



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

REPORT ON THE JOINT DIALOGUE SESSION ON THE NATIONAL LABOUR MIGRATION POLICY (NLMP), AND EMPLOYMENT SERVICES AMENDMENT BILL (ESAB), HELD 30 NOVEMBER 2021 FROM 14H00 – 16H00

1. WELCOME AND APOLOGIES

- 1.1. The Chairperson, Ms Nobuntu Sibisi the Executive Manager at Nedlac opened the meeting and welcomed all present.
- 1.2. Apologies were recorded as follows:

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| Business | Johnny Goldberg |
| Community | Lawrence Bale, Thembinkosi Josopu, Donovan Williams and Laura Kganyago |
| Labour: | Gizelle Conradie, Martle Keyter and Louise Nett |
| Government | Thembinkosi Mkalipi, Stephen Rathai, Unathi Ramabulana and Masilo Lefika |

- 1.3. Attendance register for the dialogue session is attached as **Annexure 1** of the report.

2. BACKGROUND

- 2.1. The Nedlac social partners engaged on an informal briefing session led by the Department of Employment and Labour with the view to obtain initial input from the social partners on the proposed National Labour Migration Policy (NLMP) which was a sub-theme of the National Employment Policy (NEP), and the proposed Employment Services Amendment Bill (ESAB).
- 2.2. The purpose of the dialogue was to provide an opportunity for Government to brief the Nedlac social partners on the NLMP and the proposed ESAB, to also take Nedlac social partners into confidence on its proposed approach.
- 2.3. Furthermore, provide the social partners with insight on the Government thinking on the policy and the Bill before being tabled to Cabinet to seek approval to publish for public comment.

- 2.4. In line with the Nedlac protocol of tabling issues for consideration, the Department of Employment and Labour would still formally table the National Labour Migration Policy and the Employment Services Amendment Bill, incorporating public comments for a detailed engagement at Nedlac, once all the Government processes have been completed.

3. DIALOGUE DISCUSSIONS

- 3.1. Ms Boitumelo Moloi, the Deputy Minister of the Department of Employment and Labour (DEL) led the Government delegation and was accompanied by a number of specialists on the area, senior delegation from key Government departments responsible for both legislations being proposed i.e. the Department of Higher Education and Training (DHET), Department of Home Affairs (DHA) including the Department of Small Business Development (DSBD).

- 3.2. Presentation highlighted the following key issues:

- 3.2.1. The National Employment Policy (NEP) is an overarching coordinated policy that serves as the umbrella that aims to respond and influence employment in the context of unprecedented technological, structural and social policy change. NEP was being developed in line with the employment convention, as part of the Government's medium-term strategic framework 2019 – 2024. DEL has already appointed Xeshibe Holdings and ILO experts to assist in the development of the draft policy. Government committed to formally table the NEP to Nedlac for engagement once finalized.

- 3.2.2. The NEP as an overarching policy provides for the harmonious and coordinated implementation policy, promotes and encourage gender equality, defeat of discrimination in the workplace, strengthens social dialogue in the work place including the projections for achieving the 22.2. million jobs in the country etc. NEP contains a number of sub-themes and some fall within the mandate of the DEL and others fall outside the mandate of the department.

- 3.2.3. The focus for the joint dialogue session was on the sub-theme on National Labour Migration Policy (NLMP) and the Employment Service Amendment Bill. Key issues outlined in the NLMP:

- 3.2.3.1. Purpose of the NLMP is to:

- 3.2.3.1.1. give rise to efficient, effective Government leadership and intervention, supported by social partners and all major stakeholders, allowing for safe, orderly and regular migration for employment of highly, semi- and low-skilled workers to and from South Africa, in pursuit of the country's national priorities. This process was initiated during 2017, it has gone through a number of drafting stages and incorporates the latest international treaties on Migration.

- 3.2.3.1.2. environment of precarity, vulnerability with poor decent work faced by migrant workers. Undocumented migrant workers found in the informal economy. Ensure the involvement of the Department of Small Business Development and for the department to consider

developing relevant policy to address trading business in the informal economy.

3.2.3.1.3. proposes interventions and benefits associated with each intervention i.e. labour migration governance and management, labour migration data, labour migration to and from South Africa.

3.2.4. The objects of the Employment Service Amendment Bill, outlined as follows:

3.2.4.1. It provides a policy framework and the legal basis to regulate the extent to which employers can employ foreign nationals in their establishments where needed while protecting the rights of migrants. It also considers the Constitutional rights, fair labour practices, impact on labour standards and the rights of SA workers including the availability of critical skills.

3.2.4.2. Key features of the Bill were on proposals around permit development and publication of quotas and determination of applicable sectors, clarification of definitions of foreign nationals, enhanced regulatory functions for DEL in respect of the employment of foreign nationals.

3.3. Input by Constituencies:

3.3.1. Input by Business Constituency:

3.3.2. Business welcomed the presentation and expressed appreciation to Government for sharing the information with the social partners. It noted that the roadmap provided an opportunity for the social partners to interact with Government on the proposed policy and the Bill. It will ensure to provide its inputs when both legislations have been formally tabled for engagement.

3.3.3. It understood and related to the Government version. It supported the proposal for social protection including migrant workers. It further extended appreciation on the streamlining and policy coherence process that was underway in Government.

3.3.4. It also welcomed the consultation process that will be put in place to deal with setting and exceptions of quotas and it hopes to engage constructively in this regard.

3.3.5. Input by Community Constituency:

3.3.5.1. It welcomed the Government thinking on the proposed provisions the policy and the Bill and noted that Government was still in the process of developing the actual policy and the Bill.

3.3.5.2. The issue of Border Management Agency Bill was engaged and finalized at Nedlac, it hoped that through the legislation, issues of the porous borders will be adequately addressed.

3.3.5.3. It proposed that Government should consider including worker cooperatives theme in the NLMP. This will assist to build local wealth, inequality in the work place, and creation of quality jobs.

3.3.6. Input by Labour:

- 3.3.6.1. It welcomed the objectives of the proposed policy and the Bill and stated that in order to align with the Nedlac protocol of tabling issues, Government should consider commencing with the Nedlac consultation process earlier as this will allow Government to realize its three months target as outlined its road map.
- 3.3.6.2. Government must ensure to conclude all the necessary consultation process including the public hearings etc. As Parliament will not accept any new Bill after May 2023, as it will be concluding all its functions ahead of the new national election and the new administration. Bills tabled after that time will be processed by the new administration.
- 3.3.6.3. The consultation process will also enable the social partners to have a detailed engagement on the scientific approach on critical skills needed for the country. An engagement has just been concluded on the critical skills list and Labour's view was that Government had insufficient data and no scientific basis for identifying a critical skill for the country. There must be a tighter requirement in the labour market on critical skills as this eradicate the migrants works entering the country at a low skill and low NQF level.
- 3.3.6.4. It sought clarity on what control measures have been put in place by Government to address the issue of undocumented migrates in the country. It anticipates that the process will address the influx of migrants clogging the system including the corporate sector as there were a number of undocumented Europeans, Malaysians etc. in the sector.
- 3.3.6.5. It was important to find a right balance to address the high rate of unemployment in the country at the same time continue to honour the historical obligation entered with the Southern African Development Community (SADC) countries Lesotho, Swaziland, Botswana and Mozambique etc.
- 3.3.6.6. It has been evident that some sectors have been taken over by the migrant workers which could have absorbed South African citizens youth e.g. petrol attendant, waitresses etc. This cause social conflict and must be addressed.
- 3.3.6.7. There were existing policies put in place by Government however, there was lack of enforcement by Government, and lack of eagerness to conduct necessary inspections to companies by the relevant inspectors.
- 3.3.6.8. Employers that circumvent the labour laws, choose to be non-compliant with the law and continue to pay below the minimum wage. There was a need for the private sector to adequality assist in this regard.

3.3.6.9. It was concerned that Government continued to work in silos and this was clearly noticed in the critical skills list engagement. Its view was that the DEL had not participated in the Government internal discussion in the development of the critical skills list that was tabled at Nedlac for engagement.

3.3.6.10. It was important for Government to provide an outline how the issue of quotas would be determined at the high level.

3.3.7. Government comments and responses:

3.3.7.1. **Timeframes** – it was important to strike a balance on the consultation process that will provide adequate input and outcomes. The dedicated consultation process at Nedlac would assist Government to move faster on the process.

3.3.7.2. **Quotas** – some countries were bold to provide a percentage that will be suitable to their needs whereas other countries were not as bold as others. The policy and the Bill empower the Minister of DEL to set national or regional quotas for the employment of foreign nationals in any sector or occupational category. Government was also considering different models where a baseline has already been put where negotiation was held whether to increase or lower the provision.

3.3.7.3. **Undocumented migrants' workers** – a number of issues contributed to the influx of undocumented migrants in the labour market without putting in place any reciprocal means to South African nationals. Issues such as the socio-economic challenges in the neighbouring countries, including the bilateral agreements held between South Africa and countries such as Chinese, Pakistan and Russians could have also contributed.

3.3.7.4. **Government working in silos-** in terms of Critical Skills List. Government was engaging with the colleagues from the Department of Higher Education and Training (DHET) on occupations contained in the list as some of the officials from DHET were new to the process. It noted that the list needed to be enriched with the history possessed by the DEL and that it could be improved.

3.3.7.5. **Cooperatives theme in the policy** – this also includes the general small business sector. The court judgment indicated that if Government was allocating refugee status to migrants, it must provide shelter and food parcels. In an event Government was not able to meet the obligation of providing shelter and food parcels, it must allow the refugees to work, hence a high percentage of migrant's workers in the small business sector. Confirmed that small business/ cooperative service was already a sub-theme in the policy.

3.3.7.6. **Enforcement** – Government acknowledged that there were great policies put in place but there were issues with capacity and numbers to ensure enforcement of the policies. Some proposals have been put in place on how to address the issue.

3.4. **Way Forward and Process Matters**

- 3.4.1. It was agreed that a six-a-side joint task team consisting of members from both Labour Market and Development Chamber will be established. In expediting the process, the Secretariat will develop the draft terms of reference (ToR) for this joint task team.
- 3.4.2. It was agreed that social partners will submit the written submission directly to Government on 10 December 2021.
- 3.4.3. It was agreed that Government will submit the revised NLMP and the ESAB once approved by Cabinet and once have incorporated the public comments, for engagement at Nedlac.
- 3.4.4. It was agreed that the Nedlac report emanating from this session will be circulated to participants within fourteen (14) working days. Given that the documents have not been widely distributed to the public, the Nedlac Report for this session will not be uploaded on the Nedlac website.

Attendance Register for the Joint Dialogue Session on the National Labour Migration Policy (NLMP), and Employment Services Amendment Bill (ESAB), held 30 November 2021 from 14h00 – 16h00

| Business | Community | Labour | Government | Secretariat |
|--|--|--|--|---|
| Jahni de Villiers Kgaugelo Qwabe Marius Olivier Motsamai Motlhamme Aruna Ranchod Marius Olivier | Lucas Qakaza Matthew Mponzo Puleng Tsebe | Bhabhali Ka Maphikela Nhlapho Lebogang Mulaisi Matthew Parks Sipho Ndhlovu Boitumelo Molete Mduduzi Mbongwe Zanoxolo Mpendu | Mantombi Bobani Ntsoaki Mamashela Paul Benjamin Phindiwe Boqo Sam Morotoba Sihle Mthiyane Mantombi Bobani Ntsoaki Mamashela Paul Benjamin Esther Tloane Tendani Rmulongo | Nobuntu Sibisi Priscilla Mashabane Tsholo Lelaka Prudence Zwane Ruth Mofokeng |