



SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

SADC LABOUR MIGRATION POLICY

DRAFT

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Section 1: Definitions and abbreviations

List of Abbreviations

CSO: Central Statistical Office
DHA: Department of Home Affairs
DRC: Democratic Republic of Congo
ELS: Employment and Labour Sector
ILO: International Labour Organization
IMF: International Monetary Fund
IOM: International Organization for Migration
LM: Labour Migration
LMIS: Labour Market Information Systems
NSDS: the National Strategy for the Development of Statistics
NSS: National Statistical Systems
RSD: Refugee Status Determination
SADC: Southern African Development Community
SSA: Statistics South Africa
TRP: Temporary Residence Permits
UN: United Nations
UNFPA: United Nations Population Fund
UNHCR: United Nations High Commissioner for Refugees
USAID: United States Agency for International Development
WB: World Bank

Definitions

International migrant any person who changes his or her country of usual residence¹.

Long-term migrants are those who move to a country other than their country of usual residence for a period of at least a year.

Short-term migrants people who move to a country for a period of at least 3 months but less than a year.

Labour Market Information Systems consists of a set of institutional arrangements, procedures and mechanisms that are designed to produce labour market information².

Section 2: Background and context

2.1 Institutional frameworks

2.1.1 SADC Treaty

This SADC Labour Migration Policy is drafted within the spirit of the overall SADC Treaty whose main objectives include inter alia, “to achieve development, peace and security, and economic growth, to alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially

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

² ODA 1996

disadvantaged through regional integration, built on democratic principles and equitable and sustainable development”.

The SADC Treaty calls for the development of policies aimed at “the progressive elimination of obstacles to free movement of capital and labour, goods and services, and of the people of the region generally, among Member States”.

This policy has been developed to reflect, contribute to, and refine existing legal frameworks at regional, bilateral and national level, and international and regional legal instruments and obligations relating to migration and labour.

2.1.2 Existing regional, bilateral and national legal frameworks:

There is no overall regional policy framework to govern migrant labour in SADC. Currently, labour migration is regulated through a series of existing migration or labour migration policies at national, bilateral or multilateral level within the region.

At national level, all SADC member countries have migration and labour policies that govern the entry, stay, and employment of foreign workers, although these are often disconnected from each other internally (labour and migration) and/or across countries. Permits for work are either issued by Ministries of Home Affairs only (as is the case in South Africa) or through a system combining Ministries of Labour and Home Affairs (Botswana, DRC, Tanzania). “Five SADC countries have separate legislation granting employment permits to foreign workers: Botswana, the DRC, Lesotho, Mauritius, and Mozambique. In Botswana, the Employment of Non-Citizens Act 11 of 1981 governs employment permits. In the DRC, separate laws govern general immigration and specific work permits. In Lesotho, the Department of Labour administers work permits in terms of its legislation. In Mauritius, the Non-Citizens Employment Restriction Act governs employment permits. In Mozambique, Law 25/99 and 26/99 govern work visas” (Crush et al 2010:47).

Bilateral agreements in SADC are dominated by South Africa, which as the principal migrant receiving country in the region, and due to its historical migrant labour system in core sectors of its economy, concluded state-to-state agreements to recruit labour from 5 countries: Mozambique, Swaziland, Lesotho, and Malawi (now expired). It has also signed MoUs with Zimbabwe, Cuba and Tunisia to meet labour demands in critical sectors or for certain skills.

Bilateral agreements beyond labour also exist in the sub region, for instance between Zimbabwe and Mozambique a formal transit border pass mechanism was initiated during the Mozambican civil war to help regulate entry into Zimbabwe (Minaar, 1996). Mozambique also has bilateral committees include the Sub-Committee on Defence, Security and Migration with Swaziland, and a Sub-Committee on Migration, Security and Labour with Zimbabwe (Klaaren and Rutinwa, 2004).

Within SADC a number of official documents refer to the need to better address labour migration and /or migrant workers. These include:

- i. The **SADC Treaty** signed in 1992, is the foundational document of SADC and sets forth the regional body’s objectives, amongst which are to :

- achieve complementarity between national and regional strategies and programmes; and
 - to promote and maximise productive employment and utilisation of resources of the region. The Treaty also requires Member States to agree on areas of cooperation in relation to human resources development, and work toward regional development, and integration on the basis of balance, equity and mutual benefit³
- ii. Article 3(a) of the **SADC Protocol on Education and Training** states as an agreed objective of Member States “to work towards the relaxation and eventual elimination of immigration formalities in order to facilitate freer movement of students and staff within the Region for the specific purposes of study, teaching, research and any other pursuits relating to education and training.”
- iii. The **SADC Charter of Fundamental Social Rights**, signed in 2003 whose overall objective is “ to facilitate through close and active consultations amongst social partners, **a spirit conducive to harmonious labour relations** within the region,” and which sets out 7 specific objectives:
- ensure the retention of the tripartite structure of the three social partners, namely, governments, organisations of employers and organisations of workers;
 - promote the formulation and harmonisation of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes, in Member States;
 - promote labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States;
 - provide a framework for regional co-operation in the collection and dissemination of labour market information;
 - promote the establishment and harmonisation of social security schemes;
 - harmonise regulations relating to health and safety standards at work places across the Region; and
 - promote the development of institutional capacities as well as vocational and technical skills in the Region

The Charter sets the foundation for ensuring that the basic human rights of migrant workers and their rights to freedom of association, collective bargaining, access to social security and decent work are guaranteed.

iv. The SADC Protocol on Employment and Labour

Ministers and social partners agreed on a draft protocol in May 2013. The protocol provides and recognises the importance of collective bargaining; social dialogue and consultations among employers, trade unions and government; equal treatment and social protection for workers and their families; the protection of migrant workers; paternity leave in addition to maternity leave; protection of children and young

³ Chapter 7, SADC Treaty 1992 http://www.sadc.int/files/9113/5292/9434/SADC_Treaty.pdf

persons, as well as people with disabilities; education and skills development and decent work; and strengthening labour market information systems.

v. SADC Protocol on Facilitation of Movement of Persons

The Protocol on the Facilitation of Movement of Persons, drafted in 2005 currently provides a regional legal framework on migration in the SADC. Although the protocol has a legal binding mechanism, it has not yet come into force as too few Member States have ratified it to date.

2.1.3 International legal instruments:

A range of international legal instruments and guideline frame this policy. These include the AU Migration Policy Framework for Africa (SADC), and ILO conventions 97, 143, 157, 118, Recommendation 151, the ILO Multilateral Framework on Labour Migration, a non-binding guiding document on managing labour migration to effectively meet the needs and rights of constituents of the tripartite alliance (governments, employers and workers) and the ILO SADC Decent Work Programme which includes amongst its objectives:

- strengthening the capacity of Member States to collect data and report progress on employment and labour issues.
- tools that will be used by Member States to monitor, evaluate and report progress on the implementation of employment and labour policies and programmes.
- provision of social security for workers, their families and other vulnerable people;
- the elimination of child labour and human trafficking in the region;
- prevention, treatment and support for those at risk and affected by HIV and AIDS at the workplace;
- safeguarding occupational safety and health.
- promoting policies and programmes for youth employment.

2.1.4 Processes

Two particular processes have sharpened the need for the drafting of a labour migration policy in SADC. These include:

The Migration Dialogue for Southern Africa (MIDSA), which was founded in November 2000, and aims to:

- Assist SADC governments to respond to the AU Strategic Framework on Migration and AU Common Position on Migration and Development;
- Stimulate discussion and debate on the implications of ratifying the SADC Draft Protocol on the Facilitation of Movement;
- Assist governments to participate in global debates about migration and development e.g. Global Commission on International Migration, UN High Level Dialogue on International Migration and Global Forum on Migration and Development⁴

⁴ <http://www.migrationdialogue.org/midsa/>

One of the key (non-binding) recommendations adopted by the 2010 MIDSA Ministerial Conference was to “**enhance migration management** coordination, including through the establishment of migration focal points in relevant ministries; agreement on common regional standard operating practices including minimum standards for migrants access to basic social services; capacity building; ongoing exchange of experiences and best practices; harmonised border management systems; and an integrated regional information management system.”⁵

This led to the **drafting of a Regional Action Plan on Labour Migration for Southern Africa** at a MIDSA Technical Meeting held in 2012 in Mauritius and subsequently approved by the Employment and Labour Sector meeting of Ministers and Social Partners held on 17 May 2013, in Maputo, Mozambique.

Secondly, within **SADC, the Secretariat and the Member States** with support from ILO Pretoria, have collaborated earnestly to develop a guiding document to address labour migration within the Protocol on Employment and Labour. At a meeting in April 2013 in Maputo, the Labour Migration Action Plan was endorsed by the SADC Ministers and Social Partners responsible for Employment and Labour Sector. The SADC Secretariat also convened a labour migration workshop for the tripartite structure in the region from 21-23 August 2013 in Johannesburg. One of the conclusions from that workshop was the need to develop a regional policy on labour migration which this initiative directly responds to.

2.2 Reminder of key indicators & trends within SADC

2.2.1 Migration trends

Data on labour migration within SADC is scant at best, with variances from country to country. This itself is an issue that this regional policy must address through arrangements for better collection, management and sharing of data.

Although labour migration within, from and toward SADC has been a feature of the region historically, there is a lack of comprehensive data on the number and types of labour migration in the region. Crush and Williams (2010:4) cite a SAMP study of 30 000 migrants from five SADC countries in 2005 “which showed that 23% of migrants had grandparents who had gone to work in another country, and 57% had parents who had done so.” Data from the UN suggests that 72% of all African migrants in SADC are from within the region.⁶

The following section is taken from the MARS survey (N= 30 000) administered by SAMP in 2004 (Crush 2010):

- Mining remains the largest employer of labour migrants from SADC (49.5%) followed by skilled manual workers (5.6%), professionals (4.8%) and unskilled manual labourers (4.7%).
- The informalization of migrant labour is evident in that 6.4% of migrants worked in the informal sector and another 2.2% said they were self-employed business people.
- The proportion of commercial farm workers is relatively low (1.8%).

⁵ http://www.migrationdialogue.org/midsa/index.php?option=com_content&view=article&id=4&Itemid=7

⁶ <http://www.un.org/esa/population/publications/migstock/2003TrendsMigstock.pdf>

- Other sectors in which over 1% of the migrants are employed include domestic work (3.2%), the service sector (3.1%), the health sector (2.3%), teaching (1.5%) and clerical work (1.5%).
- Botswana, Lesotho Swaziland and Mozambique (at over 50%) in each case are clearly dominated by mine migration (to South Africa). In the Zimbabwean case, mining (at 3%) was relatively insignificant.
- Very few labour migrants appear to leave Botswana for work other than in mining and these numbers are declining.
- In the case of Lesotho, while 68% of migrants are miners, retrenchments have diversified the sources of employment (as well as encouraging more women to migrate). As many as 9% are domestic workers and 6% are skilled manual workers.
- Mozambican labour migrants are employed in a large array of unskilled and semi-skilled professions. After mining (at 30.5%) come unskilled manual work (9%), skilled manual work (8%) and trading and hawking (6%).
- Zimbabwean labour migrants are employed in an even greater variety of occupations. The single most significant category is informal work and self-employment (at 23.7%), followed by professionals (14.7%), health workers (10.6%), service workers (9.9%), teachers (7.0%), skilled manual workers (4.9%) and office workers (4.6%).

In terms of skilled labour, two factors are important: brain drain whether it consists of the circulation of skilled labour within SADC, or the loss of skilled workers outside the region; and the import of skilled labour into the region, mainly through bilateral agreements. “Although precise data on the extent of the skills exodus is lacking, all the countries of the region have expressed concern about the impact of an accelerating brain drain on economic growth and development and on the quality of service delivery in the public sector”⁷ (Crush undated).

For the latter most countries have identified critical skills that its economies need, and has through a series of protracted or stumbling processes attempted to fill these, mostly from beyond SADC (Bhorat et al 2002)⁸.

2.2.2 Labour market trends

Labour markets in SADC have undergone substantial change as a result of privatization; deregulation and liberalization of the economy, yet the full extent of these are not known as the region also has limited data on LMIS (Sparreboom 1999). Although there are significant variances across the region, available data suggests a low labour force participation rate particularly felt amongst younger workers and women (ILO citing WB 2010).

2.3 Institutional architecture

This LM policy is located in the Directorate: Social and Human Develop and Special Programmes under – Employment and Labour Sector (ELS) to be coordinated in

⁷ Migration Policy Series No. 35.

⁸ Bhorat, H., Meyer, J. B., & Mlatsheni, C. (2002). Skilled labour migration from developing countries: Study on South and Southern Africa. Geneva: International Migration Programme, International Labour Office.

close collaboration with the Directorate: Organ on Politics, Defence and Security Cooperation under – Public Security Sector: Immigration & refugees.

Close and efficient coordination between the two organs is needed for the successful implementation of the policy. The overall coordinating structure, work plan, key coordinating mechanism, systems of authority and delegation and principles will be guided by the principles of the SADC Treaty although exact coordination needs to be agreed upon. It is proposed that a special steering committee comprising of representatives from both Organs be set up to coordinate the adoption and implementation of the policy.

Section 3: Principle and Objectives of a SADC Labour Migration Policy

3.1 Key principle:

To align with regional and international frameworks on labour migration, harmonise respective national, and bilateral policies, and work towards an inclusive labour migration regime balancing international frameworks with the specificities of Southern African economies and labour market dynamics.

3.2 Overall Objective:

To develop a harmonised regional policy framework to regulate labour migration within SADC that benefits sending and receiving countries, protects the rights of migrant workers, contributes to equitable and just development in the region, and builds on principles of mutual respect and cooperation.

3.3 Specific objectives:

- i. To achieve legal and policy convergence in the region in the area of labour migration.
- ii. To establish, maintain, and disseminate a system of sub-regional data collection in key areas of labour migration including but not limited to migration stocks & flows; labour market data; legislations; comparative sector-based qualitative research; impact assessments.
- iii. To develop an integrated and evidence based strategy aimed at retaining existing skills within the sub-region, improving and expanding the skills pool within SADC and attracting new skills from outside the region that will contribute to the development of the region's economy.
- iv. To improve understanding of low-skilled migrant workers' mobility strategies; and to design pro-poor labour migration policies assisting and protecting this category of workers towards increased and more sustainable income-generating activities
- v. To ensure the mainstreaming of self-employed migrants in migration, labour, rural and urban development strategies.
- vi. To ensure the full integration of migrant workers into national and sub-regional workers' organisations without discrimination based on their citizenship or length of residence
- vii. To create a harmonised social protection regime across SADC for migrant workers and nationals that takes into consideration a minimum floor of social security for migrant workers

viii.To creating mechanisms for monitoring and evaluation of labour market integration

3.4 Outcomes of the policy

A harmonised policy in the region which benefits sending and receiving countries and migrant workers. Specific outcomes are addressed in Section 4 below.

SECTION 4: POLICY AREAS

This section defines **eleven policy areas** where Member States agree to adopt common measures, develop them into work plans, and monitor and evaluate progress in terms of their implementation. These eleven policy areas draw on regional, SADC, and international policy frameworks (Section 2a) as well as resolutions adopted in ELS meetings (Section 2b) leading to the adoption of this policy. Policy areas therefore reflect SADC Member States' effort to align with regional and international frameworks on labour migration, harmonise their respective policies, and work towards an inclusive labour migration regime balancing international frameworks with the specificities of Southern African economies and labour market dynamics.

The eleven policy areas are organised into **3 clusters**:

- **Law, Policy Harmonisation & Data** (Policy harmonisation, National sovereignty, Protection of Migrant Workers' Rights, Data);
- **Workers & Sectors** (Semi- and Highly-skilled; Low-skilled; Self-employed; Sector-specific policies);
- **Protection & Regulation** (Organisation, representation & mobilization of migrant workers; Social Protection & Remittances; Regulation of intermediaries).

Each policy area entails: a desired outcome; a problem statement addressing a specific policy issue; an intervention strategy; and finally initial priority areas to guide the drafting of work plans. The latter will be revised from time to time to adapt to changing socio-economic and political realities.

LAW, POLICY HARMONISATION & DATA CLUSTER

Policy Area 1: Policy harmonisation

With eleven Member States with contrasted histories of labour migration within and outside the region, SADC is characterised by multiple bilateral and multilateral frameworks. A prerequisite to the emergence of a common SADC labour migration regime is the harmonisation of existing policies and legislations regulating mobility and access to labour markets for SADC and third country nationals.

- i) Outcome
 - Harmonised laws and policies on documentation and permitting for the entry and stay of SADC migrant workers or work seekers and third country nationals;

- Harmonisation of legislations & policies on recruitment & conditions of employment of SADC migrant workers & third country nationals towards a minimum floor of rights;
- Mainstreaming of SADC labour migration strategy into national development strategies and poverty reduction strategies.

ii) Issue : problem statement

While current heterogeneous legislations and policies are the result of Southern Africa's complex history of labour migration, they inadequately address the desired integration of labour markets and often constitute a hindrance to workers' mobility, bilateral government cooperation, and SADC governance of labour migration.

iii) Intervention: Strategy

Legislative and policy harmonisation should be pursued as a cross-cutting institutional strategy aimed to facilitate the achievement of a range of other regional policy objectives. Harmonisation is understood here as all decisions and activities that will consist in identifying common directions and aligning laws, policy frameworks, and all other implementation mechanisms to those common directions. Concretely, activities in this policy area will consist in assessing the scope for legislative convergence and standardisation in specific sub-policy areas regulating the documentation, entry and stay of migrant workers across the Community; formulating clear policy recommendations; adopting plans of actions; monitoring their implementation; and evaluating their impact.

iv) Initial priority areas

- Harmonisation of required documentation for SADC migrant workers employed within the region and without;
- Harmonisation of visa requirements for work permits for SADC nationals and third country nationals;
- Harmonisation of work seekers' visa requirements for SADC nationals;
- Harmonisation of national labour and employment legislations on the rights of foreign workers aligning to: SADC Treaty, SADC Decent Work Programme, SADC Charter on Fundamental Social Rights, SADC Protocol on Employment and Labour, SADC Protocol on Facilitation of Movement of Persons, ILO conventions 97, 143, 157, 118, Recommendation 151 and ILO's Multilateral Framework on Labour Migration; AU Migration Policy Framework for Africa.

Policy Area 2: National sovereignty: Rights and obligations of Member States

Currently, there is no devolution of power to any SADC or other supranational organ on issues of migration within the Community. There is no question that Member States will want to retain their national sovereignty over the governance of their immigration policies, and the decision regarding who they decide to accept in and who they refuse entry to. This is not contradictory with the goal of harmonisation which this policy is based on. However, the policy is also based on the unfettered

commitment of Member States to the rights and obligations coming with harmonisation. These need to be defined collectively.

i) Outcome

A commonly agreed upon set of rights and obligations of Member States regarding the implementation of the SADC labour migration policy balancing states' attachment to sovereignty and the need to harmonise policies at the sub-regional level.

ii) Issue : Problem Statement

SADC's frameworks and institutions do not adequately define the modalities of multilateral cooperation and governance of labour migration. Specific principles and mechanisms balancing Member States' need to retain sovereignty over their immigration policies on one hand and the imperative of harmonisation of labour migration need to be designed and adopted.

iii) Intervention: Strategy

On the basis of the double imperative of national sovereignty and legal & policy harmonisation, Member States will agree to a set of cooperation principles and oversight mechanisms of the implementation of their labour migration policy.

iv) Initial priority areas

- Adoption of a common set of cooperation principles (harmonisation efforts and areas, methodology) on labour migration;
- Creation of monitoring and evaluation mechanisms within SADC ELS;
- Creation of a SADC labour litigation mechanism.

Policy Area 3: Protection of migrant workers' rights and safety

Abuses at the hands of labour brokers, smugglers, unscrupulous employers, or state agencies (Interior/Home Affairs, Police, Immigration services) have been documented extensively across the region. Exposure to unnecessary health hazards and poor safety conditions at the work place are very widespread, particularly in low skilled employment such as mining, security, and agriculture. Migrant workers' vulnerability to rights abuses and safety risks is increased by their status as foreigners, whether legal or illegal, as they are on average less organised and less informed of minimum standards, labour legislations, and recourses in case of abuses. For these reasons, they are often deliberately targeted for exploitative or extortion practices. In certain sectors, such as hospitality and domestic work, gender imbalances constitute specific vulnerabilities.

i) Outcome

A general improvement of conditions of work regarding rights and safety for migrant workers across the region as measured by indicators provided in workers' wellbeing surveys; and including an increase in condemnations of law breaking role players (employers, smugglers, labour brokers) for illegal labour practices or criminal offences against migrant workers.

ii) Issue : problem statement

SADC is currently toothless regarding abuses of migrant workers' rights and safety and can therefore not exert pressure to ensure an efficient and effective protection of migrant workers.

iii) Intervention: Strategy

The strategy adopted on rights' protection and increased safety consists in the three following dimensions: inform & educate; equip & strengthen; effectively protect & sanction. It is intended to the following actors:

- Inform potential migrants, returning / seasonal migrants of their rights and of minimum standards, of possibilities to claim those rights and report abuses;
- Educate migrant workers, labour representatives and employers regarding the implications of legal requirements;
- Equip leading ministries & state agencies with adequate knowledge and support increased intervention means;
- Strengthen labour inspectorates across SADC Member States;
- Effectively provide protection to abused migrant workers by designing and implementing emergency plans in situations of gross rights abuses and safety infringements (social assistance services; employers' emergency funds; unions' emergency funds; municipalities);
- Monitor, harmonise and ensure implementation of effective sanctions by judicial systems.

iv) Initial priority areas

Sectors where gross abuses on both rights and safety have been documented across the region could be targeted for a specific SADC multi-level campaign (information, sensitization, strengthening of monitoring agencies, supporting & monitoring sanctions, disseminating information on actions taken across the sub-region). Existing research point to: sub-contracted mining activities & informal mining; commercial agriculture & forestry; domestic work.

Policy Area 4: Data

In general, migration is an area of state intervention that lends itself well to speculations and generalisations, often based on anecdotal evidence and xenophobic representations. However, all SADC Member States are confronted with labour migration, whether as sending, receiving or transit countries. Yet, there is currently no SADC repository of data on labour migration and while there are several national and sub-regional resources, these are scattered and at times difficult to access. A prerequisite to improved labour migration is a better understanding of underlying socio-economic trends and the systematic collection of evidence.

i) Outcome

A system of sub-regional data collection in key areas of labour migration (migration stocks & flows; labour market data; legislations; comparative sector-based qualitative research; impact assessments) of high scientific standards, regularly updated, and accessible to the public and decision-makers through general communication tools (internet; public releases; etc).

ii) Issue : problem statement

Most policy decisions adopted at national, bilateral and sub-regional levels are currently informed by limited research and often inadequate data. In particular, still too few data are available in a comparative format at sub-regional level.

iii) Intervention: Strategy

The strategy here will consist in supporting the adoption of common norms and standards across Member States' statistical agencies and using existing SADC structures to ensure the setting of targets and monitoring of progress, as well as the accessibility of collected data.

iv) Initial priority areas

- Migration stocks & flows: standardisation of data collection mechanisms across Member States from census and border control data sets;
- Labour market data: standardisation of migration modules within labour market surveys; in the absence of LMS, support for insertion of migration module in first LMS.
- Creation of regular data collection mechanism and accessible platform within one existing member state statistics agency.

SKILLS & SECTORS CLUSTER

Policy Area 5: Mobility of semi- and highly skilled employees

While Southern Africa has been characterised by the immigration of semi- and skilled workers from Europe, the majority of skilled migrants are currently from within the region. Southern Africa is also confronted with high rates of emigration of skilled nationals towards OECD countries. Different attempts to quantify the phenomenon have been undertaken but not sustained by governments. The measurement of the brain drain has also rarely been envisaged regionally in terms of intraregional compensation of imbalances. At national level, even the richer Member States, Botswana, Mauritius, Namibia, and South Africa, have a limited understanding of brain drain dynamics, most of the time no policy instruments, and continue to neglect sub-regional resources. A change in approach, relying more resolutely on sub-regional resources, but also boosting Southern African competitiveness and attractiveness globally, is needed.

i) Outcome

An improved knowledge base of ongoing inward, sub-regional and outward mobilities of semi- and skilled workers serving Member States' economic needs and the adoption of an integrated strategy aimed at retaining existing skills within the sub-region, growing the skills pool and attracting new skills from outside.

ii) Issue

SADC Member States currently have inadequate policies at national and sub-regional level to boost the growth of a regional skills pool based on facilitated circulation within the region and increased attractiveness.

iii) Intervention: Strategy

A resolute change in approach is needed. It should consist in: a/ Capitalising on existing skills within the sub-region and region; b/ Retaining and growing those by creating incentives for semi- and skilled workers to remain in Southern Africa; and c/ Increasing the attractiveness of SADC labour markets to attract new, needed skills from outside.

iv) Initial priority areas

- Establishing the state of available skills regionally in critical sectors and an inventory of barriers to their circulation;
- Establishing the scope for standardisation of skills recognition across SADC (e.g.: South African SAQA agency) with the aim to fast track mutual recognition and standardise training prior to qualification;
- Exploring the scope for SADC multilateral agreements, including on the basis of bilateral agreements as a starting point, to encourage circular migration of skilled personnel (e.g. twinning of medical schools and health care facilities).

Policy Area 6: Mobility of low-skilled employees

The political economy of Southern Africa has historically been characterised by the mobility of hundreds of thousands of low-skilled workers employed as miners and agricultural labourers in the different settlers' economies under colonial rule. While large mining conglomerates and commercial farming companies in South Africa, and to a lesser extent the two Rhodesias and Botswana, needed ever increasing numbers of workers, forced labour, in Mozambique or Angola for instance, on plantations, and later under socialist regimes regulated strictly the mobilities of the low-skilled. With globalisation and the demise of colonial rulers, their mobilities have diversified towards less regulated forms of employment as casual / seasonal labourers across a broader range of industrial sectors. The coexistence of the contract labour migration and unregulated economic migration poses a range of challenges to states. Often at the lower end of protection from exploitation and abuses, low-skilled migrant workers are the vast majority of migrants in this region. However, migration does not seem to have become the development instrument some were calling for. It remains a survival strategy to diversify and maximise resources among increasingly impoverished households.

i) Outcome

A diversified understanding of low-skilled migrant workers' strategies in opting for mobility serving the design of pro-poor labour migration policies assisting and protecting this category of workers towards increased and more sustainable income-generating activities.

ii) Issue

While Southern African economies haven historically relied on low-skilled migrant workers, current structural transformation in the region's economies have triggered

profound changes in forms of mobilities. However, these remain poorly understood and their development potential continues to be limited to survival strategies.

iii) Intervention: Strategy

SADC's strategy should be guided by: a/ The need to better understand the current distribution of low-skilled migrant workers across countries and industrial sectors in the region; b/The need to harmonise immigration & labour legislations for the low-skilled in terms of entry, recruitment processes, and conditions of employment; c/ The need to educate workers, governments, and employers' organisations to low-skilled migrant workers' rights.

iv) Initial priority areas

- Mapping of regional migration corridors of low-skilled workers
- Mapping of industrial sectors reliant on migrant workers and understanding of nature of reliance
- Mapping of socio-economic actors involved in the organisation of low-skilled labour migration (labour brokers, recruitment agencies, ethnic networks and associations)
- Technical training and assistance to migration & labour ministries, unions, employers' organisations on migrant workers' rights, drawing on international, regional and SADC frameworks

Policy Area 7: Mobility of the self-employed

Deregulation, liberalisation, the feminisation of labour, and ailing economies in the region have also had consequences on the type of employment sought by the poorest. For many, trade, and cross-border trade in particular, has become the lowest entry point into labour markets due to limited costs and the maximisation of border differentials as a resource. However, these activities are poorly recognised by governments. As they largely take place in the informal sector, they are subject to specific targeting by criminals and unscrupulous police staff. In urban areas, the central importance of these trade activities are generally not taken into consideration in regeneration strategies and brutal plans to 'clean' city centres often jeopardise entire trade migration networks and all the households that rely on them.

i) Outcome

Mainstreaming of self-employed migrants in migration, labour, rural and urban development strategies.

ii) Issue

While ever increasing numbers of regional migrants are self-employed, a historical bias continues to inform migration, labour, and rural & urban development policies against their condition creating unnecessary challenges to their mobilities.

iii) Intervention: Strategy

Recognising the historical shift in labour migration across the region, SADC resolves to support an approach consisting in mainstreaming the situation of self-employed migrants across its Member States' migration, labour, and rural & urban development policies.

iv) Initial priority areas

- Mapping of main cross-border trade corridors & other forms of self-employed activities adopted by migrant workers;
- Mainstreaming and harmonisation of status and rights of self-employed migrants across member-states' migration, labour, and rural & urban development policies
- Support to bilateral agreements on identified corridors
- Support to self-employed migrant workers' organisations

Policy area 8: Addressing specific labour market needs including sector-specific interventions

While historically mining and agriculture have secured privileged access to migrant labour, and science & technology specific sectors have also imported skills more easily, labour migration currently affects a range of emerging sectors, e.g. hospitality, services, security, engineering, etc... This is largely taking place outside of any regulatory framework, therefore allowing gross abuses, exploitative practices and the perpetuation of huge inequalities across the region. As a regional organisation, SADC can make decisive inputs to the regulation of transnational labour supplies to specific industrial sectors.

i) Outcome

A consistent regulatory framework across industrial sectors within the sub-region informed by historical and on-going dynamics offering consistent protection to migrant and national workers, and consistent access to labour supplies to employers.

ii) Issue

Access to migrant labour supplies and regulatory frameworks across industrial sectors have been historically biased in favour of mining and commercial agriculture. More consistent access to and protection of workers is needed across sectors.

iii) Intervention: Strategy

Targeting emerging industrial sectors increasingly reliant on migrant labour, SADC's intervention can be critical in terms of: a/ Sector identification; b/ Harmonisation of labour supply conditions and workers' protection.

iv) Initial priority areas

- Mapping of emerging industrial sectors reliant on migrant labour;
- Documenting on-going dynamics in historical sectors;
- Developing sector-specific strategies from labour source to workplace across the region

PROTECTION & REGULATION CLUSTER

Policy Area 9: Organisation, representation and mobilisation of migrant workers

Either as a result of their subaltern positions in production processes, limited efforts by unions and deliberate avoidance strategies, migrant workers are generally less organised than nationals. While they may have been in some instances active in the emergence of black unions, as in South Africa in the 1980s, restructuring in mining has shattered those efforts and the general casualization of labour has particularly hit migrant workers' ability to organise effectively. This trend is a dangerous one as it perpetuates fragmentation and division of the labour force, stigmatising migrant workers as having a downward effect on employment and wages in a region hardly hit by high unemployment rates, particularly among the youth. Migrant organisations, where they exist, have mostly rallied behind human rights and migration issues. Better organisation and mobilisation of migrant workers should not be seen as a source of social unrest but on the contrary as a means to better coordinate efforts to harmonise wage levels and conditions of work across the region.

i) Outcome

The full integration of migrant workers into national and sub-regional workers' organisations without discrimination based on their citizenship or length of residence and taking into consideration the specificity of their situations.

ii) Issue

Migrant workers' levels of mobilisation into national and regional workers' organisations are very low, particularly in emerging industrial sectors, increasingly reliant on this labour force. This perpetuates a fragmented and divided labour force and represents a risk in terms of further segmentation.

iii) Intervention: Strategy

Through its ELS Directorate, SADC is mandated to hold forums of discussion fostering a more comprehensive and migrant-sensitive approach among its constituents.

iv) Initial priority areas

- Mapping of migrant workers' organisations and of migrant workers' representation among SADC workers' organisations
- Support to mainstreaming of mobility and migrant workers' specific rights, drawing on international, regional and SADC frameworks, into national legislations on collective bargaining, representation, etc.

Policy Area 10: Social Rights Portability & Remittances

While Southern Africa continues to rely on a historical migrant labour system, this has had limited consequences on the region's ability to develop efficient transnational social protection systems. Biased in favour of governments under colonial bilateral agreements, the migrant labour systems have done little to alleviate migrant workers' levels of vulnerability. In emerging sectors, deregulation and casualisation have had the effect of leaving the issue of social protection entirely out, exonerating employers from any contributions. As a result, migrants have largely developed their own informal social protection systems, through self-help, regional associations & networks and remittances. Social protection and the portability of

rights is a fundamental dimension of improved labour migration and should be prioritised by SADC. Its potential to reduce inequalities between countries is also critical to further integration.

i) Outcome

A harmonised social protection regime across SADC countries for migrant workers and nationals informed by existing institutional good practices and supporting grass-root mechanisms.

ii) Issue

Inclusion or exclusion of migrant workers from national social protection systems and private sector social rights is inconsistent across Member States and industrial sectors thus aggravating discrepancies between migrant and domestic workers. Transfer costs for remittances remain extremely high and constitute a challenge to their transformation into capital investment in source countries.

iii) Intervention: Strategy

As a regulatory and monitoring regional body, SADC's intervention should be guided by: a/ The need to harmonise legislations towards a better inclusion of migrant workers into state provided social services; b/ The need to harmonise and monitor the delivery of migrant workers' social rights in the private sector in the framework of a decent work agenda across the region; c/ The need to support regulation intended to lower transaction costs and secure transfers of migrant workers' remittances.

iv) Initial priority areas

- Mapping of Member States' legislations on access to state-provided services and recommendations for harmonisation & implementation;
- Mapping of Member States' legislations on private sector social rights to migrant workers and recommendations for harmonisation and implementation;
- Mapping of legislations on transaction costs and practical challenges and recommendations for improvements.

Policy Area 11: Regulation of informal and illegal work and of intermediaries

While the share of informal work, defined as form of economic activities left unregulated by state authorities, varies across SADC Member States, migrant workers are overrepresented in this category. There are also suspicions of an overrepresentation of migrant workers in illegal work, to be distinguished from informal work as forms of employment corresponding to explicit infringements on labour or migration legislations. The regulation of intermediaries, labour brokers, recruitment agencies, since they operate transnationally and given their growth in a context of sub-contracting, would benefit from sub-regional regulatory frameworks.

i) Outcome

Harmonised legislations on the regulation of informal and illegal work across SADC Member States; harmonised regulatory frameworks for the activities of intermediaries (labour brokers, recruitment agencies).

ii) Issue

Legislations regulating informal work and regulating and sanctioning illegal employment; as well as legislations and policies regulating the activities of intermediaries are inconsistent, at times, inexistent, and sometimes contradictory between SADC Member States.

iii) Intervention: Strategy

Mapping and harmonisation of legislations leading to the adoption of consistent policy frameworks at the sub-regional level.

iv) Initial priority areas

- Mapping of informal work regulatory frameworks across SADC Member States with a specific emphasis on the inclusion of migrant workers;
- Mapping of regulatory frameworks and sanctions to illegal employment with a specific emphasis on the protection of migrant workers' rights SADC Member States;
- Mapping of state and private sector regulatory frameworks governing the activities of intermediaries across SADC Member States.

Section 5: Monitoring & Evaluation of Policy Outcomes

5.1 Monitoring mechanisms

Each policy area is organised in a committee with Member States and constituents tasked with coordination, monitoring and reporting responsibilities on a voluntary basis. Given the cross-cutting nature of issues, policy areas gather in cluster with tasks possibly shared across several policy areas within the same cluster. Work plans and meeting schedules are determined at the cluster level.

5.2 Reporting structures

Clusters report to the SADC ELS Labour migration committee (see Section 6a).

5.3 Evaluation indicators

Each policy area determines evaluation indicators within its annual work plans against which its own actions and those of Member States can be assessed to determine progress.

Section 6: Implementation and operationalization

6.1 Coordination of implementation & reporting

i. Overall coordination structure

The overall coordination structure is dedicated to the development, promotion and implementation of the SADC Labour Migration strategy. It is mandated to propose measures to be adopted by the SADC ELS and Secretariat. It is tasked with the financial oversight of the budget allocated to the SADC Labour Migration strategy. It is accountable to SADC ELS.

a. Roles of Member States and constituents

Member States and constituents are expected to allocate expertise from the relevant government ministries and agencies to the different policy clusters.

b. SADC Secretariat

The SADC Secretariat facilitates the coordination between the Labour Migration coordination structure and other organs of SADC, SADC Member States, and constituents in the ELS.

c. Development partners

International organisations, such as the ILO or the IOM, are expected to provide technical assistance and financial support to the SADC Labour Migration organisation structure as well as support its fund-raising strategy.

- ii. Capacity building needs
- iii. Proposed creation of specific coordination structure: Labour Migration Service under ELS but incorporating representatives of Organ on PDS

6.2 Operational plan

Timeframe, resources and costing

POINTS FOR DISCUSSION WITH WORKING GROUP

- Monitoring and evaluation: please provide additional information on existing structure and capacity to determine who will be responsible for this
- Please comment on the feasibility and room within SADC structures for the proposed creation of a coordinating mechanism on Labour Migration between the ELS structure and the Organ on PDS
- Please comment on available resources, capacity, and challenges to cost and implement policy