ACCESS TO SOCIAL SERVICES FOR NON-CITIZENS AND THE PORTABILITY OF SOCIAL BENEFITS WITHIN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

Malawi Country Report

A REPORT TO THE WORLD BANK

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SETTING THE CONTEXT

This report presents findings of a World Bank commissioned research project exploring the access to particular social services/forms of social security and portability for international migrants living and working within the Southern African Development Community (SADC). Overseen and managed by the Centre for International and Comparative Labour and Social Security Law (CICLASS) at the University of Johannesburg, the research project was specifically carried out in Botswana, Malawi, Namibia, South Africa and Zambia. The Malawi component was carried out by the Institute for Social Policy Research and Social Empowerment (IPRSE), a local think tank specialising in systematic policy analysis and evidence based advocacy.

The research design for the study was entirely qualitative. The data used to address the Terms of Reference (ToRs) was collected in three main ways. Extensive literature review was carried out focusing on policy documents and legal enactments guiding the provision of social services and social security in the country. Scholarly literature dealing with issues of interest to this project in the Malawi context is non-existent. The literature review exercise was further complemented with a series of key informant interviews with relevant government officials, trade unions and civil society institutions. Finally the fieldwork also involved a brief visit to one of the refugee camps situated about 35kms from Lilongwe, the capital city of Malawi for interviews with some refugees; interviews with some permanent residents and asylum seekers. These interviews were guided by the ToRs focusing mainly on the access groups of people have to social services and social security.

Malawi is one of the smallest countries within SADC covering 94,276 sq kms. It shares borders with Zambia to the West, Tanzania to the North and surrounded by Mozambique in the South. According to the last Population and Housing Census (PHC) held in 1998, Malawi had 9.9 million people. Currently the population is estimated at about 12 million. It is also one of the least urbanised countries, with the urban population estimated at only 18%.
The number of migrants entering Malawi is reportedly very small, (to send the figure by tomorrow) even though the number is rapidly increasing. According to immigration officials, there are essentially four kinds of legal immigrants in Malawi. These are Permanent Resident Permit (PRP) holders, Business Resident Permit (BRP) holders, Temporary Resident Permit (TRP) holders, and Student Permit (SP) holders.¹ The last official count of these categories in 1997 indicated that there were 150 PRPs, 184 BRPs, 1260 TRPs and 197 SPs. Data for the current state of affairs are not readily available.

There are no figures for undocumented or clandestine immigrants, even though there is a general feeling among officials from the Ministry of Home Affairs and Department of Immigration that the number is on the increase.² It is extremely difficult to systematically track the number of undocumented immigrants because of the absence of a national identification and registration system. The number of refugees in Malawi was at its peak during the Mozambican civil war. The United Nations High Commission for Refugees (UNHCR) recorded the number of Mozambican refugees at 1057314 in 1993. Almost all the Mozambican refugees have now voluntarily returned home. The number of refugees and asylum seekers picked up again toward the end of the 1990s following the destabilisation and enduring civil and political strife in the great lakes region. The number of refuges currently, according to the UNCHR, is 9200.

Malawi is one of the poorest countries in the world, despite undergoing significant economic and political reforms. It is one of the poorest countries in the world ‘whether judged by gross national product (GNP) per capita, the United Nations Development Programme’s Human Development Index or its Human Poverty Index’.³ The National Statistical Office (NSO) estimated the country’s per capita income at US$ 140 in 1994, which dropped to US$ 126 in 1998 and subsequently peaked up to, and has stabilised at around, US$ 190 since 2000.⁴ The progress in terms of human development has not been satisfactory either. In the last decade, Malawi’s position has been among the bottom ten

³ Jenkins & Tsoka, 2003: 119.
countries on the ladder of prosperity. It has slumped from position 138 out of 178 when the Human Development Index (HDI) was inaugurated in 1990, to position 166 out of 178 nations in 2000. This underlies a steady decline in health care delivery, education, economic growth and general living standards.

This report is organised as follows: Chapter I compile matrices on the accessibility of social services and assistance to the different categories of people as specified in the ToRs. Chapter II provides an overview of social services/forms of social security in the country, while chapter III evaluates accessibility of social services or forms of social security for citizens and categories of non-citizens. Chapter IV discusses the portability of certain benefits and chapter V offers some conclusions with reference to the main problems, gaps and shortcomings as well as recommendations and priorities.
CHAPTER ONE: MATRICES ON ACCESS TO SOCIAL SERVICE

1.1 Introduction

This chapter provides matrices on the access to social services/forms of social security in the country.

1.2 Access to Social Services/Social Security

Matrix A

<table>
<thead>
<tr>
<th>Categories of Persons covered</th>
<th>Social Assistance</th>
<th>Old age pension (public, occupational, Private)</th>
<th>Disability pension (public, occupational, Private)</th>
<th>Unemployment (public, Occupational, Private)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens</td>
<td>Provided only through the Social Welfare Department</td>
<td>Public pension are not available in the country</td>
<td>Public – not available</td>
<td>Services in the form of pensions, gratuity and severance available to the unemployed as a result of retirement or retrenchment</td>
</tr>
<tr>
<td></td>
<td>Home based care for orphans and vulnerable children</td>
<td>Occupational pensions are provided in the form of severance allowance and Gratuity</td>
<td>Occupational only provided if medically proved that disability occurred in the line of duty</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Early childhood development (preschool)</td>
<td>Pensions from Private Companies can only be provided as part of severance/gratuity or pension</td>
<td>Private: only provided if medically proved that disability occurred in the line of duty or if it is part of the contractual agreement between the employer and employee</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Probation for Juveniles</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent Residents</td>
<td>Adoption</td>
<td>Occupational gratuity plus severance allowance as provided for in the employment Act</td>
<td>Occupational severance allowance is provided if proven that the disability occurred as a result of exposure to workplace or if it is part of the contract</td>
<td>Services in the form of pensions, gratuity and severance available to those unemployed as a result of retirement or retrenchment</td>
</tr>
<tr>
<td></td>
<td>Foster care Security</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Temporary residents (including contract migrants)</th>
<th>Repatriation Adoption Security</th>
<th>Depends on the length of service and if the government approves their contract from more than the recommended agreement</th>
<th>Not properly documented, but can access the pensions if provided for in the contract</th>
<th>Permits for temporary residence are only allowed if the individual comes into the country to work or invest. If unemployed they get deported back to their country of origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refugees</td>
<td>Security Water and sanitation</td>
<td>Service not available</td>
<td>Service not available</td>
<td>Not eligible</td>
</tr>
<tr>
<td>Asylum Seekers</td>
<td>Repatriation Security</td>
<td>Service not available</td>
<td>Service not available</td>
<td>Not eligible</td>
</tr>
<tr>
<td>Undocumented non Citizens</td>
<td>Information not available</td>
<td>Information not available</td>
<td>Information not available</td>
<td>Not eligible</td>
</tr>
</tbody>
</table>

### 1.3 Access to Social Services/Social Security

**Repatriation**

**Matrix B**

<table>
<thead>
<tr>
<th>Categories of Persons covered</th>
<th>HealthCare (public, occupational, Private)</th>
<th>Sickness benefits (public, occupational, Private)</th>
<th>Public Housing</th>
<th>Schooling (public, Private)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens</td>
<td>Free Public health services Occupational health is provided at the discretion of the employer Private healthcare accessible</td>
<td>Public – not available Occupational; provided if proven medically that the sickness was caused as a result of exposure to the working environment Sickness benefits from non work-related illnesses are short, usually not exceeding 6 months Private sickness benefits not available</td>
<td>Currently no public housing schemes available in the country</td>
<td>Free Public Primary Schools Contributory Public Secondary Schools Fee paying Private Primary and Secondary Schools</td>
</tr>
<tr>
<td>Permanent Residents</td>
<td>Public health care accessible upon satisfying legal requirement such as production of an</td>
<td>Public benefits not available Occupational</td>
<td></td>
<td>Free Public Primary Schools Contributory</td>
</tr>
<tr>
<td>Identity Card</td>
<td>Occupational health care provided at the employer’s discretion</td>
<td>Provided if proven medically that the sickness was caused as a result of exposure to the working environment</td>
<td>Public housing not available in the country</td>
<td>Secondary Schools</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Private health care accessible</td>
<td></td>
<td>Private sickness benefits may be accessed if provided in the employment contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public housing not available in the country</td>
<td></td>
<td>Public sickness benefits not yet documented</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee paying Private Primary and Secondary Schools</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary residents (including contract migrants)</td>
<td>Public health care only available during emergencies</td>
<td>Public sickness benefits not available</td>
<td>Public housing not available in the country</td>
<td>Public schools not accessible</td>
</tr>
<tr>
<td>Occupational health care provided as a condition of the contract with the employer/local authorities</td>
<td>Occupational sickness benefits can be provided if proven medically that the sickness was caused as a result of exposure to the working environment</td>
<td>Private sickness benefits not yet documented</td>
<td></td>
<td>Occupational schools provided as part of the contract</td>
</tr>
<tr>
<td>Private health care accessible</td>
<td></td>
<td></td>
<td></td>
<td>Private schools accessible</td>
</tr>
<tr>
<td>Public schools not accessible</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugees</td>
<td>Public healthcare is accessible in the camps of residence</td>
<td>Provided as part of the social protection package</td>
<td>Special Public schools are provided for refugees in the camps</td>
<td></td>
</tr>
<tr>
<td>Occupational health care not available</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private healthcare is accessible</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asylum Seekers</td>
<td>Public healthcare provided in the camps</td>
<td>Sickness benefits are provided based on the status of the individual</td>
<td>Provided in the camps or other designated places as provided for by government</td>
<td>They can access public schools as part of the protection arrangement</td>
</tr>
<tr>
<td>Occupational health care not provided</td>
<td></td>
<td></td>
<td></td>
<td>Private schools accessible</td>
</tr>
<tr>
<td>Private health care can be accessed</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Undocumented non Citizens</td>
<td>No information available</td>
<td>No information available</td>
<td>No information available</td>
<td>Not information available</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.4  (Ex)Portability of Benefits

Matrix C

<table>
<thead>
<tr>
<th>Categories of Persons covered</th>
<th>Old age pension (public, occupational and Private)</th>
<th>Disability pension (public, occupational, Private)</th>
<th>Health care (public, occupational, Private)</th>
<th>Sickness benefits (public, Occupational, Private)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens</td>
<td>Not legally allowed/does not apply</td>
<td>No information available</td>
<td>information not available</td>
<td>Information not available</td>
</tr>
<tr>
<td>Permanent Residents</td>
<td>Occupational pensions can be accessed outside the country</td>
<td>service is not available</td>
<td>service is not available</td>
<td>service is not available</td>
</tr>
<tr>
<td>Temporary residents</td>
<td>Service not available</td>
<td>Service not available</td>
<td>Service not available</td>
<td>Service not available</td>
</tr>
<tr>
<td>(including contract migrants)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refugees</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
</tr>
<tr>
<td>Asylum Seekers</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
<td>Not allowed by law</td>
</tr>
<tr>
<td>Undocumented non Citizens</td>
<td>Information on undocumented citizens not available</td>
<td>Information on undocumented citizens not available</td>
<td>Information on undocumented citizens not available</td>
<td>Information on undocumented citizens not available</td>
</tr>
</tbody>
</table>
CHAPTER TWO: OVERVIEW OF SOCIAL SERVICES/FORMS OF SOCIAL SECURITY

2.1 Introduction

The major challenge with social services and social security systems in Malawi has been that almost the entire government machinery was operating without viable policy frameworks until the mid 1990s. Having clear policy guidelines and frameworks at the ministerial and departmental level is quite a recent development. Most of the ministries and departments are currently busy developing policy guidelines and frameworks for their mandates. This chapter outlines the state of affairs in terms of social security and services.

2.2 Social Assistance

Basically social assistance refers to help provided to extremely poor individuals and households. Social assistance to the people of Malawi is provided by the Ministry of Women and Child Development through the Department of Social Welfare. Unlike other countries within the sub region, there are no specific grants that are given out to extremely poor individuals and households. The major form of social assistance provided by the Department is in form of technical support to the running of Community-Based Organisations (CBOs) caring for orphans and vulnerable children through Community-Based Child Care Centres (CBCCs). The Department also attempts to link the CBOs with potential funding agencies. This has become one of the core activities of the Department following the worsening of the HIV/AIDS pandemic. About 1 million people are infected with HIV/AIDS; while about 70,000 children are living with HIV/AIDS. The number of orphans is projected to reach 1,150,000 by 2010.5

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5 Government of Malawi (GoM), 2005.
The Department is also involved in providing stranded citizens repatriation services back to their home villages. There is usually a very high rate of temporary rural to urban migration mostly after the harvest period, as people seek temporary employment opportunities. Often those who do not manage to get jobs have problems to make it back to their respective home villages, and end up destitute. The Department offers repatriation services to whoever becomes destitute in the urban areas. The Department also facilitates the rehabilitation of delinquent juveniles. Through the Department, the youth are sent to relevant rehabilitation centres. In addition, the Department also provides education bursary schemes to children in extremely poor households at both primary and secondary school levels. This programme has, however, been quite ad hoc and often highly politicised mainly because of the lack of a viable policy framework for the identification of potential beneficiaries.

2.3 National and Occupational Old Age and Disability Pension

According to the officials of Ministry of Labour and Trade Unions, there is no pension Act that provides a legal framework for the disbursement of occupational old age pensions. This means that old age occupational pension is at the discretion of the employer. The Employment Act provides for gratuity payable to employees upon reaching the retirement age which ranges from 55-70 depending on the sector of employment. Gratuity is widely referred to as pension benefits that accrue to the employee at the time of retirement to which both the employer and employee contribute. However, when the employee’s services are terminated on the basis of mutual agreement between the employee and the employer, the employee is entitled to a severance allowance provided for by section 35 of the Employment Act and the gratuity contributions up to the time of his/her dismissal.

A proposal has been tabled in Parliament to amend the Employment Act in order to ensure that employees are only entitled to either severance pay or gratuity if their services are terminated as a result of redundancy or retrenchment; death of the employee, mental or physical disability that prevents the employee from working; due to common
difficulties, technical, standard or operational requirements of the employer; or where
employment is terminated unilaterally by the employer. The proposal is that employees
should only be entitled either to the severance or gratuity and not both, depending on
which of the two is greater. This amendment has been motivated by the court’s ruling in
the case of Kawale and Others vs Commercial Bank of Malawi in which the court ruled
that employees are entitled to both severance and gratuity upon being declared redundant.
Kawale and others had only been given gratuity by the bank.

There is currently pressure to amend the Employment Act on the basis that entitling the
employees to both gratuity and severance allowances is proving to be a deterrent to
investors who consider the current practice as being exorbitant. Until the proper
amendment is enacted, employees are entitled to both gratuity and severance pay. When
employees get their gratuity, they have two options. They can either get a lump sum or
get a greater proportion as a lump sum at retirement and receive a monthly fixed sum
either through their banks or through the Treasury Cashiers office in their district of
residence.

National old age pension does not exist in Malawi. When people grow old without
working in order to benefit from occupational old age pension, they have to fend for
themselves or be cared for by the extended family system - usually their children.
Previously the extended family system was quite useful but this has declined in recent
years due to generalised shocks experienced by the country. Frequent occurrences of
flash floods, droughts and rollercoaster inflation have decimated the traditional support
systems to effectively function as shock absorber for senior citizens. If the children do
not have the means to provide for the elderly, then they are on their own.

There are no disability grants to which all people with disabilities are eligible. The only
exception is for people who become disabled in the course of duty. They only become
entitled to the disability pension when there is medical proof that the disability resulted
directly from their employment.
2.4 Unemployment Benefits

Unemployment benefits do not exist in the country. People who are out of employment or out of school and are actively searching for employment or do not have the potential to be employed gainfully are not entitled to any benefits. They have to provide for themselves.

2.5 Health Care

Both public and private health care systems exist. Public health care is free at the point of delivery and accessible to all citizens. The challenge in recent years is that the quality of health care has gone down due to financial difficulties following the implementation of the structural adjustment programmes. Private health care is quite expensive and accessible to a small minority of the population who have the ability to pay. Public health insurance does not exist. Private health insurance exists but only affordable to a few people, often through their employers. The dominant private medical insurance scheme is the Medical Aid Society of Malawi (MASM). The larger majority remains uncovered and their lives are generally in great danger given the declining standards of the public health care system.

2.6 Sickness Benefits

There are no legal provisions for particular benefits that should be provided to an individual by virtue of them being sick expect social support that might in certain cases be provided by charitable groups.

Employees within the public service are entitled to long-term sickness benefits if it is proven beyond reasonable doubt that the sickness was a direct consequence of the work. These benefits range from the normal salary and other support services such as medical costs and transportation. The sickness benefits from non work-related illnesses are short, usually not exceeding 6 months in most non-state institutions. For civil servants, there is a one year ceiling, although in practice it is not observed. Employees get the benefits as long as they live.

Some private companies, depending on the seniority of the individuals involved and the internal employment rules and incentives do provide a full salary to their employees for
the duration of the sickness on top of paying for all the medical bills. However, information from the Malawi Congress of Trade Unions (MCTU) reveal that there are many cases of people losing their jobs for being absent from work even if the absences is caused by sickness. This usually happens to non professional workers who also form a large part of the national labour force.

2.7 Public Housing

Public housing schemes do not exist in the country except through organisations such as Habitat for Humanity and the Federation of the Homeless. However, the scale of these initiatives is very limited to have a discernible impact on the housing situation in the country. Civil Servants had access to decent subsidised housing through the Malawi Housing Cooperation (MHC), but these housing units are no longer available. MHC has sold a large proportion of its housing units and the few that are available are now accessible at almost market rates. Some ad hoc politically motivated public housing projects targeted at the elderly have been launched, but they have not been sustained beyond the political agendas of the politicians involved.

2.8 Public Schools

The school system is both public and private. The private sector education services have dramatically expanded since the mid 1990, following the implementation of the structural adjustment programmes. These have expanded at all levels including tertiary. However, private schools only cater for a small minority of the population who can afford to pay. The ability of Malawians to afford private sector educational services is very limited. Up to 6.7 million people (52%) live below the poverty line and as many as 2.7 million can not afford to meet their daily needs. Early childhood development services are provided by the Ministry of Women and Child Development through the Department of Social Welfare. Public primary and secondary education are provided by the Ministry of Education. Primary school education is free since the mid 1990. Pupils in secondary schools and students in the public universities of Malawi and Mzuzu colleges pay what are termed ‘contributions’ towards their education. This is some kind of a cost sharing
arrangement. However, in the wake of financial difficulties resulting from the negative repercussions of structural adjustment programmes, public universities are taking on a new category of fee paying students on a non-residential basis as a means of shoring up their finances.
CHAPTER THREE: ACCESS TO SOCIAL SERVICES/FORMS OF SOCIAL SECURITY FOR CITIZENS AND CATEGORIES OF NON-CITIZENS

3.1 Introduction

Having examined the social services/forms of social security in the country, this chapter explores accessibility of these services to citizens and categories on non-citizens. The main objective is to explore the conditions under which these services are accessible or not, to citizens and non-citizens.

3.2 Citizens

There are very limited social assistance services available to citizens. This is the case because the systems of social service provision and social security are not yet fully developed. Perhaps the situation is going to change quite dramatically once the Social Protection Policy currently under way is finalised. The challenge with the Policy at the moment is that it is basically focusing its strategies on providing social assistance to the following categories of people:

Destitute: households that have few assets, little or no land and no labour, those that are beset by chronic illness and are child/female/elderly headed with high dependency ratio.

Ultra-Poor: these are households that have few assets, little or no land, little of no valuable assets, have some labour capacity and are not able to purchase essential non-food items such as soap, clothing, school utensils)

Moderately poor: these are households that fall above the ultra poverty line but are below the poverty line of USD1 per day. These include households that are able to do some productive work, they can respond to labour based projects and programs to overcome their poverty and hunger.

Some of the major aspects noticeably missing in the policy are areas that address formal employment related benefits as well as basic packages of child benefit, old age pensions and disability grants as required by the International Labour Organization.
Details of citizen’s access to social services are outlined in Matrix A. It has to be emphasised, as pointed out in the previous chapter, that Malawians in formal employment will be entitled to severance allowances only as per the following schedule:

<table>
<thead>
<tr>
<th>Length of Service</th>
<th>Severance Allowance payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not less than one year, but not exceeding five years</td>
<td>Two weeks’ wages for each completed year of service up to and including the fifth year</td>
</tr>
<tr>
<td>Exceeding five years, but not exceeding ten years</td>
<td>Three weeks’ wages for each completed year of service up to and including the tenth year</td>
</tr>
<tr>
<td>Exceeding ten years</td>
<td>Four weeks’ wages for each completed year of service from the eleventh year onwards.</td>
</tr>
</tbody>
</table>

Under the new system, if the employee’s contract is terminated due to redundancy, retrenchment, death, mental or physical disability, retirement or due to economic difficulties, technical, structural or operational requirements of the employer or unilaterally by the employer the following three scenarios are applied:

1. The employee will not be entitled to pension benefit, gratuity or any other terminal benefits but shall be entitled to be paid at the time of termination a severance allowance to be calculated according to the above schedule.

2. The employee may be entitled to a pension benefit which is less than the severance allowance that he would be entitled to under the schedule plus the difference between the pension benefit and the severance allowance they would have otherwise have been entitled to.

3. An employee may be entitled to pension benefits, gratuity or any other terminal benefits which exceeds severance allowance as calculated based on the schedule but shall not be entitled to a severance allowance.

Currently civil servants are no longer entitled to public housing. Subsidised housing that was available to civil servants through the Malawi Housing Corporation (MHC) has been
discontinued. Most of these housing units have been sold out to sitting tenants and the remaining ones are let out at almost market rates.

3.3 Permanent Residents

There are a number of services that permanent residents are entitled to. In terms of social services, the Ministry of Women and Child Development, through the Department of Social Welfare, provides adoption and foster care services to permanent residents as well as repatriation to their countries. This is usually in the case of estranged spouses who had been married to a Malawian national.

Permanent residents face the same conditions as citizens when it comes to old age pension, disability pension and unemployment benefits. This is also the case with free health care, sickness benefits, public housing and schooling. The only exception is that when it comes to health care and schooling, permanent residents can only access these services on production of acceptable identification documents. Perhaps more importantly, permanent residents are availed the same standards of services as provided to citizens. This is emphasised when the quality of service provision in their countries of origin is higher than in Malawi.

3.4 Temporary Residents

Temporary residents are not entitled to most of the social services except those provided for in their contracts of employment. They can, however, access the public health care system only in cases of emergency. They are eligible for the private health care system. Temporary residents may also access Public School but under normal circumstance most of these prefer private schools due to among other things to factors such as communication and education standards.
3.5 Refugees

Refugees are a special group of non-citizens, especially in terms of how they are treated. According to the 1989 Refugee Act, refugees are required to stay in camps where their needs are attended to with assistance from UNHCR. Through the camps, refugees are provided with access to basic education and health services. They are also provided with vocational skills training, including income-generating activities.

Refugees are not allowed to attend public schools outside the camps at primary level. Government provides schools for refugees within the camps. On the other hand children from the local communities (citizens) closer to the camps are allowed to attend primary school within the camps. Refugees are not however eligible to enrol for tertiary education upon successfully completing secondary school education. The current arrangement is that qualified refugees for university education are sent to Canada through the World University Service of Canada (WUSC) scholarship scheme. There are also opportunities for scholarships for secondary education. Refugees are not allowed to work within the formal sector in the country; as such they are not entitled to any employment-related benefits.

3.6 Asylum Seekers

Asylum seekers are entitled to security and repatriation under social assistance. They are eligible for public health care if it is an integral part of their protection clause. This is also the case with public schooling. They are, however, eligible for private medical and education services.

3.7 Undocumented non-Citizens

While there is a feeling that the number of undocumented migrants is on the rise, there is no documentation on their existence. The law in Malawi requires that all migrants should register and apply for a resident or work permit with the Immigration department.
Technically therefore, all undocumented non citizens living in the country are doing so illegally and if found are usually detained and deported back to their countries of origin. In fact these illegal immigrants enjoy some invisible privileges that are acquired on their behalf by the people who ‘import’ them into the country.

The lack of a Registration Act in Malawi is the major shortfall as far as credible statistics on the undocumented non citizens are concerned. It is also complex on the part of employers to verify whether one is indeed a Malawian or not in the absence of an Identification Certificate (Birth Certificates in Malawi are not mandatory). This situation therefore provides room for undocumented non citizens to blend in with the rest of the population and get employment both in the formal and informal sectors without questions being raised. Although employment contracts provide for information on ones nationality, usually it is problematic for the employer to authenticate any information provided by the applicant in the absence of an identification card. The Malawi Congress of Trade Unions suspects that there is an increase in the number of undocumented non citizens in the unregulated informal sector mostly from West African countries such as Nigeria.
CHAPTER FOUR: PORTABILITY OF CERTAIN BENEFITS

4.1 Introduction

This chapter discusses the extent to which benefits are (ex) portable between Malawi and other countries.

4.2 Portability in Perspective

Portability of benefits is almost non-existent for all categories of people, except for permanent residents. For this category, the (ex)portability of benefits is only applicable to occupational pension (gratuity). However, this is only allowed for a maximum period of 12 months after an individual leaves the country. At the expiry of this period, the permanent resident status is revoked.

Refugees and asylum seekers lose their entitlements immediately after they leave the country. Retired Malawians returning from countries such as South Africa and Zimbabwe (in particular those who worked in mines) are able to access their pensions through the Ministry of Labour for as long as their pension entitlements last. Malawi has a lot of people who worked in the Gold Mines in South Africa and Zimbabwe through a multilateral agreement that established the Temporary Employment Bureau for Africans (TEBA). Under this agreement Malawi was allowed to export labour to South Africa and Zimbabwe. This agreement came to an end in the late 1980s. However even though there is a provision for such people to receive their money through the ministry of Labour, it was reported that in reality most people spent two to three years before they could access their money. The problem becomes worse when the owner of the money dies and someone from the family has to get the money instead. Upon cross interviewing the ministry responsible, it was noted that there are a number of factors that contribute to this problem such as bureaucratic bottlenecks, Jealousy, lack of capacity (professionalism) within the ministry and deviation of the funds to other ministerial activities.
On the other hand expatriates who came to work in Malawi are allowed

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

The system of social services and social security is not well developed. There are numerous gaps that have not been taken care of. A social protection policy is currently being developed. It is expected to be completed by the end of this year. This policy will address some of the gaps in the existing system of social services and social security. The challenge however is that the focus of the policy is disproportionately focussing on social assistance to rural households that fall within the categories of ultra poor (22% of the population) and moderate poor households (30% of the total population).

The major gap in employment-related benefits is the absence of a Pensions Act. This leaves the welfare of employees largely to the discretion of employers. The situation is worsened by disagreements between employers and trade unions on the appropriate levels of compensation for employees in terms of severance pay and gratuity. Amendments to the Employment Act, as indicated above, have been proposed but they are yet to be tabled in Parliament for ratification. This is an indication that there is an urgent need for the enactment of a Pensions Act that shall serve as an overall guiding framework.

There is also need to re-examine the Refugees Act. This exercise would, among other things, help to consider how to integrate refugees into society for the benefit of the country. The refugees are taught income-generating skills, yet they are restricted to camps. Similarly, some have technical and professional skills that could be tapped in the developmental endeavours of the country if refugees are integrated into society. It is a paradox that children of refugees are restricted to education services available in camps at primary level, yet up to 60% of the population in these schools are nationals. The integration of the refugees, especially now that the numbers are very limited, into society would be beneficial to the country. Assistance directed at refugees would be used to improve services generally in the country in the areas of health and education.
There is a need to clarify statutes dealing with the different categories of non-citizens. For instance, the law is silent on the employment of permanent residents and refugees. In the case of refugees, it is merely implied that they are not allowed to work by virtue of the fact that they are, by law, confined to camp life. The major challenge for the country to realistically follow up on some of the issues identified in the paper is the lack of a national identification system. If some of the proposals are to work, then there is an urgent need for the country to introduce a national identification system. This would be one of the fundamental prerequisites for any plans on the possibility of developing a comprehensive social policy for the country.

**Selected Bibliography**


