

CODE ON SOCIAL SECURITY IN THE SADC

PREAMBLE

RECALLING the objectives of SADC as spelt out in Article 5 of the Treaty

FURTHER RECALLING the provisions contained in the Charter of Fundamental Social Rights in SADC, and the strategic direction outlined in the Regional Indicative Strategy Development Plan (RISDP)

NOW THEREFORE, SADC hereby adopts the following Code:

ARTICLE 1: DEFINITIONS

In this Code, unless the context indicates otherwise, the following terms shall have the meaning indicated below:

- 1.1 **Social allowances**: These are universal payments made to persons in designated categories who are exposed to exceptional need (such as children, older persons, persons with disabilities), designed to assist them in the realisation of their full potential. The objective of social allowances is social compensation. Social allowances are financed from government revenue and are not means-tested. They are paid to all persons falling within the designated categories, regardless of their socio-economic position.
- 1.2 **Social assistance**: This is a form of social security which provides assistance in cash or in kind to persons who lack the means to support themselves and their dependants. Social assistance is means-tested and is funded from government revenues. Normally, the beneficiaries are those who are not covered by any other form of social security. The objective of social assistance is to alleviate poverty through, amongst other things, the provision of minimum income support.
- 1.3 **Social insurance**: This is a form of social security designed to protect income-earners and their families against a reduction or loss of income as a result of exposure to risks. These risks impair one's capacity to earn income. Social insurance is contributory with contributions being paid by employers, employees, self-employed persons, or other contributors, depending on the nature of the specific scheme. Social insurance is aimed at achieving a reasonable level of income maintenance.
- 1.4 **Social protection**: Social protection is broader than social security. It encompasses social security and social services, as well as developmental social welfare. Social protection thus refers to public and private, or to mixed public and private measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs. The objective is to enhance human

welfare. Conceptually and for purposes of this Code social protection includes all forms of social security. However, social protection goes beyond the social security concept. It also covers social services and developmental social welfare, and is not restricted to protection against income insecurity caused by particular contingencies. Its objective, therefore, is to enhance human welfare.

- 1.5 **Social security**: This refers to public and private, or to mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, invalidity, old age and death. The main objectives of social security are: (a) to maintain income, (b) to provide health care, and (c) to provide benefits to families. Conceptually and for the purposes of this Code, social security includes social insurance, social assistance and social allowances.

ARTICLE 2: PRINCIPLES UNDERLYING THE PROVISIONS OF THE CODE

- 2.1 This Code is mindful of and attempts to give expression to salient principles underlying the development of sound social security systems, with specific reference to SADC Member States.
- 2.2 The principles reflected in this Code, of which some are specifically SADC-related, include the following:
- (a) solidarity and redistribution;
 - (b) variable geometry (the principle, according to the Regional Indicative Strategic Development Plan (RISDP), where a group of Member States could move faster on certain activities and the experiences learnt are replicated in other Member States); and
 - (c) multi-actor responsibility (that is to say, social security provisioning is a function shared by governments, public social security institutions and private role-players, keeping in mind that governments bear the overall responsibility)

ARTICLE 3: PURPOSES

- 3.1 To provide Member States with strategic direction and guidelines in the development and improvement of social security schemes, in order to enhance the welfare of the people of the SADC region.
- 3.2 To provide SADC and Member States with a set of general principles and minimum standards of social protection, as well as a framework for monitoring at national and regional levels.
- 3.3 To provide SADC and Member States with an effective instrument for the coordination, convergence and harmonisation of social security systems in the region.

ARTICLE 4: THE RIGHT TO SOCIAL SECURITY

- 4.1 Everyone in SADC has the right to social security.
- 4.2 Every Member State should establish and maintain a system of social security in accordance with the provisions of this Code and Article 10 of the Charter of Fundamental Social Rights in SADC.
- 4.3 Every Member State should maintain its social security system at a satisfactory level at least equal to that required for ratification of International Labour Organisation (ILO) Convention Concerning Minimum Standards of Social Security No. 102 of 1952.
- 4.4 Every Member State should progressively raise its system of social security to a higher level, which should include achieving the meaningful coverage of everyone under the system, bearing in mind the realities and level of development in the particular Member State.

ARTICLE 5: SOCIAL ASSISTANCE, SOCIAL SERVICES AND SOCIAL ALLOWANCES

- 5.1 Everyone in SADC who has insufficient means of subsistence to support themselves and their dependants should be entitled to social assistance, in accordance with the level of socio-economic development of the particular Member State.
- 5.2 Member States should provide an enabling environment for the provision of social services to both those individuals and groups in the community in need of welfare and development support. Member States should encourage the participation of individuals, civil society organisations, non-state actors and other non-governmental organisations in order to establish and maintain such services.
- 5.3 Member States are encouraged – where economically feasible – to provide social allowances to persons falling within designated categories in order to assist them in the realisation of their full potential.

ARTICLE 6: SOCIAL INSURANCE

- 6.1 Each Member State should establish social insurance schemes and should progressively expand the coverage and impact of these schemes.
- 6.2 Member States should adopt relevant legislative and other measures in order to ensure the proper management and administration of these schemes.

- 6.3 Member States should provide fair and adequate social insurance benefits, commensurate with the contingency covered and with the nature and extent of the loss suffered.
- 6.4 Member States should extend social insurance coverage to the entire working population.
- 6.5 Member States should provide and regulate social insurance mechanisms for the informal sector.
- 6.6 Member States should encourage and regulate private and public sector participation, with regard to both the provision and management of social insurance, as well as the payment of social insurance benefits. Private sector participation can be either occupational-based or of an individual or group nature.

ARTICLE 7: HEALTH

- 7.1 Member States should ensure that adequate health care is available to everyone.
- 7.2 Member States should provide curative, preventative and promotive medical care and should ensure equity in access to health services.
- 7.3 Member States are encouraged to develop and maintain viable public health insurance schemes.
- 7.4 Member States should promote, regulate and support the establishment of private health insurance schemes, particularly in the absence of viable public health insurance schemes.
- 7.5 Member States should provide public health services for the benefit of the poor who are unable to contribute towards a public health insurance scheme or a private health insurance scheme.
- 7.6 In addition to medical care, Member States should provide appropriate sickness and invalidity cash benefits.
- 7.7 Member States are encouraged to promote and support micro-health insurance for the benefit of persons with low and unpredictable incomes, who are unable to participate in a public health insurance scheme or a private health insurance scheme.
- 7.8 Member States should put in place special measures to address the HIV/AIDS pandemic, bearing in mind the provisions of the Code on HIV/AIDS and Employment in SADC, the SADC HIV/AIDS Strategic Framework and the SADC (Heads of State) Declaration on HIV/AIDS (Maseru, 2003).

- 7.9 Member States should promote occupational health and safety in accordance with the provisions of this Code and the Charter of Fundamental Social Rights in SADC.
- 7.10 Member States should ensure that health care is provided in a professional, safe and ethical manner.

ARTICLE 8: MATERNITY AND PATERNITY

- 8.1 Member States should ensure that women are not discriminated against or dismissed on grounds of maternity and that they enjoy the protection provided for in the ILO Maternity Protection (Revised) Convention No. 183 of 2000.
- 8.2 Member States should ensure that working conditions and environments are appropriate for and conducive to pregnant and nursing mothers.
- 8.3 Member States should progressively provide for paid maternity leave of at least 14 weeks and cash benefits of not less than 66% of income.
- 8.4 Member States are encouraged to provide for paternity leave in order to ensure that child-rearing is a shared responsibility between father and mother.

ARTICLE 9: DEATH AND SURVIVORS

- 9.1 Member States should ensure that social insurance schemes provide protection against the contingency of death.
- 9.2 The benefits payable in the event of death of a breadwinner should include a death grant, to assist with funeral costs and – subject to qualifying conditions – survivors' benefits, which should be in the form of periodical payments, aimed at the upkeep of survivors.
- 9.3 Member States should ensure that legal dependants and, where justified, factual dependants, qualify as survivors.

ARTICLE 10: RETIREMENT AND OLD AGE

- 10.1 Bearing in mind the provisions of the Charter of Fundamental Social Rights in SADC, in particular article 8 of the Charter, Member States should aim to create an enabling environment that provides universal coverage for old people, through social assistance, social insurance or social allowances. Member States are urged to promote measures that would assist in maintaining human dignity, prevention of destitution and protection of the aged from abuse.
- 10.2 Member States should work towards the establishment of a minimum and maximum retirement age that takes into account the need to ensure an appropriate

- retirement benefit, as well as country specific considerations such as life expectancy, the HIV/AIDS pandemic and economic development.
- 10.3 Member States are encouraged to promote institutional, residential, community and home-based care for aged persons.
 - 10.4 Member States should work towards the mandatory membership of and coverage in terms of retirement funds, whether public or private or both, as well as the compulsory preservation and transfer of retirement contributions and benefits.
 - 10.5 Member States should aim at achieving equality of access, as well as the maintenance and aggregation of social security contributions and benefits and the aggregation of insurance periods on a cross-country basis among Member States, through national laws and bilateral and other arrangements.
 - 10.6 Member States should promote the provision of social security benefits that provide for periodic pensions to be paid to the aged, rather than lump sum payments.

ARTICLE 11: UNEMPLOYMENT AND UNDER-EMPLOYMENT

- 11.1 Member States should ensure that those who are openly unemployed, including work-seekers and those who have been retrenched, as well as those who are undertaking employment or income-generating activities for survival purposes, are supported through at least the provision of social assistance, so as to enable them to live above poverty levels.
- 11.2 Member States should adopt proactive policies and measures towards inclusive economic and social development so as to eradicate poverty and eventually to absorb the majority of the labour force into productive employment and income-generating activities.
- 11.3 Member States should aim to progressively integrate the formal and non-formal aspects of social security (as they simultaneously seek to align these with) – and to integrate – formal and non-formal aspects of the economy, as a way of promoting inclusive social and economic development.
- 11.4 Member States should provide adequate protection against loss of employment, including protection against arbitrary and/or unfair dismissal.
- 11.5 Member States should provide adequate protection in the event of the unavoidable loss of employment. Bearing in mind the level of socio-economic development in a particular Member State, these forms of protection should include the payment of appropriate social insurance benefits, severance benefits and – in the event of employer insolvency or sequestration – specialised privileged status of employee claims and, where possible, the establishment of a wage guarantee fund.

ARTICLE 12: OCCUPATIONAL INJURIES AND DISEASES

- 12.1 Member States should provide compulsory coverage, either through public or private mechanisms or through a combination of both.
- 12.2 All modalities of disablement should be covered, irrespective of whether the disablement occurs in the formal or informal sector.
- 12.3 All occupational-related injuries and diseases should be covered.
- 12.4 To the extent that use is made of a list of occupational-related diseases, the range of diseases covered in such list should at least be in accordance with the list of diseases contained in the most recent ILO Convention on occupational health and safety.
- 12.5 Occupational injury and diseases schemes should provide adequate medical care and appropriate benefits.
- 12.6 Social security systems should provide for adequate rehabilitation and reintegration measures. Member States should ensure that appropriate preventative measures are in place.

ARTICLE 13: GENDER

- 13.1 Member States should ensure that there is equal coverage of and access to social security – including equality in receiving social security benefits – between men and women.
- 13.2 Member States should ensure that social security legislation in their respective countries is not gender-discriminatory and is aligned with the 1997 SADC Declaration on Gender and Development and the 1999 Plan of Action for Gender in SADC.
- 13.3 Member States should support gender sensitisation in the social security system, inclusive of addressing women's special needs and circumstances, and introducing appropriate affirmative action programmes.
- 13.4 Member States should abolish all discriminatory laws, customs and practices in their respective social security systems.
- 13.5 Member States should introduce programmes and strategies for the eradication of poverty and the economic empowerment of women.

- 13.6 Member States should adopt and promote policies that ensure that workers, particularly female workers, are able to balance occupational and family obligations.

ARTICLE 14: PEOPLE WITH DISABILITIES

- 14.1 Member States are encouraged to create an enabling environment that would ensure that persons with disabilities, irrespective of the origin and nature of their disabilities or incapacities, are entitled to social security. In particular, Member States are encouraged to ensure that persons with disabilities benefit from social safety net mechanisms.
- 14.2 Member States should ensure that social security instruments guarantee equality of access and coverage to persons with disabilities.
- 14.3 Member States should promote the social and professional integration of persons with disabilities, through measures such as rehabilitation, vocational training, accessibility and mobility, means of transport and housing and the appropriate organisation of work and the working environment.
- 14.4 Member States should ensure that the special needs (including the need for assistive devices) and circumstances of persons with disabilities are provided for in national social insurance and social assistance instruments.

ARTICLE 15: FAMILY PROTECTION

- 15.1 Member States should ensure that the family, as a fundamental unit of society, is appropriately protected. Member States should promote the economic, legal and social protection of family life.
- 15.2 Member States should ensure that social security systems and programmes reflect the reality and importance of the extended family. Member States should recognise and strengthen the extended family support system.
- 15.3 Member States are encouraged to provide a framework for the extension of appropriate family benefits, particularly to families in need and to dysfunctional family structures.

ARTICLE 16: CHILDREN AND YOUNG PERSONS

- 16.1 Member States should recognise and acknowledge the UN Convention on the Rights of the Child as the main source of children's rights.
- 16.2 Member States should prevent child labour and child abuse, in accordance with United Nations and ILO Conventions.

- 16.3 Member States should ensure that sufficient protection is extended to children who are lawfully employed.
- 16.4 Member States should provide that the minimum employment age shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.
- 16.5 Member States should provide that persons who are still subject to compulsory education should not be employed in such work as would deprive them of the full benefit of their education.
- 16.6 Member States should ensure that there is proper and adequate nutrition for children.
- 16.7 Member States should adopt measures that ensure protection against mental, physical and emotional abuse of youth and children.
- 16.8 Member States should provide adequate support to orphans and child-headed households, especially in relation to inheritance and family integration.
- 16.9 Member States should put in place effective measures and provision for adequate foster-care and adoption arrangements.

ARTICLE 17: MIGRANTS, FOREIGN WORKERS AND REFUGEES

- 17.1 Member States should work towards the free movement of persons. Immigration controls should be progressively reduced.
- 17.2 Member States should ensure that all lawfully employed immigrants are protected through the promotion of the following core principles. These principles should be contained in both the national laws of Member States and in bi- or multilateral arrangements between Member States:
 - (a) Migrant workers should be able to participate in the social security schemes of the host country.
 - (b) Migrant workers should enjoy equal treatment alongside citizens within the social security system of the host country.
 - (c) There should be an aggregation of insurance periods and the maintenance of acquired rights and benefits between similar schemes in different Member States.
 - (d) Member States should ensure the facilitation of exportability of benefits, including the payment of benefits in the host country.

- (e) Member States should identify the applicable law for purposes of the implementation of the above principles.
 - (f) Member States should ensure coverage of self-employed migrant workers on the same basis as employed migrants.
- 17.3 Illegal residents and undocumented migrants should be provided with basic minimum protection and should enjoy coverage according to the laws of the host country.
- 17.4 The social protection extended to refugees should be in accordance with the provisions of international and regional instruments.

ARTICLE 18: SPECIAL AND COLLECTIVE CONTINGENCIES

- 18.1 Member States should ensure that their social security systems provide protection against special and collective risks, including political conflict and natural disasters.
- 18.2 Member States should provide for special interventionist approaches to disaster relief at regional and country level, including prevention, relief, reconstruction and rehabilitation.
- 18.3 Member States should ensure that protection is provided on an equitable basis.

ARTICLE 19: PREVENTION AND INTEGRATION

- 19.1 Member States are encouraged to ensure that national social security systems adequately integrate sufficient preventative and reintegrative measures and are not primarily compensation-focused.
- 19.2 Reintegrative measures should be aimed at ensuring that those persons affected by a risk-creating situation are meaningfully integrated, at least socially, and in the labour market, in order to encourage self-reliance and to support their human dignity.
- 19.3 Member States should collectively and individually ensure that their social security systems adequately provide for the prevention of social risks that affect communities within and across the borders of Member States, and should also provide for effective measures of relief, rehabilitation, reconstruction, reintegration and revival for communities so affected.

ARTICLE 20: SOCIAL PROTECTION FRAMEWORK

- 20.1 Member States should recognise the links between social and economic development and should accordingly seek to ensure that social security policies

and economic development policies are formulated in a complementary, integrated and mutually reinforcing manner.

- 20.2 Member States should recognise that social security operates within the broader social protection framework of both direct and indirect measures and should, thus, accordingly ensure that indirect forms of support, such as those related to health, education, transport, housing, water and electricity, complement direct forms of social security.
- 20.3 Member States should recognise the existence of informal modes of social security and should seek to strengthen and rationalise them (by, for example, providing skills training and relevant forms of support) and to integrate them with formal modes of social security.
- 20.4 Member States should aim at developing integrated and comprehensive social security protection which encompasses co-ordinated formal and non-formal types and direct and indirect forms of social support.

ARTICLE 21: IMPLEMENTATION AND MONITORING

- 21.1 Member States should endeavour to establish proper administrative and regulatory frameworks in order to ensure effective and efficient delivery of social security benefits, in particular:
- (a) integrated, inter-departmental and inter-sectoral structures with adequate and sufficient budgetary support;
 - (b) easy access for everyone to independent adjudication institutions that have the power to finally determine social security disputes, inexpensively, expeditiously and with a minimum of legal formalities;
 - (c) sustainable social security provisioning linked to economic policy;
 - (d) preference for most vulnerable groups in the provision of social security benefits;
 - (e) apart from the utilisation of national tripartite and regional structures, every effort should be made to involve civil society and other non-state entities such as NGO's and CBO's in the formulation, implementation and monitoring of social security policies; and
 - (f) improved monitoring and sound governance structures independent of social security providers to ensure the protection of members, autonomous decision-making and sound investment, among other requirements.

- 21.2 Member States and the relevant SADC structures should establish mechanisms both at the national and SADC levels to monitor progressive compliance with the provisions of this Code.
- 21.3 The Integrated Committee of Ministers should establish an Independent Committee of Experts within the relevant SADC structures to monitor compliance with the Code and to make recommendations to the relevant SADC structures and the respective national structures on the progressive attainment of its provisions.
- 21.4 The Committee should consist of no less than seven members and no more than twelve members.
- 21.5 Members of the Committee should be appointed in their personal capacities and shall be persons of integrity and proven relevant expertise.
- 21.6 In appointing members of the Committee, account should be taken of the need for equitable representation in terms of gender, disability, areas of expertise and broad geographical distribution.
- 21.7 Members of the Committee should be appointed for a once-off renewable period of six years.
- 21.8 In order to ensure continuity, staggered appointments should be made.
- 21.9 In the event of a position becoming vacant on the Committee, a new member should be appointed for the remainder of the vacant term.
- 21.10 The Code will be reviewed and amended from time to time as and when it is deemed necessary.