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**MODEL FRAMEWORK
FOR LABOUR DISPUTE RESOLUTION SYSTEMS IN THE
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

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A. PREAMBLE

The Member States of SADC:

RECOGNISING the need to strengthen labour dispute prevention and resolution systems by making them independent and impartial and thereby promote access to labour justice;

AWARE that increased access to labour justice strengthens labour market governance and enhances workplace democracy;

NOTING that the SADC Protocol on Employment and Labour, 2023, calls upon State Parties to put in place policy and legislative measures to ensure that the labour dispute resolution machinery is autonomous, accessible and efficient, and subject to tripartite consultation;

RECALLING the SADC Charter of Fundamental Social Rights, 2003;

MINDFUL that efficient labour dispute resolution systems are crucial for sound industrial relations, productivity and the effective functioning of the labour market;

RECOGNISING that Member States have made significant strides to enhance labour dispute prevention and resolution systems, and are desirous to continuously improve their functioning and to achieve greater coordination and harmonisation of these systems in the region;

COMMITTED to promoting the efficiency, effectiveness, and fairness of labour dispute resolution systems including through regular performance evaluation and peer review;

HEREBY DECIDE to adopt this Model Framework for labour dispute resolution systems in SADC Member States to promote the progressive development of autonomous national dispute resolution machinery taking into account the specific context of each Member State.

B. DEFINITION OF TERMS

1. Within the context of the Model Framework:

“Autonomous dispute resolution system” means a State funded labour dispute resolution system established in terms of legislation that includes an independent commission, authority, or similar body, which has operational independence from government, and is not influenced or controlled by any political party, business interests, employers, or trade unions.

“Conciliation” means a process in which a conciliator assists the disputing parties to resolve the dispute and to reach a mutually acceptable agreement.

“Dispute resolution” in the context of a dispute resolution system comprises *dispute prevention* (i.e. proactive processes and mechanisms to prevent disputes from arising), *dispute settlement* (i.e. processes through which the disputing parties settle a dispute themselves or are assisted to settle a dispute), and the *determination of disputes* (a decision is made on the dispute by an arbitrator or adjudicator).

“Dispute of interest” or an **“interest dispute”** means a dispute between workers and their employer concerning future rights and is not based on an existing entitlement but rather the creation of new rights such as a wage increase or additional benefits. A dispute of interest usually arises from a breakdown in collective bargaining processes between workers and their employer(s), or their respective representatives.

“Dispute of right” or a **“rights dispute”** means a dispute between a worker or workers and their employer concerning an alleged infringement of an existing entitlement or right flowing from statutory law, collective agreements or individual employment contracts.

“Labour Court” refers to a specialised court of law or tribunal established to adjudicate disputes and legal matters in accordance with applicable labour laws.

“Mediation” refers to a process-oriented form of conciliation in which the mediator actively participates to assist the parties to reach a mutually acceptable agreement.

“Negotiation” means a process of dialogue between two or more parties for the purpose of reaching a mutually acceptable agreement on matters of common and conflicting interests.

“Tripartite consultation” means the active engagement and interaction of government, employers and workers, through their respective representatives, on matters of common concern before a decision is taken.

C. OBJECTIVES

1. The objectives of this Model Framework are as follows:
 - 1.1. to promote the effective and efficient functioning of labour dispute resolution systems and the harmonisation of systems;
 - 1.2. to promote greater coordination and harmonisation of dispute resolution systems in SADC Member States; and
 - 1.3. to promote the development of dispute resolution systems that are autonomous, accessible, and efficient.
2. The Model Framework promotes the resolution of labour disputes¹ within a system consisting of autonomous institutions that perform functions related to dispute prevention, dispute settlement and the determination of disputes by arbitration or adjudication, recognising that –
 - 2.1. dispute prevention is preferable to resolution; and
 - 2.2. if prevention is not possible, the parties should engage with a view to settling the dispute themselves, or through third party intervention in the form of conciliation and mediation to facilitate settlement; and
 - 2.3. if conciliation or mediation fails to result in settlement, there should be provision for:
 - 2.3.1. the determination of rights disputes by arbitration in a process with limited formalities that is expeditious; and
 - 2.3.2. a procedure through which the parties to interest disputes can resolve the dispute through collective action in accordance with applicable laws; and
 - 2.4. adjudication of rights disputes by a court should occur only as a measure of last resort or in the case of a review or appeal.
3. Labour dispute resolution systems should strive to:

¹ Noting that labour disputes can be categorised as *individual disputes*, between a single worker and his or her employer, or *collective disputes* between workers, who may be represented by a trade union, and one or more employers; and as interest disputes, or disputes of right, and that there are in practice overlaps between the categories.

- 3.1. be free of charge, user-friendly, accessible, and expeditious;²
- 3.2. continuously improve and ensure effective use of available resources and public funds;
- 3.3. collect and publish data on dispute resolution, seek feedback from users, regularly evaluate processes, and implement necessary changes to enhance efficiency, effectiveness, and fairness; and
- 3.4. be innovative, agile and flexible, with the ability to adjust in order to provide the best possible services, using new approaches and initiatives for labour dispute prevention and resolution for the benefit of users.

D. LABOUR INSPECTION

Commentary: the compliance and enforcement role of labour inspection

Article 3 of the [Labour Inspection Convention, 1947 \(No. 81\)](#), which has been ratified by all SADC Member States, emphasises that the function of the system of labour inspection is ‘to secure the enforcement of legal provisions relating to conditions of work and the protection of workers ... such as provisions relating to hours, wages, safety, health and welfare ...’. Part III of the [Labour Inspection Recommendation, 1947 \(No. 81\)](#) states that the ‘functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.’ Therefore, it should be noted that labour inspection is not part of the labour dispute resolution system.

1. In this Model Framework, labour inspection refers to the mechanisms in place for the enforcement of statutory minimum labour standards and related matters. It is a labour administration function that aims to –
 - 1.1. ensure compliance with labour laws and regulations;
 - 1.2. prevent labour disputes by identifying and addressing non-compliance; and
 - 1.3. provide guidance and advice to employers and workers regarding labour rights and obligations.
2. The Labour Inspectorate and labour dispute resolution functions shall be separate,

² A distinction should be drawn between statutory functions, which are provided free of charge, and discretionary functions, which can be charged for and used to supplement State funding.

to the effect that –

- 2.1. public officials responsible for labour inspection shall not perform conciliation, mediation and arbitration duties;
- 2.2. the Labour Inspectorate shall be responsible for promoting compliance with the law, and for securing compliance with the legal provisions and labour standards that are enforceable by Labour Inspectors; and
- 2.3. the Labour Inspectorate should be accessible and adequately resourced and capacitated to detect violations and expeditiously secure compliance through administrative procedures. If a compliance order or directive has been issued, the administrative procedures should include a right of appeal for an employer within the labour administration system. In the event that a party fails to comply with a compliance order or directive, provision should be made for its enforcement and execution by way of an order of the Labour Court.

E. LABOUR DISPUTE RESOLUTION SYSTEMS

1. Member States shall establish and maintain labour dispute resolution systems to facilitate the efficient resolution of labour disputes, including conciliation, mediation and arbitration functions, that shall –
 - 1.1 operate transparently, fairly, and independently, ensuring equal access to all parties involved in labour disputes;
 - 1.2 be adequately funded and provide their services free of charge, and have sufficient and appropriately skilled staff who are equipped to effectively carry out their functions;
 - 1.3 maintain records of labour disputes and their resolution, including the collection of data that measures the performance of dispute resolution systems on clearly defined indicators, with a view to promoting efficiency and continual improvement within the system;
 - 1.4 disseminate information regularly on the resolution of labour disputes; and
 - 1.5 provide a range of services that will meet the needs of the users and assist in the prevention of labour disputes.³
2. Dispute resolution systems must be established in terms of legislation which enshrines the objectives of the system and against which the functioning of the

³ This may include services such as training, workshops, advice, facilitation, investigations, conciliation (con-arb and arb-con) and arbitration.

system can be evaluated.

3. Labour Officers who perform conciliation and/or mediation must:

- 3.1 act impartially, engage in dialogue with the disputing parties, and provide guidance on the interpretation of labour laws and regulations, and assist the parties to reach a mutually acceptable settlement;
- 3.2 maintain confidentiality regarding information obtained during mediation, subject to legal requirements;
- 3.3 advise the parties, if conciliation or mediation is not successful within a specified timeframe, of any right of referral to arbitration or the Labour Court, or, in the case of an interest dispute, the procedures for industrial action.

4. Labour Officers who arbitrate disputes of right⁴ shall:

- 4.1 be suitably qualified and trained;
- 4.2 be impartial and independent and shall not have conflicts of interest that may compromise their impartiality;
- 4.3 conduct the arbitration proceedings in a fair and expeditious manner;
- 4.4 allow the parties to present their case, produce evidence, and cross-examine witnesses;
- 4.5 render a written award, setting out reasons for the decision, within a specified timeframe from the commencement of the arbitration proceedings; and
- 4.6 base the award on the evidence presented and the applicable law.

5. The arbitration award shall be final and binding on the parties, subject to a right of review, or an appeal, as may be appropriate, to the Labour Court.

6. There shall be provisions relating to the awarding of costs by an arbitrator, the confidentiality of information disclosed in arbitration proceedings, and the enforcement of arbitration awards.

7. Provisions may be put in place to regulate the right to legal representation in arbitration proceedings so as to avoid unnecessary technicalities and delays emerging in the system and to ensure compliance with time limits.

⁴ Interest disputes should be arbitrated only by agreement, or in event of a referral by a party to a dispute arising from an essential service.

8. If the Labour Ministry appoints independent conciliators, mediators or arbitrators to panels that supplement the services provided by Labour Officers, it shall develop criteria for the appointment of suitably qualified persons. Similar criteria should be developed by Labour Courts which appoint independent persons as mediators for the purpose of court-annexed mediation.
9. The above provisions in respect of conciliations, mediations and arbitrations performed by Labour Officers shall apply to independent panellists contracted by the Labour Ministry or appointed by the Labour Court.
10. Case management systems must be developed to monitor the case load and to assess the effectiveness of arbitrations conducted by Labour Officers and independent panellists, and to provide statistics on labour disputes and arbitration outcomes.
11. The Labour Court should have a status equivalent to the High Court in relation to labour matters in order to streamline the labour dispute resolution process and expedite resolution.

F. PHASED HARMONISATION OF LABOUR DISPUTE RESOLUTION SYSTEMS

Commentary: a spectrum of labour dispute resolution systems

The Model Framework recognises four composite 'phases' in the development of labour dispute resolution systems, ranging from dispute resolution performed by a Labour Officer within the Labour Ministry (Phase 1) to resolution of disputes performed by an Autonomous Dispute Resolution Body (Phase 4). Labour Courts are included in all phases of a labour dispute resolution system.

Although there is considerable variation among Member States, the direction of change in labour dispute resolution systems is towards greater autonomy, accessibility, and efficiency, with tripartite governance at the apex of dispute resolution systems in Phase 4. This is the direction of change that SADC Member States are taking to achieve greater alignment and, ultimately, convergence towards Phase 4 systems in which the central pillar is an autonomous dispute resolution body providing speedy, high-quality conciliation, mediation, and arbitration as well as dispute prevention services.

Phase 1: Dispute settlement within the Labour Ministry (Labour Officers)

Commentary: the rationalisation of functions within the Labour Ministry

The primary feature of Phase 1 systems is the absence of a distinct body or office that undertakes conciliation and/or mediation, with the functions of the Labour Inspectorate often extending into dispute resolution, contrary to the requirements of

the [Labour Inspection Convention, 1947 \(No. 81\)](#) and [Labour Inspection Recommendation, 1947 \(No. 81\)](#).

Phase 1 labour dispute resolution systems typically comprise the Labour Ministry and the Labour Court. In such systems, there is usually no distinction between disputes that involve non-compliance with statutory standards and disputes of right in so far as their resolution is concerned. In other words, the procedure for resolving both types of disputes within the ministry is conciliation and/or mediation, which is also the first step for disputes of interest. Furthermore, non-compliance with many statutory standards is an offence subject to criminal sanctions.

Such systems have the advantage of being well established in law and practice in the territories where they operate. Furthermore, if the Labour Court uses Magistrate's Courts to hold hearings, its footprint can be extended further. Nevertheless, Phase 1 systems typically fall short of the standards of autonomy, accessibility and tripartite governance, and the Labour Ministry is generally overwhelmed by the number of disputes to be resolved through conciliation and mediation, including those relating to non-compliance with legislative provisions. Should the Labour Ministry fail to resolve the dispute, the only recourse for the employee or employer is to take the matter to the Labour Court, which increases the case load of the court.

1. Key Actions towards accessible and efficient labour dispute resolution beyond Phase 1:
 - 1.1 One of the first steps to improve such a system is to distinguish between the functions of the Labour Inspectors (powers of enforcement to deal with breaches of statutory standards) and Labour Officers, who should seek to resolve labour disputes (not related to enforcement) through conciliation and mediation processes.
 - 1.2 Labour officers should be required to have relevant experience and skills, preferably with a specialist dispute resolution qualification or equivalent training in conciliation, mediation, and arbitration, and therefore should be appointed and remunerated at the appropriate level.
 - 1.3 Consideration should be given to decriminalising non-compliance with those statutory standards where the breach can be easily quantified, and monetary compensation can adequately remedy the breach. Criminal sanctions should be limited to breaches that are manifestly criminal in nature and relating to work that should be abolished such as child labour or forced labour.

Phase 2: Determination of disputes under the auspices of the Labour Ministry (limited autonomy)

Commentary: arrangements for the determination of disputes by arbitration in the Labour Ministry and mechanisms to supplement the functions of Labour Officers

A key feature of Phase 2 is that provision is made for arbitration under the auspices of the Labour Ministry and conducted by Labour Officers. Arbitration is an effective dispute resolution process which eases pressure on the courts; however, there is a concern with impartiality when arbitration occurs under the auspices of the Labour Ministry.

In Phase 2, the 'space' between the Labour Ministry and the Labour Court begins fill up, but with the role of the Ministry of Labour still dominant and with limited independence being achieved. Supplementing the functions of Labour Officers is achieved by the Ministry introducing specific mechanisms. This takes the form of panels of independent conciliators, mediators and arbitrators contracted by the Ministry. Where bipartite (sectoral or industry) bargaining structures exist these are, in some cases, enabled to provide dispute resolution services. Furthermore, in some cases the Labour Court requires court-annexed mediation.

In Phase 2 progress clearer dividing lines between the roles of a Labour Inspector and a Labour Officer with a distinction being drawn between enforcement and dispute resolution procedures. However, non-compliance with many statutory standards remain an offence and criminal prosecution remains a characteristic of the system.

2. Key Actions towards accessible and efficient labour dispute resolution beyond Phase 2:
 - 2.1 Arbitration under the auspices of the Labour Ministry may be achieved if the skills of Labour Officers are developed to provide them with the expertise to conduct arbitrations.
 - 2.2 The dispute resolution functions of Labour Officers can be complemented through the establishment of panels of independent conciliators, mediators and arbitrators contracted to the Ministry of Labour. Another mechanism that can be introduced to relieve the pressure on the Labour Court is for the Court to introduce court-annexed mediation, which can be required before the Court will hear a dispute of right. Mediators may be drawn from a panel. Panels of independent conciliators, mediators and arbitrators introduce an element of autonomy and strengthen impartiality in the dispute resolution system. In addition, legislation that promotes sectoral or industry bargaining

structures should empower these structures to perform dispute resolution functions for their sectors, including arbitration.⁵

- 2.3 The introduction of arbitration as a step between conciliation and/or mediation and the Labour Court should include the right to take an arbitration award on review (or appeal in appropriate circumstances) to the Labour Court. Disputes of interest should be excluded from arbitration except by agreement between the parties or in the case of essential services.

Phase 3: Consolidating Dispute Resolution in Institutions (strengthening independence)

Commentary: conciliation, mediation, and arbitration outside the Labour Ministry

In Phase 3 the labour dispute resolution system advances further towards independence with dispute resolution starting to move out of the Labour Ministry (this is not always complete) and the semi-autonomous mechanisms of Phase 2 coalescing into institutions (or coalescing into new institutions alongside existing independent institutions). However, in Phase 3 a single autonomous dispute resolution body that conducts conciliation/mediation and arbitration has not yet been established, i.e. there are separate bodies for conciliation/mediation and for arbitration, or arbitration is being phased into the independent body as trained arbitrators become available (and some dispute resolution continues in the Labour Ministry).

3. Key Actions towards accessible and efficient labour dispute resolution beyond Phase 3:
 - 3.1 Establish independent institutions in which conciliation/mediation is conducted alongside independent arbitration tribunals and progressively phase out dispute resolution by Labour Officers in order to avoid duplication of functions.
 - 3.2 Put in place the foundations in the form of trained personnel for the establishment of a single integrated autonomous dispute resolution body that performs conciliation, mediation and arbitration for the entire country. Pending that, dispute resolution by the Labour Ministry may continue in some areas or as circumstance require. Where new institutions are

⁵ Sector or industry bargaining structures will require adequate and sustainable funding to handle dispute resolution functions.

established alongside existing institutions ways should be explored to integrate or coordinate their functions.

- 3.3 Provisions shall be put in place through legislation or regulations to ensure that conciliation, mediation and arbitration performed by independent dispute resolution institutions is accessible, expeditious and efficient and that the processes are of high quality.
- 3.4 The institutions operate transparently, fairly, and independently, and ensure equal access to all parties involved in labour disputes.
- 3.5 The institutions are adequately funded by the State, they provide their statutory services free of charge, and they have sufficient and appropriately skilled staff who are equipped to effectively carry out their functions. The institutions, however, have scope to raise additional funds to meet their objectives, provided that this is done within a defined framework that does not compromise their autonomy.
- 3.6 The independent institutions maintain records of labour disputes and their resolution, including the collection of data that measures the performance of dispute resolution systems on clearly defined indicators, with a view to promoting efficiency and continual improvement within the system. Such data on dispute resolution should be disseminated regularly.

Phase 4: Establishing an Autonomous Dispute Resolution Body

Commentary: the features of an autonomous dispute resolution body

In Phase 4, the role of government is limited, and the scope of dispute resolution is clearly delineated with the focus of labour administration within ministries being inspection and enforcement of statutory standards, whereas labour disputes are dealt with in dedicated processes within an independent institution. The Labour Court continues to play an important role in the dispute resolution system, but the vast majority of disputes should be settled (by conciliation or mediation) or determined (by arbitration) in an independent institution before they reach the courts.

Phase 4 sees the functions of conciliation, mediation and arbitration consolidated within an autonomous dispute resolution body established in terms of legislation through tripartite consultation. It is funded by the State and has an independent governance structure with tripartite representation. There is a clearly demarcated division between the functions of the autonomous dispute resolution body and the Ministry of Labour. There is a right of appeal and review to the Labour Court, which has the status of a High Court in relation to labour matters. The independent dispute resolution body collects data on dispute resolution that is made publicly available.

The specialisation of the autonomous dispute resolution body should result in high quality processes and efficiency. The latter should not be compromised by

inadequate staffing to deal with the volume of disputes or by the expansion of the services of the independent body beyond its capacity to efficiently perform its core functions of dispute prevention, dispute settlement and arbitration. Inefficiencies in the Labour Ministry and the Labour Court must be addressed within those institutions and not by adding to the functions of the independent body. Furthermore, case management needs to seamlessly span the entire system and all agencies in the system.

Although budgetary constraints remain a practical reality, the efficiency gains within the dispute resolution system and the benefits that flow from such a system should outweigh its cost. Inefficiencies arising from inadequate funding should not be grounds for rolling back progress towards autonomous dispute resolution bodies.

4. The autonomous dispute resolution body shall:

- 4.1 be established through a process of tripartite consultation and in terms of legislation that provides for an independent governance structure for the body, with tripartite representation;
- 4.2 be accountable to its governing structure in terms of its operations and functioning and shall be independent of government and employers' organizations and trade unions;
- 4.3 be adequately funded by the State but shall have the authority to receive supplementary budget support from any other sources as may be defined in the enabling legislation, provided that the independence and integrity of the body shall not be interfered with or compromised;
- 4.4 employ a director or similar executive head, appointed by the governing structure, and staff to run the dispute resolution body, who will be accountable to the governing structure for its performance;
- 4.5 have sufficient and appropriately skilled staff who are equipped to effectively carry out their functions, together with an appropriate remuneration structure;
- 4.6 provide impartial and expeditious dispute resolution through conciliation, mediation and arbitration processes for individual and collective rights disputes and will conciliate and mediate interest disputes; and
- 4.7 ensure expeditious dispute resolution by implementing strict time limits for concluding conciliation and mediation processes, and for the hearing and issue of an arbitration award.

5. Provisions and processes shall be put in place that provide for:

- 5.1 appropriate procedures that are simple and user-friendly, which may include the use of a website and online and digital services

- 5.2 ensuring access to justice by providing sufficient branches in the country that are accessible to workers,⁶ and access to information and processes, including access via digital technology;
 - 5.3 the independent dispute resolution body to certify its own awards as well as an expeditious system for the enforcement of settlement agreements and arbitration awards;
 - 5.4 review and appeal, as appropriate, to a Labour Court; and
 - 5.5 putting in place and enforcing codes of conduct and ethical standards for staff.
6. Mechanisms for collecting data should be put in place, as well as steps to monitor and evaluate performance against targets for key aspects of the dispute resolution system, and mechanisms should be put in place to assess the performance statistics and to make adjustments and take the necessary actions so that the system is continually improving its efficiency and the quality of its processes.

G. LABOUR COURT

Commentary: functioning of Labour Courts

Member States have in place specialised Labour Courts, also known as Industrial Courts, Industrial Relations Courts, Labour Appeal Courts or tribunals, which place an emphasis on fairness, informality, expediency and accessibility. Labour Courts are meant to be informal and flexible. Hence, they are generally not bound by the strict rules of evidence but are concerned with substantive issues of justice and fairness. They are a key institution that provides quality assurance for the entire labour dispute resolution system, ensuring that questions of law arising from arbitral awards are judicially settled as well as providing judicial precedents to guide employers and employees, as well as conciliators, mediators and arbitrators.

However, the high workload of Labour Courts is a continuing problem in the SADC region, hence the need to shorten the time taken to resolve disputes to achieve effectiveness. In addition, despite exclusive jurisdiction granted Labour Courts, the High Court retains its inherent original jurisdiction hence the issue of concurrent jurisdiction is still a problem in some Member States. The purpose of legislature in creating Labour Courts was to create a specialist court which enjoys expertise in labour matters. Therefore, there is a need to have laws properly streamlined to mitigate the challenges arising from concurrent jurisdiction.

⁶ Which may include the use of part-time conciliators, mediators and arbitrators, as well as using accredited private agencies and bipartite bargaining structures; and making use of the existing infrastructure of the Labour Ministry or Magistrate's Courts.

1. A specialised Labour Court, which should have the status of a High Court, should offer an efficient and accessible mechanism for the resolution of labour and employment disputes.
2. Where there is no autonomous institution that arbitrates labour disputes the Labour Court should consider the introduction of court-annexed mediation.
3. Where an autonomous dispute resolution body has jurisdiction to determine a dispute, appeals and review from the dispute resolution body may be referred to the Labour Court.

H. REGIONAL CO-OPERATION

1. Regional co-operation is envisaged to support Member States to transition to autonomous dispute resolution systems and to establish an enabling environment for the efficient and fair resolution of labour disputes. To this end, the SADC Forum for Dispute Prevention and Resolution should be fully operationalised to, inter alia:
 - 1.1 facilitate regular exchanges between the bodies / authorities on their experiences in dispute resolution to promote consistency of performance standards and efficiency of service delivery throughout SADC; and
 - 1.2 consider and develop non-binding protocols and standards / guidelines on best practice on the resolution of labour disputes and labour dispute resolution systems (for example, on matters relating to the expeditious resolution of disputes such as time limits for the referral and resolution of disputes, condonation applications, legal representation in conciliation, mediation and arbitration proceedings, and the enforcement of arbitration awards, etc); and
 - 1.3 promote collaboration between the bodies / authorities in building the capacity of professionals responsible for labour dispute resolution through relevant entities or centres of excellence and centres of specialisation established for this purpose.