

(SADC/ELSM&SP/1/2016/3)



SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

PORTABILITY OF ACCRUED SOCIAL SECURITY BENEFITS WITHIN THE REGION

DRAFT POLICY FRAMEWORK

MAY 2016

PREAMBLE

NOTING that Member States recognise that the State and Social Partners must play an active role in the labour market;

ACKNOWLEDGING the need to place decent employment and social security at the centre of macro-economic and sectoral policies at global, regional and national levels;

CONSCIOUS of the different levels of development of labour markets, labour market regulation and social security in Member States of the Community and the need to achieve regional integration through harmonisation and co-ordination of labour and social security laws;

MINDFUL of the Principles, Objectives and SADC Common Agenda as set out in Articles 4, 5 and 5A of the Treaty;

NOTING Article 21 of the Treaty which enjoins Member States to cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit, including in employment and labour sector, and with reference to among others social and human development, and social welfare;

NOTING FURTHER the need to give further effect to African Union Ouagadougou Plus 10, Sustainable Development Goal 8, the International Labour Organisation Core Conventions, and to facilitate ratification of the Employment Policy Convention, 1964 (No. 122), Social Security (Minimum Standards) Convention, 1952 (No. 102) and other international instruments concerning labour and social security;

AWARE of the human rights principles as enshrined under the major international human rights instruments;

HAVING REGARD of the principles of SADC Protocol on Employment and Labour of August, 2014, signed and adopted by the Member States;

FURTHER HAVING REGARD to the SADC Protocol on the Facilitation of Movement of Persons adopted and signed in 2005;

ACKNOWLEDGING FURTHER that the SADC Labour Migration Policy Framework that guides Member States on issues of management of labour migration requires corresponding support on issues related to regional portability of accrued social security benefits;

DESIROUS of realising the aspirations of regional cooperation and integration in the employment and labour sector in line with the SADC Regional Indicative Strategic Development Plan (RISDP) and Industrialisation Strategy;

CONVINCED that this Framework will contribute to the process of preventing discrimination of non-citizens in social security systems and facilitate harmonization thereof;

HEREBY AGREE as follows:

DRAFT

**PART I
GENERAL PROVISIONS**

**SECTION 1
DEFINITIONS AND ABBREVIATIONS**

- (1) In this Framework relevant terms and expressions defined in Article 1 of the SADC Treaty will bear the same meaning unless the context otherwise requires.

Treaty: means the Treaty establishing SADC

Region: means geographical coverage of Member States of SADC

Secretariat: means secretariat of SADC established under the Treaty

Member State: means a member of SADC

- (2) In this Framework, unless the context otherwise requires:

“Accrued social security benefit” benefits due to the beneficiary by virtue of legislation and/or contractual obligations which are defined and recognized as social security benefit within Member States;

“Competent authority” means SADC Ministers Responsible for Labour and Employment, and other relevant authority responsible for social security

“Competent institution” means institutions within Member States responsible for policy formulation, administration, and regulatory oversight of social security systems;

“Employment” means employment as defined in the SADC Labour Market Information System policy document;

“Framework” means this Policy Framework;

“Harmonisation” means the process of creating common standards across the SADC Community, notwithstanding that each Member State has the primary responsibility for the regulation of all social security matters and laws within its jurisdiction;

“Legislation”	means laws, regulations and other statutory provisions and all other implementing measures in each Member State relating to social security benefits, inclusive of retirement, occupational injuries and diseases, unemployment insurance, health insurance, as well as survivors' benefits where relevant;
“Portability”	means the transfer of accrued social security benefits of an individual beneficiary;
“Residence”	means the place where a person habitually resides;
“Social Partners”	means representatives of Government, Employers and Workers;
“Social security”	means social security as defined in Article 1.5 of the Code on Social Security in the SADC (2005);
“Survivors”	means the spouse(s), child(ren), dependent(s), or such other persons defined or recognised as such by the national legislation, whose entitlement to benefits is premised on the death of the primary beneficiary;
“Tripartite social dialogue structure”	means a structure consisting of representatives of Government, Employers and Workers;

SECTION 2 OVERALL OBJECTIVE

The overall objective of this Framework is to facilitate the development of policies and programs aimed at the progressive enhancement of the adequacy, efficiency and regional coordination of SADC Member States’ social security systems.

SECTION 3 GENERAL AND SPECIFIC PRINCIPLES

- (1) Member States agree to be guided by the following general principles:
- (a) Recognition and respect for the equality of all Member States;
 - (b) Respect for fundamental and basic human rights enshrined in international, regional and national legal instruments;

- (c) Recognition that labour is not a commodity and that decent work and social security can contribute to economic development, poverty eradication and the improvement of the standard and quality of life in the SADC Region; and
 - (d) Recognition of the challenges of precarious employment, underemployment and unemployment; and the need to promote decent employment as a priority in the SADC Region.
- (2) The following specific principles will guide the interpretation and implementation of this Framework:
- (a) All matters related to the implementation of this Framework will be decided by consensus among Member States;
 - (b) Cooperation within this Framework will be strengthened and institutionalised by utilising national and regional tripartite and broader social dialogue structures;
 - (c) The Framework will focus on the progressive extension and enhancement of social security coverage commencing with vulnerable employment sectors such as mining, agriculture, domestic and informal workers; and
 - (d) Where relevant, the implementation of the Framework will be guided by the principles of the SADC Protocol on Employment and Labour, the SADC Regional Indicative Strategic Development Plan and other relevant SADC strategic plans and protocols.

SECTION 4 SPECIFIC OBJECTIVES

- (1) The specific objectives of this Framework are to:
- a) Provide mechanisms to enable workers moving within and outside the SADC Region to keep the social security rights which they have acquired under the legislation of the one Member State;
 - b) Ensure that workers in the SADC Region enjoy equal rights under the social security legislation of the Member States;
 - c) Provide a regional platform for the progressive coordination and integration of social security systems in the SADC Region; and
 - d) Contribute towards the improvement of the standard of living and conditions of employment of persons in the SADC Region.

- (2) It will be the responsibility of each Member State to create the enabling environment in order to ensure that the objectives referred to in Section 3(1) of this Framework are implemented at national and regional level.

PART II APPLICATION OF FRAMEWORK

SECTION 5 LEGISLATIVE SCOPE OF APPLICATION

This Framework applies to all general social security schemes, as well as to schemes consisting of obligations by legislation which include but not limited to:

- a) retirement benefits;
- b) occupational injury and disease benefits;
- c) unemployment insurance;
- d) health insurance; and
- e) survivors' benefits where relevant.

SECTION 6 EQUALITY OF TREATMENT

- (1) Each Member State will grant within its territory to the nationals of any other Member State equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits.
- (2) In the case of survivors' benefits, such equality of treatment will also be guaranteed to the survivors of persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such persons, where their survivors are nationals or residents of a Member State residing in one of the Member States.
- (3) Benefits payable under the legislation of one or more Member States will not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the primary beneficiary or his/her survivors reside in a Member State other than in which the competent institution responsible for providing benefits is situated.

SECTION 7 DETERMINATION OF BENEFITS

Each Member State will determine in accordance with the applicable legislation whether and to what extent an insured person or the survivor of that person, as the case may be, satisfies the conditions for entitlement to a benefit.

PART III ADMINISTRATIVE MEASURES

SECTION 8 MAINTENANCE OF RELATIONS

Competent institutions within Member States responsible for policy formulation, administration, and regulatory oversight of social security systems will cooperate with one another and endeavour to establish and maintain relations with regional peers for the progression of the principles of this Framework.

SECTION 9 ESTABLISHMENT OF ADMINISTRATIVE MEASURES

The competent authorities of the Member States will establish the administrative measures necessary for the application of this Framework.

SECTION 10 COMMUNICATION ON MEASURES TAKEN TO IMPLEMENT FRAMEWORK

The competent institutions of the Member States will communicate to each other, all necessary information about the measures taken by them for the application of this Framework or about changes in their national legislation in so far as these changes affect the application of the provisions of this Framework.

SECTION 11 INSTITUTIONAL ARRANGEMENTS

The implementation of this Framework will be facilitated by the SADC Institutions as established in Article 9 of the SADC Treaty.