



Kingdom of Eswatini
**NATIONAL LABOUR
MIGRATION POLICY**



JULY 2019

PREFACE

This National Labour Migration Policy (NLMP) is a key milestone for the Kingdom of Eswatini. It points to the recognition of the historic role of the migrant worker in the economies and societies of the country and the sub region, and is forward looking in embracing the challenges and opportunities of a global, interconnected labour market. The overall objective of the NLMP is to provide a governance framework for the Kingdom of Eswatini to effectively manage labour migration so that it protects workers, develops the country's economy, strengthens and transfers skills, integrates returnees, and benefits the Kingdom and its subjects as a whole.

The NLMP is comprehensive in nature, dealing with migrant workers of all levels of skill, their families and dependents, inclusive of internal and cross-border migration, from pre departure to return, and in line with international norms and standards. It provides a clear description of the patterns of labour migration that take place within, into, out of, and through the Kingdom of Eswatini. It addresses the issues of skills retention, development and transfer, migrants' rights, a labour market information system and good governance. Specific provisions include:

- Return and reintegration of Emaswati who have been working abroad;
- Increased efficiency for registration of labour migrants within the Kingdom of Eswatini;
- Regulation and monitoring mechanisms of private employment agencies
- Protection of rights of migrant workers and their dependents;
- Portability of social security for migrant workers and their dependents;
- Health concerns of migrant workers in the context of fitness to work and access to health services;
- Establishment of mechanisms which can contribute to regional integration and international cooperation vis-à-vis labour migration;
- The development of coordination mechanisms to regulate labour migration and combat human trafficking; and
- The establishment and maintenance of a comprehensive data management system;

The NLMP was developed through the work of a Technical Working Group Committee consisting of members from various ministries and social partners.

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GLOSSARY:

Term	Definition
Asylum-seeker	Person seeking to be admitted into a country as a refugee and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.
Diaspora	Individuals and members of networks, associations and communities, who have left their country of origin, but maintain links with their homelands. This concept covers more settled expatriate communities, migrant workers based abroad temporarily, expatriates with the nationality of the host country, dual nationals, and second-/third generation migrants.

International migrants	persons who are foreign-born (or foreign citizens when place-of-birth information is not available (ILO 2018)
Labour Market Information System	Consists of a set of institutional arrangements, procedures and mechanisms that are designed to produce labour market information (Sparreboom, 1999).
Labour migration	Movement of persons from one State to another, or within their own country of residence, for the purpose of employment.
Migrant in an irregular situation	A person who does not comply with the national legislation and international agreements concerning the entrance, stay and employment in the host State (see Article 5 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 ⁱ)
Migrant flow	The number of migrants counted as moving or being authorized to move, to or from a country to access employment or to establish themselves over a defined period of time.
Migrant stock	The number of migrants residing in a country at a particular point in time.
(International) Migrant worker	<p>International migrant individuals of working age and older who are either employed or unemployed in their current country of residence</p> <p>Measures the current labour attachment of international migrants in a country, irrespective of the initial purpose of migration, and of others who are not usual residents of the country but have current labour attachment in the country of measurement. In this context, the terms “international migrant workers” and “international migrant and non-resident foreign workers” are equivalent. They are defined, for statistical purposes, as all persons of working age present in the country of measurement who are in one of the following two categories: (a) usual residents: international migrants who, during a specified reference period, were in the labour force of the country of their usual residence, either in employment or in unemployment; (b) not usual residents, or non-resident foreign workers: persons who, during a specified reference period, were not usual residents of the country but were present in the country and had labour attachment to the country, i.e., were either in employment supplying labour to resident producer units of that country or were seeking employment in that country.¹</p>

¹ ILO ICLS Guidelines concerning statistics of international labour migration (2018).

Migrants of working age	(15 years of age and over)” is a subset of international migrants (ILO 2018).
Mixed flows	Complex population movements including refugees, asylum-seekers, economic migrants and other migrants.
Permanent residence	The right, granted by a host State to a non-national, to live and work therein on a permanent (unlimited) basis.
Precarious workers	Those who fill permanent job needs but are denied permanent employee rights. Globally, these workers are subject to unstable employment, lower wages and more dangerous working conditions. Workers in precarious employment can either: (a) be workers whose contract of employment leads to the classification of the incumbent as belonging to the groups of “casual workers”, “short-term workers” or “seasonal workers”; (b) be workers whose contract of employment will allow the employing enterprise or person to terminate the contract at short notice and/or at will, with the specific circumstances to be determined by national legislation and custom. (Labour Force Survey 2016).
Refugee	A refugee, according to Article 1 (A) (2), Convention relating to the Status of Refugees Article 1A (2), 1951 ⁱⁱ as modified by the 1967 Protocol ⁱⁱⁱ , is a person who, “owing to a 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.” In addition, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa defines a refugee as any person compelled to leave his or her country “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality.”
Remittances	Monies earned or acquired by non-nationals that are transferred back to their country of origin.
Social Dialogue	All types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy (ILO)
Social Protection	Set of policies and programmes designed to reduce and prevent poverty, vulnerability and social exclusion throughout the life cycle. Social

	<p>protection includes nine main areas: child and family benefits, maternity protection,</p> <p>unemployment support, employment injury benefits, sickness benefits, health protection (medical care), old age benefits, invalidity/disability benefits, and survivors' benefits (ILO)</p>
Temporary migrant workers	Migrant workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise, or for any other reason. (Adapted from the IOM Glossary on Migration definition)
Trafficking in persons	"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" (Article 3 (a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000). ^{iv} Trafficking in persons can take place within the borders of one State or may have a transnational character.

Source: IOM Glossary on Migration (2nd edition, Geneva) 2011, unless otherwise indicated.

ACRONYMS

AGOA:	African Growth and Opportunities Act
AU:	African Union
BLA:	Bilateral Agreement
CAT:	International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CRC:	International Convention on the Rights of the Child
EHIES:	The Eswatini Household Income and Expenditure Survey
FESBC:	Eswatini Business Community
FESWATU:	Federation of Eswatini Trade Unions
FSE&CC:	Federation of Eswatini Employers and Chamber of Commerce
ICCPR:	International Covenant on Civil and Political Rights

ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICRMW:	United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
ILO:	International Labour Organization
IOM:	International Organization for Migration
NLMP:	National Labour Migration Policy
SA:	South Africa
SADC:	Southern African Development Community
SATUCC:	Southern Africa Trade Union Coordination Council
SWAMMIWA:	Eswatini Migrant Mineworkers Association
TEBA:	The Employment Bureau of Africa
TUCOSWA:	Trade Union Congress of Eswatini
TVETSD:	Technical and Vocational Education and Training and Skills Development

PART I: CONTEXT

1. INTRODUCTION

Migration, or the movement of people within a country or across international borders is a global phenomenon. The human desire to seek decent employment and livelihoods is at the core of the migration-development nexus. As more people cross borders to work in the coming years, fair and effective migration policies that protect the rights of migrant workers and reduce the costs of labour migration will be essential for achieving economic growth and enhancing development outcomes for migrant workers and their families, and for countries of origin and destination. Globally migration dominates the political agenda, with regions seeking to develop harmonized approaches to managing migration that align with international obligations, and national legislation.

The latest estimates show that there are 258 million international migrants around the world. This is an increase from 248 million in 2015, and 220 million in 2010. The majority of these, 164 million, are migrant workers, of which 58% are men. Migrant workers constitute 4.7 % cent of the global labour force^v. In Africa 36 million people are migrants and most (58%) remain in the region. Across the continent, migrants constitute less than 2% of the population.

Regions and number of countries or areas	Countries or areas with at least one data source						Number of migrants included in data from the 2000 census round or later	
	Number			Percentage			(thousands)	Percentage
	Total	By age	By origin	Total	By age	By origin		
World (232)	214	179	187	92	77	81	240,176	93
Africa (58)	48	33	40	83	57	69	19,479	79
Asia (50)	44	37	34	88	74	68	67,259	85
Europe (48)	47	43	44	98	90	92	77,895	100
Latin America and the Caribbean (48)	47	44	45	98	92	94	9,468	100
Northern America (5)	5	5	5	100	100	100	57,664	100
Oceania (23)	23	17	19	100	74	83	8,411	100

Table 1: International migration stock 2017 by region

Migration is integral to the African Union (AU). The AU's Strategic Framework on International Migration (2006) its 2017 revision, the Common Position on Migration and Development (2006), the Joint Labour Migration Programme (2015) and the Protocol on the Free Movement of Persons strongly guide the Kingdom's policy objectives.^{vi}

At a sub-regional level, the Southern African Development Community adopted a Protocol on the Facilitation of Movement of Persons in 2006, which provides for visa-free entry, and rights of residence and establishment, although this has not come into force, its principles of developing harmonisation across the sub-region are acknowledged. The 2014 SADC Labour Migration Policy Framework and the SADC Employment and Labour Protocol both guide this policy. In particular, the 2016-2019 SADC Labour Migration Action Plan^{vii} which is aimed at promoting labour migration for regional integration and development in the Region forms a strong basis of this national policy.

Nationally, the Kingdom of Eswatini, which is an important country of origin in the sub-region, does not have a comprehensive labour migration policy. This National Labour Migration Policy (NLMP) therefore is aimed at developing a comprehensive tool to manage labour migration within, from and to the Kingdom of Eswatini.

Within this context, this policy sets forward the vision, mission, objectives and strategy of the Kingdom of Eswatini in developing an effective legislative framework to manage labour

migration. It is inspired by global, continental and regional standards and best practices and responsive to national and local level realities and ambitions.

SITUATIONAL ANALYSIS

HISTORICAL BACKGROUND

The Kingdom of Eswatini is a landlocked country within South Africa, and bordering Mozambique. This geographic specificity, coupled with its socio-economic characteristics, and the history of the political economy of the sub-region, have shaped the employment-related mobility of Emaswati nationals over the last century.

At the same time Mozambican workers have also transited in the country en route to South Africa. Over the past twenty years, investors, from Asia and South Africa, have brought new categories of skilled workers into the country. Together these traditional and contemporary forms of migration have necessitated changes and improvements in migration management.

After independence, labour migration mostly responded to an internal process of underdevelopment (de Vletter, 1981^{viii}). For most of the 20th century, Emaswati mine workers made up a substantive share of the South African workforce on mines and farms although they were always in much smaller numbers than their Basotho or Mozambican counterparts. Their labour mobility to South Africa was organised in the framework of the 1975 agreement between the Kingdom of Eswatini and the Republic of South Africa. However, the adoption of the Mining Charter in South Africa in 2003 confirmed an earlier decision to phase out foreign labour on South African mines. The number of Emaswati workers on South African mines therefore, decreased from 17, 717 in 1990 to only 4, 485 in 2012 (See Tables 5 and 6).

These are official statistics from the mining industry only, and do not count those working in other sectors or who are in irregular situations. Correspondingly, the Eswatini Household Income and Expenditure Survey of 2016/7 indicates that 5,8% of household members have returned to the country from abroad in the last 5 years^{ix}.

The Kingdom therefore is now facing a dual challenge of integrating returnees into the country while still exploring new opportunities for migrants to work abroad.

SOCIO-ECONOMIC CONTEXT

The Kingdom of Eswatini is a lower middle income country with a population of population of **1,093,238 people in 2017 a slight increase of 0,7% per since 2007 (Census, Government of Eswatini)**. The Kingdom faces several challenges: sluggish economic growth of less than 2% and a GDP of \$4,8 billion (World Bank 2018), a 59% poverty rate (EHIES 2016), high income inequality, a 23% unemployment rate (Labour Force Survey 2016), and an HIV prevalence rate of 27% (World Bank 2017).

Economic growth is slow and hovers below the 2% mark. The Kingdom has close economic and social ties to South Africa; the national lilangeni currency is pegged to the Rand, and it relies on South Africa for 85% of its imports and 60% of exports (World Bank 2019)^x.

The poverty rate declined by 4% to **59%** in 2016 from 63% in 2010 (Eswatini Household Income and Expenditure Survey 2016^{xi}). However this was not evenly distributed across regions. For instance, poverty in Lubombo has increased by 2,2% to 71%, and in Shiselweni by 1% to 61%. Income inequality is measured by the Gini coefficient, which in 2009 was 0.51.

Unemployment in the country is at 23% (Labour Force Survey 2016). Women, the youth and those in rural areas have disproportionately higher unemployment rates.

Many HIV infections are transmitted through low condom use, transactional sex, and sexual violence. Women are most affected by the epidemic with more than 31% reporting an HIV-positive status, compared to 20% in men. High levels of gender violence against women, polygamy, and early marriages to older men contribute to the high rates of infection among women (DW Country Program 2019-2023)

The decline of Emaswati labour in the South African mining sector together with the loss of employment in the Eswatini textile sector which had developed under the United States African Growth and Opportunities Act (AGOA), has also had profound socio-economic consequences. For instance, communities of origin across the sub region which have historically relied on migrant labour have faced severe economic challenges because of a reduction in remittances.

The socio-economic context has transformed the migratory profile of the country in a number of ways. First, many Emaswati, especially women and girls, have been pushed into irregular migration toward South Africa (Tati, 2015).^{xii} This creates the potential for precarious conditions of employment and living between the two countries. Trafficking and smuggling of women in the South African sex industry is a chronic problem, as documented in the United States Department of State annual reports on Trafficking (2016, 2017)^{xiii}. Female cross border trading has also substantively increased due to the intersection between female poverty, unemployment, underemployment and vulnerability.

Second, women are more affected by poverty: 63% of female-headed households are poor and lack productive assets compared to 52% of their male counterparts. Informal cross border trade is vibrant in the Kingdom of Eswatini and a UN Women study^{xiv} indicated that the majority of traders are women. Another factor is high poverty levels resulting from inequalities in income distribution in the country. Some women are involved in cross border trade because of the need to augment their income from formal employment (UNDP, 2013).^{xv}

Third, the burden of HIV and TB, and their impact on household structures, have exacerbated the vulnerability of children, girls and young women to child labour, forced labour and trafficking especially given the lack of adequate social protection in the country. The proximity of the Kingdom of Eswatini to South African mines, with regular commuting of mine workers, has also been found to place rural Emaswati women at greater risk of contracting HIV than spouses in other countries such as Mozambique where miners only return home once a year (Crush et al., 2010)^{xvi}.

Among men, the decline in formal employment in mining has not been adequately studied. Little is known of how men cope economically, or of how these migratory and economic behaviours affect gender roles or households. Given anecdotal data from the sub region, it is assumed that informal employment and/or informal migration to South Africa is a survival strategy adopted by some (Segatti 2014^{xvii}; Jinnah 2015^{xviii}).

The context for this policy therefore is driven by the socio-economic context which makes migration a livelihood strategy for many.

MIGRATION PROFILE

Migration data is captured principally in the census and various other surveys. In 2017, 2% of the population or 22, 564 people in the Kingdom were foreign nationals (immigrants), and 32, 448 Emaswati nationals left the country as emigrants (census)

From 2000- 2007, there was a notable increase in flows of African migrants (D.R. Congo, Nigeria and Tanzania) but also Asian migrants (from Pakistan, India, China and Taiwan). The AGOA brought to the Kingdom of Eswatini Chinese and Taiwanese investors who came with considerable numbers of managers, supervisors and technical advisors (Tati, 2015: 354).

Between 2007 and 2017, however the number of immigrants decreased from 32, 971 to 22,564, and the number of emigrants increased from 24, 056 to 32, 448.

Additional data from the CSO states that the total migrant population in 2016 was 16, 392 people, of which 9, 170 were employed (source supplied by CSO, 2010 , 2013/14 & 2016 Labour Force Surveys, Ministry of Labour and Social Security in collaboration with CSO). The discrepancy with the census figures of 2017 is not explained.

Focusing on this data source, 3, 942 migrants are from Mozambique, followed by 2,095 from South Africa.

	Employed Migrants	Stock of Employed Migrants by country of origin								
		...	South Africa	Mozambique	Botswana	Lesotho	Zambia	Zimbabwe	Other SADC Countries	Rest of the World
2010	9,238		1,624	4,985	0	161	367	664	798	639
2011										
2012										
2013										
2014										
2015										
2016	9,170		2,095	3,942	330	129	104	812	512	1,245

Table 2: Stock of employed migrants,. Source: CSO supplied personal correspondence July 2019

LABOUR MARKET AND LABOUR MIGRATION PROFILE

The Kingdom of Eswatini has been conducting a national labour force survey every three years since 2007. The latest report from 2016 presents the following profile of the labour market:

- Working age population: 738 799 , sharp increase from 2013
- Labour force: 373 869 (51%)
- Labour force participation rate: 50,6%
- Unemployment rate : 23% (women are 3% higher than men)
- Youth unemployment rate 47%
- Informally employed 67,5% (women are 6% higher than men)
- Average monthly income: E2 200

The labour force has grown by 152, 927 people from 2013, representing a 26.1 % increase. 58% of the working age population is aged between 15 and 34 years, and a further 26% between the ages of 35 and 55. Thirty percent of the labour force live in Manzini region, however 76% of the workforce is rural based. Men have higher a labour force participation and employment rate than women. Conversely, women have a 3% point high unemployment rate than men.

Labour force participation is a measure of the proportion of a country's working age population (15-64 years) that engages actively in the labour market either by working or looking for work. It provides an indication of the relative size of the supply of labour available to engage in the production of goods and services. The Labour force participation rate for the Kingdom of Eswatini is 50.6%. The participation rate is higher for men (55.5%) compared to women which is 46.5%.

The broader definition of unemployment which includes the unemployed potential labour force is 36%. It indicates a demand for jobs in the country. The youth, those in rural areas and women all tend to have higher than average unemployment rates.

Sixty percent of the employed population are engaged in the informal sector, and 36% work in private households.

	Sex		
	Male	Female	Both sexes
Employed Population	148 389	139 655	288 044
Unit Of Production			
Informal Sector	66.1	54.1	60.3
Formal Sector	3.5	2.8	3.1
Household	30.4	43.2	36.6
Total	100.0	100.0	100.0

Table 3: Employed by unit of production. Source: LFS 2016:22

The main occupations of the employed are provided in the table below. 27,5% of those with jobs work in services and sales. Almost 20% of all women work in elementary occupations

	Sex		
	Male	Female	Both Sexes
Employed	148 389	139 655	288 044
Broad Occupation			
Managers	1.3	1.2	1.3
Professionals	11.2	12.1	11.7
Technicians and Associate Professionals	4.0	4.6	4.3
Clerical Support Workers	3.6	4.5	4.0
Services and Sales Workers	25.1	30	27.5
Skilled Agricultural, Forestry and Fishery Workers	6.7	5.8	6.3
Craft and Related Trades Workers	16.9	12.6	14.8
Plant and Machine Operators and Assemblers	11.6	6.8	9.3
Elementary Occupations	15.9	19.8	17.8
Not stated	3.7	2.6	3.1
All Occupations	100.0	100.0	100.0

Table 4: Occupational profile of the employed. Source: LFS 2016:23

The median monthly earnings of all employees in the Kingdom of Eswatini is 2 200 Emalangeni. Overall MEN (E2 500) earn more than women whose average is 1 800 Emalangeni a month. The Manzini region have the highest median monthly earnings (E2 800) compared to Lubombo (E2 200), Hhohho (E 2000), and Shiselweni (E1 500).

Only 1.2% of the working age population are non-Eswati citizens (LFS 2013/4)^{xix}, with most coming from South Africa; smaller numbers are nationals of Kenya, Malawi, Zambia, Namibia and Zimbabwe (personal correspondence from the MHA Dec 2018).

STATUS OF DATA IN THE KINGDOM OF ESWATINI

Updated, credible and comprehensive labour migration data is essential to policy development, reform, implementation, and monitoring. There are currently three main official sources of statistical data in the country:

- Census every 10 years:
- Labour force survey every 3 years
- Household income survey every 5 years.

All have a question on migration. However, the census, community and labour force surveys contain many additional demographic, educational, and employment indicators that could be further analysed at regular intervals to produce a more accurate and nuanced profile of migration.

In addition the following sources provide supplemental information:

- Administrative data from the Ministry of Home Affairs controlling entry into and exit from the territory as well as numbers of work permits issued;
- Qualitative data from research studies
- Data from other Governments or private entities (both administrative and statistical) to assess numbers of Eswati citizens in specific countries or numbers of Eswati workers in employment in specific sectors (One example here is The Employment Bureau of Africa (TEBA) previously owned by the mining companies in South Africa as a recruitment arm, and now a privately listed company).

Administrative data

Administrative data on entries, exits and work permit numbers is limited. Ideally, these should be regularly collected and compared with statistical data. The Ministry of Home Affairs (MOHA) as the custodian of work permits and border control should share its data base and ensure harmonisation with the Ministry of Labour and Social Security (MOLSS) on basic indicators which could be used across sectors to determine labour market needs.

Qualitative data from research studies

There is limited literature on labour migration from Eswatini. A handful of studies were conducted in the 1970 and 1980s on labour migration (both internal and international) from the Kingdom of Eswatini but with limited scope. Since 2000, there has not been only specific study (Crush et al. (2010) on migration and HIV in rural Eswatini), one IOM briefing note (2006) on HIV prevalence and AIDS and migration in Eswatini^{xx}, the IOM 2010 Country Assessment on HIV-prevention Needs of Migrants and Mobile Populations: Eswatini^{xxi}, and the United States Department of State annual reports on trafficking^{xxii}. This points to an urgent need for in-depth studies on the various dimensions of labour migration.

Data from other Governments or private entities (both administrative and statistical).

Another possibility to map out Eswatini migrant workers abroad is to look into other Governments' statistics or private entities such as The Employment Bureau of Africa, now TEBA Limited, the largest recruiter of mine-workers in the sub-region.

Data from TEBA confirms the reduction of labour from Eswatini on South African mines since the mid-2000s. Tables 1 and 2 below show how the number of mineworkers reduced since 2003:

Table 5. Mineworkers on gold mines in South Africa. 1990-2006

Year	RSA	Botswana	Lesotho	Mozambique	Eswatini	% foreign	Total
1990	199 810	14 609	99 707	44 590	17 757	47	376 473
1991	182 226	14 028	93 897	47 105	17 393	49	354 649
1992	166 261	12 781	93 519	50 651	16 273	51	339 485
1993	149 148	11 904	89 940	50 311	16 153	53	317 456
1994	142 839	11 099	89 237	56 197	15 892	55	315 264
1995	122 562	10 961	87 935	55 140	15 304	58	291 902
1996	122 104	10 477	81 357	55 741	14 371	58	284 050
1997	108 163	9 385	76 361	55 879	12 960	59	262 748
1998	97 620	7 752	60 450	51 913	10 336	57	228 071
1999	99 387	6 413	52 188	46 537	9 307	54	213 832
2000	99 575	6 494	58 224	57 034	9 360	57	230 687
2001	99 560	4 763	49 483	45 900	7 841	52	207 547
2002	116 554	4 227	54 157	51 355	8 698	50	234 991
2003	113 545	4 204	54 479	53 829	7 970	51	234 027
2004	121 369	3 924	48 962	48 918	7 598	47	230 771
2005	133 178	3 264	46 049	46 975	6 993	43	236 459
2006	164 989	2 992	46 082	46 707	7 124	38	267 894

Source: Crush and Williams, 2010: 11. Cited in Budlender, 2013: 34^{xxiii}.

Table 6. Mineworkers recruited by TEBA for mines in South Africa and sub-contractors, by country of origin, across all ores, 2006-2012.

Year	RSA	Lesotho	Botswana	Eswatini	Mozambique	% foreign	Total
2006	218 137	46 078	2 992	7 123	46 706	32	321 036
2007	225 949	45 608	2 845	7 099	44 879	31	326 380
2008	243 701	42 851	2 654	6 397	43 004	28	338 607
2009	224 544	38 559	2 357	5 855	39 090	28	310 405
2010	228 370	35 179	1 800	5 009	35 782	25	306 140
2011	240 896	34 583	1 783	4 779	34 940	24	316 981
2012	244 842	30 519	1 527	4 485	31 596	22	312 969

Source: Tim le Roux, TEBA, January 2013; cited in Budlender 2013: 79.

According to TEBA Ltd, there are 2, 800 Emaswati Mineworkers working in the South African Mines as at December 2018 (personal correspondence). This figure only includes mineworkers who renew their annual contracts with TEBA Ltd. Nevertheless it provides additional evidence of the drastic decline of formal labour migration to the South African mining sector.

Since both administrative and statistical data collection on labour migration related indicators is already organised, it means efforts should focus on data sharing systems and on strengthening analytical skills within the MoLSS, MoHA and the Central Statistical Office.

Given the size of the overall Emaswati population and the limited available research on labour migration from and into Eswatini, analyses of statistical and administrative data should be regularly supplemented by ad-hoc studies commissioned by Government to guide decision-making and policy management. These could be on trends which are hard to capture through statistical or administrative indicators, such as irregular migration in vulnerable sectors like domestic work, transport, and forestry.

PART II: RATIONALE

Migration is a vital economic and social feature of Eswatini. As a country of origin, transit and destination, Eswatini has benefited and can benefit further from labour migration, but this potential is not yet being fulfilled to a large extent. In this regard, the country is committed to harness the benefits of migration to contribute further to the national development priorities of economic growth, reduced unemployment and increased income equality. The NLMP will directly benefit the Kingdom in its ongoing efforts to improve migration management within the labour sector.

The current regulatory framework on labour migration in the Kingdom has a number of gaps which impede on the ability of the government to benefit fully from migration. This included limited provisions in regulating in-migration, no mechanisms to align migration policy with labour market needs, no provisions for social security portability within the sub region, and no gendered approach to labour migration. This affects the ability of the policy to provide protection to Emaswati migrant workers going abroad or returning to the country, to interact

with the Emaswati diaspora and for the Kingdom to realise its sub regional, regional and global obligations.

2.1. ALIGNMENT WITH INTERNATIONAL, REGIONAL AND NATIONAL LEGAL CONTEXT

2.1.1. INTERNATIONAL FRAMEWORKS

Eswatini has ratified a vast range of international conventions relevant to labour migration and the protection of migrant workers.

International UN treaties and conventions ratified by Eswatini and of relevance to labour migration are:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention on the Rights of the Child (CRC)

These instruments guide this NLMP in terms of the general protection of migrant workers' fundamental human rights they afford, as well as more specific rights (civil and political, social and cultural) and categories of migrants they protect (women and children).

However, Eswatini has not ratified the United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) (1990) which is the most appropriate instrument for labour migration. Two ILO Conventions on migrant workers (the Migration for Employment Convention (Revised), 1949 (No. 97) and the- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)) are complementary to the UN ICRMW and should be considered as a broad protection legal framework for migrant workers.

Eswatini has also ratified specific instruments against transnational organized crime which may be related to labour migration processes, particularly in terms of recruitment and travel across international borders. These instruments are important because they protect both migrants into Eswatini as well as Emaswati nationals who would fall victim to these crimes on an outward journey. This is an important consideration which this NLMP recognizes.

- The Kingdom is committed to and supportive of the Global Compact for Safe, Orderly and Regular Migration (GCM), an intergovernmental non binding agreement to develop a comprehensive and organised approach to managing migration in line with the 2030 Agenda for Sustainable Development.
- The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime:
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
 - Protocol against the Smuggling of Migrants by Land, Sea and Air;
 - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regards to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

All of these instruments have been ratified by the Kingdom of Eswatini in 2012.

ILO Conventions and Protocols

Eswatini has ratified all ILO fundamental conventions, but none of the relevant technical conventions. Ratification of these ILO fundamental conventions (see Table 1) and some of the key governance (C081 - Labour Inspection Convention, 1947 (No. 81), and technical conventions C189 – Domestic Workers Convention, 2011. Ratification of Conventions is

voluntary but important as this will make them binding at the national level and thus guarantees e.g. the minimum rights for migrants set out in the conventions. Ratifying countries commit themselves to applying the Convention in national law and practice and to reporting on its application at regular intervals.

C189 is particularly needed as it they applies to all workers, regardless of their migratory status (regular or irregular). Despite not ratifying these conventions though, the country still uses the obligations and recommendations contained in the conventions as a guide to determine national policy.

As indicated in the introduction to this section, Eswatini has not ratified the two key ILO instruments related to migrant workers:

- C097 - Migration for Employment Convention (Revised), 1949 (No. 97) and
- C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Nor has it ratified three other important technical instruments in relation to migrant workers: C157 - Maintenance of Social Security Rights Convention, 1982 (No. 157),

- C181 - Private Employment Agencies Convention, 1997 (No. 181) or
- C189 – Domestic Workers, 2011 (No.189).

This is addressed in the relevant policy section later.

International reporting mechanisms

As signatory to these various conventions, Eswatini is bound to submit regular reports to the various committees in which they outline their progress:

- Committee on the Elimination of Racial Discrimination (CERD)
- Human Rights Committee (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on Elimination of Racial Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Right of the Child
- Division for Treaty Affairs (DTA), Organized Crime and Illicit Trafficking Branch (OCB), Human Trafficking and Migrant Smuggling Section (HTMSS) of UNODC
- ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)

In addition to the above, as a member of the United Nations, Eswatini is reviewed regularly under the Universal Periodic Review (UPR) which is a unique process involving a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to

declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. In its reports on Eswatini and recommendations issued by other Member States (2011, 2016), the issue of ratification of the ICRMW has been raised repeatedly and Eswatini has noted and accepted it, although there has been no additional progress reported formally so far.

The 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in September 2015, provides for a strong link between decent work and migration in Sustainable Development Goal (SDG) 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, which contains target 8.8: “Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.”

Other important targets relating to labour migration are found in SDG 10 on reducing inequality within and among countries: “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies” (target 10.7) and “by 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent” (target 10.c).^{xxiv}

2.1.2. REGIONAL AND SUB-REGIONAL FRAMEWORKS

Eswatini is committed to the implementation of regional and sub-regional migration frameworks demonstrated through its membership of these organizations as well as ratification of specific instruments.

The country supports the African Union's Strategic Framework on International Migration (2006) and its 2017 revision, and Common Position on Migration and Development (2006), the Joint Labour Migration Programme (2015) and is assessing the Protocol on the Free Movement of Persons (to be adopted in 2018).

At the regional level labour migration has been chosen as one of the four key policy areas of the African Union Commission (AUC)'s Ouagadougou + 10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development. The ILO, the International Organization for Migration (IOM) and the United Nations Economic Commission for Africa (UNECA), in collaboration with the AUC, have developed a joint programme on labour migration to support the implementation of the labour migration component of the AU Migration Policy Framework for Africa. This joint programme will also support the implementation of the Ouagadougou + 10 Plan of Action through inter-regional collaboration and Regional Economic Communities.

At the sub regional level, the SADC Ministers and Social Partners responsible for Employment and Labour adopted a SADC Labour Migration Policy Framework that provides guidance for member states to develop National Labour Migration Policies. The regional Labour Migration Policy Framework seeks among others to afford the protection of migrant workers at their places of work in communities. And in terms of the SADC Labour Migration Policy Framework, member states are required to put in place rights based national Labour Migration Policies by 2019 that are consistent with relevant national policies and legislation as well as the SADC, AU, UN and ILO instruments

As a Member State of SADC, Eswatini has actively taken part in the recent adoption of key frameworks for labour migration. In the 2000s, the SADC Organ on Politics, Defence and Security adopted the Protocol on the Facilitation of Movement of Persons in 2005. By early 2018, the Protocol had however only been ratified by Botswana, Mozambique, South Africa, and Eswatini, and has therefore not been enforced yet.

SADC has also confirmed its interest for the fight against trafficking with the harmonised SADC Regional Strategic Plan on Combating Illegal Migration, Smuggling of Migrants and Trafficking in Persons which was developed to enable comprehensive implementation of the 10-Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009-2019).

The SADC Employment and Labour Sector has asserted its support to harmonised and rights-based labour migration policies with the SADC Labour Migration Action Plan 2013-2015, renewed for 2016-2019; the SADC Labour Migration Policy Framework, 2014; and in Article 19 of the SADC Protocol on Employment and Labour, 2014 on the protection of migrant workers (not enforced yet). Eswatini has not yet ratified the latter. Lastly, the Tripartite Free Trade Agreement between COMESA, EAC and SADC, launched in June 2015 but not yet enforced, focuses essentially on the mobility of business persons and trade in services.xxv

Between the frameworks adopted at AU and SADC levels, there is clear encouragement towards human and labour rights-based, and gender-sensitive, national labour migration policies, distinct from general migration policies. Furthermore, both the AU and SADC encourage the development of national labour migration policies by 2019. This policy is part of this process.

While Eswatini has not ratified the most pertinent international instruments on migrant workers (C97, C143 and ICRMW), it still adopts aspects of these in its own laws, and it may draw on a range of other international, regional and sub-regional conventions and frameworks to guide its labour migration policy development effort. Importantly, it has also committed to ratifying the ICRMW following comments received in the context of the Universal Periodic Review.

2.1.2. NATIONAL LEGISLATION, AND POLICY

The current institutional framework in the Kingdom that relates to labour migration includes the Ministries of Labour and Social Security and the Central Statistical Office. Private and public employment agencies manage the recruitment and placement of workers abroad, including The Employment Bureau of Africa (TEBA) which recruits mine workers for employment in South Africa. In addition, trade unions and associations, and business councils and associations are also key stakeholders.

This NLMP is supported by a range of other national laws and a bill regulating immigration into the country, refugees and asylum seekers and citizenship. These include the:

- Constitution of Eswatini, 2005 (regulates acquisition and loss of citizenship)
- Immigration Act No.17 of 1982;
- Citizenship Act, 1992;
- People Trafficking and People Smuggling Act of 2009
- Refugees Act 142 of 2017

In terms of its labour and employment legislation:

- Industrial Relations Act of 2000;
- Code of good practice: Employment discrimination (prohibits discrimination but does not explicitly refer to nationality, citizenship or migrant status as a prohibited criterion);
- The Employment Act 1980, No. 5/1980

Several Regulations of Wages Orders (domestic employees, security industry)

- Workmen's Compensation Act, 1983 (No.107)
- Occupational Safety and Health Act, 2001.

Of note is the fact that the labour and employment legislation does not make specific provision for the treatment of foreign workers. Therefore, while in principle equality of treatment is adopted, it is unclear whether it includes foreign workers. This legislative grey zone creates ambivalence at enforcement level, with labour inspectors in situations of industrial disputes as

well as for the regular enforcement of basic conditions of work. ILO Conventions could be instrumental in this context.

Regarding emigration, Eswatini is signatory to the Universal Declaration of Human Rights of 1948 which guarantees freedom of movement to its citizens (Article 13). This right is also guaranteed in the Constitution of Eswatini (2005) (Section 26). Reference in legislation to Emaswati migrant workers, currently employed abroad or returned, and their families or dependents, is minimal. There are currently no legal provisions regarding their inclusion into national social security schemes or policies which is a significant gap.

A range of current national policies guide this policy on labour migration. These include the following:

- National Development Plan
- National Development Plan Medium-Term Policy (2013-2017);
- Revised National Development Strategy (2017);
- Ministries' Action Plans 2018-2022;
- Strategy for Sustainable Development and Inclusive Growth (2017);
- Vision 2022 (1997) and National Development Strategy (1997);
- Eswatini – ILO Decent Work Country Programme (2019-2023)
- Technical and Vocational Education and Training and Skills Development (TVETSD);
- National Employment Policy;
- National Human Resources Development Plan;
- Social Security Reform
- Small and Medium Enterprises policy

Overall, these policies emphasise a commitment to addressing immigration as a way to reduce poverty, while remaining silent on assistance to former and current Emaswati migrant workers and their families or dependents, throughout the migration cycle.

The National Labour Migration Policy therefore should be seen as a tool to facilitate economic development and reduce economic vulnerable caused by poverty, unemployment and inequality. While some policies are explicit in this vision, for instance the National Poverty Reduction Strategy Action Plan (2005) emphasizes the specific role of migration as way to reduce poverty, others take a more disjointed or vague perspective on migration. The Ministries' Action Plans (2018-2022) provide indications relating to specific ministries' priorities. For the Ministry of Home Affairs, one ministerial goal by 2022 is to “develop, implement and manage policies and legislation pertaining to immigration, citizenship, refugees and civil registration (p.185). The document indicates further that the MoHA aims to develop an “effective and efficient IT based immigration system” (p.186), two of its key indicators refer to strengthening the permanent residence system for foreigners (Key Indicator 2) and the record of flows (Key indicator 3) (p.186) as part of creating a “robust immigration system” (under Outcome Target 3, p.187). The link with Vision 2022 is underscored on p.188 (“A country where migration is formal” thanks to “automated border control and formalised flows between Eswatini, South Africa and Mozambique”).

In the Strategy for Sustainable Development and Inclusive Growth (2017), Government reiterates its interest in migration through item 2.3 on the Role of Government (Public Service: “Ensure up-dated structures and measures to improve the processing speed and accessibility of immigration services to the public, p.26).

PART III: THE NATIONAL LABOUR MIGRATION POLICY STATEMENT

3.1. GUIDING PRINCIPLES

The guiding principles informing this NLMP are:

- 3.1.1. Constitutional provisions: effective labour migration is one pillar to achieve freedom and independence for all who live, work or move through the Kingdom of Eswatini.
- 3.1.2. Safe, orderly and regular migration: establishing a legislative framework that supports, and strengthens safe migration from pre-departure to return and reintegration for migrant workers and their families. This includes regulation and monitoring mechanisms of private employment agencies within Eswatini; and the development of coordination mechanisms to regulate labour migration and combat human trafficking;
- 3.1.3. Migration and Development: It is recognised that migration, if managed well can hold developmental benefits on household, community and economic development
- 3.1.4. Equality of treatment and opportunity: all workers including migrants have equal access to equal rights and recourse within the law. All migrants regardless of status benefit from labour and social protection.
- 3.1.5. Rights-based framework: ensuring that all directives and implementation strategies centralize the protection of the rights of migrant workers and their dependents; including specifically the health rights and concerns of migrant workers in access to health services;
- 3.1.6. Decent work: Increasing decent work indicators and outcomes for all workers including non-nationals and migrants in recognizing that labour migration is not a commodity and that all workers should benefit from decent working conditions.
- 3.1.7. Skills development, transfer and database: Ensuring the development of a market-driven skills inventory; The development of a skills programme to improve capacity within the domestic workforce and to send skilled labour abroad.
- 3.1.8. Strong data: The commitment to establish and maintain a comprehensive data management system including increased efficiency of registration of labour migrants within Eswatini and Emaswati migrants going abroad and returning home;
- 3.1.9. Gender sensitive and inclusive policy and implementation: recognizing the gendered nature of employment and migration at local, national and sub regional level, and its associated impacts on rights;

- 3.1.10. Child sensitive: recognising that children are impacted by migration at various levels, and are a vulnerable category that require specific protection. Rule of law and due process need to be adopted as key principles of all policy
- 3.1.11. TB/HIV treatment protocol for migrant workers: committing to develop a framework to harmonize management of TB/HIV among migrant workers
- 3.1.12. Regional integration and global cooperation: Establishment of mechanisms which can contribute to regional integration and international cooperation vis-à-vis labour migration;
- 3.1.13. Social security portability: ensuring that migrant workers and their dependents enjoy the possibility of registering in social security systems, accessing social security benefits and having them transferred to their countries of origin, as well as enjoying minimum floor social security benefits regardless of their migratory status or place of residence;
- 3.1.14. Multi-sectorial involvement: an effective NLMP requires the expertise of actors across various ministries, with the private sector and social partners. In this regard coordination and cooperation are guiding principles of this policy.

3.2. VISION, MISSION, AIMS AND OBJECTIVES

Vision: The Kingdom of Eswatini has a comprehensive, rights-based NLMP that is built on good governance, responsive, effective and promotes decent work for all, including migrant workers.

Aim: A non-discriminatory labour migration framework that ensures equal opportunities for all, promotes gender empowerment and contains provisions for workers, and work seekers regardless of level of skills.

Mission: To effectively manage labour migration from, to and within Eswatini that builds on cooperation and coordination and aligns to national, regional and international, which effectively protects the rights of migrant workers and their families, and facilitates the country to benefit from the developmental outcomes of labour migration at all levels.

Policy Objectives

This NLMP has the following objectives:

- a) To effectively regulate labour migration, ensuring safe, orderly and regularized immigration and emigration for work
- b) To develop a NLMP that is aligned to national, regional, continental, and international standards and frameworks.
- c) To enhance the welfare of migrants, and particularly migrant workers and their family members, as well as returnees' rights to access social protection mechanisms and to ensure the portability of social security in the region

- d) To enhance opportunities for productive employment and skills development, retention and transfer for all Emaswati
- e) To facilitate engagement with the diaspora, including effective management of remittances, and to actively manage the return and reintegration of migrants returning home
- f) To have well-functioning, up to date and reliable information systems on labour migration that supports policy and programmes
- g) To establish technical and administrative cooperation across ministries and with social partners such as worker associations, unions, business and other relevant stakeholders.
- h) To ensure a rights-based labour migration system, including border management control that eradicates human trafficking, smuggling, child labour and forced labour and migration in an irregular situation and a regulated and ethical private employment agency sector that is aligned to international conventions.

PART IV: THE NATIONAL LABOUR MIGRATION POLICY

With due regard to the situational analysis, vision, mission and objectives of the NLMP, this section provides the overall structure and detail of the National Labour Migration Policy.

It is divided into five policy areas, namely:

- Policy Area One: Governance
- Policy Area Two: LMIAS: Labour Migration Information and Analysis Systems
- Policy Area Three: Rights And Protection
- Policy Area Four: Migration and Development
- Policy Area Five: Health

Each of the five sections highlights the policy statement, challenges and the key strategies.

4.1. POLICY AREA ONE: GOVERNANCE

4.1.1 Policy Statement: Ensure good governance as an important pillar for regulation and management. Appropriate, evidence-based policy frameworks are aligned to regional and global best practices; and are monitored and enforced.

4.1.2 Policy challenges:

The key **Policy Challenges** in this area include:

- a) Lack of ratification of key international instruments on migrant workers
- b) Lack of implementation of existing policies
- c) Limited inter-ministerial coordination and consultation with social partners in line with migration issues
- d) National policy gaps in various sectors
- e) No instrument regulating and supporting the reintegration of returnees
- f) Bilateral arrangements that are outdated or ill-adapted to the needs of the country
- g) Limited monitoring and enforcement mechanisms of migration, recruitment, and employment at national, regional and international levels
- h) No policy on internal (rural-urban) migration
- i) Lack of a dedicated unit, and capacity on labour migration regulation at national level

4.1.3 Policy strategies:

National level:

- a) Mainstream migration across all sectors; with existing policies to ensure coverage of all workers and enforcement of rights
- b) Review relevant legislation to ensure policy coherence to labour migration issues
- c) Develop policy and regulations for Returnees across all sectors
- d) Develop mechanisms to align labour migration policy with labour market needs.
- e) LMIA (Labour Market Information and Analysis) should be part of governance and include employers' and workers' organizations.
- f) Develop an internal (rural and urban) migration policy

Institutional level:

- Establish a code of conduct for stakeholders engaged in the governance of migration
- Strengthen the necessary institutions within and beyond the government that are essential to good governance
- Multisectoral, whole of government and society approach to effectively managing labour migration

Sub-regional and regional levels:

- a) Review and updating of all bilateral arrangements on labour migration

- b) Active involvement in regional fora on labour migration and relevant areas on migration management, for example the Migration Dialogue for Southern Africa (MIDSA) and the SADC Employment and Labour Sector (ELS), etc.
- c) Continued involvement in the SADC LM Action Plan (2016-2019) and subsequent African Union (AU) Specialized Technical Committee on Social development, labour and employment (STC-SDLE) and other relevant processes
- d) Ratification of the SADC Protocol on Employment and Labour (2014)

International level:

- a) Prioritisation, Ratification and effective implementation of the international conventions most relevant to labour migration, namely:
 - i. ILO C097 - Migration for Employment Convention (Revised), 1949 (No. 97)
 - ii. ILO C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
 - iii. United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) (1990).
 - iv. ILO Convention: Private Employment Agencies Convention, 1997 (No. 181)
 - v. ILO Convention: Domestic Workers Convention, 2011 (No. 189)
- b) Timely reporting on Conventions which are ratified to ensure monitoring and enforcement
- c) Effective labour attachés which protect migrant workers' rights at all missions abroad where significant Eswatini workforce resides.

4.2. POLICY AREA TWO: LABOUR MARKET INFORMATION SYSTEM

4.2.1 Policy Statement:

- Having comprehensive, up to date information on labour markets, migration, skills and employment is essential to ensure safe and regular migration leading to economic growth. This includes the establishment of a LMIS
- An efficient LMIS includes the ability to have access to, interpret and disseminate evidence as needed. This policy area aligns to the SADC LM Action Plan for 2016-2019.

4.2.2 Policy challenges:

- a) Poor coordination of the collection and analysis of relevant labour migration and labour market data for policy formulation, monitoring and evaluation for evidence-based decision making
- b) Labour force surveys are conducted every 3 years; hence there are intervals which impede analysis of changing trends.
- c) No mechanisms to access and share sub-regional (SADC), regional and global labour migration data
- d) Lack of standardised labour migration indicators and data in the main national surveys: (Census, LFS, EHIES)
- e) Limited access to and analysis to existing data limited access and analysis no mechanisms for distribution of existing data analytical capacity among stakeholders.

4.2.3 Policy Strategies:

- a) Harmonise existing data within various ministries to close gaps, streamline data sources and extract information
- b) Include the national skills database as a source of a centralised repository of LM data in the form of a LMIS within the MoLSS
- c) Develop analytical capacity among LMIS stakeholders, focusing on migration in the context of employment and development policies
- d) Strengthen capacity in the MoLSS/CSO to increase the frequency, analysis and publication of labour force surveys
- e) Establish cooperation with receiving States for data on Eswatini diaspora and workers abroad
- f) Develop an inventory of migrant workers who are abroad (moved from policy area 1).
- g) Prioritize the generation of information and labour migration data through multi-sectoral cooperation and including key indicators related to labour and migration within national surveillance mechanisms.

4.3. POLICY AREA THREE: PROTECTION OF RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES

4.3.1. Policy Statement:

- Aligned to Sustainable Development Goal (SDG) 8 and relevant SADC LM processes, migrant workers domestically and abroad will have equal access to basic human rights and especially labour, social protection and health rights.

4.3.2. Policy challenges:

- a) There is uneven coverage on social security across the sub-region, region, and globally.
- b) Some migrant workers and their families experience challenges in accessing social security benefits from former employers.
- c) Some migrant workers experience a detrimental effect on their safety and health as a result of occupational hazards and working conditions
- d) There is a potential for some job seekers to engage in dangerous or illegal work which lack decent work indicators.
- e) There is a potential for trafficking, smuggling, forced labour and child labour.
- f) Migration in an irregular situation persists into, and from the country.
- g) In practice, most migrants do not enjoy strong protection of labour and human rights within the region.
- h) There are some challenges in regulating private employment agencies, and/ or minimal regulation and enforcement of regulation of private recruitment agencies for work abroad.
- i) There is insufficient evidence on workers' conditions in precarious employment, thereby limiting intervention.

4.3.3 Policy Strategies:

- a) Consider the Ratification of ILO C181 on Private Employment Agencies, and ILO C160 on Labour Statistics.
- b) Monitoring of relevant AU and SADC instruments on migrant workers' health, safety, and rights, such as the SADC Code of Conduct on TB in the Mining Sector.
- c) Labour market organisations are encouraged to champion the protection of rights of migrant workers.
- d) Ensure policy coherence of labour migration across all relevant areas.
- e) Establish sub-regional and bilateral social security agreements.
- f) Establish an involved, participatory initiative, led by government to enable migrant workers and their dependents to access and claim social security benefits, pension schemes, and services.
- g) Establish pre-departure and reintegration programs for potential and returning migrants to include training and, sensitisation workshops.
- h) Engage with labour market organisations and civil society to establish coordinated responses when rights are abused.

4.4. POLICY AREA FOUR: OPTIMIZING MIGRATION FOR NATIONAL DEVELOPMENT

4.4.1. Policy Statement:

- A Whole of Government and Whole of Society Approach, emphasizes the interconnection and coordination of migration at all levels of politics and society which guides this NLMP.
- A properly managed, and mainstreamed labour migration system can have a positive effect on national development indicators in line with the principles outlined in the 2030 Agenda for Sustainable Development.

4.4.2. Policy challenges:

- a) The LMIS consisting of coordination of data production, and analysis for national development is under development.
- b) There is a lack of information and guidance to migrants on their rights and opportunities.
- c) Irregular migration persists into, and from the country.
- d) Migrants, in general, do not enjoy full access to rights in practice.
- e) There are limited institutional arrangements to facilitate remittances, and where available they are expensive.
- f) Regulation on skills development, and skills transfer is in its infancy in the Kingdom.
- g) There is minimal coordination of data on labour migration for national development, within the country and across the region.

4.4.3. Policy strategies:

- a) Revise and establish regulatory frameworks to facilitate and harmonise remittances.
- b) Capacitate the Training and Localisation unit in MoLSS so that it contributes to national development priorities.
- c) Establish a national, regional and international skills data base and inventory.
- d) Establish mechanisms and support systems to train, retain, and transfer skills needed for the domestic, regional and international labour markets.
- e) Establish an efficient system to promote the productive use of remittances for increased developmental impact. This could take the form of a dedicated agency on Remittances within MoLSS.

4.5 POLICY AREA FIVE: HEALTH

4.5.1 Policy statement:

- Safe and equitable access to adequate, holistic health care services for migrants, returnees, and their families, is an integral part for safe, orderly, and regular migration.

4.5.2 Policy Challenges:

- a) Migrant workers are susceptible to working in sectors with high risks of occupational safety and health hazards.
- b) Provision of health care services at home and in host countries is uneven for migrants.
- c) Migrant workers do not undergo medical comprehensive screening, prior to migrating, and upon return preventing assessment of and access to physical and mental health services
- d) Limited retention of critical skills in the health care sector.
- e) Physical health screening at ports of entry is limited, and might not detect dormant diseases, such as malaria, which migrants/visitors potentially carry.

4.5.3 Policy Strategies

- a) Establish an inter-ministerial migrant health help desk to raise awareness on migrant health and provide services to departing and returning migrants.
- b) Continued collaborative involvement in sub-regional, multi-lateral, and NGO networks on universal health care access and services.
- c) Continue collaborating on cross-border labour migration and bi-directional investigations on patient management for migrant workers.
- d) Provide health certificates to migrants screened from their country of origin, and confirmed in the receiving country, and vice versa.
- e) Ensure that the health status of migrant workers is not used as grounds for unfair discrimination for entry, work, etc. either before departure, abroad, or upon return.
- f) Develop a reintegration and wellness plan, which comprehensively addresses the health, mental and social needs of returnees, their families and dependents.
- g) Ensure policy coherence across the health and social sectors to address labour migration issues.

PART V: IMPLEMENTATION ARRANGEMENTS

This final section examines the tools and structures needed to realise an effective NLMP and ensure that it remains updated, enforced and relevant. It is arranged according to the following structure:

- 5.1. Institutional arrangements
- 5.2. Monitoring and enforcement
- 5.3. Resource development and mobilisation
- 5.4. Advocacy and communications
- 5.5. Proposed Action Plan

5.1. INSTITUTIONAL ARRANGEMENTS

The governance and management of labour migration into and from Eswatini requires the expertise, and involvement of several different ministries and their departments. The Ministry of Labour and Social Security as custodian of labour issues will take **the principal role in leading and coordinating activities**, this can be done through the establishment of working committees and the technical task groups to steer the drafting and implementation of the Action Plan.

It is proposed that the General Inspectorate within the MoLSS be the key instrument for directing this NLMP. It will be responsible for steering the policy through to adoption, monitoring its enforcement, reviewing periodically and making recommendations for amendments.

Below is a concise description of key stakeholders and their roles. Only key institutions currently involved in the management of labour migration related activities are cited here. The most relevant departments within ministries are cited between parentheses.

- a) Prime Minister's Office (Human Trafficking Secretariat): Deals with both trafficking from and into Eswatini.
- b) Ministry of Foreign Affairs and International Cooperation (Political Unit, Legal Unit; consulates and high commissions abroad): Deals with political dimensions of labour migration with Eswatini's partners and with social assistance to Eswatini nationals abroad (detention and deportation), manages protocol of bilateral discussions on labour agreements (South Africa).
- c) Ministry of Home Affairs (Refugee Department; Citizenship; Civil Registration; Immigration department): Deals with issuance of work visas to immigrants, refugee registration, access to and loss of Eswatini citizenship, passport issuance for Eswatini nationals.

- d) Ministry of Labour and Social Security (General Inspectorate Unit, Workmen's Compensation Unit, National Employment Services, Social Security, Conciliation, Mediation and Arbitration Commission (CMAC)
- e) Ministry of Health: Regulation of recruitment and qualifications recognition of foreign medical practitioners employed in Eswatini.
- f) Ministry of Education and Training: Identification of skills-in-demand in Eswatini; Coordination of national qualifications framework, including technical and vocational education.
- g) Ministry of Public Service: Human resources development plan.
- h) Ministry of Economy, Planning and Development - (SADC National Coordination Unit) (Central Statistical Office: Responsible for enforcement of Census and Household income surveys and publication of results).
- i) Ministry of Commerce, Industry and Trade
- j) Ministry of Justice (Attorney General's Office)
- k) Ministry of Information, Communication and Technology (Computer Services Department)
- l) Ministry of Finance

In addition, a number of key bilateral and multilateral and sub regional actors include:

- a) Eswatini Business Community (FESBC)
- b) Federation of Eswatini Trade Unions (FESWATU)
- c) The Employment Bureau of Africa (TEBA)
- d) Trade Union Congress of Swaziland (TUCOSWA)
- e) Eswatini Migrant Mineworkers Association (SWAMMIWA)
- f) Southern Africa Coordination Council (SATUCC)
- g) Business Eswatini Employers and Chamber of Commerce (BSE&CC)
- h) Swaziland National Ex-Miners Association (SNEMA).

These must be consulted and included in the Action Plan.

Creation of a LMIS:

The Central Statistical office with Government Computer Services will improve the LMIS that will guide all policy across the Kingdom.

ACTION PLAN:

- a) The NLMP was adopted at the validation meeting of the TWG (July 1-22019).
- b) Upon its adoption the TWG was dissolved
- c) The NLMP will be taken for legal review and Cabinet submission by the MoLSS,
- d) If needed an Interim Committee consisting of members of the TWG with support from international partners will be established within 3 months. The purpose of the Interim Committee is to guide the transitory work needed to ensure full implementation. The Terms of Reference of the Interim Committee includes:
 - i. Developing a roadmap for the realization of a LM unit within MoLSS

- ii. Liaising with key stakeholders listed earlier to develop a strong consultative structure for the LM unit
- iii. Establish a implementation workplan for the LM unit
- iv. Determine budgetary and resource needs for workplan implementation
 - v. Develop a ToR for the LM unit
 - vi. Ensure that the LM unit is established within 8 months.
- e) The final phase is the establishment of a fully staff, resources and functioning LM unit which will guide the implementation policy strategies in this NLMP.

5.2. RESOURCE MOBILISATION

All role players in the implementation of this policy should identify and allocate resources in order to fulfil their role in the policy's implementation action plan. This process requires the following stages:

- Resource mapping within key stakeholders
- Resource mobilisation plan at ministry level to determine allocation of resources
- Coordination of resources in action plan

MoLSS will be the Secretariat of the NLMP and take responsibility of its administrative function.

5.3. MONITORING AND EVALUATION FRAMEWORK AND REPORTING

Timely, accurate and regular monitoring is essential to strong policy processes. Quarterly monitoring of the policy is needed according to agreed upon indicators in terms of progress toward each policy area and objectives. A comprehensive monitoring and reporting plan to the MoLSS should be developed by the task team responsible for implementing the action plan.

This NLMP needs to be reviewed as needed, or at a maximum after every 5 years.

- 5.3.1. Governance: Establish governing body consisting of civil society, government, trade unions reporting to Minister of Labour and SS to ensure proper implementation monitoring and implementation of NLMP.
 - Development of monitoring and implementation action plan.
 - Indicators on monitoring to be developed.
- 5.3.2. LMIS: MoLSS to develop a fully functioning new LM unit or up scale in training and localisation. Development of LMIS and related tools, HR skills –to be done with Ministry of Public Service –
- 5.3.3. Rights: Secretariat consults on Domestication of conventions with the Ministry of Foreign Affairs and International Cooperation

Inspectorate to be enhanced to include migration indicators for compliance. HR, legal and financial resources

5.3.4. Quarterly and yearly reporting

5.3.5. Health access by migrants and migrant workers (indicators to be finalized).

5.4. ADVOCACY AND DISSEMINATION

An effective communication strategy to raise awareness of the NLMP within and outside the Kingdom of Eswatini is needed. A sub-committee tasked with communications and advocacy should be developed with key input from the Ministry of Information, Communications and Technology. Activities to disseminate the policy include:

- Updating all online portals on the content and summary of the NLMP
- Printing posters, media and radio messages on key summaries of the NLMP
- Diaspora and returnee engagement
- Roadshow to highlight the policy
- Information sheets at key embassies and at pre departure and border points.

Building awareness and compliance

SADC level

- Sensitise staff from Eswatini embassies, especially the Labour Attaché in Johannesburg on BLAs and the NLMP through workshops and information bulletins.

Ministerial level:

- Prime Minister: Secretary to Cabinet as head of government: to begin process of buy in from all government. Essential for top down approach
- MoLSS will approach Cabinet with support from IOM
- Ministry of ICT to be involved through social media platform
- Social media influential on overseas recruitment

Community level:

- Engage community leaders on Recruitment agencies
- School leavers who are vulnerable to exploitation should be sensitised life orientation programs on migration
- Organise recruitment fairs: Recruitment agencies visiting communities accompanied by MoLSS,

5.5. IMPLEMENTATION ACTION PLAN

An Action Plan on this NLMP is an integral part of its success; this is summarised below:

A Steering Committee on Implementation chaired by the MoLSS is proposed to lead the implementation of the Action Plan presented below.

Output	Organ responsible	Activity	Timeframe
Policy Area 1: GOVERNANCE	MoLSS with Min of Foreign Affairs	<p>Review all ratified and non-ratified international instruments</p> <p>Establish workplan toward ratification</p> <p>Ensure reporting of all ratified conventions in up to date</p> <p>Review all BLAs</p> <p>Establish mechanism to revise or enter into new BLAs based on need</p>	1-6
Policy Area 2: LABOUR MIGRATION INFORMATION SYSTEM	MoLSS with Home Affairs and Statistics	<p>Address labour migration data shortcomings through enhanced data collection, analysis and availability</p> <p>Review all survey instruments</p> <p>Create central repository of</p>	Months 7-10

		migration data in Statistics	
Policy Area 3: PROTECTION OF RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES	MoLSS with CSO's	Strengthen labour inspection at workplaces to ensure compliance Union engagement plan Diaspora engagement strategy	Months 7-15
Policy Area 4: OPTIMIZING MIGRATION FOR NATIONAL DEVELOPMENT	MoLSS with Business	Conduct a Skills audit Review remittance channels review migration management mechanisms establish best practices for migration and development outcomes and localise these	Months 7-22
Policy Area 5: HEALTH	Health with CSO's	Establish health desk for migrants	Months 5-12
Communications strategy	TBD	Establish task team and ToR for communications and dissemination strategy	Months 6 -9
Monitoring and Reporting Plan	Interim Committee	Establish task team and ToR for M & R strategy	Month 8-9

Annexure A

Table 3. Ratification of international human rights, labour, anti-trafficking and SADC labour migration instruments by Eswatini, 1st March 2018.

Treaty, convention or protocol	Eswatini's position	Year of ratification and Monitoring mechanism
UN Treaties		
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	✓	1969 - Committee on the Elimination of Racial Discrimination (CERD)
International Covenant on Civil and Political Rights (ICCPR)	✓	2004 - Human Rights Committee (HRC)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	✓	2004 - Committee on Economic, Social and Cultural Rights (CESCR)
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	✓	2004 - Committee on Elimination of Racial Discrimination Against Women (CEDAW)
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	✓	2004 - Committee Against Torture (CAT)
Convention on the Rights of the Child (CRC) and optional protocols	✓	2004 and 2012 (protocols) - Committee on the Right of the Child
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)	×	Committee on Migrant Workers
ILO Conventions		

C029 - Forced Labour Convention, 1930 (No. 29)	✓	1978 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	✓	1978 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	✓	1978 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C100 - Equal Remuneration Convention, 1951 (No. 100)	✓	1981 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	✓	1979 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	✓	1981 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C138 - Minimum Age Convention, 1973 (No. 138)	✓	2002 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	✓	2002 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C081 - Labour Inspection Convention, 1947 (No. 81)	✓	1981 - ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)
C097 - Migration for Employment Convention (Revised), 1949 (No. 97)	×	
C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	×	

C157 - Maintenance of Social Security Rights Convention, 1982 (No. 157) ×		
C181 - Private Employment Agencies Convention, 1997 (No. 181) ×		
C189 - Domestic Workers Convention, 2011 (No.189) ×		
UNODC Protocols		
United Nations Convention against Transnational Organized Crime	✓	2012 - Division for Treaty Affairs (DTA), Organized Crime and Illicit Trafficking Branch (OCB), Human Trafficking and Migrant Smuggling Section (HTMSS) of UNODC
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	✓	
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	✓	
SADC instruments		
Protocol on the Facilitation of Movement of Persons (2005)	✓	2005 - SADC Organ on Politics, Defence and Security
Protocol on Employment and Labour (2014)	×	SADC Employment and Labour Sector

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