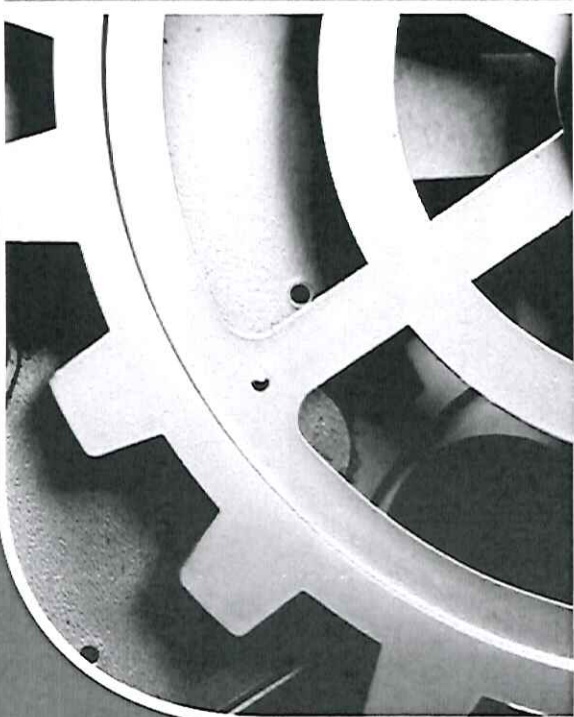


**Portfolio Committee on Labour  
Presentation on Immigration policy & issuing of work  
permits to foreign nationals  
11 May 2016**

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DDG: Public Employment Services**



**labour**

Department:

Labour

REPUBLIC OF SOUTH AFRICA



# Presentation Outline

- 1. Introduction**
- 2. Migration Management Mandate**
- 3. Migration Management interventions across government**
- 4. Department of Labour roles in migration management**
  - 4.1 Prevention of displacement of local labour**
  - 4.2 Promoting in-flow of skills**
  - 4.3 Assisting Placement of South Africans abroad**
- 5. Conclusion**

# 1. INTRODUCTION

- The ILO estimate that there are more than 232 million migrant workers around the world.
- It is estimated that there are more than 5 million immigrants in South Africa
- Globalization, demographic shifts, conflicts, income inequalities and climate change will encourage ever more workers and their families to cross borders in search of employment and security.
- Migrant workers contribute to growth and development in countries of destination, while countries of origin greatly benefit from their remittances and the skill acquired.
- The NDP Vision: “We are Africans, we are an African country, we are part of our multinational region, we are an essential part of our continent, being Africans we are actually aware of the wider world, deeply implicated in our past and present. That wider world carries some of our inheritance” .

## 2. Migration Management Mandate

### Immigration Act as amended (No. 13 of 2011)

1. The Immigration Act prescribes through the regulations for DOL to issue recommendation certificates for the following work visa types:

**1.1 Business Visa: s(15) Regulation 14(3)(c):** DOL to confirm that an enterprise issued with a business visa has 60% of total staff complement as South Africans or permanent residents;

**1.2 General Work Visa (GWW): s(19)(3) Regulation 18 (3);**

**1.3 Corporate Visa (Cor. V)-for group applications: s(21); Regulation 20(1);**  
For (1.2) & (1.3) above, DOL to confirm that despite diligent search, South Africans with the requisite skills could not be sourced for placements in the vacancies).

**2. Labour Law Compliance Requirement:** The client employer is inspected to ensure compliance when applying for any work visa type.

## 2.1 Migration Management Mandate

Immigration Act as amended (No. 13 of 2011)

### **OTHER IMMIGRATION ACT WORK VISAS WHEREIN THE DOL IS NOT INVOLVED**

- Critical Skills Visa
- Intra Company Transfer Visa
- Religious Groups (Pastors)
- Arts and Culture (Dancers and Actors)
- Sports (Professional Coaches and players)

NB. Visas are issued or denied by DHA after considering recommendations from various departments

The Immigration Act provides an appeal mechanism in case clients are dissatisfied with the outcome of their application.

## **2.2 Migration Management Mandate**

### **Employment Services Act (No. 4 of 2014)**

1. Section 8 provides for a regulatory framework for the employment of qualifying foreign workers;
2. Section 8 (2) provides for the Minister to issue Regulations that are consistent with the Immigration Act after consulting with the Employment Services Board once established.
3. Section 8 (4) provides for an employee employed without a valid work permit to be entitled to enforce any claim that the employee may have in terms of any statute or employment relationship against his or her employer or any person who is liable in terms of the law.
4. Section 9 provides prohibited acts in respect of foreign nationals that includes permitting a foreign national to perform work which is not authorised in the work visa.
5. Section 49 provides for enforcement of the ES Act in line with Chapter 10 Schedule 11 to the Basic Conditions of Employment Act.
6. Section 50 (5) provides for offences and penalties that may be imposed for contravening Section 9 as contemplated in Section 49 (6) of the Immigration Act.

## **2.3 Migration Management Mandate**

**ILO C97 Migration for Employment Convention (Revised), 1949**

**NB: RSA has not yet ratified C97**

### **Article 1**

- Each Member of the International Labour Organisation for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members—
  - (a) information on national policies, laws and regulations relating to emigration and immigration;
  - (b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
  - (c) information concerning general agreements and special arrangements on these questions concluded by the Member.

## **2.3.1 Migration Management Mandate**

### **ILO C97 Migration for Employment Convention (Revised), 1949**

#### **Article 2**

- Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

#### **Article 3**

- 1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.
- 2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

#### **Article 4**

- Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.



## **2.4 Migration Management Mandate**

**SADC agreement on migration management**

### **SADC Protocol on Employment and Labour**

Article 19 (a-k) requires member state to develop instrument on labour migration.

### **SADC Labour Migration Policy Framework**

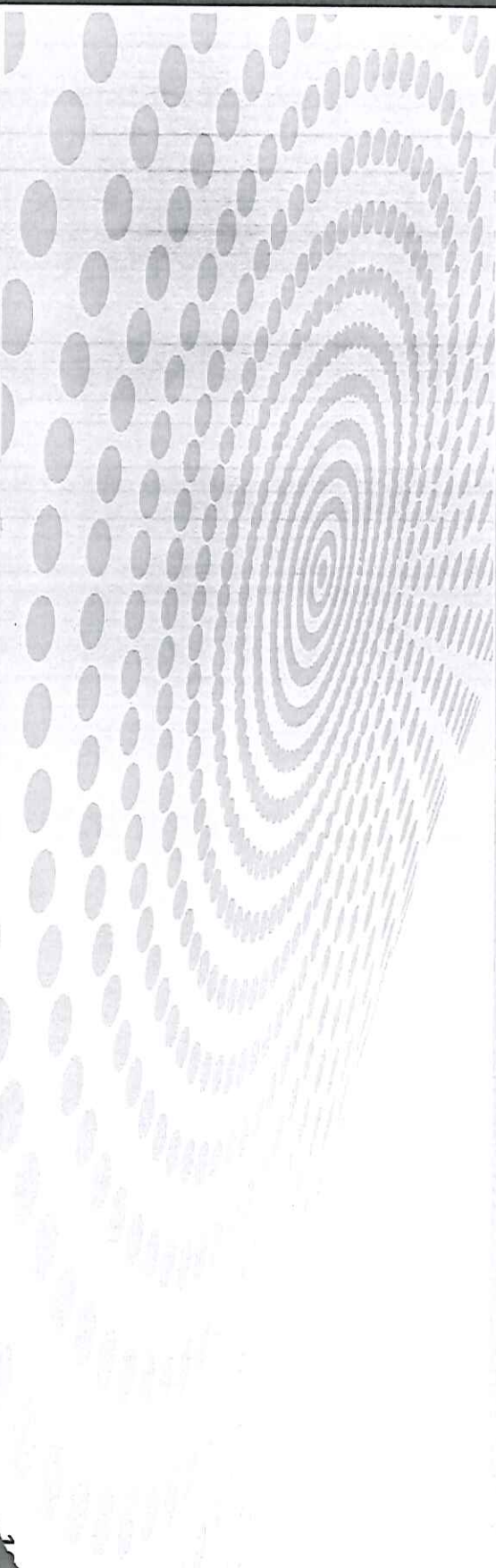
Requires member state to develop labour migration policies by 2019.

### 3. Migration Management interventions across government

Inter-Ministerial Committee on Migration

**The IMC is chaired by the President**

Focus on:	
Immigration	11 outcomes to be achieved
Border Management	6 outcomes to be achieved
Socio-economic	11 outcomes to be achieved



# 3. 1 Migration Management interventions across government: Immigration

Action	Responsibility
1. Revisit South Africa's accession to the relevant UN conventions without reservation, and amend the Refugees Act accordingly.	DIRCO to Lead: Justice and DHA
2. Adopt of the "first-safe-country and safe-third-country" principles to manage refugees and asylum seekers.	DHA to Lead: All of government
3. Support full and consistent implementation of the new immigration regulations.	DHA
4. Develop a capacity and systems to track, trace and repatriate visa-exempted migrants illegally in South Africa.	DHA
5. Find, apprehend, repatriate or deport all illegal migrants from South Africa.	DHA and SAPS
6. Reconsider South Africa's position on the SADC Protocol on the Free Movement of Persons.	DIRCO to Lead: DHA DTI

# Immigration

Action	Responsibility
7. Conduct risk and impact studies before agreeing to visa waivers for BRICS countries.	DHA to Lead: DTI, DIRCO and Security Services
8. Develop a comprehensive strategy with SADC states for managing migration into South Africa.	DIRCO to Lead:
9. Develop and implement an integration policy for foreign nationals legally in South Africa	DCOG to Lead: DHA, Human Settlements, Social Development, Premiers and Mayors
10. Ensure a sustained dialogue with representatives of émigré communities in South Africa.	Arts and Culture
11. Complete the comprehensive mapping of the émigré footprint in South Africa	NICOC

## 3. 2 Migration Management interventions across government: Border Management

Action	Responsibility
1. Fund, capacitate and deploy the remaining nine SANDF companies to the borderline.	DoD
2. Expedite the construction of border fences and the establishment of patrol roads.	DoD, DPW, DAFF and DHA
3. Repair and strengthen facilities and infrastructure on the borderline.	DoD, DPW, DAFF and DHA
4. Mobilise and involve communities in borderline security management.	DoD, DHA, COGTA, DSD and DAFF
5. Eradicate corruption and illegal activities at ports of entry and the borderline	DHA, SAPS, SANDF, NPA, SSA, SARS, Health and DAFF
6. Expedite the integration of border control functions through the Multi-Party Agreement as required by the BMA Project Management Office.	DHA to Lead: Relevant departments

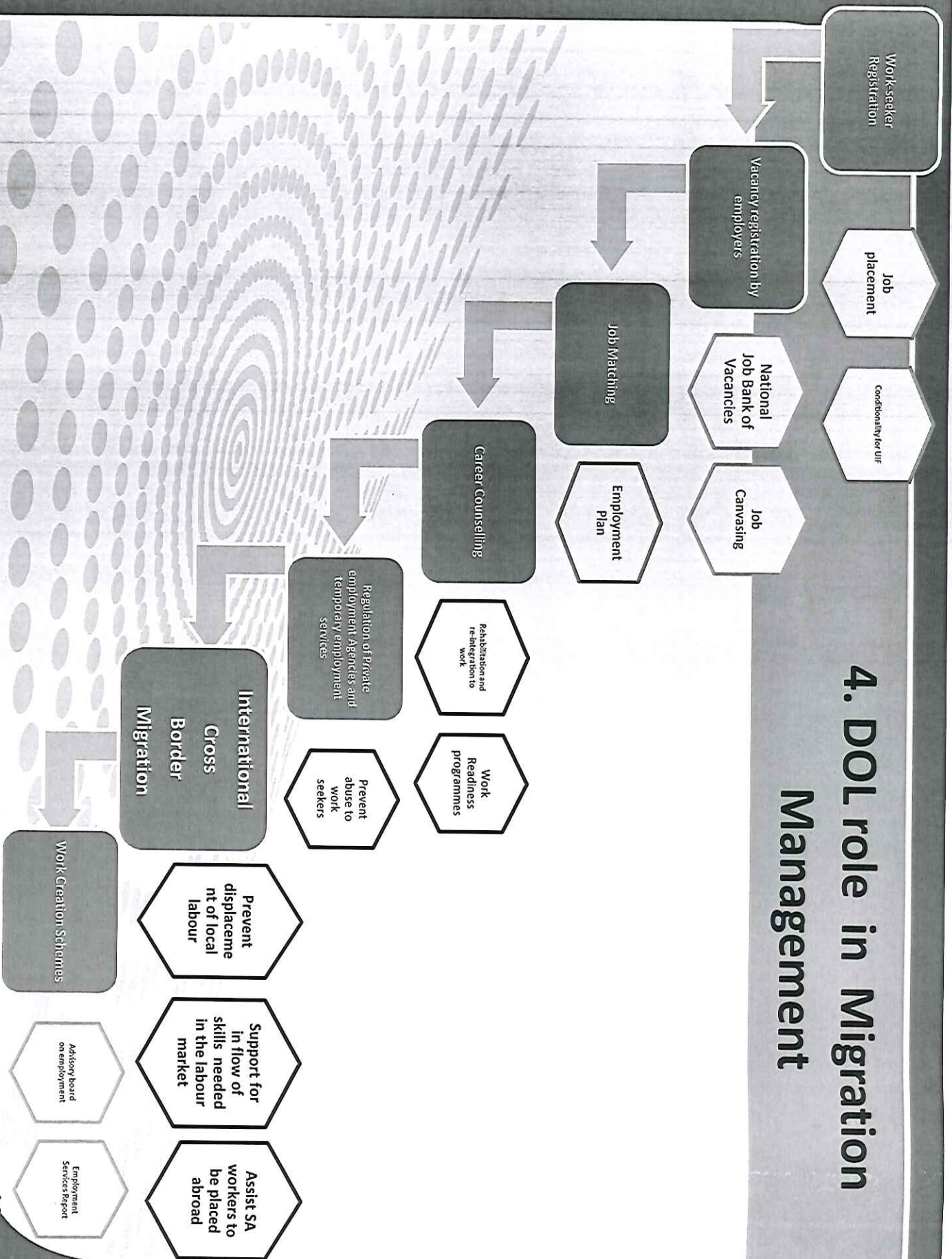
### 3. 3 Migration Management interventions across government: Socio-Economic

Action	Responsibility
1. Prioritise economic growth and job creation through implementation of the NDP	All of government
2. Expedite the national programme to revitalise township and rural economies.	DTI, SBD and Provinces
3. Encourage SA businesses to invest in SADC states to enhance economic growth and development	ICTS and ESEID Clusters
4. Legislate to oblige business to declare the number of foreign nationals they employ and to adhere to the minimum wage.	Labour and DTI
5. Prioritise the granting of work permits to foreign nationals having the skills required by the economy.	DHA and DTI
6. Develop and implement a single national biometric identification system for use by all of government	DHA, Denel and SITA

# Socio-Economic

Action	Responsibility
7. Conscientise and educate foreign nationals on their responsibility in terms of obeying the law and promoting social cohesion	Justice to Lead: DSD, DAC, SAPS, Premiers and Mayors
8. Develop and implement a programme to audit and licence informal businesses, and enforce relevant local government regulations.	All relevant departments, SALGA and Mayors
9. Conduct a scientific study to determine the number of foreign nationals utilising the health and education sectors	DBE and DHE and Health
10. Comprehensively audit social grants to determine their illegal uptake by foreign nationals	SASSA
11. Involve traditional leaders in the development of mechanisms for the management and integration of foreign nationals in rural communities.	DCoG and the House of Traditional Leaders

# 4. DOL role in Migration Management





## 4.1 DOL role in Migration Management

**International/Cross-Border Labour Migration (ICBLM) to prevent possible displacement of local labour**

1. **The legislative basis is grounded on the immigration law and the labour laws of the country for a two-pronged purpose of regulating labour migration inflows to protect the vulnerable, local work seeker, citizenry the rights of migrants,**
2. **Ensuring that requisite skills are both attracted to, and retained within the economy;**
3. **To promote labour market stability, the DOL requires that the local labour market be tested prior to reliance on foreign labour recruitment;**
4. **Local citizenry is in the process protected from exposure to unfair competition for scarce employment opportunities;**
5. **Compliance with labour legislation ensures that employment standards are not compromised by the globalization drive;**
6. **The SA Labour Laws provides protection to documented and undocumented foreign workers**

## 4.1.1 Unemployment challenges in South Africa

1. South Africa is characterise by high levels of unemployment, poverty and inequalities
2. There are 5.4 million unemployed people in the country.
3. The youth represent about 3.5 million of the total unemployed in the country
4. This correlates with the number of unemployed registered people in the Department of Labour Employment Services System ESSA

# PROBLEM ANALYSIS: PER PROVINCE

Major economic hub: 18 178 sq km  
 Population 13 200 300; employed 5 090 000, unemployed 1 936 000 and 27.6% unemployment rate in January 2016)  
 GDPPR 2.6%

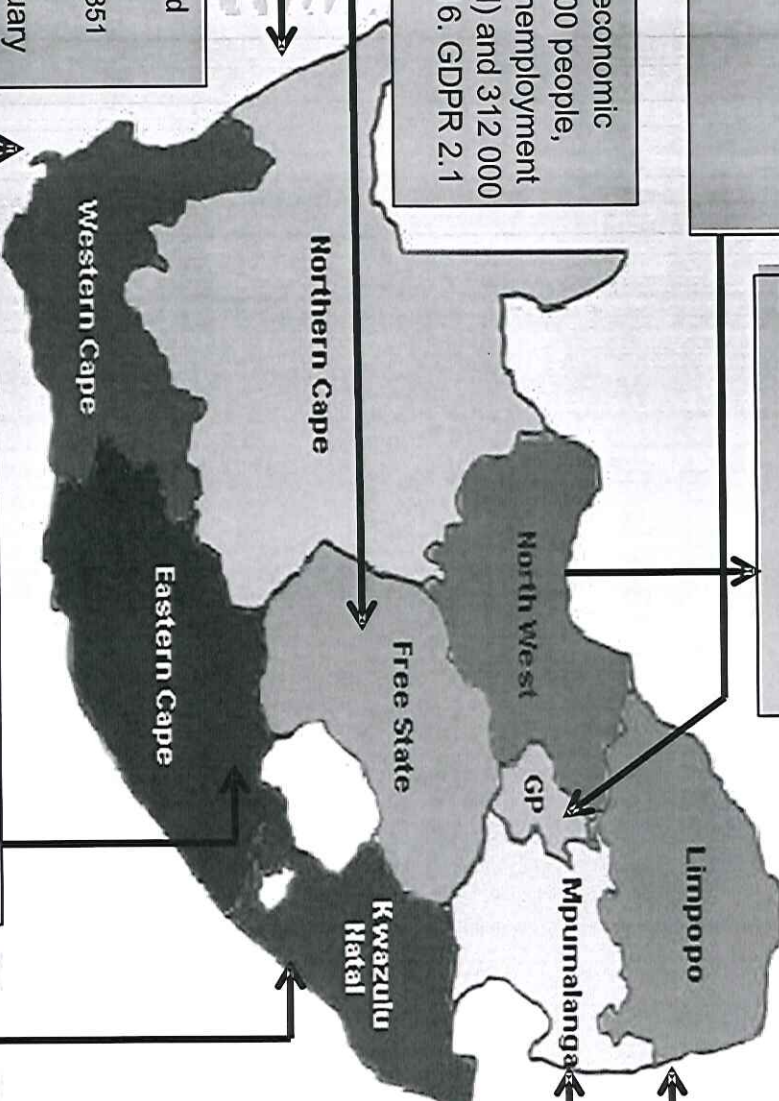
Population: 3 707 000  
 land area 104 882 sq km;  
 23.9% unemployment rate (304 000 unemployed); and 969 000 employed in January 2016  
 GDPPR 2.5%

Land area: 125 754 sq km; Pop. 5 726 800; 1 311 000 employed and 324 000 unemployed (19.8% unemployment rate) in January 2016. GDPPR 2.4%

Smallest GDP growth & economic contribution with 1 185 600 people, 372 889 sq km, 25.8% unemployment rate (108 000 unemployed) and 312 000 employed in January 2016. GDPPR 2.1%

Population: 2 817 900 land area 129 825 sq km 29.8% unemployment rate(351 000 unemployed); and 825 000 employed in January 2016. GDPPR 1.7%

3rd largest - SA economy with 6 200 100 people living in 129 462 sq km, 2 380 000 employed, 19.4% unemployment rate (571 000 unemployed) in January 2016. GDPPR 2.3%



Population: 4 283 900; land area 76 495 sq km; 25.7% unemployment rate (413 000 unemployed); and 1 191 000 employed in January 2016 GDPPR 1.7%

Population: 6 916 200 land area 168 966 sq km; 27.4% unemployment rate 534 000 unemployed); and 1 411 000 employed in January 2016, GDPPR 1.1%

2nd largest - SA economy with 94 361 sq km, 10 919 100 people, 2 529 000 employed and 20.5% unemployment rate (652 000 unemployed) in January 2016 GDPPR 1.1%

## **4.1.2 Job creation protectionist stance:**

1. The pressure to create, as much as possible, employment opportunities for South African economically active citizenry during current difficult economic times is on the increase.
2. The calls to preserve, as much as possible, the scarce employment opportunities for the vulnerable, local work seekers can not be underestimated.
3. The large number of asylum seekers, refugees, migrant workers under special dispensation and undocumented migrant workers make the situation more complex.
4. Negative public perceptions towards migrants is growing.

## **4.1.3 Inspection of workplaces to enforce compliance on employment of foreign nationals: challenges**

1. Some sections of employers and syndicates continue to exploit the situation of migrants.
2. Reasons for employment of migrants range from allegations that they are “hard working, less likely to strike or demand protection in line with current labour laws, not demand salaries in line with set minimum wages, fear deportation etc” .
3. DOL inspectors normally sets appointment prior to inspections and in most cases employers hide undocumented foreign nationals or tell them not to come to work.

## Challenges in employment of undocumented foreign nationals Mpumalanga and other Provinces

4. In most cases, employers would deny that they have undocumented foreign nationals in their employ.
5. Other employees would disclose such information whilst others will not confirm presence of migrants for fear of reprisal.
6. The boarder control is apparently inadequate as Mozambique citizens are alleged to freely cross the boarder and do their daily activities in South Africa,i.e, in Mbusuzini and Magogeni.Employers take advantage of the situation and hire them.

## 4.1.4 Mpumalanga recent Blitz finding

- Blitz inspections were conducted in Malelane and Bombela.
- Findings include non registration of foreign workers with work visas for UIF.
- Notices were issued in this regard.
- Follow-up inspection will be conducted

## **4.1.5 Inspection of workplaces to enforce compliance on employment of foreign nationals: interventions**

1. DOL is planning to increase the number of targeted joint labour inspections with the involvement of DHA and SAPS without prior notice to employers especially in economic sectors such as Security, Construction, Domestic, Hospitality and Agriculture to ensure compliance to labour laws.
2. Conduct head count against payroll.
3. Developing mechanisms to ensure that foreign illegal nationals to be repatriated and subjected to inferior standards are compensated retrospectively in line with Ministerial Determinations before deportation
4. Support National Education campaigns to educate the population on the plight of migrants.
5. Support National campaign to educate migrants on their rights and obligations.
6. Introduction of work-seeker support systems to promote citizens internal migration.



## **4.2. DOL role in Migration Management** **(ICBLM) Promoting inflow of skills needed in the Labour Market**

**Mechanisms to support skills recruitment include :**

**1. Stakeholder Relations Management Outreach programme to employers:** Through Public Employment Services the Dept. encourages and assists employers to recruit for their labour requirements through the DOL ESSA system free of charge from 126 Labour Centers, service points and through internet.

**2. Policy Procedures Implemented to attract, retain and regulate migration inflows:**

- Once an application for corporate or individual work visa is received, an acknowledgement letter is granted and applications are stamped
- The Inspectors conduct inspection on the submitted address to determine employer compliance with current labour laws and that foreign nationals will not be subjected to inferior standards.
- The inspection report forms part of the corporate or individual work Visas adjudication process in ICBLM.

## 4.2.1 Promoting inflow of skills needed in the Labour Market

3. DOL Provincial Offices verify and coordinates applications prior to submission to DOL National Office for adjudication
4. Employment Services Practitioners checks for compliance to guideline and conducts recruitment and selection processes for the employer on ESSA and PEA databases to check local availability of required skills .
5. **Head Office Adjudication Committee** : Through a centralised work visa adjudication process, recommendations are submitted to Home Affairs Department for (positive) issuance or (negative) withholding work visa.
6. Positive recommendations are made when the skill is not available in the country and the employer complies with labour laws.
7. Negative recommendations are made when skill is available in the country or the employer does not comply with labour laws.

## 4.2.2 Statistics of work visa recommended to DHA

- Department of Labour received 61 corporate visa applications covering 9073 workers. 6905 were positively recommended whilst 2168 were negatively recommended during Q1-Q4.
- A total of 1566 (475 received during 2015/16 + 1091 carried over from 2014/15) were processed. 105 were positively recommended whilst 1412 were negatively recommended.
- Labour migrants required were from the Agricultural sector, for general farm workers mainly from (Zimbabwe, Mozambique, Lesotho, Namibia and Botswana).
- Over a quarter of workers were required in the Construction sector for engineers, project managers, artisans, mechanics and builders, mainly from (Korea, UK, Germany, India, China, Thailand, Mozambique, USA and UAE)

## 4.2.3 2015/16 ICLM ANNUAL REPORT CORPORATE VISA (STILL TO BE AUDITED)

KEY PERFORMANCE INDICATOR	QUARTER 3 TARGET	ACTUAL PERFORMANCE	REASON FOR VARIANCE	REMIDIAL ACTION AND IMPLEMENTATION DATE
2.1 Applications for foreign nationals corporate and individual work visa processed within 30 working days	All complete applications for foreign nationals corporate and individual work visa processed within working days	Not Achieved <u>CORPORATE:</u> 34 Applications processed, within 30 and 57 beyond 30 working days on received 2015/16	11 Employment Practitioners (ESP's) Could not be filled due to budgetary constraints Insufficient, selection and matching of registered work seekers ESSA Systems challenges	Review targets for 2016/17 and beyond Provincial support to MP WC, LP and NW Allocation of dedicated IT resources for PES

## 4.2.4 CORPORATE VISA

PROVINCE	APPLICATIONS RECEIVED	APPLICATION PROCESSED	NO OF WORKERS	POSITIVE RECOMMENDATION	NEGATIVE RECOMMENDATION	PROCESSED WITHIN 30 DAYS	PROCESSED BEYOND 30 DAYS	NB!
EC	0	0	0	0	0	0	0	*The difference in application received and
FS	3	4	547	197	350	2	2	processed is due to backlog from 2014/15*
GP	4	9	743	546	197	3	6	Application received towards year end, will be carried to 2016/17 *
KZN	1	1	69	69	0	0	1	
LP	35	62	6127	4936	1191	25	37	
MP	14	11	587	562	25	4	7	
NC	2	0	0	0	0	0	0	
NW	0	2	775	370	405	0	2	
WC	2	2	225	225	0	0	2	
<b>TOTAL</b>	<b>61</b>	<b>91</b>	<b>9073</b>	<b>6905</b>	<b>2168</b>	<b>34</b>	<b>57</b>	

## 4.2.5 2015/16 ICBLM ANNUAL REPORT INDIVIDUAL WORK VISA (STILL TO BE AUDITED)

KEY PERFORMANCE INDICATOR	QUARTER 3 TARGET	ACTUAL PERFORMANCE	REASON FOR VARIANCE	REMEDIAL ACTION AND IMPLEMENTATION DATE
<p>2.1 Applications for foreign nationals corporate and individual work visa processed within 30 working days</p>	<p>All complete applications for foreign nationals corporate and individual work visa processed within working days</p>	<p>Not Achieved <u>INDIVIDUAL:</u> 314 Applications processed, within 30 and 1252 beyond 30 working days on received 2015/16</p>	<p>11 Employment Practitioners (ESP's) Could not be filled due to budgetary constraints insufficient, selection and matching of registered work seekers ESSA Systems challenges</p>	<p>Review targets for 2016/17 and beyond Provincial support to MP WC, LP and NW Allocation of dedicated IT resources for PES</p>

## 4.2.6 INDIVIDUAL WORK VISA

PROVINCE	APPLICATIONS RECEIVED	APPLICATION PROCESSED	NO OF WORKERS	POSITIVE RECOMMENDATIONS	NEGATIVE RECOMMENDATIONS	PROCESSED WITHIN 30 DAYS	PROCESSED BEYOND 30 DAYS	NB!
EC	45	99	99	9	78	48	51	*The difference in application received and processed is due to backlog from 2014/15* Application received towards year end, will be carried to 2016/17 *
FS	8	12	12	0	12	2	10	
GP	136	856	856	57	790	77	779	
KZN	23	150	150	6	141	29	121	
LP	21	47	47	4	42	22	25	
MP	38	50	50	3	36	21	29	
NC	2	8	8	1	7	5	3	
NW	9	25	25	2	22	7	18	
WC	193	319	319	23	252	103	216	
<b>TOTAL</b>	<b>475</b>	<b>1566</b>	<b>1566</b>	<b>105</b>	<b>1412</b>	<b>314</b>	<b>1252</b>	

## 4.2.7 Challenges

1. Some companies not willing to test local labour market for availability of suitable labour.
2. Non Compliance to labour legislation
3. Demand for unreasonable experience ( e.g. 20 years experience) and foreign language as a prerequisite.
4. Insufficient or no implementation of skills transfer plans in instances of reapplication.
5. Misleading advertisements with no SAQA linked qualifications
6. Fraudulent documentation by syndicates
7. Applications to renew visas for people already in the country wherein employers do not want to follow the application process.



## 4.2.8 Planned interventions

To improve the processing of corporate and individual work visas applications we have put the following measures in place:

1. We have advised and secured approval from Department of Home Affairs that Sports, Arts, Culture and Religious applications will no longer be processed by the Department of Labour as from 01<sup>st</sup> April 2015.
2. We have publicized guidelines on our website for corporate and individual work visa applicants to check requirements before they submit applications to the department.
3. We trained staff in our Labour Centres not to accept any applications that are incomplete or are not corporate or individual work visa related.
4. Applications submitted by employers found to be non-compliant with our labour laws will be negatively recommended immediately on receipt of inspector's report.
5. We set a target of 30 working days within which we are going to process applications.
6. As from 06<sup>th</sup> June 2016 we intend testing and piloting a new on-line system for the submission of applications.
7. At Head Office, the adjudication committee meets every Friday of the week to review and finalize documentation received from Provincial Offices and to make a final recommendation to the Department of Home Affairs.

## **4.3. . DOL role in Migration Management**

### **Assisting with placement of South Africans abroad**

- Not much work has been done around the area of promoting the Employment of South Africans abroad.
- The Department of Labour will continue to monitor emergence of employment in foreign economic sectors wherein we have access skills capacity to promote placement of South Africans in those countries in collaboration with their Public and Private Employment Services organisations
- Applicable guidelines will be developed for discussion and finalisation at the Employment Services Board levels.

## 5. Conclusion

1. Employment Services Board to conclude ES Act Migration Regulations aligned to the Immigration Act once established.
2. DOL to participate in joint surprise inspections with DHA and Police in Economic Sectors such as: Agriculture, Domestic, Construction, Hospitality and Security industries to enforce compliance with labour legislation.
3. Development of a Labour Migration Policy with ILO assistance.
4. Alignment of SA labour migration policies and initiatives with those of SADC and the AU region, ILO Conventions and International Organization on Migration (IOM) frameworks.
5. Continue to draw best practice from other developing and developed countries

## Conclusion

6. Labour migration is a very complex subject that has serious implications to Human Resources Development Planning.
7. Labour Migration, if well managed, it can contribute significantly to the growth and development of the country.
8. The application of fairness and consistency in standards and requirements for the various Work related VISAs within the country and beyond our borders remains key in facilitating the movement of people across our borders for work purposes.

**Thank You**



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