



International
Labour
Organization



MALAWI- Extract SADC Labour Migration Stocktaking Report

SADC Labour Migration Policies and Governance: Brief summaries of key elements of Labour Migration Policies¹; Specific provisions pertaining to the employment of foreign workers²; and, Applicable requirements and procedures for obtaining work permits³.

Malawi	
Type of permit	Temporary Employee Permit (TEP)
Application requirements	<p>First need to secure a visa, then the employer is responsible to apply for a TEP for its foreign employee</p> <p>Required documents for a visa:</p> <ul style="list-style-type: none"> • Two passport photos • A detailed cover letter • Airplane tickets/itinerary • Confirmed hotel booking

¹Available information indicates that only 5 SADC Member States (Eswatini, Lesotho, Namibia, Seychelles and Zimbabwe) have a National Labour Migration Policy, with Mauritius formulating a Migration and Development Policy and Malawi having reached the stage of publishing a Situational Analysis report in preparation for the drafting of its NLMP.

²The authors express their gratitude to Ms Zoe Isaacs for the permission to reproduce the information pertaining to the employment of foreign nationals found in the SADC Labour Law Guide that is maintained by the SADC Private Sector Forum (SPSF) and available at <https://www.sadclabourlawguide.spsf.org/bw/>

³Information regarding requirements and processes for obtaining work permits was primarily sourced from official government websites and from <https://www.globalization-partners.com/globalpedia/> No information was available for Comoros.

	<ul style="list-style-type: none"> • Bank statements from the last three months • Proof of yellow fever vaccine if coming from a country at risk <p>Required documents for TEP:</p> <ul style="list-style-type: none"> • Completed application form • Employment contract • Valid passport • CV • Advertisement for the job vacancy • Academic qualifications
Duration of permit	6 months to 2 years; Can be renewed twice
Employment of Foreign Nationals	<p>A foreign national who would like to enter Malawi for short term consultancy or other work related activity must apply for Temporary Employment Permit. This permit is issued to persons before they enter Malawi for the purpose of taking up specified employment in Malawi. A temporary employment permit is valid for two years and can be renewed twice through submission of temporary employment permit renewal forms to Immigration Office. An application for renewal must be submitted three months before the expiry of the permit. All applicants for new temporary employment permit are required by law to wait outside Malawi until their applications have been approved. The organisation has the responsibility to apply for the permit on behalf of the applicant. The temporary employment permit application form and supporting documents are submitted at the Immigration Headquarters or Regional Immigration Offices for processing upon payment of the processing fees.</p>
National Labour Migration Policy	<p>Malawi is in the process of working towards the drafting and adoption of a National Labour Migration Policy. In July 2020, a Situational Analysis report was published that provides a diagnostic review of migration patterns, issues and challenges that provide the context for the proposed NLMP. The Situational Analysis recommends the following as the goal and policy objectives of the NLMP, to be considered in consultation with stakeholders:</p> <p>Goal</p> <p>The main goal of the national Labour Migration policy is to harness the benefits of labour migration for socioeconomic development in Malawi.</p>

	<p>The following policy objectives and areas are suggested for consideration by stakeholders:</p> <ol style="list-style-type: none"> 1. To enhance good governance of labour migration. Possible Areas: Legislative Framework; Regulatory Framework; Institutional Framework; international cooperation. 2. To strengthen systems for protection of migrant workers and their families in Malawi and countries of destination. Possible Areas: Migrants Protection; Combatting Trafficking and Smuggling; Social Security Portability 3. To enhance mechanisms for harnessing and maximizing the developmental impacts of labour migration. Possible Areas: Remittances; Skills transfer; Mainstreaming Migration into Development Planning, Partnerships and Migrants led businesses 4. To strengthen labour market and migration information systems.
National Labour Market Institutions	<p>The main institutions are the Tripartite Labour Advisory Council, the Industrial Relations Court, and Principal Secretary, Labour Commissions and Labour officers. 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.</p> <p>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.</p>

The LRA provides for the constitution of the Court, headed up by a Chief Justice, Deputy Chief Justice and five persons nominated by each of the organisations of employers and trade unions. At least one of each of the five nominated must be a woman. Each sitting consists of the Chief Justice or Deputy Chief Justice and one member from the employer and one member from the employee nominated list. The majority constitutes the decision of the Court. The court has jurisdiction to hear any disputes on labour matters, including those identified in the Act. Appeals against the decisions of the Court may be made to the High Court. It should be noted that appeals do not stay the order or award, unless otherwise directed by the Court.

The Employment Act provides Labour Commissioner shall be appointed in the public service and 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. Labour offices are also responsible for enforcement of posting of any notices required by the Act. Labour officers may be accompanied by a member of the police force if there is reasonable cause that the officer may be obstructed in the performance of the officer's duties. The labour officer has the authority to require alteration in the interests of health and safety or in the event of the imminent danger to the health and safety of employees.

The labour officer must submit a report to the Regional Labour Officer within 30 days of the inspection. There is also a regular three monthly reporting requirement that results in an annual general report on inspections that is circulated to all registered employer and employee organisations. Any disputes and complaint, including a question difference or dispute on any matter in the Employment Act or relating to a contract of employment, by employer or employee, may be referred to a labour officer who shall attempt to resolve the matter. Any person alleging a violation of the Act may file a complaint with the District Labour Officer who may institute a prosecution to enforce the Act. In both instances, a trade union or employers' organisation may represent the person. Notwithstanding this provision, a person may personally present a complaint to the Court for relief within one month of the District Labour Officer deciding not to prosecute.