



Migrating for Work Research Consortium



Project funded by the European Union EU-South Africa Dialogue Facility EuropeAid/132200/L/ACT/ZA. Coordinated by the African Centre for Migration & Society, University of the Witwatersrand

Adoption of the SADC Labour Migration Policy Framework

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MiWorc Policy Update 1

An introduction to the SADC Labour Migration Policy Framework for policy makers, media practitioners, and NGOs.

A full text of the framework is also included.

Key MiWorc documents on regional migration policy:
[MiWorc Report N°1. A region without borders? Policy frameworks for regional labour migration towards South Africa \(and its accompanying policy brief\)](#)

[MiWorc Report N°8. Social protection and social security of migrants in South Africa and SADC](#)

These can be found at www.miworc.org.za

The SADC Labour Migration Action Plan was approved at an extraordinary meeting of SADC Ministers and Social Partners responsible for Employment and Labour in 2013. The SADC Labour Migration Policy Framework was endorsed by the SADC ELS organ which took place in Victoria Falls, Zimbabwe, in July/August 2014.

The necessity of a regional labour migration policy

Despite the long history of international migration in the region, Southern Africa lacks an official governance system to manage cross-border movement of persons and labour migration.

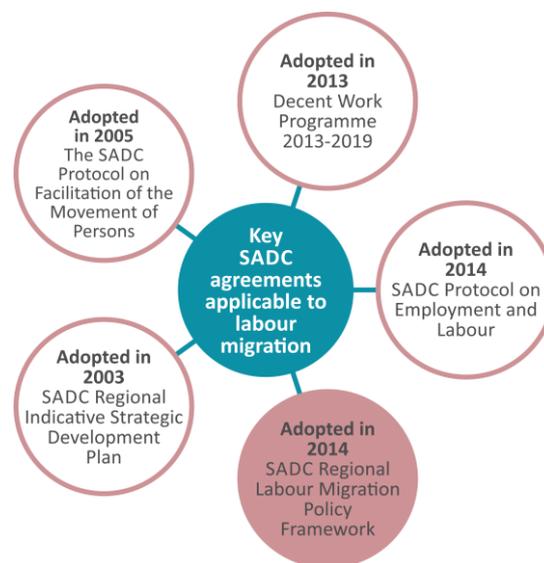
In 2009 there were around 2,2 million migrants in Southern Africa, making up 3,7 per cent of the population. Brain drain, downward pressures on wages and frictions between migrants and locals in host countries are a few examples of a wide range of issues associated with informal and un-managed migration processes across the region. Amnesties and regularisations are *ad hoc* measures and by no means provide the type of sustainable legal framework needed to manage regional migration effectively, let alone guarantee the basic forms of protection for both local and migrant workers. The absence of a clear regional framework is also triggering continuous repatriations and ‘emergency measures’ such as forced deportations, which impose significant costs on governments while showing no effectiveness in controlling undocumented migration flows.

Until 2014, SADC did not have a regional labour migration policy framework, despite growing levels of intra-regional labour migration and the governance



and development challenges these pose. In the absence of a regional labour migration policy, member states have used permanent or bilateral commissions with partner countries to regulate migration between SADC member states; in addition, South Africa has had long established MOUs on employment and labour with neighbours in SADC.

However, since the mid-2000s, the SADC Secretariat, through its Employment and Labour Sector (ELS), has worked with several stakeholders including the International Labour Organisation (ILO) and the International Organisation for Migration (IOM), to develop a regional strategy on labour migration. Two processes then unfolded. Firstly, under the Organ on Peace, Defence and Security, a protocol on the **Facilitation of Movement of Persons** was adopted in 2005 and awaits ratification by two thirds of SADC states. It deals with the facilitation of SADC citizens' movement across borders but not with access to labour markets or enterprises where people work. Secondly, since 2013, the Employment and Labour Sector of SADC, involving ministries of labour, has adopted successively, an **Action Plan on Labour Migration** (2013-2015), a **Labour Migration Policy Framework** (LMPF) (2014) and the **Protocol on Employment and Labour** which caters for the protection of migrant workers in its Article 19. As explained below, the SADC Labour Migration Action Plan and the LMPF request member states to **develop national labour migration policies by 2019**. The ILO and the IOM are collaborating to provide technical assistance to SADC member states in developing national labour migration policies¹.

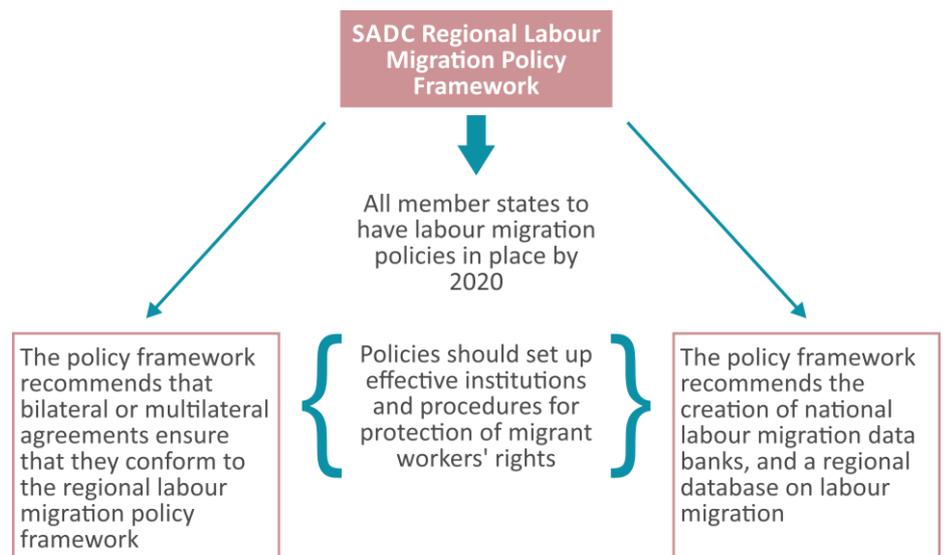


¹ Department of Labour, ILO and ITC, 'Concept Note: South Africa-based High Level Seminar and Policy Development Workshop on Labour Migration, 9 – 14 November 2015'.

Key SADC agreements with reference to labour migration

In 1992, the objectives set forth in the Treaty of the Southern African Development Community, particularly Article 5. 2 (d), called for the development of policies aimed at “the progressive elimination of obstacles to free movement of capital and labour, goods and services and the people of the Region generally, among member states”. In addition the following agreements have been made:

Key aspects of the policy framework



Text of the framework

Preamble

Having regard to the objectives set forth in the Treaty of the Southern African Development Community in particular Article 5. 2(d), which calls for the development of policies aimed at “the progressive elimination of obstacles to free movement of capital and labour, goods and services and the people of the Region generally, among Member States”;

Acknowledging the SADC Charter of Fundamental Social Rights; the SADC Protocol on the Facilitation of Movement of Persons; the SADC Protocol on Education and Training; the SADC Protocol on Employment and Labour; and other relevant instruments such as the SADC Summit Declaration on TB in the Mining Sector, and the SIPO;

Recognising the important role of migration to the social and economic development of the Region;

Determined to achieve the goals and targets set in the SADC Regional Indicative Strategic Development Plan (RISDP);

Mindful of the need to realise the goals set out in the SADC Decent Work Programme;

Affirming the responsibility of the SADC Organ on migration in general and the competence of ELS in labour migration;

Section 1 Abbreviations and Definitions

1.1 List of Abbreviations

ELS: Employment and Labour Sector

SADC: Southern African Development Community

MIDSA: Migration Dialogue for Southern Africa

ILO: International Labour Organisation

IOM: International Organisation for Migration

LMIS: Labour Market Information System

AU: African Union

UN: United Nations

MoU: Memorandum of Understanding

TB: Tuberculosis

SIPO: Strategic Indicative Plan for the Organ

Section 1 Abbreviations and Definitions

1.2 Definitions

In this Policy Framework, unless the context indicates otherwise, the terms indicated here shall have the meaning ascribed to them as follows:

SADC Organ refers to the SADC structure responsible for Politics, Defence and Security matters

Intra-regional labour migration refers to: i) the movement of labour within the SADC Region, or ii) permanent movement of labour within one region of a Member State

Labour Market Information System consists of a set of institutional arrangements, procedures and mechanisms that are designed to produce labour market information¹

Regular migration refers to movement that takes place through documented and legal channels.

Irregular migration refers to *“Movement that takes place outside the regulatory norms of the sending, transit and receiving countries”*²

Migrant worker *“A person, who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”*³

Bilateral refers to two Member States or two parties concerned

Multilateral refers to more than two Member States or more than two parties concerned

Demographic dividends refers to a window of opportunity that occurs when the majority of the population is of working age and can positively contribute to the growth of an economy

¹ United Nations (1998) Recommendations on Statistics of International Migration

² IOM (2004) International Migration Law: Glossary on Migration

³ IOM (2004) International Migration Law: Glossary on Migration

Further affirming the supporting role of MIDSA in promoting a well managed intra-regional labour migration regime and its role in fostering regular policy dialogue;

Noting the AU Migration Policy Framework for Africa, the ILO Multilateral Framework on Labour Migration and other ILO and UN instruments on labour migration which are open to ratification by Member States;

Desirous to promote safe and regular intra-regional labour migration as well as upholding the rights of migrant workers, the SADC hereby adopts a Regional Labour Migration Policy Framework:

See the sidebars for section 1 (Abbreviations and Definitions)

Section 2: Aspirations

2.1 Underpinning this Regional Labour Migration Policy Framework is the desire to:

- i. improve governance in intra-regional labour migration;
- ii. strengthen protection of the rights of migrant workers;
- iii. mainstream migration in the national and regional development plans; and
- iv. harness positive gender considerations and demographic dividends.

Section 3: Objectives

3.1 Development Objective

The policy framework seeks to promote sound management of intra-regional labour migration for the benefit of both the sending and receiving countries as well as the migrant workers.

3.2 Specific Objectives

3.2.1 The regional labour migration policy framework seeks to promote:

- i. Regular migration in the region
- ii. Development and implementation of national labour migration policies
- iii. Development and conclusion of multilateral and bilateral labour agreements
- iv. Protection of migrant workers rights at the workplaces and in the communities
- v. Harmonisation and standardisation of national labour migration policies
- vi. Integration of the intra-regional labour migration data into the SADC LMIS

Section 4: Expected Outcomes

4.1 Pursuant to this framework and through the development and implementation of national labour migration policies, multilateral/bilateral labour agreements and MoUs:

- i. Governance of intra-regional labour migration is enhanced
- ii. Protection of the rights of migrant workers is strengthened
- iii. Intra-regional labour migration is mainstreamed into the national development plans and the Region’s development strategic agenda
- iv. Intra-regional labour migration data collected, analysed and used in the planning processes

The policy framework's developmental objective is to promote sound management of intra-regional labour migration for the benefit of both the sending and receiving countries as well as migrant workers.

Its specific objectives seek to promote:

- Regular migration in the region
- Development and implementation of national labour migration policies
- Development and conclusion of multilateral and bilateral labour agreements
- Protection of migrant workers rights at the workplaces and in the communities
- Harmonisation and standardisation of national labour migration policies
- Integration of the intra-regional labour migration data into the SADC Labour Market Information System

Section 5: Policy Areas

5.1 National Labour Migration policies

5.1.1 Member States should strive to put in place national labour migration policies that are consistent with relevant national policies and legislation as well as the SADC, AU, UN and ILO Instruments.

5.1.2 Member States should strive put in place Labour Migration Policies that should include the following:

5.1.3 Migration and development

- i. Mainstreaming migration in national policies
- ii. Generating evidence on economic contribution of labour migration
- iii. Incentivising productive investment of remittances in source countries
- iv. Mitigating cost of loss of scarce and critical skills
- v. Promoting transfer of skills, capital and technology by migrant workers

5.1.4 Enabling, facilitating and managing the migration process

- i. Identification of workers and skills required and available
- ii. Harmonisation and recognition of educational and training qualifications
- iii. Exchange of information, cooperation and coordination between states
- iv. Collection and recording of migration data
- v. Promoting regular migration and curb irregular migration
- vi. Providing migrants with adequate pre-departure information
- vii. Information and support to assist migrants' integration in destination country
- viii. Facilitating and minimizing risks and costs of sending remittances
- ix. Promoting social dialogue on migration-related matters
- x. Facilitating export and import of migrants' personal possessions and tools
- xi. Harmonisation of social security schemes and portability of benefits
- xii. Regulate the function of the private recruitment agencies to promote ethical practices
- xiii. Provide for the establishment of labour migration centres or foreign recruitment offices (public or private).

5.1.5 Promoting and protecting the rights of migrant workers and their families

- i. Basic human rights
 - a) Rights to life; privacy; opinion and expression; medical care; liberty and security; property; thought, conscience and religion; freedom from torture, cruel, inhuman and degrading treatment; children's rights
- ii. ILO Fundamental principles and rights
 - a) freedom of association and collective bargaining
 - b) elimination of discrimination
 - c) abolition of forced/compulsory labour
 - d) effective abolition of child labour
- iii. Basic rights of all migrant workers
 - a) to leave country of origin and destination country
 - b) not to have identification and travel documents retained or destroyed

“Member States should strive to put in place national labour migration policies [by 2020] that are consistent with relevant national policies and legislation as well as the SADC, AU, UN and ILO Instruments [and] should strive to put in place Labour Migration Policies that should include the following:

- Migration and development
- Enabling, facilitating and managing the migration process
- Promoting and protecting the rights of migrant workers and their families”

- c) to transfer earnings and savings on return to country of origin
 - d) to access and communicate with consular and diplomatic authorities
 - e) to be informed of rights under Conv., conditions of entry, living and employment
 - f) to maintain their cultural identity
 - g) to equal treatment with nationals in respect of past employment
 - h) to equal treatment with nationals in relation to social security and social services
 - i) to have their case of expulsion dealt with lawfully
 - j) to have their case of expulsion dealt with lawfully
- iv. Rights of documented migrant workers
- a) Information on admission, stay, living and working conditions, emp. Contract
 - b) Freedom of movement and choice of remunerated activity
 - c) To form and join associations and trade unions
 - d) To participate in public affairs in country of origin
 - e) To be consulted and to have their interests and aspirations considered
 - f) Equality with nationals: education, training, housing, health, social services etc.
 - g) Protection of family unity and promotion of reunification of family
 - h) Family members’ equal access with national: education, training, social and health services, cultural life etc
 - i) Exemption from customs for personal goods and tools of trade
 - j) To transfer earnings and savings to country of origin
 - k) Family members’ leave to stay on migrants’ death or dissolution of marriage
 - l) Equality with nationals: job security, alt. employment, relief work, retraining
 - m) Not to be regarded as undocumented on termination of employment before expiry of work permit
- v. Institutions and procedures for the protection of migrant workers’ rights
- a) Extending labour inspection to migrant’ workplaces
 - b) Promoting conclusion of written employment contracts
 - c) Effective remedies and effective and accessible channels for enforcement
 - d) Remedies for violation of rights of migrants and their families
 - e) Sanctions and penalties for those who violate migrant workers’ rights
 - f) Conscientising employers and workers’ organisations about rights of migrant workers
 - g) Interpretation and translation services during admin. and judicial proceedings
 - h) Offering legal services to migrant workers during legal proceedings

5.1.6 All Member States should strive to have national labour migration policies in place by 2020

5.2 Bilateral and Multilateral Labour Agreements

5.2.1 Without derogation from the spirit of this framework and the numerous instruments adopted by SADC and other international bodies cited herein, member states entering into multilateral or bilateral labour migration agreements shall ensure that the agreements:

- i. Are in tandem with and give effect to the respective national labour migration policies or become the basis of standardising or harmonising the policies;
- ii. Provide details of the recruitment and repatriation mechanisms, and the roles to be played by both sending and receiving countries, the recruitment agents if applicable and the employer;

The policy framework recommends the creation of national labour migration data banks and a regional data base on regional labour migration.

- iii. Contain sufficient details with regard to the processing of work permits and other documentation to facilitate regular migration;
- iv. Provide templates of the type of contracts to be entered into between the migrant workers and the employing companies or individuals;
- v. Address integration measures pertaining the situation of migrant workers in the communities in order to promote cultural ties;
- vi. Specify where applicable the sectors in which the foreign labour is required and in the case of foreign recruitment of non skilled and semi skilled persons the general conditions of employment applicable in the sectors concerned may be spelt;
- vii. Provide for pre-departure information sessions in the case recruitment of large groups or simply avail information sheets on departure;
- viii. Improve, develop and implement remittance mechanisms for migrant workers;
- ix. Provide for regular bilateral meetings including social partners of the countries of origin and destination; and
- x. Provide for portability of social security benefits for migrant workers.

5.3 Migration Data

5.3.1 Creation of National Labour migration data banks and the regional data base on regional labour migration

- i. All member States should mainstream labour migration into the labour force survey modules and other relevant surveys in order to create national labour migration data banks, which are regularly updated. Such information shall be shared between and among SADC Member States and with SADC Secretariat using the agreed SADC template on Labour Market Information; and
- ii. SADC Secretariat is to maintain a regional database on intra-regional labour migration, which is updated on a regular basis.

Section 6: Implementation, Monitoring and Evaluation mechanisms and Roles of Partners

- 6.1 The SADC ELS Committee of Ministers and Social Partners on its own or in a special sitting with the Ministers responsible for Home Affairs should every second year assess the progress towards the achievement of the objectives and realisation of the goals set out in this framework;
- 6.2 Member States and Social Partners (constituents) should provide and allocate resources and expertise to formulate and implement policy and regulatory instruments necessary to implement the SADC Labour Migration Policy Framework;
- 6.3 The Secretariat shall upon request or acting on its own initiative mobilise resources for national and regional programmes aimed at pursuing the goals set out in this framework; and
- 6.4 Development Partners such as the ILO and IOM are expected to provide the technical and financial support as well as capacity building needs to the operationalisation of the SADC Labour Migration Policy Framework.

Research Reports

Christopher Changwe Nshimbi & Lorenzo Fioramonti – Report #1 – July 2013

A region without borders? Policy frameworks for regional labour migration towards South Africa

Deborah Budlender – Report #2 – July 2013

Improving the quality of available statistics on foreign labour in South Africa: Existing data sets

Deborah Budlender – Report #3 – July 2013

Improving the quality of available statistics on foreign labour in South Africa: Strategic recommendations

Deborah Budlender – Report #4 – July 2013

Improving the quality of available statistics on foreign labour in South Africa: Suggestions for a Quarterly Labour Force Survey migration module and municipal level surveys

Deborah Budlender – Report #5 – June 2014

Migration and employment in South Africa: Statistical analysis of the migration module in the Quarterly Labour Force Survey, third quarter 2012

Christine Fauvelle-Aymar – Report #6 – August 2014

Migration and employment in South Africa: An econometric analysis of domestic and international migrants (QLFS (Q3) 2014)

Aurelia Segatti – Report #7 – November 2014

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Making guests feel comfortable: Migrancy and labour in the hospitality sector in South Africa

Fact Sheets, Policy Briefs & Policy Updates

Fact Sheet #1

Labour migration by numbers: South Africa's foreign and domestic migration data

Policy Brief #1

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Policy Brief #2

Migration and employment in South Africa. Statistical and econometric analyses of internal and international migrants in Statistics South Africa's labour market data

Policy Brief #3

A disposable workforce: Foreign health professionals in the South African public service

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Working Papers

Veronique Gindrey – Working Paper #1 – October 2015

The position of foreign health professionals in the South African public health service: A statistical analysis of PERSAL data - Supplementary paper to MiWORC Report #7

Christine Fauvelle-Aymar – Working Paper #2 – November 2015

Immigration and the South African labour market

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Coordination of production:

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Printing & dissemination:

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The Migrating for Work Research Consortium

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The research consortium was a partnership from 2012 to 2015 led by the African Centre for Migration & Society (ACMS) at Wits University between a range of academic and international partners.

MiWORC was based on a matching fund principle. The European Union, in the framework of the EU-South Africa Dialogue Facility, funded 50 per cent of the consortium. Beyond an ambitious scholarly agenda, one of MiWORC's objectives was to avail empirically-based evidence to the EU-SA Dialogue Facility, as well as to a range of key stakeholders in government, organised labour, business, and the NGO sector.