

# Immigrants at sharp end of social assistance

It seems that some South Africans have the mistaken idea that migrants to South Africa get more benefits than citizens. **Edwin Kaseke** shows that migrants are discriminated against when it comes to social assistance and social security by the Southern African Development Community (SADC) Treaty to which South Africa is a signatory.

**T**he world is witnessing the growing movement of people across national borders. The International Labour Organization (ILO) estimates that 175 million people are living outside their countries of origin, and that of these, 90 million are migrant workers.

This is largely because of globalisation which has created stronger connections between nations, underscoring the growing artificiality of national borders.

## REASONS FOR MIGRATION

The main motives for migration are political and economic, including flight from political oppression, persecution, war and violence. Those who migrate for political reasons usually enter the host country as asylum-seekers and may eventually win refugee status.

But economic motives probably account for most movement. M Stepanek and J Skorpikin in their article 'Social security in a long life society' argue that "the chief motive for the majority of migrants is without doubt the pursuit of better living standards for themselves and for their families". Migrants cross national borders to escape poverty, unemployment, and high living costs.

They target countries with stronger economies and with labour or skills shortages.

In the SADC, the flow of migrants is largely towards Botswana, Namibia and South Africa because they have relatively strong economies and skills shortages.

## RIGHT TO SOCIAL SECURITY

The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights confer the right to social security on migrants.

The Declaration of Human Rights enshrines the right to work, social security and a standard of living adequate for health and well-being. Article 9 of the International Covenant on Economic, Social and Cultural Rights of 1966 provides for the right to social security, including social insurance. The principle of non-discrimination is also enshrined in Article 68 of the ILO's Social Security (Minimum Standards) Convention, 120.

The SADC Code on Social Security encourages member states to extend social protection to non-citizens. However, this is not reinforced by the SADC Treaty, which is silent on discrimination based on nationality.

The Treaty's discrimination undermines regional integration. It is unfortunate that it fails to promote the integration of migrants in the social security systems of host countries.

To link migration and social security, national constitutions should enshrine the right to social security for all living and working in a country, and make it enforceable. The constitutions of most SADC states fail to do this.

Government immigration policies also have a role to play. When the immigration climate is favourable and officially encouraged, the natural tendency of the law is to strengthen the protection of migrants. The clearest example is the European Union, where freedom of movement is enshrined in the EU Treaty.

The SADC, by contrast, has struggled to persuade member states to accept people's freedom of movement, which suggests a reluctance to encourage migration. Countries with skills shortages tend to be highly selective. They prefer to encourage the immigration of people with skills they require, who they classify as legal migrants and to whom they grant work permits.

William Matlala



South African and Zimbabwean metal workers at Safeline discussing recent xenophobic attacks.



A Mozambican worker packs his goods to return home.

### ACCESSING SOCIAL SECURITY

Access to social security depends on migrants' legal status, including whether they have been officially registered as asylum-seekers. Migrants are allowed to participate in social insurance schemes if they fall into groups covered by social insurance. But social security laws often call upon nationality and restrict access. In South Africa, for example, non-citizens are not allowed to draw unemployment insurance benefits if they have to return to their countries of origin when their contracts expire.

Territorial restrictions also make it difficult for migrant workers to receive benefits in their countries of origin. This is reflected in South Africa's Compensation for Occupational Injuries and Diseases Act which denies pensions to beneficiaries living outside South Africa or who have been out of the country for more than six months. South Africa discriminates against migrant workers and makes a lump sum payment.

Because benefits in the host country are not portable, most migrants and non-citizens lose their rights to social security when they return to their own countries. The reason for this is the absence of bilateral or international social security agreements in the SADC, meaning that social security provision is not coordinated.

There are some exceptions, including the agreement between Zambia and Malawi in the form of a

Joint Permanent Commission. This has contributed to the maintenance of social security rights for Malawian nationals working in Zambia. Presently, about 1 000 Malawians receive benefits from the Zambian authorities.

South Africa and Mozambique also have an agreement which facilitates the payment of benefits in Mozambique to Mozambicans who are injured or contracted diseases while employed in South Africa. However, benefits under this agreement rarely reach the beneficiaries.

### ACCESSING SOCIAL ASSISTANCE

Social assistance, or benefits, is also not given to migrants, as most countries impose a nationality condition. The same applies to Europe, where in half the countries of the European Union non-contributory benefits are available to nationals only.

As a rule, immigration policies deny entry to people who cannot show they can support themselves. Countries are reluctant to admit migrants who they think will be a burden on the state, and the host countries generally deport migrants who become poverty stricken and try to access social assistance.

This is the practice in Denmark, for example, where migrants who try to claim social assistance after living in the country for less than three years face deportation.

It is now common practice for countries to combine nationality and

residence conditions in order to access social assistance. The residence condition is an attempt to link access to social assistance to immigration status - migrants who have lived in the host country legally for a specified period are eligible for social assistance.

In SADC countries, the nationality condition is widespread. In Botswana, eligibility for assistance under the orphan care programme is open to all Batswana children under the age of 18 but non-Batswana children are not eligible. In Namibia, migrants are excluded from old age pensions by a nationality condition.

In South Africa, non-citizens with permanent residence can access social assistance, and refugees are entitled to assistance in line with the Geneva Convention. However, non-citizens with permanent residence only gained access to assistance as a result of a legal challenge by Khosa and others to the Minister of Social Development. The Constitutional Court ruled that permanent residents have the same right to social assistance as citizens.

Governments do not give temporary residents social assistance, despite them often needing more protection than permanent residents. In times of crisis, they have nothing to fall back on.

Some countries, including Zimbabwe, give temporary assistance to non-citizens while they are waiting for repatriation to countries of origin. The aim is to avoid long-term financial burden on the state by shifting it back to the home country.

Similarly, undocumented migrants, whose numbers are growing in Botswana and South Africa, have no access to social assistance. They cannot attempt to access social assistance, as this exposes them to deportation.

Asylum-seekers are also unable to access social assistance, although governments provide them with

survival assistance while considering their applications for refugee status.

Governments fear that giving undocumented migrants and asylum-seekers assistance will encourage migration to their countries.

#### HUMAN RIGHTS APPROACH

To enable migrants to access social security in host countries in SADC, national social security laws have to be harmonised with Article 68 of ILO Convention 102 and with the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights. It is critical for member states to ratify these as it would pave the way for a human rights approach.

It is important to remove barriers created by national social security laws which prevent legal migrants from participating in social insurance schemes. National social security laws must also allow migrants to

receive benefits in their own countries. To facilitate this, SADC states should sign bilateral and multilateral social security coordination agreements allowing the export of benefits.

Governments must also give attention to social assistance schemes which are largely inaccessible to migrants because of nationality conditions. The conditions for access to social assistance should be residence rather than nationality, as this would take account of the emergence of global citizenship.

Legal migrants with temporary residence should also get social assistance, to guarantee the sanctity of human life and the dignity of all people, regardless of immigration status. To protect life, illegal migrants should also be eligible for emergency assistance.

Social assistance for migrants may be a financial burden on host countries and so it may react by

deporting people. In addition, compassionate treatment may encourage migration.

This is a dilemma faced by host countries, particularly when the migration flow is large. What this suggests is that access to social security should not be determined by immigration status, but the form of assistance could be determined by immigration status.

*This is an edited paper from the International Conference on Migration and Social Security in the SADC organised by the Centre for International and Comparative Labour and Social Security Law, and the Friedrich Ebert Stiftung in October 2007.*

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