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# LEGISLATION, POLICY & FRAMEWORKS RELATING TO MIGRATION & HEALTH IN SOUTH AFRICA

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# 1. IMMIGRATION

## 1.1. National legislation

### 1.1.1. *The Immigration Act No. 13 of 2002 and Immigration Regulations (No. R. 1480), 2002*

The South African Immigration Act 2002 applies a rights-based approach including commitments to combat xenophobia and recognises the positive aspects of migration <sup>1</sup>. Emphasis is placed on border control with opportunities for legal labour migration and restrictions on entry and the granting of temporary and permanent residence permits to prohibited persons.

*Sec 29(1a) of the Act states that those infected with infectious diseases "as prescribed from time to time" do not qualify for a temporary or a permanent residency permit.*

Unlike the Constitution and National Health Act, access to healthcare for non-nationals is determined by legal status. *The Act states that hospitals and clinics (along with other state institutions) "shall report to the Director-General any illegal foreigner" or anyone whose status is not clear. However, this can only be enacted if this does not affect the patients' rights that are set out in the laws such as the Constitution, National Health Act and Refugees Act.*

### 1.1.2. *Immigration Amendment Act No.19 of 2004<sup>2</sup>*

Sections 42 and 44 of Act 19 of 2004 state that

*When possible, any organ of state shall endeavour to ascertain the status or citizenship of the persons receiving its services and shall report to the Director-General any illegal foreigner, or any person whose status or citizenship could not be ascertained, provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the Constitution or any law.*

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<sup>1</sup> The Republic of South Africa, "Immigration Act No. 13 of 2002," 2002, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a13-020.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf); The Republic of South Africa, "Immigration Regulations (No. R. 1480)," 2002.

<sup>2</sup> The Republic of South Africa, "Immigration Amendment Act No. 19 of 2004," 2004, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a19-041.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a19-041.pdf).

Amendments to the Act in 2004 addressed South Africa's need to attract scarce skills and facilitate rather than control migration; and provided asylum seekers only 14 days to access Refugee Reception Offices (RROs) before their asylum transit permit (Section 23) expired.

### *1.1.3. Immigration Amendment Act No. 3 of 2007, No. 13 of 2011, and Immigration Regulations (No. R. 413), 2014*

The Immigration Amendment Acts of 2007 and 2011 and Immigration Regulations of 2014 came into operation in May 2014 <sup>3</sup>. These introduce key changes including: a change in referring to all categories of temporary residence permits as visas; the stipulation that those wishing to change the status of their visas must do so from outside of SA; the replacement of the Exceptional Skills Work Permit with a category of critical skills work visa; requirements for proof of sufficient financial means; administrative fines; and, listing those who overstay the duration of a visa or permit as undesirables who are prevented from returning to SA for a prescribed period of time.

### *1.1.4. Immigration Regulations (No. R. 4847), 2024<sup>4</sup>*

The Regulations present updates on the conditions fo

### *1.1.5. The Immigration Amendment Bill (B8-2024)*

The 2024 Immigration Amendment Bill involves revision of provisions relating to the arrest, detention and deportation of undocumented foreign nationals and to align these with the South African Constitution <sup>5</sup>.

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<sup>3</sup> The Republic of South Africa, "Immigration Regulations (No. R. 413)," 2014; The Republic of South Africa, "Immigration Amendment Act No. 13 of 2011," 2011; The Republic of South Africa, "Immigration Amendment Act 3 of 2007," 2007, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a3-2007.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a3-2007.pdf).

<sup>4</sup> The Republic of South Africa, "Immigration Regulations (No. R. 4847)," 2024.

<sup>5</sup> The Republic of South Africa, "Immigration Amendment Bill (B8-2024)," 2024.

## 2. REFUGEE PROTECTION

### 2.1. National legislation

#### 2.1.1. *The Refugees Act 1998*

The South African Refugees Act of 1998 affords refugees the same legal entitlements (except political rights) as South African citizens <sup>6</sup>. This Act provides particular rights to legally recognised refugees and asylum seekers including the freedom to move, work and access social services such as health and education. Significantly, the Refugee Act also offers the possibility of asylum on the basis of persecution due to sexual orientation or gender identity. This supports the Constitutional Bill of Rights which outlaws discrimination based on sex, gender and sexual orientation. The Act is underpinned by two global conventions: the 1951 UN Convention Relating to the Status of Refugees and its accompanying protocol; and the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa.

Section 27 of the Act states that in terms of the Protection and general rights of refugees,

*A refugee-*  
*(g) is entitled to the same basic health services and basic primary education*  
*which the inhabitants of the Republic receive from time to time*

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#### 2.1.2. *The Refugees Amendment Act No. 33 of 2008*

The 2008 Refugee Amendment Act provided for: delegation of powers; establishment of Refugee Reception Offices (RROs); the dissolution of the Standing Committee for Refugee Affairs and the Refugee Appeal Board; establishment of the Refugee Appeals Authority; clarification and revision of procedures relating to refugee status determination; obligations and rights of asylum seekers; and, the repeal of certain obsolete provisions <sup>8</sup>.

#### 2.1.3. *The Refugees Amendment Act No. 12 of 2011*

The 2011 Amendment Act was promulgated in December 2019 <sup>9</sup>. It set out to clarify how applications for refugee status rejected as manifestly unfounded and unfounded must be

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<sup>6</sup> National Department of Home Affairs, "Act No. 11 of 2017: Refugees Amendment Act, 2017," 2017, [https://www.gov.za/sites/default/files/gcis\\_document/201712/refugeesamendmentact-11-of2017g41343gon1452.pdf](https://www.gov.za/sites/default/files/gcis_document/201712/refugeesamendmentact-11-of2017g41343gon1452.pdf).

<sup>7</sup> National Department of Home Affairs, 20.

<sup>8</sup> The Republic of South Africa, "Refugees Amendment Act No. 33 of 2008," 2008.

<sup>9</sup> The Republic of South Africa, "Refugees Amendment Act No. 12 of 2011," 2011.

dealt with; to empower the Director-General to establish the Status Determination Committee; and, to revise the provisions relating to withdrawal of refugee status.

### *2.1.1. The Refugees Amendment Act No. 10 of 2015*

The 2015 Amendment<sup>10</sup> conferred discretion upon the Refugee Appeals Authority to allow the public and the media access to its proceedings in appropriate cases.

### *2.1.2. The Refugees Amendment Act No. 11 of 2017 and Regulations, 2019*

The 2017 Refugees Amendment Act and the accompanying Regulations were promulgated in December 2019<sup>11</sup>. The Act and Regulations came into force on 1 January 2020, along with the Amendment Act of 2011 and signalled fundamental changes for asylum seekers and refugees in South Africa.

These changes involved: additional provisions relating to disqualification from refugee status; integrity measures to combat fraud and corruption among staff members at Refugee Reception Offices, the Standing Committee and the Refugee Appeals Authority; omit provisions referring to the Status Determination Committee; substitute certain provisions relating to the Refugee Appeals Authority; re-establishment of the Standing Committee for Refugee Affairs and to confer additional powers on the Standing Committee; confer additional powers on the Director-General; clarify the procedure relating to conditions attached to asylum seeker visas and abandonment of applications; revise provisions relating to the review of asylum applications; provide for the withdrawal of refugee status in respect of categories of refugees; provide for additional offences and penalties; and, provide for transitional provisions.

The 2017 amendment reduced the amount of time allowed for an asylum seeker to access a Refugee Reception Office (RRO) after their arrival in the country: from just 14 to five days. Of particular concern, and directly related to this, was the expansion of reasons to exclude asylum seekers from being eligible for refugee status; and – the most concerning of all amendments – the abandonment of asylum claims should an asylum seeker not attend an RRO in the month after the expiry of their asylum permit.

The regulations also introduced clear restrictions on political behaviour, indicating that refugees can lose their status if they interact with their home government, institutions or

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<sup>10</sup> The Republic of South Africa, "Refugees Amendment Act No. 10 of 2015," 2015.

<sup>11</sup> The Republic of South Africa, "Refugees Act No. 130 of 1998 - Refugee Regulations," 1998, [https://www.gov.za/sites/default/files/gcis\\_document/202001/42932rg11024gon1707.pdf](https://www.gov.za/sites/default/files/gcis_document/202001/42932rg11024gon1707.pdf); The Republic of South Africa, "Refugees Amendment Act No.11 of 2017," 2017, [http://www.saflii.org.za/za/legis/num\\_act/raa201711o2017g41343231.pdf](http://www.saflii.org.za/za/legis/num_act/raa201711o2017g41343231.pdf).

representatives; this is despite the Bill of Rights protecting the right to participate in political activity for “everyone”<sup>12</sup>.

*Sections (12) and (13) of the Regulations provide:*

*(12) The application for asylum of any person who has been issued with a visa contemplated in subsection (1) must be considered to be abandoned and must be endorsed to this effect by the Standing Committee on the basis of the documentation at its disposal if such asylum seeker fails to present himself or herself for renewal of the visa after a period of one month from the date of expiry of the visa, unless the asylum seeker provides, to the satisfaction of the Standing Committee, reasons that he or she was unable to present himself or herself, as required, due to hospitalisation or any other form of institutionalisation or any other compelling reason.*

*(13) An asylum seeker whose application is considered to be abandoned in accordance with subsection (12) may not re-apply for asylum and must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.*

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## 2.2. Constitutional Court Order - Scalabrini Centre of Cape Town and Another v The Minister of Home Affairs and Others: constitutional invalidity of subsections of the Refugees Act 130 of 1998

In March 2020, the Scalabrini Centre of Cape Town launched a case in the High Court of South Africa, Cape Town that challenged the ‘abandonment clauses’ included in the 2017 Refugee Amendment Act<sup>1415</sup>. The application submitted to the High Court outlined that:

### ***Abandonment of asylum claims***

*Of particular and urgent concern are the so-called ‘abandonment clauses’. We are challenging the constitutionality of Sections 22(12) and (13) of the Refugee Amendment Act and Regulation 9 of the Refugee Regulations. These sections of the Refugee Amendment Act and Regulations effectively mean that the claim of an asylum-seeker in South Africa ‘must’ be considered ‘abandoned’ if their asylum-seeking visa expires for 30 days or more.*

<sup>12</sup> Republic of South Africa, “Constitution of the Republic of South Africa [No. 108 of 1996],” 1996.

<sup>13</sup> Republic of South Africa, “Refugees Regulations NO. R. 1707,” 2019.

<sup>14</sup> Scalabrini Centre of Cape Town, “Press Release: Scalabrini’s ‘abandonment’ Court Case Challenges Constitutionality of South African Refugee Laws - Scalabrini,” October 28, 2020, <https://www.scalabrini.org.za/press-release-abandonment-court-case-challenges-refugee-laws/>.

<sup>15</sup> A letter was sent to the then Minister of Home Affairs, Dr Aaron Motsoaledi in January 2020 outlining these concerns and calling for the immediate suspension of the ‘abandonment clauses’ Scalabrini Centre of Cape Town, “Letter to Dr Aaron Motsoaledi Minister of the Department of Home Affairs Relating to ‘abandonment Clauses’ in the Refugee Amendment Act (2017),” 2020, [https://scalabrini.org.za/wp-content/uploads/2020/01/Scalabrini\\_centre\\_Cape\\_town\\_Letter\\_Minister\\_Home\\_Affairs\\_Abandonment\\_Asylum\\_Claims.pdf?fbclid=IwAR0WbMx3K-qtEp4O8GnOUy9AdcT6UVXKJ1zJrYOrdG\\_Wz9r4CuWlq46kLV0..](https://scalabrini.org.za/wp-content/uploads/2020/01/Scalabrini_centre_Cape_town_Letter_Minister_Home_Affairs_Abandonment_Asylum_Claims.pdf?fbclid=IwAR0WbMx3K-qtEp4O8GnOUy9AdcT6UVXKJ1zJrYOrdG_Wz9r4CuWlq46kLV0..)

*If there are no 'compelling reasons' around why an asylum seeker holds and expired permit, these persons would be treated as 'illegal foreigners' and risk facing arrest and deportation. The Refugee Amendment Act also prevents that person from re-applying for asylum in South Africa – which seems to run against international refugee law.*

***Provisions run counter to South African constitution and international law***

*The 'abandonment' provisions of the Refugee Amendment Act run counter to the fundamental legal and constitutional basis of refugee law, namely the right of non-refoulement. This is a fundamental of international and national refugee law that prevent states from forcibly returning a person to a country or place where they would face reasonable risk of harm or death.*

*The provisions allow for a person with a valid asylum claim to be returned to their country of origin to face persecution merely because they have failed to meet a procedural requirement.*

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In February 2023, the Western Cape High Court declared that:

*(c) Regulation 9 and Form 3 of the Refugee Regulations, published in GNR 1707 Government Gazette 42932, on 27 December 2019 ("the Regulations") are declared to be:*

*(i) Inconsistent with the Constitution and invalid; and*

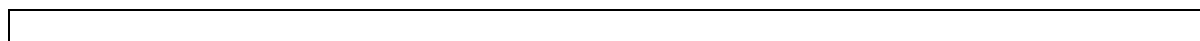
*(ii) Reviewed and set aside as unlawful and invalid.*

*(d) The declaration of invalidity is referred to the Constitutional Court for confirmation in terms of section 172 (2) (a) of the Constitution.*

*(e) Respondents are ordered to pay the applicants' costs, such costs to include the costs of two counsel, the one paying, the other to be absolved*

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Subsequently, in February 2023, Scalabrini submitted an application to the Constitutional Court to confirm this order (see Box 1).



<sup>16</sup> Scalabrini Centre of Cape Town, "Press Release."

<sup>17</sup> Scalabrini Centre of Cape Town v Minister of Home Affairs [2023] ZAWCHC 28, No. Case No: ZAWCHC 28 (High Court of South Africa, Western Cape Division, Cape Town February 13, 2023).

### Box 1: Scalabrini Centre of Cape Town and Another v The Minister of Home Affairs and Others<sup>18</sup>

*This is an application in terms of section 167(5)<sup>19</sup> read with section 172(2)(a) of the Constitution<sup>20</sup>, to confirm an order of constitutional invalidity made by the Western Cape Division of the High Court, Cape Town (High Court)<sup>21</sup>. In terms of that order, the High Court declared subsections 22(12) and 22(13) (impugned subsections) of the Refugees Act<sup>22</sup> (Refugees Act), which came into force on 1 January 2020, inconsistent with the Constitution and invalid. In sum, these provisions state that asylum seekers who fail to personally renew their asylum seeker visas issued under section 22 of the Refugees Act within one month of their visa's date of expiry<sup>23</sup>, must be regarded as having "abandoned" their applications for asylum. They may not re-apply for asylum and must be dealt with as illegal foreigners in terms of section 32 of the Immigration Act<sup>24</sup> (Immigration Act)<sup>25</sup>.*

On 12 December 2024, the Constitutional Court ordered that:

- (1) The declaration of constitutional invalidity of subsections 22(12) and 22(13) of the Refugees Act 130 of 1998 (Refugees Act) in paragraph (a) of the High Court's order, is confirmed.*
- (2) The declaration of invalidity is retrospective to 1 January 2020, the date on which subsections 22(12) and 22(13) of the Refugees Act came into operation.*

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<sup>18</sup> source: Applicants Written Submissions: Scalabrini Centre of Cape Town v Minister of Home Affairs, No. CCT Case No: 51/23; WCHC Case No: 5441/20 (The Constitutional Court of South Africa 2023); Scalabrini Centre of Cape Town and Another v The Minister of Home Affairs and Others [2023] ZACC 45, No. Case CCT 51/23 (Constitutional Court of South Africa December 12, 2023).

<sup>19</sup> Section 167(5) of the Constitution provides: "The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force."

<sup>20</sup> In terms of section 172(2)(a), "an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court."

<sup>21</sup> Scalabrini Centre of Cape Town v Minister of Home Affairs [2023] ZAWCHC 28.

<sup>22</sup> Refugees Act The Republic of South Africa, "Refugees Act No. 130 of 1998 - Refugee Regulations."

<sup>23</sup> In terms of section 22, an asylum seeker whose application for asylum has not been adjudicated, is entitled to be issued with an asylum seeker visa allowing the applicant to temporarily sojourn in the Republic. The visa may be extended from time to time.

<sup>24</sup> Immigration Act 13 of 2002 The Republic of South Africa, "Immigration Act No. 13 of 2002," 2002, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a13-020.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf).

<sup>25</sup> In terms of section 32 of the Immigration Act any illegal foreigner must be deported The Republic of South Africa.

<sup>26</sup> Scalabrini Centre of Cape Town and Another v The Minister of Home Affairs and Others [2023] ZACC 45.

### 3. WHITE PAPER ON CITIZENSHIP, IMMIGRATION AND REFUGEE PROTECTION: TOWARDS A COMPLETE OVERHAUL OF THE MIGRATION SYSTEM IN SOUTH AFRICA, 2024

The White Paper on Citizenship, Immigration and Refugee Protection was gazetted in April 2024<sup>27</sup>. The overall emphasis is on the need to further securitise migration and the focus on migration and criminality underscore fundamental amendments to the Immigration Act and asylum system. The White Paper outlines the Government's ambition to withdraw from the 1951 UN Refugee Convention and 1967 Protocol

*South Africa did not make any reservations in respect of the 1951 Convention and 1967 Protocol. These reservations mainly deal with socio-economic rights such as, access to health, education, social welfare, right to work and trade and others. This was a fatal mistake on part of the government.*

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*The new structures and highly qualified persons to serve on them will assist in fast-tracking the asylum process. The unacceptable state of affairs in which asylum seekers who do not deserve to be granted refugees status sojourn in the Republic for a long time (up to 13 years) will be avoided. While they await the outcome of the appeal process, they continue to access rights such as, health, housing and others. Thus, competing for scarce resources with South African citizens, permanent residents and genuine refugees.*

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The White Paper repeals rights previously afforded to refugees and migrants and increases the challenges migrants face in managing a regular migration status and, in turn, reducing access to basic services including health. Critically, the plan to establish Asylum Seeker Processing Centres would reverse the policy of self-settlement for asylum seekers and refugees and lead to a risk of long-term detention of vulnerable people and challenges accessing rights such as the right to healthcare.

<sup>27</sup> Republic of South Africa, "White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa (Government Gazette No. 50530)," 2024, [https://static.pmg.org.za/Citizen\\_White\\_Paper.pdf](https://static.pmg.org.za/Citizen_White_Paper.pdf).

<sup>28</sup> Republic of South Africa, "Explanatory Memo: White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa," 2024, 8, [https://www.dha.gov.za/images/Explanatory\\_memo\\_for\\_WhitePaper-20112023.pdf](https://www.dha.gov.za/images/Explanatory_memo_for_WhitePaper-20112023.pdf).

<sup>29</sup> Republic of South Africa, 12.

## 4. BORDER MANAGEMENT

### 4.1. One-Stop Border Post Bill [B12-2024]

The One-Stop Border Post Bill has been established in order to

*...regulate the establishment of one-stop border posts through international agreements; to provide for the establishment of common control zones in the territory of an adjoining state; to provide for one-stop border processing arrangements; to authorise the application of the laws of the Republic and the adjoining state in the one-stop border post; and to provide for matters connected therewith.*

30

The Bill is expected to be passed in 2025 and outlines the different functions of sovereign power that officers will be expected to perform:

*Border controls involve various functions performed by officers from different government organisations using the specific authority granted in a state's national laws. It is necessary for officers' functions and powers to be authorised in law as they potentially entail limitation of the rights of persons. These functions are the expression of the sovereign power and therefore cannot be privatised. The one stop border post concept envisaged for any port of entry requires legal authority beyond what is provided by current legislation.*

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### 4.1. The Border Management Authority (BMA) Act 2 of 2020

A decision was made to develop a Border Management Agency (BMA) to address the challenges associated with a multi-agency approach. This was facilitated through the passing of the BMA Act by the National Assembly in March 2020<sup>32</sup>.

*Since 1994, South Africa has been using a multi-agency approach in its border management agenda. In this regard, seven Departments and Agencies, i.e. the Departments of Agriculture, Land Reform and Rural Development; Forestry, Fisheries and the Environment; Health; and Home Affairs; the South African National Defence Force (SANDF); the South African Police Service*

<sup>30</sup> The Republic of South Africa, "One-Stop Border Post Bill [B12-2024]," 2024, [https://www.parliament.gov.za/storage/app/media/Bills/2024/B12\\_2024\\_One\\_Stop\\_Border\\_Post\\_Bill/B12\\_2024\\_One\\_Stop\\_Border\\_Post.pdf](https://www.parliament.gov.za/storage/app/media/Bills/2024/B12_2024_One_Stop_Border_Post_Bill/B12_2024_One_Stop_Border_Post.pdf).

<sup>31</sup> The Republic of South Africa.

<sup>32</sup> The Republic of South Africa, "The Border Management Authority Act No. 2 of 2020," 2020, [https://www.gov.za/sites/default/files/gcis\\_document/202007/43536gon799.pdf](https://www.gov.za/sites/default/files/gcis_document/202007/43536gon799.pdf).

*(SAPS); and the South African Revenue Service (SARS) have a physical presence in our border environment.*

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About the BMA:

- **MISSION**
  - To be a credible provider of highly efficient, integrated, well-coordinated, and technology-driven border law enforcement services that contribute to national security and socio-economic development by inculcating a culture that empowers teams for service excellence.
- **VISION**
  - A world class integrated border law enforcement authority partnering for a safe and prosperous South Africa.

*The functions of the Authority are to—*

*(a) facilitate and manage the legitimate movement of persons within the border law enforcement area and at ports of entry;*

*(b) facilitate and manage the legitimate movement of goods within the border law enforcement area and at ports of entry; and*

*(c) co-operate and co-ordinate its border law enforcement functions with other organs of state, border communities or any other persons*

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The BMA Act outlines that border guards/officers must approach their role from a rights-based perspective, particularly in relation to asylum seekers, refugees and people presumed to have been trafficked.

*Duties, functions and powers of officers of border guard*

*(3) When performing any border law enforcement function, an officer must exercise his or her powers in a manner that takes due regard of the fundamental rights of persons, as guaranteed under Chapter 2 of the Constitution, and public international law obligations of the Republic, with proper consideration of the rights and interests of vulnerable groups, including victims of trafficking, refugees and asylum seekers.*

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*The BMA Act aims to strengthen border control and give the Authority effective control at the ports of entry and within the border law enforcement area. In other words, the BMA will implement all border law enforcement*

<sup>33</sup> BMA, "About Us," *Border Management Agency* (blog), 2024, <https://www.bma.gov.za/about-us/>.

<sup>34</sup> The Republic of South Africa, "The Border Management Authority Act No. 2 of 2020."

<sup>35</sup> The Republic of South Africa.

*functions across the land, air and maritime ports of entry and border law enforcement areas.*

*The Border Management Authority (BMA) provides a sustainable solution to the structural and systemic challenges of border security, control and coordination by offering a new model of integration of the current disparate functions, roles and responsibilities of the various organs of state operating in the border law enforcement environment. The integrated approach will result in a single chain of command and control, and resources will be pulled together under one umbrella to ensure the optimisation of funds allocated to border management activities.*

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## 4.2. The Prevention and Combating of Trafficking in Persons Act 7 of 2013

The Prevention and Combating of Trafficking in Persons Act 7 of 2013 was assented to in 2013 and came into force in 2015<sup>37</sup>. The Act intends:

- *to give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements;*
- *to provide for an offence of trafficking in persons and other offences associated with trafficking in persons;*
- *to provide for penalties that may be imposed in respect of the offences;*
- *to provide for measures to protect and assist victims of trafficking in persons;*
- *to provide for the coordinated implementation, application and administration of this Act;*
- *to prevent and combat the trafficking in persons within or across the borders of the Republic; and*
- *to provide for matters connected therewith.*

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The Act defines trafficking as:

- 4 (1) Any person who delivers, recruits transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic by means of-*
- a) A threat of harm;*
  - b) The threat or use of force or other forms of coercion;*
  - c) The abuse of vulnerability;*
  - d) Fraud;*
  - e) Deception;*
  - f) Abduction;*

<sup>36</sup> The Republic of South Africa, "Prevention and Combating of Trafficking in Persons (PACOTIP) Act No. 7 of 2013.," 2013.

<sup>37</sup> The Republic of South Africa.

<sup>38</sup> The Republic of South Africa.

- g) *Kidnapping;*
  - h) *The abuse of power;*
  - i) *The direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or*
  - j) *The direct or indirect giving or receiving of payments, compensations, rewards benefits of any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose or any form or manner of exploitation, is guilty of the offence of trafficking in persons.*
- (2) Any person who –*
- a) *Adopts a child, facilitated or secured through legal or illegal means; or*
  - b) *Concludes a forced marriage with another person within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence.*

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<sup>39</sup> The Republic of South Africa.

## 5. MIGRANT LABOUR & EMPLOYMENT OF FOREIGN NATIONALS

### 5.1. Employment Services Act No. 4 of 2014

The purpose of the Employment Services Act No. 4 of 2014 is to –

- (h) facilitate the employment of foreign nationals in the South African economy, where their contribution is needed in a manner—*
- (i) that gives effect to the right to fair labour practices contemplated in section 23 of the Constitution;*
- (ii) that does not impact adversely on existing labour standards or the rights and expectations of South African workers; and*
- (iii) that promotes the training of South African citizens and permanent residents.*

40

The right to health for migrants is not covered specifically in this Act. The Act, in accordance with the Immigration Act, outlines details of how a foreign national may be employed, including:

- 8. Employment of foreign nationals*
- (1) An employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.*

An important aspect of the Act is that it confirms the principle established in case law that an employee who is employed without a valid work permit may still enforce any claim afforded to the employee by South African labour law:

- 8. Employment of foreign nationals*
- (4) An employee who is employed without a valid work permit is 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.*

In this way the Act facilitates the employment of foreign nationals in a manner that is consistent with the objects of the Act and the Immigration Act No. 13 of 2002

- Prohibited acts in respect of foreign nationals*
- 9. An employer may not require or permit a foreign national—*
- (a) to perform any work which such foreign national is not authorised to perform in terms of his or her work permit; or*
- (b) to engage in work contrary to the terms of their work permit.*

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<sup>40</sup> The Republic of South Africa, "Employment Services Act No. 4 of 2014," 2014.

## 5.2. Draft National Labour Migration Policy and Employment Services Amendment Bill (2022)

The draft National Labour Migration Policy (NLMP) and Employment Services Amendment Bill <sup>41</sup> are aligned with the National Development Plan 2030; the New Growth Path and Medium-Term Strategic Framework (2014-2019); and the Decent Work Country Programmes (2010-2014) and (2018-2023). The Employment Services Amendment Bill is designed

- *To amend the Employment Services Act, 2014, so as to extend the scope of the Act to cover private employment agencies not operating for gain;*
- *To regulate the employment of foreign nationals in South Africa in a manner consistent with the objects of the Act, the Immigration Act, 2002 and the Refugees Act, 1998;*
- *To expand the scope of the Act to cover employees and workers;*
- *To expand the functions of the Employment Services Board and the powers of the Minister to make regulations in respect of matters related to labour migration;*
- *To provide for the governance of Supported Employment Enterprises; and*
- *To provide for the improved enforcement of the Act and other laws regulating work by foreign nationals*

42

The NLMP follows a rights-based approach to the protection of all workers employed in South Africa and the protection of South African workers abroad as defined in South Africa's international and regional and commitments, and in national labour legislation which is guided by the principle of equality of treatment. The NLMP addresses the health of migrant workers, as indicated in Box 2.

### Box 2: draft National Labour Migration Policy (NLMP) and the health of migrant workers<sup>43</sup>

*The NLMP proposes a range of measures to address some of the most pressing needs for intervention. This includes the enforcement of social protection rights which migrant workers are entitled to, including access to health care as well as the prevention of exposure of migrant workers to occupational safety and health hazards.*

*The policy identifies the categories of migrant workers particularly at risk as: irregular migrants; migrants with chronic diseases or disability; women and youth; children employed illegally; domestic workers; farm workers and, female entertainment and sex workers.*

<sup>41</sup> The Republic of South Africa, "Draft National Labour Migration Policy and Employment Services Amendment Bill (No. 45962)," 2022, [https://static.pmg.org.za/45962\\_28-02\\_EmploymentLabour\\_Bill.pdf](https://static.pmg.org.za/45962_28-02_EmploymentLabour_Bill.pdf); The Republic of South Africa.

<sup>42</sup> The Republic of South Africa, "Draft National Labour Migration Policy and Employment Services Amendment Bill (No. 45962)."

<sup>43</sup> source: The Republic of South Africa, "Draft National Labour Migration Policy for South Africa" (National Department of Employment and Labour, 2022), <https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20services/National%20Labour%20Migration%20Policy%202021%202.pdf>.

Additionally, and In collaboration with the Department of Health, the Departments of Education and Labour will assist with the reintegration of health professionals into the South African labour market, preferably in the public sector, upon their return from overseas placement.

## 6. HEALTH

### 6.1. Constitution and Bill of Rights (1996)

The new Constitution for the Republic of South Africa was adopted in 1996, with the stated goal to build a democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms as stated in the Bill of Rights of the Constitution<sup>44</sup>. The Constitution places obligations on the state to progressively realise socio-economic rights, including access to healthcare. Schedule 4 of the Constitution reflects health services as a concurrent national and provincial legislative competence; Section 9 of the Constitution states that everyone has the right to equality, including access to health care services. This means that individuals should not be unfairly excluded in the provision of healthcare.

In line with the internationally recognised right to access health services, South Africa's laws, policies and guidelines provide a rights-based framework for delivery of health care services. As enshrined in the Bill of Rights in the South African Constitution, all persons – including migrants - in the country have equal rights to life, dignity, freedom, security and health care. Section 27 of the Constitution guarantees everyone the right to access basic health care affirming that

*Section 27.*

*(1) Everyone has the right to have access to—*

- (a) health care services, including reproductive health care;*
- (b) sufficient food and water; and*
- (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*

*(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*

*(3) No one may be refused emergency medical treatment.*

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<sup>44</sup> Republic of South Africa, "Constitution of the Republic of South Africa [No. 108 of 1996]."

<sup>45</sup> Republic of South Africa.

## 6.2. National legislation

### 6.2.1. *The National Health Act No. 61 of 2003*<sup>46</sup>

The Constitutional right to health for all is given effect through the National Health Act (61 of 2003)<sup>47</sup> which acknowledges the particular health needs of vulnerable groups, including women, and provides for free healthcare for all pregnant and lactating women and children under the age of six.

The National Health Act 61 of 2003 was passed by Parliament to give effect to the right of everyone to have access to health care services as guaranteed by section 27 of the Constitution of the Republic of South Africa, 1996. Section 27 places explicit obligations on the state to progressively realise socio-economic rights, including access to health care services, including reproductive health care. The National Health Act sets out the structure of the healthcare system, delineating power and responsibility at national level, provincial level and district level, and providing for public and private components to the system.

The Act is designed to create the framework for delivering health care services, placing the duty on the Minister under section 3 to “promote the inclusion of health services in the socio-economic development plan of the Republic”, and providing for the rights and duties of health care personnel, the governance of health facilities, the quality of health care services, and human resources planning, among others. It also provides for occupational health services (section 25) while other specific aspects of health law and the health system, including health care workers, medicine registration, mental health, traditional health practitioners, and abortion are dealt with in other Acts and policies.

The Act specifies:

- Pregnant and lactating women and children below the age of six years, who are not members of beneficiaries of medical aid schemes, with free health services (Section 4);
- Clinics and health centres funded by the state *must provide all persons*, except members of medical aid schemes and their dependents and persons receiving compensation for compensable occupational diseases, with free primary health care services that a healthcare provider (Section 4);
- A health worker or health establishment *may not refuse a person* emergency medical treatment and are not restricted solely to citizens (Section 5)

<sup>46</sup> National Department of Health, Republic of South Africa, “National Health Act, 2004. No. 61 of 2003:” (Pretoria: National Department of Health, Republic of South Africa, 2003).

<sup>47</sup> The Republic of South Africa, “The Republic of South Africa National Health Act No. 61 of 2003,” 2003, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a61-03.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a61-03.pdf).

The Act was approved and implemented in 2003 although the provisions relating to the Office of Health Standards Compliance were promulgated only in 2015. Amendments to the Act were made in 2013; however, these sections remain un-amended. The proposed National Health Insurance Act will also impact the National Health Act.

### 6.2.2. *The Choice on Termination of Pregnancy Act 92 of 1996*

The Choice on Termination of Pregnancy Act sets the conditions and procedures to be followed for women to obtain a termination of pregnancy <sup>48</sup>. The Act repeals the restrictive provisions of the Abortion and Sterilization Act 1975 and was led by the Abortion Reform Action Group. The Act was approved in 1996 and came into effect in February 1997. The Act states that

- *(T)he State has the responsibility to provide reproductive health to all, and also to provide safe conditions under which the right of choice can be exercised without fear or harm*
- *(N)o consent other than that of a pregnant woman shall be required for the termination of a pregnancy*
- *In the case of a pregnant minor, a medical practitioner or registered midwife... shall advise such minor to consult with her parents, guardian, family members or friends (but) . . . the termination of pregnancy shall not be denied because such minor chooses not to consult them*

### 6.2.3. *The Mental Health Care Act 26 of 2020*

The Mental Health Care Act <sup>49</sup> provides for the care, treatment and rehabilitation of persons who are mentally ill . The Act sets out procedures for admission to mental health facilities and establishes Mental Health Review Boards to review admissions and to which complaints can be directed. The Act, developed in line with international developments in mental health legislation, sets out an explicit patient centred approach to psychiatric care. The Act emphasises the integration of mental health care services into the general health services environment and promotes the provision of community-based care, treatment and rehabilitation services; the rights and interests of mental health care users; and promotes and improves the mental health status of the population. There is however no mention of asylum-seekers, refugees or migrants or explicit statements regarding who is entitled to access mental health care. The Act presumes that there is a functional primary health care service such as clinics with available healthcare providers who can refer patients onwards to community health clinics for psychiatric assessments or hospitals with functioning psychiatric units.

<sup>48</sup> Republic of South Africa, "Choice on Termination of Pregnancy Act 92 of 1996," 1996, <https://www.westerncape.gov.za/other/2004/4/a92-96.htm>.

<sup>49</sup> The Republic of South Africa, "The Mental Healthcare Act 26 of 2020," 2020, <http://www.health.gov.sc/wp-content/uploads/GOS-2020-ACT-MentalHealthCareAct-Final.pdf>.

### 6.2.4. The National Health Insurance Act 20 of 2023

The National Health Insurance Act 20 of 2023<sup>50</sup> is designed

- to achieve universal access to quality health care services in the Republic in accordance with section 27 of the Constitution;
- to establish a National Health Insurance Fund and to set out its powers, functions and governance structures;
- to provide a framework for the strategic purchasing of health care services by the Fund on behalf of users;
- to create mechanisms for the equitable, effective and efficient utilisation of the resources of the Fund to meet the health needs of the population; and
- to preclude or limit undesirable, unethical and unlawful practices in relation to the Fund and its users

#### *Chapter 2 – ACCESS TO HEALTH CARE SERVICES*

##### *4. Population coverage*

*(2) An asylum seeker or illegal foreigner is only entitled to-*

*(a) emergency medical services; and*

*(b) services for notifiable conditions of public health concern.*

#### *CLAUSE BY CLAUSE ANALYSIS*

##### *6. Rights of users*

*6.4.2 This clause also provides that an asylum seeker or illegal foreigner is only entitled to emergency medical services and service for notifiable candidates of public health concern.*

51

<sup>50</sup> The Republic of South Africa, "National Health Insurance Act No. 20 of 2023," 2024, [https://www.gov.za/sites/default/files/gcis\\_document/202405/50664nathealthinsuranceact202023.pdf](https://www.gov.za/sites/default/files/gcis_document/202405/50664nathealthinsuranceact202023.pdf).

<sup>51</sup> The Republic of South Africa, "National Health Insurance Bill," 2019, [https://www.gov.za/sites/default/files/gcis\\_document/201908/national-health-insurance-bill-b-11-2019.pdf](https://www.gov.za/sites/default/files/gcis_document/201908/national-health-insurance-bill-b-11-2019.pdf).

## 6.3. Strategic plans, policies & frameworks

### 6.3.1. Revenue Directive – Refugees/Asylum Seekers with or without a permit, 2007

This Directive<sup>52</sup>, released by the Chief Financial Officer of the National Department of Health in September 2007, clarifies that that refugees, asylum seekers and undocumented migrants from SADC states are entitled to be treated in the same way as South African citizens and to be means tested to determine their ability to pay for services.

### 6.3.2. The National Adolescent Sexual and Reproductive Health and Rights (SRHR) Framework Strategy (2014-2019)

The National Adolescent Sexual and Reproductive Health and Rights Framework Strategy (2014-2019)<sup>53</sup> is based on three key documents: The National Report on Factors Associated with Teenage Pregnancy in South Africa (2014), The Background Resource Document on the State of Adolescent Sexual Reproductive Health and Rights (ASRH&R) in South Africa (2012) and the Report on Consultative Workshop with Stakeholders on ASRH&R (2012).<sup>54</sup> The strategic framework focuses on five priority areas including the evidence-based revision of current policy and improved sexual and reproductive health and rights knowledge among adolescents and their caregivers. While a comprehensive framework there is no mention of migration, or migrant's access to SRHR and services in South Africa.

### 6.3.3. National Adolescent and Youth Health Policy (2017)

The AYHP moves away from single-focus prevention initiatives. It highlights the co-occurrence of risk behaviours and promotes a more comprehensive, holistic understanding of health determinants. It aligns with many of the policies relating to health and wellbeing as shown in Figure XX below. Adolescence is a period of emotional and social development, growing independence and changing relationships within families, friendships and communities. Associations between risk behaviours, poverty and inequality are complex. Research has established that social and structural deprivation, intersecting with gendered norms that disempower girls and women, are key drivers of risky behaviours and poor health

<sup>52</sup> The National Department of Health, "Revenue Directive- Refugees/Asylum-Seekers with or without a Permit. Ref: BI 4/29 REFUG/ASYL 8 2007," 2007, [https://www.passop.co.za/wp-content/uploads/2012/07/revenue-directive\\_refugees-and-asylum-seekers-with-or-without-permit.pdf](https://www.passop.co.za/wp-content/uploads/2012/07/revenue-directive_refugees-and-asylum-seekers-with-or-without-permit.pdf).

<sup>53</sup> South African Department of Social Development, "National Adolescent Sexual and Reproductive Health and Rights Framework Strategy" (Department of Social Development, 2015), <https://srjc.org.za/wp-content/uploads/2019/10/02-National-Adolescent-Sexual-and-Reproductive-Health-and-Rights-Framework-Strategy-pdf-003.pdf>.

<sup>54</sup> National population Unit, "National\_Teenage\_Pregnancy\_Report\_Version\_August\_2014-Copy.Pdf," 2014, [https://www.sexrightsafrika.net/wp-content/uploads/2016/11/National\\_Teenage\\_Pregnancy\\_Report\\_Version\\_August\\_2014-copy.pdf](https://www.sexrightsafrika.net/wp-content/uploads/2016/11/National_Teenage_Pregnancy_Report_Version_August_2014-copy.pdf).

outcomes. These deprivations include poverty and exclusion, income shocks, mental health distress, stigma, harsh parenting and abuse. Exposure to multiple stressors can have cumulative effects, maximising risk behaviours. In addition, these risk behaviours are primarily extra-clinical, occurring beyond healthcare facilities, in contexts in which adolescents and youth live, have fun, and take risks.

Health promotion programmes need to focus on individual behaviours, complemented by support, education, empowerment and health service delivery programmes based in schools, families and communities (including traditional and religious systems). The power and practicality of digital health tools can be leveraged to advance health education, information and support. The AYHP identifies six principal objectives which are outlined below:

1. Use innovative youth-oriented programmes and technologies to promote the health and well-being of adolescents and youth
2. Provide comprehensive, integrated sexual and reproductive health services
3. Prevent, test and treat for HIV/AIDS, TB and NCDs
4. Reduce substance abuse and violence
5. Promote healthy nutrition and reduce obesity
6. Empower adolescents and youth to engage with policy and programming on youth and be responsible for their health and wellbeing-Leave no one behind including youth with disability

#### 6.3.4. *National Integrated Sexual and Reproductive Health and Rights Policy, 2019*

The 2019 National Integrated Sexual and Reproductive Health and Rights Policy<sup>55</sup>

*...advocates keen attention and inclusion, including all adolescents, young women and girls, sex workers, LGBTQI+, migrants, people with disabilities, young men and male partners of women seeking SRHR services, and survivors of sexual violence. By calling attention to the spectrum of needs of the population, iterating the resources and guidance available within SRHR, prioritizing essential areas of SRHR service delivery, and illustrating comprehensive care, quality care is championed.*

56

As presented in Box 1 below, the policy considers migrants and asylum seekers as priority groups, and emphasises the importance of a rights-based approach.

<sup>55</sup> National Department of Health, "National Integrated Sexual and Reproductive Health and Rights Policy. Edition 1." (National Department of Health, South Africa, 2019), [https://knowledgehub.health.gov.za/system/files/elibdownloads/2023-04/National%2520Integrated%2520SRHR%2520Policy\\_Final\\_2021.pdf](https://knowledgehub.health.gov.za/system/files/elibdownloads/2023-04/National%2520Integrated%2520SRHR%2520Policy_Final_2021.pdf).

<sup>56</sup> National Department of Health, 5.

### Box 3: The National Integrated Sexual and Reproductive Health and Rights Policy<sup>57</sup>

#### OBJECTIVE 3: Ensure access to respectful and non-judgmental SRHR services for priority groups

##### 3.6. Migrants and asylum seekers

###### Intended results:

- Rights-based approach characterised by non-discrimination, confidentiality, and privacy.

###### POLICY STATEMENT:

- Offer a basic package of SRHR care in emergency situations.
- Build and enhance the capacities of health care providers to render culturally competent, gender-sensitive, age-responsive, and migrant-friendly reproductive health services.

###### SRHR needs are heightened for displaced people and refugees. All migrants and asylum seekers should receive SRHR services, with full respect for client rights.

- Provide information on contraceptive options, HIV and STI prevention, detection and treatment, abortion, emergency contraception, PMTCT, and antenatal and postnatal services in South Africa. Information is available in a range of languages, especially South African languages. Where necessary, a translator (trained for correct translation and in confidentiality) is engaged for non-English speakers. In the context of SRHR, translators should preferably be the same gender as the client.
- Provide specialist referral services where clinic staff do not have the required skills (for example, provide services for women who have a subdermal implant from their home country). Implement a referral system and training programme for staff.
- Provide all HIV services, including HTS, initiation onto ART, PMTCT, and PEP, where indicated. For some cross-border migrants, this may require the switching of ART regimens. In such cases, national ART guidelines should be followed. Pregnant women on PMTCT should be encouraged to delay moving away from the area until they complete PMTCT treatment to ensure continuity of care and in cases where there is no PMTCT programme where they plan to move. Thereafter, clear referral direction, documentation, and letters should be provided.
- Issue clients with 'health passports' that record information about all contraceptive methods being used, treatment, and testing. Encourage clients to keep these health passports with them, to make relevant notes, and memorise all contraceptive methods, medication, and doses in case they need to move to another location and/or lose their health passport (or other records). Encourage clients to come to the clinic before they relocate and provide sufficient treatment and a referral letter for their next health facility.
- Encourage informed decision-making and provide choice in contraception methods. Methods provided should take into account the client's risk, mobility, and fertility plans for the future.
- Some migrant groups are more vulnerable to violence, sexual assault, and exploitation. The provision of additional counselling may be necessary, given the trauma experienced by some migrants. Such trauma may relate to circumstances and experiences in their home country and during their journey to South Africa, as well as to particular vulnerabilities to which they may be exposed, such as rape, bribes, sexual exploitation and abuse. As with all clients, post-rape management should include PEP, STI management, and emergency contraception.

<sup>57</sup> National Department of Health, 31.

### 6.3.5. National Malaria Elimination Strategic Plan for South Africa 2019 - 2023

The National Malaria Elimination Strategic Plan 2019-2023 for South Africa <sup>58</sup>is key to the continued efforts in South Africa to eliminate malaria through the implementation of evidence-based malaria policies aligned to the World Health Organization's (WHO) Global Technical Strategy.<sup>59</sup> This is in line with the goals of the 2030 National Development Plan<sup>60</sup> and the UN Sustainable Development Goals and will collectively benefit the southern African countries on issues of trade, tourism, health and economic growth. The plan is therefore intrinsically linked to regional efforts and commitment by SADC heads of state to eliminate malaria in the whole SADC region by 2030, with the target of zero local malaria cases and deaths <sup>61</sup>.

To achieve the goal of achieving zero malaria transmission in South Africa by 2023, the strategic plan focuses on improving overall health outcomes by strengthening the quality of health services, increasing human resource capacity, and increasing malaria knowledge, attitudes and practices of the general population, to improve health. The plan recognises the need to "Ensure universal access to diagnosis and treatment in endemic and non-endemic areas according to national guidelines for the period 2019-2023".

This is based on the constitutional right to access health services for everyone in the country which can enable "...any individual to be appropriately tested and treated for malaria, including travellers and migrants to South Africa". As a result, the strategic objectives engage with mobility and migration. Objective 3 (4.4.3), "Ensure that 90% of the population affected by malaria receives information education communication messaging by 2023" identifies the importance of engaging migrant populations while strategy 3.3 (Behaviour change communication) pairs messaging with the significant population movement within and across South Africa's borders during the December and April holidays. Universal access to quality treatment and coverage across the country underpins the strategic plan. The plan will be revised and updated based on evolving research and evaluation.

*The government is committed to integrating the ethos of ensuring equal access to malaria prevention and treatment services for all with the principles of the National Health Insurance, which essentially has the objective of attaining Universal Health Coverage.*

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<sup>58</sup> National Department of Health, "Malaria Elimination Strategic Plan 2019-2023," 2019, <https://www.nicd.ac.za/wp-content/uploads/2019/10/MALARIA-ELIMINATION-STRATEGIC-PLAN-FOR-SOUTH-AFRICA-2019-2023-MALARIA-ELIMINATION-STRATEGIC-PLAN-2019-2023.pdf>.

<sup>59</sup> World Health Organisation, "WHO Global Technical Strategy for Malaria 2016–2030 (2021 Update) - World | ReliefWeb," 2021, <https://reliefweb.int/report/world/who-global-technical-strategy-malaria-2016-2030-2021-update>.

<sup>60</sup> Republic of South Africa, "National Development Plan, 2030. Our Future- Make It Work" (Pretoria: National Planning Commission, The Presidency, 2011).

<sup>61</sup> National Department of Health, "Malaria Elimination Strategic Plan 2019-2023."

*The department is of the view that eliminating malaria is an ambitious task that requires sustainable resources, collaboration with neighbouring countries including Botswana, Eswatini, Mozambique, Namibia, and Zimbabwe, evidence-based policies, strong partnerships and a dedicated workforce.*

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### *6.3.6. National Strategic Plan for the Prevention and Control of Non-Communicable Diseases (2020-2025) <sup>63</sup>*

The National Strategic Plan for The Prevention and Control of Non-Communicable Diseases 2020-2025 (NSP) <sup>64</sup> aims to move South Africa closer to Sustainable Development Goal (SDG) 3.4: To reduce, by one-third, premature mortality from NCDs+ through prevention and treatment and promote mental health and well-being by 2030 through the progressive improvement of wellness and reduction of premature morbidity, disability and mortality from NCDs+.

The NSP takes a comprehensive, person-centered approach, within the context of Universal Health Coverage (UHC) and implementation of National Health insurance (NHI) in South Africa by 2025. It directs the actions to be taken, across health and through a multi-sectoral approach, to address the present and growing threat posed by NCDs+.

The goals and objectives articulated in this NSP are set against the background of the following guiding principles: human rights, equity, universal health coverage, integration, engagement with and empowerment of people and communities and the life course approach.

A set of comprehensive key strategies direct implementation of the NSP and focus on:

- Governance for NCD prevention and control including national NCD leadership, partnership, and advocacy for action in addition to strengthening national capacity for implementation
- Reduction of risk factors including tobacco use, harmful use of alcohol, unhealthy diet and physical inactivity.
- Early detection and effective NCD management through PHC and health systems strengthening
- Promoting high quality NCD research
- Enhance national capacity for NCD surveillance

<sup>62</sup> South African Government News, "SA on Track to Eliminate Malaria Disease by 2028," April 25, 2024, <https://www.sanews.gov.za/south-africa/sa-track-eliminate-malaria-disease-2028>.

<sup>63</sup> South African Department of Health, "National Strategic Plan for the Prevention and Control of Non-Communicable Diseases 2020-2025" (Department of Health, 2022), [https://www.sancda.org.za/wp-content/uploads/2020/05/17-May-2020-South-Africa-NCD-STRATEGIC-PLAN\\_For-Circulation.pdf](https://www.sancda.org.za/wp-content/uploads/2020/05/17-May-2020-South-Africa-NCD-STRATEGIC-PLAN_For-Circulation.pdf).

<sup>64</sup> South African Department of Health.

With respect to risk factors and determinants of health, the NSP recognises the impact of the broader societal context on health and quality of life. NCDs+ and their risk factors also have strategic links to health systems and universal health coverage, environmental, occupational and social determinants of health, communicable diseases, maternal, child and adolescent health, reproductive health and ageing. However, the NSP does not engage with mobility and migration as determinants of health. There is no consideration of vulnerable or “key populations” in terms of non-communicable diseases nor how migration needs to be factored into interventions and public health responses.

### *6.3.7. 2030 Human Resources for Health Strategy: Investing in the health workforce for Universal Health Coverage (2020)*

*Human resources for health is the personification of any health system. The right health workforce enables an efficient and effective health system, which is critical for attaining the goals of improved population health, responsiveness to patient and community expectations, and ensuring financial risk protection.*

65

The 2030 Human Resources for Health Strategy emphasises the need to invest in the health workforce to support efforts designed progress towards Universal Healthcare Coverage (UHC)<sup>66</sup>. It acknowledges the challenges faced with the out-migration of skilled healthcare professionals and recognises that:

1. *The health workforce is:*
  - a. *A key driver of inclusive economic growth*
  - b. *An investment, contributing to decent work and job creation, particularly for women and youth in rural and under-served communities*
  - c. *At the heart of an efficient and well-functioning health system when empowered with the optimum skills mix, distribution, competencies, standards, support and motivation to deliver essential services*
2. *The value of investing in the health workforce is demonstrated by the experience in Brazil, Ghana, Mexico and Thailand. These countries recorded sustained improvements in Universal Health Coverage (UHC), which in turn contributed to improved population health outcomes.*
3. *There can be no delivery of UHC and National Health Insurance (NHI) without a skilled, enabled and supported health workforce*
4. *Strategic leadership, optimal governance and capable management are needed to maximise the efficiency, accountability and measurable impact of investment in the health workforce.*

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<sup>65</sup> National Department of Health, “2030 Human Resources for Health Strategy: Investing in the Health Workforce for Universal Health Coverage” (National Department of Health, 2020), 15, <https://www.health.gov.za/wp-content/uploads/2023/06/2030-HRH-Strategy-Final.pdf>.

<sup>66</sup> National Department of Health, 14.

<sup>67</sup> National Department of Health, 14.

### 6.3.8. The National Strategic Plan for HIV, TB and STIs (2023 – 2028) <sup>68</sup>

The current National Strategic Plan for HIV, TB and STIs<sup>69</sup> recognises migrants, mobile populations and undocumented individuals as a priority population due to the barriers faced in accessing healthcare services (See Figures 1-3). The NSP states that

*There is a direct link between inequalities and vulnerability to HIV, TB and STIs, mental health conditions and-related rights abuses. While inequalities do not directly cause HIV, TB and STIs, inequalities increase unsafe behaviours, mental distress, SGBV and harm. Inequalities could be caused by stigma, discrimination, violence, uneven power relations, harmful gender beliefs and norms, poverty, migration, disability and poor service-delivery.*

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*Subobjective 1.5.3. Enhance legal protection against hate crimes based on sexual orientation, gender identity and expression, and migrancy:  
Enhance legal protection against hate crimes based on sexual orientation, gender identity and expression, and migrancy.  
This will be achieved through expediting the finalisation and enactment of the Hate Crimes Bill (i.e., Prevention and Combating of Hate Crimes and Hate Speech Bill of 2018) and the scale up of and support to LGBTQI+-led organisations and networks to advocate for the enactment of the Hate Crimes Bill.*

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<sup>68</sup> SANAC, “National Strategic Plan for HIV, TB and STIs: 2023-2028” (Pretoria: South African National AIDS Council (SANAC), 2023), <https://sanac.org.za/wp-content/uploads/2023/05/SANAC-NSP-2023-2028-Web-Version.pdf>.

<sup>69</sup> SANAC, 26.

<sup>70</sup> SANAC, 31.

<sup>71</sup> SANAC, 38.

Figure 1: Minimum package of services: Migrants, mobile populations and undocumented individuals <sup>72</sup>

SERVICES / INTERVENTIONS / APPROACHES	SETTING	ACCOUNTABLE PARTIES
<ul style="list-style-type: none"> <li>• Mobile populations include those involved in big infrastructure and construction projects, agriculture, all four modes of transport, road, rail, civil aviation and maritime e.g., truck drivers, seafarers, long-distance taxi drivers, pilots and cabin attendants</li> <li>• Provision of health services along transport corridors</li> <li>• Flexible service-delivery options including provision of condoms, HTS, provision of ART-refills and TB treatment</li> <li>• Focused prevention messages and SBCC that addresses their specific challenges e.g., SGBV, drug and alcohol-use</li> <li>• Intensified psychosocial support</li> <li>• Cross-border collaboration on HIV, TB and STIs policy and programming</li> <li>• Use informal networks to raise awareness about available services</li> <li>• Accelerated access to official papers to access services</li> <li>• Places of safety</li> <li>• Implementation of social impact plans that mitigate the impact of HIV, TB and STIs for organisations involved in big infrastructure and construction projects e.g., building power stations, major roads</li> <li>• Sensitise healthcare providers and law enforcement authorities on the rights of non-nationals is essential. In addition, equipping service providers with migrant-sensitive job aids and instruments to enhance implementation that will strengthen service provision to migrants</li> <li>• Sensitise migrants, sex workers, and young vulnerable populations living in migration-affected communities about their rights and responsibilities to improve their access to SRHR services</li> </ul>	<ul style="list-style-type: none"> <li>• Truckers</li> <li>• Seasonal workers</li> <li>• Mineworkers</li> <li>• Taxi drivers</li> </ul>	<ul style="list-style-type: none"> <li>• Southern African Development Community (SADC)</li> <li>• The Department of International Relations and Cooperation (DIRCO)</li> <li>• Multilaterals</li> <li>• NGOs</li> <li>• DSD</li> <li>• SAPS</li> <li>• DHA</li> <li>• DOA</li> <li>• DOT</li> <li>• NDOH</li> <li>• Private Sector</li> </ul>

<sup>72</sup> source: SANAC, 107.

Figure 2: GOAL 1 - break down barriers to achieving outcomes for HIV, TB and STIs.<sup>73</sup>

## PRIORITY POPULATIONS

PRIORITY ACTION	SETTING	ACCOUNTABLE PARTNERS
<b>&gt; Migrants, mobile populations and undocumented individuals</b>		
<ul style="list-style-type: none"> <li>• Social inclusion and community integration</li> <li>• Intensified mental health services and access to psychosocial support</li> <li>• Protection against xenophobia and violence</li> </ul>	<ul style="list-style-type: none"> <li>• All communities in 52 districts</li> </ul>	<ul style="list-style-type: none"> <li>• DSD</li> <li>• Department of Home Affairs (DOA)</li> <li>• South African Police Service (SAPS)</li> </ul>

## KEY POPULATIONS & PEOPLE WITH INCREASED RISK TO TB: PRIORITY ACTIONS

<b>&gt; Refugee/Migrant populations, mobile populations and undocumented individuals</b>		
<ul style="list-style-type: none"> <li>• Develop peer-led TB health promotion and non-pharmaceutical TB-prevention strategies</li> <li>• Integrate TB screening in the enrolment procedure into the migration centres and linkage to care</li> <li>• Include WBOT visits in the migration waiting centres</li> </ul>	<ul style="list-style-type: none"> <li>• All Home Affairs facilities</li> <li>• All migration and deportation centres</li> </ul>	<ul style="list-style-type: none"> <li>• NDOH</li> <li>• DHA</li> </ul>

Figure 3: GOAL 2 - maximise equitable and equal access to HIV, TB and STI services and solution<sup>74</sup>

## PRIORITY POPULATIONS

<b>Migrants, mobile populations and undocumented individuals</b>		
<ul style="list-style-type: none"> <li>• Create demand to promote the uptake of SRH services by migrants</li> <li>• Sensitise service providers to the needs, rights and responsibilities of migrant and mobile populations, as well as related protective policies</li> <li>• Increase the availability of migrant-friendly facilities for prevention, screening, testing and treatment of HIV, TB and STIs</li> <li>• Intensified mental health services and access to psychosocial support to support adherence</li> <li>• Offer a comprehensive package of HIV-prevention services, including harm-reduction in prisons, such as OST</li> </ul>	<ul style="list-style-type: none"> <li>• Communities</li> </ul>	<ul style="list-style-type: none"> <li>• NDOH</li> <li>• DSD</li> <li>• DHA</li> <li>• SAPS</li> </ul>

## KEY POPULATIONS: PRIORITY ACTIONS INCLUSIVE OF HIV, TB, STIs

<b>Migrant and mobile populations</b>		
<ul style="list-style-type: none"> <li>• WBOT catchment areas to include migrant and mobile communities</li> <li>• TB screening, testing and linkage to care</li> </ul>	<ul style="list-style-type: none"> <li>• All 52 Districts</li> </ul>	<ul style="list-style-type: none"> <li>• NDOH</li> <li>• DHA</li> </ul>

<sup>73</sup> source: SANAC, 43–47.

<sup>74</sup> source: SANAC, 43–47.

### 6.3.9. Zero Draft Policy Advisory on Refugees, Migration, Health and Development in South Africa. 2024

The Zero Draft Policy Advisory on Refugees, Migration, Health and Development in South Africa<sup>75</sup> was developed in 2024 by the National Department of Health and is designed to act as a discussion document with the National Planning Commission (NPC) and focuses on the target of UHC. The text below is from the drafted advisory, outlining its ambitions and recommendations:

*This policy advisory supports South Africa's larger objective of Universal Health Coverage by highlighting important opportunities and challenges in resolving health disparities experienced by migrants and refugees in the nation. The advisory's foundation is an examination of South Africa's obligations under regional, continental, and international frameworks, such as the UN Sustainable Development Goals, the African Union Agenda 2063, and the Global Compact on Migration. In order to promote social cohesion and public health resilience, South Africa is required by these accords to guarantee fair health access for all citizens, especially vulnerable migrant groups, in line with domestic laws and policy frameworks.*

*Some of the key challenges to ensure equitable health access for all residents, including vulnerable migrant populations, are:*

- Access to Healthcare: Systemic and structural obstacles, such as legal limitations for those without documentation, frequently prevent migrants and refugees from having complete access to healthcare.*
- Resource constraints: Budget cuts and increasing demand in migrant-hosting provinces and districts have made the healthcare system's inadequate resources even more severe, affecting worker capacity and access to necessary medical supplies.*
- Data integration: There are gaps in tracking and meeting health needs because migrant health data is not regularly included into the national health information system.*
- Health workforce distribution: The quality of service is impacted by staff shortages and an unequal distribution of medical professionals, particularly in rural and densely populated urban areas with sizable immigrant populations.*

*There are opportunities to improve refugees and migrants' access to health services in South Africa, and these include:*

- Strengthening health information systems: The implementation of the uniform Electronic Health Record system as part of the National*

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<sup>75</sup> National Department of Health, "Zero Draft Policy Advisory on Refugees, Migration, Health and Development in South Africa," 2024.

*Health Insurance (NHI) policy presents an opportunity to incorporate migrant health data, enhancing service delivery and tracking.*

- *Intersectoral collaboration: Successful cooperation between the government, NGOs, civil society, academia and migrant communities is exemplified by initiatives such as the Johannesburg and Musina migrant forums, which can act as models for other regions.*
- *Innovative service delivery models: Strategies to better serve host and migrant communities should be informed by lessons learned from international examples on increasing access to essential health services for marginalized populations.*
- *Sustainable finance Models: To help South Africa create a more robust and inclusive health finance system, international best practices emphasize financing strategies that include health insurance mechanisms that include refugees and other categories of migrants.*

*This draft advisory provides some of the key recommendations, which include:*

*Short-Term Actions:*

- *Strengthen capacity building and training for healthcare providers to improve migrant-sensitive services.*
- *Pilot migrant data integration within the health information system architecture.*

*Medium-Term Actions:*

- *Develop guidelines to support equitable migrant healthcare under NHI Bill.*
- *Expand intersectoral collaborations to address social determinants of health for refugees and migrants.*

*Long-Term Actions:*

- *Expand and standardize health services to address social determinants of health.*
- *Scale up national health data systems to include comprehensive data on migrant health, supporting long-term health system resilience.*

*One of the most important steps in achieving South Africa's UHC objectives is addressing health disparities for migrants and refugees. South Africa can create a healthcare system that is resilient, inclusive, and sensitive to the needs of all citizens, including migrants, by implementing policies that address workforce distribution, healthcare access, and resource allocation.*

*Adopting these recommendations will increase South Africa's commitment to social justice and equity in healthcare, assist sustainable development, and be in line with national priorities.<sup>76</sup>*

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<sup>76</sup> National Department of Health, 2–3.

## 7. OCCUPATIONAL HEALTH

### 7.1. The Occupational Health and Safety Act No. 85 of 1993

The Department of Employment and Labour is responsible for the Occupational Health and Safety Act <sup>77</sup> which provides for the requirements that employers must comply with in order to create a safe working environment for employees in the workplace. In doing so it offers protection to some workers, some of whom include migrants, by demanding that employers provide safe and healthy working conditions and ensure protection from any hazards in the workplace. The Act however, does not specifically identify (to include or exclude) migrants in terms of protection or access to health care.

The Act is guided by the Advisory Council for Occupational Health and Safety and based on a number of regulations including the Labour Relations Act; Basic Conditions of Employment Act; and, the Medical, Dental and Supplementary Health Service Professions Act.<sup>78</sup>

### 7.2. Mine Health and Safety Act No. 29 of 1996

*South Africa has the most mature mining industry on the continent. Large-scale mining started with the discovery of diamonds in 1867 and the mining industry has been the backbone of the country's economy ever since. The country's rather complex mining legislation reflects this long tradition. Provisions for occupational health and safety in mining are made in several Acts.*

*The 'Mine Health and Safety Act (MHSA) of 1996<sup>79</sup> is administered by 'Department of Mineral Resources (DMR) and places accountability on the mine owner. The 'Mine Health and Safety Inspectorate (MHSI) situated within the DMR is the country's largest specialist occupational health and safety inspectorate.*

*Beside the inspectorate, South Africa has established a 'Mine Health and Safety Council (MHSC) promoting occupational health and safety within the industry and advising the DMR on health and safety matters. The MHSC is a tripartite structure comprised of representatives from the state, mine employees and mine owners.*

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<sup>77</sup> The Republic of South Africa, "Occupational Health and Safety Act 85 of 1993," 1993, [https://www.gov.za/sites/default/files/gcis\\_document/201409/act85of1993.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act85of1993.pdf).

<sup>78</sup> Department of Health, "Medical, Dental and Supplementary Health Service Professions Act, 1974," no. 56 (1974): 38.

<sup>79</sup> The Republic of South Africa, "Mine Health and Safety Act No. 29 of 1996," 1996.

<sup>80</sup> TIMS, "HEALTH FOCUS. TB in the Mining Sector in Southern Africa (TIMS)" (TB in the Mining Sector in Southern Africa (TIMS), unknown), 27, <https://www.timssa.co.za/Documents/Studies/Legislation%20and%20Regulations%20Review%20-%20Health%20Focus.pdf>.

### 7.3. Mine Health and Safety Amendment Act No. 72 of 1997

The 1997 Amendment provides for a system of administrative fines; further regulates the operation of the tripartite institutions; and provides for the participation of health and safety representatives responsible for a working place in an inquiry in respect of that working place.<sup>81</sup>

### 7.4. Mine Health and Safety Amendment Bill

In October 2024, it was announced that the latest Mine Health and Safety Amendment Bill<sup>82</sup> will be introduced to the National Assembly 'shortly'.<sup>83</sup>

### 7.5. Guidance Note for the Management of Latent Tuberculosis infection in the South African Mining Industry, No. 5404, 2024

*"The primary objective of the Guidance Note<sup>84</sup> is to help employers reduce the incidence of TB in mines by focusing on the prevention of latent TB progressing to active TB. It aims to enhance and upscale TB prevention programmes in the mining industry, particularly following the setbacks caused by the COVID-19 pandemic. The Guidance Note targets employees, mining communities, and peri-mining communities exposed to TB risks.*

*The Guidance Note is applicable not only to the employees employed by a mine and those in the employ of independent contractors, but also members of surrounding communities. It provides clear roles and responsibilities for relevant stakeholders involved in TB management, ensuring that the approach is collaborative and comprehensive.*

*The Guidance Note identifies several groups at high risk of latent TB infection, including:*

- *Mine employees exposed to silica dust and those with silicosis.*
- *Individuals with compromised immune systems, such as those with HIV, cancer, or diabetes.*
- *Pregnant women with significant TB exposure.*
- *Healthcare workers exposed to employees with TB.*
- *Families of mine employees and members of mining and peri-mining communities who have had contact with individuals who have contracted TB.*

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<sup>81</sup> The Republic of South Africa, "Mine Health and Safety Amendment Act No. 72 of 1997," 1997.

<sup>82</sup> The Republic of South Africa, "Mine Health and Safety Amendment Bill," 2024, [https://static.pmg.org.za/MHS\\_Amendment\\_Bill\\_2022\\_PDF.pdf](https://static.pmg.org.za/MHS_Amendment_Bill_2022_PDF.pdf).

<sup>83</sup> The Republic of South Africa, "Publication of Explanatory Summary of the Mine Health and Safety Amendment Bill 2024 NO. 5424," 2024, [https://www.gov.za/sites/default/files/gcis\\_document/202410/51390gon5424.pdf](https://www.gov.za/sites/default/files/gcis_document/202410/51390gon5424.pdf).

<sup>84</sup> The Republic of South Africa, "Guidance Note for the Management of Latent Tuberculosis in the South African Mining Industry (No. 5404)," 2024.

The Guidance Note focuses on four core components: screening, management, treatment, and management of adverse health effects.

- *Screening: High-risk populations must be screened for active TB before latent TB testing and be considered eligible for TB preventive therapy (TPT). This is critical to identifying and managing such cases effectively.*
- *Management: Employers are urged to scale up TPT programmes. Previously, TPT was limited to children under the age of five and individuals living with HIV. However, the Guidance Note emphasises the need to expand coverage to persons with significant TB exposure, particularly in a high-risk area of work.*
- *Treatment: The Guidance Note provides treatment protocols for individuals who have tested positive for latent TB, to ensure they receive appropriate care to prevent a progression to active TB.*
- *Monitoring of adverse health effects: Detailed protocols are provided for managing any adverse health effects associated with TPT.*

To ensure the effective rollout of this Guidance Note, mining companies must develop comprehensive implementation plans. These plans would outline the organisational structure, define the roles and responsibilities of those who will be part of the TB management efforts, and establish schedules and programmes for such TB management. Employers would be required to monitor and evaluate their TB control programmes annually, ensuring ongoing compliance with the Guidance Note.

The Guidance Note emphasises the importance of continuous monitoring and evaluation. Employers must maintain thorough internal records of their TB management efforts and conduct annual evaluations to measure the effectiveness of their programmes.”<sup>85</sup>

## 7.6. Guidance note for the management of gender-based violence, femicide (GBVF), safety and security challenge for women in the South African mining industry, No. 5098, 2024

“The Guidance Note<sup>86</sup> applies to the South African mining industry and mining communities and sets out specific roles and responsibilities for employers, managers and supervisors. It proposes that a zero-tolerance approach to GBVF in the workplace be adopted by developing and implementing policies and strategies to tackle the GBVF scourge, which also includes discrimination and sexual harassment. Employers are further expected to report on GBVF issues in relation to the development and implementation of a sexual harassment policy

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<sup>85</sup> from: Cliffe Dekker Hofmeyr., “Guidance Note for the Management of Latent Tuberculosis Infection in the South African Mining Industry,” 2024, <https://www.cliffedekkerhofmeyr.com/en/news/publications/2024/Practice/Employment/employment-law-alert-18-october-Guidance-Note-for-the-Management-of-Latent-Tuberculosis-Infection-in-the-South-African-Mining-Industry>.

<sup>86</sup> The Republic of South Africa, “Guidance Note for the Management of GBVF, Safety and Security Challenge for Women in the South African Mining Industry (No. 5098),” 2024.

*which must be displayed on notice boards; GBVF plans; the establishment of a GBVF database; and collaboration initiatives with the criminal justice system.*

*GBVF management structures and systems should be in place to address, amongst other things, anti-sexual harassment ambassadors; employee health and wellness services; the establishment of a gender monitoring and evaluation committee; the provision of properly illuminated ablution facilities that are lockable from the inside and specific change rooms for women in mining; reporting systems; and the implementation of a buddy system and the use of mobile radios for reporting purposes.*

*Managers and supervisors are similarly obligated to adhere to GBVF policies and procedures; participate in GBVF training; report on progress regarding GBVF annually; refer GBVF victims to relevant support systems; and ensure that systems to address the safety and security of women are in place and are periodically reviewed or assessed, including the monitoring and reporting of progress.*

*Part B of the Guidance Note requires an employer to develop an implementation plan to address its organisational structures, responsibilities of functionaries and programmes and schedules in light of the requirements in the Guidance Note (Annexure D includes a template to be used for the implementation plan). The implementation plan must be kept on record and related documents".<sup>87</sup>*

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<sup>87</sup> Cliffe Dekker Hofmeyr., "A Step in the Right Direction: Mining Sector Required to Develop a GBVF Implementation Plan," 2024, <https://www.cliffedekkerhofmeyr.com/en/news/publications/2024/Practice/Dispute/dispute-resolution-alert-6-August-2024-a-step-in-the-right-direction-mining-sector-required-to-develop-a-gbvf-implementation-plan>.

## 8. OTHER RELEVANT LEGISLATION

### 8.1. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (The Equality Act) is a comprehensive anti-discrimination law <sup>88</sup>. It concretizes Section 9(4) of the South African Constitution in prohibiting harassment, hate speech, and unfair discrimination in almost all spheres of life specifically including: race, gender, sex, pregnancy, family responsibility or status, marital status, ethnic or social origin, HIV/AIDS status, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. It also contains criteria that courts may apply to determine which other characteristics are prohibited grounds. Employment discrimination is however, addressed separately in the Employment Equality Act, 1998.

The Act is in line with the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of All Forms of Racial Discrimination. The Act also entrenches positive duties in respect of equality by calling on the state and all persons to promote substantive equality. As an overarching piece of legislation, the Act trumps all other pieces of legislation apart from the Constitution. In terms of health care services and benefits, the Act prohibits

*(b) Unfairly denying or refusing any person access to health care facilities or failing to make health care facilities accessible to any person.*

*(c) Refusing to provide emergency medical treatment to persons of particular groups identified by one or more of the prohibited grounds.*

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### 8.2. Disaster Management Act No. 57 of 2002 and National Disaster Management Policy Framework of 2005

The South African Disaster Management Act <sup>90</sup> integrates disaster risk reduction in all spheres of government through a decentralised approach. The Act calls for the development of a multi-sectoral and multi-disciplinary approach with the main emphasis to disaster risk reduction and post-disaster recovery. The resulting National Disaster Management Policy

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<sup>88</sup> The Republic of South Africa, "Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (as Amended in 2002, 2003, 2005, 2008)," 2000, <https://www.justice.gov.za/legislation/acts/2000-004.pdf>.

<sup>89</sup> The Republic of South Africa.

<sup>90</sup> Republic of South Africa, "Disaster Management Act 57 of 2002," 2020, [https://www.gov.za/sites/default/files/gcis\\_document/201409/a57-020.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a57-020.pdf).

Framework was published in 2005 <sup>91</sup>. It elaborates on various disaster risk management structures to be established within the tiers of government, with a drive towards the involvement of local “at risk” communities, the private sector and government parastatals such as the utilities companies, centres of research and the higher education sector as well as non-governmental, faith-based and community-based organisations and traditional leaders.

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<sup>91</sup> The Republic of South Africa, “National Disaster Management Policy Framework of 2005,” 2005.

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