

Draft National Labour Migration Policy (NLMP) Response Comments.

Executive Summary

The Draft National Labour Migration Policy (NLMP) is a positive step towards the ongoing development of a comprehensive migration management and governance framework in South Africa. The draft policy has been widely welcomed, given its focus on regulating migration labour in line with public opinion which has not been kind towards migrants. It also focuses on the promise of putting South Africans first in employment in line with the growing unemployment rate. As a result, the key aims of the NLMP are informed by the following factors:

- (a) The population's expectations regarding accessibility to work for South Africans, given worsening unemployment and a perception that undocumented foreigners are distorting labour market access.
- (b) South Africa's labour market needs, in particular, the need for critical skills not locally available.
- (c) The protection of migrant workers and their families, in accordance with international standards and guidelines, and
- (d) Regional integration and cooperation imperatives.

However, the draft policy still draws a lot from previous narrow migration policies. The policy makes reference to the "two gate policy" that characterized the history of South African migration policy prior to 1994. There were three objectives of this policy. These objectives were as follows:

- To assimilate limited attractive skilled migrants through the 'front gate'.
- To discourage unwanted migration from entering and settling into the country, and
- To retain cheap labour on a temporary basis through the 'back gate' in sectors such as agriculture and mining (Department of Employment & Labour DEL, 2022, p. 18-19).

The current draft NLMP draws a lot from this history as its provisions seek to retain a limited number of migrants possessing critical skills through:

- quota systems and,

- The discouragement of employment of unwanted migrants, that is, undocumented migration; as well as limiting the economic activities open to these migrants through restrictions of activities migrants can and cannot establish with regards to SMME's.

This response makes commentary on the following key aspects of the draft policy, the rights-based approach, and the principles of equality, gender sensitivity, youth employment/unemployment, challenges, and general points. These comments refer to the rationale, purpose, scope and proposed interventions of the draft policy framework.

Response to the Rationale

The NLMP is rooted in and heavily influenced by the 'rights-based' approach. This is based on international and constitutional obligations, regional commitments, as well as national labour legislation. It is guided by the principles of equality of treatment (DEL, 2022, p. 12), equality of opportunity (DEL, 2022, p. 41), and combatting discrimination at work (distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin) (DEL, 2022, p. 41). The framework is also gender sensitive (DEL, 2022, p. 82). These considerations are made in line with the limitations of labour migration management in South Africa over the years as indicated in the NLMP.

The NLMP outlines the overall challenge with the policy environment. For instance, it appreciates that the current policy environment in South Africa is inadequate to address labour management. As the NLMP states, "The current policy environment has neither fully addressed the changing needs of the South African economy nor aligned South African laws and practices to existing international and regional standards and frameworks of protection ensuring that South African and migrant workers are treated equally in practice. Nor is there a policy framework, which provides a coordinated and consistent basis for the meaningful and streamlined management of labour migration." (DEL, 2022, p. 24).

The DEL states there is need for a NLMP for various reasons listed below. The factors that inform the NLMP are comprehensive enough to cover the broad spectrum of gaps and challenges present within South Africa's migration policy landscape. The factors that have informed the NLMP are as follows:

- The commitment of SADC countries to develop and adopt labour migration by 2019.

- The recognition by the DEL of the fact that the DEL, The Department of Home Affairs (DHA) and other departments need policy guidance on labour migration in South Africa.
- A lack of policy frameworks on recruitment, data requirements and labor migration to and from South Africa.
- The need for an appropriate legislative framework to mandate state interventions.
- The need for labor and social protection of migrant works which can be informed by clear policy direction, regulatory provision, and operationalization.
- A need for a response to external and continental dynamics which are, *inter alia*, a response to instruments identified by the African Union (AU) and the SADC. The aim of this response is to inform South Africa’s external stance on migration and labor related issues on the continental field.
- The need to “inform the reconsideration of outdated bilateral labour agreements” which were concluded by South Africa with SADC member countries. However, the rationale suggests that there is not enough attention directed to actively regulating the working conditions of migrants in South Africa. The scope also needs to be deepened to address migrant labour relations on a social level. The rationale must be informed by an understanding of how migrant workers are treated by employers and colleagues. Moreover, the policy notes that there is no existing policy to address “the changing needs of the South African economy nor aligned South African laws and practices to international and regional standards and frameworks of protection ensuring that South African and migrant workers are treated equally in practice” (Department of Employment & Labour 2022: 24). To this end, this gap can be addressed through the creation of policy that is informed by the social factors of labour migration.
- The policy document is also correct by noting that regulatory activities are overlapped by different ministries (DEL, 2022, p. 20). A consequence of this is a lack of coordination and direction with regards to the generation of a stance from South African policy that can effectively regulate migration labour (DEL, 2022, p. 22).

Nevertheless, some policy provisions such as the recruitment of migrants and the obligations of the employer, the treatment of irregular migrant workers and the protection of indigent

migrant groups like women and the youth of the NLMP are not given adequate attention and are at odds with the presumed objectives of the policy namely under the principles of equality, gender sensitivity, and the challenge of youth employment within the context of the “rights-based approach”.

Equality

Equality is one of the key democratic principles which grounds the South African Constitution. The NLMP accepts the fact that the constitution “extends protection to migrants and migrant workers” and it speaks against unequal treatment (DEL, 2022, p. 65-66). Furthermore, the NLMP closely aligns with the proposed Employment Services Amendment Bill of 2021. This forms the foundation for legally protecting migrant rights and the regulation of their employment. While this is commendable, the proposed amendments to the Employment Services Act are contradictory and at odds with the principle of equality of employment and working conditions which ought to be applied without discrimination towards migrants. The provisions of the act read;

a) Only employ foreign nationals entitled to work in terms of the Immigration Act, the Refugees Act or any other provision;

b) Ascertain the foreign national is entitled to work in the Republic in the relevant position;

c) Satisfy themselves that there are no South Africans with the requisite skills to fill the vacancy;

d) Prepare a skills transfer plan, where appropriate;

e) Employ foreign nationals on the same terms as local workers; and

f) Retain copies of relevant documentation.

Two issues are apparent. First, provisions a), b) and f) are in keeping with regulating the employment of migrants. In addition, provision d) provides a rational and progressive move for skills transfer which has the potential to develop the much-needed critical skills locally. However, provisions c) and e) are contradictory and at odds with the principles of equality which are enshrined in the constitution, regional and international protocols that South Africa

has ratified. For instance, the International Labour Organization's (ILO) Convention 189 on Domestic Workers, (Convention 081 - Labour Inspection Convention, 1947 (No. 81), the AU and SADC instruments and treaties on labour migration such as the African Charter on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Convention Governing the Specific Aspects of Refugee Problems in Africa and the Protocol on the Facilitation of Movement of Persons (2005) to name a few. While provision e) is in keeping with the principle of equal employment terms for both migrants and locals, provision c) implies a subtle discrimination towards migrants.

Provision e) aligns the employment policy with international conventions that South Africa is party to. An example of this, is the Protocol to the Treaty establishing the African Economic Community relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU FMP). A key provision of the AU FMP reads, "Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws and policies of the host Member State." (DEL, 2022, p. 56).

It also aligns the country's employment policy with international labour standards from the International Labour Organization (ILO) as reflected in the National Employment Policy (NEP) of 2021. The following extract from the NLMP illustrates this,

"The draft National Employment Policy (NEP) (2021), commissioned by the NDEL, aims at promoting full, productive and freely chosen employment at the heart of socio-economic and development policies through a rights-based approach and a broad basis of agreement achieved through social dialogue in line with the ILO Employment Policy Convention, 1964 (No. 122). The goals and objectives of the NEP are to ensure that (a) there is work for all who are available for and seeking work, (b) such work is as productive as possible, (c) there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use their skills and endowments in, a job for which they are well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin." (DEL, 2022, p. 62).

Provision c) on the other hand adds a layer of discrimination and disadvantages foreigners seeking employment on equal basis as locals. The provision reads that employers must, "satisfy themselves that there are no South Africans with the requisite skills to fill the vacancy",

giving an advantage to local seeking employment at the expense of migrants. This discrimination is more apparent considering quotas are being proposed. Moreover, the constitution does not allow unequal treatment of migrants - it even extends protection to migrants and the constitutional court precedent has established migrants as a vulnerable group (DEL, 2022, p. 65-68). Furthermore, international instruments, treaties and protocols from the UN, ILO, AU and SADC that South Africa has ratified promote the equal treatment of workers and speak against the unequal treatment of migrant workers (DEL, 2022, p. 42-43). They also identify migrants (both regular and irregular) as vulnerable groups – they promote steps to combat discrimination against them. (DEL, 2022, p. 46).

The rationale of vulnerability is so that indigent groups of workers can be given an advantage to seek work on equal basis however, provision c) implies the contrary bringing out the aspect of discrimination. As outlined in the Executive Summary such provisions mirror a subtle application of the two-gate policy aimed at discouraging employers from employing migrants. Therefore, there is a need for greater alignment of the employment policy with the principle of equality, the constitution, regional and international standards.

Gender Sensitivity

Women are one of the most vulnerable groups in general but more specifically when it comes to unemployment and labour standards. The NLMP appreciates this point. However, the considerations of gender-sensitivity in the NLMP falls short and leaves much to be desired. The term woman is non-existent in the policy. It is mentioned 25 times. Of those 25 times, it is mentioned 3 times in relations to the proliferation of women in precarious, unskilled and semi-skilled work and the overrepresentation of the female population in low productivity and low paying work (DEL, 2022, p. 28-29). It is mentioned three times together with youth in relation to the vulnerability of these groups and their susceptibility to unemployment (DEL, 2022, p. 28, 43 and 91). It is mentioned four times in the title of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (DEL, 2022, p. 42, 45 & 48); and four times again in the title of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (DEL, 2022, p. 43, 51 & 112); twice in the title of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (DEL, 2022, p. 46); 3 times in relation to SDGs 8 and 5 (DEL, 2022, p. 53); and once in the title of the 10-Year SADC Strategic Plan of Action on Combating Trafficking in

Persons, especially Women and Children (2009-2019) (DEL, 2022, p. 57); once as a suggestion to promoting productive work opportunities (DEL, 2022, p. 113); twice in relation to enforcing migrant workers labour and social protection rights (DEL, 2022, p. 72); And three times in the references (DEL, 2022, p. 108 & 110).

For a policy whose vision is gender-sensitive approach to labour migration (DEL, 2022, p 8, 36, 71 & 82) the only sector with a reasonable proposed regulation is in domestic work whereby, recruiters will have to, “expose the intending migrant worker to his/her contract of employment in the presence of an authorised labour official before the migrant embarks on his/her journey. Domestic work is predominantly occupied by women however, there are other works occupied by women such as hawkers and hairdressers. There is no mention of affirmative action to mitigate the disadvantage of migrant women in employment. To this end, possible suggestions could be affirmative action programs in labour management and government initiatives specifically for migrant women workers to promote their entrepreneurial activities and offer social protection.

Youth Unemployment

The policy appreciates that one of the major challenges in the labour market is youth unemployment. However, the NLMP mentions the word youth 11 times. Out of those 11 times, the term youth is mentioned three times as a vulnerable category of people together with women (DEL, 2022, p. 28, 72 & 91); twice as a duplicate reference from Statistics SA (DEL, 2022, p. 6 & 28); three times as a vulnerable group affected by unemployment and the wage gap (DEL, 2022, p. 28-29); once in reference to the need for measures that address youth and female unemployment (DEL, 2022, p. 29); And twice again in the title of the African Youth Charter (DEL, 2022, p. 46 & 52).

The NLMP is not comprehensive because it only appreciates that youth unemployment is a major challenge in the labour market, it mentions the youth as a vulnerable group and the need for measures to address these challenges. However, the policy does not offer any real measures to mitigate that challenge of youth unemployment especially amongst the migrant communities. There is a need for extensive research into and data collection of the challenges and issues of migrant youth unemployment. Since quotas are being proposed in the labour market, strides can be made by including unemployed migrant youths in initiatives such as

the Presidential Youth Employment Initiative (PYEI) through creation of a quota for this vulnerable group. Vulnerable groups such as the youth and women should be given greater attention especially when the policy is informed by the principle of equality.

Key Notes:

A Note on the Challenges of Skills Scarcity, Unemployment and Migration Management and their Proposed Solutions

The NLMP appreciates that South Africa faces a tripartite challenge of skills scarcity, an increasing unemployment rate and migrant labour management. The first challenge the NLMP notes is that South Africa has a scarcity of skills in certain sectors. However, the DHET has responded to this by releasing a list of skills that are in demand, which has been created in line with the DHA's Immigration Act (DEL 2022, p. 30).

“South Africa has also struggled with skills scarcity in specific sectors and sub-sectors for many years as the result of various factors such as attrition to the private sector in health professions, emigration, and displacement of skills from manufacturing to finance, etc. The South African Government has adopted several measures to address this challenge and among them, has drawn several scarce skills lists, the latest being the Department of Higher Education and Training (DHET) Occupations in High Demand List 2015.” (DEL, 2022, p. 29). In response to this, the NLMP recommends the following:

- The attraction and retention of skills should be prioritized.
- The development of measures and incentives to attract wanted skills through visa/permit types.
- Generalization of priority incentives in the affected sectors for South Africans and documented foreign nationals.
- Intensive recruitment of migrant workers for critically affected sectors and professions
- Better coordination and transparency of professions organizations with the establishment of recognition of qualifications and competencies that are aligned with the critical skills list.

The NLMP must expand by creating provisions that will assist willing migrants to learn critical and wanted skills. This can be through the creation of agencies that will be able to teach these skills to migrant workers where possible. The private sector must also be made to contribute by funding such programs to meet the skills deficit that has been identified by DHET. Especially since South Africa has lost skilled nationals to emigration: teaching these skills to migrant workers will give them the means to contribute skills to South Africa.

The second challenge noted by the NLMP is the growing rate on unemployment in the country. In response to this, the NLMP supports the proposition to implement a quota system to complement the employment of 60% of South African locals. The NLMP also supports the proposal to exempt migrants to operate in certain sectors (DEL, 2022, p. 64). Although seeming progressive, these provisions are in conflict with the challenge of scarcity as mentioned above because quotas have the potential to limit the potential contribution of migrants to the South African economy. Migrants with requisite skills have the potential to fill the gap of skills scarcity the economy faces. If they are employed, a plan for skills transfer can be implemented on a broad-base allowing the locals to develop the requisite skills in preparation to fill these critical skills positions once migrants have moved on.

Implications for Future Policy Conversations on Migration

Labour migration is a key policy issue in the South African economic, social and political spaces with potential spill-over effects on broader national policy conversations. The draft NLMP raises potential implications for future policy conversations around broader migration management and governance in the country. Key amongst these issues is the conversation around easing of visa regulations and subsequently, the regional integration and the successful implementation of the African Continental Free Trade Area (AfCFTA).

Easing of Visa regulation on one hand while proposing quota systems to limit migrant labour and potentially closing certain sectors to limit migrant investment are contrary provision. The whole idea of easing visa applications and access while simultaneously restricting certain sectors for investment and introducing quota systems that result in limited opportunities for work and investment seems counter-productive. Such provisions are significant points of discussion in the context of regional integration and the successful implementation of the

AfCFTA because they are at odds with the key objectives of the AfCFTA. According to the AfCFTA Secretariat¹, these objectives include among others to:

1. *Create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “An integrated, prosperous and peaceful Africa” enshrined in Agenda 2063;*
2. *Create a liberalised market for goods and services through successive rounds of negotiations;*
3. *Contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;*

We concur with the NLMP that there needs to be greater alignment of South African Migration policies with broader regional, continental and international instruments and protocols. We also propose that in the context of aligning South African migration policy with the AfCFTA, that easing of visa’s applications especially for business people should be coupled with a broad range of economic sectors that they can invest in. The proposal to close of certain sectors does not align with the objective of market liberalisation.

Additional Notes on Regional and Continental Contribution to Integration

The NLMP notes, that global, regional and sub-regional contexts influence the way that migration labour is managed. This is institutionalized by regional mechanisms that call for an alignment of international and regional labour standards (DEL, 2022, p. 21). The policy document notes moreover, that “labour migration to and from South Africa should be taking place in a manner that contributes to South African society” – it argues furthermore that it should not undermine South Africa’s labour protection regime, and that it must serve the countries regional integration goals (DEL, 2022, p. 21). While the DEL is correct in noting that the country must be aligned with regional and continental laws, the NLMP must also be designed in such a manner that it aids the continental and regional (SADC) integration agenda that has been declared by the AU and Regional Economic Communities. The SADC Action Plan is another example of this. The aim of this plan is to ‘protect and safeguard the rights and

¹ AfCFTA Secretariat, About the African Continental Free Trade Area (AfCFTA) available on, <https://afcfta.au.int/en/about>

welfare of migrant workers'. There is a need for the Labour Migration policy to peruse the ideas brought forward by this plan in order to harmonize the movement of people and policies that regulate the general integration project of SADC.

As Hartzenberg (2011) notes - the movement of labor across the continent is a focal feature of the African integration agenda. The NLMP should aid this agenda through the creation of laws and regulations that make it easier for migration labor to move in and out of the country. This will aid South Africa because it will make rare skills much more accessible and will allow them to move into the country more efficiently. This will also aid the continental integration agenda through a more efficient transfer of skills across the continent. To this end – the NLMP should be guided by the declarations made in the Abuja Treaty (1991) which sought to promote economic and social development on all African countries through integrating nations within RECs – SADC is one of these.

The Abuja Treaty which seeks to pursue the creation of one African Economic Community names six stages of integration. First is the creation of RECs. Second is the removal of tariff and non-tariff barriers – and the coordination and harmonization of economic activities. Third, is the establishment of a free trade area. Fourth, is the coordination of tariff systems among various RECs. Fifth, is the establishment of one African common market. Sixth, and most relevant to the NLMP is the consolidation of integration through “free movement of people, goods, capital and services” (Abuja Treaty 1991). This is a key feature of the regional and continental dynamics that must inform the thrust of the NLMP. As Hatzenberg (2011) notes – one of the key features of African integration is the use of RECs to aid and unite African countries. Using the NLMP to contribute to this by addressing certain laws and making it easier for migrant workers to find work will aid this agenda greatly.

Investment in Migration Education to Encourage Public Engagement with Policies and Raise Awareness on Migration.

To stimulate broader public engagement with the policy especially at the communal levels of South African Society where a considerable population of migrants are located and to facilitate the generation of comprehensive and constructive responses to the policy, the government should deliberately budget for public education on the contents of the policy document but also public migration education in general. Given the significance of migration

in the country and the challenge of endemic xenophobia fueled by the negative narrative on migrants, that is, migrants are taking jobs and job opportunities meant for South African Citizens (Kalitanyi and Visser, 2010; Dewa, 2022), we propose that the government invests in education and awareness activities. The aim should be to educate members of the government, political actors and the general public on what migration really entails, as well as educating migrants on their rights and obligations when they are in the country and most significantly foster social cohesion within the country. The aim of the public education will also be to demystify and transform the negative narrative that drives anti-migration sentiments. The narrative that migrants are taking jobs and job opportunities meant for South African Citizens can be an example of this. This has a high potential for mitigating the scourge of xenophobia. Having an actual budget for these activities has the potential to encourage enforcement of the policy as well.

Insufficient Time to Generate Comprehensive public engagement

In line with the aforementioned proposal to invest in migration education, we highlight that the 60 day-duration for public engagement and policy response on the draft NLMP is therefore insufficient to cultivate the necessary public engagement to generate comprehensive contributions and policy responses on the draft. Migration is a sensitive policy and social issue in the country and it evokes a lot of emotions and actions that may result in violence. We believe the 60 days of public engagement and responding to the draft NLMP was mainly overshadowed by the ongoing #OperationDudula. This has potentially limited the contributions of key stakeholders such as organized migrant representative groups and the voices of migrants. We propose that government provide sufficient time for public engagement for a period of three to six months

The Intersection of Securitization and Migration Policy

One of the challenges that migrants face - undocumented migrants in particular, is a lack of protection from vigilantisms, organised crime syndicates and xenophobia from locals. There is little to no reference of a strategy to mitigate this challenge in the draft NLMP. Article 17 on Migrants, Foreign Workers and Refugees of the SADC Code on Social Security adopted in 2007 provide that there should be, “access to minimum protection for irregular workers, and extension of social security to refugees” (DEL, 2022, p.57). Over the past few months, the

human rights protection of migrants in business and in particular those in the informal trade have not been respected by the political parties and vigilante groups, organised crime as well as the ongoing #OperationDudula. In line with this, we propose that the government invest in developing comprehensive, effective and migrant friendly enforcement mechanisms that protect the human rights of migrants in business and those in the informal trade. We propose that this structure of enforcement include various departments of government on migration, labour, civil society, organised migrant representative bodies, community stakeholders, law enforcement, and migrants themselves. This structure can even include relevant embassies of identified migrants.

The Policing of Xenophobia in Line with Human Rights as a Mitigating Strategy for Xenophobia/Afrophobia

The draft NLMP policy by the DEL and the South African government as a whole, have made considerable efforts in policing migration and undocumented migrants from tightening border controls, repatriating undocumented migrants with an emphasis on black African migrants to the current proposals to limit migrant business investments through closing off certain sectors and limiting migrant employment opportunities through proposed quota systems as discussed above. However, very little attention has been given to policing xenophobia.

The intersection of securitization and migration policy needs to be established so that it can be the foundation for the policing of xenophobia. A number of the provisions of the NLMP are aimed at regulating migration and migrants specifically, however, there is no indication of a formal plan to police xenophobia. Policing xenophobia is a critical issue and as recently illustrated in Diepsloot where a number of African migrants lost their lives through brutal means for a reason of not having documentation raises concerns over the protection of migrants. Similarly, the harassment of hawkers by the operation of the Dudula movement are cases in point where the human rights of migrants are infringed upon. Again we reiterate the proposal to establish a structure of migration enforcement including various departments of government on migration, labour, civil society working closely on migration issues in the country, organised migrant representative bodies, community stakeholders who interact with migrants on a daily basis, law enforcement, and migrants themselves to mitigate this challenge.

A Note on the Enforcement of the Policy Provisions

The NLMP appreciates the difficulty in implementation and enforcement of migrant labour management. “Actual enforcement, in particular of labour inspection, clear separation between labour inspection and immigration control and equality of treatment between local and migrant workers, seem to be the major challenges.” (DEL, 2022, p. 35). The legislative instruments that are identified by the NLMP have the aim of addressing human rights, labour and immigration related issues. However, the NLMP notes the aforementioned challenges. It recommends that labour inspection should receive specific training and approaches in order to strengthen labor inspectors. The NLMP must identify the areas which need strengthening in this regard. Consultation with government ministries, civil society and the private sector is critical to developing an effective and sustainable enforcement strategy. If there is a human resources limitation, this could also be an opportunity for employment creation focusing on positions such as labour inspectors and immigration control officers.

A Note on Irregular Migrant Labour Protection

The NLMP makes reference to the SADC Code on Social Security and its Article 17 on Migrants, Foreign Workers. The protocols speak on the need for the extension of minimum protection and social security to irregular workers and refugees (DEL, 2022, p. 57). Extension of social security and protection however minimal is one of the key issues that need to be addressed when considering irregular migrants, the self-employed and refugees. These migrants make up a considerable portion of the informal economy.

A Note on Illegal Migrants

The national Health Insurance Bill provides medical coverage to different migrant groups like refugees, asylum seekers and undocumented migrant. However, the challenge is that it refers to undocumented migrants as ‘illegal migrants’ (DEL, 2022, p. 67). The constitutionality of the term ‘illegal migrant’ is in question as it fuels the negative narrative of migrants and feeds into xenophobic tendencies. We propose a reinvention of our approach to migrants and migration. From a human rights perspective, no human being can be illegal hence we propose that such terminology be reinvented. Instead of ‘illegal migrant’, ‘undocumented migrant’ is more humane.

A Note on Labour Data Collection

This KAI is focused on coordinating data for labour migration. This is envisioned as a key feature of the NLMP monitoring and evaluation. Data in this regard includes “labour migration administration, demographics and emerging trends from and into the South African territory” (DEL 2022, p. 78). The DEL notes that there is need to improve efforts geared towards collecting, comparing, analysis and using data on labour migration for policy monitoring and evaluation purposes (DEL 2022, p. 78). Data remains an important feature in the monitoring and evaluation. However, the department must also ensure that the implementation of data collecting and all related to this KAI is immaculately done. A key feature of this, will be the consistent collection of data. Moreover, there will need to be agencies and systems created to monitor and aid the collection of data. Questions that should be asked however is, what will come from the data collection as part of the monitoring and evaluation process? Will the data be collected simply with the aim of making information accessible, or will it be used to identify certain policy errors and failures – and will the DEL be flexible in changing the issues and errors that are identified? Another question, is how effective will these agencies be, and exactly what kind of data does the DEL seek to collect? The policy needs to clearly define these and be adjusted in a manner that makes this process easy to implement.

Conclusion

The challenges that inform the NLMP need to be addressed. These challenges are, inter-alia – an inadequate policy framework that is able to address labour migration management, a challenge regarding the changing needs of the South African economy and a lack of alignment with regional and international frameworks. Moreover, the NLMP is also informed by a regional commitment to develop labour migration policies, a lack of inter-ministerial coordination as well as the need for the DEL to provide policy guidance on labour migration, for appropriate policy frameworks to legitimize the regulatory powers of the state, a need to align with regional, continental, and international dynamics and a need to effectively regulate migration labour. However, the content of the NLMP is contradictory to the abovementioned objectives. This needs to be addressed by the introduction of policies and regulations that are in line with the abovementioned objectives.

To this end, the NLMP needs to align its proposed amendments to the DEL's stance on the Employment Services Amendment Bill of 2021 which seeks to protect the rights of migrants. Moreover, the content of the NLMP must speak of issues that women face as one of the most vulnerable groups. The NLMP does not address this matter in such a manner that government regulation and enforcement is legitimized. The NLMP falls short on this matter. The NLMP also needs to create measures and entities that are geared to assist migrants to learn the critical skills. This will not only affect the pressing skills deficit – it will also give migrants more opportunities which will give them economic security. It will also facilitate a process of skills transferring between nationals and migrants. The NLMP must also be cognisant of regional and continental dynamics according to the Abuja Treaty in which African countries have agreed to contribute to overall integration. The flow of labour between different countries will be an important feature of this.

In order for the NLMP to be effective, there is a need for the rational to expand and to include the protection of undocumented migrants, through the creation of mechanisms that protect them from workplace abuse and underpayment. A new approach to migrants and migration will be a key feature of a successful NLMP.

Last, the NLMP must propose solutions that are easy to implement. They must also speak to social realities that are faced by migrants in South Africa. Doing so will ensure a successful implementation of the NLMP.