



Consultancy - Call for Applications

Terms of Reference

Production of a Model Labour Migration Legislation

(August 2021)

1. Background and context

The **Southern Africa Migration Management (SAMM)** project is a model of a ONE-UN approach collaborative effort between 4 UN development and humanitarian agencies: the ILO, IOM, UNODC and UNHCR. The (SAMM) project forms part of the European Union Regional Indicative Programme (11th EDF RIP) for Eastern Africa, Southern Africa and the Indian Ocean (2014–2020) which includes among its objectives the facilitation of safe, orderly and regular migration and the prevention of irregular migration. It focuses on South-South migration flows, identifying positive spill over effects of international migration on regional integration and regional economic development.

Its **overall objective** is to improve migration management in the Southern Africa and Indian Ocean region guided by, and contributing to, the realisation of the 2030 Development Agenda (goals 8 and 10).

It is comprised of **two main project components**: 1. Labour Migration and 2. Mixed Migration. The first component supports the implementation of the UN Global Compact on Safe, Orderly and Regular Migration (GCM) and the second one the application of the UN Global Compact on Refugees (GCR), as well as of the GCM.

Regional Economic Communities (RECs) are key stakeholders in SAMM's implementation. One of SAMM's key project priorities is to support the formulation and realisation of

International Labour Migration and Mixed Migration Frameworks of: i) the Common Market for Eastern and Southern Africa (COMESA), ii) the Southern African Development Community (SADC) and; iii) the Indian Ocean Commission (IOC).

The project focuses on the Southern African Region, and targets the following **16 SADC countries**: Angola, Botswana, Comoros, Democratic Republic of the Congo (DRC), Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

Work under this consultancy is linked to SAMM's Workplan as follows:

Output 1.5.3. Policies and legislations in MS reviewed and formulated within International Labour Standards, African Union Migration Policy Framework and Joint Labour Migration Programme, and RECs existing Labour Migration Policy Framework, particularly:

- Activity 1.5.3.4. Develop material, tools for Standard ratification

2. Technical Context (Global and at the SADC level)

The protection of migrant workers and their families is firmly rooted in the **1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** adopted in 1990 by the United Nations General Assembly, as well as in the following international labour standards: the **Migration for Employment Convention (Revised), 1949 (No. 97)**; **Migration for Employment Recommendation (Revised), 1949 (No. 86)**; **Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)**; **Migrant Workers Recommendation, 1975 (No. 151)**.

In order to ensure an effective protection of migrant workers, the ILO and partner institutions need to continue strengthening their work on improving labour migration legislation at the country, RECs and continental level. At the same time, they should continue advancing work on advocating for the ratification and effective implementation of ILO Migrant Workers' Conventions in Africa.

The outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments stated the following: *"the Office should undertake an awareness-raising and implementation campaign on Conventions Nos 97 and 143 and Recommendations Nos 86 and 151.... Such an awareness-raising campaign should include tools to assist member States which have ratified the instruments in working towards their full implementation, as well as to assist other member States that express an interest in the possibility of ratifying the instruments"*¹.

¹ International Labour Organization: **Report of the Committee on the Application of Standards, Third item on the agenda; Information and reports on the application of Conventions and Recommendations**, Provisional Record 16 part one, 105th Session of the International Labour Conference, Geneva, May-June 2016.

In the African region, the following 11 African States have ratified **ILO’s Migration for Employment Convention (revised), 1949 (No. 97)**: Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Morocco, Nigeria, Tanzania Zanzibar, Zambia. A ratification of the same Convention by Sierra Leone is on its way.

The following 9 African States have ratified the **ILO’s Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)**: Benin, Burkina Faso, Cameroon, Guinea, Kenya, Madagascar, Mauritania, Togo, Uganda. A ratification of C.143 is also on its way in Sierra Leone.

The 2016 “Promoting Fair Migration, General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations” identified the following countries in **Africa** as having reported intention to consider ratification: Algeria (C. 143), Benin (C. 97), Senegal (both), Sudan (both), Uganda (C. 97).

- ✓ The Government of **Sudan** reported that it was currently considering ratification of the two Conventions;
- ✓ The Government of **Benin** indicated that ratification of Convention No. 97 would be included in the annual workplan for 2016 of the General Labour Directorate, and ILO technical support would be appreciated in this regard;
- ✓ The Government of **Uganda** (in relation to Convention No. 97) indicated that the instruments were among those identified to be considered for ratification.
- ✓ The Government of **Senegal** (in relation to both Conventions) stated that the possibility of ratification was being studied.
- ✓ The Government of **Algeria** stated that, with respect to the ratification of Convention No. 143, the issue required reflection in order to harmonize the labour migration governance scheme.

In the **SADC region**, five countries have ratified C.97. C.143 has only been ratified by one country. Only Madagascar has ratified both conventions (in 2001 and 2019 respectively).

Table 1: Ratification of Specific Standards on Labour Migration in Southern Africa

	Migration for Employment Convention (Revised) 1949 (No. 97)	Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143)
Angola		
Botswana		
Comoros		
DRC		
Eswatini		
Lesotho		
Madagascar	2001	2019

Malawi	1965	
Mauritius	1969	
Mozambique		
Namibia		
Seychelles		
South Africa		
Tanzania	1964	
Zambia	1964	
Zimbabwe		

Women migrant workers are particularly exposed to vulnerability during the migration process and deserve specific attention considering the following:

- Low regard for women and the types of mostly low-skilled and semi-skilled jobs they perform, thus often resulting in de-skilling and other discriminatory practices.
- More likely to face multiple discrimination and various forms of exploitation and abuse (e.g. non-payment or withholding of wages, lowest wages, workplace violence, non-freedom of movement, bad working conditions) and inequality (no right to family reunification, nor to family life, neither to child care support services).
- Often no right to contribute to social security, mainly health coverage and pension (e.g. domestic workers).
- Relatively more job opportunities for men migrant workers into safe, orderly and regular channels of migration
- Remain outside the scope of national legislation
- Too dependent on the employer for their working and residence permit

CEDAW General Recommendation No. 26 on women migrant workers addresses the situations of migrant women, who as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship. It mentions women migrant workers who migrate independently, those who join their spouses or other members of their families who are also workers, and undocumented women migrant workers who may fall into any of the above categories. Female migration should be studied from the perspective of **gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration**. It includes recommendations to States parties as follows:

- Common responsibilities of countries of origin and destination;
- Responsibilities specific to countries of origin;
- Responsibilities specific to countries of transit;
- Responsibilities specific to countries of destination;
- Bilateral and regional cooperation;

- Recommendations concerning monitoring and reporting.

OHCHR’s General Comment no. 1 on migrant domestic workers states:

“60. [...] Recognizing that most domestic workers are women and girls and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, **States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that they face throughout the migration process.**”

“61. States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status (articles 1 and 7), including restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel (article 8) or bans on women migrant domestic workers marrying nationals or permanent residents (article 14), or securing independent housing [...]”

OHCHR’s General Comment no. 2 on the rights of migrant workers in an irregular situation and members of their families states:

“21. Migrant workers in an irregular situation, **particularly women**, are at increased risk of ill-treatment and other forms of violence at the hands of both private actors, including employers, and State officials which includes **sexual violence, beatings, threats, psychological abuse, and denial of access to medical care**, for example. Under article 16, paragraph 2, States parties have an obligation to protect all migrant workers and members of their families against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. This obligation requires States parties to:

- (a) Adopt and implement legislation prohibiting such acts;
- (b) Effectively investigate cases of abuse and violence;
- (c) Prosecute and punish those responsible with appropriate punishments;
- (d) Provide adequate reparation to victims and members of their families;
- (e) Provide human rights training for public officials; and
- (f) Effectively monitor the conduct of State agents, and regulate that of private persons and entities, with a view to preventing such acts.”

3. Objectives and Outputs

To produce a Model Labour Migration Legislation with a gender angle. The Model Labour Migration Legislation will support concrete action by ILO constituents and other stakeholders on the promotion of the ratification and effective implementation of ILO migrant workers Conventions, as well as the 1990 UN Convention.

The Model Labour Migration Legislation should be no longer than 40 pages.

4. Methodology

The methodology to be used in the production of the Model Labour Migration Legislation will include:

- a desk review of C. 97, C. 143 and UN 1990 Convention; as well as, CEDAW General Recommendation No. 26 on women migrant workers; OHCHR's General Comments on the rights of migrant workers;
- good practices of existing National Labour Migration Legislation; and
- related material.

5. Qualifications and Experience Required

Education: Advanced university degree in Law, Development Studies, Economics, Migration studies, Public Policy, Management, or other relevant Social Sciences degree.

Experience: At least 5 years of demonstrated experience on International Human Rights and International Labour Standards and/or labour migration governance particularly in SADC countries as well as working with COMESA, IOC, as well as demonstrable knowledge of mainstreaming gender and non-discrimination. Country level experience in at least some of the SADC countries is an asset.

Languages: Excellent command of English. Working knowledge of French and/or Portuguese is an advantage.

6. Terms of Contract for Consultant

The service provider will be responsible for all expected outputs mentioned in the terms of reference.

Daily fees will range between 200 to 450 USD.

Fees will be determined depending on the knowledge and experience by the consultant(s) and in SADC countries on the technical area under study: International Human Rights and International Labour Standards, as well as labour migration governance.

The ILO will separately cover the cost of travel and DSA of the consultant in case of need to organise face to face meetings or interviews.

7. Timeline and payment breakdown

The consultant will work for a total of **(40)** non-consecutive working days.

Starting date: **day/month/year**

End date: _____ **day/month/year** _____

Total agreed consultant(s)' fees represent _____ **amount** _____ **US dollars** based on a daily fee of _____ \$/day for **number** of working days.

Payments will be disbursed as follows:

- ✓ **30% of the total or _____ amount _____ US dollars** upon the completion of a first draft no later than _____ **day/month/year** _____ **to the satisfaction of the ILO.**
- ✓ **30% of the total or _____ amount _____ US dollars** upon the completion of the second draft no later than _____ **day/month/year** _____ **to the satisfaction of the ILO.**
- ✓ **40% of the total or _____ amount _____ US dollars** upon the completion of the final product no later than _____ **day/month/year** _____ **to the satisfaction of the ILO.**

8. Supervision and Reporting

The service provider will report to Ms. Gloria Moreno-Fontes, Chief Technical Advisor of the Southern Africa Migration Management (SAMM) project, who will coordinate with ILO/MIGRANT in HQ and share it broadly with other ILO Technical Specialised Departments.

The ILO will liaise with the IOM, UNHCR and UNODC (if pertinent) and be in charge of the overall supervision for incorporating inputs and comments and validation of the work.

9. Application

Interested candidates are invited to submit their applications by midnight South African Standard Time on the 31st August 2021 to the International Labour Organization (samm-project@ilo.org) and copying: ngoveni@ilo.org. Applicants should include the following documentation:

- CV/resumé;
- Cover letter;
- 3 weblinks to latest labour migration articles/reports or attach 3 writing samples (preferably of published material);
- 3 references;
- A half a page financial proposal indicating the consultant's daily professional fees in USD and (if necessary) a breakdown of costs.