

Ewatini Labour Migration Review

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FOREWORD

The Southern Africa Migration Management (SAMM) project represents a collaborative effort embodying the ONE-UN approach, uniting the expertise and resources of four prominent UN development and/or humanitarian agencies: the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), and the United Nations High Commissioner for Refugees (UNHCR).

The SAMM project is dedicated to improve labour and mixed migration management in the Southern Africa and Indian Ocean region. By focusing on South-South migration flows, the project aims to uncover and enhance the positive spillover effects of international migration on regional integration and economic development (e.g. recognising the positive contribution of migrant workers to economic growth).

The SAMM project first produced a Labour Migration Stocktaking Report for the SADC region. Labour Migration Reviews (LMRs) are complementary tools aimed to enhance the capacity of Ministries of Labour, Employers' and Workers' Organizations to engage in tripartite dialogue and influence evidence-based policy formulation and implementation for fair labour migration governance. LMRs include information on at least, seven key labour migration thematic areas:

1. Gender-responsive labour migration policies and/or strategies;
2. International labour standards and national legislation on the protection of migrant workers, as well as advocacy on the contribution of migrant workers to development;
3. Bilateral labour migration agreements (BLMAs) across the region and with third countries;
4. Fair recruitment and decent employment for migrant workers including regulatory legislation on Private Employment Agencies (PEAs), and strengthening of Public Employment Services (PES);
5. Social Security Portability of Benefits for migrant workers through the SADC Guidelines on the Portability of Social Security Benefits;
6. Skills mobility (skills anticipation, skills profiling, skills matching, skills transfer and recognition of qualifications of migrant workers), as well as support to the SADC Qualifications Framework;
7. Labour migration statistics (indicators, module, inclusion in labour market information systems, etc).

The ILO believes that this publication will provide valuable insights and contribute significantly to the ongoing efforts to improve labour migration governance effectively in the SADC and IOC region. We extend our gratitude to all partners and stakeholders for their unwavering support and commitment to this crucial endeavour.

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1 INTRODUCTION

In 2019, the Government of Eswatini released its first National Labour Migration Policy (NLMP) with a far-reaching agenda for aligning national policy with international norms and principles of the governance of labour migration. In order to assess the policy and legislative changes that would be necessary to ensure full implementation, this review focuses on the existing migration governance framework developed over several decades of labour and other forms of migration to the country. The NLMP also emphasizes that policy changes are contingent on the availability of current and reliable data and information on migration streams to and from the country. To that end, this review is also designed to facilitate the development of evidence-based policies.

2 NATIONAL LABOUR MIGRATION POLICY (NLMP)

Eswatini has a National Labour Migration Policy that was adopted and validated in July 2019 and a Draft Implementation Plan that was prepared and finalized in March 2020. The NLMP provides an overview of the appropriate international and regional instruments and frameworks that are applicable to the management of labour migration and confirms the commitment of the Government of Eswatini to give effect to its international obligations in terms of these instruments and frameworks.

The NLMP sets out the following objectives for the country:

- To effectively regulate labour migration, ensuring safe, orderly and regularized immigration and emigration for work.
- To develop a Policy that is aligned with national, regional, continental, and international standards and frameworks.
- To enhance the welfare of migrants, 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.
- To enhance opportunities for productive employment and skills development, retention, and transfer for all Emaswati.
- To facilitate engagement with the diaspora, including effective management of remittances, and to actively manage the return and reintegration of migrants returning home.
- To have well-functioning, up-to-date and reliable information systems on labour migration that support policy and programmes.
- To establish technical and administrative cooperation across ministries and with social partners such as worker associations, unions, businesses, and other relevant stakeholders.

- 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.

The NLMP identifies five main policy areas that need to be addressed, and for each policy area, it sets out a clear statement of intent:

Policy Area One: Governance

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.

Policy Area Two: Labour Migration Information and Analysis Systems (LMIAS)

- 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 an LMIAS
- An efficient LMIAS includes the ability to have access to, interpret and disseminate evidence as needed.

Policy Area Three: Rights and Protection

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

Policy Area Four: Migration and Development

- The NLMP is guided by a Whole of Government and Whole of Society Approach which emphasize the interconnection and coordination of migration at all levels of politics and society.
- 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.

Policy Area Five: Health

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

The accompanying Action Plan of the NLMP sets out the key outcomes, timelines, and designated authorities/stakeholders responsible for the implementation of specific activities to achieve the objectives of the NLMP.

3 MIGRATION DATA

The main data sources for migration to Eswatini include the following:

- Eswatini Labour Force Survey 2021 available at ILOSTAT
- Central Statistical Office, Population and Housing Census 2017: Volume 3 (CSO, 2019)
- UNICEF Migration and Displacement Country Profile (MCDP) (UNICEF, 2021)
- UN DESA Migrant Stock by Origin and Destination 2019 Update

4 MIGRANT POPULATION

4.1 Migration Trends

UN DESA migrant stock data provides the total number of foreign-born migrants in Eswatini since 1990. The data shows that there was a sharp decline in international migrant stock between 1990 and 1995 (Table 1). The UN DESA estimates suggest a reduction of more than 50 percent of migrant stock between 1990 and 1995, from almost 75,000 in 1990 to around 35,000 in 1995. The decline was mainly due to the end of the civil war in Mozambique and the repatriation of Mozambiquan refugees from the country in the early 1990s (Simelane & Crush, 2004). However, since 1995, the stock appears to have remained relatively stable at 30-35,000.

The table also suggests most of the foreign-born population in Eswatini originates from SADC countries. Though the trend line shows a slight decrease since mid-1990s, the share of SADC migrants remains significantly higher than that of migrants from other regions. However, the 2017 Census recorded a total of only 22,546 migrants in the country which is considerably lower than the UN DESA estimates in 2015 and 2019. Because the Census estimates are likely to be more accurate, we rely on these numbers rather than UN DESA in this report.

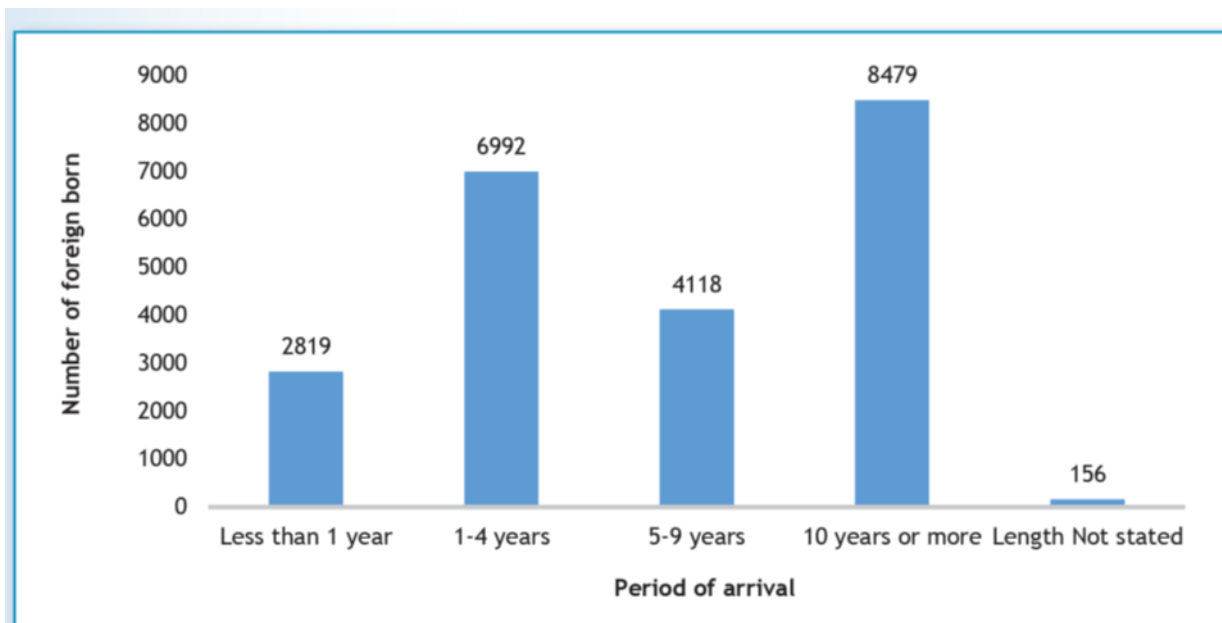
Table 1- Migrant Trends in Eswatini, 1990-2019

	Total Migrants	SADC Migrants	% SADC Migrants
1990	74,991	67,508	90.0
1995	35,157	27,680	78.7
2000	34,084	25,972	76.2
2005	33,392	24,461	73.3
2010	32,637	23,821	73.0
2015	32,352	23,331	72.1
2019	32,310	23,394	72.4

Source: Compiled from UN DESA (2019)

Figure 1 from the 2017 Census (CSO, 2019) shows that more than half of the country's migrants had been in Eswatini for five or more years, and over one third had been there for 10 years or more. This suggests that there are two types of migrants – temporary migrants with less than 5 years residence and permanent or semi-permanent migrants who have settled in the country.

Figure 1 - Length of Residence of Migrants in Swaziland, 2017



Source: CSO (2019: 40)

4.2 Migrant Origins

Most of the migrants in Eswatini recorded in the 2017 Census were from neighbouring Mozambique (37%) and South Africa (25%). Another 22% were from other African countries, and 9% from Asia. Smaller numbers were from Europe, North America, Lesotho, and Botswana (Table 2).

Table 2 - Countries and Regions of Migrant Origin, 2017

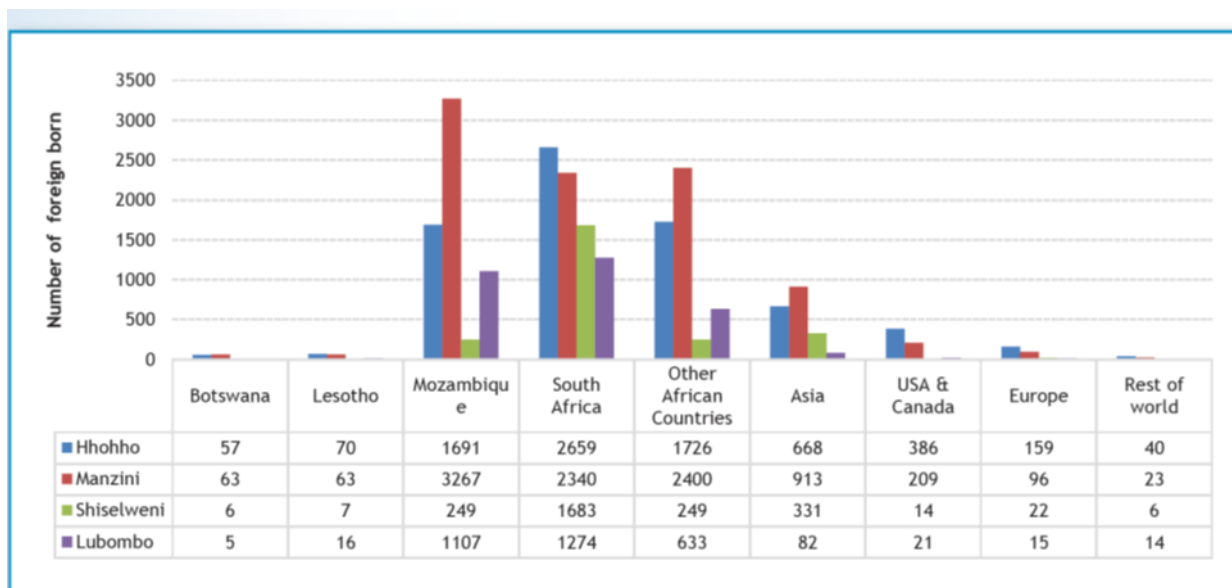
	No of SADC Country Migrants	% of Total Migrants
South Africa	7,981	35.3
Mozambique	6,351	28.0
Lesotho	156	0.7
Botswana	131	0.6
Other Africa	5,030	22.2
Asia	2,004	8.8
Europe	633	2.8

America and Canada	293	1.3
Other	83	0.4
Total	22,546	100.0

Source: CSO (2019: 39)

The majority of migrants in Eswatini are located in the central Hhohho and Manzini districts of the country (Figure 1).

Figure 1: Origins of foreign-born migrants and residential location in Eswatini



4.3 Age and Sex Distribution of Migrant Population

Table 3 from the 2017 Census shows that 55% of migrants were male and 45% were female. However, the sex breakdown varied considerably from country to country. For example, Mozambican migrants were predominantly male (73%) while South African migrants were 60% female and only 40% male.

Table 3 - Sex Distribution of Migrant Population by Origin, 2017

Country of Birth	Male	Percent	Female	Percent	Total	Percent
Botswana	53	0.4	78	0.8	131	0.6
Lesotho	35	0.3	121	1.2	156	0.7
Mozambique	4639	37.2	1675	16.6	6351	28.0
South Africa	3158	25.3	4798	47.5	7981	35.3
Other African	2770	22.2	2238	22.2	5030	22.2
Asia	1252	10.0	742	7.3	2004	8.8
Europe	370	3.0	260	2.6	633	2.8
America and Canada	145	1.2	147	1.5	293	1.3
Rest of the World	44	0.4	39	0.4	83	0.4
Total	12466	55.2	10098	44.8	22564	100

Source: CSO (2019: 39)

Table 4 shows the age and sex breakdown of the total migrant population. The sex ratio breakdown discrepancy is greatest in the working age population between 25 and 49, where males are predominant.

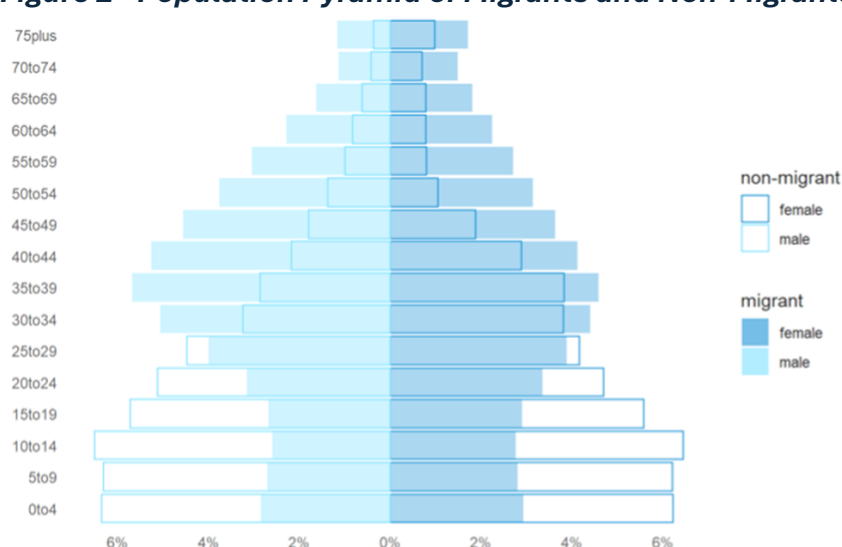
Table 4 - Age and Sex Breakdown of Migrant Population, 2017

Age Group	Male	Female	Total	Sex Ratio
0-4	830	839	1669	98.9
5-9	746	700	1446	106.6
10-14	563	553	1116	101.8
15-19	672	571	1243	117.7
20-24	788	613	1401	128.5
25-29	1078	745	1823	144.7
30-34	1284	984	2268	130.5
35-39	1433	923	2356	155.3
40-44	1248	767	2015	162.7
45-49	1045	681	1726	153.5
50-54	791	603	1394	131.2
55-59	623	496	1119	125.6
60-64	481	439	920	109.6
65+	840	1144	1984	73.4
Not Stated	44	40	84	110.0
Total	12466	10098	22564	123.5

Source: CSO (2019: 39)

Figure 2 from UNICEF (2021) compares the sex and age profile of the migrant and non-migrant populations of Eswatini. While the non-migrant population is generally very youthful, the migrant population (both male and female) is dominated by working-age adults.

Figure 2 - Population Pyramid of Migrants and Non-Migrants

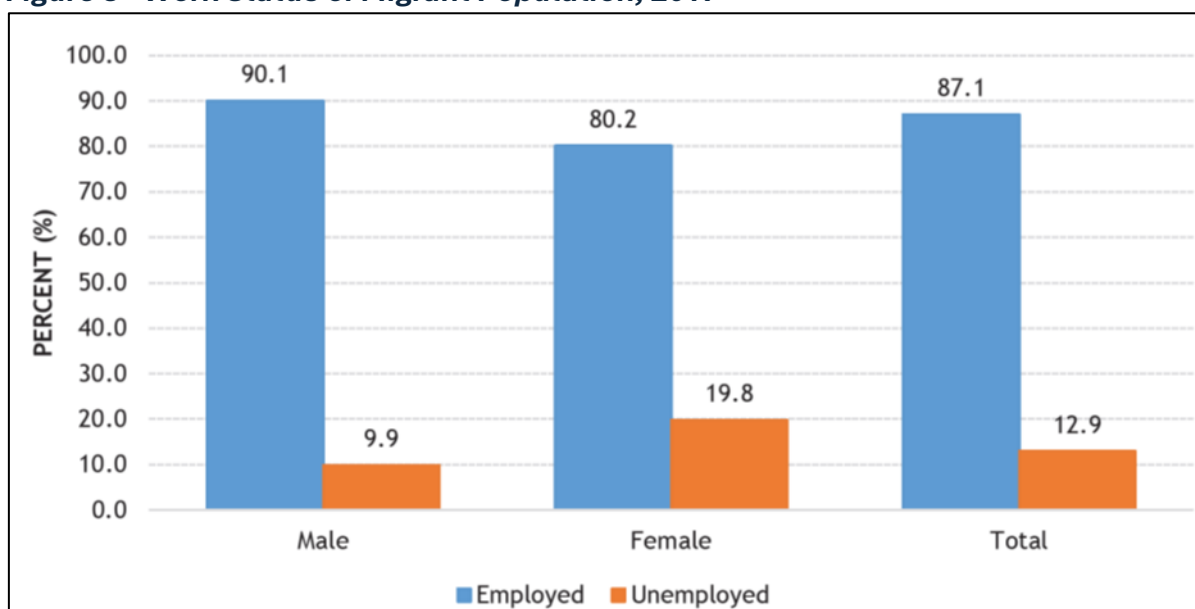


Source: UNICEF (2021)

5 MIGRANT EMPLOYMENT

Figure 3 shows the formal work status of the migrant population in Eswatini. Nearly 90% of migrants are employed, with the remainder too young to work. Employment is higher for males (90%) than females (80%), possibly because the latter includes accompanied spouses who are ineligible to work.

Figure 3 - Work Status of Migrant Population, 2017



Source: CSO (2019: 41)

Migrants in Swaziland are a mix of those with secondary and post-secondary educational qualifications. As Table 5 shows, 17% had completed primary school, another 29% had completed secondary school and 27% had a post secondary qualification. The educational qualifications of the remaining 25% were unknown.

Table 5 - Educational Level of Migrant Population, 2017

Educational Level	Male	Female	Total
Primary certificate	17.4	16.5	17.0
Junior certificate	9.5	9.7	9.6
O level/GCSE	18.3	16.7	17.6
A level certificate/IB	1.2	1.4	1.3
Certificate	1.8	1.9	1.8
Diploma	9.4	10.8	10.0
Bachelor Degree	11.5	10.9	11.2
Master Degree	5.0	3.4	4.3
PhD Degree	1.0	0.4	0.8
Not stated	24.9	28.3	26.4

Source: CSO (2019: 41)

ILOSTAT provides data on the working-age migrant population employed in 2021 by country of origin (Table 4). According to this data, the working age population was 14,100 and the employed population was only 7,100. The data is sourced from the Labour Force Survey 2021 and paints a different picture to the 2017 Census which found that most migrants were working. The reason for the discrepancy may be because the LFS only records formal employment while the Census includes both formal and informal work. Notably, 70% of working age males are formally employed, compared with only 29% of working age females. The apparent discrepancy with Figure 3 for females could also indicate that most working females are informally employed or self-employed.

Table 6 also shows that Mozambicans are the largest group of both working age and employed adults in Eswatini, followed by South Africa and Zimbabwe. As many as 65% of male Mozambicans are formally employed, compared to only 30% of females. In the case of South Africans, the ratio is 57% of males and 14% of females. There is greater gender equity in the case of Zimbabweans: 50% of males and 57% of females.

Table 6 - Migrant Working Age and Employed Population, 2021

Country of origin	Working age population			Employed population		
	Male	Female	Total	Male	Female	Total
Mozambique	4,600	2,700	7,300	3,000	800	3,800
South Africa	700	2,100	2,800	400	300	700
Zimbabwe	600	700	1,300	300	400	700
India	500	200	700	500	0	500
Zambia	100	100	200	0	100	100
Other	1,000	800	1,800	1,000	300	1,300
Total	7,500	6,600	14,100	5,200	1,900	7,100

Source: ILOSTAT

Table 7 from the 2017 Census provides an occupational breakdown of migrants in formal employment by sex. Migrants in elementary occupations make up only 18% of the total in employment. High-skilled managers and professionals combined make up 36% of the total. The next most significant category is services and sales workers (at almost 20% of the total). While female migrants make up only 27% of the total, and a clear minority in most occupational categories, they are better represented as professionals (at 43%).

Table 7 - Occupations of Migrants by Sex, 2017

Main Occupation category	Sex				Total	%
	Male	%	Female	%		
Total	6613	72.5	2510	27.5	9123	100
Managers	502	7.6	217	8.6	719	7.9
Professionals	1391	21.0	1053	42.0	2444	26.8
Technicians and associate professionals	486	7.3	97	3.9	583	6.4
Clerical support workers	132	2.0	65	2.6	197	2.2
Service and sales workers	1367	20.7	439	17.5	1806	19.8
Skilled Agricultural, Forestry and Fishery workers	364	5.5	63	2.5	427	4.7
Craft and Related Trades Workers	829	12.5	157	6.3	986	10.8
Plant and Machine operators and assemblers	318	4.8	19	0.8	337	3.7
Elementary occupations	1224	18.5	400	15.9	1624	17.8

CSO (2019: 42)

The 2017 Census also provides insights into the dominant employment sectors of migrants. As Table 8 shows, migrants are employed in most sectors of the economy with 'other' service activities being most common (22%), followed by construction (12%), health and education (both 9%), and manufacturing (6%). The biggest gender differences are in construction (16% of males and only 1% of females), education (7% of males and 16% of females) and health (7% of males and 17% of females).

Table 8 - Economic Sectors of Migrant Employment

Main Industry	Sex				Total	%
	Male	%	Female	%		
Total	6610	72.5	2510	27.5	9120	100
Agriculture, forestry and fishing	635	9.6	114	4.5	749	8.2
Mining and quarrying	28	0.4	6	0.2	34	0.4
Manufacturing	432	6.5	179	7.1	611	6.7
Electricity, gas, steam and air conditioning supply	153	2.3	7	0.3	160	1.8
Water supply, sewerage, waste management and remediation activities	40	0.6	10	0.4	50	0.5
Construction	1075	16.3	35	1.4	1110	12.2
Wholesale and retail trade; repair of motor vehicles and motorcycles	519	7.9	73	2.9	592	6.5
Transportation and storage	110	1.7	21	0.8	131	1.4
Accommodation and food service activities	162	2.5	140	5.6	302	3.3
Information and communication	172	2.6	59	2.4	231	2.5
Financial and insurance activities	115	1.7	102	4.1	217	2.4
Real estate activities	40	0.6	14	0.6	54	0.6
Professional, scientific and technical activities	200	3.0	79	3.1	279	3.1
Administration and support service activities	122	1.8	78	3.1	200	2.2
Public administration and defence; compulsory social security	78	1.2	26	1.0	104	1.1
Education	441	6.7	406	16.2	847	9.3
Human health and social work activities	439	6.6	420	16.7	859	9.4
Arts, entertainment and recreation	165	2.5	56	2.2	221	2.4
Other service activities	1478	22.4	549	21.9	2027	22.2
Activities of households as employers; undifferentiated goods-and services-	173	2.6	123	4.9	296	3.2
Activities of extraterritorial organizations and bodies	33	0.5	13	0.5	46	0.5

CSO (2019)

6 LABOUR MARKET POLICIES AND LEGISLATION

6.1 Eswatini Constitution, 2005 ¹

Chapter 3 of the Eswatini Constitution of 2005 sets out the Protection and Promotion of Fundamental Rights and Freedoms. Article 14, Clause 3 provides for the following:

A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the

¹ https://www.constituteproject.org/constitution/Swaziland_2005.pdf?lang=en

individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

Further articles of specific relevance to labour migration and migrant workers include the following:

- 17. Protection from slavery and forced labour
- 18. Protection from inhuman or degrading treatment
- 20. Equality before the law
- 24. Protection of freedom of expression
- 25. Protection of freedom of assembly and association
- 26. Protection of freedom of movement
- 32. Rights of workers
 - 1. A person has the right to practise a profession and to carry on any lawful occupation, trade or business.
 - 2. A worker has a right to –
 - a. freely forms, join or not to join a trade union for the promotion and protection of the economic interests of that worker; and
 - b. collective bargaining and representation.
 - 3. The employer of a female worker shall accord that worker protection before and after childbirth in accordance with law.
 - 4. Parliament shall enact laws to –
 - a. provides for the right of persons to work under satisfactory, safe and healthy conditions;
 - b. ensures equal payment for equal work without discrimination;
 - c. ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays; and
 - d. protects employees from victimisation and unfair dismissal or treatment.

All of the clauses in Chapter 3 of the Constitution refer to the rights of ‘persons’. There are no rights that explicitly apply to citizens only. This is consistent with Article 20 (Equality before the Law), as well as Clause 3 of Article 14. The assumption is that migrant workers are equally protected by the Constitution of Eswatini, although in practice, it is possible that certain rights of migrant workers can be limited.

6.2 Industrial Relations Act, 2000 ²

The Industrial Relations Act of 2000 provides for the collective negotiation of terms and conditions of employment and for the provision of dispute resolution mechanisms and

² https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_174704.pdf

for matters incidental thereto. The Act establishes the various labour market institutions (discussed below) and the purpose and objective of the Act is set out as follows:

- (a) promote harmonious industrial relations;
- (b) promote fairness and equity in labour relations;
- (c) promote freedom of association and expression in labour relations;
- (d) provide mechanisms and procedures for speedy resolution of conflicts in labour relations;
- (e) protect the right to collective bargaining;
- (f) provide a healthy and legally sound environment for the creation of smart partnerships between the government, labour and capital;
- (g) promote and create employment and investment;
- (h) stimulate economic growth, development and competitiveness;
- (i) stimulate a self-regulatory system of industrial and labour relations and self-governance;
- (j) ensure adherence to international labour standards; and
- (k) provide a friendly environment for both small and big business development.

6.3 Employment Act, 1980 ³

The Employment Act of 1980 consolidates the law in relation to employment and introduces new provisions designed to improve the status of employees in Eswatini.

The Act provides for the establishment of a Labour Commissioner and Labour Inspectors and a Labour Advisory Board, and covers the following:

- Contracts and termination of contracts of employment
- Protection of wages
- Registration of employers
- Foreign contracts of employment
- Recruiting
- Employment services
- Holidays and sick leave
- Forced labour

6.4 Immigration Act, 1982 ⁴

Under the Immigration Act of 1982, any person who is not a citizen of Eswatini, or exempted by the immigration regulations, may not engage in any form employment

³

<http://www.rodra.co.za/images/countries/eswatini/legislation/Eswatini%20Employment%20Act%20of%201980.pdf>

⁴ <https://www.gov.sz/images/home-affairs/immigration%20act,%201982.pdf>

without being authorized to do so by being issued with a work permit. All foreign nationals who have been offered employment or wish to work in Eswatini must apply for a work permit from their country of origin or residence and must await the outcome of their application in their country of residence prior to entering the country. Prospective employees are strictly prohibited from engaging in any work without obtaining a valid work permit. If the employee engages in work without the necessary documentation it is regarded as an offence and the individual can be declared undesirable.

7 LABOUR MARKET INSTITUTIONS

7.1 Labour Advisory Board

The Labour Advisory Board was established by the Industrial Relations Act no.1 of 2000 as amended section 23 to advise the Minister upon any matter affecting employment and labour referred to the Board by the Minister and without prejudice to the generality of this requirement. These matters include proposals for:

- any new legislation to employment;
- amendments to Employment Act no.5 1980 as amended or any other law relating to employment;
- proposed action in regard to agenda items or texts to be discussed by the International Labour Conference;
- the submission of International Labour Conventions or Recommendations to the Government;
- questions arising out of reports submitted under Article 22 of the Constitution of the International Labour Organisation;
- the denunciation of ratified International Labour Conventions.

7.2 Conciliation, Mediation and Arbitration Commission

The Conciliation, Mediation and Arbitration Commission is primarily responsible for the resolution of all labour disputes. The disputes are initially referred for conciliation or mediation, to try and resolve the matter amicably. If the parties fail to resolve the matter, the dispute is referred to arbitration. Either of the parties to the dispute can refuse arbitration and bring the case to the Industrial Court, which can also order arbitration.

7.3 Labour Commissioner and Labour Inspectors

Labour Inspectors take periodic inspections of places of employment as directed by the Labour Commissioner:

- to ensure that all laws relating to conditions of employment and the protection of employees in their occupations are being fully applied;
- where necessary providing information and advice as to the means of complying with such laws, including a time limit by which such compliance shall be effective;
- bring to the notice of the Labour Commissioner any difficulty or abuse relating to employment which is not covered by existing laws;
- investigate matters pertaining to child labour, make studies and collect data relating to employment as may be required by the Labour Commissioner.
- Conciliate, advice employers and employees about the National Labour laws of the country
- Ensure equal pay for equal job whether female or male and non-discrimination on nationality
- Ensure that all employees are provided with protective clothing, that statutory deductions take place and also ensuring that all workmen is covered under the Workmen Insurance Policy Scheme

In addition, labours inspector may require an employer to provide any information requested by them as to the wages, hours of work or other conditions of employment of persons employed by that employer, carry out any examination, test or enquiry considered necessary in order to ensure that all legal provisions relating to employment are being complied with.

7.4 Industrial Court

The Industrial Court has exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of an application, claim or complaint or infringement of any of the provisions of the Employment Act, the Workmen's Compensation Act, or any other legislation which extends jurisdiction to the Court, or in respect of any matter which may arise at common law between an employer and employee in the course of employment or between an employer or employers' association and a trade union, or staff association or between an employees' association, a trade union, a staff association, a federation and a member thereof. In the exercise of its powers under this, the Court shall take into consideration any guidelines relating to wage and salary levels and other terms and conditions of employment that may from time to time be prevailing in Government and other related or relevant industries or enterprises.

8 RATIFICATION OF INTERNATIONAL INSTRUMENTS

Eswatini has ratified 33 ILO Conventions, of which 26 are in force.⁵ With regard to fundamental rights covering all workers in the country, including migrant workers (regardless of migration status), the following Conventions have been ratified:

	Convention No	Title	Date of Ratification
Fundamental Conventions	C029	Forced Labour Convention, 1930 (No. 29)	26 Apr 1978
	C087	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	26 Apr 1978
	C098	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	26 Apr 1978
	C100	Equal Remuneration Convention, 1951 (No. 100)	05 Jun 1981
	C105	Abolition of Forced Labour Convention, 1957 (No. 105)	28 Feb 1979
	C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	05 Jun 1981
	C138	Minimum Age Convention, 1973 (No. 138)	23 Oct 2002
	C182	Worst Forms of Child Labour Convention, 1999 (No. 182)	23 Oct 2002
Governance Conventions	C81	Labour Inspection Convention, 1947 (No. 81)	05 Jun 1981
	C144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	05 Jun 1981
Technical Conventions	C97	Migration for Employment Convention (Revised), 1949 (No. 97)	22 Mar 1965

Eswatini has not ratified the following ILO conventions that are specifically related to labour migration or of particular significance in terms of the recruitment and employment of migrant workers:

⁵ A full list of conventions ratified by Eswatini is available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103336

- Migration for Employment Convention (Revised), 1949 (No. 97)
- Employment Policy Convention, 1964 (No. 122)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (No. 189)
- Violence and Harassment Convention, 2019 (No. 190)

Eswatini has also not ratified the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶

9 BILATERAL LABOUR MIGRATION AGREEMENTS

Eswatini has a Joint Bilateral Commission for Cooperation (JBCC) with South Africa that was established in 2004 and that meets annually.⁷ In relation to labour migration, the JBCC has the objective to facilitate the movement of people, goods, and services between the two countries by ensuring user-friendly border posts. Eswatini also has an MOU/BLA with South Africa that governs:

- the movement of persons across the borders;
- the establishment of an office for a Swaziland Government Labour representative in South Africa; and
- regulations for the repatriation of former migrants (Labour Attache) (outdated and is due for renewal)

However, the JBCC has expired, and the two countries will soon meet to start negotiating on the renewal of the JBCC which then will give the country an opportunity to incorporate issues that were left out in the previous agreements to include issues of portability of social security benefits

No information on possible BLAs between Eswatini and other countries is available.

10 FAIR RECRUITMENT OF MIGRANT WORKERS

The country has provided employment to over 46, 000 foreign nationals (expatriates), mainly on Class A permits (over 31, 000 entry permits). Class A permits are where a qualified foreign national is offered employment by an employer and whose engagement is considered to be of benefit to Eswatini. (Statistics are according to the draft Migration Profile, 2022)

⁶ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=167&Lang=EN

⁷ Southern African Trade Union Coordinating Council (SATUCC), *Developing a Cohesive and Transformative Labour Migration Policy Framework for SADC*. Regional Research on Migration Report (2017).

The Eswatini NLMP does not address the issue of fair recruitment directly, yet the implementation addresses it under policy Area 4 on migration and development. However, the Employment Act of 1980 has three sections that are of relevance:

- Part VII – Registration of Employers
- Part VIII – Foreign Contracts of Employment
- Part IX – Recruiting: The section on Foreign Contracts of Employment regulates the following:
 - Details pertaining to employment contracts
 - Medical examination of employees (to confirm the employee is capable of performing the employment referred to in the contract)
 - Termination of contract
 - Transport, welfare and repatriation of employees
- The provisions of Part IX on recruiting are as follows:
 - (1) No public officer shall, either directly or indirectly, recruit any person for employment.
 - (2) No chief shall —
 - (a) perform the functions of a labour or recruiting assistant;
 - (b) exercise any pressure upon any person to enter into a foreign contract of employment;
 - (c) receive from any source any remuneration or inducement for assistance in recruiting.
 - (3) No person shall recruit another person under the age of eighteen years.
- Licensing of labour agents.
 - (1) No person shall perform the functions of a labour agent in Swaziland unless he is the holder of a labour agent's licence issued in the approved form by the Labour Commissioner.
 - (2) The following provisions shall apply to labour agent's licences —
 - (a) no licence will be valid for a longer period than twelve months and in any event will expire on the thirty first day of December in the year in which the licence was issued; and
 - (b) licences will not be transferable between one person and another.

EMPLOYMENT BILL, 2022 ON PRIVATE EMPLOYMENT SERVICES.

- Part XVI of the Act: Foreign Contracts of Employment: Recruitment and Regulation of Labour Agents.
- Part XVII: Public and Private Employment Services (*PES*). Contract of employment made within Eswatini and to be performed substantially outside Eswatini. S69
 - Contract shall be attested by attesting officer
 - Particulars of employment.
 - Name of Employer or group of Employers

- Origin of employee (address and identification)
- Nature and duration of employment
- Rate of wages and method of calculating such wages
- Conditions of repatriation
- If any advances given to the employee and the manner of repayment thereof.
- Medical examination of employee
- Employer must produce to the attesting officer a certificate, signed by the medical practitioner, satisfying sound state of health and physically capable of performing the work.
- Termination of contract
- Effluxion of time
- Death of employee
- Transport and welfare of employee
- Employer or agent shall at his own expenses provide transport and repatriation cost.

PES must apply for authorisation to operate from the Labour Commissioner. Commissioner may review the application and authorise or decline to issue authorisation to operate. Decision by the Commissioner is appealable to the Minister responsible for Labour. Minister's decision is final.

PES's are liable for inspections

PES's to keep records and registers

11 SKILLS RECOGNITION OF MIGRANT WORKERS

The Eswatini Qualifications Framework (ESQF) ⁸ was adopted in 2020 to address various challenges in the Education, Training and Skills Development System, as follows:

- low responsiveness to industry and labour market needs,
- fragmentation within the sector,
- poor credibility and quality of existing qualifications and training programmes and lack of opportunities for lifelong learning.

The ESQF supports development of education and training, comparable and compatible qualifications, transparency of qualifications, and facilitates mobility and progression of learners.

The ESQF does not address the issue related to the recognition of skills and qualifications of migrant workers directly, but it does note that the structure of the

⁸ <http://www.shec.org.sz/wp-content/uploads/2021/08/Eswatini-Qualifications-Framework-ESQF.pdf>

ESQF has been benchmarked against other international and regional structures such as the SADCQF and the Commonwealth of Learning Transnational Qualifications Framework (TQF).

12 SOCIAL PROTECTION OF MIGRANT WORKERS

In 2020, Eswatini published a Voluntary Review Report on the status of implementation of the Global Compact for Migration.⁹ In this report, the following are noted:

- Access to basic services is coordinated and facilitated through public service delivery provided by Government Ministries and non-governmental organizations, thereby bringing basic services closer to the people at local government level and help mitigate migration causes.
- The Government is partnering with neighbouring countries to ensure that migrants have equal access to health services through the Ministry of Health. This contributes to the reduction of their vulnerabilities, particularly of women and children.
- The country has established clinics along the border to ensure that truck drivers and sex workers have access to Sexual and Reproductive programmes to prevent STI infection.
- The country adheres to the non-discriminatory nature of health services to all, including all migrants, regardless of their migratory status. The Motto being “health for all,” Universal Health Coverage (UHC) for all living in Eswatini.
- There are existing health agreements with neighbouring countries. The SADC health protocol assures continuity of health care in a harmonized and standardized manner: HIV and TB protocols with both neighbours are being used.
- Eswatini has implemented the Sexual Reproductive Health (SRH) 'knows no borders' Project targeting migrants to ensure their access to healthcare services. This project was supported by IOM and Save the Children (which protects vulnerable members of society, sex workers, migrants at borders and others). These services include non-medical interventions to improve lives of emigrants.
- Eswatini promotes and advocates for the principle of equality and non-discrimination as provided in Section 20 of the Constitution which states that all persons are equal before and under the law in all spheres of political, economic, social, and cultural life and in every other respect and shall enjoy equal protection of the law.

⁹ <https://migrationnetwork.un.org/system/files/docs/Eswatini%20-%20Voluntary%20GCM%20Review.pdf>

REFERENCES

Central Statistical Office (CSO) (2019). Census Report 2017 (Mbabane: CSO).

Dlamini, G. (2022). “Dualism’s Dilemmas: Citizenship and Migration in Contemporary eSwatini” *Journal of Contemporary African Studies* (online).

ILOSTAT Statistics on Migrant Workers. At: <https://ilostat ilo.org/topics/labour-migration/>

Kingdom of Eswatini (2022). Voluntary Review Report on the Status of implementation of the Global Compact for Migration in Eswatini. At: <https://migrationnetwork.un.org/system/files/docs/Eswatini%20-%20Voluntary%20GCM%20Review.pdf>

Ministry of Home Affairs Eswatini. Immigration. At: <https://www.gov.sz/index.php/ministries-departments/ministry-of-home-affairs/issuance-of-passports>

Simelane, H. and Crush, J. (2011). *Swaziland Moves: Perceptions and Patterns of Modern Migration* (Cape Town: SAMP).

UNICEF (2021). Migration and Displacement Country Profile (MCDP): Eswatini. At: <https://data.unicef.org/resources/migration-and-displacement-country-profiles-mdcp/>



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