

CHARTER OF FUNDAMENTAL SOCIAL RIGHTS IN SADC

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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 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

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

FURTHER RECALLING that the SADC Council of Ministers approved the main objectives of the SADC Employment and Labour Sector;

NOW THEREFORE, SADC hereby adopts the following Charter:

ARTICLE 1

DEFINITIONS

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

2. In this Charter, unless the context otherwise requires:

“ Charter” means this Charter of Fundamental Social Rights in SADC;

“consultation” means a process of discussion which involves information sharing, and the making of representations on relevant issues with a view to achieving consensus;

“essential services” has the meaning assigned to it under national legislation and consistent with international labour standards;

“international instrument” means any international treaty, declaration, recommendation or relevant international agreement in the social, human rights and labour fields subscribed to by Member States;

“ ILO” means the International Labour Organisation; and

“social partners” means Governments, representative organisations of workers and representative organisations of employers in respective Member States.

ARTICLE 2

OBJECTIVES OF THE CHARTER

1. The objective of this Charter shall be to facilitate, through close and active consultations among social partners and in a spirit conducive to harmonious labour relations, the accomplishment of the following objectives:

(a) ensure the retention of the tripartite structure of the three social partners, namely, governments, organisations of employers and organisations of workers;

(b) promote the formulation and harmonisation of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes, in Member States;

(c) promote labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States;

(d) provide a framework for regional co-operation in the collection and dissemination of labour market information;

(e) promote the establishment and harmonisation of social security schemes;

(f) harmonise regulations relating to health and safety standards at work places across the Region; and

(g) promote the development of institutional capacities as well as vocational and technical skills in the Region.

2. It shall be the responsibility of Governments to create an enabling environment in order that objectives referred to in paragraph 1 of this Article are realised.

ARTICLE 3

BASIC HUMAN RIGHTS AND ORGANISATIONAL RIGHTS

1. This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.

2. Member States undertake to observe the basic rights referred to in this Charter.

ARTICLE 4

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Member States shall create an enabling environment consistent with ILO Conventions on freedom of

association, the right to organise and collective bargaining so that:

- (a) employers and workers of the Region shall have the right to form employers associations or trade unions of their choice for the promotion and defence of their economic and social interests;
- (b) every employer and every worker shall have the freedom to join or not to join such employers associations or trade unions without any personal or occupational damage being thereby suffered by him or her;
- (c) employers associations and trade unions shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice;
- (d) the industrial disputes settlement machinery and method of operation shall be autonomous, accessible, efficient and subject to tripartite consultation and in agreement with guaranteed right of recourse to established appeals or review procedures;
- (e) the right to resort to collective action in the event of a dispute remaining unresolved shall:
 - (i) for workers, include the right to strike and to traditional collective bargaining; and
 - (ii) for employers, include traditional collective bargaining and remedies consistent with ILO instruments and other international laws;
- (f) organisational rights for representative unions shall include:
 - (i) the right of access to employer premises for union purposes subject to agreed procedures;
 - (ii) the right to deduct trade union dues from members' wages;
 - (iii) the right to elect trade union representatives;
 - (iv) the right to choose and appoint full time trade union officials;
 - (v) the right of trade union representatives to education and training leave; and
 - (vi) the right of the trade unions to disclosure of information;
- (g) essential services and their parameters shall mutually be defined and agreed upon by governments, employers associations and trade unions;
- (h) due to the unique nature of essential services, appropriate and easily accessible machinery for quick resolution of disputes shall be put in place by governments, employers and trade unions; and
- (i) freedom of association and collective bargaining rights shall apply to all areas, including export processing zones.

ARTICLE 5

CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANISATION

For the purposes of attaining the objectives of this Charter:

- (a) Member States shall establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labour (Nos. 29 and 105), freedom of association and collective bargaining (Nos. 87 and 98), elimination of discrimination in employment (Nos. 100 and 111), minimum age of entry into

employment (No. 138) and other relevant instruments;

(b) Member States shall take appropriate action to ratify and implement relevant ILO instruments and as a priority the core ILO Conventions; and

(b) Member States shall establish regional mechanisms to assist Member States in complying with the ILO reporting system.

ARTICLE 6

EQUAL TREATMENT FOR MEN AND WOMEN

Member States shall create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments so that:

(a) Gender equity, equal treatment and opportunities for men and women are ensured;

(b) Equal opportunities for both men and women shall apply, in particular, to access to employment, remuneration, working conditions, social protection, education, vocational training and career development; and

(c) Reasonable measures are developed to enable men and women to reconcile their occupational and family obligations.

ARTICLE 7

PROTECTION OF CHILDREN AND YOUNG PEOPLE

Member States shall create an enabling environment consistent with the ILO Convention on the Minimum Age of Entry into Employment (No 138) or any other relevant international instrument so that:

(a) Without prejudice to such rules as may be more favourable to young people in particular those ensuring their preparation for work through vocational training, and subject to derogation limited to certain light work, the minimum employment age must 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;

(b) Employers shall be liable for employment practices of adult employees that lead to the indirect employment of children;

(c) Young people who are in gainful employment shall receive an equitable remuneration in accordance with national law and practice;

(d) Appropriate measures shall be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met;

(e) The duration of work for young people shall be limited, and work for young people shall not be resorted to, save in the case of certain jobs laid down in national laws or regulations; and

(f) 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.

ARTICLE 8

ELDERLY PERSONS

Member States shall endeavour to create an enabling environment in accordance with arrangements applying to each Member State so 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; and
- (c) Employment after the normal retirement period shall be under the same labour standards and rates of remuneration that applies to all workers.

ARTICLE 9

PERSONS WITH DISABILITIES

1. Member States shall create an enabling environment such that all persons with disabilities, whatever the origin and nature of their disability, shall be entitled to additional concrete measures aimed at improving their social and professional integration.
2. The measures shall relate to, in particular, according to the capacities of beneficiaries, vocational training, accessibility and mobility, means of transport and housing and appropriate organisation of work and workplaces to take into account their needs.

ARTICLE 10

SOCIAL PROTECTION

1. Member States shall create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits.
2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.

ARTICLE 11

IMPROVEMENT OF WORKING AND LIVING CONDITIONS

Member States shall create an enabling environment so that:

- (a) Harmonisation of minimum requirements laid down in labour legislation and in particular the

introduction of equitable basic working and living conditions, the specifications of minimum rest periods, annual paid leave, compassionate leave, paid maternity leave, occupational health and safety protection, and stipulation of acceptable rules and compensation for overtime and shift work, are achieved;

(b) Every worker in the Region shall have a right to a weekly rest period and annual paid leave, the duration of which must be progressively harmonised in accordance with the national practice; and

(c) The conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment.

ARTICLE 12

PROTECTION OF HEALTH, SAFETY AND ENVIRONMENT

Member States shall endeavour to create an enabling environment so that:

(a) Subject to paragraphs (b) to (g) of this Article, every worker in the Region has the right to health and safety at work and to a healthy and safe environment that sustains human development and access to adequate shelter;

(b) Employers shall provide safe workplaces that do not pose a risk to the health of employers or any other person exposed;

(c) Basic work environment and occupational health and safety standards as set out in ILO Convention No. 155 are provided;

(d) Engineering is prioritised to control risk from hazards at source;

(e) The organisation of occupational health and safety shall be on the basis of bipartite and tripartite co-operation and the full participation of all parties;

(f) Workers have a right to information on workplace hazards and the procedures being taken to address them, and to appropriate health and safety training in paid working time;

(g) Workers have the right to stop work that they reasonably believe poses an immediate and serious risk to their health, safety or physical well being according to ILO Convention No. 155;

(h) Workers have the right to services, that provide for the prevention, recognition, detection and compensation of work related illness or injury, including emergency care, with rehabilitation and reasonable job security after injury and adequate inflation adjusted compensation;

(i) Employers control and are liable for work related environmental risks according to the 'polluter pays' principle;

(j) Workplace based health service for workers is accessible, affordable and equitable, and is provided on a professional ethical basis; and

(k) Economic and investment measures take into consideration health, safety and environmental standards.

ARTICLE 13

INFORMATION, CONSULTATION AND PARTICIPATION OF WORKERS

Member States shall create an enabling environment so that:

- (a) Industrial and workplace democracy is promoted;
- (b) Workers shall have the right to information, consult and participate particularly in the following cases:

- (I) When technological changes which, from the point of view of working conditions, have major implications for the work force are introduced into undertakings;

- (ii) In connection with the restructuring operations in the undertakings having an impact on the employment of workers; and

- (iii) In connection with social responsibility or other outreach programmes carried out by the community;

- (c) Information, consultation and participation of workers is developed along appropriate lines and similar practices are encouraged in all Member States; and

- (d) Information, consultation and participation apply especially in companies or groups of companies having establishments or companies in two or more Member States in the Region.

ARTICLE 14

EMPLOYMENT AND REMUNERATION

Member States shall create an enabling environment so that:

- (a) Every individual shall be free to choose and engage in an occupation of his or her choice;
- (b) Workers are provided with fair opportunities to receive wages, which provide for a decent standard of living;
- (c) Remuneration systems in Member States encourage the progressive establishment of equitable wage rates across the Region in accordance with arrangements applying in each Member State; and
- (d) Workers, subject to terms of employment other than full-time contracts, shall benefit from an equitable current rate.

ARTICLE 15

EDUCATION AND TRAINING

Member states shall create an enabling environment consistent with ILO Convention on Paid Education and Training (No 140) so that:

(a) Government, employers and trade unions contribute towards workers education, training and skills development; and

(b) All workers have the right to paid study leave subject to the provisions of ILO Conventions and to a collective agreement.

ARTICLE 16

IMPLEMENTATION OF THE CHARTER

1. The responsibility for the implementation of this Charter lies with the national tripartite institutions and regional structures.
2. The institutions and structures referred to in paragraph 1 of this Article shall promote social legislation and equitable growth within the Region and prevent non-implementation of this Charter.
3. All Member States shall submit regular progress reports to the Secretariat.
4. The most representative organisation of employers and workers shall be consulted in the preparation of the reports referred to in paragraph 3.

ARTICLE 17

ENTRY INTO FORCE

This Charter shall enter into force upon signature by Member States.

ARTICLE 18

AMENDMENTS

1. An amendment to this Charter shall be adopted by a decision of three-quarters of the Member States.
2. A proposal for the amendment to this Charter may be made to the Secretariat by any Member State for preliminary consideration by the social partners provided that the proposed amendment shall not be submitted for preliminary consideration until all Member States have been duly notified of it and a period of three months has elapsed after such notification.

IN WITNESS WHEREOF, WE the Heads of State or Government, or duly authorised Representatives of SADC Member States, has signed this Charter.

DONE at Dar-es-Salaam on this 26.. day of August 2003, in three (3) original texts, in the English, French and Portuguese Languages, all texts being equally authentic.

REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

DEMOCRATIC REPUBLIC OF CONGO

KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MAURITIUS

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

REPUBLIC OF SEYCHELLES

REPUBLIC OF SOUTH AFRICA

KINGDOM OF SWAZILAND

UNITED REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE