

# South Africa 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 the Southern African region, South Africa has long been a country of destination for migrant workers, dating back to the discovery of diamonds and gold in the nineteenth century. During the apartheid period, a two gates policy was introduced for labour migration (Crush and Iturralde, 2022). The first gate was immigration of skilled and semi-skilled white workers and their families from Europe). The second gate was the notorious temporary migrant labour system that brought unaccompanied black contract workers from the region to work on the South African mines and in commercial agriculture. This system of recruitment in the mining sector was governed by Bilateral Labour Agreements between South Africa and the main countries of origin, including Botswana, Eswatini, Lesotho, Malawi and Mozambique.

After 1994, the South African Government began to close both gates. The racist white immigration policy was abandoned and the numbers of contract migrants from other countries has declined as the Government encouraged the companies to hire locally. The collapse of apartheid, the decline of mine recruiting, and the lack of job opportunities in other countries have led to a significant increase in women and men workers migrating regularly and irregularly to South Africa from all other SADC Member States. Work permits are generally denied to semi-skilled and low skilled labour migrants and their South African employers, so irregular migration and employment has grown in both the formal and informal economy. Since 1990, South Africa has deported over 1.5 million irregular migrants, mainly to neighbouring countries such as Zimbabwe, Mozambique and Lesotho.

Immigration policy reform is currently in a state of flux. In 2017, the Department of Home Affairs published a new development-oriented White Paper on International Migration with a strong skills-based emphasis and regional approach to immigration management.<sup>1</sup> Despite Cabinet approval, the White Paper was never implemented for reasons that remain unclear but may be related to the resignation of the Minister in 2018. It was effectively overtaken by a new White Paper published in April 2024 by his successor which the government framed as a “complete overhaul” of immigration, refugee, and citizenship legislation.<sup>2</sup> The 2024 White Paper focuses primarily on refugees and the purported “abuse” of the refugee system by irregular economic migrants and effectively abandons most of the 2017 framework.

In May 2025, the Department of Employment and Labour published its first White Paper on a National Migration Labour Migration Policy.<sup>3</sup> This White Paper makes no reference to the 2024 Home Affairs White Paper claiming, in effect, to be consistent with the framework in the 2017 White Paper. The new Democratic Alliance Minister of Home Affairs in the Government of National Unity (GNU) has publicly stated that the 2024 White Paper will be revisited for its alignment with the GNU’s priorities on economic growth and referred to a forthcoming Supplementary White Paper which may align more closely with the proposed National Labour

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<sup>1</sup> Republic of South Africa, *White Paper on International Migration to South Africa*. Government Gazette No. 750 of 2017, Department of Home Affairs, July 2017.

<sup>2</sup> Republic of South Africa, *White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa*. Government Notice No. 4745, Department of Home Affairs, April 2024.

<sup>3</sup> Republic of South Africa, *White Paper on National Labour Migration Policy for South Africa*. Government Notice 3234 of 2025, Department of Employment and Labour, May 2025.

Migration Policy framework. In this Review, we summarize all three White Papers to show the differences in their approach and recommendations.

## 2.LABOUR MIGRATION TRENDS AND DYNAMICS

### 2.1 MIGRATION DATA SOURCES

The main data sources for labour migration to South Africa include the following:

- UN DESA Migrant Stock Country Profile
- UN DESA Migrant Stock by Origin and Destination 2019 Update
- UNDESA Migrant Stock by Age and Sex
- Statistics South Africa, *Labour Market Outcomes of Migrant Populations in South Africa, 2012 and 2017* (Pretoria 2020).
- Statistics South Africa (2017). *Documented Immigrants in South Africa 2015* (Pretoria).
- Statistics South Africa (2024). *Migration Profile for South Africa: A Country Profile 2023* (Pretoria).
- Statistics South Africa (2025). *Report on Migration Statistics Based on Various Data Sources Including Census 2022* (Pretoria).

### 2.2 MIGRANT STOCK

According to the South African Census, the total number of foreign-born international migrants in South Africa increased from around 835,000 in 1996 to 1,025,000 in 2010 and 2,200,000 in 2011 (Table 1). The rate of increase was much lower between 2011 and 2022: declining from 11.3% per annum to 1.1% per annum. The proportion of migrants in the total population increased from 2.1% in 1996 to 4.2% in 2011, and then declined to 3.9% in 2019. However, the share of the employed population continued to increase from 6.0% in 2001 to 7.7% in 2011 and 8.9% in 2022. The proportion of females in the migrant stock has risen slightly since 2001 to 42% in 2022. The median age of migrants has remained steady for the last decade. Interestingly, the proportion of foreign-born migrants who are South African citizens has remained relatively stable for the last two decades, while the proportion of non-citizens has risen dramatically from 43% in 2001 to 77% in 2022.

**Table 1: Migrant Stock in South Africa 2001-2022**

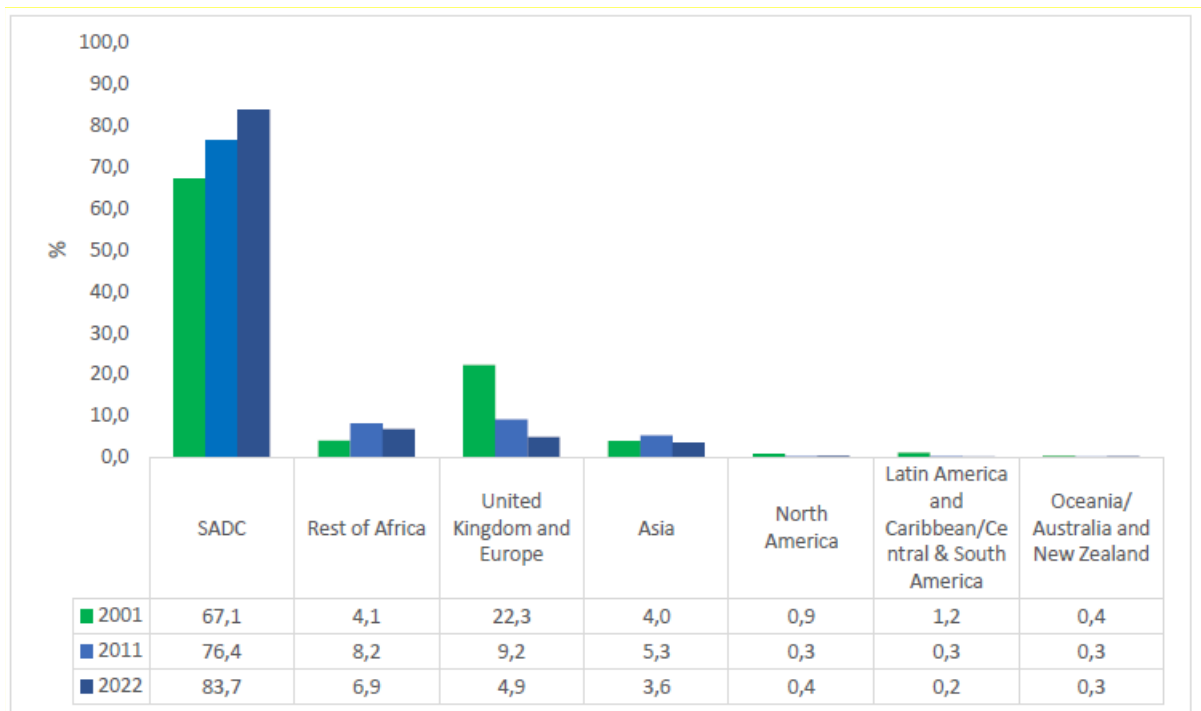
	1996	2001	2011	2022
Migrant Stock	835,216	1,025,074	2,184,408	2,418, 408
Share of population (%)	2.1	2.3	4.2	3.9
Females %	38.0	40.5	39.8	42.2
Median Age		33.7	36.2	36.4
Citizens		585,435	582,904	529,542
Non-Citizens		439,642	1,541,942	1,828,375
Non-Citizens %		42.9	72.6	77.5
Employed		871,165	1,251,477	1,396,826
Share of employed (%)		6.0	7.7	8.9

Source: Compiled from Stats SA (2024)

## 2.3 COUNTRIES OF MIGRANT ORIGIN

Figure 1 shows that 84% of migrants in South Africa are from other SADC countries, up from 67% in 2001. The proportion from other major regions including the Rest of Africa, Europe and Asia fell between 2011 and 2022 which suggests that the country is no longer as popular a global destination as it was in the early 2000s, which is unsurprising given the level of xenophobic violence and the high rate of unemployment. Three neighbouring SADC countries dominate the inward flow of migrants: Zimbabwe (45%), Mozambique (19%), and Lesotho (10%), with smaller numbers from Malawi, Namibia, Zambia, Eswatini, and Botswana (Figure 2, Table 2). In sum, migration to South Africa has become increasingly regionalized over time.

**Figure 1: Migrants in South Africa by Region of Birth, 2001-2022**



Source: Statistics South Africa (2024: 25)

**Table 2: Top 20 Source Countries of Migrants in South Africa, 2022**

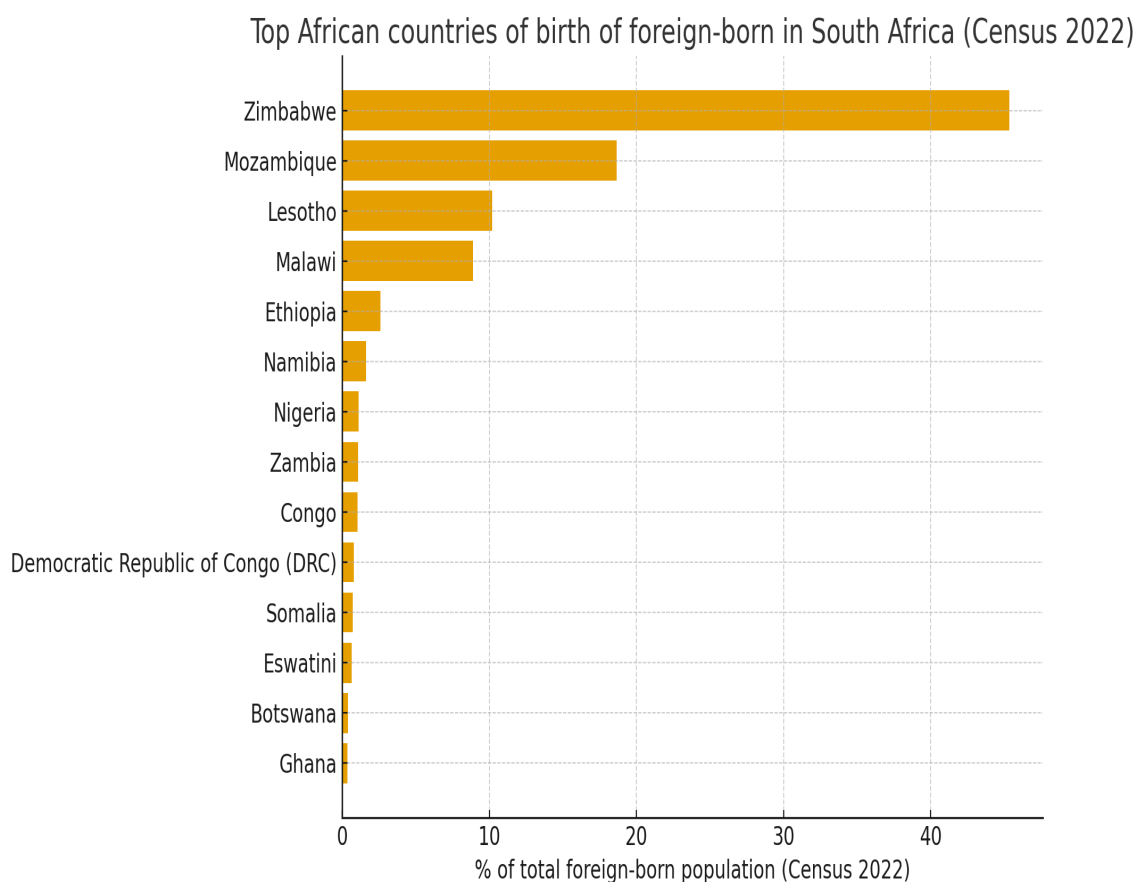
Country of birth	Number (Census 2022)	% of total foreign-born
Zimbabwe	1,012,059	45.4
Mozambique	416,564	18.7
Lesotho	227,770	10.2
Malawi	198,807	8.9
United Kingdom	61,282	2.8
Ethiopia	58,131	2.6



Namibia	36,140	1.6
India	27,350	1.2
Nigeria	24,718	1.1
Zambia	24,625	1.1
Congo	23,328	1.1
Bangladesh	20,894	0.9
Democratic Republic of Congo	17,635	0.8
Somalia	15,838	0.7
Pakistan	15,006	0.7
Eswatini	14,624	0.7
Germany	12,139	0.5
Botswana	8,976	0.4
Ghana	8,038	0.4
Portugal	7,615	0.3

Source: Statistics South Africa (2024)

**Figure 2: Top African Source Countries of Migrants in South Africa, 2022**



Source: Compiled from Census 2022 data



Outside the SADC Region, the main African source countries are Ethiopia, Congo, Somalia, and Ghana. Kenya. The main Asian sources include India, Bangladesh, and Pakistan. From Europe the most important countries include the UK, Germany, and Portugal.

Included in these figures are 150,000 registered refugees and asylum-seeker permit holders. As Table 3 shows, most come from a limited number of countries especially DRC, Somalia, and Ethiopia. There are also a number of particularly Asian countries with very few accepted refugees but larger numbers of asylum-seekers.

**Table 3: Refugees and Asylum-Seekers in South Africa, 2024**

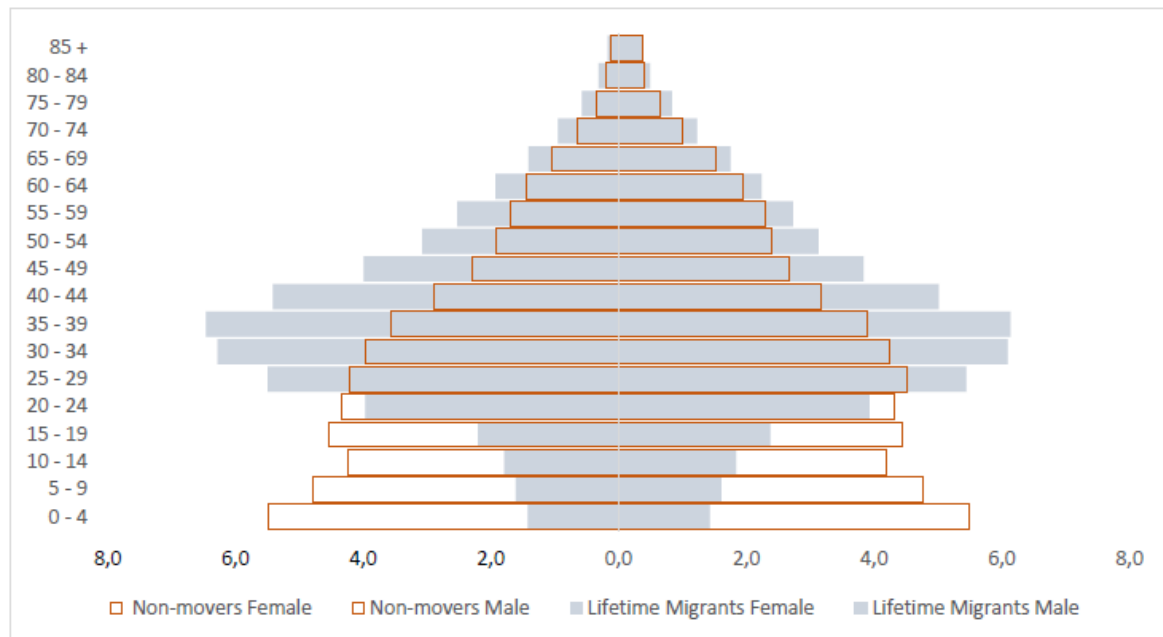
	Refugees (Section 24)	Asylum-Seekers (Section 22)	Totals
DRC	18,929	24,049	42,978
Somalia	17,900	4,369	22,269
Ethiopia	13,512	30,514	44,026
Zimbabwe	3,375	3,363	6,738
Congo	3,487	3,631	7,118
Eritrea	1,022	843	1,865
Burundi	2,334	5,459	7,793
Rwanda	712	822	1,534
Uganda	402	1,907	2,309
Bangladesh	158	8,238	8,396
Nigeria	8	1,467	1,475
Pakistan	7	2,792	2,799
India	4	1,544	1,544
Other	799	3,669	4,468
<b>TOTAL</b>	<b>62,649</b>	<b>92,657</b>	<b>150,848</b>

Source: Parliamentary Monitoring Group (PMG)

## 2.4 AGE AND SEX BREAKDOWN

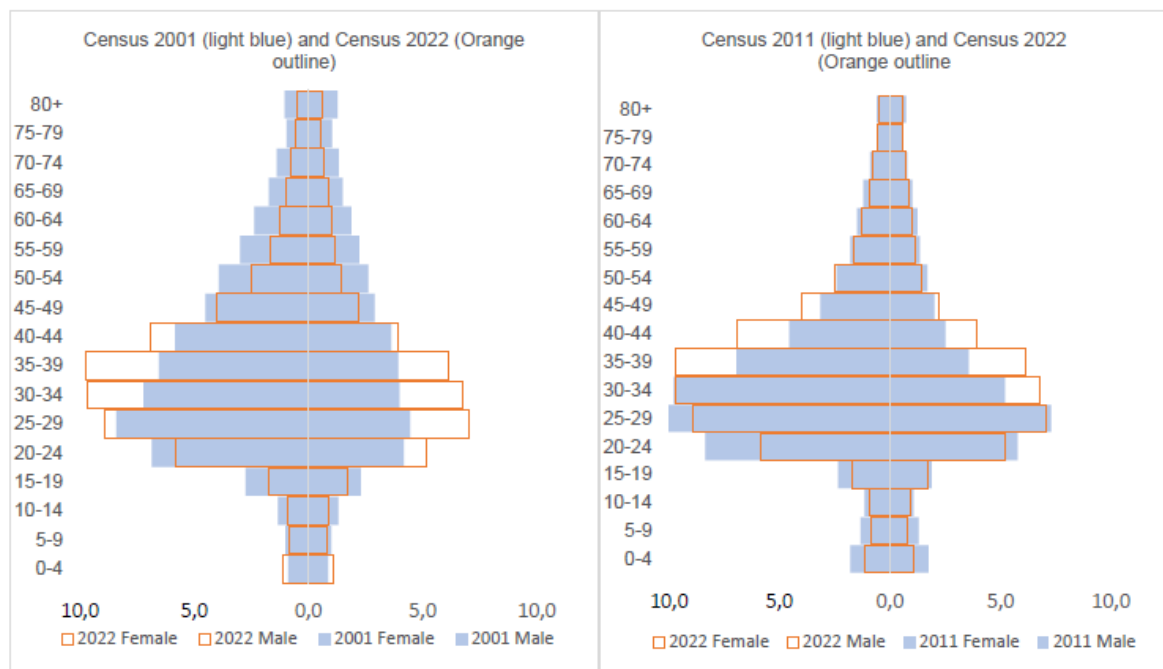
Figure 3 compares the age and sex breakdown of the South African and migrant populations. The South African population (in orange) is relatively youthful with a significant proportion of the population under the age of 20 and a declining proportion for each subsequent age group. By contrast, the population pyramid shows that the migrant population (in grey) is dominated by men and women in their prime working age years from 25 to 45. The share of youth and children is much smaller, and relatively minor compared to their South African counterparts. Figure 4 shows that the age profile of the migrant population has also shifted over time. A comparison of the age profile at the three different of 2001, 2011, and 2022 shows a decline in the share of older migrants and youth and children, and a concomitant increased share of working-age migrants. These differences between the migrant and South African age profile, and the shifts over time in the age profile of the migrant population, are observable for both male and female migrants.

**Figure 3: Age and Sex Distribution of the South African and Migrant Population, 2022**



Source: Statistics South Africa (2025: 42).

**Figure 4: Age and Sex Distribution of the Migrant Population, 2001-2022**



Source: Statistics South Africa (2024: 22)

Table 4 from UN DESA (2019c) estimates the number of migrants in South Africa from every other SADC country by sex. In total, 57% of migrants are male and 43% female. However, there is considerable variation from country to country of origin. First, there is a group of countries which are clearly male-dominated – these include Malawi (79% male, 21% female),

Zimbabwe (70% and 30%), Botswana (60% and 40%) and Mozambique (54% and 46%). Second, there are a number of countries which are female-dominated, including the Seychelles (36% and 64%), the DRC (37% and 63%), Zambia (45% and 55%), and Namibia (46% and 54%). Third, there are countries where the male to female ratio is more balanced including Angola, Eswatini, and Lesotho.

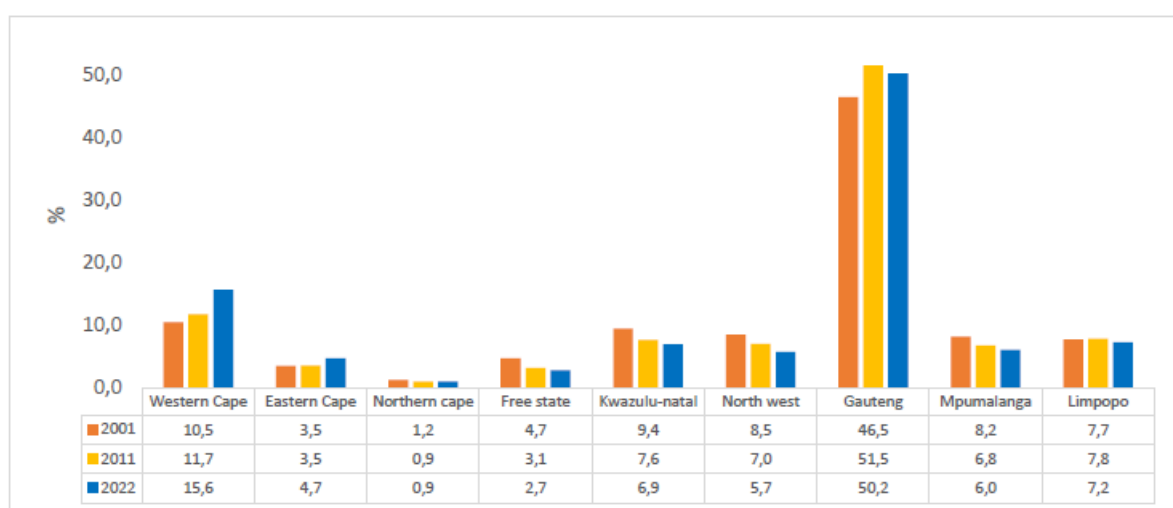
**Table 3: SADC Origin Countries of Migrants in South Africa, 2019**

	% Male	%Female
Zimbabwe	69.6	30.4
Mozambique	54.2	45.8
Lesotho	51.8	48.2
Namibia	46.4	53.6
Malawi	78.6	21.4
Zambia	44.6	55.4
Eswatini	53.0	47.0
Botswana	60.5	39.5
Angola	49.3	50.7
DRC	37.4	62.6
Mauritius	48.6	51.4
Seychelles	36.1	63.9
Madagascar	39.3	60.7
Comoros	86.5	13.5
Total	57.3	42.7

Source: Compiled from UN DESA data

Given the heavy concentration of migrants of working-age, we might expect migrants to be concentrated geographically in the provinces where employment opportunities are greatest. Figure 5 clearly shows the dominance of Gauteng, the industrial heartland of South Africa, as a migrant destination. In 2022, Gauteng had 50% of the migrant population with the Western Cape a distant second at 16%. However, the Western Cape is attracting more migrants and has experienced growth from 10% to 16% of all migrants between 2001 and 2022.

**Figure 5: Provincial Distribution of Migrant Population, 2000-2022**



Source: Statistics South Africa (2024: 24)

## 2.5 LABOUR MIGRATION DATA

Table 4 provides a breakdown of the working age male and female migrant population for the ages 21 to 60. The ratio of working age men to women is highest between the ages of 31 and 50 (at 61%). However, age and sex distribution of males and females between the different age categories is relatively similar with two-thirds of both groups aged between 21 and 40.

**Table 4: Working Age Migrant Stock in South Africa, 2019**

Age Group	% Male	Male Age Group Distribution	% Female	Female Age Group Distribution
21-30	56.7	28.4	43.3	31.3
31-40	61.0	38.4	39.0	35.5
41-50	61.0	22.6	39.0	20.9
51-60	55.8	10.6	44.2	12.3

Source: UN DESA (2019c)

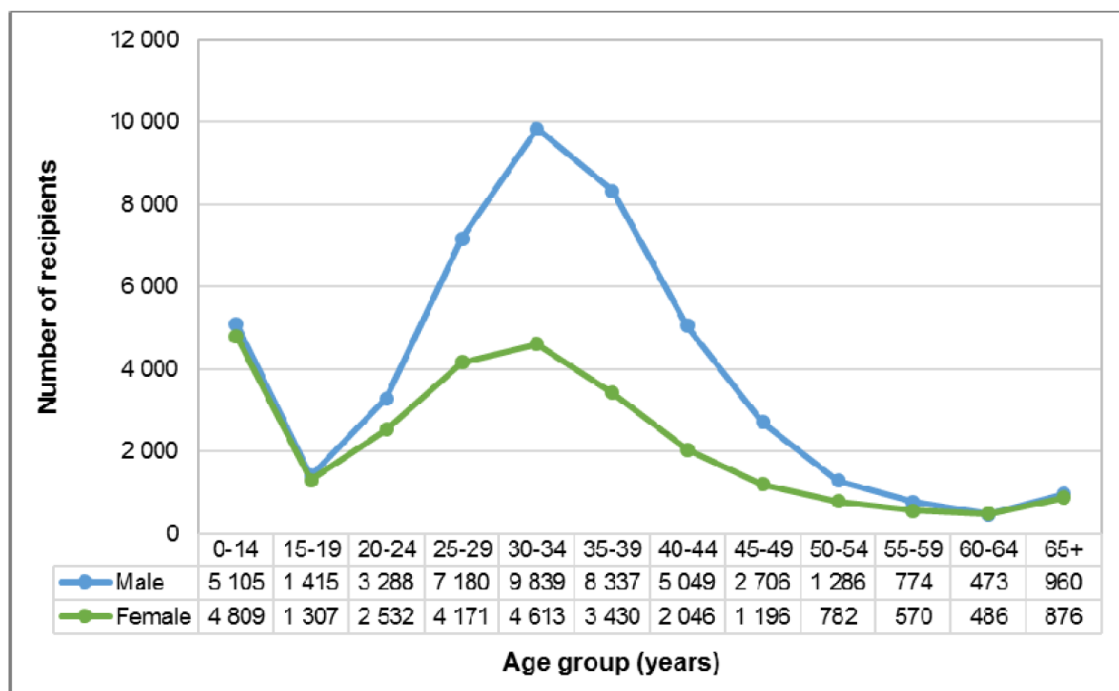
Although the Department of Home Affairs has not released any data since 2015, the only indicative legal work-related permit data available is the 192,000 temporary residence permits issued between 2011 and 2015 (Table 4) (Statistics South Africa, 2017). Of these, 108,000 were for employment. Figure 5 shows the age and sex distribution of all temporary permit holders and there is a clear bias towards those of working age with those in the 30-40 age range predominant for both males and females.

**Table 4: Temporary Residence Permits Issued by Type of Permit in South Africa, 2011-2015**

Permit Type	No.
Study	76,299
Work	108,491
Business	7,750
Total	192,540

Source: Statistics South Africa (2017)

**Figure 5: Age Distribution of Temporary Residence Permit Holders in South Africa**

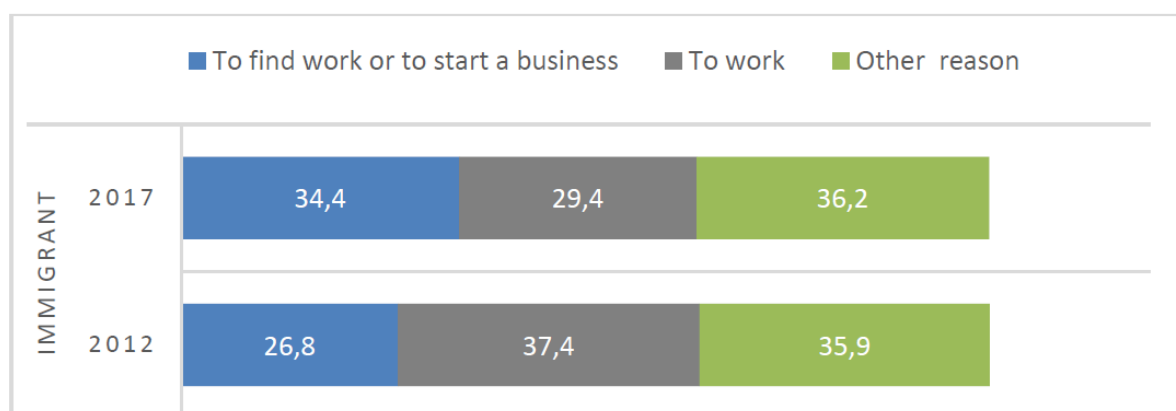


Source: Statistics South Africa (2017)

At that time, Zimbabwe was the most important source for work permits (21%), followed by India (15%), Nigeria (14%), and China (10%). In total, work permits were issued to migrants from 20 countries including 10 in Africa, 5 in Asia and 5 in Europe. Work permits were issued to migrants from only four SADC countries (Zimbabwe, DRC, Malawi, and Angola).

Figure 6 data from two separate Labour Force Surveys show the main reasons given by labour migrants for moving to South Africa. In both years, the proportion of migrants finding work, starting a business, or coming to work was similar at just over 60%, although the proportion of those looking for work or starting a business increased from 27% in 2012 to 34% in 2017.

**Figure 6: Main Reason for Migrating to South Africa, 2012 and 2017**

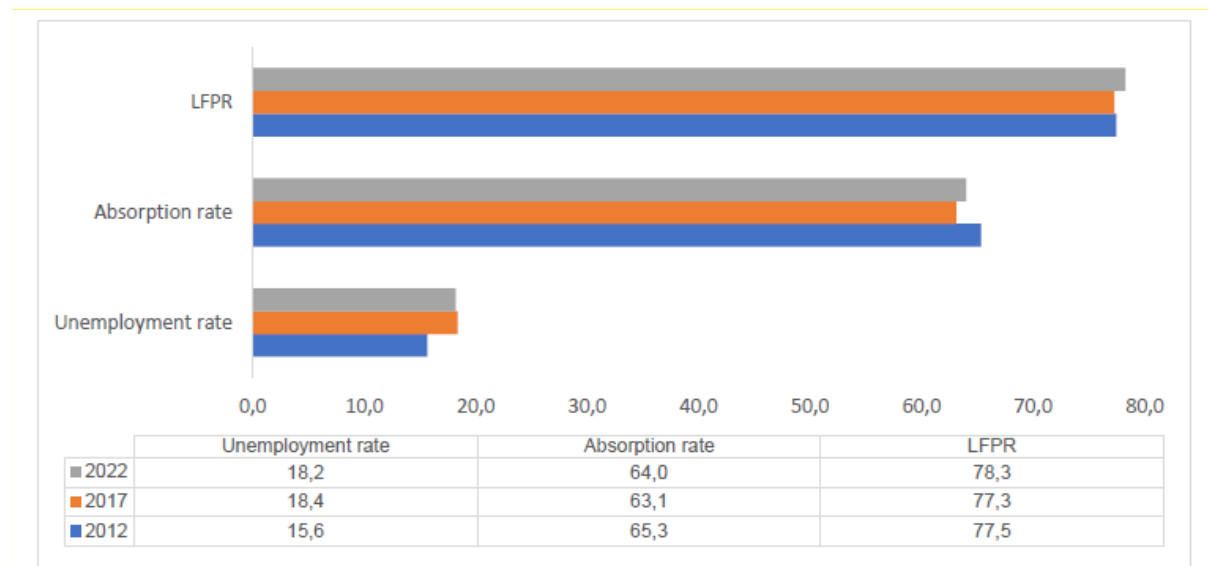


Source: Statistics South Africa (2020: vii)

## 2.6 MIGRANT EMPLOYMENT

Figure 7 compares the migrant labour force participation rate (LFPR), absorption rate, and unemployment rate in 2012, 2017, and 2022. The LFPR has remained relatively constant at around 78%, as has the absorption rate at about 64%. Unemployment rose by a couple of percentage points between 2012 and 2017 to 18% which, despite the intervening COVID-19 pandemic, was virtually the same in 2022.

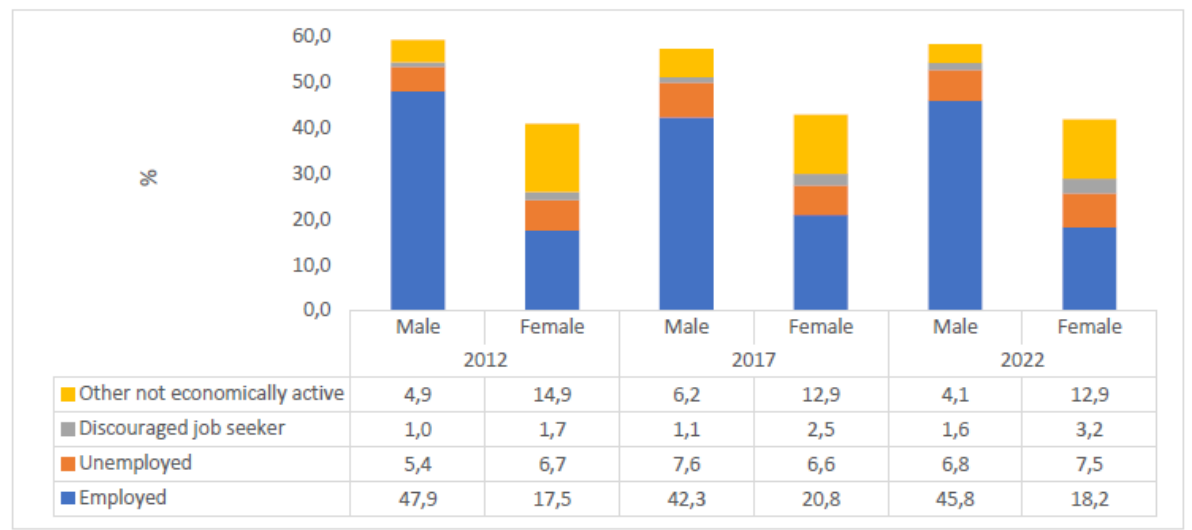
**Figure 7: Migrant Employment Rates, 2012-2022**



Source: Statistics South Africa (2024: 32)

Figure 8 shows the percentage distribution of migrants by labour market status and sex. Between 2012 and 2022, migrant employment in South Africa remained strongly gendered, with men consistently more likely to be employed than women (46% vs. 18% in 2022), even after adjusting for their relative numbers. Women face higher unemployment, greater discouragement, and higher rates of non-economic inactivity. Female unemployment rose from 6.7% to 7.5% over the period, compared to an increase from 5.4% to 6.8% for men, and the share of discouraged job seekers grew more among women (3.2% vs. 1.6% in 2022). Women were also three times more likely than men to be classified as “not economically active,” reflecting barriers such as childcare responsibilities, exclusion from formal labor markets, and limited access to work permits. These patterns reveal persistent structural disadvantages that constrain the participation of female migrants in the South African labour market.

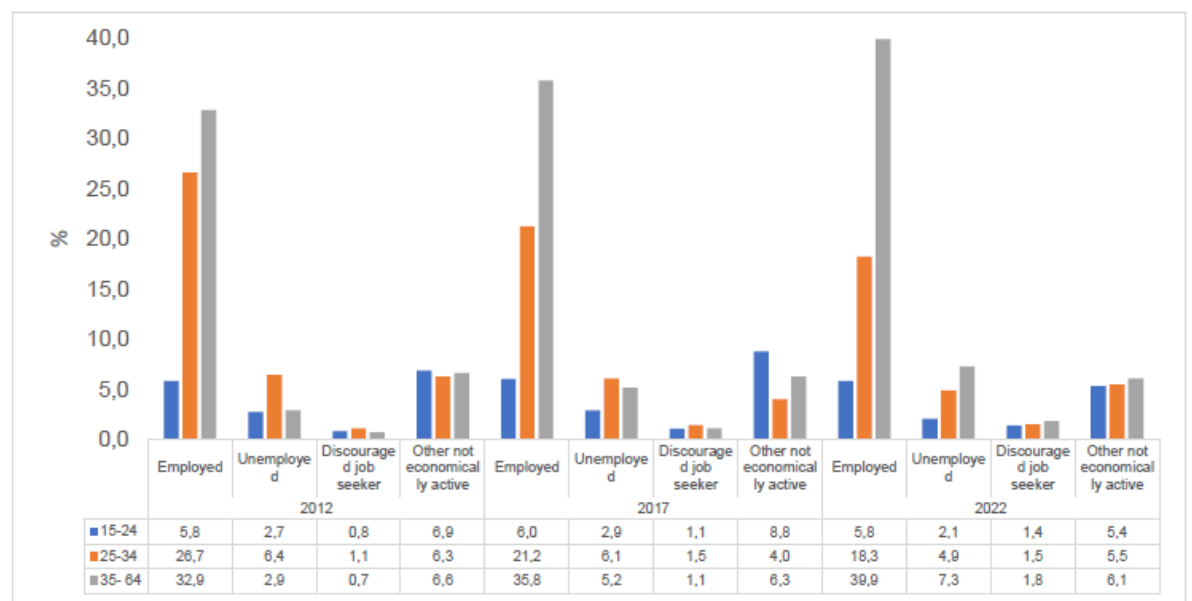
**Figure 8: Migrant Employment and Unemployment by Sex, 2012-2022**



Source: Statistics South Africa (2024: 28)

Between 2012 and 2022, migrant employment in South Africa was heavily age-structured, with older migrants (35–64) dominating the workforce and steadily increasing their share of employment from 32.9% to 39.9%, while younger cohorts lagged (Figure 8). Migrants aged 25–34 saw their share of employment fall sharply from 26.7% to 18.3%, even as unemployment among them declined. Youth (15–24) remained the smallest employed group but showed modest gains from 5.8% to 8.8%. Older migrants experienced rising unemployment (2.9% to 7.3%) pointing to growing age-related vulnerabilities to employment in lower-skilled manual jobs. Overall, the trends reveal persistent challenges for both ends of the age spectrum with migrant youth struggling to enter the labour market and older migrants facing declining job opportunities.

**Figure 9: Distribution of Migrants by Age and Labour Market Status, 2012-2022**

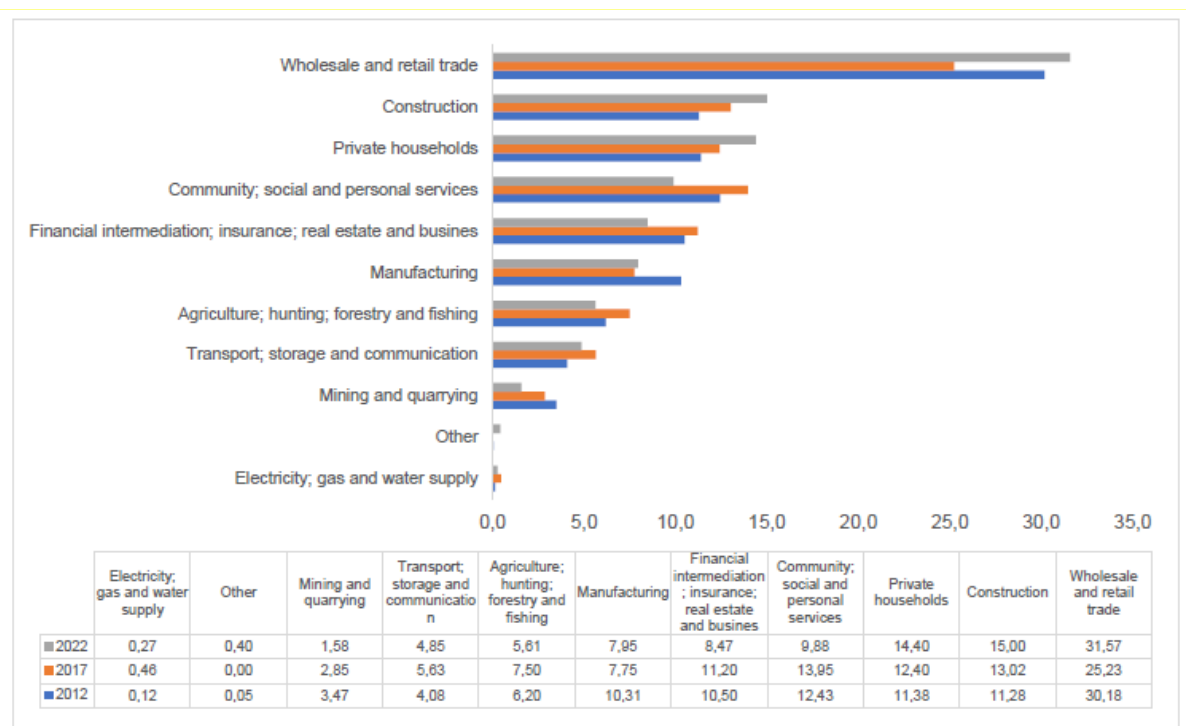


Source: Statistics South Africa (2024: 29)



Figure 10 shows the sectoral distribution of migrant employment in South Africa between 2012 and 2022, and which industries absorb the largest shares of migrant labour. Informal is the largest employer of migrants, rising from 30% in 2012 to 32% in 2022. **Construction** also plays a major role, although its share declined from 25% in 2012 to 16% in 2022, reflecting a slowdown in the sector. Domestic work in private households absorbed a growing share, increasing from 11% in 2012 to 14% in 2022. **Services** peaked at 11% in 2017 but declined to 8% in 2022. Manufacturing also declined from 10% in 2012 to 8% in 2022. Thus, migrants remain clustered in a narrow set of sectors, leaving them vulnerable to sector-specific downturns. The informal trade sector consolidated its dominance, while construction's decline indicates reduced opportunities in traditional migrant employment. Domestic work has become more important for migrant women, reflecting gendered labour market segmentation.

**Figure 10 Distribution of Migrants by Employment Sector, 2012-2022**



Source: Statistics South Africa (2024: 30)

Table 5 does not support the claim that migrants are completely displacing South Africans in the labour market as claimed by some. South African-born workers remain the clear majority in every major sector, above 90% in mining, electricity/water, community services, finance/business, transport, and manufacturing, and even in migrant niches like domestic work (18% migrants) and construction (17%). South African workers still hold most jobs. What the table shows instead is occupational segmentation with migrants clustering in a few lower-wage, labour-intensive roles. The intensifying campaign to stop migrants from opening and running informal businesses because they are putting South Africans out of business is also not supported by this data. In this sector, 86% of the participants are South Africans and only 14% are migrants.

**Table 5: Sectoral Distribution of SA-Born and Migrant Workers, 2022**

	SA-Born (%)	Migrants (%)
Electricity; gas and water supply	96.7	3.3
Community; social and personal services	96.4	3.6
Finance; insurance; real estate and business services	94.9	5.1
Mining and quarrying	94.6	5.4
Manufacturing	93.0	7.0
Transport; storage and communication	92.6	7.4
Agriculture; hunting; forestry and fishing	91.1	8.9
Wholesale and retail trade	86.4	13.6
Construction	82.8	17.2
Private households	81.6	18.4

Source: Statistics South Africa (2024: 31)

Table 6 provides an occupational profile of the migrant workforce in 2012 and 2017. In both years, the proportion of migrants in skilled occupations was around 30% although the actual number employed increased from 267,000 to 357,000. There were also significant increases in semi-skilled and low skilled numbers, while the proportion of the latter increased from 21% to 26%. Contrary to popular perceptions that all migrants are low-skilled, this is a significant finding. Increases in the informal economy are also noteworthy, especially in domestic service.

**Table 6: Employment Profile of Migrants in South Africa, 2012 and 2017**

Employment	2012 No.	2012 %	2017 No.	2017 %
<b>Skilled</b>				
Senior Managers and Officials	105,848	12.0	140,134	11.0
Technical and Associate Professionals	60,813	6.9	66,635	5.2
Professionals	46,828	5.3	71,973	5.7
Plant and Machine Operators and Assemblers	47,724	5.4	71,920	5.9
Skilled Agricultural and Fishery Workers	5,534	0.6	6,220	0.5
<b>Semi-Skilled</b>				
Service Workers & Shop & Market Sales Workers	151,801	17.2	190,574	15.0
Clerks	34,031	3.9	72,899	5.7
<b>Low Skilled</b>				
Elementary Occupation	183,807	20.8	336,129	26.4
<b>Informal Economy</b>				
Craft and Related Trades Workers	184,918	21.1	206,269	16.1
Domestic Workers	60,341	6.8	108,597	8.5
Total	881,655	100.0	1,271,350	100.0

Source: Statistics South Africa (2020)

More recent migrant occupational profiles have yet to be calculated, but Table 7 provides a partial update to 2022 focused on designated company employees as well as a sex breakdown

showing persistent gender disparities. Between 2019 and 2022, women's share of migrant employment in South Africa rose modestly from 22.0% to 24.1%, with absolute numbers increasing from 41,891 to 44,504, even as male employment declined slightly. Women remained underrepresented across almost all occupational levels, though their presence varied widely. At the top, women made up only 16.0% of top management in 2019, rising slightly to 18.5% in 2022. Senior management showed a steadier share, while professional roles improved from 25.7% to 29.7%, reflecting relative gains in higher-skilled employment. Skilled occupations also saw a small increase, from 24.6% to 25.8%, but semi-skilled work (by far the largest category) declined sharply in female representation, despite absolute female numbers rising slightly (8,181 to 8,468). In unskilled jobs, women's share increased from 22.1% to 24.1%, while in temporary employment they had the strongest relative presence, rising from 31.0% to 35.2%. Overall, the figures show that women have gained modestly in professional and temporary roles but remain heavily underrepresented in management and especially semi-skilled work, leaving the occupational structure marked by persistent gender segmentation.

**Table 7: Migrant Occupational Levels by Sex, 2019-2022**

Occupational levels	2019 Male	2019 Female	2019 % Female	2022 Male	2022 Female	2022 % Female
Top management	1,647	313	16.0	1,385	315	18.5
Senior management	3,649	1,212	24.9	3,343	1,167	25.9
Professional qualified	11,789	4,088	25.7	10,921	4,609	29.7
Skilled	24,018	7,846	24.6	22,612	7,875	25.8
Semi-skilled	50,006	8,181	14.1	68,126	8,468	11.1
Unskilled	37,951	10,759	22.1	36,205	11,485	24.1
Temporary employees	19,770	8,882	31.0	19,338	10,496	35.2
Total	148,830	41,891	22.0	140,020	44,504	24.1

Source: Statistics South Africa (2024: 33)

While the number of migrants in various skilled, semi-skilled and low-skilled occupations have shown a numerical increase since 2012, the number of international migrant workers in the South African mining industry has continued to decline from 120,000 in 2003 to 33,000 in 2022 (Table 8). The South African Government has indicated that it wants to see all non-South African labour on the mines phased out by attrition by 2030.

**Table 8: SADC Migrant Workers in South African Mines, 2006-2018**

Year	Botswana	Eswatini	Lesotho	Mozambique	Total
2003	4,204	7,970	54,479	53,829	120,482
2007	2,845	7,099	45,608	44,879	100,431
2012	1,527	4,485	30,519	31,596	68,127
2017	840	2,926	21,234	22,075	47,075
2022	428	1,724	14,330	16,202	32,684

Source: TEBA

## 2.7 INFORMAL SECTOR EMPLOYMENT

Sample surveys in South African cities provide more detailed insights into employment in the informal economy. Table 9 shows the results for four recent surveys of the informal economy, two in Johannesburg, one in Cape Town and one in towns in northern Limpopo. Migrants in the informal economy originate from a large number of countries in Africa and Asia (31 in the two Johannesburg surveys, 20 in Cape Town and 24 in Limpopo). In Johannesburg and Cape Town, the sector is dominated by Zimbabwean migrants (over 40% in Johannesburg and 20% in Cape Town). Mozambicans, Malawians and Nigerians are also well-represented in Johannesburg. Mozambicans are much less important in Cape Town although Malawians and Nigerians represent a significant presence. More important in Cape Town are migrants from Somalia and the DRC. While Ethiopians are present in all three sites, they make up nearly 30% of the sample in Limpopo.

**Table 9: Source Countries of Migrants in South African Informal Economy**

	<b>Johannesburg (IOM 2020)</b>	<b>Johannesburg (SAMP 2016)</b>	<b>Cape Town (SAMP 2015)</b>	<b>Limpopo (SAMP 2015)</b>
Zimbabwe	28.3	30.1	22.8	11.1
Mozambique	14.9	14.4	0.8	0.6
Malawi	10.7	3.2	7.5	
Nigeria	9.7		9.3	5.8
DRC	6.3	4.9	11.2	10.9
Pakistan	5.9	4.5	1.5	5.4
Ethiopia	5.4	2.6	7.2	28.0
Bangladesh	4.5	1.8	0.8	0.7
Ghana	2.8		3.3	6.8
Somalia	2.6	2.6	13.5	7.4
Lesotho	1.9	4.5	1.0	0.2
Uganda	1.3		2.3	0.2
India	1.0	3.7		0.8
Tanzania	0.9	1.1	1.7	0.2
Eswatini	0.6	2.1		
Egypt	0.5	2.1		
Cameroon	0.5		4.3	0.8
Kenya	0.4	0.3	2.1	0.2
Benin	0.4			
Cote D'Ivoire	0.4			
Burundi	0.3			0.6
Botswana	0.1			
Liberia	0.1			
Malaysia	0.1			
Senegal	0.1			
Sudan	0.1			1.0
Zambia	0.1	2.6	1.0	0.2
Angola		1.8	0.8	7.6

Eritrea		0.2		4.6
Congo			2.7	0.6
Rwanda			1.1	0.2
China		2.6		0.6
Other		0.4	5.2	3.5
No. of Countries	27	19	20	24
N	796	613	517	503

Source: IOM (2021), Peberdy (2016), Tawodzera et al (2015), Tawodzera and Crush (2022)

## 2.8 SPECIAL EXEMPTION PERMITS

As of 2023, an estimated 233,000 migrants from Zimbabwe, Lesotho, and Angola hold exemption permits which allows them to reside temporarily and work in South Africa. In 2009, the Department of Home Affairs introduced a Dispensation for Zimbabweans Permit (or DZP) to legalise large numbers of Zimbabweans in the country, many of whom had asylum-seeker status. In 2014, the DZP was renewed and renamed the Zimbabwe Special Permit (ZSP). In 2017, the program was renewed again and replaced with the Zimbabwe Exemption Permit (ZEP). In 2021, the government announced that ZEP system would no longer be renewed, and that holders should apply for alternative legal status. As of December 2023, there was a directive to issue new exemption permits for Zimbabwean nationals to expire on 29 November 2025. This affects around 178,000 ZEP holders in South Africa.

In 2015, the Lesotho Special Permit (LSP) was launched to regularise the status of undocumented Basotho living and working in South Africa. Around 90,000 migrants applied for LSPs which were valid until 2029 when they were replaced by the Lesotho Exemption Permit (LEP) which expired in 2023. About 55,000 Basotho hold LEPs which, like the ZEP, were extended until November 2025. The numbers of Angolans with Angolan Special Permits issued to ex-refugees in 2015 is estimated to be around 5,000.

Most of the Exemption Permit holders have now lived and worked in South Africa for years and many have children born in the country. However, Home Affairs has been reluctant to grant them permanent status, keeping them in a state of permanent temporariness.

## 3. LABOUR MARKET LEGISLATION

South Africa has a range of employment related policies and laws that for the most part are interpreted as equally relevant and applicable to migrant workers, despite the fact that most of these instruments do not provide any explicit references to labour migrant workers.

### 3.1 South African Constitution and Bill of Rights<sup>4</sup>

The South African Constitution contains several categories of rights that pertain to everyone in the country including migrant workers:

- **Section 17. Assembly, Demonstration, Picket and Petition.** Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

<sup>4</sup> The Constitution of the Republic of South Africa | South African Government ([www.gov.za](http://www.gov.za))

- **Section 21. Freedom of Movement and Residence.** Everyone has the right to (1) freedom of movement and (2) to leave the Republic.
- **Section 22. Freedom of Trade, Occupation and Profession.** Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
- **Section 23. Labour Relations.** Every worker has the right (a) to form and join a trade union; (b) to participate in the activities and programmes of a trade union; and (c) to strike.
- **Section 27. Health Care, Food, Water and Social Security.** (1) Everyone has the right to have access to (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) No one may be refused emergency medical treatment.
- **Section 33. Just Administrative Action.** (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

There are two caveats to the interpretation that all labour and labour-related legislation are equally relevant and applicable to migrant workers:

- (a) Section 22 of the Constitution specifically limits the right of foreign nationals with regard to trade, occupation or profession.
- (b) Section 36 of the Constitution provides for the limitation of rights, as follows:
  - (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
    - (a) the nature of the right;
    - (b) the importance of the purpose of the limitation;
    - (c) the nature and extent of the limitation;
    - (d) the relation between the limitation and its purpose; and
    - (e) less restrictive means to achieve the purpose.

### 3.2 Immigration Act 13 of 2002 and Regulations (amended by the Immigration Amendment Act 13 of 2011)<sup>5</sup>

- **Admission and Departure:** no person shall enter the Republic at a place other than a port of entry; (3) No person shall leave the Republic (a) unless in possession of a passport or certificate in lieu thereof; (c) except at a port of entry. A foreigner may only enter the Republic (a) by producing to an immigration officer his or her passport valid for no less than 30 days after the expiry of the intended stay; and (b) if issued with a valid temporary residence. (Section 9 (1 and 4))
- **Monitoring Entries and Exits:** the Department of Home Affairs controls the entry and exit of people through the borders of the Republic in order to ensure compliance with this Act and may do so with the assistance of other organs of State (Section 36(1)).

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<sup>5</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/24100rg7524gon1480.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/24100rg7524gon1480.pdf)



- **Temporary Residency:** temporary residency related to labour migration includes the critical skills work visas, general work visas, business visas, intra-company transfer work visas and study visas.<sup>6</sup>
- **Visitor's Permit/Visa:** in 2011, the term “permit” was replaced by “visa” throughout the Act. May be issued if the person (a) has a visa [if applicable]; (b) is a citizen of a foreign state; (c) cannot exceed 3 months; (d) may be issued for up to 3 years for certain categories. Visitor's visa holders may not conduct work but there is evidence that entry as a visitor is a primary conduit for irregular labour migrants who either leave within 90 days, overstay their visas or leave South Africa and renew for another 90 days. In 2011, a Visitor's Visa with Authorization to Work was introduced for those employed by a company abroad who needed to work for a South African business for up to 90 days. Schedule C of the Regulations specifies a list of countries for which visas are required for entry. This list includes over 30 African countries (Section 11).
- **Study Permit/Visa:** may be authorised to work as practical training in field of study. Regulation 22 specifies that students may work part-time for up to 20 hours per week (Section 13).
- **Business Permit/Visa:** may be issued to a foreigner intending to establish or invest in a business in South Africa who invests a prescribed amount of capital (Section 15). Regulation 24 specifies the amount of capital as ZAR2.5 million and identifies the following approved sectors for which business permits can be granted: information & communication technology; clothing & textiles; chemicals & biotechnology; agro-processing; metals & minerals; automobiles & transport; tourism; and crafts.
- **General Work Permit/Visa:** issued to a foreign employee who has obtained a position with a South African company provided that the employer has undertaken a diligent search for a South African with equivalent qualifications that the salary and benefits are not inferior to the same market segment for citizens and residents as certified by a CA and recorded by the Department of Employment and Labour. The employee's credentials will be screened by the Department to ensure they have the relevant qualifications for the positions.
- **Exceptional Skills Work Permit (repealed):** may be issued to an individual of exceptional skills or qualifications. A foreign national with specialized or exceptional skills can be issued with a for three years with a possibility for extension.
- **Quota Permit (repealed):** the Minister of Labour and Minister of Trade and Industry publish an annual list of critical skills and a quota relating to each. A quota work permit may be issued if the individual falls within that quota.
- **Critical Skills Work Permit/Visa:** in 2011, the Quota Work Permit and Exceptional Skills Permit were amalgamated to create the new permit/visa valid for up to 5 years.<sup>7</sup> According to section 19(4) of the amended Immigration Act, the Department of Home Affairs is authorized to issue critical skills work visas to persons holding the combination of skills and qualifications identified in the Critical Skills List (CSL) published by the department in the Government Gazette. DHA identifies critical skills as “those skills that are determined to be critical for improvement in economic growth and without which certain projects and work could not be undertaken, as well as high-level skills that will enhance the skills pool in the economy which in turn will encourage

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<sup>6</sup> DHA. 2022. “Types of Temporary Residency Visas” <http://www.dha.gov.za/index.php/immigration-services/types-of-temporary-permits>

<sup>7</sup> DHA. 2022. “Critical Skills Visa”, <http://www.dha.gov.za/index.php/immigration-services/scarce-skills-work-permits>



and potentially accelerate growth in the economy.<sup>8</sup> Applicants should be on the Critical Skills list published in the Government Gazette.

- **Intra-Company Transfer Work Permit/Visa:** allows a foreign employee of a company with business relations in South Africa to work in-country for up to 4 years with said company. Permissible companies include those with a branch, subsidiary, or affiliate in South Africa. The applicant must be an employee of the parent company for at least 6 months prior to transfer
- **Corporate Permit:** larger entities, such as mining corporations, may also apply for a to employ a pre-determined number of skilled/semi-skilled/unskilled workers. There is no fixed validity period for such permits as the validity period is determined and stipulated by the corporate entity upon application. (Section 21 and Regulation 20). In 2011, legislation amended to make it harder to obtain corporate permits such that businesses need to show or ensure: (a) proof that they need to employ the requested number of foreigners; (b) they have a certification from the Department of Employment and Labour confirming that despite a diligent search they were unable to find suitable citizens to fill the roles; (c) the proposed remuneration package is not inferior to the average salary of South African Citizens or Permanent Residence holders occupying similar positions; (d) proof of registrations with SARS, UIF, COIDA, CIPC; (e) undertaking to inform DHA of any changes and to cover employee repatriation costs if this becomes necessary; (f) 60% of total staff are South African Citizens or Permanent Residents at any time before and after the application; (g) the foreigner only conducts work in a position that the permit was issued for, departs South Africa upon completion of their contract; and the employer immediately inform the DHA if the foreigner is not compliant with the immigration and visa rules.
- **Permanent Residence:** the Department shall issue a permanent residence permit to a foreigner who (a) has been the holder of a work permit, including one issued under a corporate permit in terms of the Act for five years and has received an offer for permanent employment, provided that (i) such foreigner submitted a certification from his or her prospective permanent employer's chartered accountant of the job description and that the position exists and is intended to be filled by such foreigner; and (ii) the Department of Employment and Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other standards (Section 26 and Regulation 33).
- **Deportation:** Section 32 and Regulations 37-39 provide that any illegal foreigner shall depart, unless authorised by the Department and (2) any illegal foreigner shall be deported. An 'illegal foreigner' is defined broadly in the Act as an individual who is neither a citizen nor a resident and is in the Republic in contravention of the Act. Regulation 37 specifies that the Department should endeavour to record the identity and fingerprints of those who are deported.
- **Arrest and Detention:** without need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Department determined by the Director-General of Home Affairs. The section also details procedures for appeal and the allowable length of detention (up to 90 days) prior to deportation. Section 34(5) provides that anyone who is deported and then returns in irregular status or fails to comply with a deportation order is liable

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<sup>8</sup> National Assembly. 2014. Minister of Home Affairs, Question 257, 7 March.

on conviction to a fine or to imprisonment for a period not exceeding 12 months (Section 34). In 2011, the law changed so that those who overstay their permit/visa can be declared undesirable and face not being allowed back into South Africa for as many as 5 years.

- **Irregular Employment:** no-one is permitted to employ an undocumented foreign national and must make a good faith effort to identify the citizenship and residence status of any prospective employee. Any illegal foreigner found on an employer's premises is deemed to be employed by the employer unless they can prove the contrary (Section 38).
- **Learning Institutions:** are prohibited from knowingly offering learning or training to an 'illegal foreigner' (Section 38(1)).
- **Accommodation:** any establishment offering overnight accommodation must make a good faith effort to ascertain the citizenship and residence status of all guests and report any discrepancies to the Department on a prescribed form (Section 38(2))
- **Other Institutions:** prescribed institutions or persons other than organs of State may be required by regulation to endeavour to ascertain the status or citizenship of the persons with whom they enter into commercial transactions and are required to report to the Department any illegal foreigner or any person whose status or citizenship could not be ascertained (Section 45). Regulation 45 clarifies that the onus to report is on (a) banking and other financial institutions, including micro financiers; (b) estate agents and insurance brokers; (c) private hospitals and clinics; and (d) employment agencies and covers commercial transactions, loans and bonds, money transfers and the opening of accounts (for a), purchase, sale, leasing or renting of fixed property and purchase of insurance policies of any nature (for b), when admitting or registering a patient except in emergencies (for c); and when approached by, or referring, a work seeker (for d). Reporting of illegal foreigners to be in writing or in the interim verbally.
- **Administrative Offences:** any foreigner who leaves the Republic after the expiry of his or her permit is liable to an administrative fine of a prescribed amount not exceeding R3000 to be imposed on detection of the overstay (Section 50).

### 3.3 Refugees Act 130 of 1998 (as amended in 2002, 2008, 2011, 2015, 2017, 2020)<sup>9</sup>

- The Refugees Act gives effect to relevant international (UN and AU) legal instruments and standards relating to refugees including providing for the reception of asylum-seekers and regulating applications for the recognition of refugee status. The most relevant sections from the point of view of administrative data on labour migration are Sections 21, 22 and Sections 24. There are two reasons for this: (a) many asylum-seekers and refugees are unable to secure formal sector jobs and instead are employed or self-employed in the urban informal sector; and (b) because of the difficulty of obtaining work permits for unskilled and semi-skilled work, labour migrants have utilized the asylum-seeker process to enter, remain and work in South Africa. Government refers to these as "bogus refugees" and claims that 90% of claims are bogus. Recent amendments are designed to make it harder for labour migrants to acquire asylum-seeker permits and to work as part of a more general strategy to make South Africa an undesirable destination.

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<sup>9</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/a130-980.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf)

- **Section 21** lays out the procedure for making applications for asylum at Refugee Reception Offices and specifies that no proceedings may be instituted against an applicant for unlawful entry or presence in the country.
- **Section 22** establishes procedures for issuing asylum-seeker permits (so-called Section 22 permits) by Refugee Reception Centres. The right to work while waiting for a refugee determination hearing is not enshrined in the Act but a Supreme Court judgement in 2003 extended the right to work and study to all asylum-seekers.<sup>10</sup> Regulation 32 of the Immigration Act empowers immigration officers to issue an asylum permit in terms of section 23 of the Act to a bona fide asylum seeker at a port of entry, to enable such an asylum seeker to report to a Refugee Reception Office in terms of the Refugees Act within a period of 14 days.
- The 2017 and 2020 Amendments curtailed the right to work by rescinding the automatic right to work and study while waiting for the outcome of the asylum application. The right would only be 'endorsed' on a Section 22 asylum visa following an assessment process to determine if the applicant can support themselves in any way. If not, the right to work could be endorsed but requires the asylum-seeker to furnish the Department with a Letter of Employment or Enrolment in an Educational Institution. The Amendments also allow for barring asylum-seekers from working in certain sectors of the economy. Since employers are hesitant to provide written undertakings, asylum-seekers will be pushed towards irregular employment. To date, however, these provisions have not been fully implemented. In justifying the new restrictions, officials claimed that 90% of applications for asylum were from economic migrants.
- **Section 24** on decisions regarding applications for asylum lays out the responsibilities of Refugee Status Determination Officers (Home Affairs officials in practice) and the acceptance or rejection of asylum-applications. Those whose applications are approved are issued with Refugee Permits (so called Section 24 permits).
- **Section 27** specifies the rights of refugees including the right to apply for permanent residence after 5 years' continuous residence in South Africa. This has now been extended to 10 years.

*Note: it is broadly accepted that all migrant workers, even if in an irregular situation, are protected by South Africa's labour legislation<sup>11</sup> and it is in this context that brief information on labour related legislation is provided.*

### 3.4 Labour Relations Act 66 of 1995 (LRA) <sup>12</sup>

The LRA is the primary legal instrument that governs labour relations in South Africa and its purpose is set out as the law governing labour relations and therefore to:

- Give effect to Section 23 of the Constitution
- Regulate the organisational rights of trade unions
- Promote and facilitate collective bargaining at the workplace and sectoral level
- Regulate the right to strike and recourse to lockout
- Promote employee participation in decision-making through workplace forums

<sup>10</sup> <http://www.saflii.org/za/cases/ZASCA/2003/142.html>

<sup>11</sup> <https://ceosa.org.za/do-illegal-immigrants-employed-without-work-permits-have-legal-rights-in-south-africa/>

<sup>12</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/act66-1995labourrelations.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf)

- Provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration
- Establish Labour Court and Labour Appeal Court with exclusive jurisdiction to decide matters arising from the Act
- Provide simplified procedure for registration of trade unions and employers' organization
- Give effect to public international law regulations relating to labour relations

### 3.5 Basic Conditions of Employment Act 1997 (BCEA)<sup>13</sup>

The purpose of the BCEA is to give effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provisions for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation. Amongst others, the BCEA regulates the following:

- Work time and rules
- Remuneration and Deductions
- Termination of Employment
- Administrative Obligations
- Children and Forced Labour

### 3.6 Employment Equity Act 1998 (EEA)<sup>14</sup>

The purpose of the EEA is to promote equal opportunity and fair treatment and to establish affirmative action practices to redress disadvantages. Given that the EEA specifically identifies designated groups - black people (Africans, Coloureds, Indians), women and people with disabilities as the beneficiaries of the EEA. However, foreign nationals are not part of the designated groups for which numerical targets are set.<sup>15</sup>

There are also several other laws that are relevant to our understanding of the governance of labour and workplace relations in South Africa:

- Occupational Health and Safety Act (OHSA)
- Compensation for Occupational Injuries and Diseases Act (COIDA)
- Unemployment Insurance Fund (UIF)
- South African Qualifications Authority Act (SAQA Act)
- Skills Development Act (SDA)
- Skills Development Levies Act (SDLA)

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<sup>13</sup> <https://www.gov.za/documents/basic-conditions-employment-act>

<sup>14</sup> <https://www.labour.gov.za/DocumentCenter/Acts/Employment%20Equity/Act%20-%20Employment%20Equity%201998.pdf>

<sup>15</sup> <https://www.chmlegal.co.za/foreign-nationals-affirmative-action-cowan-harper-attorneys>

### 3.7 Employment Services Act (ESA) (2014) <sup>16</sup>

The Department of Employment & Labour (DEL) works with DHA to supervise the employment of non-citizens in South Africa, using the provisions (Sections 8 and 9) of the Employment Services Act (2014). Introduced on 7 April 2014, this law seeks to ‘facilitate the employment of foreign nationals in the South African economy where their contribution is needed’ using fair labour practices, without adverse impacts on the ‘rights and expectations of South African workers’ and to ‘promote the training of South African citizens and permanent residents’.

- The Act permits DEL to establish additional regulations and requirements for the management of labour migration in consultation with the Employment Services Board consistent with the provisions of the Immigration Act (2002).
- The ESA has a section that regulates the employment of foreigners in South Africa and specifically provides for the following:
  - 1) An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.
  - 2) The Minister may, after consulting the Board, make regulations to facilitate the employment of foreign nationals, which regulations may include the following measures:
    - (a) The employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign national;
    - (b) the employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and
    - (c) preparation of a skills transfer plan by employers in respect of any position in which a foreign national is employed.
  - 3) A regulation made in terms of this section may—
    - (a) include any other requirement necessary to implement the provisions of this section which are consistent with the Immigration Act; and
    - (b) differentiate between different categories of visas issued in terms of the Immigration Act and different categories of work.
  - 4) An employee who is employed without a valid work permit is entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law. An employer may not require or permit a foreign national—
    - (a) to perform any work which such foreign national is not authorised to perform in terms of his or her work permit; or
    - (b) to engage in work contrary to the terms of their work permit.

Proposed revisions to the Act include extra conditions on employers seeking corporate visas that would need to include details for the transfer of skills in migrants’ employment contracts and the plan would affect all (junior, middle, senior and top) management placement

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<sup>16</sup> South Africa. Office of the Presidency. 2014. *Employment Services Act No. 4 of 2014*. Government Gazette No. 37539: 586 7 April. <https://www.gov.za/documents/employment-services-act>

categories.<sup>17</sup> Skills transfer plans would additionally have to be monitored regularly, annual reports published on it, and provided to the DEL. Future modifications would be required (for example, around sectoral quotas) if the Draft NLMP become policy.

## 4. LABOUR MIGRATION POLICY REFORMS

### 4.3 Migration White Papers

#### 4.3.1 White Paper on International Migration to South Africa, 2017

The 2017 White Paper on International Migration to South Africa proposed significant changes to South Africa's immigration policy, specifically with regard to:

- The link between migration and development, as encapsulated in South Africa's National Development Plan;
- Increased 'preferential treatment' that enhances mobility for migrants from the SADC region and the African continent;
- The development of a skills-based immigration policy aimed at meeting critical skills needed for economic growth through skilled immigration.<sup>18</sup>

The White Paper referred to the African Union Agenda 2063 that calls for visa-free travel for African citizens. The White Paper acknowledged the Treaty Establishing SADC and the SADC Protocol on the Facilitation of Movement of Persons. Consistent with the SADC Labour Migration Policy Framework and accompanying Action Plan.

The White Paper underscored that migration policy is not adequately connected with skills growth and investment priorities of South Africa and proposed measures to address these gaps, including a points-based system likely combined with critical skills lists or quotas.<sup>19</sup> If fully implemented, the provisions of the White Paper would require a major overhaul of the existing legislative framework. A summary of the White Paper listed the following proposals relevant to labour migration:<sup>20</sup>

*African Continent:* The White Paper references the AU Agenda 2063, which calls for the abolishment of visa requirements for all African citizens. The aim is visa-free travel for African citizens (i.e., the ability to enter South Africa for ninety days upon arrival at South Africa's borders). 'Trusted travelers' from Africa will be able to access long-term, multiple-entry visas. The plan is a fully automated visa application system (for all tourists, migrants), whereby applications are made in countries of origin, and are subject to advanced security checks using improved data systems.

*SADC:* The White Paper proposes the following changes:

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<sup>17</sup> South Africa. Department of Labour. 2018. Draft Regulations on the Employment of Foreign Nationals. Employment Services Act (Act No. 4 of 2014). Government Gazette No. 42140: R.1433 28 December.

<sup>18</sup> Government of South Africa. 2017. *White Paper on International Migration to South Africa*. At: <https://www.gov.za/documents/white-paper-international-migration-south-africa-28-jul-2017-0000>

<sup>19</sup> OECD/ILO. 2018. *How Immigrants Contribute to South Africa's Economy*. Paris: OECD.

<sup>20</sup> "What Is the White Paper on International Migration?" At: <https://www.scalabrini.org.za/news/what-is-the-white-paper-on-international-migration/>



- *‘Special Dispensation’ Permits for certain SADC nationals:* Special Dispensation Permits have already been issued to Zimbabweans and Angolans in South Africa. These are temporary permits that allow certain work/study rights, but offer no pathway to permanent residency. The Zimbabwean permit has been extended three times since its inception.
- *New visa options for SADC nationals:* These might include a special work visa, a trader visa, and Small Medium Enterprise Visa. These visas would be dependent on bilateral agreements with South Africa and sending countries, and would be subject to requirements, such as business registration, SARS registration and so on. These visas would not lead to permanent residency.
- A ‘long-term residence’ category instead of permanent residency, which would be accessible by certain migrants such as highly-skilled migrants on a fast-track system. This would not lead to citizenship. Citizenship, but only to be granted by the Minister of Home Affairs in exceptional cases, after being advised and considered by a new Citizenship Advisory Panel (CAO).

*Skilled Labour Migration:* For highly skilled migrants from other continents than Africa, the White Paper proposes a points-based system. Skilled migrants would be considered in terms of their skills, investments and qualifications. This would be tied to a critical skills list. Migrants with critical skills would be able to apply for a long-term family residence visa, and international students would be able to access residency after graduation. Where skilled migrants were granted residency, schemes would have to be deployed to transfer skills to local South Africans, such as through understudy programmes.

#### **4.3.2 White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa, April 2024<sup>21</sup>**

The 2024 White Paper was approved by the South African Cabinet on 10<sup>th</sup> April 2024, and replaces the 2017 White Paper. However, its scope is much narrower and primarily focuses on rectifying perceived abuse of South Africa’s immigration system. This means that the fate of the forward-looking elements of the 2017 White Paper is uncertain. At the same time, many of the policy positions around regional integration and cooperation in the 2017 White Paper are explicitly endorsed in the White Paper on the National Labour Migration Policy (4.3.3).

The key proposals of the 2024 White include the following:

- Development of a single policy and one piece of legislation dealing with citizenship, immigration, and refugee protection to replace the three Acts currently in force. The Refugees Act “must be repealed in its entirety” (Clause 59.2)
- Review and/or withdraw from the 1951 UN Refugee Convention and the 1967 Protocol.<sup>22</sup>

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<sup>21</sup> <https://www.gov.za/documents/white-papers/white-paper-citizenship-immigration-and-refugees-white-paper-citizenship>

<sup>22</sup> This proposal was opposed by the UNHCR on the grounds that withdrawal would set a negative precedent, both regionally and globally (Clause 54)



- Re-accede to the Convention and Protocol with reservations. The Paper notes that “South Africa did not make any reservations in respect of the 1951 Convention and 1967 Protocol. This was a serious mistake on the part of government” (Clause 32)
- South Africa should make reservations to Articles 7, 8, 9, 13, 15, 17 and 24 of the 1951 Convention; and Articles 24 and 29 of the 1967 Protocol.
- The White Paper also makes various policy proposals for the governance and adjudication of asylum and refugee claims (Clauses 62-66). These include locating refugee reception offices at ports of entry, quick and virtual hearings by qualified adjudicators such as retired and serving judges, strict application of the first safe country principle, and “effective monitoring” of asylum seekers awaiting the outcome of applications.

The primary stated motivation for the reforms is to clamp down on perceived abuse of the asylum system by economic migrants and to eliminate the possibility of asylum-seekers and refugees ever progressing to permanent residence and citizenship (Clause 97.5)

A new Integrated Bill should include the following preamble:

“In providing for the regulation of admission of foreigners to, their residence in, and their departure from the Republic and for matters connected therewith, the Immigration Act aims at setting in place a new system of immigration control which ensures that –”

- (a) temporary and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, without consuming excessive administrative capacity;
- (b) security considerations are fully satisfied and the State retains control on the immigration of foreigners to the Republic;
- (c) interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making;
- (d) the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with;
- (e) border monitoring is strengthened through the Border Management Authority to ensure that the borders of the Republic do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred;
- (f) ports of entry are efficiently administered and managed;
- (g) immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the Department of Home Affairs, thereby reducing the pull factors of illegal immigration;
- (h) the South African economy may have access at all times to the full measure of needed contributions by foreigners;
- (i) the contribution of foreigners in the South African labour market does not adversely impact on existing labour standards and the rights and expectations of South African workers.

The proposal is to couple border control with immigration:

- The Border Management Authority Act must be reviewed to align it with Citizenship, Immigration and Refugee Protection new policy framework.
- The policy framework must provide for the establishment of the Advisory Board which comprise representatives of the Departments of Trade, Industry and Competition, Labour and Employment, Tourism, South African Police Service, South African Revenue Service, Education, International Relations & Cooperation, Defence & Military Veterans and Director-General of the DHA.
- The Board must also comprise representatives of organised labour, including four individuals on the grounds of expertise in administration, regulatory matters or immigration law, control, adjudication and enforcement, appointed by the Minister.
- Given the over-arching services rendered by the DHA that cuts across many departments, the composition of the Immigration Board as proposed is the most appropriate step. Today the country is facing challenging immigration issues which cannot be resolved by the DHA alone.

#### **4.3.3 National Labour Migration Policy White Paper, 2025 (NLMP) <sup>23</sup>**

All SADC countries have committed to the development of a National Labour Migration Policy (NLMP) within the implementation of SADC's Labour Migration Action Plan (LMAP), and a number have already done so. In South Africa, the blueprint for NLMP was created in 2016.<sup>24</sup> The draft policy was released in February 2022 and the NLMP White Paper in May 2025. Next steps include proposed amendments to the Employment Services Act (ESA) to give effect to the NLMP, and submitted to Cabinet via the Inter-Ministerial Committee on Migration. Based on approval from Cabinet, the broader public and social partners will be consulted, before the final version is submitted to Cabinet, and thereafter to NEDLAC in accordance with the provisions of the NEDLAC Act. The NEDLAC report will be tabled to Parliament for consideration when the proposed Amendment Bill is processed.

The Introduction to the NLMP White Paper provides the following rationale for the development of a National Labour Migration Policy:

Firstly, this will fulfil South Africa's commitment, made at the level of the SADC ELS (Employment and Labour Sector), to develop and adopt labour migration policies by the end of 2019. Secondly, there is need to provide guidance to the Department of Employment and Labour, the Department of Home Affairs and other government departments on the desired policy framework applicable to labour migration impacting on South Africa. Thirdly, in a range of related areas (e.g., recruitment, data requirements, and labour migration to and from South Africa), policy frameworks are either insufficient or absent. An evidence-based and labour migration policy, which takes into consideration labour market needs, is required to

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<https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20Services/National%20Labour%20Migration%20Policy%202021%202.pdf>

<sup>24</sup> Department of Employment and Labour. 2022. Draft National Labour Migration Policy for South Africa (Pretoria)

<https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20Services/National%20Labour%20Migration%20Policy%202021%202.pdf>

deal with these concerns. Fourthly, there is need to inform an appropriate legislative framework (to accompany the Policy), serving as a mandate for State interventions. In the fifth and sixth instance, improved labour and social protection of migrant workers to and from South Africa requires clear policy direction, regulatory provision and operationalisation, while there is need to inform South Africa's responses to African Union and SADC regional instruments in the making and/or recently adopted. Finally, there is also need to inform the reconsideration of outdated bilateral labour agreements, which South Africa concluded many years ago with five southern African countries. is as follows:

The NLMP is designed to achieve the following:

- Document current challenges on the basis of evidence;
- Adopt guiding principles rooted in South Africa's core values and international commitments;
- Identify national strategic priorities at the intersection of national interests and guiding principles;
- Propose sustainable intervention methods and monitoring and implementation mechanisms;
- Serve the overarching objectives of the National Development Plan and other key national policy frameworks;
- Adopt a rights-based approach to the protection of all workers employed in South Africa and the protection of South African workers abroad as defined in South Africa's international obligations, regional and SADC commitments, as well as obligations under its Constitution and national labour legislation

The Vision Statement of the NLMP is defined as:

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

The White Paper sets out four Key Areas of Intervention (KAI):

KAI 1 proposes policy intervention in three specific clusters: Department of Employment and Labour structures and organisation; Inter-ministerial coordination of labour migration; Social dialogue and tripartism.

KAI 2 focuses on the coordination of labour migration data analysis for NLMP monitoring and evaluation.

KAI 2 is about strengthening the collection, comparison, analysis and use of labour migration related data by a range of data users (government officials, social partners, civil society, the media) for the purposes of policy monitoring and evaluation.

KAI 3 focuses on all activities related to the management of labour migration to South Africa, including the recruitment, selection, placement, employment, visa issuance, access to benefits and return of migrant workers, whether low-, semi- or highly skilled, employed in the South African labour market and their protection.

KAI 4 focuses on interventions which aim to protect and, where necessary and strategic, assist South African workers in search of employment experience abroad, while abroad and upon return.

Section 1 of the White Paper provides a more detailed rationale for the NLMP:

- Southern African countries have committed, at the level of the Southern African Development Community (SADC) ELS (Employment and Labour Sector), to develop and adopt labour migration policies by the end of 2019 – at the time of formulation of this policy, several SADC countries have already finalised/adopted their respective national labour migration policies (Lesotho, Namibia, Seychelles and Zimbabwe; Eswatini's policy is awaiting cabinet approval), while certain other SADC countries are in the process of developing theirs;
- There is need to provide guidance to the Department of Employment and Labour, the Department of Home Affairs and other government departments on the desired policy framework applicable to labour migration impacting on South Africa;
- Insufficient and absent policy frameworks in a range of related areas have to be addressed, e.g., in relation to recruitment, data requirements, and labour migration to and from South Africa – for this, an evidence-based labour migration policy, which takes into consideration labour market needs, is required;
- There is need to inform an appropriate legislative framework (to accompany the Policy), serving as a mandate for State interventions;
- Improved labour and social protection of migrant workers to and from South Africa requires clear policy direction, regulatory provision and operationalisation;
- There is need to inform South Africa's responses to African Union and SADC regional instruments in the making and/or recently adopted; and
- There is also need to inform the reconsideration of outdated bilateral labour agreements, which South Africa concluded many years ago with five southern African countries.

Furthermore:

Labour migration to and from South Africa should be taking place in a manner that contributes to South African society, does not undermine its own labour protection regime and serves regional integration goals. In addition, several recent developments at regional (African Union - AU) and SADC levels, in the form of guiding frameworks on labour migration, have been adopted, strongly encouraging (SADC) Member States to develop national labour migration policies aligned with international and regional labour standards (p. 24)

Key Recommendations vis-a-vis labour migration to South Africa include the following:

***Skills Retention and Diaspora Engagement***

- In addition to coordinated incentives for retention of skills, there should be coordinated programmes maintaining links with professionals in the diaspora and

creative and flexible pathways for their temporary or permanent return maximising their possible contribution to South African society, without undermining in any manner citizens' fundamental right of movement.

### ***Bilateral Agreements and Regional Integration***

- Bilateral agreements with neighbouring countries should be entirely revisited and reviewed on the basis of mutual needs and reciprocal commitments serving the best interests of SADC populations. It is necessary to consider how South Africa and the other affected SADC countries view the unfolding of the labour market structure, opportunities and requirements from a regional, rather than purely individual country perspective, bearing in mind that all SADC Member States have repeatedly committed to furthering regional integration.
- The development of policy approaches to cross-border labour migration involving neighbouring SADC countries should also consider other regional programmes and objectives, including regional collaboration on a sectoral basis (e.g., in migrant health, education, mining, tourism), regional skills and qualifications recognition, harmonisation and alignment frameworks, regional data harmonisation frameworks, and the facilitation of free movement of persons, to which South Africa has committed itself.
- BLAs whether with SADC countries or beyond should be aligned to international standards and recent policy developments at international, regional and SADC levels, as well as among Member States. Of particular importance in this regard are two (recent) guiding instruments, the one emanating from the UN and the other from the AU, i.e., the UN Guidance on Bilateral Labour Migration Agreements (2022) and AU Guidelines on Developing Bilateral Labour Agreements (BLASs) (2022). Their review should adopt an approach inclusive of social partners and other relevant stakeholders.
- BLAs should also be strengthened technically to become effective and efficient tools in the governance of labour migration.
- Sectoral BLAs concluded by individual South African government departments, for example to procure professional migrants to fill particular employment needs in a certain sector, need to be designed in consultation with NDEL, to be aligned with international standards, and communicated to DIRCO and DHA, to ensure a coordinated approach to BLAs.
- Creating legal pathways into the South African labour market for low-skilled workers from neighbouring countries and SADC partners on the basis of negotiated agreements is the best way to stymie unhealthy levels of irregular migrants, prone to exploitation and abuse. These agreements should afford stability and protection to migrant workers while at the same time being monitored and adjusted regularly at cross-border, national, provincial and local level, in consultation with the countries of origin.
- The objective should be to bring deportations to a minimum level.

- Emigration of skilled South Africans has not been addressed thoroughly in any policy document for years. Policy efforts should ensure that they capture the full scope of the issue and develop appropriate, innovative and effective policy responses, that may range from regular diaspora mapping, counter-attrition policies based on international benchmarking for wages, incentives for temporary and permanent return, rosters of experts and coordination of professionals' associations.

### ***Departmental Responsibilities***

- The DEL should become the lead department in the definition of labour market needs and priorities in relation to labour migration regulation.
- The DHA should remain the custodian of border control, visa issuance and identity documentation and verification, as well as final decision-maker on all aspects of migration unrelated to work and employment (all other visa types, asylum, security vetting, document authentication, civil registration, etc).
- Wavers in relation to immigration requirements, impacting on labour migration, will be considered by DHA in consultation with the DEL.
- The conclusion of revised BLAs should be undertaken in coordination with DIRCO, while DEL should be consulted by all other departments when concluding BLAs that include labour migration, to ensure coordination.
- All aspects of labour migration governance should be consolidated and strengthened within the DEL and performed by its core units or in collaboration with other departments and coordinated by the DEL (compliance of employment services, labour market tests, skills-indemand lists, monitoring of labour market indicators, labour inspection, conciliation and arbitration, compensation, social protection of migrant workers).
- This reform should be envisaged as a two-pronged process: 1. Clarification of respective responsibilities should be undertaken with a view to a mid-term evolution into 2. A "one-stop shop inter-ministerial model" for users behind which there would be intervention of all relevant departments with clarified internal procedures.

### ***Labour Inspections***

- Labour inspection for enforcement of equality of treatment between local and foreign workers and protection of their rights should be addressed through the strengthening of capacities of labour inspectors of both DEL and DHA across all provinces and branches as well as among labour inspectors operating at sectoral level, e.g., the mining sector.
- South Africa has opted for labour and immigration inspections which are conducted in respect of each law and with an emphasis on the protection of workers' rights, in addition to enforcement of immigration regulations. Strengthened integration between the two services will continue.

### ***Recruitment***

- There is therefore a need for the DEL inspectorate to have the ability to monitor sector dynamics in terms of employment of migrant workers to ensure employment in decent conditions of work and prevent concentrations which would result in social dumping.
- In other sectors, such as higher education, South Africa is attractive to foreign professionals, e.g., lecturers. This should, subject to the advancement of employing South Africans in these sectors, be enhanced and further incentives for retention of their skills should be put in place.
- Private employment agencies and temporary employment services should be compelled by law to follow strict equality of treatment in their recruitment processes of migrant workers. The DEL should develop a three-pronged approach to the regulation of private employment agencies based on control, sanctions and incentives for compliance.

### ***Migration Data***

- South Africa has functional and efficient data collection mechanisms (with a few gaps in administrative data that can be addressed, for instance in terms of disaggregation of labour inspection notices per migratory status). However, it needs to have a coordination system for the analysis of administrative and statistical data in order to monitor labour migration data on a regular basis with regular reports placed in the public domain. There is also a need to develop a tailored framework for the collection, analysis and use of data in relation to labour migration from South Africa, and to inform appropriate policy responses in this regard.
- Administrative data between the DHA and the DEL should be better coordinated and complied with the South African Statistical Quality Assessment Framework (SASQAF) from Statistics South Africa.
- Data users (policy-makers, social partners, civil society organisations) should be well informed and capacitated to understand, analyse and use such data for regular policy monitoring and evaluation.
- There is a need to develop a well-functioning labour market information system, to which labour migration planning and policy frameworks should be linked. Recently, the DEL and Stats SA enhanced engagements with the ILO in establishing the LMIS for South Africa; the aim is to have the LMIS for South Africa functional with all the stakeholders' involvement.

### ***Attitudes to Migration***

- Given that labour migration to South Africa, whether skilled or low-skilled is a long-term dynamic, it is important to ensure that the South African population, and South African workers in particular, are well informed about what motivates the strategic choices made by the South African government on labour migration issues and educated to the rights and responsibilities of both nationals and non-nationals.



- Equally, social partners should be capacitated on migrant workers' specific rights and issues and to employers' responsibilities so as to ensure continued peaceful industrial relations regarding the integration of migrant workers at the workplace.
- Workers' organisations should be encouraged to develop position documents and provisions in their constitution defining their position regarding the mobilisation and organisation of all migrant workers, including those in irregular situations.

### ***Social Protection***

- Challenges and bottlenecks related to the social protection and compensation of migrant workers in South Africa and back in their country of origin need intervention in the following areas: a. Actual enforcement of social protection rights which migrant workers are entitled to, including access to health care; b. Effective and sustainable facilitation of access to accrued rights and benefits in South Africa and back in the country of origin; c. Emergency exhaustion of outstanding claims d. Actual enforcement of claims for compensation under COIDA and ODMWA e. Prevention of exposure of migrant workers to Occupational Safety and Health hazards f. Improvement of data capturing and reporting on social protection and compensation
- In collaboration with relevant departments and agencies, the DEL will develop an annual action plan on the social protection and compensation of migrant workers to implement these areas of intervention.
- Enforcement of social protection rights which migrant workers are entitled to, including access to health care should focus on ensuring that social protection measures, in particular contributory social security measures, are on par with those availed to South African workers in terms of equality of treatment and non-discrimination and in compliance with existing legislation are clearly specified in contracts of employment vetted by the DEL
- Ensure that social protection contributions by employers and employees and actual access to benefits are effective during inspections for work and corporate visa holders and if not, issue sanctions;
- Sensitise employers to the need to extend social protection to migrant workers effectively, including UIF and pension contributions where relevant;
- Sensitise provident and pension funds and operators in this sector to the need to develop specific outreach strategies for migrant workers;
- Sensitise workers' organisations to the role they can play in running the necessary checks to ensure that migrant workers' rights to social protection are enforced;
- In collaboration with the DoH, sensitise public health care management and medical personnel to the rights of both regular and irregular migrant workers and working refugees and asylum seekers. • Sensitise migrant workers about their rights to social protection.

### ***Migrant Rights***

- Strengthen human resources within the Labour Centres with administrative skills to facilitate effective access to accrued rights and benefits, especially in situations of litigation and blockade, and with the capacity to initiate legal redress if need be;
- Streamline access to affordable remittance transfers to countries of origin;
- Prioritise the exhaustion of outstanding claims recorded in pension, provident and compensation funds over a one-year timeframe;
- Ensure accessibility of this service to current and former migrant workers through online service, hotline telephone line and face-to-face meetings;
- Utilise the SADC Forum to identify development, job-creating projects drawing on funds accumulated by former migrant workers;
- Ensure that this unit works closely with relevant departments (National Treasury, UIF and Compensation Fund, as well DoH (in relation to the ODMWA-mandated Compensation Commissioner)), agencies and employers' organisations in South Africa, and relevant counterparts across SADC Member States.

### ***Labour Market Integration of Refugees and Asylum-Seekers***

- Sensitisation of employers' and workers' organisations, private employment agencies, and labour inspectors of both DEL and DHA to the specific rights held by, documentation issued to and vulnerabilities encountered by refugees and asylum seekers;
- Sensitisation of the banking sector operators to the importance of this category of workers accessing banking services to facilitate their full integration into the labour market, where foreseen by legislation;
- In collaboration with the DHA, and subject to prevailing legislation, detection of refugees and asylum seekers' experience and qualifications at an early stage and orientation towards relevant institutions with a view to their labour market integration or completion of training and education;
- Disaggregation of data regarding refugees and asylum seekers per gender, qualification, experience and employment situation.

### ***Collaboration with SADC Neighbours***

- The DEL will make use of the SADC Employment and Labour Sector (ELS) platform to advocate for ratification of international and regional (AU and SADC) instruments for the protection of migrant workers with a view to creating thresholds of protection within SADC;
- The DEL will work closely with DTIC and DSBD to implement the STR (Simplified Trade Regime) for informal cross-border traders in agreement with neighbouring SADC Member States;
- The DEL will work closely with DIRCO to review and amend existing bilateral labour agreements with SADC Member States with a view to aligning them to

international standards of protection, as promoted in ILO Recommendation No. 86 Annex and to minimum standards favourable to workers;

- Where possible and relevant, the DEL in collaboration with the Department of Social Development will enter into mutual social security agreements to reciprocate social security coverage with SADC Member States – the 2016 SADC Cross-Border Portability of Social Security Benefits Policy Framework and the Guidelines on the Portability of Social Security Benefits in SADC (2019) already provide a basis for action in this regard;
- The DEL will actively participate in Joint Bilateral Commissions with countries of origin and promote the NLMP approach across all discussions relating to labour migration;
- The DEL will support strengthened collaboration and joint operations between its labour inspectorate and those of neighbouring countries of origin of migrant workers.
- The DEL will encourage South African workers' organisations to consider entering into bilateral trade union agreements with their sister organisations in countries of origin to work jointly on prevention of fraudulent recruitment and educate migrant workers to South African labour laws, and encourage South African informal traders' organizations to enter into bilateral agreements with their sister organizations across borders to negotiate for the implementation of the STR (Simplified Trade Regime) on common borders between them.

#### 4.1 Critical Skills.

Changes to South Africa's immigration policy have encouraged the entry of highly-skilled migrants and migrants in the investor category.<sup>25</sup> Prior to 2011, Quota Work Visas were issued on the basis of the Quota List of 2009, while Exceptional Skills Visa/Work Permits were issued to "an individual of exceptional skills or qualifications and to...members of his or her immediate family".<sup>26</sup> Quota work permits were determined by DHA in consultation with the Department of Employment and Labour and Department of Trade and Industry.<sup>27</sup> The Human Resource Development Strategy of South Africa 2010-2030 recommended the creation of a national "scarce skills list" supporting South Africa's social and economic goals.<sup>28</sup> Provisions for compiling and maintaining a "Critical Skills List" to guide DHA's allocation of work visas was introduced in the Immigration Amendment Act of 2011. DHA is required to publish a list of critical skills in collaboration with DEL, DTI and DHET.

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<sup>25</sup> SIMHA. 2020. *Labour-Related Experiences of Migrants and Refugees in South Africa*. Cape Town: Scalabrini Institute for Human Mobility in Africa.

<sup>26</sup> South Africa. Department of Home Affairs. 2002. Immigration Act, 2002 (Act, No. 13 of 2002). Government Gazette No. 23478: 766 31 May.

[https://www.gov.za/sites/default/files/gcis\\_document/201409/a13-020.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf)

<sup>27</sup> DHA. 2022. "Critical Skills Visa",

<http://www.dha.gov.za/index.php/immigration-services/scarce-skills-work-permits>

<sup>28</sup> South Africa. Department of Higher Education and Training. 2014. Call for Comments on the National Scarce Skills List: Top 100 Occupations in Demand. Government Gazette No. 37678: 380 23 May.

The Department of Higher Education and Training (DHET) carries out national skills assessment exercises and to this end, it produces two key documents, including the Annual Report on Skills Supply and Demand in South Africa and the list of Occupations in High Demand (OIHD). In 2014, DHET released a National Scarce Skills List identifying the top one hundred occupations considered to be in demand in South Africa. “Scarce skills” are “those occupations in which there are a scarcity of qualified and experienced people, currently or anticipated in the future, either (a) because such skilled people are not available or (b) they are available but do not meet the employment criteria.

According to section 19(4) of the Immigration Act, the Department of Home Affairs (DHA) is authorized to issue critical skills work visas to persons holding the combination of skills and qualifications identified in the Critical Skills List (CSL) published by the department in the Government Gazette. DHA identifies critical skills as “those skills that are determined to be critical for improvement in economic growth and without which certain projects and work could not be undertaken, as well as high-level skills that will enhance the skills pool in the economy which in turn will encourage and potentially accelerate growth in the economy.”<sup>29</sup> The CSL process was initiated in November of 2013 to guide DHA’s strategy for the approval of work-related visas for skilled migrants, in addition to supporting the Government of South Africa’s key priorities.

Work-related visas are issued partly on the basis of the Critical Skills List (CSL) created by the Department of Home Affairs (DHA). Creation of the CSL involves complex processes of inter-departmental information sharing on skills assessment, identification and needs. A large number of key stakeholders play an important role in this process outside of the Department of Home Affairs. South Africa’s Department of Higher Education and Training (DHET) and Sector Education and Training Authorities (SETAs) play an important role in the identification of required skills and linkages between labour market skills needs (demand) and supply.<sup>30</sup> The Sector Education and Training Authority (SETAs) also create Scarce and Pivotal Skills lists.

On 18 February 2021, DHA released a new draft version of the CSL for public input.<sup>31</sup> The new list was finalized at the end of 2021 and was approved by the National Economic Development & Labour Council (NEDLAC). NEDLAC consists of key stakeholders from business, labour, government and community groups in South Africa.<sup>32</sup> The latest Critical Skills List (CSL) has been compiled using the Department of Higher Education and Training (DHET)’s Labour Market Intelligence (LMI) research programme.<sup>33</sup> Occupations added to the CSL must fulfill three conditions: involve high-level qualifications and advanced skillsets; require a long period for the regular supply of South Africans who can perform these jobs; and

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<sup>29</sup> National Assembly. 2014. Mr. M. S. De Freitas to ask the Minister of Home Affairs, Question 257, 7 March.

<sup>30</sup> Balwanz, D. and Ngcwangu, S. 2016. “Seven Problems with the ‘Scarce Skills’ Discourse in South Africa,” *South African Journal of Higher Education* 30(2): 31-52.

<sup>31</sup> Department of Home Affairs. 2021. “Invitation to Comment on the Draft Critical Skills List (2020)”, Government Notice no. 44164, 18 February, [https://www.gov.za/sites/default/files/gcis\\_document/202102/44164gon96.pdf](https://www.gov.za/sites/default/files/gcis_document/202102/44164gon96.pdf)

<sup>32</sup> <https://nedlac.org.za/>

<sup>33</sup> DNA Economics. 2020. *A Technical Report for the 2020 Critical Skills List*. Produced for the Department of Higher Education and Training (DHET). [http://www.dha.gov.za/images/PDFs/2020-Critical-Skills-List\\_Report.pdf](http://www.dha.gov.za/images/PDFs/2020-Critical-Skills-List_Report.pdf)

occupations that are currently experiencing severe shortage of trained professionals and this situation is likely to continue for some time. The Critical Skills list was gazetted on 2 February 2022. It runs to 17 pages and lists 101 occupations.<sup>34</sup>

## 5. LABOUR MARKET INSTITUTIONS

Several institutional mechanisms have been created to give effect to the provisions of labour market legislation and to regulate labour relations.

### 5.1 Inter-Ministerial Committee (IMCM) on Migration<sup>35</sup>

The South African Cabinet established the IMC in 2020 and is convened by the Minister of Employment and Labour and co-chaired by the Minister of Home Affairs with a Technical Committee of Directors-General. President Ramaphosa told Parliament that the IMC would respond to the “frustrations of South Africans at the violation of immigration laws and other regulations that employ foreign nationals illegally and that the IMC would review decisions on special dispensation permits, amendments to the Immigration and Employment Services Act and Labour Migration Management.” The IMC would also ensure that the approach to employing foreign nationals is focused on scarce and critical skills needed to grow the economy. According to the NLMP White Paper, the IMCM is expected to submit to Cabinet, policy recommendations on South Africa’s position in relation to the employment and economic opportunities for South African citizens and foreign nationals taking into consideration amongst others: (a) The relevant global treaties, AU and SADC protocols; (b) Aspects such as labour and employment, the various sectors in the economy, crime and border security; and (c) The Constitution of the RSA and other applicable legislation (p. 26)

### 5.2 Department of Employment and Labour (DEL)

The vision of the DEL is to strive for a labour market which is conducive to investment, economic growth, employment creation and decent work, and its stated mission is to regulate South Africa’s labour market for a sustainable economy through:

- Appropriate legislation and regulations
- Inspection, compliance monitoring and enforcement
- Protection of human rights
- Provision of Employment Services
- Promoting equity
- Social and income protection
- Social dialogue.

The Labour Policy and Industrial Programme in the DEL facilitates the establishment of an equitable and sound labour relations environment and the promotion of South Africa's interest

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<sup>34</sup> The full list is available at

[http://www.dha.gov.za/images/notices/Gazetted\\_Critical\\_Skills\\_List\\_2022-compressed.pdf](http://www.dha.gov.za/images/notices/Gazetted_Critical_Skills_List_2022-compressed.pdf).

Application procedures for Critical Skills Work Visas are at

<http://www.dha.gov.za/index.php/immigration-services/scarce-skills-work-permits>

<sup>35</sup> <https://pmg.org.za/committee-question/16561/>

in international labour matters through research, analysing and evaluating labour policy and providing statistical data on the labour market, including providing support to institutions that promote social dialogue. The Division has several programmes and entities:

- **Management and Support Services:** manages delegated administrative and financial responsibilities, coordinates all planning, monitoring and evaluation functions, and provides corporate support to line function sub-programmes;
- **Strengthen Civil Society:** funding for civil society organisations that protect vulnerable workers in order to contribute to a stable and smooth functioning labour market by providing resources, support and expertise to improve the independence and self-reliance of workers through transfers to the Development Institute for Training, Support and Education for Labour (DITSELA), the Workers' College Natal, the Congress of South African Trade Unions (COSATU), the South African Confederation of Trade Unions (SACOTU), the South African Labour Bulletin and selected rural advice offices;
- **Collective Bargaining:** Manages the implementation of the Labour Relations Act (1995) through policies and practices that promote sound labour relations. Funds are mainly used to: register labour organisations and de-register those that are noncompliant; publish and extend collective agreements; support and advance participation in collective bargaining structures; participate in the governance structures of the Commission for Conciliation, Mediation and Arbitration; and to participate in relevant National Economic Development and Labour Council(NEDLAC) activities;
- **Employment Equity.** Promotes equity in the labour market through improving the enforcement of the Employment Equity Act (1998);
- **Employment Standards.** Protects vulnerable workers in the labour market by administering the Basic Conditions of Employment Act (1997);
- **Research, Policy and Planning.** Researches and monitors working conditions and policies affecting the labour market in South Africa;
- **Labour Market Information and Statistics.** Collects, collates, analyses and disseminates internal and external labour market statistics about changes in the South African labour market that impact on legislation;
- **International Labour Matters.** Facilitates compliance with international obligations and coordinate multi- and bilateral relations.

- **Benchmarking Certificates:** For general work visas, business visas and intra-company transfer work visas, the DEL is required to issue benchmarking certificates confirming compliance with certain conditions stipulated in South Africa's immigration law.<sup>36</sup> First, the prospective employer has not been able to find a citizen or permanent resident with skills and qualifications matching the applicant, despite thorough efforts to do so. Second, the applicant holds suitable skills and qualifications required for the position. Third, that holders of business visas have fulfilled the key requirement of employing citizens and/or permanent residents as 60 percent of their total staff. To receive the business visa, an individual application has to be accompanied by a letter of recommendation from the Department of Trade, Industry and Competition (DTI) (previously Department of Trade and Industry) supporting the business plan and confirming its potential contribution to South Africa's interests.<sup>37</sup>
- **National Economic Development and Labour Council (NEDLAC).** Funds are transferred to the National Economic Development and Labour Council, which promotes economic growth, participation in economic decision making and social equity.
- **Commission for Conciliation, Mediation and Arbitration (CCMA).** Funds are transferred to the Commission for Conciliation, Mediation and Arbitration, which promotes social justice and fairness in the workplace through dispute prevention and dispute resolution services.

### 5.3 Commission for Conciliation Mediation and Arbitration (CCMA)

The Labour Relations Act provides for the establishment of the Commission for Conciliation Mediation and Arbitration, the Governing Body consisting of a chairperson and three members each from government, business and labour. It is headed up by a Director and is staffed with commissioners and support staff. The Commission is independent and operates throughout South Africa.

The mandatory functions include

- resolving disputes through conciliation and arbitration in terms of the LRA;
- assisting in the establishment of workplace forums;
- reviewing rules and publish information.

Discretionary functions include

- providing advice and training, and,
- conducting, overseeing or scrutinising of elections or ballots of unions or employers' organisations.

One of the functions of the Commission is to accredit bargaining councils and private agencies for dispute resolution, provided the necessary conditions and standards are achieved. Specific

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<sup>36</sup> Government of South Africa. 2022. "Employment and Labour on Employment of Foreign Nationals in South Africa." <https://www.gov.za/speeches/employment-and-labour-employment-foreign-nationals-south-africa-25-jan-2022-0000>

<sup>37</sup> DHA. 2022. "Types of Temporary Residency Visas," <http://www.dha.gov.za/index.php/immigration-services/types-of-temporary-permits>



provisions apply in relation to the effect of arbitration awards that may be enforced or reviewed in the Labour Court, or varied or rescinded by the Commission.

## 5.4 Labour Court

The Labour Court is established under the LRA and consists of a Judge President and a number of permanent and acting judges. The Court has the same standing as the High Court in relation to matters under its jurisdiction. The Court has broad powers to grant interdicts, issue declaratory orders, order compensation, and damages. It has inherent jurisdiction in relation to employment matters.

The Labour Appeal Court has a Judge President and consists of a three-person panel and also includes High Court judges. The Labour and Appeal Courts also have exclusive civil jurisdiction to grant certain relief under the BCEA. They also have concurrent jurisdiction with the civil courts on matters relating to employment contracts.

## 5.5 Labour Inspection Service

The Department of Labour includes an Inspection Service that appoints labour inspectors to monitor all employment legislation including compliance with the Labour Relations Act, Basic Conditions of Employment Act, payment of levies and health and safety and employment equity compliance. This inspection service can also be conducted by a relevant Bargaining Council and is conducted by a separate inspectorate for the mines and transport.

## 5.6 Employment Conditions Commission

The Employment Conditions Commission is established under the BCEA and is an advisory Commission responsible for advising the Minister on any matter arising out of the application of the Act; trends and impacts in collective bargaining that may undermine the purposes of the BCEA; or related policies. The Commission consists of three experts appointed by the Minister that are knowledgeable about the labour market and conditions of employment; and one member and alternate member representing organised labour and organised business nominated through NEDLAC. A chairperson is appointed from among the members.

## 5.7 National Economic Development & Labour Council (NEDLAC)

The National Economic Development & Labour Council (NEDLAC) is an independent statutory body, constituted under separate legislation (*National Economic, Development and Labour Council Act, [No. 35 of 1994]*), and consists of an executive council with representatives of government, labour, business and community. Community is only represented on the Development Chamber, whereas the other constituents are represented on the trade and industry; public monetary and finance and labour market chambers. All employment matters must go through NEDLAC before being presented in Parliament, and other related socio-economic issues may also be referred to NEDLAC. While not specifically a labour market institution, NEDLAC represents the primary institutionalised mechanism at a national level that facilitates dialogue between government and the social partners, including on matters related to (labour) migration policy and the labour market in general.

## 5.8 Commission for Employment Equity



In terms of the Employment Equity Act, the Commission for Employment Equity is established and operates as an advisory body to the Minister on all matters of employment equity and affirmative action in terms of the EEA. It is constituted with two representatives each from government, labour, business and community and a chairperson appointed by the Minister. As indicated above, there is a view that the legislative employment equity provisions are not applicable to migrant workers, but consistent with the Constitution, employment equity is an important instrument to promote and achieve non-discrimination in the workplace, which in general, does apply to migrant workers.

## 5.9 Labour Market Intelligence Partnership (LMIP)

LMIP is a national research consortium led by the state-funded Human Sciences Research Council (HSRC) in collaboration with the Department of Higher Education and Training (DHET) conducted a high-level audit of twenty government departments for statistical purposes in 2014.<sup>38</sup> The core objective was to assess administrative data-sets for skills identification and planning and also to evaluate the quality of these data-sets for generating statistics. The detailed audit also evaluated the technical platforms and data formats available for interfacing and facilitation of data exchange between partner institutions.<sup>39</sup>

## 6. RATIFICATION OF INTERNATIONAL INSTRUMENTS

South Africa has ratified 27 ILO Conventions, of which 24 are in force. With regard to labour migration, the following Conventions have been ratified:

**Table 10: Ratified ILO Conventions Relating to Labour Migration<sup>40</sup>**

	Convention No	Title	Date of Ratification
<b>Fundamental Conventions</b>	C029	Forced Labour Convention, 1930 (No. 29)	05 Mar 1997
	C087	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	19 Feb 1996
	C098	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	19 Feb 1996
	C100	Equal Remuneration Convention, 1951 (No. 100)	30 Mar 2000
	C105	Abolition of Forced Labour Convention, 1957 (No. 105)	05 Mar 1997

<sup>38</sup> <https://lmip.org.za/>

<sup>39</sup> LMIP 2015. Labour Market Intelligence Partnership – Update 2014, [https://lmip.org.za/sites/default/files/documentfiles/LMIP%20Update2014\\_Web\\_\\_0.pdf](https://lmip.org.za/sites/default/files/documentfiles/LMIP%20Update2014_Web__0.pdf)

<sup>40</sup> A full list of ILO conventions ratified by South Africa is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102888](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102888)

	C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	05 Mar 1997
	C138	Minimum Age Convention, 1973 (No. 138)	30 Mar 2000
	155	Occupational Safety and Health Convention, 1981 (No. 155)	18 Feb 2003
	C182	Worst Forms of Child Labour Convention, 1999 (No. 182)	07 Jun 2000
<b>Governance Conventions</b>	C81	Labour Inspection Convention, 1947 (No. 81)	20 Jun 2013
	C144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	18 Feb 2003
<b>Technical Conventions</b>	C189	Domestic Workers Convention, 2011 (No. 189)	20 Jun 2013
	C190	Violence and Harassment Convention, 2019 (No. 190)	29 Nov 2021 (will enter into force 29 Nov 2022)

South Africa has not ratified the two ILO conventions that are specifically related to labour migration; namely the Migration for Employment Convention (revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). South Africa has also not ratified the Private Employment Agencies Convention, 1997 (No. 181), which is of particular relevance to the recruitment and employment of migrant workers.

South Africa has also not ratified the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>41</sup>

## 7. BILATERAL LABOUR MIGRATION AGREEMENTS (BLMAs)

A report prepared for the Department of Labour and the ILO provides an extensive overview and analysis of BLMAs and MOUs between South Africa and neighbouring countries.<sup>42</sup> South Africa has historically had Bilateral Labour Migration Agreements with several SADC Member States, with some of them having been updated in more recent years, as reflected in Table 11.

**Table 11: Bilateral Labour Migration Agreements**

Country		Description of issues related to labour issues
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<sup>41</sup> <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

<sup>42</sup> Olivier, M. (2019) Selected areas of relevance for the development of a labour migration policy for South Africa: Recruitment, bilateral agreements and freedom of movement (report prepared for the Department of Labour, South Africa and the International Labour Organization, January 2019)

Botswana	1973	Governs employment of citizens of Botswana in South Africa, including: <ul style="list-style-type: none"> <li>- issues remittances and workers' welfare and compensation funds;</li> <li>- governs movement of persons across the countries;</li> <li>- establishes a Botswana Government Labour Office in South Africa</li> <li>- provides regulations for repatriation of former migrant workers</li> </ul>
Eswatini	1973	Governs: <ul style="list-style-type: none"> <li>- movement of persons across the borders;</li> <li>- establishment of an office for Eswatini Government Labour representative in South Africa;</li> <li>- provides regulations for the repatriation of former migrants</li> </ul>
Lesotho  (established under the SA-Lesotho JBCC)	2013	Governs five areas of cooperation on labour issues which include: <ul style="list-style-type: none"> <li>- dispute resolution mechanisms and institutions;</li> <li>- social dialogue mechanisms and institutions;</li> <li>- compensation in respect of occupational diseases and injuries to citizens of both countries working in either country;</li> <li>- training of arbitrators;</li> <li>- social security; and,</li> <li>- review of the Labour Agreement between the two governments signed in 1973.</li> </ul>
Zimbabwe	2009	Cooperation between the countries' Ministries and Departments of Labour. The result was the establishment of the Beitbridge Labour Migration Centre; <ul style="list-style-type: none"> <li>- facilitation of dialogue in areas such as labour dispute resolutions, labour law reform and employment services;</li> <li>- facilitation of interface between ex-Zimbabwe migrant workers in gold mines in South Africa and their previous employers and ex-employing agencies.</li> </ul>
	2013	Facilitation of recruitment of Zimbabwean workers in South African farms in the Limpopo province. The aim was to bring to an end the exploitation of Zimbabweans working in South Africa farms and especially in the Limpopo Province as illegal immigrants.
Mozambique	1964, (revised 2015)	Covers <ul style="list-style-type: none"> <li>- improvement in status and conditions of migrant workers.</li> <li>- social protection to documented migrant mineworkers.</li> </ul>
Zambia	2016	Cooperation in the following areas: <ul style="list-style-type: none"> <li>- collective bargaining;</li> <li>- dispute resolution systems;</li> <li>- labour inspections;</li> <li>- social dialogue;</li> <li>- labour market information;</li> <li>- occupational health and safety including HIV/AIDS and wellness in the workplace;</li> <li>- international labour cooperation issues;</li> <li>- social security issues relating to unemployment insurance and compensation; and</li> <li>- productivity issues.</li> </ul>

In addition to BLMAs that specifically pertain to labour migration, other bilateral arrangements include Joint Permanent Commissions for Cooperation (JPCCs) or Joint Bi-lateral Commissions of Cooperation (JBCCs). In the main, JPCCs or JBCCs are broad cooperation agreements covering more than one sector/thematic area, and may include a section/clause on labour migration. South Africa has signed JPCCs and JBCCs with six SADC Member States, but only two (Lesotho and Eswatini) specifically provide for the facilitation of movement of persons.

## 8. FAIR RECRUITMENT OF MIGRANT WORKERS <sup>43</sup>

The recruitment and placement of workers (including foreign nationals), public employment services, and the regulation of private employment agencies are all governed by the Employment Services Act (ESA) of 2014. As discussed above, the ESA provides specific guidelines on the employment of migrant workers, in line with the provisions of the Immigration Act of 2002. In broad terms, the ESA provides a substantive legal framework to ensure fair recruitment of all workers, including migrant workers.

### 8.1 Public Employment Services

The ESA makes the Department of Employment and Labour responsible for providing the following public employment services free of charge to members of the public in a manner that is open and accessible:

- Matching work seekers with available work opportunities;
- Registering work seekers;
- Registering job vacancies and other work opportunities;
- Facilitating the placing of work seekers with employers or in other work opportunities;
- Advising work seekers on access to education and training;
- Advising workers on access to social security benefits;
- Providing specialised services to assist vulnerable work seekers;
- Facilitating the exchange of information among labour market participants, including employers, workers and work seekers, private employment agencies, Sector Education and Training Authorities and training providers;
- Facilitating the employment of foreign nationals in a manner that is consistent with the object of this Act and the Immigration Act; and
- Performing any other function in terms of employment law or prescribed in terms of this Act.

### 8.2 Job Matching Services

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<sup>43</sup> For more detailed information, see the ILO report on Fair Recruitment in Africa, which includes a South African case study at [https://www.ilo.org/africa/information-resources/publications/WCMS\\_806628/lang--en/index.htm](https://www.ilo.org/africa/information-resources/publications/WCMS_806628/lang--en/index.htm)

The Department may also provide the following services to facilitate the matching of work seekers to work opportunities:

- Vocational and career counselling;
- Assessment of work seekers to determine suitability; and
- Any other related life skills to secure employment or other forms of work.

The manner in which this section of the ESA is written suggests that its provisions are primarily directed at providing employment services to citizens. However, migrant workers are not specifically excluded and unless an administrative or regulatory limitation on providing these services to migrant workers is in place, it is arguable that these provisions apply to migrants as well.

### 8.3 Registration of Private Employment Agencies

With regard to the registration and regulation of private employment agencies, the ESA provides for the following:

- The Minister (of Employment and Labour) may prescribe criteria for the registration of private employment agencies.
- The criteria for registering private employment agencies must differentiate between private employment agencies (a) that are registered as temporary employment services; and (b) that only seek to perform other employment services as contemplated in the Act.
- The Minister must designate an official of the Department as the registrar of private employment agencies.
- Any person wishing to provide employment services must apply to the registrar in the prescribed form and manner in order to register as a private employment agency.
- The registrar must, within 60 days of the application, issue a private employment agency with (a) a certificate of registration, if the application is successful or a temporary certificate of registration as prescribed; or (b) a letter containing reasons, notifying the private employment agency that it has not been granted registration, in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- The registration certificate of a private employment agency must specify whether or not the private employment agency is permitted to perform the functions of a temporary employment service.
- The registrar must maintain in electronic form a register of private employment agencies that have been registered in terms of this Act and must make suitable arrangements for the public to access the register.
- The private employment agency must display its certificate of registration in a conspicuous place at the premises from where it operates.
- A person may not operate a private employment agency except in accordance with the provisions of this Act and the terms of its registration.

### 8.4 Recruitment and Other Fees

With regard to the charging of recruitment and other fees, the ESA provides for the following:

- No person may charge a fee to any work seeker for providing employment services to that work seeker.
- The Minister may by notice in the Gazette permit private employment agencies to charge fees in terms of a specified fee to specified categories of employees or for the provision of specialised services.
- A notice may specify categories of employees by reference to the work performed or to the earnings of such employees.
- A private employment agency must not deduct any amount from the remuneration of an employee or require or permit an employee to pay any amount in respect of the placing of that employee with an employer.
- Any agreement between a private employment agency and a client in terms of which employees perform work for the client, must specify separately the remuneration that employees will receive and the fee that the client is paying to the private employment agency.
- A provision in any agreement concluded with an employee that is in breach of this section is invalid and of no force and effect.
- The Commission for Conciliation, Mediation and Arbitration or a bargaining council having jurisdiction may conciliate and arbitrate any dispute concerning the application of this section.

## 9. SKILLS RECOGNITION OF MIGRANT WORKERS

In 2011, the SADC Ministers of Education established the SADCQF as a Regional Qualification Framework (RQF) to enable easier movement of learners and workers across the SADC region and internationally. South Africa was one of the countries that piloted the alignment of its national qualifications frameworks with the SADCQF and the relevant authorities in South Africa have reported that their National Qualifications Frameworks is fully aligned with the SADCQF. The alignment of the South African NQF with the SADCQF technically allows for the mutual recognition and transferability of skills and qualifications between South Africa and other SADC Member States whose NQFs are also aligned.

### 9.1 South African National Qualifications Framework (NQF)

The mutual recognition and transfer of qualifications and skills of migrant workers is governed by the NQF. The objectives of the NQF as outlined in the NQF Act No 67 of 2008 are to:

- Create a single integrated national framework for learning achievements
- Facilitate access to, and mobility and progression within, education, training and career paths
- Enhance the quality of education and training
- Accelerate the redress of past unfair discrimination in education, training and employment opportunities

## 9.2 South African Qualifications Authority (SAQA)

SAQA is a statutory agency overseen by the Department of Higher Education and Training (DHET).<sup>44</sup> Established by the NQF Act, SAQA is the oversight body of the NQF and has as its primary functions to:

- Advance the objectives of the NQF,
- Oversee the further development and implementation of the NQF
- Co-ordinate sub-frameworks.

SAQA's functions as set out in section 13 of the Act mandates SAQA to:

- Oversee NQF implementation and collaborate with the Quality Councils
- Develop and implement NQF policies and criteria
- Register qualifications and part-qualifications on the NQF
- Recognise professional bodies and register professional designations
- Undertake research and collaborate with international counterparts
- Maintain the National Learners' Records Database
- Provide an evaluation and advisory service with respect to foreign qualifications
- Inform the public about the NQF
- Provide advice to the Minister of Higher Education and Training

All persons applying for Critical Skills Work Visas and General Work Visas are required to have their qualifications assessed by SAQA.<sup>45</sup> In the case of the former, written confirmation of these skills must be additionally provided by the appropriate South African professional body, council or board recognized by SAQA along with proof of registration with this council or board.

Qualified educators from other countries who want to work in South Africa's education sector must have their foreign qualifications assessed and register with the South African Council for Educators (SACE) in order to receive work-related visas.<sup>46</sup> For employment at public institutions, migrant educators are required to have their qualifications assessed by DHET submitted through the appropriate provincial department or school where they are seeking a position. This assessment is conducted to ensure that their qualifications are consistent with the current minimum requirements in the public sector. Information about migrant teachers employed by state institutions is also captured by PERSAL, the payroll system used by all national and provincial departments in South Africa.

The role of the Foreign Qualifications and Advisory Services division of SAQA is the evaluation of foreign qualifications for all online applications for a Foreign Qualification Evaluation. SAQA uses a two-step evaluation process involving: (a) verifying foreign

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<sup>44</sup> South Africa. South African Qualifications Authority. 2015. Policy and Criteria for Evaluating Foreign Qualifications within the South African NQF. Government Gazette No. 39566: 1289 30 December.

<sup>45</sup> DHA. 2022. "Types of Temporary Residency Visas", <http://www.dha.gov.za/index.php/immigration-services/types-of-temporary-permits>

<sup>46</sup> SAQA. 2014. The Status of Migrant Teachers in South Africa: Implications for Policy, Research, Practice. At: <https://www.saqqa.org.za/>. in 2015 the Department of Home Affairs removed teaching from the Critical Skills List and stopped issuing or renewing Quota Work Permits for teachers. **When** the Quota Work Permit expires it cannot be renewed, and the employer has been forced to terminate the employment of teachers or break the law. As a result, the number of migrant teachers in South Africa has declined.



qualifications by ensuring that issuing bodies are accredited/recognized by their national systems, that qualifications are legitimately issued by those issuing bodies; and that qualifications and awards documents are genuine; and (b) comparing foreign qualifications with South African qualifications to locate them within the South African NQF.<sup>47</sup> As of July 2021, SAQA only issues electronic certificates of evaluation at the end of the process. All application data is captured in the NLRD (National Learners' Records Database).

**9.3 National Learners' Records Database (NLRD):** the NLRD is the electronic information management system maintained by SAQA recording skills and qualifications of South Africans and non-South Africans.<sup>48</sup>

## 10. SOCIAL PROTECTION OF MIGRANT WORKERS

### 10.1 Department of Social Development

The Department of Social Development (DSD) offers a number of social grants to citizens, permanent residents and refugees, including child support grants, care dependency grants, foster child grants, disability grants, older persons' grants, war veterans' grants, grants-in-aid and social relief of distress grants, as outlined by the provisions of the Social Assistance Act (2004).<sup>49</sup> DSD also established the South African Social Security Agency (SASSA) under the terms of this law and this agency disburses the various social grants in the country. These social grants are only available to refugees, permanent residents and citizens. Former migrant mineworkers who were offered permanent residence through amnesties are eligible for social grants, although they do not qualify if they leave South Africa.

DSD and SASSA operate the comprehensive national system of social grants using the legacy information management system, Socpen, which began in the 1980s. Socpen's database, Adabas, holds a register of more than 18.3 million beneficiaries and has interfaces with other national data sources, including DHA databases such as the Population Register to verify eligibility; National Treasury to verify beneficiary banking details; DBE's learner database; and Unemployment Insurance Fund. Socpen captures age, gender, address, contact details, marital status and children's details. It does not capture countries of origin of refugees, only the expiry date of their permits. Socpen runs on a mainframe and is being modernized to become web-based with provision for online applications for grants.

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<sup>47</sup><https://www.saqa.org.za/evaluation-foreign-qualifications;>  
<https://dfqeas.saqa.co.za/dfqeas/user/home>

<sup>48</sup> SAQA. 2017. The Role of the National Qualifications Framework (NQF) and the National Learners' Records Database (NLRD) in Showing Trends in the Education and Training Sector, 31 October.

<sup>49</sup> South Africa. Office of the President. 2004. *Social Assistance Act, 2004 (Act No. 13 of 2004)*. Government Gazette No. 26446: 468 10 June; World Bank. 2021. *South Africa: Social Assistance Programs and Systems Review*. Washington, DC: World Bank.



## 10.2 COVID Relief Grants

SASSA has a separate system which receives, validates and pays applications for the COVID-19 Social Relief of Distress grants which covers citizens, permanent residents, refugees, asylum seekers and special permit holders from Angola, Lesotho and Zimbabwe. It contains the same details as Socpen plus educational level and work history.

## 10.3 Occupational Health and Safety

The occupational health and safety of workers in South Africa is defined by three key pieces of legislation: Occupational Health and Safety Act (OHSA) of 1993<sup>50</sup> and the Compensation for Occupational Injuries and Diseases Act (COIDA)<sup>51</sup> under the Department of Employment and Labour, the Mine Health and Safety Act (MHSA) of 1996<sup>52</sup> under the Department of Mineral Resources and Energy (DMR), and the Occupational Diseases in Mines and Works Act (ODMWA)<sup>53</sup> under the Department of Health. The Compensation Fund (CF) offers financial remuneration for disability, medical conditions and fatalities resulting from occupational injuries and diseases to eligible persons.<sup>54</sup> Employers are required to register with this fund directly through the Compensation Commissioner of the Compensation Fund or a designated mutual association. Although it is meant to cover all employed persons in South Africa for work-related accidents or health conditions, these provisions exclude domestic workers, informal workers, independent and self-employed persons. These are several key sectors/occupations in which migrants are employed in significant numbers in South Africa.

Migrant workers in the mining sectors are covered by additional programs. Under the terms of the Compensation for Occupational Injuries and Diseases Act (COIDA) and the Occupational Diseases in Mines and Works Act (ODMWA), current and former migrant labour in South Africa's mining sector are eligible for financial compensation for occupational injuries and diseases.<sup>55</sup> The Department of Employment and Labour enforces COIDA through the Compensation Fund, along with the Rand Mutual Assurance Company Limited providing

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<sup>50</sup> South Africa. State President's Office. 1993. *Occupational Health and Safety Act (Act No. 85 of 1993)*. Government Gazette No. 14918: 337 2 July; South Africa. State President's Office. 1993. *Occupational Health and Safety Amendment Act, 1993 (Act No. 181 of 1993)*. Government Gazette No. 15369: 342 29 December.

<sup>51</sup> South Africa. State President's Office. 1993. *Compensation for Occupational Injuries and Diseases Act (Act No. 130 of 1993)*. Government Gazette No. 15158: 340 6 October; South Africa. Office of the President. 1997. *The Compensation for Occupational Injuries and Diseases Amendment Act (Act No. 61 of 1997)*. Government Gazette No. 18430: 1517 14 November.

<sup>52</sup> This law has been amended in 1997, 2002, 2003 and 2008. South Africa. President's Office. 1996. *Mine Health and Safety Act (Act No. 29 of 1996)*. Government Gazette No. 17242: 372 14 June.

<sup>53</sup> South Africa. The Presidency. 2003. *Occupational Diseases in Mines and Works Amendment Act (Act No. 60 of 2002)* Government Gazette No. 24283: 451 22 January.

<sup>54</sup> [https://www.labour.gov.za/About-Us/Pages/Compensation\\_Fund.aspx](https://www.labour.gov.za/About-Us/Pages/Compensation_Fund.aspx)

<sup>55</sup> Mpedi, L G and Nyenti, M. 2013. "Portability of Social Security in Mining Sector: Challenges Experienced by Former Mineworkers in Accessing Social Security Benefits in Selected Southern African Countries (A Scoping Study)." Southern Africa Trust.

occupational injury and disease compensation insurance in the mining industry (under a license granted to it in the provisions of the Act).

## 10.4 Eligibility by Legal Status

Table 12 reflects the social security (protection) rights of permanent and temporary migrant workers in relation to the rights of citizens. For citizens and permanent residents, these rights are enshrined in a variety of social security laws, but the extent to which temporary migrant workers and particularly irregular migrant workers have access to these rights remains largely unclear.<sup>56</sup>

**Table 12: Eligibility for Social Protection**

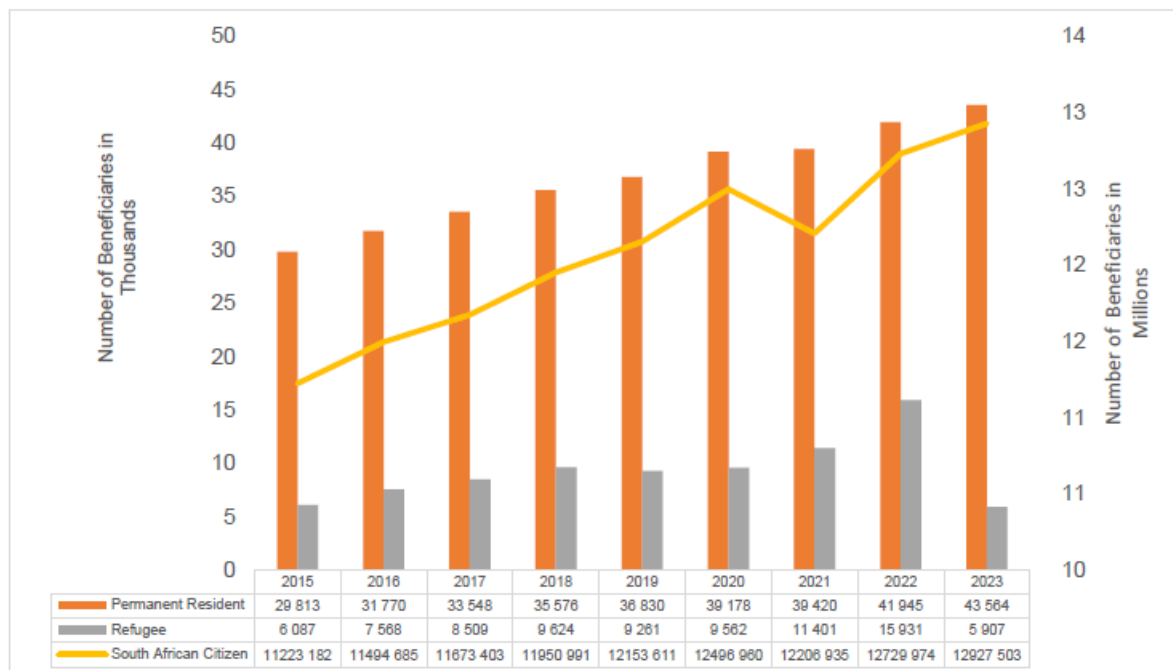
	Social Assistance	National & Occupational Old-Age and Disability Pension	Unemployment Benefits	Public Health Care & Health Insurance	Public Housing	Public Education
Citizens	✓	✓	✓	✓	✓	✓
Permanent Residents	✓	✓	✓	✓	✓	✓
Temporary Residents		✓		✓		
Irregular Migrants						

Statistics South Africa (2024) recently released data on the numbers of migrants receiving social grants. Figure 12 compares the overall numbers for social grant beneficiaries who are citizens (nearly 13 million in 2023), permanent residents (43,500), and refugees (6,000).

<sup>56</sup>

[https://www.ilo.org/dyn/natlex/natlex4.listResults?p\\_lang=en&p\\_country=ZAF&p\\_count=916&p\\_classification=15&p\\_classcount=153](https://www.ilo.org/dyn/natlex/natlex4.listResults?p_lang=en&p_country=ZAF&p_count=916&p_classification=15&p_classcount=153)

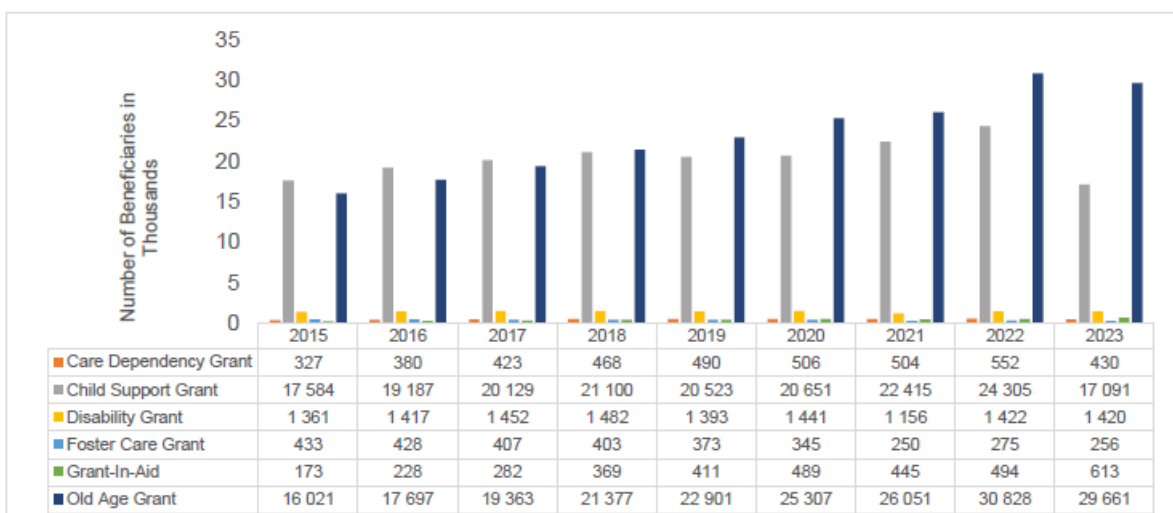
**Figure 12: Social Grant Beneficiaries by Migratory Status, 2015-2023**



Source: Statistics South Africa (2024: 54)

Figure 13 looks at the number of migrant beneficiaries by grant type, showing that in 2023, there were 17,000 Child Support Grant recipients, 29,000 old age grants ( an increase from 16,000 in 2015), and 1,400 disability grants, mostly to permanent residents.

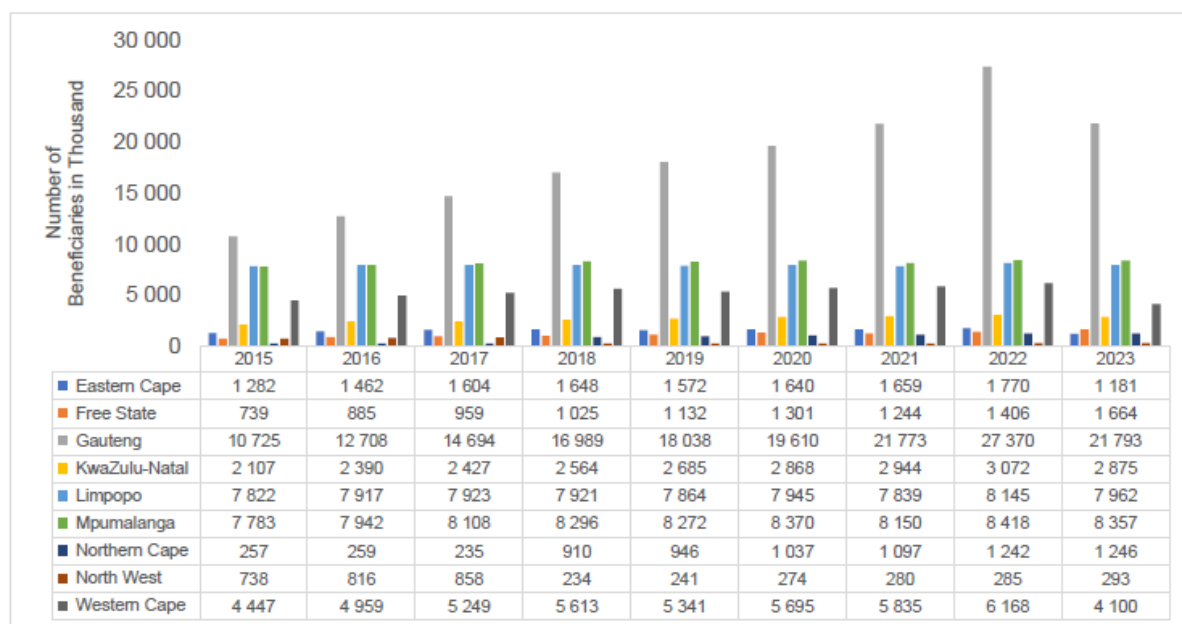
**Figure 13: Migrant Social Grant Beneficiaries by Grant Type, 2015-2023**



Source: Statistics South Africa (2024: 54)

Most social grants to migrants are paid out to residents of Gauteng (22,000 in 2023), followed by Mpumalanga (8,300), Limpopo (7,900) and Western Cape (4,100) (Figure 14).

**Figure 14: Migrant Social Grant Beneficiaries by Province, 2015-2023**



Source: Statistics South Africa (2024: 55)

Eligibility for the COVID-19 Social Relief of Distress Grant was limited to unemployed citizens, permanent residents, refugees, and (after a court challenge) holders of Zimbabwean, Angolan, and Lesotho Special Permit holders. As Tables 13 and 14 show, in November 2023, grant applications were received from around 34,000 permanent residents, 5,700 refugees, 5,700 asylum-seekers, and 14,800 Permit holders or almost 55,000 migrants in total.

**Table 13: SRD Grant Applications by Migratory Status and Province, November 2023**

Province	Citizens	Permanent residents	Refugees	Total
Eastern Cape	1 960 841	881	706	1 962 428
Free State	845 896	883	51	846 830
Gauteng	3 006 042	10 661	1 818	3 018 521
KwaZulu-Natal	3 778 347	2 677	855	3 781 879
Limpopo	2 062 599	12 085	178	2 074 862
Mpumalanga	1 452 420	4 136	184	1 456 740
North West	1 058 295	1 244	72	1 059 611
Northern Cape	327 490	164	20	327 674
Western Cape	1 186 849	1 197	1 799	1 189 845
<b>Total</b>	<b>15 678 779</b>	<b>33 928</b>	<b>5 683</b>	<b>15 718 390</b>

Source: Statistics South Africa (2024: 56)

**Table 14: SRD Grants to Asylum Seekers and Special Permit Holders, November 2023**

Province	Asylum seeker	Angolan Special Permit holder	Lesotho Exemption Permit holder	Zimbabwean Exemption Permit holder	Total
Eastern Cape	549	44	149	53	795
Free State	312	5	816	16	1 149
Gauteng	1 273	13	5 080	247	6 613
KwaZulu-Natal	931	25	366	87	1 409
Limpopo	524	23	357	47	951
Mpumalanga	358	12	273	46	689
North West	285	17	1 127	32	1 461
Northern Cape	177	10	81	7	275
Western Cape	1 292	23	117	33	1 465
<b>Total</b>	<b>5 701</b>	<b>172</b>	<b>8 366</b>	<b>568</b>	<b>14 807</b>

Source: Statistics South Africa (2024: 56)

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