²³ This includes the newly published United Nations Network on Migration (UNNM) BLMAs Guidelines. Available from: https://migrationnetwork.un.org/sites/g/files/tmzbd416/files/resources_files/blma_guidance_final.pdf.

and other stakeholders. The operation of PRAs has been held off until these guidelines can be endorsed, but once this happens, dissemination of guidelines and clarity around the licensure process will be essential. Some informants estimated around 10 recruitment agencies that were currently undergoing licensure or re-licensure under MOLSA, but these numbers were also not certain. Key informants highlighted greater opportunities for upward revision of penalties for noncompliance of PRAs with ethical recruitment laws and standards and a greater need in general to encourage compliance.

PRAs are also responsible for pre-departure training for those going abroad as a mandatory requirement, although the pre-departure orientation training manual is being revised at the moment. It was envisioned that this would be completed in the next few months. The Better Migration Management Programme, a regional labour migration governance initiative, collaborated with the MOLSA on the latest draft of the Qatar-Somalia BLA, which has been completed (but not yet disseminated) in preparation for the World Cup in Qatar in 2022.

Labour counterparts in Mogadishu highlighted significant gaps in awareness levels of migrants about their rights in countries of destination, especially in the Kingdom of Saudi Arabia (KSA) and Qatar. This presents a frontline opportunity for awareness raising among the administration of private recruitment firms. Informants also noted the need for the establishment of a strong and comprehensive Labour Code and Labour Migration Policy given that several ILO conventions have been recently signed.²⁴ Significant capacity was needed to fully operationalize these conventions in March 2022, when this was planned to happen.

Part of ensuring culpability throughout the recruitment process is having systems in place with which to monitor recruitment pipelines throughout the Migration Cycle, including the ability to follow up with recruits once they have arrived in their CoD. There are several illustrative examples that might be useful for the future design of BLMAs. The BLMAs with the KSA at the moment provide for an online platform used to facilitate the labour recruitment process and to protect the rights of the binding parties by applying a comprehensive recruitment process from start to finish.²⁵ Labour representatives in sending countries have access to this system (Musaned in KSA), but that does not necessarily confer equal power arrangements between sending and receiving countries. It allows sending countries to follow every migrant worker that travels on a formal pathway, allows for documentation of contracts and in general increases overall awareness, but the platform is run by the receiving country and does not account for migrant workers who travel informally.

Additionally, enhancing the establishment of diplomatic missions and consulates in popular countries of destination to ensure protection of migrant workers' rights and assignment of labour attachés is one mechanism for ensuring migrant worker protection. In lieu of this, there may be opportunities to increase collaboration between neighbouring countries on the provision of certain consular services.

In other countries in the region, for the most part, there are no plans for the dissemination of guidelines among migrant workers travelling under the BLMAs. Any guidelines that are included in the BLMAs should be accompanied by a dissemination plan that takes account of the migrant workers themselves. With these dissemination plans, the Governments of Kenya and Somalia will be better equipped to shape the narrative around BLMAs and communicate how they are working to protect migrant workers being sent abroad and those coming to work in countries of destination.

²⁴ These include the Migration for Employment Convention, Migrant Workers Convention, Tripartite Consultation in International Labour Standards Convention, Occupational Safety and Health Convention, Private Employment Agencies Convention, Promotional Framework for Occupational Health and Safety Convention and the Violence and Harassment Convention. Available from: https://www.ilo.org/dyn/normlex/en/?p=1000:11200:99289805041:::P11200_INSTRUMENT_SORT:3.

²⁵ Musaned. <https://tawtheeq.musaned.com.sa/>.

Joint Monitoring Committees and Review

Joint Technical Committees (JTCs) in Somalia, even if included in the provisions of the BLMAs, did not have the capacity either in funding or staffing to meet and adequately oversee BLMAs. Well-established workplans and a comprehensive understanding of roles and responsibilities in terms of ensuring implementation and review of BLMAs will be essential in future. Any agreement signed should provide for a joint working committee tasked with monitoring and review of existing BLMAs, including the ability to mediate if and when problems arise. Somalia is working towards taking active steps to review the KSA agreement at this juncture. This might also be delegated to the JTCs once operationalized with concrete time periods after which review is required.

There is considerable discussion on a potential review of BLMAs in Kenya, with particular attention given to existing agreements with GCC. All actors saw a need for a more effective Joint Monitoring Committee holding power to address inconsistencies in BLMAs application. The onset of the Covid-19 pandemic did not help in this arena, with the Kenya Ministry of Labour lamenting that there were no specific budget lines to assist in Joint Technical Committee implementation. This, coupled with a lack of human resource capacity within the Ministries renders monitoring of existing BLMAs quite difficult, feeding into the pervasive feelings amongst stakeholders that there is no one ensuring that the agreements are appropriately being implemented.

When there are joint meetings involving all actors, like private recruitment agencies, human rights agencies, government line ministries, it is more of an information sharing platform rather than one that is geared toward actionable collaboration. In practice, these meetings were identified as opportunities to showcase what various stakeholders are doing rather than collaborative, actionable policy work.

Emerging Trends

For Somalia and Kenya, the political feasibility of establishing BLMAs between the two states is likely to be out of reach given current political tensions. All areas for formalization of migrant worker pathways should be examined, including the application of the REC Free Movement Protocol. There is room for analysis of what may be feasible in terms of an agreement between the two Governments that creates more formalized migration pathways that aligns with regional harmonization and FMP priorities. **BLMAs are not intended to create new labour migration pathways but rather to assist in formalizing already travelled corridors in an effort to meet the needs of both countries of origin and countries of destination as well as to enhance the protection and access to services for migrant workers and their families.**

Stakeholders in both Somalia and Kenya are very aware of the potential unequal negotiating power they may bring to the table. Somalia, in particular, is seeking additional clarity and capacity for frontline ministries in order to set up BLMAs infrastructure for potential future agreements and labour migration governance. There is considerable interest in establishing a common approach in terms of negotiating BLMAs and increasing the overall bargaining power of countries of origin.

Kenya representatives discussed a movement towards additional BLMAs, and the desire to establish them with each CoD. The recent UK/Health worker BLMA may serve as a potential

model for the establishment of near-future BLMAs. While the agreement is general, the guidelines are specific. The Guidelines included in this agreement are specific with regard to migrant worker protection as well as pre-departure training and certification and discusses skills recognition. There is also a specific provision with regards to dissemination of the information in the BLMAs and Guidelines but it remains to be seen how this is applied in the day-to-day context.

Why should countries enter into inter-State cooperation on labour mobility?

Country of Origin	Country of Destination
To protect rights of its nationals that work abroad	To regulate migration flows
To encourage skills development in nationals	To fill in market needs for specific skills or sectors
To increase the flow of remittances	To gain cheaper labour
To relieve tensions from population pressures	To counterbalance an aging population
To manage labour market surpluses	To gain assistance in screening potential migrants
To provide employment opportunities for nationals	To make a symbolic goodwill gesture

11. KEY AREAS OF RAPID ASSESSMENT RECOMMENDATIONS

Based on the rapid assessment utilizing the IOM/ILO BLMAs Assessment Tool, there are 11 policy recommendations that have been identified. Some of these recommendations may fall outside the scope of the initial assessment but seek to strengthen the conditions that will lead to greater labour migration governance, economic empowerment, and protection of migrant workers throughout the region. While most recommendations are aimed at both Somalia and Kenya, others are included that are country-specific.

Recommendations:

1. Identify members of Joint Technical Committees or build on existing entities such as the National Coordination Mechanism on Migration (Kenya), ensuring participants are from a variety of areas of government and society. Allocate resources to the JTC, increase capacity and knowledge around labour migration governance and international migration law, and provide resources needed to adequately monitor existing BLMAs. Identify gaps in existing BLMAs for dispute resolution, social benefits, etc. Ensure the inclusion of a wide array of stakeholders throughout the entirety of the BLMAs process.
2. All BLMAs, new or revised, should be inclusive of all types of employment and skills levels and meet the standards of protection needs of the migrant workers.
3. Map Labour Market Information System (LMIS) inputs so that future BLMAs are based on evidence of supply and demand. Identify key stakeholders needed for establishment of a comprehensive LMIS. Use evidence to strengthen TVET and skills development system.

4. Use the RMFM Road Map to transform it into policy decisions and specific examples of on-the-ground implementation of methods to regularize migration. An example of concrete policies is the establishment of One-Stop border posts.
5. Identify gaps where additional national policies or strategic frameworks may be of use and other areas where the labour migration governance scope may be broadened to include further migrant worker protection measures. For example, ensure the inclusion of migrant worker considerations into strategies intended to combat human trafficking and smuggling and to reduce the effects of transnational organized crime.
6. Enhance collaboration between Ministries of Labour and Ministries of Health to ensure that migrant workers are considered in strategies for health services, pandemic preparedness, and COVID-19 response. Ensure migrant worker health provisions are included in BLMAs and cover the entirety of the migration cycle, from recruitment to return.
7. Expand legal framework to regulate, monitor, and supervise Private Recruitment Agencies. Establish a process workflow for licensure of Private Recruitment Agencies (PRAs) and censuring PRAs that do not meet ethical recruitment standards. Ensure these standards are well disseminated and clear. (Somalia)
8. Complete Draft Labour Migration Policy and workplan that identifies next steps in operationalizing recently signed ILO Conventions. The labour migration policy development has not started and no draft is yet available. (Somalia)
9. Arrange for benchmarking discussions between REC MSs to better understand best practices and lessons learnt in BLMAs. Conduct collaborative meetings prior to signing new agreements.
10. Work with REC MSs to identify areas of consular support for countries where Somalia does not have embassies, consulates, or labour attachés. (Somalia)
11. Tap into robust Somali diaspora for additional skills development within different sectors in Somalia. (Somalia)

12. ANNEX

Annex A. RECs and Labour Migration Policy Initiatives

The African Union recognizes eight different Regional Economic Communities (RECs):

- Arab Maghreb Union (UMA)
- Common Market for Eastern and Southern Africa (COMESA)
- Community of Sahel–Saharan States (CEN–SAD)
- East African Community (EAC)²⁶
- Economic Community of Central African States (ECCAS)
- Economic Community of West African States (ECOWAS)
- Intergovernmental Authority on Development (IGAD)
- Southern African Development Community (SADC).

The EAC is viewed as the most integrated regional economic bloc based on the African Regional Integration Index (ARII) 2019 that measures REC integration based on five dimensions:

- » Free movement of people
- » Infrastructure integration
- » Macroeconomic integration
- » Productive integration
- » Trade integration

The EAC scored particularly high on the free movement of people indicator – the highest on the continent. This is attributed to the fact that EAC citizens are able to move freely within the region with valid travel documents. Additionally, very few EAC Partner States require a visa before arrival for non-citizens.²⁷

The Global Compact for Safe, Orderly, and Regular Migration (GCM) lays the groundwork for REC integration as well as partnership between Member States and extracontinental partners such as other countries or companies. Under the auspices of the United Nations, the GCM covers all dimensions of international migration in a holistic and comprehensive manner. The non-binding document respects States' sovereign right to determine who enters and stays in their territory while demonstrating a global commitment to international cooperation on migration.²⁸ In 2018, over 160 world governments unanimously adopted the historic GCM framework, which is consistent with Target 10.7 of the 2030 Agenda for Sustainable Development.²⁹ Furthermore, migration is a cross-cutting theme across all Sustainable Development Goals, with at least ten out of 17 goals containing targets and indicators that are directly relevant to migration or mobility.

The GCM Framework is designed to support international cooperation on the governance of international migration; provide a comprehensive menu of options for States from which they can select policy options to address pressing issues around international migration; and to give States space and flexibility to pursue implementation based on their own migration realities and

²⁶ The EAC is comprised of 6 states: the Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and the Republic of Uganda, with its headquarters in Arusha, Tanzania.

²⁷ EAC Takes the Lead as the Most Integrated Block in Africa. <https://www.eac.int/press-releases/1764-eac-takes-the-lead-as-the-most-integrated-bloc-in-africa>.

²⁸ IOM. Global Compact for Safe, Orderly, and Regular Migration. <https://www.iom.int/global-compact-migration>.

²⁹ Sustainable Development Goal 10.7 is to facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies.

capacities. As a follow up to the GCM, the International Migration Review Forum (IMRF) is set to meet again in 2022, presenting an opportunity for more action-oriented planning towards implementation. The IMRF will (1) provide an opportunity for Member States and other relevant stakeholders to discuss and share progress on the implementation of all aspects of the GCM; (2) provide a space for a policy debate focusing on challenges in the implementation of the GCM; and (3) result in a Progress Declaration.

African Union

African Union (AU) frameworks that BLMAs may fall under include the African Union Agenda 2063, the AU Revised Migration Policy Framework and the AU Free Movement of Persons Protocol.³⁰ A key concern requiring attention by the AU and a common approach across the AU membership is promoting rights-based bilateral labour migration agreements (BLMAs) that ensure protection and decent work for all Africans. The AU wished to develop guidelines that will assist the Member States and the Races in concluding appropriate BLMAs.

The Draft Guidelines on Developing Bilateral Labour Agreements were validated by AU Member States, RECs and Workers and Employers Organizations on 22 July 2021. ILO is currently working on the translation of the Guidelines into AU languages in preparation for the AU Specialized Technical Committee on Social Development, Labour and Employment for approval in October or November 2022.

The Revised Migration Policy Framework for Africa (Revised MPFA) was endorsed by the AU Member States and RECs in 2016. This provided for the establishment of regular, transparent, comprehensive and gender-responsive labour migration policies, legislation and structures at the national and regional levels aimed at achieving significant benefits for countries of origin and destination.³¹

EAC Migration Governance Framework

The EAC Free Movement Protocol may serve as a model for other RECs in Africa. The East African Common Market Protocol (CMP), which provides for the free movement of labour, has helped to facilitate labour mobility within the subregion. From the Situational Analysis for Labour Migration in the East African Community (2021):

“The free movement of persons and labour was initially a founding principle of the East African High Commission in 1967 and was reaffirmed in article 104 of the EAC Treaty in 1999, which makes express provision for the free movement of persons, labour, services, and the right of establishment and residence.³² In 1999, the EAC also launched its community passport which permits nationals of EAC Partner States to travel within the EAC and to a multi-stay of six months validity in any of the Partner States.³³ In 2017, the electronic East African passport was introduced and is to replace national passports of the Partner States and further boost the free movement of persons in the region.³⁴ It has been rolled out by the majority of Partner States.³⁵ The timeframes for the phasing out of old passports are unclear and are likely to vary in each Partner State — for example, in Rwanda, the electronic passport will replace old passports by June 2021.³⁶”

³⁰ As of the writing of this report, 33 out of 55 countries have signed the FMP and 4 have ratified it.

³¹ Draft Road Map for the Implementation of the RMFM 2020.

³² EC Regional Migration Report above n 69 at p. 33 and article 104 of the EAC Treaty above n 71.

³³ EC Regional Migration Report id at p. 33.

³⁴ EAC, EAC to start issuing EA e-Passports January 2018, (7 April 2017), accessible at: <https://www.eac.int/press-releases/148-immigration-and-labour/754-eac-to-start-issuing-ea-e-passport-january-2018>.

³⁵ The East African, Rwanda to phase out old passports in June 2021, (14 August 2020,), accessible at: <https://www.theeastafrican.co.ke/tea/news/east-africa/rwanda-to-replace-passports-with-east-african-e-permits-1919136>.

³⁶ Ibid.

“Allied to the free movement of persons and labour framework within the EAC, Partner States have agreed to harmonize labour and employment legislation and to progressively achieve the right of establishment for EAC nationals through the development of complementary policies.³⁷ These include the recognition of educational attainments, the harmonization of social security benefits, the regulation of the movement of family members, and the creation of an East African central for productivity and employment promotion.³⁸ The EAC has also enacted the East African Community One-Stop Border Posts Act³⁹ (OSBP Act), with the stated objective of enhancing “trade through the efficient movement of goods, persons, and services” within the EAC.⁴⁰ Separately, the movement of refugees within the EAC is governed by the East African Community Common Market (Free Movement of Persons) Regulations.⁴¹”

Intergovernmental Authority on Development

IGAD, or the Intergovernmental Authority on Development, has also recently endorsed the Protocol on Free Movement of Persons in the IGAD Region. The REC has formulated two migration policy frameworks, both of which aim to realize the development potential of migration. These are the IGAD Regional Migration Policy Framework (IGAD-RMPF), adopted in 2012, and the IGAD Regional Migration Action Plan (MAP) 2015-2020 formulated in 2013. The Protocol on Free Movement of Persons in the IGAD region, adopted by the 72nd Extraordinary Session of the IGAD Council of Ministers of Foreign Affairs of IGAD Members States, under Article 3 General Principles states that citizens of IGAD MS shall enjoy the protection of the law of the host Member State guided by the fundamental principles and rights at work and equal treatment regarding working conditions. It further states that such protection under the law shall be gender-responsive and child-sensitive regarding rights to education, health, and other services. It calls for Member States and IGAD to devise instruments and mechanisms for the protection of migrant workers against unfair recruitment practices including by intermediary bodies such as private recruitment agencies and public employment services.

Regional Ministerial Forum on Migration (RMFM)

The Regional Ministerial Forum on Migration brings together Member State Ministers from Kenya, Uganda, the Republic of South Sudan, the Republic of the Sudan, Ethiopia, the Federal Republic of Somalia, Djibouti, the Republic of Rwanda and the Republic of Burundi working jointly with other high-level government representatives to harmonize labour migration policies in the region.⁴² It was established to accelerate the free movement agendas and to provide a platform for a dialogue intraregionally and interregionally, particularly with the Gulf States (as well as the EU and other countries in the long term). Participating States signed a Communiqué and a Call for Action Priorities (2020-2023), with a Draft Road Map setting priority action for harmonization of labour migration policies for safe, orderly and humane labour migration.

The RMFM is a platform to elaborate common approaches and build on good practices generated by such countries as Kenya, Uganda, Ethiopia and Rwanda. These countries have made significant efforts towards strengthening labour migration policies, regulating private recruitment agencies, negotiating BLMAs and establishing labour market information systems. They have also strengthened education and TVET systems used for skilling and reskilling, to address the needs of both the labour market and their migrant workforce.

37 SIHMA Report above n 7 at p. 34.

38 Ibid.

39 East African Community One-Stop Border Posts Act (2016) (OSBPs Act).

40 Ibid, Section 3.

41 East African Community Common Market (Free Movement of Persons) Regulations (2009).

42 IOM. Regional Ministerial Forum on Migration. Available from: <https://www.iom.int/regional-ministerial-forum-migration-east-and-horn-africa-rmfm>.

“The RMFM calls on countries to cooperate towards establishing a common platform for engagement between countries of origin, transit and destination on labour migration, as well as to enhance inter-State, intra- and interregional cooperation for strengthening the protection of the labour, social and human rights of African migrant workers in destination countries,” stated Mohammed Abdiker, the IOM’s Regional Director for the East and Horn of Africa.⁴³

The six objectives of the RMFM for 2020-2023 include⁴⁴:

- Support Member States and RECs to develop, adopt and implement bilateral and multilateral labour migration agreements (BLMAs).
- Promote common African policy responses to implement existing legal and policy frameworks; formulate new policy responses where protection gaps have been identified and involve multilateral stakeholders and development partners to protect the human, social, economic, and labour rights of African migrant workers in countries of origin, countries of transit and destination.
- Establish or reinforce existing labour market information systems within Africa to identify labour market needs for migrant workers and strengthen the capacity of labour market institutions on labour migration.
- Introduce harmonized standards and tools for data collection, analysis and monitoring on international labour migration in Africa to encourage quantitative and qualitative research on labour migration and its intercorrelated issues and facilitate evidence-based labour migration policymaking.
- Governments to enhance inter-State, intra- and interregional cooperation for implementation of the AUC/IOM/ILO Joint Labour Migration Program.
- Governments to support the overall strengthening of social security and welfare institutions in Member States in order to extend social security to migrant workers, promoting in particular the mainstreaming of gender and disability issues, induced mental health and psychosocial issues through access and portability regimes compatible with international standards and good practice.



⁴³ IOM, 2020. Ministers from East and Horn of Africa Pledge to Harmonize Labour Migration Laws to Protect Migrant Workers' Rights. <https://reliefweb.int/report/world/ministers-east-and-horn-africa-pledge-harmonize-labour-migration-laws-protect-migrant>.

⁴⁴ <https://www.iom.int/regional-ministerial-forum-migration-east-and-horn-africa-rmfm>.

