

Namibia Labour Migration Review

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Reviewed by Albius Mwiya
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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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ACRONYMS

| | |
|-------------|--|
| AU | African Union |
| BQA | Botswana Qualification Authority |
| EEC | Employment Equity Commission |
| ESB | Employment Services Board |
| GCM | Global Compact on Migration |
| HIES | Household Income and Expenditure Survey |
| ILO | International Labour Organization |
| ILOSTAT | International Labour Organisation Statistics |
| IOM | International Organisation for Migration |
| ISB | Immigration Selection Board |
| ITUC AFRICA | International Trade Union Africa |
| LAC | Labour Advisory Council |
| LMAP | Labour Migration Action Plan |
| LMTWG | Labour Migration Technical Working Group |
| MHISS | Ministry of Home Affairs, Immigration, Safety and Security |
| MLIREC | Ministry of Labour, Industrial Relations and Employment Creation |
| MoU | Memorandum of Understanding |
| MQA | Malaysian Qualification Agency |
| NANLO | Namibia National Labour Organization |
| NCHE | National Council on Higher Education |
| NCMM | National Committee on Migration Management |
| NEF | Namibian Employers Association |
| NHIES | National Housing Income and Expenditure Survey |
| NLMP | National Labour Migration Policy |
| NLMPIP | National Labour Migration Policy and Implementation Plan |
| NMP | National Migration Policy |
| NMS | National Migration Survey |
| NQA | Namibia Qualification Authority |

| | |
|--------|--|
| NQF | Namibia Qualification Framework |
| NSA | Namibia Statistics Agency |
| NTA | Namibia Training Authority |
| NUNW | National Union of Namibian Workers |
| SADC | Southern African Development Community |
| SAMM | Southern Africa Migration Management Project |
| SAQA | South Africa Qualification Authority |
| SATUC | Southern Africa Trade Union Congress |
| SSC | Social Security Commission |
| SWANLA | South West Africa Native Labour Association |
| TEC | Tertiary Education Council of Botswana |
| TUCNA | Trade Union Congress of Namibia |
| UNDESA | United Nations Department of Economic and Social Affairs |
| UNHCR | United Nation High Commission for Refugees |
| UNODC | United Nation on Drugs and Crime |

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1 INTRODUCTION

Since independence in 1990, Namibian development planning and policies have focused more on internal migration than international migration. The abolition of mobility controls imposed by the South African during apartheid regime on Namibians led to a major increase in rural-urban migration and the rapid growth of urban areas throughout the country. Rapid urbanisation has posed many policy challenges including the growth of informal settlements, urban unemployment, poverty and food insecurity, and challenges of housing and service provision for the urban population.

Namibia is the only SADC country to have conducted a National Migration Survey (NMS) since 1990 (Frayne & Pendleton, 1998, 2001a). The NMS laid the groundwork for many subsequent analyses of the extent, character and impacts of labour migration within the country. Work on the policy challenges of rapid urbanization and rural-urban migration in Namibia has focused on issues such as the drivers of migration and urbanization (Frayne & Pendleton, 2002; Moses, 2020a, 2020b), rural-urban linkages (Grenier, 2011; Pendleton et al., 2014; Venditto, 2019); migrant livelihoods (Frayne, 2004, 2007; Kharuchas, 2020; Nickanor, 2014), remittances (Greiner, 2009), gender and migration (Guetto & Djurfeldt, 2014; Venditto, 2018), migrant health (Mushaandja & Ashton, 2013; Low et al., 2021); and the use of mobile technology by migrants (Lai et al., 2019).

International migration to Namibia has not received the same amount of attention to date in terms of scientific analysis. However, in 2015, the Namibia Statistics Agency (NSA) published a Migration Report using data from the 2011 Census which focused primarily on internal migration volumes, trends and geographies, but also contained a section on international migrants in Namibia (NSA, 2015a). According to the Report, the census recorded 93,000 foreign-born residents with the top five countries being Angola (38,076), South Africa (21,209), Zambia (10,299), Zimbabwe (5,770) and Germany (3,670). Other literature works on international migration to Namibia has focused on Namibian attitudes to migrants and immigration policy (Frayne & Pendleton, 2001b), migrant communities (Armbruster, 2010; Danielsson, 2016; Dobler, 2009), and cross-border informal sector workers (Dobler, 2008; Nangulah & Nickanor, 2005; Nduma et al., 2021; Niikondo, 2007).

The Ministry of Home Affairs and Immigration chaired a Technical Group charged with producing Namibia's first National Migration Profile (IOM, 2015). As the Profile notes, "reliable international migration data concerning Namibia are hard to find and difficult to verify. Included in this regard are data involving migration into and from Namibia, as well as migration through Namibia." The Profile makes 14 Key Recommendations some of which are relevant to labour migration to Namibia:

- Promote the health of migrants, their partners and dependants through dedicated strategic and policy frameworks and accessible preventive, educative, treatment, care and support services, focusing in particular on high-risk areas (such as areas of vulnerability);
- Enhance and use the labour market information system and skills audit data to determine available and required skills (supply and demand) in Namibia, and develop a priority skills retention/acquisition strategy;
- Harness skilled migration for development in Namibia by requiring immigrant professionals to provide training and imparting of skills;
- Develop concrete policies to give effect to core elements of the Migration Profile, supported by a dedicated institutional framework within the Government of Namibia, and consider the ratification and implementation of major migration standard-setting instruments of the ILO and the UN, as well as other relevant standard-setting instruments to guide migration policy and practice in Namibia;
- Support the migration statistical environment in Namibia by enhancing the NSA's capacity to render a more comprehensive and emphatic service in the migration domain, by strengthening inter-institutional data cooperation, and by addressing capacity weaknesses;
- Align data indicators and collection in Namibia with universally applicable labour migration concepts, definitions and methods;
- Enhance migration-related data in census and household surveys, mainstream migration data in Namibian policy and strategic frameworks.

These recommendations are designed to promote the official Namibian skills-based immigration policy of allowing skilled immigration provided that it is temporary and tied to the training and imparting of skills to Namibians.

2 STAKEHOLDER ANALYSIS

There are many different stakeholders, defined as groups or institutions that may be affected by or may influence the design, implementation, and outcomes of labour policies in Namibia more broadly. The section below highlights the key stakeholders that are crucial in this review.

Government Institutions and Agencies

1. Ministry of Home Affairs, Immigration, Safety and Security
2. Ministry of Labour, Industrial Relations and Employment Creation
3. Social Security Commission
4. Ministry of Gender, Poverty Eradication and Social Welfare
5. Ministry of Health and Social Welfare

Social Partners;

1. National Union of Namibian Workers
2. Trade Union Congress of Namibia
3. Namibia National Labour Organization
4. Namibia Informal Sector Organization
5. Labour Resource and Research Institute
6. Namibian Employers Federation
7. Namibia Employers Association

Academia

1. University of Namibia
2. Economic and Social Justice Trust

3 SITUATIONAL ANALYSIS

The purpose of this section is to present the views captured during consultations with identified stakeholders within the area of Labour Migration. The views were captured under seven (7) key thematic areas: (1) Labour Migration Policies, (2) International Labour Standards, (3) Bilateral Labour Migration/circular migration Agreements across the region and with third countries, (4) Fair Recruitment and decent employment for migrant workers including regulatory legislation on Private Employment Agencies aligned to international standards, (5) Skills Mobility and Qualifications Frameworks, regional and national, (6) Social Security Portability of benefits, (7) Labour Migration Data. There was a total of fourteen (14) stakeholders identified, of which 12 availed themselves for consultations and two had challenges with their schedules and hence were not available for interviews.

3.1 Labour Migration Policies

The majority of stakeholders interviewed indicated that they have been involved in the development of migration frameworks at Global, Continental, Regional and National levels. They further indicated that they are currently involved in the implementation of some of the frameworks through their respective representatives in some of the implementation committees. Some stakeholders, however, expressed that Namibia has not yet established well-functioning labour migration Institutions. Therefore, people leaving and returning, entering and leaving the country are not coordinated. When it comes to the collective bargaining, stakeholders stated that although migrant workers have right to collective bargaining and freedom of association, most of them are not well organized. Therefore, migrant workers especially domestic workers are being mistreated. The main factor that causes this condition is the fact that in most of these cases are not reported because they take place in private homes and most of these migrant workers are in irregular status and they are afraid to report to the authority for

fear of being deported to their countries of origin. Furthermore, even those in regular status do not also report cases of abuse due to fear of their work permits being withdrawn. Stakeholders stated further that there have been some reports that employers threaten migrant workers with non-renewal of their work permits if they join unions. There are also cases where migrant worker's salaries are lower than those of the nationals especially those recruited through Private Employment Agencies. To mitigate this condition, the Ministry of Labour, Industrial Relations and Employment Creation has embarked on the process of establishing a labour migration unit within the Directorate of Labour Market Services.

3.2 International Labour Standards

Consultations with stakeholders reveals that Namibia has ratified 17 ILO Conventions and have been modified to the country's national legislations to adapt them for effective implementation. The two¹ out of the ten Fundamental Conventions that Namibia has not ratified are with the Office of the Attorney General for scrutiny before tabled for ratification. There is agreement by all stakeholders that there is child labour and discrimination among migrant workers in Namibia. Most of the social partners interviewed agreed that migrant workers are deprived of freedom of association and lack of collective bargaining. The issue of child labour is prevalent more especially in domestic environment. Most of these children are from the neighbouring countries of Zambia and Angola. The labour courts are offering equal service to the migrant workers as well as nationals. There is no specific labour market Institution which is specifically for the support of migrant workers but sometimes there is ad-hoc joint operations of Government and Social partners to address the plight of migrant workers. The situation of migrant domestic workers and women migrant workers is very precarious. Most of the domestic workers are women operating illegal in the informal economy. They are being exploited, discriminated against, and in most cases they do not report such incidences due to fear of being arrested and deported.

3.3 Bilateral labour migration/circular migration agreements across the region and with third countries.

The stakeholders consulted, confirmed that, besides the agreements signed with Angola and Botswana, Namibia has also signed Bilateral Labour Agreements (BLAs) with Zimbabwe and Venezuela and are now busy finalizing the implementation plans to ensure effective implementation.

¹ C 187 – Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
C 155 – Occupational Safety and Health Convention, 1981 (No.155).

3.4 Fair recruitment and decent employment for migrant workers including regulatory legislation on private employment agencies, aligned to internal standards.

Consultation with stakeholders revealed that the Government of the Republic of Namibia has promulgated a law to regulate the operations of the Private Employment Agencies (PrEA). This is in line with Part 4 of the Public Employment Service Act, Act No. 8 of 2011 which stipulate that all PrEAs must be licensed in order to operate in the country. In terms of the size of the industry, informants indicated that the number of informal employment agencies that are operating in the country is relatively small. From amongst the few agencies operating in Namibia, it was reported some of the agencies were demanding payments from job seekers in exchange of promising to find jobs for them which is against law. In instances where such were found those agencies guilty of such offences were ordered to refund the money to the job seekers. When it comes to the registration of job seekers, the country's Public Employment Service is registering all job seekers including foreign nationals. The service manages a data base of job seekers called "Namibia Integrated Employment Information System (NIEIS). In order to ensure fair recruitment of Nationals, the Immigration Selection Board issues a work permit to a foreign national, the public employment service is required to issue a letter confirming that there is no national who qualifies to occupy the position.

3.5 Qualifications Frameworks – Regional and National

In terms of qualification frameworks alignment, consultations with the Namibia Qualifications Authority (NQA), which is the administrator of the national qualifications' framework, confirmed that Namibia is aligned to the SADC Qualifications Framework and is party to the Lisbon Convention. Besides other recognition agreements, Namibia has signed a recognition agreement with Russia. Which means that all qualifications recognized in Russia will also be recognized in Namibia and vice versa. In order to address the issue of the present and future skills gap, the Namibia Training Authority has established Industry Skills Committees. These committees are composed of experts from different sectors of the economy and they mainly identify skills needs within their respective sectors and feed in the Skills Development Plan for the TVET sector.

3.6 Social Security Portability of Benefits

Consultations with the Social Security Commission, an entity established under the Social Security Act No.34 of (1994) , and has a mandate to provide social security benefits to the citizens including migrant workers confirmed that it is implementing the ILO Recommendation on social protection floors. These are such as sick, death, maternity benefits to all workers including migrant workers. Upon termination of employment, e.g. each employee including migrant worker is paid N\$ 12,000.00 by the

Social Security Commission. In terms of analytical labour statistics, SSC has confirmed that it keep record of employees including migrant workers in their data base.

3.7 Labour Migration Data

In terms of labour migration data, consultations with the Namibia Statistics Agency (NSA), an entity established by the Act of Parliament, Statistics Act, No. 9 of 2011 whose mandate is to collect, produce, analyse and disseminate official and other statistics in Namibia confirmed that it collects data on labour migration. The data collected is disaggregated by sex and age per economic sector, occupation and skill levels. Furthermore, NSA confirmed that It has data on labour migration disaggregated by status in employment and their working conditions. This information is contained in the labour Force Surveys of 2016 and 2018. Going forward, NSA indicated that this exercise is ongoing and that it will again be captured in the upcoming Namibia Household Income and Expenditure Survey (NHIES). In terms of the needs to conduct skills assessment, there are some discussions going on with stakeholders to conduct a skills audit survey as most of the stakeholders in the labour market have been demanding for it.

4 NATIONAL MIGRATION AND LABOUR MIGRATION POLICIES.

In 2018, the Namibian government launched a National Committee on Migration Management (NCMM), a coordinating body comprised of government institutions, UN agencies, civil society and non-governmental organizations, responsible for the development of a Comprehensive National Migration Management Policy and a roadmap for its implementation. The Draft National Migration Policy and Five-Year Implementation Plan was validated in July 2019.

Namibia's first National Labour Migration Policy and a Five-Year Implementation Plan (NLMPIP 2020-2025) from the Ministry of Labour, Industrial Relations and Employment Creation were adopted by government in 2019 and launched in June 2020. This policy was developed by a tripartite body, the Labour Migration Technical Working Group (LMTWG), comprised of Government Institutions and Agencies, as well as Employers and Workers representatives. The primary policy focus is to have a well-managed labour migration process that makes a significant contribution to Namibia's economic development and skilled workforce and where both immigrant workers and Namibian workers abroad are gainfully employed and enjoy concrete protection.

The NLMPIP has the following general guiding principles:

- Maximising migration for development
- Decent Work
- Skills Enhancement

- Diaspora Inclusion
- Migrant workers', including vulnerable workers' protection
- Normative framework and benchmarking
- Multi-actor involvement
- Adequate data support
- Sound regulation
- Decent job opportunities, at home and abroad
- Improved migration management

The policy addresses several labour migration-related challenges as identified in Namibia:

- Data Shortcomings: need for administrative data, digitalised information on work permits, details of nationality/country of origin of prospective immigrants, and employment and demographic data on migrants;
- Skills Shortages and Mismatches: inadequate information on available skills and skills shortages in the country and need for a database of critical skills;
- Working Conditions: foreign workers change their approved working conditions and sometimes start their own businesses after arrival;
- Work Permit Processes: backlog in granting work permits by the Immigration Selection Board
- Standardised Evaluation Framework: need for the finalisation and utilisation of a standardised framework across the region.

Box: Objectives of the National Labour Migration Policy, 2019

- a) Develop a labour migration system that benefits optimally from the developmental impact of migration to and from Namibia;
- b) Ensure effective border control, and sound management of migration flows, including the eradication of human trafficking, smuggling, child labour, forced labour and irregular migration;
- c) Have an informed well-regulated legal mandate and dedicated policy context, appropriately aligned to relevant international and regional standards;
- d) Employ immigrant labour to provide and transfer critical skills, in the absence of available human resources;
- e) Appropriately regulate the selection and recruitment of migrant workers through supervised private employment agencies and public employment services, in accordance with universal good practice;
- f) Effectively include and make use of the ability of Namibian workers abroad to support development in Namibia and impart skills to other Namibians;

- g) Extend rights-based protection to migrant workers, as well as to victims of human trafficking, refugees and asylum seekers in the form of, among others, labour and social protection, and access to justice;
- h) Ensure positive health outcomes for migrant workers and affected households and communities;
- i) Deal with abuse of migrant workers; including Namibian migrant workers abroad;
- j) Ensure the collection, analysis and dissemination of reliable labour migration statistics;
- k) Improve the skills of Namibians to bridge the skills gap in the country through training and projection of demand and supply of human resources.

Concrete labour migration-related strategies to be implemented by the NLMIP can be divided into four main groups:

Skills-Based Temporary Immigration for Training Namibians

- Better understand the occupational profile and skills competencies of the Namibian labour market and conduct regular skills audit surveys;
- Enhance skills development, training and human resource management of Namibians;
- Strengthen labour inspection at workplaces to ensure compliance of work permit holders with skills imparting obligations and other relevant laws;
- Enforce understudy and skills impartation obligations supported by an appropriate legal mandate including amending existing understudy legislation;
- Harmonize the qualifications and standardised evaluation framework for foreign qualifications.

Enhanced Migration Management and Control

- Develop and implement Bilateral Agreements to meet labour migration needs;
- Streamline the work permit process through Immigration Selection Board reform;
- Improve and manage a dedicated Cross-Border Migration Management System;
- Address the problem of foreign labour migrants changing their status in the labour market and starting businesses on arrival in Namibia;
- Adopt a legal/regulatory framework for adoption, monitoring and evaluation of NLMIP implementation;
- Benchmark NLMIP implementation against AU and SADC instruments and programs;

Rights and Protections for Labour Migrants

- Extend public employment services to migrant workers and promote ethical recruitment;

- Ensure access to and portability of social security benefits for migrant workers;
- Implement strategic frameworks on migration and health;
- Address labour migration data shortcomings through enhanced data collection, analysis and availability.

Migration Data Needs

- Address labour migration data shortcomings through enhanced data collection, analysis and availability
- Enhance the collection and use of labour migration data by strengthening the Namibia Statistics Agency and the migration statistical environment; develop labour migration indicators; expedite Labour Migration Information System development; and mainstream labour migration data.

Other additional policy framework includes the following:

- Affirmative Action (Employment) Act 1998.
- Employment Services Act, 2011
- Statistics Act, 2011
- Social Security Act, 1994
- Namibia Qualifications Authority Act, 1996
- National Employment Policy 2013 -2027
- Social Protection Policy 2019
- National Migration Policy 2020
- National Labour Migration Policy 2019
- Immigration Control Act, 1993 +

In April 2024, the Namibia Employers and Trade Unions Labour Migration Network (NETUMN) was launched by the most representative employers (Namibian Employers Federation or NEF) and trade union (Trade Union Congress of Namibia or TUCNA) representatives from the country. At its inception, NETUMN produced a “Common Charter of Social Partners for the Protection of the Rights of Migrant Workers and Refugees and Members of their Families and the Strengthening of Social Dialogue on International Labour Migration in Namibia” including common values, principles, objectives and modalities of action. It also called for the establishment of a body and an annual monitoring work plan for the application of the Charter. The founders of NETUMN drafted a 2024-2027 Action Plan that would contribute to the implementation of Namibia’s Labour Migration Policy.

5 LABOUR MIGRATION DATA SOURCES, TRENDS AND DYNAMICS

5.1 Migration Data Sources

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

- National Population and Housing Census, 2011 (NSA, 2013)
- Inter-Censal Demographic Survey, 2016 (NSA, 2017a)
- Namibian Labour Force Surveys (NSA, 2015b, 2017b, 2019)
- Household Income and Expenditure Survey 2015/16 (HIES) (NSA, 2017c)
- UN DESA Migrant Stock Country Profile (UN DESA, 2019a)
- UN DESA Migrant Stock by Origin and Destination 2019 Update (UN DESA, 2019b).

Work permit data from the Immigration Selection Board and Employment Services Bureau in the Directorate of Labour Market Services as well as other administrative data is not readily accessible and an audit of these potential sources is desirable.

5.2 Migrant Stock and Trends

UN DESA migrant stock data suggests that the total number of foreign-born international migrants in Namibia has remained relatively stable since independence in 1990, and even registered a slight decline since 2000. In 2000, there were an estimated 135,500 migrants in the country, a number which had fallen to 101,600 by 2015 (Table 1). The proportion of migrants in the total population declined from 8.4% in 1990 to 4.3% in 2019. The number of refugees (mainly from Angola) peaked in 2000 at 28,400 (21% of all migrants) but has since fallen to less than 5,000. Refugees made up 2.2% of the total migrant population in 2019.

Most refugees reside in Osire Refugee Camp in the north of the country, although an estimated 900 have relocated to Windhoek. Females constitute 43% of the total migrant stock and males 57%. The relative proportions of each have remained constant since 1990 despite a major change in the age structure with an increase in the median age from 29 to 35, a decline in child and youth migration from 34% to 13% and an increase in the working age population from 54% to 78%. The proportion of the migrant stock is from Southern African countries has slowly increased from 68% in 1990 to 75% in 2019.

Table 1 - Migrant Stock of Namibia, 1990-2019

| | 1990 | 1995 | 2000 | 2005 | 2010 | 2015 | 2019 |
|-------------------------------|---------|---------|---------|---------|---------|---------|---------|
| International migrants | 120,600 | 115,400 | 135,500 | 107,300 | 103,800 | 101,600 | 107,400 |
| Share of total population (%) | 8.4 | 7.1 | 7.5 | 5.5 | 4.9 | 4.4 | 4.3 |
| Refugees | 0.0 | 1,700 | 28,400 | 6,400 | 8,700 | 2,800 | 4,100 |
| Refugee share of migrants (%) | 0.0 | 1.5 | 21.0 | 5.9 | 8.4 | 2.8 | 4.1 |
| Females % | 47.2 | 46.9 | 46.0 | 46.3 | 46.3 | 46.1 | 46.1 |
| Median Age | 28.6 | 29.1 | 29.6 | 31.5 | 33.5 | 34.4 | 35.4 |
| Age Group (%) | | | | | | | |

| | | | | | | | |
|-------|------|------|------|------|------|------|------|
| 0-19 | 33.9 | 31.4 | 28.2 | 25.3 | 18.3 | 14.4 | 12.6 |
| 20-64 | 54.4 | 57.5 | 61.2 | 64.0 | 71.0 | 75.2 | 77.6 |
| 65+ | 11.7 | 11.1 | 10.7 | 10.8 | 10.7 | 10.5 | 9.8 |

Source: UN DESA (2019a)

The UN DESA methodology for calculating migrant stock suggests that there are more than 100,000 international foreign-born migrants in Namibia. However, data from the Namibia Statistics Agency indicates that the number of non-citizens is lower:

- The 2016 Namibian Inter-Censal Survey recorded 70,373 non-Namibian citizens usually resident in Namibia (of whom 10,123 were outside Namibia at the time of the census).
- The 2015/16 Household Income and Expenditure Survey (HIES) recorded 44,000 non-Namibians in the country, or only 1.2% of the population.

It is possible that there are fewer non-citizens than foreign-born and that some of the discrepancy is a result of the foreign-born becoming citizens. However, Namibia has strict regulations on transitioning to citizenship (e.g. born in Namibia or a spouse of a Namibian with 10 years residency) so this is unlikely to account for the differences (Hubbard, 2021).

5.3 Countries of Migrant Origin

The UN DESA Migrant Stock by Origin and Destination Tables provide data on the country of origin of 107,561 migrants in 2019 (Table 2). This data set suggests that about two-thirds of migrants are from other SADC countries. Table 3 shows that three countries – Angola, Zimbabwe and South Africa – account for 86% of all SADC migrants and 59% of total migrants in Namibia. More than half (54%) of SADC migrants and 36% of all migrants in Namibia are Angolans.

Table 2 - Migrants from Other SADC Countries, 1990-2019

| | Total Migrants | SADC Migrants | % SADC Migrants |
|------|----------------|---------------|-----------------|
| 1990 | 120,641 | 71,173 | 59.0 |
| 1995 | 115,372 | 68,059 | 59.0 |
| 2000 | 135,347 | 91,651 | 67.7 |
| 2005 | 107,347 | 72,631 | 67.7 |
| 2010 | 103,626 | 70,367 | 67.9 |
| 2015 | 101,618 | 68,906 | 67.8 |
| 2019 | 107,561 | 72,978 | 67.8 |

Source: Compiled from UN DESA (2019b)

Table 3 - SADC Origin Countries, 2019

| | No of SADC Country Migrants | % of SADC Migrants | % of Total Migrants |
|--------------|--|-------------------------------|--------------------------------|
| Angola | 39,580 | 54.2 | 36.8 |
| Zimbabwe | 14,968 | 20.5 | 13.9 |
| South Africa | 8,785 | 12.0 | 8.2 |
| DRC | 3,675 | 5.0 | 3.4 |
| Zambia | 3,132 | 4.3 | 2.9 |
| Tanzania | 1,136 | 1.6 | 1.1 |
| Botswana | 681 | 0.9 | 0.6 |
| Malawi | 370 | 0.5 | 0.3 |
| Eswatini | 202 | 0.3 | 0.2 |
| Mozambique | 141 | 0.2 | 0.1 |
| Lesotho | 130 | 0.2 | 0.1 |
| Mauritius | 109 | 0.2 | 0.1 |
| Seychelles | 57 | 0.1 | 0.1 |
| Total | 72,966 | 100.0 | 67.8 |

Source: Compiled from UN DESA (2019b)

Despite the dominance of a few source countries, the migrant population of Namibia is amongst the most diverse in the whole region with migrants from 81 other countries (Table 4). Germany is the third most important source country (at 11% of the total) and the UK, China and the USA are all in the top 10 source countries. In total, nearly 80,000 migrants come from 34 other African countries and constitute 75% of all migrants in Namibia. The second most important source region is Europe with nearly 17,000 migrants from 24 countries, followed by Asia with 3,400 migrants from 11 countries.

Table 4 - Regions and Countries of Migrant Origin in Namibia, 2019

| | Total Migrants | % of Total | No. of Females | No. of Males | % Female | % Male |
|---------------|---------------------------|-------------------|---------------------------|-------------------------|---------------------|---------------|
| Africa | | | | | | |
| Angola | 39,580 | 36.8 | 16,258 | 23,322 | 41.1 | 58.9 |
| Zimbabwe | 14,968 | 13.9 | 7,362 | 7,606 | 49.1 | 50.9 |
| South Africa | 8,785 | 8.2 | 4,390 | 4,395 | 50.0 | 50.0 |
| DRC | 3,675 | 3.4 | 1,879 | 1,796 | 51.0 | 49.0 |
| Zambia | 3,132 | 2.9 | 1,097 | 2,035 | 35.0 | 65.0 |

| | | | | | | |
|---------------|--------|------|--------|--------|-------------|-------------|
| Congo | 1,156 | 1.1 | 482 | 674 | 41.7 | 58.3 |
| Kenya | 1,149 | 1.1 | 567 | 582 | 49.4 | 50.6 |
| Tanzania | 1,136 | 1.1 | 574 | 562 | 50.5 | 49.5 |
| Nigeria | 1,017 | 1.0 | 392 | 625 | 38.5 | 61.5 |
| Botswana | 681 | 0.6 | 346 | 335 | 50.8 | 49.2 |
| Algeria | 500 | 0.5 | 262 | 238 | 52.4 | 47.6 |
| Uganda | 497 | 0.5 | 243 | 254 | 48.9 | 51.1 |
| Burundi | 402 | 0.4 | 156 | 246 | 38.8 | 61.2 |
| Malawi | 382 | 0.4 | 176 | 206 | 46.1 | 53.9 |
| Rwanda | 370 | 0.3 | 163 | 207 | 44.1 | 55.9 |
| Ethiopia | 218 | 0.2 | 148 | 70 | 67.9 | 32.1 |
| Sudan | 205 | 0.2 | 113 | 92 | 55.2 | 44.8 |
| Eswatini | 202 | 0.2 | 110 | 92 | 54.5 | 45.5 |
| Egypt | 179 | 0.2 | 69 | 110 | 38.6 | 61.4 |
| Sierra Leone | 168 | 0.2 | 89 | 79 | 53.0 | 47.0 |
| Benin | 160 | 0.2 | 89 | 71 | 55.6 | 44.4 |
| Ghana | 147 | 0.1 | 60 | 87 | 40.8 | 59.2 |
| Mozambique | 141 | 0.1 | 60 | 81 | 42.6 | 57.4 |
| Lesotho | 130 | 0.1 | 66 | 64 | 50.8 | 49.2 |
| Cameroon | 121 | 0.1 | 21 | 100 | 17.4 | 82.6 |
| Mauritius | 109 | 0.1 | 64 | 45 | 58.7 | 41.3 |
| Somalia | 96 | 0.1 | 28 | 68 | 29.3 | 70.7 |
| Gambia | 88 | 0.1 | 48 | 40 | 54.6 | 45.4 |
| Burkina Faso | 73 | 0.1 | 38 | 35 | 52.1 | 47.9 |
| Seychelles | 57 | 0.1 | 35 | 22 | 61.4 | 38.6 |
| Guinea | 53 | 0.1 | 21 | 32 | 39.6 | 60.4 |
| Libya | 35 | <0.1 | 17 | 18 | 48.6 | 51.4 |
| Côte d'Ivoire | 30 | <0.1 | 8 | 22 | 26.7 | 73.3 |
| Senegal | 30 | <0.1 | 11 | 19 | 36.7 | 63.3 |
| Sub-Total | 79,672 | 74.6 | 35,442 | 44,230 | 44.5 | 55.5 |
| Asia | | | | | | |
| China | 3,216 | 3.0 | 906 | 2,310 | 28.2 | 71.8 |
| India | 703 | 0.7 | 240 | 457 | 34.1 | 65.9 |
| Philippines | 254 | 0.2 | 159 | 95 | 62.6 | 37.4 |
| Pakistan | 171 | 0.2 | 17 | 154 | 9.9 | 90.1 |
| Japan | 116 | 0.1 | 73 | 43 | 62.9 | 37.1 |

| | | | | | | |
|----------------------------------|-------|------|-------|-------|-------------|--------------|
| Dem. People's Republic of Korea | 103 | 0.1 | 0 | 103 | 0.0 | 100.0 |
| Indonesia | 93 | 0.1 | 57 | 36 | 61.3 | 38.7 |
| Thailand | 76 | 0.1 | 43 | 33 | 56.6 | 43.4 |
| Afghanistan | 44 | <0.1 | 25 | 19 | 56.8 | 43.2 |
| Republic of Korea | 35 | <0.1 | 21 | 14 | 60.0 | 40.0 |
| Bangladesh | 32 | <0.1 | 11 | 21 | 34.4 | 65.6 |
| Sub-Total | 4,843 | 4.5 | 1,552 | 3,285 | 32.0 | 68.0 |
| Middle East | | | | | | |
| Israel | 111 | 0.1 | 48 | 63 | 43.2 | 56.8 |
| Bahrain | 49 | <0.1 | 35 | 14 | 71.4 | 28.6 |
| Lebanon | 47 | <0.1 | 17 | 30 | 36.2 | 63.8 |
| Iran | 30 | <0.1 | 11 | 19 | 36.7 | 63.3 |
| Sub-Total | 237 | 0.1 | 111 | 126 | 46.8 | 53.2 |
| North & South America | | | | | | |
| United States of America | 1,087 | 1.0 | 627 | 460 | 57.7 | 42.3 |
| Cuba | 703 | 0.7 | 416 | 287 | 59.2 | 40.8 |
| Brazil | 552 | 0.5 | 320 | 232 | 58.0 | 42.0 |
| Antigua & Barbuda | 485 | 0.5 | 288 | 197 | 59.4 | 40.6 |
| Canada | 194 | 0.2 | 106 | 88 | 54.6 | 45.4 |
| Argentina | 50 | 0.1 | 31 | 19 | 62.0 | 38.0 |
| Bahamas | 50 | 0.1 | 38 | 12 | 76.0 | 24.0 |
| Chile | 32 | <0.1 | 8 | 24 | 25.0 | 75.0 |
| Sub-Total | 3,153 | 3.0 | 1,834 | 1,319 | 58.2 | 41.8 |
| Europe | | | | | | |
| Germany | 9,388 | 8.7 | 5,397 | 3,991 | 57.5 | 42.5 |
| United Kingdom | 1,779 | 1.7 | 1,024 | 755 | 57.6 | 42.4 |
| Italy | 853 | 0.8 | 468 | 385 | 54.9 | 45.1 |
| Austria | 630 | 0.6 | 288 | 342 | 45.7 | 54.3 |
| France | 554 | 0.5 | 303 | 251 | 54.7 | 45.3 |
| Netherlands | 534 | 0.5 | 272 | 262 | 50.9 | 49.1 |
| Russia | 469 | 0.4 | 193 | 276 | 41.2 | 58.8 |
| Portugal | 447 | 0.4 | 182 | 265 | 40.7 | 59.3 |
| Switzerland | 442 | 0.4 | 255 | 187 | 57.7 | 42.3 |
| Spain | 355 | 0.3 | 145 | 210 | 40.9 | 59.1 |

| | | | | | | |
|--------------------|----------------|--------------|---------------|---------------|-------------|--------------|
| Ukraine | 265 | 0.3 | 35 | 230 | 13.2 | 86.8 |
| Belgium | 190 | 0.2 | 93 | 97 | 49.0 | 51.0 |
| Poland | 173 | 0.2 | 113 | 60 | 65.3 | 34.7 |
| Denmark | 116 | 0.1 | 38 | 78 | 32.8 | 67.2 |
| Sweden | 103 | 0.1 | 55 | 48 | 53.4 | 46.4 |
| Finland | 81 | 0.1 | 57 | 24 | 70.4 | 29.6 |
| Czechia | 78 | 0.1 | 51 | 27 | 65.4 | 34.6 |
| Armenia | 64 | 0.1 | 0 | 64 | 0 | 100.0 |
| Ireland | 61 | 0.1 | 31 | 30 | 50.8 | 49.2 |
| Norway | 53 | 0.1 | 35 | 18 | 66.0 | 34.0 |
| Luxembourg | 44 | <0.1 | 24 | 20 | 54.6 | 43.4 |
| Turkey | 35 | <0.1 | 13 | 22 | 37.1 | 62.9 |
| Bulgaria | 30 | <0.1 | 24 | 6 | 80.0 | 20.0 |
| Romania | 30 | <0.1 | 13 | 17 | 43.3 | 56.7 |
| Sub-Total | 16,774 | 15.7 | 9,109 | 7,665 | 54.0 | 46.0 |
| Australasia | | | | | | |
| Australia | 554 | 0.5 | 338 | 216 | 61.0 | 39.0 |
| New Zealand | 50 | 0.1 | 21 | 29 | 42.0 | 58.0 |
| Sub-Total | 604 | 0.6 | 359 | 245 | 59.4 | 40.6 |
| Other | | | | | | |
| Other South | 1,837 | 1.7 | 924 | 913 | 50.3 | 49.7 |
| Other North | 447 | 0.4 | 292 | 155 | 65.3 | 34.7 |
| Sub-Total | 2,284 | 2.1 | 1,216 | 1,068 | 53.2 | 46.8 |
| Total | 106,864 | 100.0 | 49,383 | 57,481 | 46.1 | 53.9 |

Source: Compiled from UN DESA (2019b)

5.4 Age and Sex Distribution of Migrant Population

Assuming that working age is a proxy for labour migration, Table 1 above shows that 78% of migrants in Namibia in 2019 were labour migrants (aged between 20 and 64). Of the rest, 13% were under the age of 20 and 8% were 65 or older. Figure 1 provides a detailed age and gender population pyramid for international migrants estimated to be in Namibia in 2019. It also compares the distribution by age group and sex with the total population. Most male and female migrants fall into the 30-34 age group, followed by the 25 to 29 age group and the 35-39 age group. In each of these groups, males exceed females in proportional distribution. The main difference with the pyramid for the total

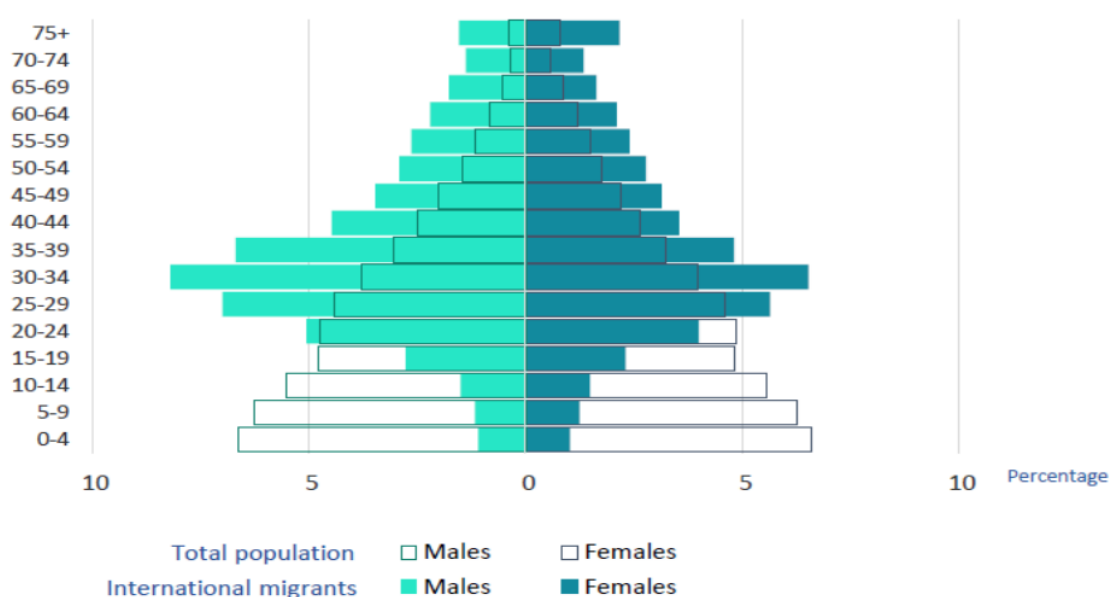
population is the much larger proportion of the total Namibian population that is under the age of 20.

Table 4 also provides a breakdown by country of origin and sex from UN DESA data for 2019. The table shows that the overall breakdown is 46% female and 54% male. However, the sex ratio varies considerably by region and country of origin. In the case of Africa and Asia, for example, males predominate while the opposite is true for Europe and North and South America. The Asian migrant population is particularly male-dominated with only 32% female. Overall, 45% of African migrants in Namibia are female but the proportion by country of origin varies from a low of 17% female (Cameroon) to a high of 67% female (Ethiopia). As many as 9 African countries have migrant populations which are over 60% male compared to only 2 with more than 60% female (bolded in Table 4).

The HIES reports that 56.5% of non-Namibians of all ages are male and 43.5% are female (NSA, 2017c). The breakdown by gender varies considerably from origin country to country. Most SADC origin countries show a similar pattern of more male migrants than female (e.g. Angola: 57% male, 43% female); Zimbabwe: 52% male, 48% female). South Africa is the opposite (43% male, 57% female). Both Nigeria and Europe have more female than male migrants in Namibia, but China is completely male-dominated (90% male, 10% female).

Figure 1 - Age and Sex of International Migrants in Namibia, 2019

Age and sex distribution of international migrants and of the total population in Namibia, 2019 (percentage)



Source: UN DESA (2019a)

5.5 Migrant Employment

Namibian Labour Force Surveys do not distinguish between migrant and Namibian employees. However, the Labour Force Survey instrument does collect data on the foreign-born and non-citizen population and ILOSTAT presents data for the working-age population in the ILMS database (ILO, Online). According to ILMS, there were 85,800 migrants of working age in Namibia in 2018 of whom 48,700 (58%) were male and 37,100 (42%) were female. Country of origin data is only provided for four countries: Angola (42,100), South Africa (14,800), Botswana (800), Nigeria (300) and (Table 5). The South African figure is actually higher than the total South African migrant population according to UN DESA. Angola is clearly the major source country for labour migrants with almost 50% of the total (and a gender breakdown of 59% men and 41% women).

Table 5 - Working Age Migrants in Namibia by Country of Origin, 2018

| | No. | % | Male No. | % Male | Female No. | % Female |
|--------------|--------|------|----------|--------|------------|----------|
| Angola | 42,100 | 49.1 | 24,700 | 58.7 | 17,400 | 41.3 |
| South Africa | 14,800 | 17.2 | 6,500 | 43.9 | 8,300 | 56.1 |
| Botswana | 800 | 0.9 | 200 | 25.0 | 600 | 75.0 |
| Nigeria | 300 | 0.3 | 300 | 100.0 | 0 | 0.0 |
| Other | 27,900 | 22.5 | 17,000 | 60.9 | 10,800 | 39.1 |

Source: ILOSTAT

The ILOSTAT database identifies only four employment sectors: agriculture, non-agriculture, industry and services (Table 6). Non-agriculture includes informal sector employment. There is a clear gendered division of labour in these four sectors with men dominating agricultural and industrial employment and women having greater numbers in the services sector (which would include domestic service).

Table 6 - Employment of Migrant Population in Namibia, 2018

| | Total Employed | No. of Migrants Employed | Migrants as % of Total | % Break-down by Sector | Male No. | % Male | Female No. | % Female |
|-----------------|----------------|--------------------------|------------------------|------------------------|----------|--------|------------|----------|
| Agriculture | 167,242 | 14,800 | 8.8 | 17.3 | 11,300 | 76.4 | 3,500 | 23.7 |
| Non-Agriculture | 281,706 | 36,900 | 13.1 | 43.1 | 20,100 | 54.4 | 16,800 | 45.6 |
| Industry | 116,052 | 6,500 | 5.6 | 7.6 | 5,300 | 81.5 | 1,200 | 18.5 |
| Services | 160,772 | 30,400 | 18.9 | 32.0 | 14,800 | 48.7 | 15,600 | 51.3 |
| Total | 725,742 | 88,600 | 12.2 | 100.0 | 51,500 | 58.1 | 37,100 | 41.9 |

Source: ILOSTAT; NSA (2019)

5.6 Work Permits

In terms of the Employment Services Act (Act No. 8 of 2011) Section 13, The Employment Service Bureau in the Directorate of Labour Market Services in the Ministry of Labour, Industrial Relations and Employment Creation has the duty to keep a list of non-Namibian Citizens granted work permits in terms of the Immigration Control Act (Act No. 7 of 1993), and to advise the Minister accordingly in the training of Namibians in those occupations. Currently, this information is captured by the Ministry of Home Affairs, Immigration, Safety and Security.

The Ministry of Home Affairs, Immigration, Safety and Security has a duty to keep a list of non-Namibian citizens granted work permits in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993). However, this data is not published on the Ministry website or available in the public domain.

6 LABOUR MARKET POLICIES AND LEGISLATION

6.1 Constitution of The Republic of Namibia²

The Namibia Constitution came into force in March 1990 and is the supreme law of the land. Chapter 3 of the Constitution provides for the Fundamental Rights and Freedoms of all persons and includes the following provisions:

Article 6: Protection of Life

Article 7: Protection of Liberty

Article 8: Respect for Human Dignity

Article 9: Slavery and Forced Labour

Article 10: Equality and Freedom from Discrimination

Article 11: Arrest and Detention

Article 12: Fair Trial

Article 13: Privacy

Article 14: Family

Article 15: Children's Rights

Article 16: Property

Article 17: Political Activity

Article 18: Administrative Justice

Article 19: Culture

Article 20: Education

Article 21: Fundamental Freedoms

² <https://www.embassyofnamibia.fr/perch/resources/pdf/namibia-constitution-2015.pdf>

With the exception of Article 17, pertaining to the right to vote and stand for public office and that uses the phrasing ‘all citizens’, all the other rights and entitlement are applicable to ‘all persons’, subject to limitations that may be imposed as provided for in Article 22 of the constitution. This would suggest that unless a limitation or limitations are imposed through legal, administrative or regulatory means, these rights are equally applicable to migrant workers.

The government has taken steps to make permanent residence and citizenship by naturalisation harder to achieve (Hubbard, 2021: 24). The Constitution was amended in 2010 to double the period of residency required for naturalisation. The fees for obtaining permanent residence have also increased from N\$20 in 1994 to N\$18,000.

6.2 Labour Act of 2007³

Namibia’s primary instrument that governs labour relations is the Labour Act of 2007. In its preamble, the Labour Act sets out the following objectives:

- promoting an orderly system of free collective bargaining;
- improving wages and conditions of employment;
- advancing individuals who have been disadvantaged by past discriminatory laws and practices;
- regulating the conditions of employment of all employees in Namibia without discrimination on grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status, in particular ensuring equality of opportunity and terms of employment,
- maternity leave and job security for women;
- promoting sound labour relations and fair employment practices by encouraging freedom of association, in particular, the formation of trade unions to protect workers’ rights and interests and the formation of employers’ organisations;
- setting minimum basic conditions of service for all employees;
- ensuring the health, safety and welfare of employees at work;
- prohibiting, preventing and eliminating the abuse of child labour;
- prohibiting, preventing and eliminating forced labour; and
- giving effect, if possible, to the conventions and recommendations of the International Labour Organisation;

Chapter 3 of the Labour Act provides for the basic conditions of employment for all workers and specifically addresses the following:

- Remuneration
- Hours of Work

³ https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=79050

- Leave
- Accommodation
- Termination of Employment
- Disputes

The Labour Act does not make any specific reference to migrant workers, though the provisions of the Act apply to all employees/workers and an ‘employee’ is defined by the Labour Act as ‘an individual, other than an independent contractor, who works for another person and who receives, or is entitled to receive, remuneration for that work; or in any manner and for remuneration assists in carrying on or conducting the business of an employer’.

A recent government survey of violence and harassment in the workplace in Namibia did not include any migrant workers but the survey report does identify migrants as a vulnerable group as follows:

Immigrant workers, and in particular the ones working without a valid work permit, are obvious victims of exploitation, violence and/or harassment because they are afraid to be deported if they report a case. There are also no Civil Society Organizations in Namibia specifically working with migrant workers. Depending on their country of origin and reasons for emigration, they may or may not have a social network in the country, but in many cases they will stick to the employment that they have no matter the circumstances because they do not have many options (den Adel-Sheehama, 2019).

6.3 Immigration Control Act 7 of 1993⁴

Section 27 of the Immigration Control Act of 1993 provides the establishment of an Immigration Selection Board that is responsible for considering and the issuing of work permits to potential migrant workers as follows:

- (1) The board may, subject to the provisions of subsection (2), on application of any person made on a prescribed form, authorize the Chief of Immigration to issue to such person an employment permit -
 - (a) to enter Namibia or any particular part of Namibia and to reside therein;
 - (b) if he or she is already in Namibia to reside in Namibia or any particular part of Namibia, for the purpose of entering or continuing in any employment or conducting any business or carrying on any profession or occupation in Namibia during such period and subject to such conditions as the board may impose and stated in the said permit.

⁴ https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=34673

(2) The board shall not authorize the issue of an employment permit unless the applicant satisfies the board that -

(a) he or she has such qualifications, education and training or experience as are likely to render him or her efficient in the employment, business, profession or occupation concerned; and

(b) the employment, business, profession or occupation concerned is not or is not likely to be any employment, business, profession or occupation in which a sufficient number of persons are already engaged in Namibia to meet the requirements of the inhabitants of Namibia; and

(c) the issue to him or her of an employment permit would not be in conflict with the other provisions of this Act or any other law.

(3) The board may, with due regard to the provisions of subsection (2), from time to time extend the period for which, or alter the conditions subject to which, such permit was issued under subsection (1), and a permit so altered shall be deemed to have been issued under that subsection.

(4) (a) If the board intends issuing an employment permit under subsection (1) to a person for that purpose or subject to conditions, he or she may, in order to ensure that the purpose of his or her residence and the conditions under which the permit was issued are observed or complied with, require that person, before issuing the permit to him or her, to deposit with the Chief of Immigration an amount fixed by the board, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with the Chief of Immigration to his or her satisfaction, in the prescribed form, a guarantee for the amount concerned.

(b) An amount or guarantee deposited or lodged with the Chief of Immigration in terms of paragraph (a) shall, subject to paragraph (c), be refunded to the person concerned or cancelled on his or her departure from Namibia, as the case may be.

(c) If such person acted in conflict with the purpose for which, or failed to comply with a condition subject to which, the employment permit was issued to him or her under subsection (1), the Minister may order that the amount deposited with the Chief of Immigration be forfeited to the State or, if a guarantee was lodged with the Chief of Immigration that the amount payable in terms of the guarantee be recovered for the benefit of the State.

(5) When the board authorizes the issue of such an employment permit to any person under subsection (1), it may authorize in that permit the spouse and dependent child of that person, if the spouse or child accompanies or resides with him or her, to enter and reside in Namibia with that person.

(6) Any person to whom an employment permit was issued under subsection (1) or who was authorized in that permit under subsection (5) to reside with that person, and who remains in Namibia after the expiration of the period or extended period for which, or acts in conflict with the purpose for which, that permit was issued, or contravenes or fails to comply with any condition subject to which it was issued, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

7 LABOUR MARKET INSTITUTIONS

7.1 Labour Advisory Council

The Labour Advisory Council is established by the Labour Act and is made up of a chairperson and 12 other members represented equally by the State, and members nominated by registered trade unions and registered employers' organisations.

The Council must investigate and advise the Minister on a wide range of issues including: national policy, collective bargaining, reducing unemployment, issues arising from the ILO, or international or regional states of which Namibia is a member, legislation on labour matters, collection and compilation of information and statistics, performance of dispute prevention and resolution by the Labour Commissioner, and panels to resolve issues of national interest.

Various provisions relating to the removal and filling of members, committees, meeting governance, administration and appointment of a permanent secretary of the Labour Advisory Council are set out in the Act.

7.2 Committee for Dispute Prevention and Resolution

The Committee for Dispute Prevention and Resolution is established to advise the Labour Advisory Council on matters relating to rules, policies, guidelines, ethical standards and criteria for appointment of conciliators and arbitrators. The composition of the Committee includes a chairperson and two representatives from the State, registered employers and registered trade unions.

7.3 Essential Services Committee

The Essential Services Committee investigates and recommends designation of essential services to the Labour Advisory Council. The Committee is made up of a chairperson, who is a member of the Labour Advisory Council, and four members with knowledge and experience in labour law and labour relations appointed or designated by the Labour Advisory Council.

7.4 Wages Commission

The Wages Commission is constituted at the discretion of the Minister and is required to investigate terms and conditions of employment, including remuneration and report to the Minister for the purposes of making a wage order. The Commission consists of a chairperson and equal numbers of representatives from registered employers and trade unions. A Permanent Secretary is available as required for the work of the Commission. The Wages Commission is directed by a terms of reference determined by the Minister that specifies the industry, categories of employees and matters for investigation. Wage orders or collective agreements may only be investigated after 12 months of being in force. The Minister must publish a notice in the Gazette setting out the details of the investigation and inviting written representations.

7.5 Labour Court

The Labour Court is a division of the High Court. It is presided over by a Judge-President and judges. It has exclusive jurisdiction to determine appeals from the decisions of the Labour Commissioner, arbitrations and compliance orders; reviews of arbitration tribunals, the Minister, Permanent Secretary or Labour Commissioner in terms of the Act and any other employment or labour related matter. It has a wide range of specified powers and inherent powers in relation to labour matters. Cost orders by the Court are, however, limited to incidences of frivolous and vexatious conduct.

7.6 Labour Commissioner

The Labour Commissioner and Deputy Labour Commissioner are appointed by the Minister. Functions of the Labour Commissioner include registration of disputes, advice, conciliation and resolution of disputes, arbitration, compilation and publication of information.

7.7 Labour Inspectors

The Minister may appoint labour inspectors that are to be confirmed by the Permanent Secretary. Inspectors have general powers of entry, search and seizure. Inspectors may issue compliance orders. It is an offence to hinder, obstruct, or provide false information, falsely claim to be a labour inspector or fail to comply with a compliance order of an inspector. Offences may carry a fine or up to two years' imprisonment or both.

8 RATIFICATION OF INTERNATIONAL INSTRUMENTS

Namibia has ratified 17 ILO Conventions (including 8 out of 10 Fundamental Conventions), of which 16 are in force.⁵ The following Conventions have been ratified (Table 7):

Table 7 - ILO Conventions Ratified by the Government of Namibia

| Convention No | Title | Date of Ratification |
|---------------|--|---|
| C029 | Forced Labour Convention, 1930 (No. 29) | 15 Nov 2000 |
| C81 | Labour Inspection Convention, 1947 (No. 81) | 20 Sep 2018 |
| C087 | Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) | 3 Jan 1995 |
| C098 | Right to Organise and Collective Bargaining Convention, 1949 (No. 98) | 3 Jan 1995 |
| C100 | Equal Remuneration Convention, 1951 (No. 100) | 6 April 2010 |
| C105 | Abolition of Forced Labour Convention, 1957 (No. 105) | 15 Nov 2000 |
| C111 | Discrimination (Employment and Occupation) Convention, 1958 (No. 111) | 13 Nov 2001 |
| C138 | Minimum Age Convention, 1973 (No. 138) | 15 Nov 2000 |
| C144 | Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) | 3 Jan 1995 |
| C182 | Worst Forms of Child Labour Convention, 1999 (No. 182) | 15 Nov 2000 |
| C189 | Domestic Workers Convention, 2011 (No. 189) | 9 Dec 2020 (will enter into force for Namibia on 09 Dec 2021) |

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

⁵ A full list of ILO conventions ratified by Namibia is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103008

9 BILATERAL LABOUR MIGRATION AGREEMENTS

Namibia and Angola have a Joint Commission of Cooperation and have signed as many as 40 agreements since 2000. These include (a) a 1996 agreement to facilitate the cross-border movement of border residents living within a 30 km radius of the frontier. In 2013, a new border resident card was introduced to grant access to areas within 60 km of the border for a limited period of time without a passport; (b) an Economic Partnership Agreement was concluded in 2009 to promote and facilitate bilateral cross-border trade.

According to the 2023 report on the implementation of the SADC Labour Migration Action Plan, Namibia has a number of Bilateral Labour Agreements with Angola and Botswana (trilateral) on the Permanent Okavango River Basin Water Commission (1994); with Angola (bilateral) on exchange of expertise for the Cuvelai Watercourse Commission (2013); with Botswana (bilateral) on exchange of expertise for the Dryport at Walvis Bay coastal area (2008), as well as the Trans Kalahari Railway Project (2008). However, this report found out that the said agreement referred to as an agreement in areas of cooperation in exchange of expertise instead of as a Bilateral Labour Migration Agreement.

10 FAIR RECRUITMENT OF MIGRANT WORKERS

In the colonial period, there was large-scale recruiting of low-skilled migrant workers from outside Namibia on contract by SWANLA (Moorsom, 1997). SWANLA no longer exists or operates and there is no modern equivalent of this low-wage, exploitative migrant labour system modelled on the South African example (Crush et al., 1992). However, the 2019 LMAP notes that Namibia will “appropriately regulate the selection and recruitment of migrant workers through supervised private employment agencies and public employment services, in accordance with universal good practice” (Republic of Namibia, 2019).

Section 28 of the 2007 Labour Act (Persons Placed by Private Employment Agencies) was struck down by the Supreme Court on constitutional grounds.⁶ Government replaced it with the Labour Amendment Act 2 of 2012⁷ and the Employment Services Act No 8 of 2011.⁸ The Preamble to the Amendment Act notes its intention to “regulate the employment status of individuals placed by private employment agencies to work for

⁶ Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia & Others 2009 (2) NR 596 (SC).

⁷ https://mol.gov.na/documents/53329/69965/Labour_Amendment_Act_no._2_of_2012.pdf/bd88e16b-23f4-f0c0-454e-b64abef6bb78

⁸

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94730&p_country=NAM&p_count=149&p_classification=08&p_classcount=2

user enterprises; to provide for protection for individuals placed by private employment agencies; to prohibit the hiring of individuals placed by private employment agencies in contemplation of a strike or lock-out or following collective termination; and to substitute certain provisions in order to align them with the definition of private employment agency.”

A further Supreme Court Appeal against the new legislation was rejected by the Court that found the revised and new legislation was constitutional.⁹ Recruiting and employment agencies maintain that the intent of Section 128 and the Employment Services Act is to regulate them out of business describing them as “overkill.” It is unclear to what extent these measures affect the recruitment of migrants from outside the country.

Currently forty -seven (47) Private Employment Agencies are registered and licenced while Two Thousand, One Hundred and Twelve (2112) designated employers are registered with Namibia Integrated Employment Information System (NIEIS).

11 SKILLS RECOGNITION OF MIGRANT WORKERS

The Namibian Qualifications Authority (NQA) was established in 1996 with the following legislative obligations:

- to set up and administer a national qualifications framework
- set the occupational standards for any occupation, job, post or positions in any career structure
- set the curriculum standards for achieving the occupational standards
- promote the development of, or analyse, benchmarks of acceptable performance norms for any occupation, job or position
- accredit persons, institutions and organisations providing education and courses of instruction or training
- evaluate and recognise competencies learnt outside formal education
- be a forum on matters pertaining to qualifications
- establish facilities for the collection and dissemination of information in connection with matters pertaining to qualifications
- enquire into whether any particular qualification meets the national standards
- advise any person, body, institution, organisation or interest group on matters pertaining to qualifications and national standards for qualifications.

⁹ Africa Labour Services (Pty) Ltd v The Minister of Labour and Social Welfare and Another 2013 (4) NR 1175 (HC).

The NQA currently represents Namibia membership on SADC Technical Committee on Certification and Accreditation. This Committee is principally concerned with overseeing progress towards the Regional Qualification Framework for the Southern African Development Community. The Committee is looking to establishing common principles and procedures for the evaluation of qualifications and to strengthen quality assurance systems in the SADC Member States.

The NQA has entered into and is negotiating formal MoUs with the quality assurance bodies within the SADC region. Such MoU's are intended to:

- strengthen information sharing about providers and their courses
- build and share staff skills and expertise in quality assurance
- facilitate research on qualification and quality assurance matters of shared interest.

Formal agreements currently exist with:

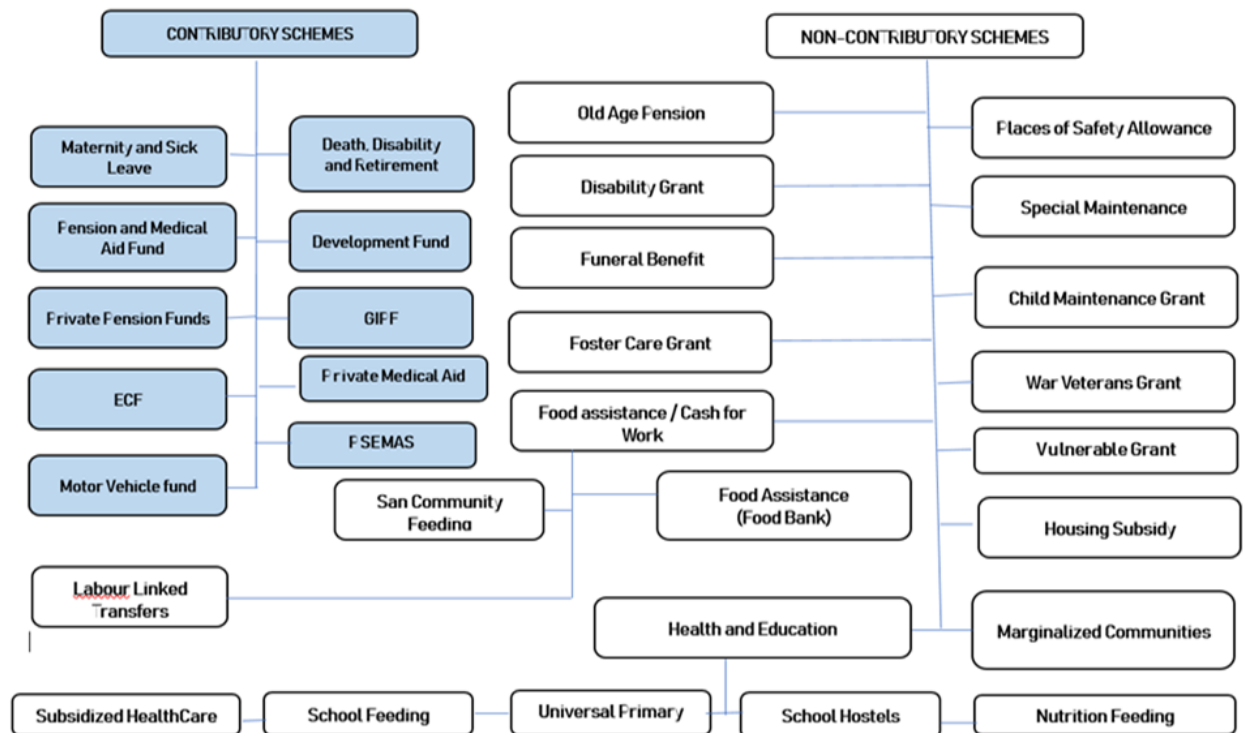
- Botswana Qualifications Authority (BQA)
- Tertiary Education Council of Botswana (TEC)
- Malaysian Qualification Agency (MQA)
- Council on Higher Education (CHE)
- South Africa Qualification Authority (SAQA)
- Mauritius Qualification Authority

12 SOCIAL PROTECTION OF MIGRANT WORKERS

The social protection system in Namibia is described as “robust” and a major contributor to poverty reduction in the country by the World Bank (2021). Figure 2 shows the range of social protection programs, and Figure 3 that the old age grant is the most important. Also important are the child grant and the disability grant. Children are the major beneficiaries of both grants. Combined, all social protection spending is currently just below 3% of GDP, higher than in most other African countries.

Access to social protection depends on immigration status. Namibian citizenship or permanent residence is required for access to public social benefits. The Old Age Pension Scheme for all individuals aged 60 and above who are citizens or permanent residents. To be eligible for disability grants an individual must also be a Namibian citizen or permanent resident and must reside in Namibia. Public unemployment benefits are not provided. Public health care is limited to Namibian citizens and permanent residents, although state hospitals provide subsidised health care to non-citizens and permanent residents. Public housing is restricted to citizens, while basic education for everyone is a constitutional right. Table 8 summarizes access to social protection programs by type of citizenship and residence status.

Figure 2 - Social Protection Programmes in Namibia



Source: Authors compilation from various policy documents

In May 2018, SADC convened a workshop on the Portability of Social Security Benefits in the SADC Region in Windhoek.¹⁰ Namibia does not yet have any bilateral arrangements for the portability of social benefits for migrants in the country. Following adoption of the SADC Guidelines on Portability of Social Security Benefits in March 2020, Namibia is not one of the five member states that have committed to pilot their implementation through bilateral arrangements.

¹⁰ https://www.social-protection.org/gimi/gess/RessourcePDF.action;jsessionid=XRCYcV9vy-pF1p2hbwb5-Jplyy_iCb42luAhf0V0k5novXQ2DBj-!2052637978?id=55324

Table 8 - Access to Social Protection for Non-Citizens in Namibia

| | Social Assistance | National and Occupational Old-age and Disability Pension | Unemployment Benefits | Health Care and Health Insurance | Public Housing | Public Schooling |
|----------------------------|--------------------------|---|------------------------------|---|-----------------------|-------------------------|
| Citizens | | | | | | |
| | ✓ | ✓ | | ✓ | ✓ | |
| Permanent Residents | | | | | | |
| | ✓ | ✓ | | ✓ | ✓ | |
| Temporary Residents | | | | | | |
| | | ✓ | | ✓ | | ✓ |
| Irregular Migrants | | | | | | |
| | | | | | | |

Source: Adapted from Mpedi and Smit (2011)

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APPENDIX

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