



WHAT YOU NEED TO KNOW ABOUT THE



NATIONAL LABOUR MIGRATION POLICY



EMPLOYMENT SERVICES AMENDMENT BILL

WHY WERE THE NLMP AND ESAB CREATED?

The draft National Labour Migration Policy (NLMP) was introduced to facilitate and regulate the flow of labour to and from South Africa. It's aimed at addressing the country's "brain drain" by keeping skilled workers in the country.

Similarly, the Employment Services Amendment Bill (ESAB) was created to amend the Employment Services Act (2014) to regulate the employment of non-South African nationals.

The South African government states that, overall, the draft policy and Bill are aimed at retaining skilled labour, growing the economy, creating opportunities for South Africans and combatting unemployment.

While we welcome the introduction of laws to protect workers' rights, the NLMP and ESAB fall short in this regard.

WHY DO THE DRAFT POLICY AND BILL FALL SHORT ?



- The provisions of the draft policy and Bill **place restrictions on the right to work** which are inconsistent with South Africa's constitutional and international human rights law obligations.
- The NLMP and ESAB seem to **disregard the valuable contributions that migrant workers make** to the economy and seem to be based on the (debunked) myth that restricting non-nationals' access to the labour market will solve unemployment.
- The Bill **gives labour inspectors excessive power** to enforce immigration rules. This goes against the purpose of their role which is to protect workers' rights and contradicts the ILO Labour Inspection Convention (1947) which South Africa has ratified.
- The **quota system** the policy and Bill introduce **will not remedy most (or any) of the challenges** it is aimed at addressing, like the high unemployment rate. SERI's consultations with their clients showed that leaders of unions for domestic workers and farm workers did not support restricting employment opportunities for non-nationals through quotas or by any other means.
- Many of the provisions are **problematic for refugees and asylum seekers**, disregarding their right to work, as well as failing to consider the often lengthy or cumbersome asylum-seeking and refugee status determination processes.

HOW CAN THE DRAFT POLICY AND BILL BE IMPROVED?

We recommend a **complete overhaul of the NLMP and ESAB** to ensure that their provisions don't restrict the right to work and don't go against South Africa's obligations in terms of the Constitution and commitments under international human rights law.

The draft policy and Bill cannot adequately tackle sector-specific challenges and/or consider the circumstances of refugees, asylum seekers and other migrant workers because their **scope is too wide**. Rather than creating opportunities for locals in an exclusionary way, we recommend that the authorities **enforce existing labour laws** to protect workers' rights irrespective of their nationality.

In response to the South African Department of Labour's call for public comment on the NLMP and ESAB, the Socio-Economic Rights Institute of South Africa, Lawyers for Human Rights and the Scalabrini Centre of Cape Town, with research and advocacy support from the International Commission of Jurists, have made detailed submissions with specific recommendations to improve the policy and Bill.

Follow @SERI_RightsSA, @ScalabriniCT, @LHR_SA and @ICJ_Africa on Twitter for regular updates on this campaign.

