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The Portability of Pension Fund Benefits & Rights in the Course of Acquisition: A Brief Critique of the SADC Frameworks.

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We explore 2 questions regarding provision for portability of pension fund benefits and rights in acquisition:

- 1. Defining portability of pension fund benefits and rights in the course of acquisition and importance of this to the SADC region.**
- 2. Regional situational analysis regarding portability of pension fund benefits & rights in the course of acquisition.**



Defining portability of pension fund benefits and rights in the course of acquisition and importance to SADC.

*“...a migrant's ability to preserve, maintain, and transfer **both** acquired social security rights and rights in the process of being acquired **from one** private, occupational, or public social security **scheme to another**, independent of nationality and country of residence.”*

(Holzmann and Jacques: 2019)

Totalisation/Aggregation – workers’ contributions, employment, or residence of a migrant worker in different jurisdictions.

Code on Social Security 2008 – vehicle for coordination, convergence & harmonisation of social security systems in the region.

Article 17(2): portability principle should be contained in national laws, bilateral or multilateral arrangements. **Article 17(2) portability mechanisms** (1) aggregation of insurance periods (2) maintenance of acquired rights and benefits between similar schemes in different countries (3) facilitation of exportability of benefits, including the payment of benefits in the host country (ergo, withdrawal & death benefits)

Status of Code: not binding.

Protocol on Employment and Labour 2014 – article 3(f) ILO Migration Conventions; only DRC ratified two & article 19(f) coordination and portability of social security benefits; aggregation of insurance periods, maintenance of acquired rights and benefits, exportability of benefits and institutional cooperation.

Status of Code: adopted but not ratified by Members.



Regional situational analysis regarding portability of pension fund benefits and rights in the process of acquisition.

❑ Programmes & plans of action not grounded in rights-based regime e.g. **SADC Migration Action Plans of 2013 and 2016** silent on portability. **SADC Migration Action Plan (2016-2019)** addresses portability of social security. Outcome 6: Strengthening of migrant workers' access to pension and social protection across SADC region. Key outputs: development of SADC policy and legislation to provide for portability and pension contribution. Plan envisaged that only in 2020 would Member States have adopted such measures.

Status: uncertain.

❑ **SADC Cross-Border Portability of Accrued Social Security Benefits Policy Framework 2016.** Provisions seek to ensure the maintenance of acquired benefits and benefits in the course of acquisition. Coverage: all social security schemes. Some modalities incl. qualifying criteria left to Members; SADC plays coordinating role and implementation.

Status: draft.



Conclusion & Recommendations

- ❑ Too many instruments with varying legal statuses to navigate.

Recommendation 1: consolidate all provisions regulating portability of pension benefits and rights in the course of acquisition into one binding Protocol; ensure ratification of ILO Conventions on migration as well.

Recommendation 2: adopt Cross-Border Portability of Accrued Social Security Benefits Policy Framework 2016 as a Protocol; holds potential in terms of the consolidation of regional principles, values, rights addressing withdrawal and death benefits in the context of migration and remigration, coordination mechanisms and taxation mechanisms, amongst other things.

Recommendation 3: consolidate guidelines extracted from the plethora of relevant SADC instruments and consolidate into a Code of Good Practice governing portability, criteria, coordination, etc., for bilateral agreements operating within context of integrated SADC multilateral framework as per recommendations above.

