ACCESS TO SOUTH AFRICAN SOCIAL SECURITY BENEFITS: CHALLENGES AND PROSPECTS

Social Protection for Migrants in the SADC: Prospects, Vulnerability and Benefits across Borders

(Conference organised by SASPEN and the FES – Johannesburg, 29–30 October 2014)

Professor Marius Olivier, Director: Institute for Social Law and Policy;
Professor Avinash Govindjee, Faculty of Law, NMMU
Overview

- Overview of SA social security system and the constitutional right of “everyone” to access social security
- Principal legal and administrative obstacles restricting access to South African social security benefits: Selected issues
- Institutional challenges, deficient processes and procedural shortcomings
- Cross-border agreements and portability of South African social security benefits
- Developing a suitable approach in South Africa
- General conclusions
- Specific recommendations
- Final remarks
Overview of SA social security system and the constitutional right of “everyone” to access social security

- The Constitution
- Legislation
  - Retirement schemes
  - Workmen’s compensation
  - Occupational lung diseases
  - Unemployment insurance
  - Road accidents
  - Social assistance
Selected Issues

- Immigration Law and Xenophobia
- Lack of information; institutional challenges and procedural shortcomings
- Fragmentation / dysfunctional service delivery
- Portability provisions – absence / limitations
- Lack of administrative co-operation between schemes / delays
Immigration law and policy restrictions

- Precedence of immigration laws
- Emphasis on regulation, control and deportation
- Different immigration statuses and social security
- Employment termination implications
Institutional challenges, deficient processes and procedural shortcomings

- Documentation difficulties
- Illiteracy / lack of awareness
- Tax issues
- Limited physical presence of SA institutions abroad
- Onerous pre-conditions
Cross-border agreements and portability of South African social security benefits

- Steps taken by certain institutions in RSA and neighbouring countries essentially unilateral
- Absence of multilateral arrangements, except for standard-setting SADC instruments
- Status and impact of labour agreements / MOUs?
- Cross-border verification mechanism contained in Social Assistance Act of 2004 & Regulations – report to a mission abroad or to any other designated office for purposes of identification and verification
- RSA institutions: Synergy and consistency in cross-border payment mechanisms lacking
Developing a suitable approach in South Africa

Key considerations
- Constitutional and international context (including a human rights approach, and regional considerations)
- Vulnerability of different categories of non-citizens (e.g. children)
- Jurisprudence
- Proposed legislative reform
- Immigration law restrictions on social security access

Considering a standard for social security entitlement
- Lawful residence principle

Need for streamlined and effective policy direction
- Adopt a migration policy framework that balances demand for national security and orderly migration: see, for example, AU Migration Policy Framework, SADC developments, Nigeria
General conclusions

- Improving service delivery and strengthening institutions
- Retirement benefits for migrant mineworkers in SA
- Raising awareness at relevant levels
- Need for inter-country or inter-scheme arrangements
- Introducing appropriate cross-border portability and co-ordination arrangements
- Extension of access to some social security schemes (particularly to vulnerable categories of non-citizens)
- Stakeholder engagement and consultative workshops
- Securing high-level political intervention
Specific recommendations

- Children
- Lawfully employed temporary residents and social insurance
- Asylum-seekers and irregular non-citizens
- Refugees and Permanent Residents
- Limited entitlement to social assistance
Final remarks

- Government should adopt a comprehensive, integrated, co-ordinated, multi-faceted and principled approach
  - Executive and legislative measures called for, some on an urgent basis (due to constitutional imperatives)
    - Core guiding principles (lawful residence, lawful employment, means of subsistence test) will assist
    - Supporting principles also relevant (e.g. best interests of the child, principle of non-discrimination, addressing the position of vulnerable persons etc.)

- Portability of benefits remains an issue
- The need for a lead ministry?
- Implementation protocol?
  - Communication strategy
  - M & E