



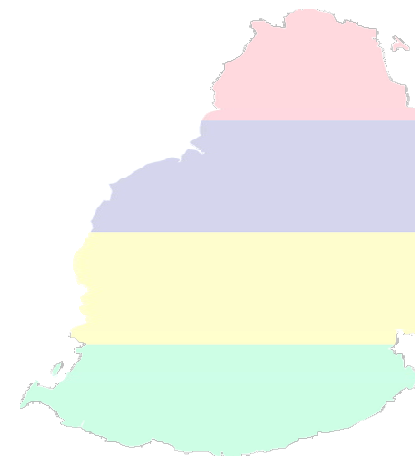
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The SADC Social Protection Legal Framework: Overview and Prospects

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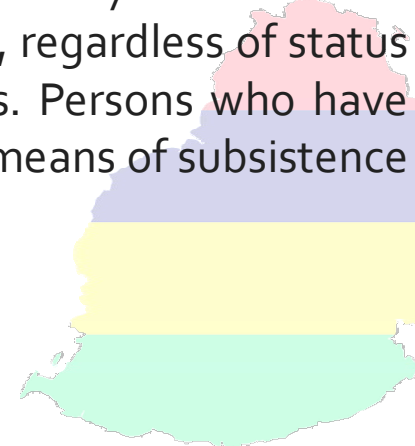
Overview

- SADC Social Protection Legal Framework
- Prospects and future direction



SADC Social Protection Legal Framework

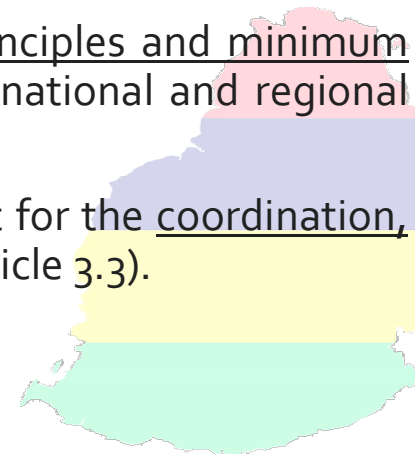
- SADC Treaty provisions
- Social Charter (2003):
 - Contains provisions relating to the social protection of both workers and those who are not employed – and regulates the position of workers (in terms of social protection) more comprehensively than those who do not work.
 - Article 10 is the lead article in this regard, and stipulates as follows:
 - "SADC Member States shall create an enabling environment such that every worker in the SADC Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be able to receive sufficient resources and social assistance."



SADC Social Protection Legal Framework

- Code on Social Security in the SADC

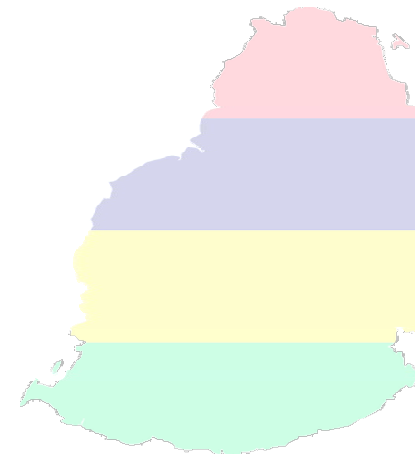
- Contains crucial provisions for the further development of social security in SADC, in particular at a country level.
- It provides **strategic direction, including guidelines, a set of principles and standards, a monitoring framework, and an instrument for co-ordination, harmonisation and convergence of social security.**
- Article 3 describes the purposes of the Code to be:
 - Firstly, 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 (article 3.1);
 - Secondly, 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 (article 3.2); and,
 - Thirdly, to provide SADC and Member States with an effective instrument for the coordination, convergence and harmonisation of social security systems in the region (article 3.3).



SADC Social Protection Legal Framework

- **Code on Social Security in the SADC**

- A non-binding instrument, giving guidance and indicating minimum standards
- Wide-ranging provisions on social security, recognising the individual right to social security (both contributory and non-contributory/tax-financed)
- Dealing with all the traditional social security risks, but also special contingencies relevant to Africa
- Addressing the plight of relevant vulnerable groups
- Providing for supportive implementing mechanisms
- Probably the most extensive social security instrument in Africa



SADC Social Protection Legal Framework

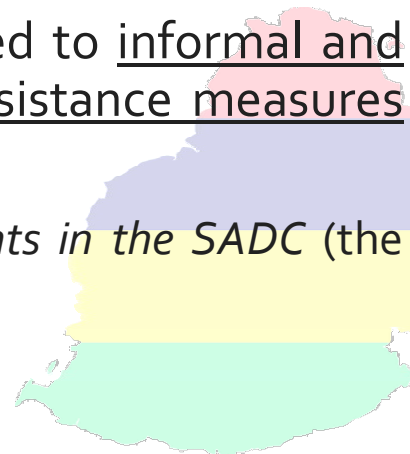
- The *Protocol on Employment and Labour* (2014) enjoins each State Party to aim at developing an integrated and comprehensive social protection system which ensures meaningful coverage of all through social protection programmes, including social assistance (art 11(3)(a))

Progressively attaining the benchmark of protection in accordance with international and regional standards in SADC countries

According to article 11(2) of the SADC Protocol on Employment and Labour, every Member State 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), the Charter of Fundamental Social Rights in SADC and the SADC Code on Social Security.

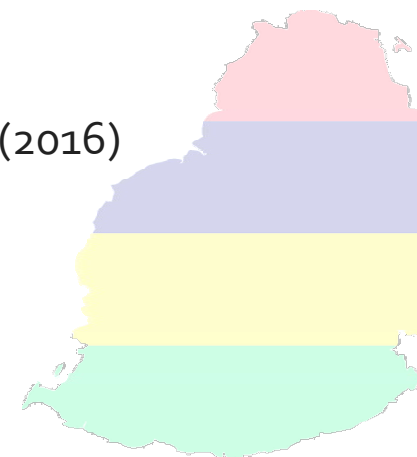
SADC Social Protection Legal Framework: 2014 Protocol on Employment and Labour

- 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 (art 11(1)(b));
- Every worker who has reached retirement age but is not entitled to a pension or does not have other means of subsistence shall be eligible to receive adequate social assistance to cater specifically for basic needs including medical care (art 14(b));
- Ideally, social assistance support should also be available to workers who have become unemployed and who are not covered by compulsory social insurance (art 15(i)); and
- Appropriate and adequate social security protection should be extended to informal and rural workers, among others, through universal schemes and social assistance measures (art 20(1)(e))
 - This provision echoes par 10(2) of the *Charter of Fundamental Social Rights in the SADC* (the "Social Charter") of 2003; see also par 8(b) of the Social Charter



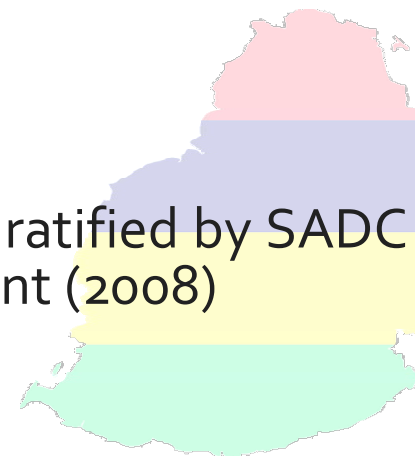
SADC Social Protection Legal Framework: SP for migrant workers

- Relevance of –
 - SADC Treaty emphasis on regional integration, in addition to SP provisions
 - SADC Social Charter
 - SADC Code on Social Security and SADC Protocol on Employment and Labour
 - SADC Draft Protocol on the Facilitation of Movement of Persons (2006)
- SADC Employment and Labour Sector initiatives/interventions
 - Labour Migration Action Plan (2013)
 - Labour Migration Policy Framework (2014)
 - SADC Cross-Border Portability of Social Security Benefits Policy Framework (2016)



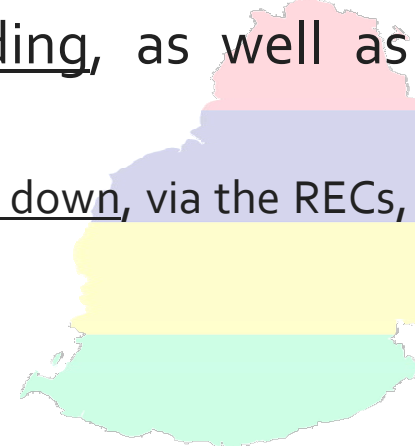
Prospects and future direction

- Weak ratification of SADC instruments
- Weak implementation of SADC instruments
 - Technical and human capacity
 - At SADC level
 - At country level
- Absent monitoring institutions/mechanisms
 - Usual provisions in Protocols insufficient
 - SADC Tribunal?
 - Monitoring and evaluation tool
 - SADC Independent Committee of Experts?
- Weak ratification of in particular ILO instruments
- Better use could be made of provisions of UN instruments, widely ratified by SADC countries – e.g., the 1966 ICESCR, and the related General Comment (2008)



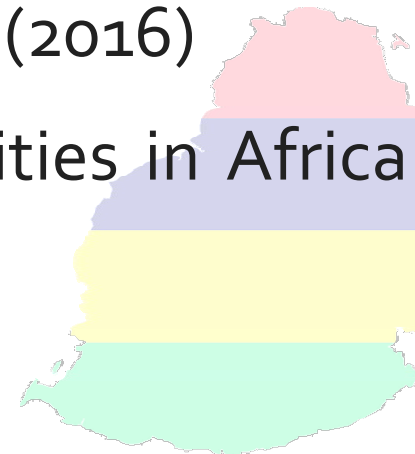
Prospects and future direction

- Better use could be made of provisions of a host of AU instruments, largely ratified by SADC countries
- In accordance with several AU constitutive documents –
 - *the evolution and ultimate absorption of the RECs into the African Economic Community (AEC) is foreseen as a constitutive element of attaining economic integration*
 - *the policies and programmes of the RECs shall be coordinated with those of the AU*
- In essence, RECs are seen as building blocks of the AEC/AU. Alignment of their policies, programmes, actions and activities with those of the AU is therefore a primary consideration, which explains the leading and guiding, as well as overall monitoring role of the AU(C) – also in the area of SP
 - Continental-level programmes, policies and standards need to be cascaded down, via the RECs, to the country level



Prospects and future direction: AU instruments

- African Charter on Human and Peoples' Rights (Banjul Charter) (adopted in 1981; in force in 1986)
 - Interpreted to include social security and minimum levels of protection
- African Youth Charter (2006)
- Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009)
- AU Protocol on the Rights of Older Persons in Africa (2016)
- AU Protocol on the Rights of Persons with Disabilities in Africa (2017)



Prospects and future direction: AU instruments

- Specialised frameworks, such as:
 - Social Protection for the Informal Economy and Rural Workers 2011-2015 (SPIREWORK) – again, the minimum package approach; this instrument is currently being updated
 - AU Free Movement Protocol (2018)
 - Migration Policy Framework (MPF) (2006), now revised (2018)
 - See also the new Joint Labour Migration Programme (JLMP) (in relation to social protection of migrant workers) and the SP impact of the recently adopted Free Movement Protocol (2018)
 - A vast range of other SP areas are covered in a large number of other AU instruments, policies and strategies



Prospects and future direction: AU instruments

- AU Council decisions – June 2015
 - “The implementation of the Social Policy Framework of Africa to be accelerated, that Member States pursue a **rights-based approach to social protection and social security of all citizens**, aiming at inclusive development that leaves no one behind, through appropriate legal and policy frameworks, complementing the AU Charter on Human and People’s Rights”
 - Requests the AU Commission, In collaboration with the African Commission on Human and Peoples Rights, to develop an additional protocol to the African Charter on Human and People’s Rights on the *Rights of citizens to Social Protection and Social Security*
 - Requests the AUC to elaborate a Social Agenda for the AU Agenda 2063



Prospects and future direction: AU instruments

- **AU visionary documents – see Agenda 2063**

- A strategic framework for the socio-economic transformation of the continent over the next 50 years (from 2013)
- Aspirations (The first of its seven Aspirations concerns “A prosperous Africa based on inclusive growth and sustainable development”)
- Priorities, targets and goals
- First Ten Year Implementation Plan
- Five Year First Five Year Priority Programme is anchored on six Key Priority Areas, one of which concerns Social Protection and Productivity for Sustainable and Inclusive Growth

