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**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

# **PROTOCOL ON EMPLOYMENT AND LABOUR**

*AUGUST 2014*

Protocol on Employment and Labour

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**PREAMBLE**

We, the Heads of State or Government of:

The Republic of Angola

The Republic of Botswana

The Democratic Republic of Congo

The Kingdom of Lesotho

The Republic of Madagascar

The Republic of Malawi

The Republic of Mauritius

The Republic of Mozambique

The Republic of Namibia

The Republic of Seychelles

The Republic of South Africa

The Kingdom of Swaziland

The United Republic of Tanzania

The Republic of Zambia

The Republic of Zimbabwe

**NOTING** that Member States recognise that the State 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 sectors, and with reference to among others social and human development, and social welfare;

**NOTING FURTHER** the need to give further effect to the International Labour Organisation (ILO) Core Conventions as covered by the Declaration on Fundamental Principles and Rights at Work, 1998, having been ratified by all Member States, and to facilitate ratification of the ILO Employment Policy Convention, 1964 (No. 122), Social Security (Minimum Standards) Convention, 1952 (No. 102) and other core international instruments concerning labour and social security;

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

**MINDFUL** of the commitment to promote and protect the social and economic rights of the people of Africa and guarantee special protection to the marginalised sections of the society in line with the African Charter on Human and Peoples' Rights, 1981, the African Charter on the Rights and Welfare of the Child, 1990, the Protocol on the Rights of Women in Africa, 2003 and the Migration Policy Framework for Africa, 2006;

**RECOGNISING** the African Youth Charter, 2006 adopted during the seventh Ordinary session of the Conference of the Heads of State and Government held on 2<sup>nd</sup> July, 2006, in Banjul, The Gambia;

**RECALLING** the African Union Declaration and Plan of Action on Employment Promotion and Poverty Alleviation in Africa adopted by Heads of State and Government in 2004 in Ouagadougou;

**HAVING REGARD** to the SADC Charter of Fundamental Social Rights of 26 August, 2003, signed and adopted by the Member States;

**CONVINCED** that the Protocol will, through employment and labour sector areas of cooperation, guide employment creation, poverty reduction and its ultimate eradication, facilitation of labour migration and harmonisation of labour and social security legislation;

**NOTING** the SADC Declaration on Productivity signed on 18 August, 1999 by Heads of State or Government;

**RECOGNISING** the SADC Declaration of Poverty Eradication and Sustainable Development adopted by Heads of State or Government in Mauritius in April 2008;

**REGOGNISING** that SADC has, through the SADC Ministers responsible for Employment and Labour Sector approved and adopted inter alia, the following policy documents:

- (a) SADC Code of Conduct on Child Labour;
- (b) SADC Code on Social Security in the SADC;
- (c) SADC Code of Practice on the Safe Use of Chemicals in the SADC;
- (d) SADC Code of Conduct on HIV and AIDS and Employment in the SADC; and
- (e) SADC Decent Work Programme and attendant monitoring plan;

**DESIROUS** of realising the aspirations of regional cooperation and integration in the employment and labour sector;

**HEREBY AGREE** as follows:

## **ARTICLE 1**

### **DEFINITIONS AND ABBREVIATIONS**

1. In this Protocol terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.
2. In this Protocol, unless the context otherwise requires:

"AIDS"	means Acquired Immunodeficiency Syndrome;
"Broader Social Dialogue Structure"	means a structure consisting of the tripartite social partners and other stakeholders envisaged under Article 23 of the SADC Treaty;
"Council"	means the Council of Ministers of Southern African Development Community established by Article 9 of the Southern African Development Community;
"HIV"	means Human Immunodeficiency Virus;
"ILO"	means the International Labour Organization;
"Labour Market Information System (LMIS)"	means the systematic collection, analysis and dissemination of information on demand for labour and supply for labour;
"Multi-actor responsibility"	means responsibility shared by governments, public institutions and private role-players,
"Protocol"	means this Protocol;
"Region"	means the geographical area of Member States of the Southern African Development Community;
"SADC"	means the Southern African Development Community;
"Social Partners"	means representatives of government, employers and workers;
"State Party"	means a Member State that is a party to this Protocol;
"tripartite social dialogue structure"	means a structure consisting of representatives of organised labour, employers and government;
"variable geometry"	means the principle, according to the RISDP, where a group of Member States could move faster on certain activities and the experiences learnt are replicated in other Member States;

"vulnerable groups"

means among others the youth, women, migrants and persons with disabilities, informal economy workers, the unemployed, elderly persons, orphans and vulnerable children, and people living with HIV and AIDS.

## **ARTICLE 2**

### **GENERAL AND SPECIFIC PRINCIPLES**

1. State Parties agree to be guided by the following general principles:
  - (a) recognition and respect for the equality of all State Parties;
  - (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 challenge of unemployment and underemployment and the need to promote decent employment as a priority in the SADC Region.
  
2. The following specific principles shall guide the interpretation and implementation of this Protocol:
  - (a) all matters related to the implementation of the Protocol shall be decided by consensus.
  - (b) cooperation within the framework of strengthened and institutionalised national and regional tripartite and broader social dialogue structures;
  - (c) variable geometry; and
  - (d) multi-actor responsibility.

**ARTICLE 3**  
**GENERAL OBJECTIVES**

The objectives of this Protocol shall, amongst others, be to:

- (a) provide Member States with strategic direction and guidelines for the harmonisation of employment and labour, as well as social security, policies and legislation;
- (b) enhance cohesion, encourage collaboration amongst Member States and promote common approaches to labour market challenges for the attainment of sustainable development;
- (c) promote and enhance labour productivity by providing harmonious and conducive working environments;
- (d) ensure the achievement of minimum labour standards, social protection and creating sustainable social dialogue;
- (e) promote the development of employment and labour, as well as social security, policies, measures and practices, which facilitate labour mobility, and enhance industrial harmony and increase sustainable productivity and decent work in Member States;
- (f) create a legal and policy framework for labour migration within SADC through harmonised labour and social security legislation, in the context of ILO Conventions on migrant workers and African Union policy documents;
- (g) facilitate formulation and harmonisation of legal instruments, economic and social policies and programmes for the generation of productive employment and sustainable and inclusive development in Member States; and
- (h) Support the establishment of inclusive social security schemes in Member States providing income maintenance and minimum income protection and facilitating labour market integration.

**ARTICLE 4**  
**SPECIFIC OBJECTIVES**

1. The specific objectives of this Protocol shall be to facilitate, through close consultation among the social partners and other stakeholders in a spirit conducive to harmonious employment and labour relations, the following:
  - (a) setting minimum standards on employment and labour, social security, safety and health at work place and related matters;
  - (b) providing a framework for harmonisation of policies and legislation on employment, labour and social security, safety and health standards at the work place and enhancing cohesion and common approaches to labour market challenges;
  - (c) providing a framework for regional co-operation in the collection and dissemination of labour market information;
  - (d) promoting gender equality in the employment and labour sector, in particular equal treatment and opportunities for men and women;
  - (e) promoting the development of institutional capacities, and vocational and technical skills in the Region; and
  - (f) promoting employment and income-generating opportunities for all, and in particular for vulnerable groups as a basis for achieving full, freely chosen, productive and decent employment within the Region.
2. It shall be the responsibility of each State Party to create the enabling environment in order to ensure that the objectives referred to in Articles 3 and 4 of this Protocol are implemented at national level.

**ARTICLE 5**  
**BASIC HUMAN RIGHTS AND DOMESTICATION OF INTERNATIONAL OBLIGATIONS**

1. State Parties and other responsible institutions, as well as employers, unions and workers of State Parties shall recognise the universality and indivisibility of basic human rights proclaimed in the United Nations Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Constitution of the International Labour Organisation, the Philadelphia Declaration, the ILO Declaration on the Fundamental Principles and Rights at

Work and Governance Conventions, the African Charter on Human and Peoples' Rights, the SADC Charter of Fundamental Social Rights, and other international and regional instruments.

2. State Parties shall take appropriate steps to ratify and implement all ILO Core and Governance Conventions.
3. State Parties are encouraged to establish national and regional mechanisms to assist them with:
  - (a) the domestication and implementation of ratified ILO conventions and other international as well as regional instruments; and
  - (b) compliance with the reporting and monitoring systems of the ILO and other international and regional organisations.
4. State Parties undertake to observe the basic rights and freedoms in this Protocol.

## **ARTICLE 6**

### **FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING**

State Parties shall, consistent with ILO Conventions on Freedom of Association, the Right to Organize and Collective Bargaining, ensure in particular that:

- (a) employers and workers have a right to form and join an employers' association or trade union and to participate freely in the activities and programmes of such association or union;
- (b) every employers' association or trade union has the right to determine its own administration, programmes and activities; and to form and join a federation;
- (c) employers' associations and trade unions have the right and freedom to organise and conclude collective bargaining agreements;
- (d) the industrial disputes settlement machinery and method of operation is autonomous, accessible, and efficient;
- (e) the right to take collective action in the event of a dispute remaining unresolved includes:
  - (i) for workers, the right to collective bargaining and resort to lawful strike action; and

- (ii) for employers, the right to collective bargaining and remedies consistent with national laws;
- (f) organisational rights for representatives of unions are adequately protected;
- (g) freedom of association and collective bargaining rights apply to all areas of economic activities including export processing zones and other economic zones.

## **ARTICLE 7**

### **EQUAL TREATMENT**

1. State Parties shall adopt laws and policies to ensure that every person is equal and accorded equal treatment and equal protection before the law.
2. State Parties undertake to promote equality of opportunity in employment and labour market policies and legislation and social security and to eliminate all forms of direct or indirect discrimination on grounds such as sex, gender, colour, nationality, race, religion, language, ethnic or social origin, political opinion, pregnancy, marital status, disability, age, or HIV and AIDS.
3. State Parties shall ensure compliance with ILO Conventions on Discrimination and Equality (Nos. 100 and 111), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the SADC Protocol and the Declaration on Gender and Development and other relevant international and regional instruments so as to ensure gender equity and equality, equal treatment and opportunities for men and women as regards access to employment, remuneration for work of equal value, working conditions, social protection, education, vocational training and career development; and where necessary provide specific employment and social security needs of women which may arise as a result of reproductive roles.
4. Legislative, administrative and other appropriate measures shall be adopted to ensure:
  - (a) equal pay for work of equal value, and equal remuneration for jobs of equal value for women and men;
  - (b) the eradication of occupational segregation and all forms of employment discrimination;
  - (c) adoption of reasonable measures to enable men and women to reconcile their occupational and family obligations; and

- (d) specific mechanisms for reporting and resolving cases of discrimination and intimidation of workers particularly on the basis of gender.

## **ARTICLE 8**

### **EMPLOYMENT AND REMUNERATION**

State Parties shall ensure that:

- (a) every individual person shall be free to choose and engage in an occupation of his or her choice;
- (b) workers are provided with fair and equal opportunities in line with promotion of decent work;
- (c) remuneration systems strive towards the establishment of equity across the Region in accordance with means and capacity in each State Party.

## **ARTICLE 9**

### **IMPROVEMENT OF WORKING AND LIVING CONDITIONS**

State Parties shall ensure that:

- (a) minimum requirements stipulated in labour and social security legislation and in the introduction of equitable basic working and living conditions, the specifications of minimum rest periods, annual leave, compassionate leave, paid maternity leave, occupational health and safety protection, and stipulated acceptable rules and compensation for over time are adhered to;
- (b) every worker in the Region shall have a right to a weekly rest period and annual paid leave, the duration of which shall be progressively harmonised in accordance with the national legislation and practices; and
- (c) the conditions of employment for every worker in the Region shall be stipulated in national laws, collective bargaining agreements or contracts of employment.

**ARTICLE 10**  
**DECENT WORK FOR ALL**

Member States shall put measures in place to ensure full implementation of regional and international obligations, also in terms of the SADC Decent Work Programme, relating to the pillars of decent work for all in the Region, including:

- (a) Employment creation and enterprise development;
- (b) Social protection extension;
- (c) standards and rights at work; and
- (d) good governance and social dialogue.

**ARTICLE 11**  
**SOCIAL PROTECTION**

1. State Parties shall, with due regard to the means available, ensure that:
  - (a) every worker in the Region and his or her dependants shall have a right to adequate social protection and shall, regardless of status and the kind of employment of the worker, enjoy adequate social security benefits; and
  - (b) persons who are unable to enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.
2. Every State Party shall establish, maintain and progressively raise its system of social security to a level consistent with international and regional instruments, by ratifying and implementing ILO Social Security (Minimum Standards) Convention 1952 (No. 102) and implementing the ILO National Floors of Social Protection Recommendation 2012 (No. 202).
3. Each State Party shall aim at developing an integrated and comprehensive social protection system which:
  - (a) ensures meaningful coverage of everyone under the system, in terms of among others social insurance schemes and social assistance measures;
  - (b) protects against special and collective risks, including political conflict and natural disasters;

- (c) adequately integrates sufficient preventive and reintegrative measures, including measures aimed at integrating and reintegrating workers into the labour force;
  - (d) encompasses co-ordinated formal and non-formal types and direct and indirect forms of social support; and
  - (e) promotes complementarities between social security and economic development policies.
4. State Parties shall encourage and regulate private and public sector participation, with regard to the provision and management of social insurance, as well as the payment of social insurance benefits.

## **ARTICLE 12**

### **OCCUPATIONAL SAFETY AND HEALTH**

1. Every worker, including the self-employed, has a right to a safe and healthy working environment.
2. State Parties shall take all reasonable, practicable steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health, in accordance with ILO Conventions on occupational health and safety.
3. State Parties shall adopt measures to ensure that workers have the right to services that provide for the prevention, recognition, detection and compensation of work-related illness or injury including emergency cases, with rehabilitation and job security after injury and adequate compensation appropriately adjusted from time to time.
4. State Parties shall ensure that:
  - (a) all modalities of disablement are covered, irrespective of whether the disablement occurs in the formal or informal sector;
  - (b) a preventive safety and health culture based on a systems approach for the progressive improvement of Occupational Safety and Health performance is promoted;

- (c) the organisation of occupational safety and health shall be on the basis of tripartite and bipartite cooperation and the participation of all parties at national and enterprise levels;
  - (d) workers have the right to information on workplace hazards and the procedures being taken to address them and to appropriate safety and health training during paid working time; and
  - (e) workers have the right to stop work that they reasonably believe poses risk to their safety, health or physical well-being in accordance with ILO Convention No. 155.
5. State Parties shall ensure that where use is made of a list of occupational-related diseases, the range of diseases covered shall at least be in accordance with the list of diseases contained in the most recent ILO Convention on occupational health and safety.
6. Each State Party shall, in consultation with the most representative organisations of employers and workers, periodically consider what measures should be taken in order to ratify relevant occupational safety and health Conventions of the ILO.

### **ARTICLE 13**

#### **HEALTH CARE**

1. State Parties shall, having due regard to the means available, ensure that adequate health care is available to all residents in accordance with the relevant provisions of the SADC Health Protocol .

### **ARTICLE 14**

#### **RETIREMENT AND PROTECTION OF ELDERLY PERSONS**

State Parties shall, use their best effort within available resources, to ensure that:

- (a) every worker in the Region shall at the time of retirement enjoy resources affording him or her a decent standard of living, including equity in post-employment security schemes;
- (b) every worker who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence shall be entitled to adequate social assistance to cater specifically for basic needs including medical care;

- (c) retirement benefits are provided both as periodic benefits and lump-sum payments;
- (d) institutional, residential, community and home-based care for aged persons is promoted; and
- (e) employment after the normal retirement period is under the same labour standards and rates of remuneration that apply to all workers.

## **ARTICLE 15**

### **UNEMPLOYMENT AND UNDER-EMPLOYMENT**

State Parties shall with due regard to the means available:

- (a) adopt proactive policies and measures towards inclusive economic and social development so as to absorb the majority of the labour force into productive employment and income-generating activities;
- (b) adopt measures to increase investment in education and training, and stimulate and support job creation initiatives;
- (c) afford preferential employment opportunities for the youth, women and persons with disability;
- (d) provide support structures to be set up to assist entrepreneurs in the establishment and development of small- and medium-sized enterprises;
- (e) formulate national and regional policies and strategies to enhance productivity, in particular by developing a framework for the implementation of the Declaration on Productivity;
- (f) promote the attainment of the objectives of the SADC Regional Productivity Organisation, as articulated in the SADC Charter Establishing the SADC Regional Productivity Organisation;
- (g) facilitate the implementation of the SADC employment promotion action plan;
- (h) cooperate to harmonise and strengthen skills development initiatives;
- (i) endeavour to provide unemployment benefits to every worker through compulsory social insurance, with social assistance ideally to be provided to persons not covered by compulsory social insurance;

- (j) adopt appropriate regulations for both enterprises and employment relations that balance economic efficiency and social redistribution goals; and
- (k) ensure adequate protection against loss of employment, including protection against arbitrary and/or unfair dismissal.

## **ARTICLE 16**

### **MATERNITY AND PATERNITY**

1. State Parties shall ensure that maternity protection is afforded to all employed women, including those in atypical forms of dependent work, and shall endeavour to increase protection to the level provided for in the ILO Maternity Protection (Revised) Convention, 2000 (No. 183).
2. Employment-related maternity benefits shall ideally be financed through compulsory social insurance paid by both the employer and the employees in respect of the total number of men and women employed, without distinction of sex.
3. Maternity medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalisation care when necessary.
4. State Parties shall provide for, in accordance with national laws, paternity leave in order to ensure that child-caring is a shared responsibility between father and mother.
5. State Parties shall ensure that women are not discriminated against or dismissed on grounds of maternity.
6. State Parties shall ensure that working conditions and environments are appropriate for and conducive to pregnant and nursing mothers.

## **ARTICLE 17**

### **PERSONS WITH DISABILITIES**

- (1) State Parties shall ensure that persons with disabilities are afforded the rights protected in the United Nations Convention on the Rights of Persons with Disabilities of 2006, in particular employment and social protection rights.
- (2) State Parties shall ensure that persons with disabilities, whatever the nature and origin of such disability, are entitled to additional concrete measures aimed at

improving their social and professional integration, including through measures such as rehabilitation, vocational training, accessibility and mobility, provision of assistive devices, means of transport, access to appropriately designed housing, and the appropriate organisation of work and the working environment.

- (3) State Parties shall undertake measures to curb discriminatory practices against persons with disabilities, and foster social acceptance and integration of persons with disabilities.
- (4) Social protection measures for persons with disabilities shall include persons with disabilities living with HIV and AIDS, and afford such persons employment protection and access to employment benefits.

## **ARTICLE 18**

### **PROTECTION OF CHILDREN AND YOUNG PERSONS**

1. State Parties shall, consistent with ILO Convention on the Minimum Age of Entry into Employment, 1982 (No. 138), the UN Convention on the Rights of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1990 or any other relevant international legal instrument, ensure that:
  - (a) child labour and child abuse are prevented;
  - (b) subject to any derogation limited to certain light work provided for in national laws and/or regulations and without harm to their health, morals or education, the minimum employment age shall not be lower than the minimum school leaving age and in any case, not lower than that set out in the ILO Convention No. 138;
  - (c) children who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
  - (d) employers shall be liable for employment practices of adult employees that lead to the indirect employment of children;
  - (e) young people who are in gainful employment shall, subject to applicable minimum wages, receive an equitable remuneration in accordance with national law and/or practices;
  - (f) appropriate measures shall be taken to adjust labour laws and regulations applicable to young workers in order to meet their specific development and vocational training and access to employment needs;

- (g) the duration of work for young people shall be limited; and
  - (h) young people shall be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirement of their future working life and for young workers, the training shall take place during normal working hours.
2. State Parties shall adopt measures to eliminate the worst forms of child labour in line with ILO Convention on the Elimination of the Worst forms of Child Labour, 1999 (No. 182).

## **ARTICLE 19**

### **LABOUR MIGRATION AND MIGRANT WORKERS**

In accordance with African Union and ILO instruments on migration, State Parties shall endeavour to:

- (a) improve migration management and control, and strengthen mechanisms to combat smuggling and human trafficking;
- (b) create a favourable climate to facilitate and encourage the return to and/or participation of emigrants in the development of the country of origin;
- (c) ensure that fundamental rights are accorded to non-citizens, in particular labour/employment and social protection rights;
- (d) adopt measures to provide for the special needs of migrant women, children and youth;
- (e) harmonise national migration legislation and policies; and adopt a regional migration policy in accordance with international conventions to ensure the protection of the rights of migrants;
- (f) adopt measures to facilitate the coordination and portability of social security benefits, especially through the adoption of appropriate bilateral and multilateral agreements providing for equality of treatment of non-citizens, aggregation of insurance periods, maintenance of acquired rights and benefits, exportability of benefits and institutional cooperation;
- (g) develop mechanisms, services and effective financial products to facilitate the transfer of remittances by migrants;

- (h) ensure coherence between labour migration, employment policies and other development strategies within the member states;
- (i) reach an agreement on a common approach towards immigration within the Region;
- (j) establish an autonomous regional agency to address cross-cutting issues pertaining to social protection such as: streamlining and facilitation of portability of social security benefits across borders; stipulating applicable regional minimum standards; and regulating institutional mechanisms that guarantee relevant entitlements, rights and obligations across borders; and
- (k) promote labour migration data collection, analysis and exchange at regional and national levels.

## **ARTICLE 20**

### **INFORMAL EMPLOYMENT AND RURAL WORKERS**

1. State Parties shall ensure the:
  - (a) adoption of a comprehensive regulatory mechanism to promote decent work in both informal and rural employment;
  - (b) promotion of productivity of informal and rural enterprises, among others ,through access to capital, sector-specific business development services, infrastructure and inputs, and supportive regulations and policies;
  - (c) promotion of organised membership-based informal economy and rural organisations that can participate in relevant policy-making and rule-setting bodies or processes;
  - (d) protection of informal and rural workers, through the promotion of their business, labour, social protection and property rights, including the adoption of a regulatory framework promoting decent working conditions and appropriate and adequate labour law protection for informal and rural workers; and
  - (e) adoption of a regulatory framework promoting appropriate and adequate social security protection of informal and rural workers, through the provision or recognition of amongst others formal and informal social insurance and micro-insurance mechanisms, universal schemes, social assistance measures, and dedicated savings instruments;

2. State Parties shall aim to progressively integrate formal and non-formal aspects of the economy, as a way of promoting inclusive social and economic development.

## **ARTICLE 21**

### **LABOUR MARKET INFORMATION SYSTEMS**

State Parties shall put measures in place to:

- (a) strengthen regional and national Labour Market Information Systems among others by facilitating the flow of data from national systems to the regional system;
- (b) establish a regional data collection and dissemination mechanism on employment and labour matters in order to facilitate effective planning and monitoring of the labour market in the Region; and
- (c) enhance national and regional capacities for collection and dissemination of employment and labour statistics taking into account internationally recognised indicators in the relevant areas and sectors.

## **ARTICLE 22**

### **EDUCATION, TRAINING AND SKILLS DEVELOPMENT**

State Parties shall ensure an education, training and skills development system that is sensitive to the objective of rationalising admission requirements to education and training institutions and accreditation of qualifications, as reflected in the SADC Protocol on Education and Training, 1997, which simultaneously addresses the needs for employability and sustainable human development and which:

- (a) promotes innovative, gender-sensitive training and skills development programmes, such as apprenticeship programmes, mentorship, business incubators, promoting a culture of entrepreneurship;
- (b) promotes vocational training programmes designed and implemented in partnership with the private sector;
- (c) ensures that government, employers and trade unions contribute towards workers' education; and
- (d) promotes paid study leave for workers.

**ARTICLE 23**

**INFORMATION, CONSULTATION AND PARTICIPATION**

State Parties shall ensure that:

- (a) effective inter-ministerial and stakeholder coordination and participation are promoted;
- (b) inclusive, participatory and institutionalised social dialogue structures are promoted;
- (c) Social partners shall have the right to information, consultation and participation, particularly in respect to the following:
  - (i) when technological innovation and changes which, from the point of view of working conditions, have major implications for the workforce are introduced into undertakings;
  - (ii) in the event of restructuring and operational changes that have an impact on the employment of workers and well-being of the undertaking; and
  - (iii) social responsibility or other outreach programmes carried out in the community;
- (d) information, consultation and participation applies especially in companies or groups of companies having establishments or companies in two or more Member States in the Region; and
- (e) labour market information generation, sharing and exchange of experiences are enhanced at both regional and national levels through the establishment of an efficient and effective regional Labour Market Information System.

**ARTICLE 24**

**INSTITUTIONAL ARRANGEMENTS**

- 1. The institutional arrangements for the implementation of this Protocol shall comprise the following:
  - (i) the Committee of Ministers and Social Partners responsible for Employment and Labour Affairs and other relevant Ministries;

- (ii) the Committee of Senior Officials and Social Partners responsible for Employment and Labour Affairs and other relevant Ministries;
  - (iii) the SADC Secretariat; and
  - (iv) SADC National Committees.
2. The Committee of Ministers and Social Partners responsible for Employment and Labour Affairs and other relevant Ministries shall:
- (a) oversee and monitor the implementation of this Protocol and ensure that this Protocol is implemented;
  - (b) provide strategic and political guidance on common policy decisions that are relevant for the implementation of this Protocol, supervise the work of any committee, sub-committee or any mechanism established in accordance with the provisions of this Protocol;
  - (c) establish any permanent or ad hoc sub-committees which may be required for the implementation of the Protocol;
  - (d) provide regular updates to the Council on the status of implementation of this Protocol; and
  - (e) provide advice to the Council on policy issues relating to the employment and labour sector.
3. The Committee of Senior Officials and Social Partners responsible for Employment and Labour Sector shall:
- (a) provide technical advice to the Committee of Ministers responsible for Employment and Labour Affairs and other relevant Ministries on all matters relating to the implementation of this Protocol, in particular the following:
    - (i) the status of implementation of this Protocol;
    - (ii) the development and harmonization of policies at national and regional levels; and
    - (iii) the establishment of technical sub-committees deemed necessary for the implementation of the Protocol.
  - (b) translate policy decisions of the Committee of Ministers into specific projects and programmes at national and regional levels;

- (c) formulate and recommend regional programmes that are consistent with the objectives of this Protocol;
  - (d) provide policy guidance and supervise the work of the Secretariat in respect of the implementation of the provisions of this Protocol;
  - (e) clear the documents prepared by the Secretariat for submission to the Committee of Ministers and Social Partners responsible for Employment and Labour Affairs;
  - (f) enable/facilitate the Secretariat to make representation/presentations to the Committee of Ministers and Social Partners responsible for Employment and Labour on matters concerning employment and labour, as and when necessary; and
  - (g) closely liaise with both the Committee of Ministers and Social Partners responsible for Employment and Labour and other relevant Ministries and the Secretariat.
4. The SADC Secretariat shall be responsible for facilitating and coordinating the implementation of the Protocol in accordance with Article 14 of the Treaty and shall:
- (a) facilitate and monitor reporting by State Parties on the implementation of this Protocol;
  - (b) coordinate the implementation and application of this Protocol;
  - (c) identify areas of cooperation and research needs and other priorities connected with the application of this Protocol; and
  - (d) provide administrative and technical support to the Committee of Ministers and Social Partners and Committee of Senior Officials and Social Partners.
5. SADC National Committees created in each State Party shall:
- (a) in their composition consist of employment and labour stakeholders, since employment and labour is a core area of integration referred to under Article 12(2)(iv) of the Treaty;
  - (b) in the light of Article 16A of the Treaty be responsible for the formulation of SADC policies, strategies, coordination and overseeing of SADC

programmes of action in the area of employment and labour as well as social security at national level; and

- (c) create Sub-Committees on Employment and Labour composed of representatives of Government, Workers and Employers organisations.
6. SADC National Committees and their Sub-committees shall take decisions by consensus.
  7. For the purpose of implementing this Protocol, Member States undertake to comply with the provisions of Article 23 of the Treaty with regards to the participation of Stakeholders.

## **ARTICLE 25**

### **IMPLEMENTATION**

1. State Parties shall ensure the application and implementation of this Protocol at national level.
2. State Parties shall put in place national mechanisms, such as nation and labour action plans, with time frames in order to facilitate the execution of measures which enable the application/implementation of the provisions of this Protocol.
3. State Parties shall ensure that national and regional employment and labour evaluation and monitoring mechanisms are developed and implemented.
4. State Parties shall be responsible for the collection and analysis of the fundamental information and data against which the monitoring will be measured and achieved;
5. State Parties shall submit bi-annual reports to the Council, through the Executive Secretary, showing achievements in the application/implementation of the provisions of this protocol;.
6. Independent experts may be co-opted by the Committee of Ministers and Social Partners to review compliance with the implementation of the Protocol and make recommendations to the Committee on the progressive attainment of its provisions and, where necessary, to the respective national structures;
7. The Council shall consider Progress Reports of the Ministers responsible for Employment and Labour, and may submit recommendations thereon to the Summit for its consideration.

8. State Parties shall take all steps required to give effect to the application of the provisions of the Protocol.

## **ARTICLE 26**

### **RELATIONSHIP WITH OTHER STATES, REGIONAL AND INTERNATIONAL ORGANISATIONS**

Subject to the provisions of Article 6(1) of the Treaty, State Parties shall maintain good relations and other forms of cooperation, and may enter into agreements with other states, regions and international organisations, whose objectives are compatible with the objectives and provisions of this Protocol

## **ARTICLE 27**

### **SETTLEMENT OF DISPUTES**

State Parties shall endeavour, to settle any dispute arising from the application, interpretation or implementation of the provision of this Protocol amicably, and any dispute which cannot be settled amicably, shall be referred to the SADC Tribunal for adjudication in accordance with Article 16 of the Treaty.

## **ARTICLE 28**

### **WITHDRAWAL**

1. Any State Party shall be considered to have withdrawn from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Executive Secretary.
2. Such State Parties shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.

## **ARTICLE 29**

### **AMENDMENT**

1. A State Party, in consultation with Social Partners, may propose an amendment to this Protocol and shall submit such proposal to the Executive Secretary.
2. The Executive Secretary shall give written notice to all Member States of the proposed amendment and thirty (30) days shall elapse from the date of such

notification, after which, the Executive Secretary shall submit the proposal for amendment to the Council for consideration.

3. This Protocol shall be amended only when it has entered into force.
4. An amendment to this Protocol shall be adopted by a decision of three-quarters of the Member States that are Parties to this Protocol.
5. This Protocol shall be amended in accordance with Article 22 of the Treaty.

### **ARTICLE 30**

#### **SIGNATURE**

This Protocol shall be signed by the duly authorised representatives of Member States.

### **ARTICLE 31**

#### **RATIFICATION**

This Protocol shall be ratified by the signatory States in accordance with their constitutional procedures.

### **ARTICLE 32**

#### **ENTRY INTO FORCE**

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of Ratification by two-thirds of the Member States.

### **ARTICLE 33**

#### **ACCESSION**

This Protocol shall remain open for accession by any Member State.

### **ARTICLE 34**

#### **DEPOSITARY**

1. The original texts of this Protocol and all instruments of Ratification and Accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all the Member States.

2. The Executive Secretary shall notify the Member States of the dates on which Instruments of Ratification and Accession have been deposited under paragraph 1.
3. The Executive Secretary shall register this Protocol with the United Nations, the Commission of the African Union and such other organization as the Council may determine.

**IN WITNESS WHEREOF, WE**, the Heads of State or Government or duly Authorised Representatives of SADC Member States have signed this Protocol.

**Done at** ..... this ..... day of .....2014 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

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REPUBLIC OF ANGOLA

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REPUBLIC OF BOTSWANA

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DEMOCRATIC REPUBLIC OF CONGO

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KINGDOM OF LESOTHO

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REPUBLIC OF MADAGASCAR

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REPUBLIC OF MALAWI

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REPUBLIC OF SEYCHELLES

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REPUBLIC OF SOUTH AFRICA

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KINGDOM OF SWAZILAND

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UNITED REPUBLIC OF TANZANIA

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REPUBLIC OF ZAMBIA

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REPUBLIC OF ZIMBABWE