



Migrating for Work Research Consortium



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SOCIAL SECURITY and SOCIAL PROTECTION OF MIGRANTS IN SADC

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PRESENTATION STRUCTURE



- The research focus of Work Package 4
- The theoretical context or problem
- Existing Research Summary
- What's on the Policy Agenda
- Future Steps/ Initial thoughts.



QUESTION: WHO IS RESPONSIBLE FOR THE SOCIAL RIGHTS AND SOCIAL PROTECTION OF MIGRANTS: MIGRANTS, THE STATE, EMPLOYERS, REGIONAL or GLOBAL AUTHORITIES?



- Q1) what is and should be the role of informal networks of social protection organised by migrants? (focus on SA)
- Q2) what limitations of access by migrants to government and employer social protection systems exist arising from discrimination in law or practice and what policy changes are suggested? (focus on SA)
- Q3) how might corporations (and governments) improve and more effectively implement systems of portable and exportable social security rights? (focus on SADC)
- Q4) what is the potential role of SADC in both fostering forms of social protection in labour exporting countries and in facilitating integration of migrants into SADC countries



The theoretical and policy problematic



- Social policy, including social protection is part of a *national* social contract.
- Social Protection is a *human right* that should be afforded also to cross border movers.
- How to “bring together rights for outsiders that arise from claims on the grounds of common humanity, and are therefore in principle non-negotiable, with insiders’ rights that are transactional and negotiable with the polity” (Bolderson 2011:232)



THE ROLE OF REGIONAL AND GLOBAL AUTHORITY



- “Given that country policies are shaped within democracies by national political concerns, the only way to fully address the social protection needs of migrants is for the further development of independently funded regional (and global) bodies settling upon policies in conformity with human rights”. (Deacon 2012)
- AU Social Policy Framework: Asks RECS to “Increase inter-governmental cross-border co-operation on policies, which address *social issues and social problems* such as poverty and social exclusion”.
- ILO 2012 (SPF): “Subject to their existing international obligations, Members should provide the basic social security guarantees referred to in this Recommendation to at least all residents and children, as defined in national laws and regulations”



Regional and Global Support for Social Protection of Refugees



- The EU has a Refugee Fund which exists “to support and encourage the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons”
- UNHCR is a ‘global’ social protection provider for refugees and displaced persons (in camps often)?
- The question is whether such regional and global bodies should/could help countries meet social protection needs of all migrants. A global social protection fund? A regional social protection fund?

Research Findings



- Q1. In the field of informal social protection of migrants by migrants there is Palmary I and Landau, L (2012: 193) which concludes that “migrant communities are creating their own informal systems of social protection”, in part because “the state fails to offer any form of social protection to migrants” and is often “the greatest threat to migrants livelihoods .. through ..the denial of services”. The informal systems need to be better understood and supported.

continued



- Q2. In the field of legal discrimination between different categories of migrants in each SADC country we have CICLASS, South Africa Trust publication of 2011 on *Access to Social Services for Non-Citizens and the Portability of Social Benefits*. The formal legal situation is clear (later slide): the informal practice is less systematically researched (Ref Work Package 3 on differential benefits for migrants)

continued



- Q3. In the policy area of social security rights portability there is Olivier's 2010 report which was the subject of the SAT's Dialogue on Portability held in March 2011 and now a new SAT project on the experiences of former mine workers reporting in 2013. The reasons for the lack of portability of pensions etc are well understood. "The existing unilateral regulatory arrangements and fragmented institutional set-up in both SA and the four neighbouring countries... are wholly insufficient" (Olivier 2010:83). Detailed reform options exist.



Reform Options for Portability (Luis Frota)



Continued



- Q4. In the field of the role of a strengthened regional role for SADC we have the experience of the EU and the speculative; "A Regional Tax on the Extraction Industry to Create a Sovereign Fund to Finance a Regional Basic Income Grant." (*UNESCO-UNU Chair, Working Papers 1*. 2012. Isobel Frye and Bob Deacon) which argues for independent funding.

An Example: South Africa (formally) (CICLASS 2011)



	Social Assist.	Pensions	Unemployment B	Health Care	Public Housing	Public School
Citizen	Yes	Yes	Yes	Yes	Yes	Yes
Permanent Res.	Yes	Yes	Yes	Yes	Yes	Yes
Temporary Res	No	Yes	No	Yes	No	No
Refugees	Yes (new)	No	Yes	Yes	No	Yes
Asylum Seekers	No	No	No	Yes	Yes	Yes
Undocumented	No	No	No	No?	No	No

Formally progressive in law: reality of front line discrimination



- South Africa's domestic **legal framework** provides for extensive social protection rights for R&AS....The 1998 Refugee Act, which is recognized as one of the most progressive pieces of refugee legislation in the world....(provides that)...refugees are entitled to virtually the same rights as citizens, apart from the right to vote, while asylum seekers enjoy wide-ranging rights including the right to basic health services, basic education for children, work and study... Makhema, M. (2009). (And recent law which extends social security rights to refugees)
- **In reality** there are many problems in the realization of this progressive policy. Asylum seekers have to obtain at least a document registering them as intending to make a claim. Many do not. In practice asylum seekers may be refused medical treatment by front line staff. The problems of implementation also mirror the problems of access to services of poor and vulnerable citizens; inadequate provision and lack of knowledge of rights to them. (Deacon, B and Nita S 2012)



Current SADC and South Africa Policy Agendas Converge?



- *SADC*. The Tripartite Labour and Employment meeting of SADC at Maputo in May 2013 approved the Draft Plan of Action on Labour Migration in SADC. Among its 6 points is access to benefits across borders, social rights harmonisation and pension and social security harmonisation.
- *Possible new South Africa Law on social protection of migrants*. Policy advice given to South Africa's DSD on updated legislation addressing the social security/assistance rights of diverse categories of migrants.
- *The EU's focus within its Development Policy on Social Protection*. The European Commission's Development Programme is now committed to large scale funding to improve social protection, including the Social Protection Floor, in Southern Africa (? Not South Africa?) (Research Paper by Olivier for EU reviews SP in all Sub Saharan Countries: awaiting release)

continued



- *The new ILO Social Protection Floor Recommendation (R202)*. This says a social floor should be available to all *residents* (as defined by countries) and all *children* (as defined by a country policy on what *age* people are children).
- The *MIDSA Ministerial Migration Dialogue* (July 10-11 2013) meeting received papers addressing the need for improvements in portability of benefits, heard about the establishment of a regional ex-miners association but concluded only that “Ministers further acknowledged that well-managed labour migration flows, protection of the rights of migrant workers and effective responses to irregular migration can lead to mutual benefits for both migrants and Member States”.
- A meeting was held on 18th July between the *South African Social Security Agency (SASSA)* and the Consortium for Refugees and Migrants (CORMSA) in South Africa to ‘discuss and share challenges facing refugees in accessing social grants’ which gave rise to....??



Next Research and policy Analysis Steps



- MiWORC WP3 survey includes questions about the access of foreign workers in the mining, agriculture and hospitality sectors to social security and other benefits from state, employer and private schemes.
- MiWORC WP4 plans work on
 - Q1: Informal mechanisms in SA: Ethnography and work with NGOs.
 - Q2: Discrimination in practice in SA. See WP3, plus lit review plus interviews with some service providers (social grants and health access?)
 - Q3: Portability: Awaits SAT results. Interviews with providers of 'portable' benefits. Discussions with SA Gov.
 - Q4: Regional Role: Discussions with SADC officials.
- Outcomes:
 - a) Literature & policy review identifying key knowledge and knowledge gaps and current policy challenges
 - b) Empirically informed research papers on Q1, Q2.
 - c) Policy analysis and policy dialogues reports re Q3, Q4.

References



Bolderson, H. (2011). The ethics of welfare provision for migrants: A case for equal treatment and the repositioning of welfare. *Journal of Social Policy*, 40 (2), 219-236.

Deacon, B (2012), '*The intersection of regional migration, regional social policy and regional integration*', Paper delivered at International conference on Regional governance of migration and social policy: Comparing European and African regional integration policies and practices. University of Pretoria, South Africa, April 19th-20th 2012

Deacon, B and Nita S (2013) 'Regional social integration and free movement across borders: The role of social policy in enabling and preventing access to social entitlements by cross-border movers: European Union and Southern Africa compared', *Regions and Cohesion*, 3, 1.

Frye I and Deacon B (2011), "*A Regional Tax on the Extraction Industry to Create a Sovereign Fund to Finance a Regional Basic Income Grant.*" UNESCO-UNU Chair Working Paper www.ucrm.org

Mpedi L G and Smit N (eds) (2011), *Access to Social Services for non-Citizens and the Portability of Social Benefits within the SADC*, CICLASS and SAT, Sun Press, South Africa.

Makhema, M. (2009). *Social protection for refugees and asylum seekers in the Southern Africa Development Community (SADC)*. Background Paper for joint IDS/World. Social Protection Discussion Paper, No. 0906, Washington DC: World Bank.

Olivier M (2010) *Access to South African Social Security Benefits by Migrant Workers from L, M, S, Z and their Survivors*, International Institute for Social Law and Policy.

Palmary I and Landau L, 'Interviews of SADC Migrants...', in Mpedi and Smit (2011)

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