



Centre for International and Comparative
Labour and Social Security Law (CICLASS)



PUBLIC DIALOGUE

Cross Border Migration & the Portability of Social Security Benefits



DIALOGUE REPORT
Southern Sun Hotel, Pretoria - 25 March 2011

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1. Summary

The Southern Africa Trust, in partnership with the International Labour Organisation (ILO), the Centre for International and Comparative Labour and Social Security Law (CICLASS), with support from the Flemish Government hosted a public dialogue on “Cross Border Migration and the Portability of Social Security Benefits” on Wednesday 25 March 2011 at the Southern Sun hotel in Pretoria.

The dialogue gathered government representatives from Mozambique, Lesotho and South Africa, government agencies, trade unions, research centres and civil society organisations. The purpose of the dialogue was to discuss the critical issues arising from the increased movement of people in the region in general and South Africa in particular, and how these affect their entitlement and access to social protection. Specifically, the forum would focus its attention on:

- Sharing knowledge on existing gaps and shortfalls with respect to the access migrant workers have to social security benefits in South Africa and their portability within the Southern African Development Community (SADC) countries;
- Analysing how South Africa and SADC are dealing with the issues of portability of social security benefits by migrants;
- Making recommendations to the South African government and SADC on ways to improve access to and the portability of social security benefits of migrants working in South Africa and in other SADC countries; and
- Defining elements of a strategy to mobilise civil society including migrant workers and social partners in order to place the portability of social security benefits on the integration agenda of mainly South Africa and SADC in general.

The dialogue identified a certain number of issues impacting the portability of social security benefits. These include among others, the fragmented social security policy in South Africa that lacks a clear and common approach on cross border migration in the region, the institutional challenges and the precedence of immigration law in South Africa on labour law.

The dialogue proposed a set of steps that could improve these challenges:

- A relaxation of time taken to process claims;
- Awareness raising on employee and beneficiary rights;
- Improved systems for the tracing of survivors;
- Bilateralism by way of Memorandum of Understandings (MOUs) and agreements between states; and
- Streamlined reforms of social security systems in the region according to the SADC Framework and the ILO Convention of 1995 Framework.

2. Overview and Objectives: Opening Session



Chris Maroleng, directing the programme

The workshop was facilitated by Chris Maroleng, a television presenter in South Africa. On presenting an overview of the Dialogue, the Programme Director stated that the meeting would have two segments. He explained that the first segment would focus and engage on existing challenges related to the portability of social benefits for cross-border migrants and the second segment would actively find policy alternatives as solutions to the problem. He highlighted the pivotal role of governments in creating the correct environment for easy and inexpensive cross border movement of people in the region, stressing that “the practicality of implementation is key”.

Chris thanked the Southern Africa Trust and its partners, notably the Flemish Government and the Centre for International and Comparative Labour and Social Security Law (CICLASS) for hosting the Dialogue. He proceeded to invite representatives from these three organisations to the podium to officially welcome delegates. The workshop was attended by over 60 participants from different organisations.

2.1. Welcoming

The official welcome was extended by representatives from the Southern Africa Trust, the Flemish Government, ILO and CICLASS.

In his welcoming address, Themba Mhlongo from the Southern Africa Trust firstly acknowledged relevant stakeholders, namely, the Flemish Government, the Head of Mission from the International Labour Organisation (ILO), the South African government represented by the Department of Labour, the Mozambican Ministry of Labour and the Lesotho Ministry of Labour.

He stated that the Public Dialogue was one in a series of dialogues supported by the Flemish Government. Themba said an initial dialogue on inclusive business had already taken place and that two others focusing on food security and governance, development and regional integration would take place later on during the year.

Mhlongo proceeded to inform attendees that the Southern Africa Trust works in partnership with other organisations. He



Themba Mhlongo, Head of Programmes at the Southern Africa Trust delivering his opening remarks

explained that this is due to the recognition that civil society organisations generally lack the necessary evidence to influence policies as this capacity rests with academic and research institutions, thus the Trust seeks to bring these entities together as well as those directly affected by relevant policies. He added that the dialogue was based on the *Social Protection for Intra-SADC Migrants: Access, Portability and Inclusion* report commissioned by the Southern Africa Trust and coordinated by CIGLASS as well as research of the ILO in the publication called *Access to South African Social Security Benefits by Migrant Workers from Lesotho, Mozambique, Swaziland and Zimbabwe and their Survivors*.

“Whilst countries need to retain sovereignty they also need to go deeper in regional integration, eliminate red tape and increase the portability of skills and of social security...”

The establishment of a comprehensive social security in South Africa has gone for 5 years now; the resolution of this matter now becomes a priority concern for the country”

Vic van Vuuren, ILO



Vic Van Vuuren, Head of Mission at the International Labour Organisation (ILO)

Vic van Vuuren from the ILO affirmed that employment creation and social security were two top priorities in southern Africa. He questioned the reason for the restrictions on the movement of workers in the region that still exist, advising that this was hampering economic growth and job creation.

David Maenaut from the Flemish Government began his address by giving a brief background to the partnership between the Flemish Government and Trust. He thanked the Trust and acknowledged it as a strategic partner owing to its expertise, topics of focus and networks. He highlighted the significance of the dialogue; that it would contribute to information and knowledge sharing on the social dimension of regional integration. In his view, this entailed three main aspects: (1) the portability of skills, (2) a common platform for rights at work (“core standards”), and (3) the portability of social security. He concluded by suggesting that in terms of learning, the European Union is an ideal reference point due to its strong institutional set up .



David Maenaut, Head of Delegation of the Flemish Government

Mathias Nyethi from CIGLASS informed participants about the work conducted by this research centre at the request of Southern Africa Trust. He stressed the importance of considering the legal status of migrant workers in each country when assessing their differentiated access to social

security. He added that the present dialogue focuses on legally established migrant workers. Although this was only part of the problem, research unveiled that there were already considerable challenges that needed to be addressed for the case of legally established workers.

2.2. Keynote address

The Keynote Address was delivered by Marius Olivier, Professor and Director of the Institute of Social Law and Policy (ISLP). He addressed various issues affecting migrant



Marius Olivier, Director of the Institute of Social Law and Policy (ISLP) giving the keynote address

workers in South Africa with regards to accessing social security and the interrelated nature of legal and policy issues involved in this regard.

He highlighted that social security policy in southern Africa is fragmented, with no clear and common approach on migration in the region. He indicated that migration is a long standing feature in the region and has highly impacted industrial development by stimulating economic

growth and household survival. Today there are around 41 000 mineworkers from Lesotho, 40 000 to 50 000 mine workers from Mozambique and 7 000 mineworkers from Swaziland¹. Olivier also noted that remittances constitute a large proportion of the GDP in some neighbouring countries – 26% in the case of Lesotho and these play an important role in livelihoods of families back in these countries. He noted, however, that even if they are legally covered by social security in South Africa, migrant workers still face considerable risks of not being able to draw on their entitlements when the need arises. For instance, in the event of a risk that might be covered by his or her social security arrangement.

He further pointed out that South Africa's worker compensation system is fragmented and limited in coverage as it excludes migrant workers. Other challenges remain, especially institutional challenges and issues around insufficient and or inadequate documentation (partly due to illiteracy), Identity Documents (IDs) and access. In essence, the precedence of immigration law in South Africa over labour law and its emphasis on regulation, control and deportation sometimes

As a result and despite having contributed to a provident retirement fund or a workmen's compensation fund in South Africa, a worker suffering an industrial injury or retiring and going back home, often runs the risk of falling in poverty due to the inability to access minimum income to which he or she is entitled as a right. Impoverished families in their home countries are left to care for those who come back home.

¹ There are also an estimated 10 000 to 15 000 farm workers from Lesotho and 6 000 farm workers from Mozambique in South Africa.

restricts the ability of workers legally established in the country to access social security rights which should be granted to them by the Constitution and by international standards.

There are also practical aspects of immigration laws such as the requirement for vacating employer-provided accommodation and leaving South Africa within a short period. This consequently limits the practical ability of migrant workers to process the documentation and claim their social security rights. He stated that there was, however, a growing sensitivity to this problem and that a human rights approach to the problem was emerging.

There are questions about the non-compliance of some aspects of current internal laws and regulations with human rights standards.

He proposed the following set of steps to overcome existing challenges:

- A relaxation of time taken to process claims
- Awareness raising on employee and beneficiary rights
- Improved systems for tracing survivors
- Bilateralism by way of MOUs and agreements between states
- Streamlined reforms of social security systems in the region according to the SADC framework and the ILO Convention of 1995 Framework.

3. First Session: Challenges to maintenance of social security benefits across countries in SADC

Panellists: *Manene Samela, Secretary General of the National Council of Trade Unions (NACTU), Tomas Bernardino, Permanent Secretary of the Ministry of Labour in Mozambique, Mapulumo Lisebo Mosisili, Permanent Secretary of the Ministry of Labour in Lesotho, Ingrid Palmary, Researcher at the African Centre for Migrations and Society at the Wits University, Marius Olivier of the Institute for Social Law and Policy (ISLP) and Ian Macun of the Department of Labour in South Africa.*



Ingrid Palmary leading a discussion

Manene Samela highlighted that through the Pact of regional civil society apex organisations, a memorandum of understanding had been signed with churches and Non-Governmental Organisations (NGOs) to work together on issues of common interest. The discussion on the portability of social security benefits in the SADC region should be a civil society issue as it could have a negative impact on regional integration if not addressed proactively.

In her intervention, Ingrid Palmary focused on the seemingly neglected aspect of undocumented migrants who make up the majority of migrants in the region. She stressed that due to the existing informal mechanism for cross border migrants and the feminised nature of migration in the region, it is important that such mechanisms are supported and policy reforms are tailored for different types of migrants. She briefly discussed the six different surveys that her organisation carried out in five southern African countries and one east African country. Some major findings included the critical role that law plays in issues of migrant workers as it impacts on the workers' legal rights and the nature of their working conditions.



Manene Samela, Secretary General of the National Council of Trade Unions (NACTU)

The following panellist, Ian Macun, focused on the regional harmonisation of systems pertaining to labour migration and social security benefits. He posed a question on whether or not there was indeed a major legal and policy problem in relation to the transfer of social security benefits in the region and how a synergy of policies could be achieved. He also pointed out that there was a heavy administrative and institutional burden due to lack of coordination of Identity Documents (ID) systems, Information Technology (IT) systems across countries, all pointing to the need for practical solutions. He proposed for the improvement in the regulations of some



Alan Smith, Business Unity South Africa (BUSA) sharing his views

institutions to assist in their compliance with international and regional standards. This would also assist institutions to address shortcomings in administrative processes and dysfunctional service delivery and provide better administrative coordination mechanisms to address the problems arising from a fragmented institutional landscape in the field of social security.

Tomas Bernardino mainly expressed that it was critical for the fundamental rights of people to be recognised and upheld and that for greater impact, the ILO should support resolutions made. He emphasised the difficulties faced by Mozambique due to the fact that there is no single public social security institution in South Africa. For example, the law has established separate regulators or authorities for employment injury compensation and it may be difficult for the lay person to know what institution to approach. In addition, migrant workers are often illiterate with scarce knowledge of administrative procedures making them difficult to comprehend and access. This is being addressed by the current social security reform in South Africa which envisages the creation of a single national social security fund.

Mapulumo Lisebo Mosisili highlighted that there had been a significant decline in remittances from South Africa to Lesotho which points to a serious challenge in the transfer of benefits.



Mapulumo Lisebo Mosisili shares her views

Olivier agreed with most of the points raised by other panellists but added that other factors need to be looked at, notably, exchange controls which engender inconsistency in cross-border payments with the occasional consequence of payments not reaching the intended beneficiaries.

Discussion

In the discussion that followed after this session, participants raised many issues including the need to fully understand the nature and size of the challenges faced, the balance between the legal and constitutional imperative, the difficulty of tracing survivors, issues around country to country cooperation, questions around government responsibility and the role of employers.

A point was raised that the new comprehensive social security system of South Africa should include members of families that come into the country to collect benefits by balancing the legal and constitutional imperative. Workers representatives agreed that under the proposed social security scheme for South Africa, all workers must be covered irrespective of where they come



Participants contributing to discussions

from. Employers (as pointed out by a representative of the Chamber of Mines and BUSA at the dialogue) are taking voluntary steps to ensure social security payments abroad. The National Economic Development and Labour Council (NEDLAC), including the community constituency could address this matter further adopting, for example, a sector approach to it.

Under the ILO flagship convention on Minimum Standards of Social Security C. 102 (1952), states have a general responsibility for social security and should ensure non discrimination. In addition, there are specific international and regional commitments that ensure the exportability of benefits to home countries.

A suggestion was made that due to the high levels of poverty and unemployment in the region and their impact on comprehensive social security, countries have to fix their own policies at home first prior to entering into regional and international treaties and agreements. Discussions also called for better coordination between social security agencies regionally; a change that can be enabled by the visibility of existing regional and international social security agencies

The lack of effective portability of social security means that there's mounting unclaimed benefits sitting in South African social institutions estimated currently to total 5.7 billion rand.



Stuart Grobler representing Business Unity South Africa (BUSA) gives his views

It was noted that the successful traceability of migrant workers and or survivors was a responsibility that had to be shared by government, employers and survivors. In this regard it was especially noted that although there are inevitable capacity constraints, governments had a critical role to play by registering all people within its territory. Furthermore, by governments playing a coordinator role at regional level it becomes easier to transfer money from a South African bank to a bank in another country. Accordingly, it was highlighted that governments have to implement laws that are responsive to the realities of their own countries.

In addition, governance structures need significant improvement as they are currently quite poor with about 65% of mine workers' benefits not reaching their families. Employers need to make sure that the employee information they have is current.

Lastly, the issue of the vulnerability faced by women when claiming their husbands' benefits was addressed. It was widely acknowledged that due to a lack of sufficient information submitted by their husbands, women are placed in vulnerable positions while trying to settle disputes with other women (or family members) that emerge after the death of a mine worker, claiming to be the rightful beneficiaries. Thus, there's a need to look further into marriage law.

4. Second Session: How to make progress

Panellists: *Manene Samela, Secretary General of the National Council of Trade Unions (NACTU), Tomas Bernardino, Permanent Secretary of the Ministry of Labour in Mozambique, Mapulumo Lisebo Mosisili, Permanent Secretary of the Ministry of Labour in Lesotho, Ingrid Palmay, Researcher at the African Centre for Migrations and Society at the Wits University, Marius Olivier of the Institute for Social Law and Policy (ISLP) and Chokola Lengolo of the Department of Labour in South Africa and Schumacher Hildebrand from the International Labour Organisation (ILO) in Addis Ababa.*



Panel discussion

have been ratified by SADC must be implemented. Further, there should be cooperation not just between institutions in different countries but also between doctors in cases of health etc.

In his intervention regarding the definition of social security, Schumacher from the ILO stressed that Convention 102 contains the most accepted definition of social security. He stressed that the challenges discussed at the dialogue would be best addressed through increased cooperation between countries and different parties. He advised that this could be achieved through bilateral and multilateral agreements as recommended by the ILO.

Schumacher emphasised that conventions that

This point was reiterated by Marius Olivier, stating that unilateralism will not work; instead institutions in the region have to work together through an overarching multilateral system. This would be possible if legal, policy and operational issues are resolved. In addition, what is needed are sectoral approaches as well as capacity building and increasing awareness for beneficiaries/survivors.

Samela reaffirmed that the starting point would be for the SADC region to comply with existing treaties and harmonise the ILO Convention. In addition, the region needs social security systems that are integrated to support decent work; hence South Africa's new comprehensive social security framework needs to take into account migrant labour issues. He also stressed that individual stakeholders need to fulfil their responsibilities. For instance governments should do inspections and employers should comply with the law and be more proactive. In the process, it would be useful to solicit input from companies that already have a footprint in the region.

There is need to have regional coordination of social security: there are millions of rand to be paid to workers for labour they have provided to this country and there are people in poverty with acquired rights without knowing where and how to claim those rights

The above interventions were reiterated by the rest of the panellists with Lengolo adding that solutions also lie in the integration of Information Technology (IT) systems for database maintenance while a review of the existing Memorandum of Agreement (MOA) within SADC would be necessary.

Mapulumo Lisebo Mosisili further added that occupational diseases are a major problem requiring attention. She alerted the attendees to an upcoming SADC Ministers' meeting to take place in Namibia where such issues will be discussed.

Bernadino proposed for the formation of a Task Force that would drive the recommendations made at the Dialogue with the South African Ministry of Labour and the private sector being engaged as key stakeholders. He also commended the dialogue that has commenced between South Africa and Mozambique on social security and migrant workers.

"I would like to propose the launch of a task force involving organisations and countries to make a joint analysis and progress on practical matters. The involvement of South Africa is critical. Social Dialogue has proven to be key to solving problems our countries".

Tomas Bernardino, Permanent Secretary of Mozambique"

Discussion

Representatives of the private sector welcomed the recommendations made by the panellists and proposed that political will at SADC level would form a solid foundation for their successful implementation. A call was made for the pragmatic institutionalisation of social security transfers in the region and for a common database to be developed with current information on beneficiaries. Representatives from TEBA offered to assist in this initiative.

Other major issues discussed included the need to resolve the challenge of multiple spouses, for the region to have a common understanding of country policies and protocols and for the private sector to do its bit as a caring employer so as to create a poverty free society.

There was consensus that proposals made at the Dialogue should be elevated to the political level particularly the SADC meeting to take place in Namibia.

5. Closing remarks

The closing remarks were made by Luis Frota, Social Security Specialist at the ILO and Themba Mhlongo, Head of Programmes at the Southern Africa Trust.

Frota recalled the ILO flagship convention on Minimum Standards of Social security C. 102 (1952) that calls States to have a general responsibility for social security and should ensure non discrimination. He reminded attendees of international and regional commitments that ensure the exportability of benefits to home countries. States should, therefore, provide the framework for practical coordination mechanisms within which specific social security institutions could operate across borders.

He asserted the need for Governments to consider practical steps to address some of the priority issues which emerged from the public dialogue, starting in South Africa. The public dialogue launched a process of engagement between various stakeholders including representatives of government and different institutions on these matters. The Southern Africa Trust and the ILO are ready to assist South Africa and neighbouring countries in bringing this process further.



Luis Frota, Social Security Specialist at the International Labour Organisation (ILO) delivering his closing remarks

Mhlongo of the Southern Africa Trust explained that the dialogue was proposed to generate evidence that might later on lead to institutionalisation. In addition, he stressed that recommendations should indeed be taken to SADC. He further recommended that Mozambique takes lessons from Lesotho in terms of tracing employees and or survivors.

Mhlongo proceeded to thank the partners of the Trust who were instrumental in organising the Dialogue, namely the Flemish Government for their support of the workshop, the ILO for bringing government on board and CICLASS. He thanked BUSA and proposed that it should consider hosting a workshop that would assist in driving the process forward. He thanked Marius Olivier and stressed that he would be called on again in the future. Mhlongo thanked all those who came to listen and engage and urged them to spread the message on. Lastly, he thanked the Programme Director, Chris Maroleng for the successful facilitation of the dialogue.

Annexure 1: List of Participants

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Annexure 2: Programme

PUBLIC DIALOGUE

Cross Border Migration and Portability of Social Security Benefits in Southern Africa

Southern Sun Hotel, Pretoria, 25 March 2011

Cross Border Migration and Portability of Social Security Benefits in Southern Africa



PROGRAMME

Chris Maroleng, eTV
Programme Director

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- 08:30 Registration
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- 09:00 Official Welcome
Themba Mhlongo, Southern Africa Trust; Vic Van Vuuren, ILO Director Pretoria Office; David Maenaut, Flemish Government; Mathias Nyenti, CICLASS
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- 09:30 Keynote Address
Marius Olivier, Institute for Social Law and Policy (ISLP)
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- 09:50 Public Dialogue - Challenges to the maintenance of social security benefits across countries in SADC: Marius Olivier, Institute for Social Law and Policy (ISLP); Manene Samela, National Council of Trade Unions (NACTU); Ingrid Palmary, African Centre for Migrations and Society; Tomas Bernardino, Ministry of Labour in Mozambique; Mpilo Shange Buthane, Consortium for Refugees and Migrants in South Africa; Ian Macun, Department of Labour in South Africa
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- 12:00 Break
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- 12:05 Public Dialogue - How to make progress: Christoph Schumacher Hildebrand, International Labour Organisation (ILO) Addis Ababa, Marius Olivier, Institute for Social Law and Policy (ISLP), Ingrid Palmary, African Centre for Migrations and Society; Tendani Ramulongo, Department of Labour in South Africa
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- 13:50 Closing Remarks
Luis Frota, International Labour Organisation (ILO)
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- 14:00 Lunch
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- 15:00 End