

Malawi Labour Migration Review

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FOREWORD

The Southern Africa Migration Management (SAMM) project represents a collaborative effort embodying the ONE-UN approach, uniting the expertise and resources of four prominent UN development and/or humanitarian agencies: the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), and the United Nations High Commissioner for Refugees (UNHCR).

The SAMM project is dedicated to improve labour and mixed migration management in the Southern Africa and Indian Ocean region. By focusing on South-South migration flows, the project aims to uncover and enhance the positive spillover effects of international migration on regional integration and economic development (e.g. recognising the positive contribution of migrant workers to economic growth).

The SAMM project first produced a Labour Migration Stocktaking Report for the SADC region. Labour Migration Reviews (LMRs) are complementary tools aimed to enhance the capacity of Ministries of Labour, Employers' and Workers' Organizations to engage in tripartite dialogue and influence evidence-based policy formulation and implementation for fair labour migration governance. LMRs include information on at least, seven key labour migration thematic areas:

1. Gender-responsive labour migration policies and/or strategies;
2. International labour standards and national legislation on the protection of migrant workers, as well as advocacy on the contribution of migrant workers to development;
3. Bilateral labour migration agreements (BLMAs) across the region and with third countries;
4. Fair recruitment and decent employment for migrant workers including regulatory legislation on Private Employment Agencies (PEAs), and strengthening of Public Employment Services (PES);
5. Social Security Portability of Benefits for migrant workers through the SADC Guidelines on the Portability of Social Security Benefits;
6. Skills mobility (skills anticipation, skills profiling, skills matching, skills transfer and recognition of qualifications of migrant workers), as well as support to the SADC Qualifications Framework;
7. Labour migration statistics (indicators, module, inclusion in labour market information systems, etc).

The ILO believes that this publication will provide valuable insights and contribute significantly to the ongoing efforts to improve labour migration governance effectively in the SADC and IOC region. We extend our gratitude to all partners and stakeholders for their unwavering support and commitment to this crucial endeavour.

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1 INTRODUCTION

Malawi is often viewed as a major migrant source country for other SADC countries like South Africa (Banda, 2017) and experiencing a significant source skills brain drain to Europe (Adhikari & Grigulis, 2014; Vida, 2015). In 2019, the total number of Malawians resident outside the country in other SADC countries was an estimated 300,000 including 108,000 in South Africa, 107,000 in Zimbabwe, and 67,000 in Mozambique (UNDESA, 2019). Outside the region, there were an additional 23,000 Malawians in Europe. As this Review shows, the numbers of Malawian migrants outside the country is almost matched by the numbers of migrants from other countries in Malawi itself. Malawi therefore has to be seen as a significant migrant destination as well. In 2019, UNDESA (2019) estimated that there were 248,000 migrants in Malawi, of whom 166,000 were from other SADC countries. This Review focuses on labour migration to Malawi and the emerging policy and legal framework in the process of development to manage migration in a safe, orderly and regular manner.

2 DRAFT NATIONAL LABOUR MIGRATION POLICY

Malawi first developed and adopted a strategic plan for the Department of Immigration in 2007, covering the period 2007 to 2012 that lays out the responsibilities of the Department within the Ministry of Home Affairs and Internal Security¹.

More recently, Malawi is working towards the drafting and adoption of a National Labour Migration Policy. In July 2020, a Situational Analysis report that provides a diagnostic review of migration patterns, issues and challenges that provide the context for the proposed NLMP was prepared². The Situational Analysis recommends the following as the goal and policy objectives of the NLMP, to be considered in consultation with stakeholders:

Goal: The main goal of the National Labour Migration policy is to harness the benefits of labour migration for socioeconomic development in Malawi.

The following policy objectives and areas are suggested for consideration by stakeholders:

1. To enhance good governance of labour migration.
2. To strengthen systems for protection of migrant workers and their families in Malawi and countries of destination.

¹ <https://www.immigration.gov.mw/wp-content/uploads/2018/06/strategic-plan.pdf>

² The draft NLMP is not in the public domain but was kindly made available to the authors for the purpose of this research.

3. To enhance mechanisms for harnessing and maximizing the developmental impacts of labour migration.
4. To strengthen labour market and migration information systems.

Following consultations in 2019 and 2020 to review progress made in Malawi with the implementation and achievement of the objectives of the Global Compact for Safe, Orderly and Regular Migration (GCM), a report was published by the Government of Malawi, which notes the following³:

- There are no specific laws for migrant workers except for the Policy Statement on Temporary Employment of Expatriates and Employment Guide
- Malawi labour laws do not discriminate as they cover all workers, including migrant workers
- In 2016, Malawi developed labour export guidelines for private and employment agencies and migrating individuals
- The draft National Migration Policy enshrines the values on which migration management hinges, including (a)
 - Sovereignty of State borders and well-being of citizens
 - Respect for human rights of all migrants
 - Facilitating of the integration of vulnerable migrants and non-discrimination ethos
- The draft Malawi Labour Migration Policy seeks to protect migrants and harness the benefits of labour migration for socioeconomic development in Malawi.

3 LABOUR MIGRATION DATA SOURCES, TRENDS AND DYNAMICS

3.1 Main Migration Data Sources

3.1.1 Malawi Population and Housing Census, 2018

http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2018/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report.pdf

3.1.2 National Statistical Office, Census Migration Report (Zomba, July 2020) (NSO, 2020a)

http://www.nsomalawi.mw/images/stories/data_on_line/demography/census_2018/Thematic_Reports/Migration%20Thematic%20Report.pdf

³ https://migrationnetwork.un.org/sites/g/files/tmzbd416/files/docs/malawi_nvr_gcm.pdf

3.1.3 Labour Market Profile Malawi 2022/2023 (Danish Trade Union Development Agency, 2022)

<https://www.ulussekretariatet.dk/wp-content/uploads/2022/03/LMP-Malawi-2022-Final1.pdf>

3.1.4 Integrated household surveys (HIES), 2011, 2017, and 2020, available through ILOSTAT

https://www.ilo.org/shinyapps/bulkexplorer31/?lang=en&segment=indicator&id=MST_T_EAP_SEX_AGE_CBR_NB_A

3.1.5 Refugee and asylum seekers in Malawi (UNHCR)

<https://data.unhcr.org/en/country/mwi>

3.1.6 UN DESA Migrant Stock by Origin and Destination 2019 Update

<https://www.un.org/development/desa/pd/content/international-migrant-stock>

3.2 Migrant Stock

Migrant stock data from UN DESA shows the total number of migrants born outside Malawi declined sharply from 1,127,724 in 1990 to 241,624 in 1995. The decline was due to the voluntary repatriation of Mozambican refugees after the end of the civil war in Mozambique in 1992. Between 1995 and the present, both the total number of migrants and the number of migrants from other SADC countries have remained relatively stable (Table 1).

Table 1 - Migrants from Other SADC Countries in Malawi, 1990-2019

	Total Migrants	SADC Migrants	% SADC Migrants
1995	241,624	172,023	71.2
2000	232,620	165,609	71.2
2005	221,661	157,810	71.2
2010	217,712	155,009	71.2
2015	232,803	153,189	65.8
2019	247,652	165,951	67.0

Source: Compiled from UN DESA (2019)

3.3 Countries of Migrant Origin

The UN DESA Migrant Stock Origin and Destination Tables provide data on the country of origin of the 166,000 migrants from six other SADC countries (Table 2). The largest number (58,344) are from Mozambique, and many are likely to be refugees who stayed in Malawi after the end of the civil war. The other major source countries are Zambia (42,971) and Zimbabwe (37,294), followed by Tanzania (9,644) and the DRC (9,406). Malawi's neighbours therefore make up nearly 90% of the SADC migrants and 60% of the migrant stock in the country. Beyond the SADC region, the data shows the stock of migrants from India and the United Kingdom (Table 3). This suggests that Malawi has a

less diverse migrant stock when compared to other SADC countries. However, the migrant stock may actually be more diverse since UN DESA estimates that ‘Other North’ and ‘Other South’ account for about one-fifth of the total migrant stock (Table 3).

Table 2 - SADC Origin Countries of Migrant Stock, 2019

	SADC Country	% of SADC	% of Total
	Migrants	Migrants	Migrants
Mozambique	58,344	35.2	23.6
Zambia	42,971	25.9	17.4
Zimbabwe	37,294	22.5	15.1
Tanzania	9,644	5.8	3.9
DRC	9,406	5.7	3.8
South Africa	8,292	5.0	3.3
Total	165,951	100	67.0

Source: Compiled from UN DESA (2019)

Table 3 - Regions and Countries of Migrant Stock Origin, 2019

	Total	% of	No. of	No. of	% Female	% Male
	Migrants	Total	Females	Males		
Africa						
Mozambique	58,344	23.6	28,153	30,191	48.3	51.7
Zambia	42,971	17.4	25,506	17,465	59.4	40.6
Zimbabwe	37,294	15.1	21,061	16,233	56.5	43.5
Congo	11,560	4.7	5,110	6,450	44.2	55.8
Tanzania	9,644	3.9	5,372	4,272	55.7	44.3
DRC	9,406	3.8	4,576	4,830	48.6	51.4
Burundi	8,849	3.6	4,728	4,121	53.4	46.6
South Africa	8,292	3.3	4,594	3,698	55.4	44.6
Rwanda	7,108	2.9	3,443	3,665	48.4	51.6
Somalia	71	<0.1	31	40	43.7	56.3
Sub-Total	193,539	78.1	102,574	90,965	53.0	47.0
Other						
India	2,424	1.0	1,118	1,306	46.1	53.9
UK	1,481	0.6	717	764	48.4	51.6
Other						
Other South	38,330	15.5	19,884	18,446	51.9	48.1
Other North	11,878	4.8	5,780	6,098	48.7	51.3

Sub-Total	50,208	20.3	25,664	24,544	51.1	48.9
Total	247,652	100.0	130,073	117,579	52.5	47.5

Source: Compiled from UN DESA (2019)

The 2018 Census provides additional data on the countries of origin of the migrant population in Malawi (National Statistical Office, 2020). The Census distinguishes between 'current immigrants' (which includes labour migrants temporarily in the country) and 'lifetime immigrants' (which refers to the migrant stock of the foreign-born living in Malawi more permanently). Table 4 shows that the population of current immigrants is just over 55,000 and is dominated by migrant workers from South Africa, followed by Mozambique, Zambia and Tanzania.

Table 5 shows the migrant stock in the country from the 2018 Census is lower than the UN DESA estimates for 2019 (144,000 versus 248,000). If the current immigrant population is added, the total number of migrants recorded by the Census would be close to 200,000 which is still 48,000 lower than the UN DESA estimate. Comparing the individual countries in the Census and UN DESA data base, fewer Mozambicans, Zambians, and Zimbabweans, and more Congolese and South Africans, were recorded by the Census. Tables 4 and 5 also confirm that the migrant population in Malawi (temporary and permanent) is actually more diverse than suggested by UN DESA data.

Table 4 - Current Immigrants, 2018

Previous residence	Number
South Africa	28,140
Mozambique	15,818
Zambia	5,035
Tanzania	2,142
Congo (Kinshasa)	1,134
Zimbabwe	466
India	264
Burundi	238
United States of America	204
United Kingdom	179
Congo (Brazzaville)	163
Botswana	138
China	122
Kenya	118
Rwanda	104
Sudan	50
Uganda	50
Other countries	904
Total	55,269

Source: National Statistical Office (2020: 14)

Table 5 - Lifetime Immigrants (Migrant Stock) by Country of Birth, 2018

Country of Birth	Number	Country of Birth	Number
Mozambique	34,535	Ethiopia	123
Zambia	30,465	American Samoa	92
Zimbabwe	25,617	Somalia	87
South Africa	13,477	Canada	87
Congo (Kinshasa)	12,585	British Indian Ocean Territory	84
Tanzania United Republic	7,628	Egypt	81
Burundi	3,853	Italy	78
India	3,720	Netherlands	76
Rwanda	3,188	Swaziland	75
Congo (Brazzaville)	2,304	Korea (South)	72
United Kingdom	1,071	Lebanon	66
Pakistan	911	Sudan	58
United States of America	446	Japan	57
Kenya	391	Portugal	57
Nigeria	330	Ireland	56
China	285	Ghana	55
Botswana	242	Australia	54
Uganda	218	Bangladesh	53
Sri Lanka	198	British Virgin Islands	50
Germany	152	Other	1,019
Total			143,996

Source: National Statistical Office (2020: 15)

3.4 Age and Sex of Migrant Population

UN DESA (2019) provides the sex distribution of the migrant stock but does not provide any information on the age distribution of migrants (see Table 3). The overall migrant stock is 53% male and 47% female. Some African origin countries (such as Zambia, Zimbabwe, Tanzania and South Africa have significantly more male than female migrants). However, countries such as Mozambique, Somalia and Rwanda have more females than males in their migrant stock. This may be because migrant from these countries originally came to Malawi as refugees.

The ILOSTAT database provides data on the foreign-born working-age population by age group and sex based on the past three Integrated Household Surveys (HIES) (Table 6). The data shows a decreasing trend in the stock of the foreign-born labour force in Malawi, down from 110,700 in 2011 to 82,000 in 2020. However, the proportion of female migrants increased from 50% to 54% over the same time period. Amongst the working age population (25-54) the increase was from 47% to 53%.

Table 6 - Foreign-Born Labour Force by Age and Sex, 2011-2020

Age group	2011			% Female	2020			% Female
	Total	Male	Female		Total	Male	Female	
15-24	12,900	5,100	7,800	60.5	5,800	2,300	3,600	72.0
25- 54	73,000	38,800	34,300	47.0	52,900	24,800	28,200	53.3
55-64	10,100	3,400	6,700	66.3	14,000	5,500	8,500	60.7
65+	14,700	7,700	7,000	47.6	9,200	5,000	4,200	45.7
Total	110,700	55,000	55,700	50.3	82,000	37,600	44,400	54.1

Source: ILOSTAT

3.5 Temporary Work Permits

The most recent data available to us on the issue of work-related permits is for the period 2011 to 2014 (Tables 7 and 8). We recommend the updating of these tables with unpublished data from the Ministry of Immigration.

Table 7 - Issue of Permits in Malawi, 2011-2014

Permits issued	2011	2012	2013	2014
Temporary employment permit	2,428	2,217	2,842	1,181
Permanent resident permit	265	292	506	371
Business resident permit	121	169	175	89

Source : IOM (2015: 43)

3.6 Work Sectors of Labour Migrants

The Department of Immigration and Citizenship Services is responsible for issuing temporary work permits for foreigners, but the data is not available in the public domain. We recommend that this data be requested in order to determine in which industries and economic sectors temporary labour migrants are employed. Further analysis of 2018 Census data is also recommended to provide data on the employment sectors of migrants.

Table 8 - Arrival of Temporary Employment Permit Holders by Country of Origin (4/2013-11/2014)

Country of origin	Temporary employment permit
India	310
Other	226
South Africa	202
United States	109
United Kingdom	131

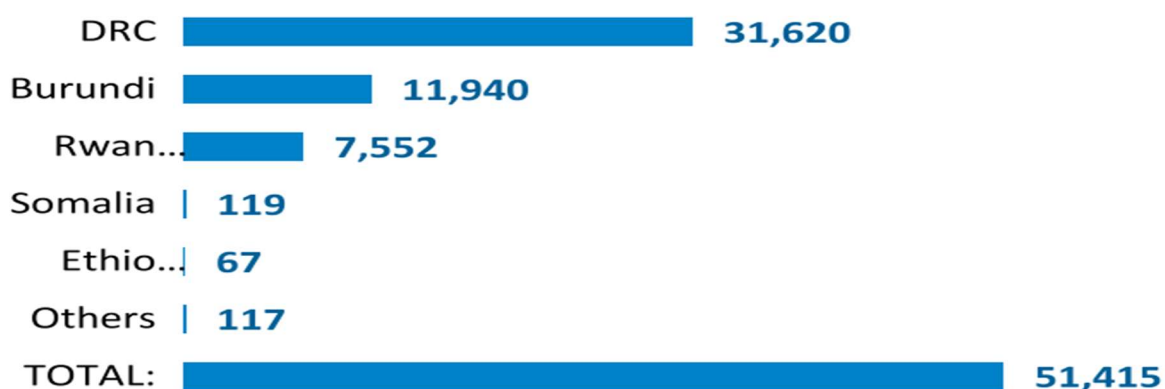
Portugal	97
Pakistan	93
Sudan	88
Netherlands	43
Egypt	38
Zimbabwe	33
Sri Lanka	29
China	26
Canada	25
Italy	23
Germany	20
Nigeria	20
Zambia	19
Kenya	17
Republic of Korea	16
Ireland	14
Ghana	11
United Republic of Tanzania	10
Lebanon	10
Brazil	7
Denmark	5
Greece	3
Mozambique	2

Source : IOM (2015: 43-44)

3.7 Refugees

According to UNHCR, the total number of refugees and asylum seekers in Malawi in August 2021 was 51,415, of whom over 60% were from DRC. Refugees and asylum seekers from DRC, Burundi, and Rwanda account for over 99% of the registered refugees in the country (Figure 1). Most registered refugees reside in Dzaleka Refugee Settlement, 41 km north of the capital Lilongwe, with an estimated population of 52,000.

Figure 1 - Total number of refugees and asylum seekers in Malawi, August 2021



Source : UNHCR, 2021

Most refugees came to Malawi for protection, and not as labour migrants, but some have lived in Malawi for up to 15 years. Refugees are prohibited from formal employment but there is an active informal refugee economy in and around Dzaleka. Msowoya (2019) notes that refugees and asylum seekers operate various business enterprises across the country, including local retail in many markets. In Lilongwe, eight out of 10 rice mills in Mchesi are owned by refugees and asylum seekers. Other business enterprises run by refugees include roast meat, hair dressing saloons, minibuses, taxis, real estate properties, beauty salons, restaurants, garments shops, farm produce shops, liquor shops and beer clubs. They are also involved in the importation of bananas and other wholesale products from Tanzania and other countries for sale in markets. Microsoft has established an Apprenticeship Factory (APP Factory) which is only centre set up in a refugee camp among the 15 centres in Africa. A 2020 survey of youth livelihoods reported involvement in small-scale businesses like construction (making bricks, carpentry, building, tin smithing), entertainment services (radio production and broadcasting, video shooting, photography), service work (barbering, hairdressing, selling doughnuts, cosmetology, shoe repair), garment work (selling clothes, tailoring), and farming (growing and selling tomatoes, keeping rabbits or pigs or chickens, selling eggs) (Wirsig and Gibbard, 2020).

3.8 Irregular migrants

The extent of irregular migration to Malawi is unknown but there appear to be four main types of irregular migrant. First, there may be economic migrants who have acquired refugee status in Malawi. Second, there are local cross-border movements for economic purposes (such as informal trading) in the “borderlands” between Malawi and neighbouring countries such as Mozambique and Zambia (Nshimbi, 2019, 2020). Third, there is a movement of irregular migrants into northern Malawi from Tanzania for work in the informal sector in urban centres (Nkoma, 2012). And finally, Malawi is a transit

corridor for irregular migrants, traffickers and smugglers on the so-called Southern Route that connects migrants from the Horn of Africa to South Africa (Crush et al., 2019).

The profile of this route has recently attracted international attention by the discovery of a mass grave of suspected Ethiopian migrants in the Mzuimba area in the north of the country and revelations by UNODC that Dzialeka has become a haven for traffickers who hire out irregular migrants for farm labour, domestic work and sex work. To curtail the use of the country by migrant traffickers and smugglers, Malawi passed a Trafficking in Persons Act in 2015 and adopted a National Plan of Action Against Trafficking in Persons (2017-2022) in 2017⁴.

4 LABOUR MARKET LEGISLATION

4.1 Malawian Constitution of 1994⁵

Chapter 3 of the Malawian Constitution of 1994 (with amendments through 2017) sets out the Fundamental Principles on which the Constitution is based and includes the following:

- *the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote*
- *as all persons have equal status before the law, the only justifiable limitations to lawful rights are those necessary to ensure peaceful human interaction in an open and democratic society*

Chapter 4 (Human Rights) sets out the rights of all persons in Malawi and includes the following provisions:	
16	The right to life
20	Equality. <i>Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition.</i>
23	Rights of children
24	Rights of women
26	Culture and language
27	Slavery, servitude and forced labour:

⁴https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/TraffickinginPersons/Malawi_cleaned_and_final_Malawi_NPA_TIP_Final_Validated_Draft_16.03.2017_clean4074pdf.pdf

⁵ https://www.constituteproject.org/constitution/Malawi_2017.pdf?lang=en

	<i>(1) No person shall be held in slavery or servitude; (2) Slavery and the slave trade are prohibited; (3) No person shall be subject to forced labour; (4) No person shall be subject to tied labour that amounts to servitude</i>
28	Property
29	Economic activity: <i>Every person shall have the right freely to engage in economic activity, to work and to pursue a livelihood anywhere in Malawi.</i>
30	Right to development
31	Labour: <i>(1) Every person shall have the right to fair and safe labour practices and to fair Remuneration; (2) All persons shall have the right to form and join trade unions or not to form or join trade unions; (3) Every person shall be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race.</i>
32	Freedom of association
37	Access to information
39	Freedom of movement and residence: <i>(1) Every person shall have the right of freedom of movement and residence within the borders of Malawi. (2) Every person shall have the right to leave the Republic and to return to it.</i>
40	Political rights
41	Access to justice and legal remedies
42	Arrest, detention and fair trial

The Malawian Constitution uses the phrasing Every person and All persons and therefore does not make any distinction between the rights of citizens and migrants. However, the Constitution does have the following clause pertaining to the limitations on rights:

44. Limitations on rights

(1) No restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in this Constitution other than those prescribed by law, which are reasonable, recognized by international human rights standards and necessary in an open and democratic society; and (2) Laws prescribing restrictions or limitations shall not negate the essential content of the right or freedom in question, and shall be of general application.

This suggests that the rights of migrant workers may be limited, provided that these limitations are consistent with the Fundamental Principles of the Constitution and applied as envisaged by the limitations clause.

4.2 Labour Relations Act, 1996⁶

The Labour Relations Act of 1996 promotes sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective

⁶ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44859/104140/F547679546/MWI44859.pdf>

bargaining, and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development. The Act provides for the following:

- (a) Freedom of association, the rights of trade unions and employers' organizations and the protection of employees
- (b) The registration and rules of trade unions and employers' organizations
- (c) Collective Bargaining and the establishment of Industrial Councils
- (d) Dispute Settlement
- (e) The establishment and functions of a Tripartite Labour Advisory Council
- (f) The establishment and operations of an Industrial Relations Court

4.3 Employment Act, No 6 of 2000⁷

The Employment Act No 6 of 2000 was adopted to *“establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice and for matters connected therewith and incidental thereto.”*

The Act is based on the following Fundamental Principles and has specific provisions pertaining to these principles:

- (a) Prohibition against forced labour
- (b) Anti-discrimination
- (c) Equal pay
- (d) Remedies for infringement of fundamental rights

The Act has the following specific provisions with regard to employment in Malawi:

- (a) The appointment and powers of a Labour Commissioner and Labour Officers who may (a) inspect places of work as often and as thoroughly as is necessary; (b) supply relevant technical information and advice to employers, employees and other persons on labour matters; and (c) make proposals for the periodic review of this Act; and (d) make such reports as he (sic) shall consider appropriate or as the Minister may require
- (b) Employment of Young Persons (specifically prohibits child labour)
- (c) Contracts
- (d) Hours of work, weekly rest and leave
- (e) Wages
- (f) Discipline and Dismissal

⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125534.pdf

Additional labour-related laws include the Workers Compensation Act, No 7 of 2000⁸ ; the Occupational Safety, Health and Welfare Act, 1997⁹ ; and the Technical, Entrepreneurial and Vocational Education and Training Act, 1999¹⁰

4.4 Immigration Act, 1964¹¹

The Malawian Immigration Act of 1964 (with amendments up to and including 1988) is designed to:

- regulate the entry of persons into Malawi,
- prohibit the entry into Malawi of undesirable persons,
- make provision for the deportation from Malawi of undesirable persons

The Immigration Act makes provision for the issuance of a temporary employment permit to an applicant, *“authorizing him, together with his wife and children under the age of eighteen years and dependent relatives, and subject to such conditions as may be prescribed, to reside within that area for the purpose of engaging in that occupation for a period of not less than six months or more than two years.”* The conditions for issue of Business Permits (Section 24) and Temporary Employment Permits (Section 25) are as follows:

24	Business Permit
24.1	The Chief Immigration Officer or such other immigration officer as may be authorized by him may, on the application of a person who wishes to reside in Malawi for the purpose of carrying on a business, practising a profession or engaging in an occupation, for gain, profit or reward, as a self-employed person or a partner or a proprietor of that business, professional practice or occupation, issue to that person a business residence permit authorizing him, together with his wife and children under the age of eighteen years and dependant relatives, and subject to such conditions as may be prescribed, to reside in Malawi, within such area as the Minister may specify, for the purpose of carrying on, practising or engaging in such business, profession or occupation.
24.2	A business residence permit shall: (a) be <u>valid for a period of five years</u> from the date of issue and thereafter may, on the application of the holder, be renewed from time to time for successive periods of five years; (b) be in such form as may be prescribed; (c) be subject to payment by the applicant of the fee prescribed to be payable for the issue or renewal of such permit; and (d) be subject to such other conditions as may be prescribed
24.3	The Minister may, without assigning any reason, refuse to issue to any person a business residence permit or to renew the business residence permit issued to any person.

⁸ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/58427/66913/F149646313/MWI58427.pdf>

⁹ <http://www.oit.org/dyn/natlex/docs/ELECTRONIC/57356/104128/F-1353843435/MWI57356.pdf>

¹⁰ <https://media.malawilii.org/files/legislation/akn-mw-act-1999-6-eng-2014-12-31.pdf>

¹¹ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86512/97723/F471460850/MWI86512.pdf>

24.4	Where the Minister refuses to issue or renew a business permit in respect of a person who is resident in Malawi then, unless that person is otherwise entitled under this Act to reside in Malawi, he shall not be entitled to remain in Malawi for a period longer than six months after such refusal or the expiry of his permit.
24.5	A holder of a business residence permit shall not, during the validity of his permit be eligible for a temporary residence permit.
25	Temporary Employment Permit
25.1	The Chief Immigration Officer or such other immigration officer as may be authorized by him in that behalf, may, if he is so authorized generally or specially by the Minister, issue on the application of a person who wishes to reside within an area of Malawi specified by the Minister, for the purpose of engaging in an occupation specified by the Minister, a temporary employment permit authorizing him, together with his wife and children under the age of eighteen years and dependent relatives, and subject to such conditions as may be prescribed, to reside within that area for the purpose of engaging in that occupation <u>for a period of not less than six months or more than two years.</u>
25.2	The Minister may, from time to time, upon application, <u>renew a temporary employment permit issued under subsection (1) for a similar period</u> or similar periods if he is satisfied that the holder of the permit is still engaged in the employment for which the permit was issued at the date of expiry of such permit.
25.3	The Chief Immigration Officer may cancel a temporary employment permit (whether renewed or not) if the holder thereof (a) engages in an occupation other than the occupation specified in such permit; (b) whilst engaging in the occupation specified in such permit changes employment without the prior permission of the Chief Immigration Officer; (c) without the prior permission of the Chief Immigration Officer resides in Malawi elsewhere than within the area specified in such permit; or (d) ceases to be engaged or employed in the occupation specified in the permit.

The Department of Immigration has recently provided additional guidance on temporary employment permits as follows:¹²

1. Working Without a Permit: Government regrets the illegal practice by some organizations that engage expatriates before approval of their Temporary Employment Permits (TEPs). Organizations are reminded that it is a criminal offence under the Immigration Act to work or be employed without a TEP and those found without TEPs are liable for prosecution. TEP applications need to be logged with the Department of Immigration while the applicant is outside Malawi and can take up employment once the application has been approved.
2. Renewal of TEPs: TEPs may only be renewed twice unless it is a key post.
3. Localization Policy: vacancies in Malawi should first be offered to qualified Malawians. Only in cases where there is demonstrated shortage of skills within Malawi can the position be offered to an expatriate. All applications should show that

¹² <https://www.immigration.gov.mw/notice-on-temporary-employment-permits/>

the post was advertised locally and that it was not possible to identify a suitably qualified person locally. TEP applications should include details of a qualified Malawian who will understudy the expatriate and will eventually take over the post. The Department of Immigration only accepts applications which meet these conditions.¹³

4. Skills Shortages: Government is committed to supporting the employment of experts in areas of specific shortages. Government “will endeavour to maintain a right balance between the requirement for expertise not available in Malawi and the obligation to create employment for Malawians by among other things ensuring that suitable and qualified Malawians are not deprived of employment opportunities.”
5. TEPs and NGOs: from 1st April 2018 all NGOs submitting applications for TEPs must include the following documents: (1) Certificate of Registration of the NGO issued by the NGO Board; (2) Annual Compliance Certificate issued by the NGO Board; (3) Recommended letter for application of a TEP application Certificate issued by the NGO Board.
6. A TEP authorizes the holder, together with his wife and children (sic), under the age of eighteen years and dependent relatives, and subject to such conditions as may be prescribed, to reside within that area for the purpose of engaging in that occupation for a period of not less than six months or more than two years.

5 LABOUR MARKET INSTITUTIONS

5.1 Inter-Ministerial Committee on Migration Management: was established in 2019. The Committee is chaired by the Chief Secretary of the Office of the President and Cabinet and consists of 15 members at principal secretary and headship level from Ministries. The overall objective is to coordinate policy and political support as well as guidance from relevant ministries, departments and agencies (IOM, 2022).

5.2 Tripartite Labour Advisory Council.

The Tripartite Labour Advisory Council is appointed for a three-year term by the Minister and consists of four persons appointed by the Minister, four persons nominated from the most representative trade unions and four nominated by the most representative employer organisations. One person from each category should be a woman. The Council shall meet at least once a year and advise the Minister on all labour and employment issues, promotion of collective bargaining, labour market and human resource development and specified activities pertaining to the ILO.

5.3 Industrial Relations Court

¹³ Malawi has a Policy Statement on the Employment of Expatriates. However, this document was not available to the authors.

The Labour Relations Act provides for the constitution of the Industrial Relations Court, headed up by a Chairperson and Deputy Chairperson. There are also 10 persons nominated by each of the most representative organisations of employers and trade unions. At least one of each of the 10 nominated must be a woman. Each sitting consists of the Chairperson or Deputy Chairperson and one member from the employer and one member from the employee nominated lists

5.4 Labour Commissioner and Labour Officers

The Employment Act provides for the appointment of a Labour Commissioner who is responsible for administration of the Employment Act. Functions range from inspections, providing technical advice to employers and employees, making proposals to review the Act, and reporting to the Minister. Enforcement of the Act is by Labour Officers who have broad rights of inspection, entry, search unless a private residence, and, to make any examination, require documents or make enquiry in order to check compliance with the Act.

6 RATIFICATION OF INTERNATIONAL INSTRUMENTS

Malawi has ratified 32 ILO Conventions, of which 28 are in force.¹⁴ With regard to fundamental rights covering all workers in the country, including migrant workers (regardless of migration status), the following Conventions have been ratified

	Convention No	Title	Date of Ratification
Fundamental Conventions	C029	Forced Labour Convention, 1930 (No. 29)	19 Nov 1999
	C087	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	19 Nov 1999
	C098	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	22 Mar 1965
	C100	Equal Remuneration Convention, 1951 (No. 100)	22 Mar 1965

¹⁴ A full list of conventions ratified by Malawi is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103101

	C105	Abolition of Forced Labour Convention, 1957 (No. 105)	19 Nov 1999
	C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	22 Mar 1965
	C138	Minimum Age Convention, 1973 (No. 138)	19 Nov 1999
	C155	Occupational Safety and Health Convention, 1981 (No. 155)	07 Nov 2019
	C182	Worst Forms of Child Labour Convention, 1999 (No. 182)	19 Nov 1999
	C187	Promotional Framework for Occupational Safety and Health Convention, 2006 (No 187)	07 Nov 2019
Governance Conventions	C81	Labour Inspection Convention, 1947 (No. 81)	22 Mar 1965
	C144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	01 Oct 1986
Technical Conventions	C97	Migration for Employment Convention (Revised), 1949 (No. 97)	22 Mar 1965

Malawi has not ratified the following ILO conventions that are specifically related to labour migration or of particular significance in terms of the recruitment and employment of migrant workers:

- Employment Policy Convention, 1964 (No. 122)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (No. 189)
- Violence and Harassment Convention, 2019 (No. 190)

Malawi ratified the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 23 September 2022.¹⁵

¹⁵ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=104&Lang=EN

7 BILATERAL LABOUR AGREEMENTS (BLAs)

Malawi has no formal BLAs in place. It does have an MOU on the Accelerated Programme for Economic Integration with Mauritius, Mozambique, Seychelles, and Zambia, which aims to facilitate labour mobility among the countries (IOM, 2022).

In 2014, Malawi entered into a labour export agreement with the United Arab Emirates that allows young Malawians to work in service industries in Dubai and Kuwait (IOM, 2015).

The unpublished NLMP Situational Analysis notes the following with regard to Bilateral Labour Agreements for the employment of Malawians outside the country:

- The signing of bilateral labour agreements on labour migration is a key aspect of migration governance and for the protection of migrant workers
- Malawi has not signed many agreements with popular destinations outside of the African continent. In 2013, Malawi signed a memorandum of understanding for four years with UAE to export labour. The aim of the MOU was “to guide the development of an institutional partnership between the two parties with a focus on practical outcomes for an improved administration of the contract employment cycle of Malawian workers in U.A.E”
- Also in 2013, the government of Malawi signed a 10-year Employment Agency Agreement with Tyche Business Services (TBS) LLC, a United Arab Emirates-based private recruitment agency. The agreement mandated TBS to recruit Malawi citizens for employment in the Gulf countries.

The National Review of the GCM further notes that Malawi has bilateral agreements with Zambia, Tanzania and Mozambique to strengthen security in combating transnational crimes through Joint Permanent Commissions on Defence and Security (JPCDS). It is not clear whether these agreements have any provisions pertaining to migration.

8 FAIR RECRUITMENT OF MIGRANT WORKERS

The Situational Analysis report provides some key points with regard to fair recruitment, as follows:

- There is no comprehensive framework to regulate the activities of Private Employment Agencies (PEAs) that recruit Malawians to work abroad
- PEAs are registered with the Ministry of Trade and Local Councils as ordinary business entities, but there are no laws that require these agencies to be licensed to recruit Malawians on behalf of foreign employers

- In 2016, the Ministry of Labour issued Labour Export Guidelines that seek to protect migrant workers. These guidelines are used by the Ministry of Labour in their dealings with PEAs, but the guidelines do not have the force of law, so even when the guidelines are violated, there are no enforceable rules and regulations.
- Poor regulation of recruitment practices means that migrant workers are at risk of extortion, exorbitant recruitment fees, fraud and seizing of travel documents, and that many migrant workers face several challenges in the destination countries, including exploitation, poor working conditions and no social security.

9 SKILLS RECOGNITION OF MIGRANT WORKERS

In 2020, the Government of Malawi initiated a process to establish the Malawi Qualifications Authority (MAQA),¹⁶ a statutory body, whose duties will encompass the following:

- registration and verification of qualifications,
- recognition and regulation of professional bodies, and
- the evaluation of foreign qualifications

The Ministry of Education was given the mandate to draft the necessary legislation for the establishment of MAQA and the implementation of its functions. As part of this process, a National Qualifications Framework (NQF) will be established and will be aligned with the Southern African Development Community Qualifications Framework (SADCQF).¹⁷ This, in addition to facilitating the recognition of foreign qualifications, will also enable Malawians to have their education qualifications easily recognized across the region; both by companies and educational institutions.

10 SOCIAL PROTECTION OF MIGRANT WORKERS

Malawi has a Social Security Agreement with Zambia on the portability of social security entitlements, and agreements with Zimbabwe and South Africa regarding pension portability (IOM, 2022).

Existing legislation does not specify rights of migrants to social protection. The Malawi National Support Programme of 2018 does not mention migrant inclusion either.

¹⁶ <https://www.facebook.com/MalawiEducation/posts/establishment-of-the-malawi-qualifications-authority-maqa-the-debate-about-inval/2897722113667180/>

¹⁷ <https://malawi.un.org/en/42103-step-supports-malawi-develop-national-qualifications-framework>

However, in a section on the protection and empowerment of migrant workers and their families, the NLMP Situational Analysis notes the following:

- Malawi receives immigrants mainly from the SADC countries and refugees from other African countries, many of whom are usually engaged in small scale businesses in the unregulated informal sector, which exposes them to the vulnerabilities of the sector.
- While refugees are given humanitarian assistance, there are no similar strategies to promote the socio-economic, cultural and political participation of other migrants, including migrant workers
- The portability of social security rights is a key challenge in Malawi as many short-term migrants are not able to access social security benefits when they return home.
- Malawi does not have bilateral social security portability agreement with many of the popular destination countries and additionally, many emigrants do not contribute to the national social security trust while away.
- Return migrants who may not receive any kind of national support tend to depend on their families and/or remain unemployed.
- Those who managed to accrue some financial capital may lose their investment if not given proper business counselling. Such challenges compel return migrants to re-migrate in most cases

	Social Assistance	National and Occupational Old-age and Disability Pension	Unemployment Benefits	Health Care and Health Insurance	Public Housing	Public Schooling
Citizens						
	✓	✓		✓		✓
Permanent Residents						
	✓	✓		✓		✓
Temporary Residents						
		✓				
Irregular Migrants						

The table above provides information on access to social security by citizens, permanent

residents, temporary residents and irregular migrants in Malawi in relation to social assistance, pensions, unemployment, health care, housing and schooling. The table is adapted from Access to Social Services for Non-Citizens and the Portability of Social Benefits within the Southern African Development Community (Mpedi and Smit, 2011).

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