

Presentation on National Labour Migration Policy and Employment Services Amendment Bill

April /May 2022



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

STAKEHOLDER CONSULTATIONS



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Presentation outline

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1. NATIONAL LABOUR MIGRATION POLICY(NLMP) ROADMAP

Step 1
2013-SADC
Ministers –ELS
and Tripartite
structure adopted
Action plan on
Labour Migration



Step 2
2015-2016 DEL
Initiated discussion
through multi-
stakeholder session
on the development of
NLMP



Step 3
2017 DEL started
roll out of NLMP
development
process



Step 4
Submission of
draft policy to
the Minister for
approval



Step 5
Interdepartmental and
Inter-Ministerial Committee
workshop (IMC)
Submission of the SEIAS
Report to DPME for
approval



Step 6
Cabinet approved
the draft policy for
public
consultations



2. NLMP VISION

- To give rise to efficient and effective Government leadership and intervention, supported by social partners and all major stakeholders, allowing for safe, orderly and regular migration for employment of highly, semi- and low-skilled workers to and from South Africa, in pursuit of the country's national priorities.

3.RATIONALE

South Africa's labour migration policy aims to achieve a balance between:

- SA population expectations
- South Africa's labour market needs
- Protection of migrant workers and their families
- Regional integration and cooperation imperatives
- Address insufficient and absent policy frameworks
- Inform appropriate legislative framework
- Inform the reconsideration of the current bilateral labour agreements

4. Migration context

- Previous policy frameworks established before 1994
- Large influx of undocumented migrants.
- Concentration of Migrants in informal sector.
- Several legal and policy responses across government departments

5. Guiding principles

- Alignment with international and regional obligations
- Alignment with national policy frameworks
- Alignment with constitutional framework
- Alignment with national legislation and new adjustments

6. Four Key Intervention areas of the NLMP

- (1) Labour migration governance and management
- (2) Data for NMP monitoring and evaluation
- (3) Labour migration to South Africa
- (4) Labour migration from South Africa

6.1.1. Labour migration governance and management challenges

- Weak and inadequate inter-ministerial coordination
- High turnaround times in the processing of work visas
- Insufficient emphasis on skills enhancement in South Africa and of South Africans
- Weak enforcement of migrant workers' labour and social protection rights
- Weak policy interventions and structures regarding fraudulent recruitment
- Limited consultation and inclusion of social partners (employers' and workers' organisations and communities) through NEDLAC and other bodies on key labour migration matters

6.1.2. Labour Migration Governance and Management benefits

- DEL strengthened in its ability to implement and monitor labour migration policy and actions
- Inter-ministerial coordination will become more efficient and integrated
- Integrated, diligent and professional labour migration services
- Social partners and other key stakeholders afforded opportunity to participate in policy decision-making, management and evaluation resulting in stronger consensus building regarding the role played by labour migration policy in SA
 - Voices of trade unions, employers, civil society and NEDLAC heard and appreciated

6.2.1. Labour migration data challenges

- Labour migration data are scattered across a range of departments and agencies
- There is no functional Labour Market Information System
- No institution or organisation that collects and analyse existing labour migration data on a regular basis

6.2.1 Labour migration data benefits

- Improved Data collaboration between institutions involved in labour migration
- Improved Data collection and alignment with international standards and better understood by all users
- Reliable labour migration data will be available to inform, implement and monitor policy interventions

6.3.1. Labour migration to South Africa challenges

- Lack of strategic thinking and direction regarding how labour migration should serve South Africa's national interest
- Insufficient framework to address the country's skills needs
- General skills mismatch and inability to retain skills within the country
- Growing numbers of irregular migrant workers while many South Africans are unemployed
- Weak labour migration partnerships with SADC countries
- Fraudulent recruitment practices
- Illegal, dangerous and exploitative working conditions and weak social protection of migrant workers

6.3.2. Labour migration to South Africa benefits

- Prioritising the import of necessary scares and critical skills into the country and imparting or transferring skills to South African workers
- Preserving access for South Africans to employment
- Better enforcement of laws relating to labour migration
- Improved protection, including social protection of migrant workers
- Strengthened labour migration links with South Africa's neighbours

6.4.1. Labour migration from South Africa challenges

- Acute rates of emigration among specific, highly skilled occupations, and in some instances, scarce skills
- Absence of mapping and data collection of South African workers abroad
- Insufficient retention strategies of skills and incentives for South African emigrants to come back on a temporary or permanent basis
- Insufficient strategies to accommodate surplus South African labour abroad
- Insufficient strategies to invest in South Africans gaining skills abroad to help fill critical skills needs in the country
- Inadequate assistance and protection of South African migrant workers abroad

6.4.2. Labour migration from South Africa benefits

- Maintaining data on South African working abroad
- Introduction of strategies and incentives to attract South Africans in the diaspora to come back and slowing brain drain.
- Alleviating local high unemployment pressures
- Better integration of South Africans abroad in a national strategy for skills retention and enhancement
- Better protection and assistance of South African migrant workers abroad throughout their journey by reliable and effective Government services.

7. Employment Service Amendment Bill

- Employment Services Amendment Bill (ESAB) provides a policy framework and the legal basis to regulate the extent to which employers can employ foreign nationals in their establishments where needed while protecting the rights of migrants.
- The Bill's framework seeks to balance these factors taking into account –
 - constitutional rights, including fair labour practices
 - the impact on labour standards and the rights of SA workers
 - the training of SA workers and the availability of critical skills

7.1. Key features of the ESAB

- The proposed amendment bill provides for: –
 - Clarification of definition of foreign nationals
 - Coverage of employers and other workers
 - Proposals to permit development and publication of quotas
 - Enhanced regulatory functions for DEL in respect of the employment of foreign nationals
 - Strengthened enforcement
 - Administration of Supported Employment Enterprises

7.2. Quotas on employment of foreign nationals

- The Minister will be empowered to set national or regional quotas for the employment of foreign nationals in any sector or occupational category
- A foreign national is any person other than a citizen, permanent resident or refugee
- A quota may be set after consultation with Employment Services Board and publication for public comment
- The Bill makes provision for criteria to set targets to also take into account the availability of requisite skills among South African workers
- A quota, once set, may be exceeded to obtain critical skills if exemption is issued by the DEL in accordance with prescribed criteria.
- Quotas will apply to employees (as defined in BCEA) and workers (as defined in NMWA), including platform workers
- Quotas will be for a specified period and subject to periodic review

7.3. Regulation and enforcement

- **In order to implement the NLMP, the regulatory powers of the DEL would be extended to cover –**
 - recruitment and placement of persons residing outside of SA to work in South Africa;
 - the recruitment of South Africans to work in other countries;
 - reintegration of the South African diaspora into the domestic economy
- **Provision is made for improved enforcement by-**
 - extend the power of labour inspectors to enter workplaces to deal with the unlawful employment of foreign nationals, by agreement between Minister and Minister of Home Affairs
 - breaches of the provisions in respect of the employment of foreign nationals in the Bill will be punishable by fines imposed by the Labour Court

8. Conclusions

Absence of a streamlined policy framework will perpetuate:

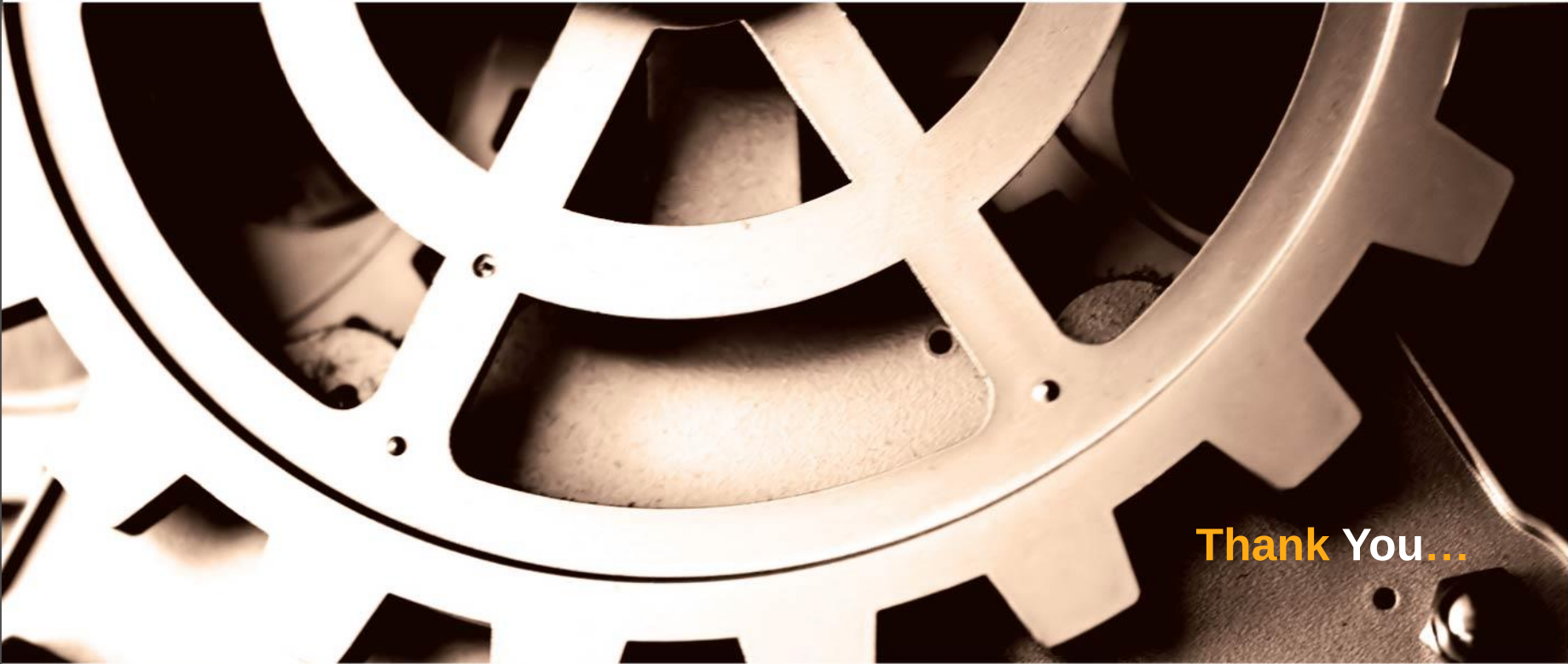
- A fragmented and inconsistent approach to labour migration
 - Non-aligned institutional frameworks
 - Irregular labour migration
 - Non-acquisition and -retention of critical skills
 - Insufficient regulatory frameworks, e.g., regarding recruitment; and
 - The absence of a framework for supporting and channelling South Africans in the diaspora or wanting to work abroad
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- Members of public to actively provide comments on the Draft NLMP.

9. Submission of Comments and Enquiries

- Interested parties are invited to submit written comments on the proposed NLMP and ESAB by no later than 31st May 2022 by: -
 - (a) Emailing comments to: NLMP@labour.gov.za
 - (b) Enquiries to: Esther.Tloane@labour.gov.za
Mantombi.Bobani@labour.gov.za

9.1. Enquiries at Provincial Level

- EC- Nomfundo Douw-Jack -Nomfundo.Douw-Jack@labour.gov.za
- FS-Emily Maneli -Emily.Maneli@labour.gov.za
- GP-Tshepo Mokomatsidi -
Tshepo.Mokomatsidi@LABOUR.gov.za
- KZN-Thembi Nene-Thembi.Nene@labour.gov.za
- LP-Phaswane Tladi -Phaswane.Tladi@labour.gov.za
- MP-Margaret Mazibuko-Margaret.Mazibuko@LABOUR.gov.za
- NW-Boikie Mampuru-Boikie.Mampuru@labour.gov.za
- NC- Zolile Albanie Zolile.Albanie@labour.gov.za
- WC_ Mawele Ntamo-Mawele.Ntamo@labour.gov.za

A close-up photograph of several interlocking metal gears. The gears are made of a light-colored metal, possibly brass or aluminum, and have a complex, multi-toothed design. The lighting is dramatic, with strong highlights and deep shadows, emphasizing the mechanical nature of the scene. The gears are arranged in a way that suggests a complex, interconnected system.

Thank You...