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**SADC MODEL FRAMEWORK FOR NATIONAL SOCIAL DIALOGUE
INSTITUTIONS (NSDIs)**

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Preamble

The Member States of SADC: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe;

Taking into account Sustainable Development Goal 16.6 that provides for the development of effective, accountable and transparent institutions at all levels; and

Aligning also with the Implementation Plan of the ILO Abidjan Declaration, 2019, on vibrant tripartism and social dialogue, which seeks to strengthen social dialogue structures and processes as well as aspiration 3 of the African Union Agenda 2063 that provides for the creation of institutions which are developmental, democratic and accountable; and

Noting the objectives of the SADC Charter of Fundamental Social Rights, 2003; and

Considering the SADC Regional Indicative Strategic Development Plan (RISDP) 2020 – 2030 that outlines the required conditions and key interventions to achieve its regional integration and development agenda, including the strengthening of ‘regional and national social dialogue mechanisms involving tripartite cooperation between governments, employers, and workers’ ... to foster industrial and labour market stability’;

Are committed to implement a model framework for national social dialogue institutions and hereby agree as follows:¹

Objectives

1. The objectives of the Model Framework are:

- (a) to build inclusive institutions for social dialogue and strengthen related mechanisms and procedures to effectively respond to the changing world of work, including technological change, the green economy, demographic shifts and globalization, and taking into account the cross-cutting challenges of gender, youth, the environment and climate change, and disaster risk management;
- (b) to create an enabling environment for social dialogue and cooperation that promotes non-interference between and among the tripartite constituents;
- (c) to strengthen the capacity of the state and representatives of organised business, workers’ organisations, and civil society organisations to participate meaningfully in such dialogue, which shall include consultation and negotiation resulting in agreement on matters falling within the mandate of the NSDI; and
- (d) to promote sustainable development, peaceful co-existence, and foster a cohesive society.

¹ See Schedule at end of document with definitions of key terms.

Principles

2. The following commitments and principles apply to the Model Framework for NSDIs:

- (a) The state shall adopt legislation *[or other appropriate statutory instrument]* facilitating the institutionalisation of social dialogue as a permanent feature of the policy-making culture between government, and representatives from organized business, workers' organisations and membership-based civil society organisations;²
- (b) The state shall ensure the inclusiveness and effectiveness of NSDIs with regard to their membership and the range of issues tabled for discussion, which should be relevant to key stakeholders in the labour and the broader socio-economic policy-making spheres, and shall strengthen the coordination of mechanisms involving NSDIs to ensure policy coherence and evidence-based decision-making;
- (c) The state shall implement policy and legislative reforms, where necessary, to guarantee freedom of association, and the right to organize, and the independence and autonomy of organized business, workers' and civil society organisations and their representatives to the NSDI;
- (d) The state shall promote NSDIs as the peak-level or apex national social dialogue institution, and a forum for information-sharing, consultation and negotiation, and shall provide adequate funding, resources and capacity to ensure effective social dialogue and co-determination in accordance with the mandate of the NSDI;

[Member States should consider whether or not a peak-level NSDI would replace any existing social dialogue structure, or alternatively the relationship between an existing structure (for example a labour advisory council) and a peak-level NSDI, should be demarcated in terms of the types of issues each institution deals with and what decisions by one mean for the other.]

- (e) The state shall ensure that an effective communications and education strategy is adopted to ensure that the nature of tripartite social dialogue and the related activities of the NSDIs are communicated to government more broadly, and to Parliament and the general public; and
- (f) The state shall ensure that adequate mechanisms are adopted for the monitoring and evaluation of the activities of the NSDI, including mechanisms for periodic review of the NSDI to assess whether there are barriers undermining effective social dialogue and co-determination and to make recommendations, including recommendations for law reform, to improve the functioning of the NSDI in accordance with its objectives.

[The provisions set out below provide for the creation, composition, role and functions of the NSDI, as well as the general operations and governance of the NSDI, and may

² Member States may want to indicate that 'civil society organisations' refers to membership-based organisations that represent civil society interests relating to socio-economic policy and human development taking into account the interests of persons who are unemployed, the youth, and other vulnerable groups within society including but not limited to women and persons with disabilities, and organisations engaged with climate change and the environment.

be adopted in legislation / regulation / decree, depending on the statutory instrument adopted by the Member State to establish an NSDI]

Establishment of NSDI and relationship with government

3. A permanent national social dialogue body, referred to as the 'NSDI' *[or as decided by the Member State]* is established as a juristic person *[statutory body]* separate from its members.
4. The Minister of Labour *[alternatively the leader of government business in parliament]* will act as the link between government and the NSDI; and as the link between the NSDI and parliament, and, unless otherwise agreed, is responsible for tabling reports from the NSDI in parliament; and for ensuring cooperation between government, parliament and the NSDI.
5. In addition to the government representatives who are members of the NSDI, the NSDI may interact with various ministries, government departments, and other authorities on issues within their jurisdiction, and such ministries, government departments and other authorities may become involved, in a non-voting capacity, in the activities of the NSDI as and when the issues under consideration require such involvement.

Role and mandate

6. The NSDI is a representative body for the purposes of social dialogue including information sharing, consultation and negotiation, and shall seek to reach consensus and, where appropriate, conclude agreements on matters within its mandate. The role and mandate of the NSDI is elaborated on in the sections below.
7. The mandate of the NSDI includes the following:
 - (a) to consider, advise and where relevant to make decisions on the formulation, implementation and evaluation of socio-economic policy;
 - (b) to consider, advise and where relevant to make decisions on and report to parliament on any proposed legislation affecting labour, employment, industrial relations or working conditions, in so far as these may have an impact on workers;
 - (c) to consider and advise on any policy measures related to matters referred to in 7.(b) above, and any other function prescribed by law;
 - (d) to advise the government on any other matters related to the mandate of the NSDI or the NSDI's objectives, as referred to the NSDI or on its own initiative;
 - (e) to consider, promote and advise on the implementation of international law and other global commitments, standards and best practices including those in relation to social and economic policy and the affairs of any regional or international body that are relevant to the NSDI's mandate or objectives.
8. The NSDI may also, on its own initiative, undertake studies on socio-economic issues, and discuss the formulation and implementation of legislation or policies related to labour, economic and social affairs, and report to the Minister of Labour, other relevant ministers and/or the Presidency on its discussions.

9. The NSDI may develop codes of practice or guidelines to ensure that the NSDI operates in an efficient and effective manner, including guidelines for –

- (a) the conduct of relations between members, including mechanisms and processes for resolving conflict and to enable members to avoid deadlock, or to resolve a deadlock between the members;
- (b) processes to ensure a good working relationship with parliament and with other institutions engaged in the formulation or implementation of social and economic policy; and
- (c) the process and criteria *[which may be included in the statutory instrument, the constitution or in guidelines to be developed]*, which must be objective, to determine the most representative organizations for the purposes of participation in the NSDI; *[this will depend on national context and the level of cooperation within constituencies and whether or not there is agreement on representation within each constituency]* and the process for admission to membership of the NSDI.

In this regard, objective criteria include quantitative criteria (such as membership, geographical or industry/sector coverage); qualitative criteria (such as organisational independence and functioning; respect for democratic principles) and other criteria (such as affiliation to international organisations, presence at sector, enterprise or workplace level). Representative organisations should ensure the participation of women and all categories of workers including workers in the informal sector, youth, rural and migrant workers, people living with HIV, and persons with disabilities. In addition, the guidelines *[alternatively the NSDI Constitution]* may specify how the seats within a constituency are apportioned between the most representative organisations.

[In the event of a dispute over representativeness – provision should be made for an impartial and independent body to resolve the dispute].

Composition

[Before the creation of the NSDI, Member States may consider adopting a process for determining the most representative organisations and for receiving nominations for the initial members representing organised business and workers' organisations, who will be responsible for determining the NSDI Constitution. The basis and considerations for the nomination of other organisations, such as relevant civil society membership-based organizations shall be on the basis of agreement by the tripartite constituents]

10. The NSDI shall consist of:

[Note to Member States that 'numbers' may be flexible (or may consist of a 'minimum' or a 'maximum') and need not be fixed in the statutory instrument and should be appropriate to accommodate representativeness based on national contexts taking into account the objectives and principles of the Model Framework. Workers' and employers' organisations should have an equal number of representatives on the

NSDI. It is not necessary for the actual numbers to appear in the primary statute establishing the NSDI and these can be determined in the Constitution or other founding documents.]

- (a) [x] members who represent the state, following consultation as prescribed by law or practice, and appointed by the President, and shall include the Minister of Labour and other relevant Ministers and senior ministry officials *[may be specified]*, having regard to the objectives, principles and mandate of the NSDI;
- (b) [x] members who represent organised business, nominated by the most representative organizations, and appointed by the President, which representatives must include [y] members *[alternatively ‘an appropriate proportion’]* from small and medium sized enterprises and enterprises in the informal economy;
- (c) [x] members nominated by the most representative workers’ organizations, and appointed by the President, which representation must include [z] members *[alternatively ‘an appropriate proportion’]* who represent the interests of workers in the informal and platform economies as well as other vulnerable groups of workers, including own-account or self-employed workers;
- (d) *[As determined or agreed by the tripartite constituents]*, other interests within society which may not be adequately represented through organised business and workers’ organisations included in (b) and (c) above shall be invited to [up to] [x] members nominated by relevant civil society membership-based organizations, taking into account the need for representation of the unemployed, organisations engaged with climate change and the environment (in light of its interconnectedness with the future of work and employment).

[Member States may consider including a number of members who are independent technical experts.]

11. The nomination of representatives must seek to achieve equitable gender representation and shall take into account the number of female members on the NSDI *[Member States may consider adopting targets for gender equity as appropriate to national circumstances]*. The interests of the youth should also be represented. *[Member States should consider appropriate mechanisms in this regard, taking into account national circumstances.]*
12. Members of the NSDI and their alternates should be authorised to act on behalf of their constituencies and are subject to the right of recall by their constituencies.
13. Each member of the NSDI shall have an alternate member, who shall, in the absence of the regular member, replace the regular member and have the same rights and functions as the regular member.
14. The names and terms of office of the members and alternate members of the NSDI must be published in the Gazette or other appropriate official Government publication within a reasonable period of time after their appointment; however, the failure to publish shall not invalidate the member’s appointment.
15. The duty of NSDI members is to promote the objectives of the NSDI.

16. The appointment and tenure of the chairperson of the NSDI shall be regulated by the Constitution of the NSDI.

[Note to Member States: different options are available for the appointment of the chairperson including –

- a. A rotating chairperson [which is preferable]; or*
- b. As otherwise agreed by the NSDI.]*

[In addition, arrangements for a vice-chairperson, or an alternative may be determined in the NSDI Constitution, or alternatively may be provided for in the relevant statutory instrument.]

Term of office

17. Members appointed shall serve for a term of three years. Members shall remain in office until they resign or are either reappointed or replaced or recalled. Any vacancy arising in the course of the member's term in office shall be filled, within a reasonable period of time *[or eg. 'within three months or as soon as possible thereafter']* in accordance with the procedures prescribed for such appointment.

[Note to Member States: the removal process should be included in the NSDI Constitution – see Schedule 1]

Advisors, experts

18. The chairperson may, after consultation with the NSDI, invite independent experts and advisors to NSDI meetings to give their expert views and opinions on specific matters, taking into account the interests of all constituencies represented on the NSDI. Such experts shall not be entitled to vote, and may be paid out of funding allocated to the NSDI for this purpose.

19. The reports and advice of any such experts and advisors shall be made available to the NSDI. Within a reasonable period of time thereafter, these will be made available to the public.

[Note to Member States: the following provisions set out a basic framework for meetings of the NSDI and the details should be elaborated in the NSDI Constitution – see Schedule 1]

Meetings and agenda

20. The NSDI shall meet regularly and as prescribed. It may meet in an extraordinary session *[or in the event that the chairperson fails to convene a meeting within the prescribed time limits – or other mechanisms for calling a meeting in such circumstances]* upon a request submitted to the chairperson by a third (or more) of the members of the NSDI.

21. The secretary shall convene the meetings of the NSDI at the request of the chairperson. The members of the NSDI shall be notified at least [x] days in advance of the meeting, unless circumstances exist requiring this period to be reduced, and

shall be invited to put items forward for the agenda. Where possible, the dates of the prescribed number of meetings shall be determined at the beginning of the NSDI's annual cycle.

22. The agenda of the meeting shall be prepared by the Executive Director following consultations with the chairperson [*and the principals of the constituencies – see 27(c)*].
23. Where possible, the minutes of the preceding meeting will be circulated, along with any other relevant documents or reports including reports of any duly appointed advisors or experts, to the members of the NSDI at least 10 days in advance of the meeting.

Quorum

24. The quorum shall consist of [*Member States to determine an appropriate percentage of members*], which shall include representation of all NSDI constituencies' interests. If the quorum is not met, the meeting shall proceed but no decisions shall be taken at that meeting. A special meeting shall then be convened for the purposes of taking decisions.

Decision-making

25. The NSDI's decisions shall normally be taken on the basis of consensus. Where this is not possible, decisions shall be taken by a simple majority of the members present and voting, subject to the quorum requirements and other relevant provisions of the NSDI Constitution.

Committees

[Note that Member States may determine specific committees or task teams or similar structures to be included in the statutory instrument (for example different committees such as 'trade and industry'; and for 'labour market regulation' and 'social security and development'; and provide for additional committees for specific issues; or may leave it to be decided once the NSDI has been established]

26. The NSDI may, as required, establish specialized chambers or standing or ad hoc committees or similar structures to deal with specific issues [*specified committees could be indicated in the NSDI Constitution*], and to ensure the NSDI responds effectively as issues arise. These committees or structures shall comprise members of the state and an equal number of members representing employers' and workers' organisations and shall include an appropriate proportion [*or as otherwise determined by the Member State*] of members representing civil society, unless members representing civil society decline the invitation to sit on any such committee or structure. The opinions and decisions of these committees shall be presented to the NSDI for final decision.

Executive committee

27. The NSDI may establish an executive committee which shall be the governing body of the NSDI and consisting of –

- (a) the chairperson;
- (b) the Executive Director, and
- (c) an appropriate number of members from each constituency, including civil society, as determined in the NSDI Constitution. *[Constituencies could also elect a 'principal' who represents the constituency in the executive committee]*

28. The role of the executive committee is:

- (a) to prepare the yearly programme of work for approval of the NSDI;
- (b) to monitor the implementation of the NSDI's yearly programme of work, including the financial and staffing resources;
- (c) to act in urgent cases and report in writing on such actions to the NSDI as a whole; and
- (d) to ensure transparency and public awareness about the activities of the NSDI in any given year; and
- (e) any other function as determined by the NSDI Constitution.

[Member States have the flexibility to determine the extent to which an executive committee is necessary, or whether the functions of an executive committee can be performed by the NSDI/ administered by the secretariat.]

Secretariat

29. The NSDI shall have a permanent secretariat responsible for the administrative work of the NSDI such as preparing the meetings (date and venue, agenda) of the NSDI and its committees or similar structures, organizing them, drafting the minutes and other records of decisions taken and undertaking follow up, managing the secretariat itself, running the documentation and filing services, and for furnishing information about the NSDI and facilitation the relationship among the members of the NSDI.

30. The secretariat shall be impartial and independent from the public authorities and the constituencies, and none of the parties shall seek to influence the secretariat or compromise its authority.

31. The permanent secretariat shall be headed by an Executive Director, who is appointed by the executive committee and must be suitably qualified for the position, and shall consist of a sufficient number of staff with appropriate skills necessary for the performance of the NSDI's mandate.

[The secretariat is independent (free from state interference or the influence of the constituencies); however, the appropriate 'size' and composition of the secretariat will depend on the context of a Member State.]

32. The Executive Director shall assist the chairperson in his/her duties but shall not be a member of the NSDI and shall not have voting rights within the NSDI.

33. The Executive Director shall be accountable to the NSDI and to the executive committee, and, in addition to the above, will be responsible for ensuring that an effective communications and education strategy is implemented.

The NSDI Constitution

34. The NSDI shall determine its rules of procedure in such a manner as it sees fit. These shall be provided for in the NSDI's Constitution, following consultation *[with the existing representatives of the constituencies in accordance with the current arrangements for national social dialogue, to the extent that this exists]* at a meeting of the NSDI.

35. The NSDI Constitution shall establish the modalities for social dialogue, including the processes, obligations and principles applicable to information sharing, consultation and negotiation, within the NSDI.

[The appropriate processes for social dialogue should be informed by the subject matter (bearing in mind the objectives, principles and mandate of the NSDI; as well as national circumstances and the degree of urgency; and the modalities should distinguish between the three forms of social dialogue (exchange of information; consultation; and negotiation) and set out the related purpose, processes, obligations, for each form, and elaborate on how decisions are made in the negotiation process].³

36. Additional matters to be included in the NSDI Constitution are listed in Schedule A, and shall include a process for the periodic review of the NSDI.

37. The Constitution should be agreed upon and gazetted within six months of its first meeting, or a reasonable period thereafter.

Training

38. The NSDI shall facilitate arrangements between the relevant public service authority, or other appropriate bodies, and organised business, workers' organisations, and civil society organisations to secure the necessary training for members of the NSDI, as well as relevant training for the secretariat.

39. Training should include but not be limited to building the capacity of NSDI members, including members from government, to engage in consultation and negotiation as well as improving the technical expertise of NSDI members and the secretariat where applicable.

40. Training should be conducted on a regular basis to ensure that all members of the NSDI are up to date on recent developments in areas relevant to the NSDI's mandate and objectives.

³ A useful tool in this regard is Section II of the *National tripartite social dialogue: an ILO guide for improved governance* / International Labour Office, Social Dialogue and Tripartism Unit, Governance and Tripartism Department. - Geneva: ILO, 2013

Budget and finances

41. The operating costs of the NSDI, including the costs of the secretariat and research services, shall be funded by government *[by way of a budgetary allocation from Parliament; [alternatively, a budgetary allocation from the Department of Labour]* which shall be adequate for the NSDI to perform its mandate and conduct its operations.
42. The transport and accommodation costs of members who are representatives from employers', workers' and civil society organisations shall be funded by the NSDI *[government]*. Similar expenses incurred by alternate members shall only be funded if the primary member is unable to attend a meeting.
43. The members of the NSDI and advisors and experts may be paid such fees and allowances as may be determined by the Presidency from time to time, with the concurrence of the Minister of Finance, taking into account *[note the funding constraints across the region and the flagging of allowances as a potential problem.]*
44. The Executive Director shall ensure that proper records and books of account are kept in such manner and form as required and shall report to Parliament on the NSDI budget and finances, and, in consultation with the Minister of Labour and the Minister of Finance, shall prepare an annual budget for submission to Parliament by *[date]* in each year *[or alternatively worded if funding is from the Ministry of Labour budget]*
45. The NSDI shall be entitled to receive funding from private or public bodies, other than the state, provided that such funds are accounted for separately in the NSDI records and books of account.

Annual report

46. The NSDI shall, not later than three months after the end of the financial year, unless otherwise agreed, furnish to the government, including the office of the president and the parliament, the annual report of the NSDI *[including a report on the NSDI budget and finances]*. Within a reasonable period thereafter, the secretariat shall make the report publicly available *[and shall submit the Annual Report to the ILO (office?) and SADC?]*.

[Member States may want to consider a requirement (either in legislation, the NSDI Constitution, or in guidelines) that a record of the meeting attendance of members of the NSDI be reported in the Annual Report. Other mechanisms to encourage attendance and participation at the NSDI should also be considered.]

Monitoring and periodic review

47. *[Member States should consider mechanisms for the monitoring and evaluation of the activities of the NSDI (& possibly dispute resolution mechanisms), including mechanisms for periodic review of the NSDI to assess whether there are barriers undermining effective social dialogue and co-determination and to make*

recommendations, including recommendations for law reform, to improve the functioning of the NSDI in accordance with its objectives.]

Commencement

48. This *[Act/decreree/regulation]* shall come into operation on a date to be fixed by Proclamation *[as appropriate]*.

Definition of Key Terms

Within the context of the Model Framework –

“civil society organisations” refers to membership-based organisations that represent civil society interests relating to socio-economic policy and human development taking into account the interests of persons who are unemployed, the youth, and other vulnerable groups within society including but not limited to women and persons with disabilities, and organisations engaged with climate change and the environment;

“consultation” means a process of informed dialogue before a decision is taken;

“negotiation” means a process of dialogue for the purpose of concluding an agreement;

“social dialogue” refers to a range of processes and practices including an exchange of information, consultation, negotiation and joint decision-making;

“organised business” means employer and business associations and federations of such associations that represent the interests of business, across sectors, including the informal economy and including the interests of small and medium sized enterprises.

Schedule 1: NSDI Constitution

Unless otherwise provided by law, the NSDI Constitution shall provide for -

- (a) the manner in which organised business; workers' organisations; and civil society organisations may nominate persons for appointment as members or alternate members; and the manner in which members, or their alternate members, may be removed;
- (b) the criteria and processes for the admission of new members to the constituencies (organised business, workers' organisations, and civil society organisations), taking into account the objectives and principles of the NSDI including the requirement for representation of:
 - (i) small and medium sized enterprises and enterprises in the informal economy;
 - (ii) workers in the informal and platform economies as well as other vulnerable groups of workers who may not be adequately represented through traditional workers' and employers' organizations; and
 - (iii) the interests of persons who are unemployed, the youth, and other vulnerable groups within society including but not limited to women and persons with disabilities, and persons engaging with issues related to the environment and climate change, in light of its interconnectedness with the future of work and employment.
- (c) processes for periodic review *[every three or five years or as determined by the country concerned, bearing in mind that three years is a relatively short period of time and a review at this stage might be less formal and aimed at adjustments and improvements based on the objectives and how the NSDI is functioning etc (ie the constitution (or founding instrument) may provide for both informal and more substantive review)]* of the NSDI; including an evaluation of the representativeness of the organisations represented in the NSDI *[which may involve the Registrar in the technical role of providing data to establish representativeness]* and processes for the withdrawal of an organisation from a constituency, or for the removal of an organisation that is no longer the most representative organisation within the relevant constituency;
- (d) the appointment, removal, duties and powers of the chairpersons and any arrangements relating to an alternative and/or vice chairperson,
- (e) the establishment, composition, functions and procedures of the executive committee; *[Member States may want to adopt processes for the constituencies to appoint a 'principal' who represents the constituency (in the executive committee and as otherwise may be provided)]*
- (f) the establishment, composition, powers, procedures and functioning of chambers, committees or task teams of the NSDI;
- (g) the rules of procedure, including the convening of, the quorum for, and conduct of meetings of the NSDI, the NSDI committees, including the executive committee;
- (h) the keeping of minutes;
- (i) the manner in which decisions are taken and mechanisms for avoiding deadlock and resolving disputes *[Member States may consider mechanisms to assist reaching consensus such as establishing an ad hoc Committee of Elders, or a technical advisory board on technical issues; or possibly referral to the ILO for technical assistance]*

- (j) the rules which apply to voting by proxy; *[and possibly block-voting in the context of constituencies]*
- (k) the amendment of the constitution; and,
- (l) any other matters necessary for or incidental to the performance of its functions.

Drafting notes on implementation and suggestions for additional schedules or protocols or codes of good practice

- a) Implementation of the model framework is likely to require amendment to relevant employment laws to ensure that government consults with the NSDI on relevant matters and to ensure that any proposed labour legislation / socio-economic policy is submitted to the NSDI before it is introduced in Parliament in accordance with the mandate of the NSDI.
- b) Member states should consider additional guidance (possibly by way of Codes of Good Practice or Protocols)⁴ on specific processes for:
 - a. the tabling of issues (by government or by a constituency) for consideration; as well as processes for urgent issues or special issues that are urgent; and for the reporting by the NSDI,
 - b. the production of official reports by the NSDI, including the content which should include any disagreement/voting results; and the submission of reports/ and
 - c. the tabling of reports in Parliament; and more generally on the relationship between the NSDI and Parliament.
 - i. Dissenting views to be included in report to Parliament [but where Minister disagrees with NSDI then Parliament must be informed]
 - ii. Requirement for reasons on why decisions not followed, etc.

⁴ An example (from the South African context) include the Protocol for Tabling and Considering Issues at NEDLAC available at <https://nedlac.org.za/wp-content/uploads/2020/11/Nedlac-Protocols.pdf>.