This book provides a comprehensive discussion of key international, regional and national instruments that regulate social security in the Southern African Development Community (SADC). It deepens our understanding of the instruments that have been driving the evolution of social security in SADC and this should in turn provoke a robust discourse on social security from both legal and public policy perspectives.

**Professor Edwell Kaseke**  
Head: Department of Social Work  
School of Human and Community Development, University of the Witwatersrand

Finally! An authoritative source that provides a researcher with a ‘one-stop shop’ for information on the international and regional instruments that shape social security in the countries in the SADC region, as well as the relevant social security (and other) legislation from the SADC countries. Gone are the days that comparative research had to focus on European and South American countries due to a lack of comprehensive sources on other African countries’ regulation of social security.

**Professor Kitty Malherbe**  
Head: Department of Mercantile and Labour Law  
Faculty of Law, University of the Western Cape

**The Centre for International and Comparative Labour and Social Security Law (CICLASS)** is a research centre attached to the Faculty of Law of the University of Johannesburg (UJ). It was established in 1994. CICLASS’ articulated mission is to drive the development of viable and sustainable labour law and social security (protection) systems to address inequality and bring about social justice in the emerging economies.

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Key International, Regional and National Instruments Regulating Social Security in the SADC

A General Perspective

Letlhokwa George Mpedi
Mathias Ashu Tako Nyenti
Key International, Regional and National Instruments Regulating Social Security in the SADC: A General Perspective

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University of Johannesburg

Celebrating 20 Years of
“Driving the development of viable and sustainable labour law and social security (protection) systems in emerging economies”
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This publication provides an overview on a variety of key international, regional and national instruments regulating social security in the Southern African Development Community (SADC). It incorporates a selection of significant documents on social security and related themes adopted by the United Nations Organisation (UN) and one of its specialised agencies, (i.e. the International Labour Organisation [ILO]); the African Union (AU); the Southern African Development Community (SADC); and member states of the SADC, namely Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. These documents include, amongst others, Conventions, Declarations, Protocols, Recommendations, Treaties and national laws of SADC member states available to the authors at the time of preparing this publication. It is hoped that this contribution will serve as a useful tool for persons and institutions active in the field of social security in their quest to establish and/or develop social security systems.

We wish to express our sincere gratitude to the Friedrich-Ebert-Stiftung (FES) (Zambia Office), especially Mr Helmut Elischer (Resident Director), Mr Heiner Naumann (former Resident Director) and Mr Daniel Kumitz (Programme Manager: Regional Project – ‘Social Compact’), for their patience, support and, most importantly, the opportunity to prepare this publication.

It should be noted that the opinions expressed in this publication are essentially those of the authors. Therefore, they do not represent in any sense the views of the FES and the Centre for International and Comparative Labour and Social Security Law (CICLASS).

Letlhokwa George Mpedi and Mathias Ashu Tako Nyenti
Authors

Johannesburg, June 2015
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**ACRONYMS AND ABBREVIATIONS**

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<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>ADB</td>
<td>African Development Bank</td>
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<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<td>ARI</td>
<td>African Rehabilitation Institute</td>
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<td>AU</td>
<td>African Union</td>
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<tr>
<td>CARMMA</td>
<td>Campaign on Accelerated Reduction of Maternal Mortality</td>
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<tr>
<td>CNaPS</td>
<td><em>Caisse Nationale de Prévoyance Sociale</em> (National Social Insurance Fund)</td>
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<td>COIDA</td>
<td>Compensation for Occupational Injuries and Diseases Act</td>
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<td>CRPB</td>
<td><em>Caisse de Retraite du Personnel des Banques</em> (Banking Employees Insurance Fund)</td>
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<td>CSOs</td>
<td>Civil Society Organisations</td>
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<td>ECA</td>
<td>Economic Commission for Africa</td>
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<tr>
<td>ECOSOCC</td>
<td>Economic, Social and Cultural Council</td>
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<tr>
<td>EEM</td>
<td><em>Ecclésia Episcopal Malagasy</em> (Malagasy Episcopal Church)</td>
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<tr>
<td>GEPF</td>
<td>Government Employees Provident Fund</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>International Conference on Population and Development</td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technology</td>
</tr>
<tr>
<td>IDMC</td>
<td>Internal Displacement Monitoring Centre</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>INAS</td>
<td><em>Instituto Nacional de Acção Social</em> (National Institute of Social Action)</td>
</tr>
<tr>
<td>INSS</td>
<td><em>Institut National de la Sécurité Sociale</em> (National Institute for Social Security)</td>
</tr>
<tr>
<td>LAPF</td>
<td>Local Authorities Provident Fund</td>
</tr>
<tr>
<td>NAPSA</td>
<td>National Pension Scheme Authority</td>
</tr>
<tr>
<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>NPF</td>
<td>National Pensions Fund</td>
</tr>
<tr>
<td>NSSA</td>
<td>National Social Security Authority</td>
</tr>
<tr>
<td>NSSF</td>
<td>National Social Security Fund</td>
</tr>
<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
</tr>
<tr>
<td>MINAS</td>
<td>Ministry of Social Affairs, Humanitarian Action and National Solidarity</td>
</tr>
<tr>
<td>MIRTM</td>
<td><em>Mutuelle Interprofessionnelle de Retraite des Travailleurs de Madagascar</em> (Madagascar Interprofessional Workers Retirement Fund)</td>
</tr>
<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
</tr>
<tr>
<td>ODMWA</td>
<td>Occupational Diseases in Mines and Works Act</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>PASD</td>
<td>Programa de Apoio Social Directo (Direct Social Support Programme)</td>
</tr>
<tr>
<td>PAUS</td>
<td>Programa de Apoio às Unidades Sociais (Social Assistance Services Programme)</td>
</tr>
<tr>
<td>PPF</td>
<td>Parastatal Pensions Fund</td>
</tr>
<tr>
<td>PRSP</td>
<td>Poverty Reduction Strategy</td>
</tr>
<tr>
<td>PSA</td>
<td>Programa de Segurança Alimentar (Food Subsidy Programme)</td>
</tr>
<tr>
<td>PSPF</td>
<td>Public Service Pensions Fund</td>
</tr>
<tr>
<td>PSRB</td>
<td>Political Service Retirement Benefits</td>
</tr>
<tr>
<td>PSSB</td>
<td>Programa Subsídio Social Básico (Basic Social Subsidy Programme)</td>
</tr>
<tr>
<td>PSSN</td>
<td>Productive Social Safety Net</td>
</tr>
<tr>
<td>RECs</td>
<td>Regional Economic Communities</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
</tr>
<tr>
<td>SADCC</td>
<td>Southern African Development Coordination Conference</td>
</tr>
<tr>
<td>SHIB</td>
<td>Social Health Insurance Benefits</td>
</tr>
<tr>
<td>SPF</td>
<td>Social Policy Framework for Africa</td>
</tr>
<tr>
<td>SSC</td>
<td>Social Security Commission</td>
</tr>
<tr>
<td>TASAF</td>
<td>Tanzania Social Action Fund</td>
</tr>
<tr>
<td>TB</td>
<td>Tuberculosis</td>
</tr>
<tr>
<td>UIF</td>
<td>Unemployment Insurance Fund</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations Organisation</td>
</tr>
<tr>
<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
</tr>
<tr>
<td>WCF</td>
<td>Workers’ Compensation Fund</td>
</tr>
<tr>
<td>WESTADI</td>
<td>Welfare Scheme for Tanzanians in the Diaspora</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organisation</td>
</tr>
</tbody>
</table>
1.1 INTRODUCTION

The United Nations Organisation (UN) is an international organisation with the following principal organs: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat. The UN strives to promote higher standards of living, full employment, conditions of economic and social progress and development, and solutions of international economic, social, health, and related problems, as well as international cultural and educational cooperation. The aim is to create conditions of stability and well-being which are necessary for peaceful and friendly relations amongst nations based on respect for the principle of equal rights and self-determination of peoples. The Economic and Social Council, one of the organs of the UN, has the power to conduct or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters. It may also make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialised agencies concerned. In addition, it has the authority to prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence. Therefore, it is not surprising to note that there are a few international instruments dealing with social security and associated issues adopted by the UN.

1 Article 1(1)-(4) of the Charter of the United Nations and Statute of the International Court of Justice (1945) lists the following as the purposes of the United Nations Organisation (UN): “(1) To maintain international peace and security, and to that end: To take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; (2) To develop friendly relations amongst nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; (3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and (4) To be a centre for harmonizing the actions of nations in the attainment of these common ends.”

2 Article 7(1) of the Charter of the United Nations and Statute of the International Court of Justice.

3 Article 55(a) and (b) of the Charter of the United Nations and Statute of the International Court of Justice.

4 Ibid.

5 Article 62(1) of the Charter of the United Nations and Statute of the International Court of Justice.

6 Article 62(3) of the Charter of the United Nations and Statute of the International Court of Justice.
1.2 SELECTED ESSENTIAL SOCIAL SECURITY-RELATED INSTRUMENTS

1.2.1 Convention on the Rights of Persons with Disabilities

1.2.1.1 Purpose

The Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006. This Convention is one of the most signed and ratified UN instruments. In addition, the signature and ratification record of this instrument by African countries is also impressive. The purpose of the Convention is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” According to the Convention persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

1.2.1.2 General principles

Article 2 of the Convention on the Rights of Persons with Disabilities makes provision for the following eight principles which are embraced by the Convention:

(a) Respect for inherent dignity, individual autonomy (including the freedom to make one’s own choices), and independence of persons;
(b) non-discrimination;
(c) full and effective participation and inclusion in society;
(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) equality of opportunity;
(f) accessibility;
(g) equality between men and women;
(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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8 Article 1 of the Convention on the Rights of Persons with Disabilities.
9 Ibid.
1.2.1.3 General obligations of state parties

State parties are obliged to “ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.” Therefore, they are required to:

- adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention;
- take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- refrain from engaging in any act or practice that is inconsistent with the Convention and ensure that public authorities and institutions act in conformity with the Convention;
- take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- undertake or promote research and development of universally designed goods, services, equipment and facilities which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, promote their availability and use, and promote universal design in the development of standards and guidelines;
- undertake or promote research and development of, and promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies as well as other forms of assistance, support services and facilities; and
- promote the training of professionals and staff working with persons with disabilities in the rights recognised in the Convention so as to better provide the assistance and services guaranteed by those rights.

1.2.1.4 Right of persons with disabilities to social protection

The Convention directs state parties to recognise the right of persons with disabilities to an adequate standard of living for themselves and their families. It proceeds by making provision for the right of persons with disabilities to social protection and the enjoyment

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12 Article 28(1) of the Convention on the Rights of Persons with Disabilities.
of that right without discrimination on the basis of disability. This right is supported by a duty imposed on state parties to take appropriate steps to safeguard and promote the realisation of the right of persons with disabilities to social protection.

Apart from the foregoing, the Convention makes provision for other relatable rights and matters concerning persons (with disabilities), such as equality and non-discrimination, awareness-raising, right to life, equal recognition before the law, access to justice, respect for privacy, right to education, right to the enjoyment of the highest attainable standard of health, habilitation and rehabilitation, as well as work and employment.

### 1.2.2 Convention on the Rights of the Child

#### 1.2.2.1 Convention on the Rights of the Child: A prelude

The Convention on the Rights of the Child was adopted on 29 November 1989. It came into force on 2 September 1990. This Convention outlines a range of social security and related rights to be enjoyed by children as well as a variety of obligations to be complied with by state parties. It defines a child as “[…] every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.”

#### 1.2.2.2 Scope of application of the rights contained in the Convention on the Rights of the Child

State parties have a duty to respect and ensure that the rights contained in the Convention are enjoyed by every child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parents’ or legal guardians’ race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. State parties are also required to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or

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13 Article 28(2) of the Convention on the Rights of Persons with Disabilities.
14 Ibid.
15 Article 5 of the Convention on the Rights of Persons with Disabilities.
16 Article 8 of the Convention on the Rights of Persons with Disabilities.
17 Article 10 of the Convention on the Rights of Persons with Disabilities.
20 Article 22 of the Convention on the Rights of Persons with Disabilities.
punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

1.2.2.3 Best interest of a child

The Convention requires that the best interest of a child must always be a primary consideration in all actions involving children. This applies to all actions undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

1.2.2.4 Children’s social security and related rights

The Convention makes provision for a range of children’s social security and related rights which include the following:

- the inherent right to life;
- the right of a child with disabilities to special care;
- the right of child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health;
- the right of every child to benefit from social security, including social insurance;
- the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development;
- the right of a child to education; and
- the right of a child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

1.2.2.5 Signature and ratification of the Convention on the Rights of the Child by the Southern African Development Community (SADC) countries

The signature and ratification of the Convention on the Rights of the Child by the SADC member states are as follows:

29 Ibid.
**TABLE 1.1** Signature and ratification of the Convention on the Rights of the Child by SADC countries

<table>
<thead>
<tr>
<th>SADC country</th>
<th>Signature</th>
<th>Ratification, Acceptance (A), accession (a), succession (d)</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>14 February 1990</td>
<td>5 December 1990</td>
<td>–</td>
</tr>
<tr>
<td>Botswana</td>
<td>–</td>
<td>14 March 1995 a</td>
<td>Reservation: The government of the Republic of Botswana enters a reservation with regard to the provisions of Article 1 of the Convention and does not consider itself bound by the same in so far as such may conflict with the Laws and Statutes of Botswana.</td>
</tr>
<tr>
<td>Congo, DR</td>
<td>20 March 1990</td>
<td>27 September 1990</td>
<td>–</td>
</tr>
<tr>
<td>Lesotho</td>
<td>21 August 1990</td>
<td>10 March 1992</td>
<td>–</td>
</tr>
<tr>
<td>Madagascar</td>
<td>19 April 1990</td>
<td>19 March 1991</td>
<td>–</td>
</tr>
<tr>
<td>Malawi</td>
<td>–</td>
<td>2 January 1991 a</td>
<td>–</td>
</tr>
<tr>
<td>Mauritius</td>
<td>–</td>
<td>26 July 1990 a</td>
<td>On 4 June 2008, the government of the Republic of Mauritius informed the Secretary-General that it has decided to withdraw the reservation made upon accession in respect to Article 22 of the Convention. The text of the reservation reads as follows: “[Mauritius] having considered the Convention, hereby accedes to it with express reservation with regard to Article 22 of the said Convention.”</td>
</tr>
<tr>
<td>Mozambique</td>
<td>30 September 1990</td>
<td>26 April 1994</td>
<td>–</td>
</tr>
<tr>
<td>Namibia</td>
<td>26 September 1990</td>
<td>30 September 1990</td>
<td>–</td>
</tr>
<tr>
<td>Seychelles</td>
<td>–</td>
<td>7 September 1990 a</td>
<td>–</td>
</tr>
<tr>
<td>South Africa</td>
<td>29 January 1993</td>
<td>16 June 1995</td>
<td>–</td>
</tr>
</tbody>
</table>
### Table: Swaziland, Tanzania, Zambia, and Zimbabwe's Ratification of the Convention on the Rights of the Child

<table>
<thead>
<tr>
<th>SADC country</th>
<th>Signature</th>
<th>Ratification, Acceptance (A), accession (a), succession (d)</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swaziland</td>
<td>22 August 1990</td>
<td>7 September 1995</td>
<td>Declaration: The Convention on the Rights of the Child being a point of departure to guarantee the child’s rights; taking into consideration the progressive character of the implementation of certain social, economic and cultural rights; as recognised in Article 4 of the Convention, the government of the Kingdom of Swaziland will undertake the implementation of the right to free primary education to the maximum extent of available resources and expects to obtain the co-operation of the international community for its full satisfaction as soon as possible.</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1 June 1990</td>
<td>10 June 1991</td>
<td>–</td>
</tr>
<tr>
<td>Zambia</td>
<td>30 September 1990</td>
<td>6 December 1991</td>
<td>–</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>8 March 1990</td>
<td>11 September 1990</td>
<td>–</td>
</tr>
</tbody>
</table>


#### 1.2.3 Declaration of Commitment on HIV/AIDS

The Declaration of Commitment on HIV/AIDS was adopted by General Assembly Resolution S-26/2 of 27 June 2001. Through the Declaration, the heads of state of government and representatives of states and governments who gathered at the United Nations from 25 to 27 June 2001, expressed their commitment to address the HIV/AIDS pandemic by “taking action as follows, taking into account the diverse situations and circumstances in different regions and countries throughout the world.”37 The Declaration emphasises the importance of leadership in the fight against HIV/AIDS. In addition, it views the HIV/AIDS crisis as a battle to be fought at national level – at a regional and sub-regional as well as global level.38 The essential elements of the Declaration that are core to the response against the pandemic include:

- prevention;39
- care, support and treatment;40
- respecting the rights of people living with HIV/AIDS;41

- reducing vulnerability;42
- addressing the needs of children orphaned and made vulnerable by HIV/AIDS;43
- alleviating the social and economic impact;44
- further research and development of a cure for HIV/AIDS;45
- address HIV/AIDS in conflict and disaster-affected regions;46
- commit additional and sustained resources;47 and
- ensure that momentum is maintained and progress is monitored.48

1.2.4 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

1.2.4.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: Introductory remarks

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted by General Assembly Resolution 45/158 of 18 December 1990. It takes account of principles and standards embodied in a variety of international instruments.49 These instruments include the following:

- the Universal Declaration of Human Rights (1948);
- the International Covenant on Economic, Social and Cultural Rights (1966);
- the International Covenant on Civil and Political Rights (1966);
- the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- the Convention on the Elimination of All Forms of Discrimination against Women (1979);
- the Convention on the Rights of the Child (1990);
- the Convention concerning Migration for Employment (1949);
- the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975);
- the Recommendation concerning Migration for Employment (1949);
- the Recommendation concerning Migrant Workers (1975);

- the Convention concerning Forced or Compulsory Labour (1930); and
- the Convention concerning Abolition of Forced Labour (1957).\textsuperscript{50}

The Convention builds on the objectives of the International Labour Organisation (ILO), namely “the protection of the interest of workers when employed in countries other than their own.”\textsuperscript{51}

### 1.2.4.2 Appropriate social security provisions

Provisions contained in this Convention germane to social security are largely concerned with access to social security by migrant workers and their families in the host countries. Firstly, the Convention makes provision for equality of treatment between migrant workers and their families. Article 27(1) of the Convention provides that:

> With respect to social security, migrant workers and members of their families shall enjoy in the state of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that state and the applicable bilateral and multilateral treaties. The competent authorities of the state of origin and the state of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

Article 43(1) (a)-(e) of the Convention further provides that:

> Migrant workers shall enjoy equality of treatment with nationals of the state of employment in relation to:

(a) access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) access to vocational guidance and placement services;

(c) access to vocational training and retraining facilities and institutions;

(d) access to housing, including social housing schemes, and protection against exploitation in respect of rents; and

(e) access to social and health services, provided that the requirements for participation in the respective schemes are met.

The Convention extends the equality of the treatment principle of the families of migrant workers as follows:

Members of the families of migrant workers shall, in the state of employment, enjoy equality of treatment with nationals of that state in relation to:

(a) access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

\textsuperscript{50} Ibid.
\textsuperscript{51} Ibid.
(b) access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) access to social and health services, provided that requirements for participation in the respective schemes are met; and

(d) access to and participation in cultural life.52

In addition to the foregoing equality of treatment-related provisions, state parties are required to strive to empower project-linked workers to remain adequately protected by social security systems of origin or habitual residence during their engagement in the project.53 Furthermore, state parties are directed to implement appropriate measures with the intention of averting any denial of rights or duplication of payments in this regard.54 However, these provisions are subject to bilateral or multilateral agreements that may be in force.55

1.2.4.3 Signature and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families by the Southern African Development Community (SADC) countries

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is open for ratification and the following Southern African Development Community (SADC) countries have, as of 5 May 2014, signed and/or ratified the instrument.

<table>
<thead>
<tr>
<th>SADC country</th>
<th>Signature, succession to signature (d)</th>
<th>Ratification, accession (a), succession (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesotho</td>
<td>24 September 2004</td>
<td>16 September 2005</td>
</tr>
<tr>
<td>Mozambique</td>
<td>15 March 2012</td>
<td>19 August 2013</td>
</tr>
<tr>
<td>Seychelles</td>
<td>–</td>
<td>15 December 1994 a</td>
</tr>
</tbody>
</table>


52 Article 45(1)(a)-(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

53 Article 61(3) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

54 Ibid.

55 Ibid.
1.2.5 International Covenant on Economic, Social and Cultural Rights

1.2.5.1 International Covenant on Economic, Social and Cultural Rights: An overview

The International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly Resolution 2200A (XXI) of 16 December 1966, and it came into force on 3 January 1976. The Covenant is underpinned by, *inter alia*, the principles proclaimed in the Charter of the United Nations and the Universal Declaration of Human Rights. This view is largely informed by the preamble of the Covenant which provides amongst others that:

The state parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognising that these rights derive from the inherent dignity of the human person,

Recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of states under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant,

Agree upon the following articles.\(^{56}\)

The Covenant requires each state party to undertake to “take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”\(^{57}\) State parties are directed by the Covenant to ensure that the rights articulated in the Covenant are exercised without discrimination of any kind based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\(^{58}\) Developing countries have discretion, taking human rights and their national economy into consideration, to determine to what an extent that would guarantee the economic rights recognised in the

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\(^{56}\) Preamble of the International Covenant on Economic, Social and Cultural Rights.

\(^{57}\) Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

\(^{58}\) Article 2(2) of the International Covenant on Economic, Social and Cultural Rights.
Another important point to note is that state parties have an obligation to guarantee the equal right of men and women to the enjoyment of all economic, social and cultural rights provided for in the Covenant. In addition, the rights (discussed below) contained in the Covenant are not absolute. This is apparent from Article 4 of the Covenant which states that:

The state parties to the present Covenant recognise that, in the enjoyment of those rights provided by the state in conformity with the present Covenant, the state may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### 1.2.5.2 Right to work

The Covenant obliges state parties to recognise the right to work. This right, according to Article 6(1) of the Covenant, encompasses “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” Measures to be undertaken by state parties in the quest to realise this right include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development, and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### 1.2.5.3 Just and favourable conditions of work

A majority of individuals satisfy their social (security) needs and those of their families through the remuneration they get for selling their labour potential. It is, therefore, befitting that the Covenant requires state parties to recognise the right of everyone to the enjoyment of just and favourable conditions of work. These conditions of work should ensure the following:

(a) remuneration which provides all workers, as a minimum, with:

(i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;

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59 Article 2(3) of the International Covenant on Economic, Social and Cultural Rights.
60 Article 3 of the International Covenant on Economic, Social and Cultural Rights.
61 Article 6(2) of the International Covenant on Economic, Social and Cultural Rights.
(b) safe and healthy working conditions;

(i) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and

(ii) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.63

1.2.5.4 Adequate standard of living

State parties to the Covenant are required to recognise every person’s right to an adequate standard of living for himself and his family. This includes adequate food, clothing and housing, and the continuous improvement of living conditions.64

1.2.5.5 Highest attainable standard of physical and mental health

The Covenant enjoins state parties to recognise everyone’s right to the enjoyment of the highest attainable standard of physical and mental health.65 Steps to be taken by state parties in the efforts to realise this right include those measures that are aimed at the reduction of the stillbirth-rate and of infant mortality, and for the healthy development of the child; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions which would assure to all medical service and medical attention in the event of sickness.66

1.2.5.6 Signature and/or ratification of the International Covenant on Economic, Social and Cultural Rights by the Southern African Development (SADC) countries

The following table depicts the signature and/or ratification of the International Covenant on Economic, Social and Cultural Rights by the SADC countries as of 5 May 2014.

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63 Ibid.
64 Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.
65 Article 12(1) of the International Covenant on Economic, Social and Cultural Rights.
### TABLE 1.3 Signature and/or ratification of the International Covenant on Economic, Social and Cultural Rights by the SADC countries

<table>
<thead>
<tr>
<th>SADC country</th>
<th>Signature</th>
<th>Ratification, accession (a), succession (d)</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>–</td>
<td>10 January 1992 a</td>
<td>–</td>
</tr>
<tr>
<td>Congo, DR</td>
<td>–</td>
<td>1 November 1976 a</td>
<td>–</td>
</tr>
<tr>
<td>Lesotho</td>
<td>–</td>
<td>9 September 1992 a</td>
<td>–</td>
</tr>
<tr>
<td>Madagascar</td>
<td>14 April 1970</td>
<td>22 September 1971</td>
<td>The government of Madagascar states that it reserves the right to postpone the application of Article 13(2) of the Covenant, more particularly in so far as it relates to primary education; since, while the Malagasy government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.</td>
</tr>
<tr>
<td>Malawi</td>
<td>–</td>
<td>22 December 1993 a</td>
<td>–</td>
</tr>
<tr>
<td>Mauritius</td>
<td>–</td>
<td>12 December 1973 a</td>
<td>–</td>
</tr>
<tr>
<td>Namibia</td>
<td>–</td>
<td>28 November 1994 a</td>
<td>–</td>
</tr>
<tr>
<td>Seychelles</td>
<td>–</td>
<td>2 May 1992 a</td>
<td>–</td>
</tr>
<tr>
<td>South Africa</td>
<td>3 October 1994</td>
<td>12 January 2015</td>
<td>–</td>
</tr>
<tr>
<td>Swaziland</td>
<td>–</td>
<td>26 March 2004 a</td>
<td>–</td>
</tr>
<tr>
<td>Tanzania</td>
<td>–</td>
<td>11 June 1976</td>
<td>–</td>
</tr>
<tr>
<td>Zambia</td>
<td>–</td>
<td>10 April 1984 a</td>
<td>Reservation: The government of the Republic of Zambia states that it reserves the right to postpone the application of Article 13(2)(a) of the Covenant, in so far as it relates to primary education; since, while the government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their entirety, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>–</td>
<td>13 May 1991 a</td>
<td>–</td>
</tr>
</tbody>
</table>

1.3 CONCLUDING OBSERVATIONS

In light of the role of social security in the promotion of, *inter alia*, the higher standards of living, it is understandable that social security and related issues do feature in the United Nations’ instruments. Furthermore, it is noteworthy that the United Nations’ instruments refer to ‘worker’ instead of ‘employee’, which tends to exclude and marginalise a majority of vulnerable groups and categories of persons (such as informal sector workers) from the scope of coverage of most social security programmes. The next chapter focuses on the key social security and associated instruments of the International Labour Organisation (ILO). The ILO is a specialised agency of the United Nations.
2.1 GENERAL BACKGROUND

2.1.1 Aims and purpose of the International Labour Organisation

The International Labour Organisation (ILO), which is a specialised agency of the United Nations Organisation (UN), was founded in 1919. One of the core features of the ILO is its tripartite structure which comprises government, employers and workers. One of the implications of this tripartite structure is that governments, employers and workers are represented and their delegates can vote at the annual International Labour Conference. This conference is important for the reason that it establishes and adopts international labour standards.

![Diagram of tripartite participation in the ILO]

The primary goal of the ILO is the adoption of international standards to address both labour and social problems. This is apparent from the Constitution of the ILO (1919) and the Declaration of Philadelphia (1944) (see, for example, the preamble of the Constitution of the ILO and Article III of the Declaration of Philadelphia).

2.1.2 Nature and form of international social security standards

The ILO standards are adopted at the annually held International Labour Conference. The standard setting process is based on extensive preparatory work undertaken by the International Labour Office built around dialogue between the ILO member states, the employers’, workers’ and government groups, as well as between the International Labour Office and the aforementioned groups. These standards have four main characteristics:
- **Universality** – for the reason that they provide, to some extent, identical minimum standards which apply to almost all countries of the world;
- **Specificity** – in view of the tripartite basis through which these international standards are drafted, negotiated and adopted, it could be argued that they are “intimately linked to economic, social and political realities”;¹
- **Comprehensiveness** – the ILO international standards cover a comprehensive range of subjects, ranging from freedom of association to social security; and
- **Flexibility** – for example, the international standards provide member states with the latitude to select between alternative standards. Some instruments permit developing countries, although for a brief period, to adopt lower standards than their developed counterparts.²

The international social security standards may, in principle, be divided into three categories:

![Figure 2.2 Categories of international social security standards](image)

Conventions are international treaties and are subject to ratification by member states. ILO conventions are only applicable to a member state if it has been ratified by that state. Therefore, the provisions of conventions do not automatically apply to a member state when the state is already a member of the ILO. Recommendations, unlike conventions, are non-binding instruments which normally deal with the same subjects as conventions.

### 2.2 INTERNATIONAL SOCIAL SECURITY STANDARDS

#### 2.2.1 International social security standards: A prelude

The ILO social security standards provide for different types of social security coverage under different economic systems and stages of development. Social security conventions

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² Ibid. 12-13.
and recommendations offer a wide range of options and flexibility clauses which allow
the goal of universal coverage to be reached gradually. There is growing consciousness
that in a globalising world where people are increasingly exposed to global economic
risks, a broad-based national social protection policy can provide a strong buffer against
many of the negative social effects of crises.  

2.2.2 International Labour Organisation’s two-pronged strategy for the
extension of social security

The ILO conventions and recommendations seek to promote the organisation’s two-
dimensional strategy for the extension of social security. The two-dimensional strategy
aims at the extension of social security through the building of comprehensive social
security systems in line with national priorities, resources and circumstances. The
dimensions consist of:

- adopting national social security strategies aimed at achieving universal coverage of the
  population with at least minimum levels of protection (horizontal dimension); and
- progressively ensuring higher levels of protection guided by up-to-date ILO social
  security standards (vertical dimension).  

![Diagram showing ILO’s two-dimensional strategy for the extension of social security]

**FIGURE 2.3** ILO’s two-dimensional strategy for the extension of social security [Source: ILO. Social
Security for All: Building Social Protection Floors and Comprehensive Social Security Systems. 3]

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3 International Labour Organisation, undated. *International Labour Standards on Social security.*


5 ILO Resolution and Conclusions Concerning the Recurrent Discussion on Social Protection (Social
2.2.3 The types of International Labour Organisation conventions

The ILO conventions can be divided into two categories: Conventions that provide comprehensive standards and those that lay down standards relating to the various branches of social security. Comprehensive conventions are the Social Security (Minimum Standards) Convention 102 of 1952, Equality of Treatment (Social Security) Convention 118 of 1962, and Maintenance of Social Security Rights Convention 157 of 1982.

The Social Security (Minimum Standards) Convention 102 of 1952 is considered the flagship of all ILO social security conventions, as it is the only international instrument based on basic social security principles that establishes worldwide-agreed minimum standards for all nine branches of social security, namely:

- medical care;
- sickness benefit;
- unemployment benefit;
- old-age benefit;
- employment injury benefit;
- family benefit;
- maternity benefit;
- invalidity benefit; and
- survivors’ benefit.6

Convention 102 of 1952 defines the nine branches in social security and sets minimum standards for the level of social security benefits (standards concerning scope of coverage, type of benefits, etc.) as well as the conditions under which they are granted.7 The branches are medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors’ benefit. To ensure that it could be applied in all national circumstances, the Convention offers states the possibility of ratification by accepting at least three of its nine branches and subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions are also envisaged for countries in which the economy and medical facilities are insufficiently developed. This enables them to restrict the scope of the Convention and the coverage of the benefits granted.

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CHAPTER 2: INTERNATIONAL LABOUR ORGANISATION

The principles underlying Convention 102 of 1952 are:

- a guarantee of defined benefits;
- participation of employers and workers in the administration of the schemes;
- general responsibility of the state for the due provision of the benefits and the proper administration of the institutions; and
- collective financing of the benefits by way of insurance contributions or taxation.

This Convention does not prescribe how to reach these objectives but rather leaves a certain amount of flexibility to the member state. The Convention, however, does require that each member state for which it is in force must comply with:

- Part I (General Provisions);
- at least three of the following: Parts II (medical care), III (sickness benefit), IV (unemployment benefit), V (old-age benefit), VI (employment injury benefit), VII (family benefit), VIII (maternity benefit), IX (invalidity benefit) and X (survivors’ benefit), including at least one of the following: Parts IV, V, VI, IX and X;
- the relevant provisions of Parts XI (standards to be complied with by periodical payments), XII (equality of treatment of non-national residents), and XIII (common provisions); and
- Part XIV (miscellaneous provisions).

Each member state is further required to specify in its ratification in respect of which of Parts II to X it accepts the obligations of the Convention. This allows for the step-by-step extension of social security coverage by ratifying countries. The level of minimum benefits can be determined with reference to the level of wages in the country concerned.

Under Article 3 of Convention 102 of 1952, a member state of which the economy and medical facilities are insufficiently developed may, if and for so long as the competent authority considers necessary, avail itself of the temporary exceptions provided for therein for every branch of social security. The coverage may be limited to prescribed classes of employees, constituting not less than 50% of all employees in industrial workplaces that employ 20 persons or more, as well as their wives and children.

The Equality of Treatment (Social Security) Convention regulates equality of treatment between national and non-national workers in relation to the nine branches of social security, provisions of benefits abroad, and maintenance of rights in course of acquisition. The Maintenance of Social Security Rights Convention also covers the nine branches of social security and regulates the provision of benefits abroad as well as detailed rules on the maintenance of migrant workers’ rights in course of acquisition.

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Conventions that lay down standards relating to the various branches of social security are later generation conventions that expand the scope of protection provided by Convention 102 of 1952. Such conventions offer a higher level of protection in terms of scope and benefits to be guaranteed, but authorise certain exceptions which ensure flexibility. These are the Employment Injury Benefits Convention 121 of 1964, Invalidity, Old-Age and Survivors’ Benefits Convention 128 of 1967, Medical Care and Sickness Benefit Convention 130 of 1969, Employment Promotion and Protection against Unemployment Convention 168 of 1988, and Maternity Protection Convention 183 of 2000.

2.2.4 Nine classical social security benefits

2.2.4.1 Medical care

Under Part II of Convention 102 of 1952 (medical care), the protection should consist of either preventive or curative medical care. The protection must be for any morbid condition (whatever its cause), pregnancy and confinement, as well as their consequences. The personal scope of coverage is:

- prescribed classes of employees, constituting not less than 50% of all employees, and also their wives and children; or
- prescribed classes of economically active populations, constituting not less than 20% of all residents, and also their wives and children; or
- prescribed classes of residents, constituting not less than 50% of all residents; or
- prescribed classes of employees, constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more, and also their wives and children (where a declaration made in terms of Article 3 is in force).

In case of a morbid condition, the scope of benefits must include at least general practitioner care (including domiciliary visiting); specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals; the essential pharmaceutical supplies as prescribed by medical or other qualified practitioners; and hospitalisation (where necessary). In case of pregnancy and confinement, the scope of benefits must include pre-natal, confinement, post-natal care – either by medical practitioners or by qualified midwives – and hospitalisation (where necessary). Medical care should be provided in order to maintain, restore or improve the health of the person protected and his/her ability to work and to attend to his/her personal needs. Where a person receives medical care for a morbid condition, he/she or his/her breadwinner may be required to share in the cost of the care. However, provisions in this regard must avoid hardship. Institutions or

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9 Article 7 of Convention 102 of 1952.
10 Article 8 of Convention 102 of 1952.
11 Article 9 of Convention 102 of 1952.
12 Article 10 of Convention 102 of 1952.
government departments administering medical care must encourage beneficiaries to make use of the general health services placed at their disposal by the public authorities or by other bodies recognised by the public authorities.

Medical care must be granted throughout the contingency covered. However, in case of a morbid condition, the duration of the medical care benefit may be limited to 26 weeks in each case (of a morbid condition). The benefit cannot be suspended while a sickness benefit continues to be paid, and states must make provision for the limit to be extended for prescribed diseases which are recognised to entail prolonged care. However, the duration of the benefit may be limited to 13 weeks in each case (of prolonged care) where a temporary exception is allowed.

The Medical Care and Sickness Benefits Convention 130 of 1969 and the Medical Care and Sickness Benefits Recommendation 134 of 1969 cover the same benefits as Convention 102 of 1952. However, they include provisions for dental care and medical rehabilitation. These conventions also allow for temporary exceptions for countries of which the economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the convention and the coverage of the benefits granted.

The scope of persons to be covered must comprise:

- all employees, including apprentices, and the wives and children of such employees; or
- prescribed classes of the economically active population, constituting not less than 75% of the whole economically active population, and the wives and children of persons in the said classes; or
- prescribed classes of residents constituting not less than 75% of all residents.

Where a declaration made in terms of Article 2 of Convention 130 is in force, the persons protected must comprise prescribed classes of employees, making up no less than 25% of all employees, and the wives and children of employees in the prescribed classes; or prescribed classes of employees in industrial undertakings, making up no less than 50% of all employees in industrial undertakings, and the wives and children of employees in the prescribed classes.

2.2.4.2 Sickness benefits

Contingencies covered under sickness benefits should include incapacity for work that results from a morbid condition and which involves suspension of earnings (as defined by national laws or regulations). The personal scope of coverage must be:

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13 Article 12 of Convention 102 of 1952.
14 Article 13 of Convention 130 of 1969.
15 Articles 2, 3, 4 and 5 of Convention 130 of 1969.
16 Article 10 of Convention 130 of 1969.
17 Article 11 of Convention 130 of 1969.
18 Article 14 of Convention 102 of 1952
• prescribed classes of employees, who make up no less than 50% of all employees;
• prescribed classes of the economically active population, who make up no less than 20% of all residents;
• all residents whose means during the period of sickness do not exceed prescribed national limits of which the limits are also consistent with the provision of the convention;
• prescribed classes of employees, constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more (where a temporary exception is in force).19

Sickness benefits must be paid in the form of periodical payments and must be at least 45% of the reference wage.20 The benefit should be provided throughout the period of sickness, although it can be limited to 26 weeks in each case of sickness. In addition, where a temporary exception is in place, the duration of sickness benefits can be reduced to 13 weeks in each case of sickness.

On its part, the Medical Care and Sickness Benefit Convention offers coverage to either all employees, including apprentices; or prescribed classes of the economically active population amounting to at least 75% of the whole economically active population; or all residents whose means during the period of sickness do not exceed national prescribed limits.21 Where a temporary exception has been made, the scope of coverage must be prescribed classes of employees, constituting not less than 25% of all employees; or prescribed classes of employees in industrial undertakings, making up at least 50% of all employees in industrial undertakings.22

Sickness benefits must be in the form of periodic cash payments which are at least 60% of the reference wage.23 Sickness benefits must be provided throughout the period of sickness, although the payment duration can be limited to at least 52 weeks in each case of incapacity.24 In addition, where a temporary exception has been declared, sickness benefits can be limited to at least 26 weeks in each case of incapacity. Waiting periods in national laws for the payment of sickness benefits are limited to 3 days.

Where a person who was in receipt of, or qualified for, the sickness benefit dies, a funeral benefit must be paid to his/her survivors, to any other dependants, or to the person who bears the costs of the funeral.25

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19 Article 15 of Convention 102 of 1952.
20 Article 16 Convention 102 of 1952.
21 Article 19 of Convention 130 of 1952.
22 Article 20 of Convention 130 of 1969.
23 Articles 21, 22 and 23 of Convention 130 of 1969.
24 Articles 26 of Convention 130 of 1969.
2.2.4.3 Unemployment benefits

Unemployment benefits are paid to an insured person who is capable of and available for work, but whose earnings have been suspended due to an inability to obtain suitable employment. The scope of persons covered must be:

- prescribed classes of employees, constituting not less than 50% of all employees; or
- all residents whose means during unemployment do not exceed prescribed national limits that are in line with the provision of the convention;
- where a temporary exception is made, at least 50% of all employees in industrial workplaces employing 20 persons or more.

Unemployment benefits are to be paid in the form of periodical cash payments, set at the level of at least 45% of the insured person’s reference wage. Benefits are to be paid throughout the period of unemployment, although benefits can be limited to 13 weeks (where classes of employees are protected) or 26 weeks (where all residents – whose means during unemployment do not exceed prescribed limits – are protected) within a period of 12 months. It is not compulsory for unemployment benefits to be paid for a waiting period of the first 7 days in each case of suspension of earnings, counting days of unemployment before and after temporary employment lasting not more than a prescribed period as part of the same case of suspension of earnings. In the case of seasonal workers the duration of the benefit and the waiting period may be adapted to their conditions of employment.

Convention 168 of 1988 grants protection in case of full unemployment (loss of earnings due to an inability to obtain suitable employment), partial unemployment (temporary reduction in the normal or statutory hours of work), and suspension or reduction of earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature.

Persons covered under Convention 168 of 1988 must comprise prescribed classes of employees making up at least 85% of all employees, including public employees and apprentices. However, where a temporary exception is declared, the persons protected must comprise prescribed classes of employees constituting not less than 50% of all employees; or where specifically justified by the level of development, prescribed classes of employees constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more.

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26 Article 20 of Convention 102 of 1952.
27 Article 21 of Convention 102 of 1952.
28 Article 22 of Convention 102 of 1952.
29 Article 24 of Convention 102 of 1952.
Unemployment benefits under Convention 168 of 1988 are in the form of periodical payments that must be at least 50% of the reference wage.\textsuperscript{32} However, where a temporary exception is declared, benefits can be at least 45% of the previous earnings; or at least 45% of the statutory minimum wage or the wage of an ordinary labourer, but no less than a level which provides the minimum essentials for basic living expenses.

There is also the possibility of applying special rules of calculation beyond the initial period of benefit entitlement.\textsuperscript{33} However, in such instance the total benefits provided must guarantee unemployed persons of healthy and reasonable living conditions in accordance with national standards.

Any waiting period in national laws for the payment of benefits cannot exceed 7 days, although it may be extended to 10 days where a temporary exception has been declared.\textsuperscript{34} In relation to seasonal workers, their waiting period can be adapted to their occupational circumstances.

2.2.4.4 Old-age benefits

Protection in old age is aimed at ensuring survival beyond a prescribed age. This age should not be more than 65 years or an age set by a particular country with due regard to the working ability of elderly persons.\textsuperscript{35} Where an old-age benefit recipient is engaged in a prescribed gainful activity, his/her benefit may be suspended. In addition, benefits may be reduced where the earnings of the beneficiary exceed a prescribed amount (in case of contributory benefits), or where the earnings of the beneficiary or his/her other means or the two taken together exceed a prescribed amount (in case of non-contributory benefits).

The scope of persons covered must comprise:

- prescribed classes of employees, constituting not less than 50% of all employees; or
- prescribed classes of the economically active population, constituting not less than 20% of all residents; or
- all residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 67 of Convention 102 (at least 40% of the reference wage); or
- prescribed classes of employees, constituting not less than 50% of all employees in industrial workplaces employing 20 persons or more (where a temporary exception is made).\textsuperscript{36}

\textsuperscript{32} Article 15 of Convention 168 of 1988.
\textsuperscript{33} Article 16 of Convention 168 of 1988.
\textsuperscript{34} Article 18 of Convention 168 of 1988.
\textsuperscript{35} Article 26 of Convention 102 of 1952.
\textsuperscript{36} Article 27 of Convention 102 of 1952.
Old-age benefits should be in the form of periodical cash payments at a level of at least 40% of the reference wage.\textsuperscript{37} However, the rates of relevant benefits must be revised, following substantial changes in the general level of earnings and/or the cost of living. Full benefits must be paid to a person protected who has completed a qualifying period of 30 years of contribution or employment, or 20 years of residence; or (where all economically active persons are protected) to a person who has completed a prescribed qualifying period of contribution and to whom the prescribed yearly average number of contributions have been paid.\textsuperscript{38} Where old-age benefits are conditional upon a minimum period of contribution or employment, a reduced benefit will be paid to a person who has completed 15 years of contribution or employment; or (where all economically active persons are protected) to a person who has completed a prescribed qualifying period of contribution to whom half the yearly average number of contributions have been paid. Old-age benefits are to be paid throughout old age.\textsuperscript{39}

The Invalidity, Old-Age and Survivors’ Benefits Convention stipulates that the prescribed age for eligibility for old-age benefits should not be more than 65 years or any higher age fixed by a country with due regard to demographic, economic and social criteria, which must be demonstrated statistically.\textsuperscript{40} Where the age limit is 65 years or higher, it must be lowered for persons whose occupations are considered to be arduous or unhealthy for the purpose of old-age benefits.

Old-age benefits are to be paid to:

- all employees, including apprentices; or
- prescribed classes of the economically active population which makes up at least 75% of the whole economically active population; or
- all residents or residents whose means during old age do not exceed prescribed limits (45% of the reference wage).\textsuperscript{41}

Where a temporary exception has been made, benefits must be paid to prescribed classes of employees which make up at least 25% of all employees; or prescribed classes of employees in industrial undertakings which make up at least 50% of all employees in industrial undertakings. Old-age benefits are in the form of periodic payments paid throughout old age, at the level of 45% of the reference wage.\textsuperscript{42}

2.2.4.5 Employment injury benefits

Employment injury benefits are payable in case of the following due to an accident or a prescribed disease resulting from employment:

\begin{itemize}
  \item Article 28 of Convention 102 of 1952.
  \item Article 29 of Convention 102 of 1952.
  \item Article 30 of Convention 102 of 1952.
  \item Article 15 of Convention 128 of 1967.
  \item Article 16 of Convention 128 of 1967.
  \item Articles 17 and 19 of Convention 128 of 1967.
\end{itemize}
- a morbid condition;
- incapacity for work resulting from such a condition and involving suspension of earnings;
- total or partial loss of earning capacity in excess of a prescribed degree, which loss is likely to be permanent, or corresponding loss of faculty; and
- the loss of support suffered by the widow or child as the result of the death of the breadwinner (a widow’s right to employment injury benefits may be made conditional on her being presumed to be incapable of self-support).43

The scope of insured persons must comprise:

- prescribed classes of employees which make up at least 50% of all employees and (for survivors’ benefits) also their spouses and children; or
- where a temporary exception is made, prescribed classes of employees which make up at least 50% of all employees in industrial workplaces employing 20 persons or more, and (for survivors’ benefits) also their spouses and children.44

Occupational injury benefits are in the form of medical care, rehabilitation/reintegration and/or periodic cash payments.45 The medical care consists of:

- general practitioner and specialist in-patient care and out-patient care, including domiciliary visiting;
- dental care;
- nursing care at home, in hospital or other medical institutions;
- maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances and eyeglasses; and
- the care furnished by allied medical professionals under the supervision of a medical or dental practitioner.46

Where a temporary exception has been made, the medical care must include at least general practitioner care, including domiciliary visiting; specialist care at in-patient and out-patient hospitals, and such specialist care as may be available outside hospitals; essential pharmaceutical supplies as prescribed by a medical or other qualified practitioner; and hospitalisation where necessary.47 Medical care is to be provided in

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43 Article 32 of Convention 102 of 1952.
44 Article 33 of Convention 102 of 1952.
45 Article 34 of Convention 102 of 1952.
46 Article 35 of Convention 102 of 1952.
47 Article 36 of Convention 102 of 1952.
48 Article 34(2) of Convention 102 of 1952.
49 Article 34(3) of Convention 102 of 1952.
order to maintain, restore or improve the health of the insured person and his/her ability to work and attend to his/her personal needs.\textsuperscript{50}

In rehabilitating and reintegrating an occupationally-injured person or a person who has contracted an occupational disease, institutions or government departments administering the medical care are compelled to co-operate with the general vocational rehabilitation services (wherever appropriate).\textsuperscript{51}

In cases of incapacity for work or invalidity, periodic cash payments should be at least 50\% of the reference wage, while for spouses and dependent children (in case of death of a breadwinner) payments should be at least 40\% of the reference wage.\textsuperscript{52} Countries are permitted to convert periodical payments into lump sums in cases where the degree of incapacity is slight, or where the competent authority is satisfied that the lump sum will be properly utilised.\textsuperscript{53}

Occupational injury benefits must be provided to a person who was employed in the territory of the member state at the time of the accident (if the injury is due to an accident), or at the time of contracting the disease (if the injury is due to a disease), or (in case of survivors’ benefits) to the spouse and children of such a person.\textsuperscript{54} The benefit must be provided throughout the period that the person is eligible, although (in case of incapacity for work) the benefit need not be paid for the first 3 days in each case of suspension of earnings.\textsuperscript{55}

In terms of Convention 121 of 1964, a country can exclude seafarers (including sea fishermen) and public servants from the application of the Convention where these categories are protected by special schemes providing benefits that are equivalent to those required by the Convention.\textsuperscript{56} However, where a temporary exception has been declared, a country may exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of employees when calculating the percentage of employees to be covered.

National employment injury and disease benefit laws must cover all employees (including apprentices) in the public and private sectors (including co-operatives), as well as prescribed categories of beneficiaries (in case of survivors’ benefits). On the other hand, a country can make any exceptions it deems necessary in relation to casual employees and those employed for purposes other than for the employer’s trade or business; out-workers; members of the employer’s family living in his/her house, in respect of their work for him/her; and other categories of employees which must not be more than 10\% of all

\textsuperscript{50} Article 34(4) of Convention 102 of 1952.
\textsuperscript{51} Article 35(1) of Convention 102 of 1952.
\textsuperscript{52} Article 36(1) of Convention 102 of 1952.
\textsuperscript{53} Article 36(3) of Convention 102 of 1952.
\textsuperscript{54} Article 37 of Convention 102 of 1952.
\textsuperscript{55} Article 38 of Convention 102 of 1952.
\textsuperscript{56} Article 3 of Convention 121 of 1964.
employees other than those excluded under clauses (a) to (c).\textsuperscript{57} Where a temporary exception has been made, the personal scope of coverage of employment injury and disease benefits must be at least 75% of all employees in industrial undertakings, and (in case of survivors’ benefits) prescribed categories of beneficiaries.\textsuperscript{58}

In addition to the scope of medical benefits specified under Convention 102 of 1952, countries must also ensure that injured workers or those who contract diseases receive at the place of work (wherever possible) emergency treatment (for persons sustaining a serious accident) and follow-up treatment (for those whose injury is slight and does not entail discontinuance of work).\textsuperscript{59}

In cases of incapacity for work or invalidity, periodic cash payments should be at least 60% of the reference wage, while for spouses and dependent children (in the case of death of a breadwinner) payments should be at least 50% of the reference wage.\textsuperscript{60} The Convention further obliges countries to prescribe minimum amounts for employment injury payments. It is also possible to convert all or part of the periodic benefit payments into a lump sum in exceptional circumstances and with the agreement of the benefit recipient, e.g. when in the opinion of the administering institution the lump sum will be utilised in a manner which is particularly advantageous for the beneficiary.\textsuperscript{61} Countries should also increase the periodical payments or provide other supplementary or special benefits for disabled persons who require the constant help or attendance of another person.\textsuperscript{62}

A funeral benefit must also be provided, which should not be less than the normal cost of a funeral. However, where survivors’ benefits provided are higher than is required by the Convention, the right to a funeral benefit may be made subject to prescribed conditions.\textsuperscript{63}

\subsection*{2.2.4.6 Family benefits}

Family benefits are provided to persons with responsibility for the maintenance of a family and children.\textsuperscript{64} A family benefit scheme must cover:

- prescribed classes of employees, making up at least 50% of all employees; or
- prescribed classes of the economically active population, making up at least 20% of all residents; or

\textsuperscript{57} Article 4 of Convention 121 of 1964.
\textsuperscript{58} Article 5 of Convention 121 of 1964.
\textsuperscript{59} Article 10 of Convention 121 of 1964.
\textsuperscript{60} Articles 13, 14 and 18 of Convention 121 of 1964.
\textsuperscript{61} Article 15 of Convention 121 of 1964.
\textsuperscript{62} Article 16 of Convention 121 of 1961.
\textsuperscript{63} Article 18 of Convention 121 of 1964.
\textsuperscript{64} Article 40 of Convention 102 of 1952.
CHAPTER 2: INTERNATIONAL LABOUR ORGANISATION

- all residents whose means do not exceed prescribed limits during the period of family and children responsibility; or
- in case a temporary exception has been declared, prescribed classes of employees, making up at least 50% of all employees in industrial workplaces employing 20 persons or more.\(^{65}\)

Family benefits should be in the form of either periodical payments or the provision of food, clothing, housing, holidays or domestic help, or a combination of these.\(^{66}\) Benefits should be granted to persons who have completed a qualifying period, which may be 3 months of contribution or employment, or one year of residence (as may be prescribed).\(^{67}\)

The value of family benefits should be at least 3% of the wage of an ordinary adult male labourer, multiplied by the total number of children or persons protected; or 1.5% of the said wage of an ordinary adult male labourer, multiplied by the total number of children of all residents.\(^{68}\) The benefit must be provided throughout the period of family and children responsibility.\(^{69}\)

2.2.4.7 Maternity benefits

Maternity benefits are to be provided for pregnancy and confinement and their consequences, as well as for suspension of earnings due to these.\(^{70}\) The scope of coverage should comprise:

- all women in prescribed classes of employees which should make up at least 50% of all employees and (for the maternity medical benefit) also the wives of men in these classes; or
- all women in prescribed classes of the economically active population which should make up at least 20% of all residents, and (for the maternity medical benefit) also the wives of men in these classes; or
- where a temporary exclusion declaration has been made, all women in prescribed classes of employees, which should make up at least 50% of all employees in industrial workplaces employing 20 persons or more, and (for the maternity medical benefit) also the wives of men in these classes.\(^{71}\)

For pregnancy and confinement and their consequences, the maternity medical benefit shall be medical care which includes at least pre-natal, confinement and post-natal care – either by medical practitioners, or by qualified midwives – as well as hospitalisation

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\(^{65}\) Article 41 of Convention 102 of 1952.

\(^{66}\) Article 42 of Convention 102 of 1952.

\(^{67}\) Article 43 of Convention 102 of 1952.

\(^{68}\) Article 44 of Convention 102 of 1952.

\(^{69}\) Article 45 of Convention 102 of 1952.

\(^{70}\) Article 47 of Convention 102 of 1952.

\(^{71}\) Article 48 of Convention 102 of 1952.
Medical care is aimed at maintaining, restoring or improving the health of the woman and her ability to work, and to attend to her personal needs. Institutions or government departments responsible for the maternity medical benefit must encourage insured women to use the general health services placed at their disposal by the state or by other bodies recognised by the state.

Where earnings are suspended due to pregnancy and confinement and their consequences, the benefit must be a periodical payment at the level of 45% of the reference wage. Maternity benefits must be granted throughout the period of pregnancy and confinement and their consequences, as well as suspension of earnings due to these. However, maternity cash payments can be limited to 12 weeks, except where a longer period of abstention from work is required or authorised. In this case, maternity cash payments cannot be limited to a period less than the longer required or authorised period.

The Maternity Protection Convention 183 of 2000 was adopted to revise the Maternity Protection Convention (Revised) 103 of 1952. Convention 183 of 2000 protects all employed women, including those in atypical forms of dependent work. However, a state may “[…] exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.” Member states are compelled to adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work that is prejudicial to the health of the mother or the child, or where the job poses a significant risk to the mother’s health or that of her child.

The Convention guarantees pregnant workers a period of maternity leave of at least 14 weeks. Maternity leave must include a period of 6 weeks’ compulsory leave after childbirth for the protection of the health of the mother and that of the child, unless otherwise agreed at the national level by the government and the representative organisations of employers and workers. In case of a difference between the presumed date of childbirth and the actual date of childbirth, the pre-natal portion of maternity leave must be extended without reduction in any compulsory portion of post-natal leave. Sick leave should be granted before or after the maternity leave period in the case of illness, complications or risk of complications arising from pregnancy or childbirth.

Maternity benefits under Convention 183 of 2000 consist of medical benefits (including pre-natal, childbirth and post-natal care, as well as hospitalisation care, when necessary), as well as cash benefits to ensure that the woman can maintain herself and her child in

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72 Ibid.
73 Article 50 of Convention 102 of 1952.
74 Article 52 of Convention 102 of 1952.
75 Article 2 of Convention 183 of 2000.
76 Article 3 of Convention 183 of 2000.
77 Article 4 of Convention 183 of 2000.
78 Article 5 of Convention 183 of 2000.
proper conditions of health and with a suitable standard of living. Cash payments should be paid through social assistance funds for women who do not qualify under social insurance, and must be at least two-thirds of previous earnings or a comparable amount. However, a country of which the economy and social security system are not sufficiently developed, will still comply with Convention 183 of 2000 if cash benefits are at least at the rate of sickness or temporary disability benefits.

Convention 183 of 2000 further seeks to ensure employment protection and non-discrimination. In terms of Article 8:

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing, shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Article 9 of the Convention also requires member states to adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment. The measure must include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment (except where required by national laws or regulations in respect of work that is prohibited or restricted for pregnant or nursing women under national laws or regulations), or where there is a recognised or significant risk to the health of the woman and child.

A nursing mother also has the right to one or more daily breaks, or a daily reduction of hours of work to breastfeed her child. National laws or practices should determine the period for nursing breaks or the reduction of daily hours of work, the number and duration of nursing breaks, and the procedures for the reduction of daily hours of work. Nursing breaks or the reduction of daily hours of work must be counted as working time and the worker must be remunerated for this time.

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80 Article 7 of Convention 183 of 2000.
81 Article 10 of Convention 183 of 2000.
2.2.4.8 Invalidity benefits

Invalidity benefits are paid for the risk of an inability to engage in any gainful activity. Such an inability should likely be permanent or persist after the exhaustion of the sickness benefit. The personal scope of coverage must comprise:

- prescribed classes of employees making up at least 50% of all employees; or
- prescribed classes of the economically active population making up at least 20% of all residents; or
- all residents whose means do not exceed prescribed limits during the period of invalidity; or
- where a temporary exception has been made, prescribed classes of employees making up at least 50% of all employees in industrial workplaces employing 20 persons or more.

Invalidity benefits must be in the form of periodical payments, at the level of at least 40% of the reference wage. However, benefits must be revised, following substantial changes in the general level of earnings and/or in the cost of living.

Invalidity benefits must be paid either to a person who has completed a qualifying period of 15 years of contribution or employment, or 10 years of residence, or (where all economically active persons are protected) to a person who has completed a qualifying period of 3 years of contribution and to whom the prescribed yearly average number of contributions have been paid. Where a person is expected to satisfy a minimum period of contribution or employment, a person who completes a qualifying period of 5 years of contribution or employment must be paid a reduced benefit. Where coverage is extended to all economically active persons, a person who has completed a qualifying period of 3 years of contribution – and who has made half the yearly average number of contributions – should also receive a reduced benefit.

Invalidity benefits must be paid throughout the period of invalidity, or until the beneficiary becomes eligible to an old-age benefit.

Convention 128 of 1967 regulates further standards for invalidity, which includes incapacity to engage in any gainful activity, to an extent prescribed, and where incapacity is likely to be permanent or to persist after the termination of a prescribed period of temporary or initial incapacity. It requires the scope of persons covered to comprise:

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82 Article 54 of Convention 102 of 1952.
83 Article 55 of Convention 102 of 1952.
84 Article 56 of Convention 102 of 1952.
85 Article 57 of Convention 102 of 1952.
86 Article 58 of Convention 102 of 1952.
87 Article 8 of Convention 128 of 1967.
all employees, including apprentices; or
prescribed classes of the economically active population making up at least 75% of the whole economically active population; or
all residents, or residents whose means do not exceed limits prescribed during periods of invalidity.  

However, where a temporary exception declaration is made, the scope of persons covered must be prescribed classes of employees that make up at least 25% of all employees; or prescribed classes of employees in industrial undertakings making up at least 50% of all employees in industrial undertakings.

Invalidity benefits under Convention 128 of 1967 must be in the form of periodical payments at the level of at least 50% of the reference wage. In addition, benefit rates must be revised in case of substantial changes in the general level of earnings and/or in the cost of living.

Member states are compelled to provide rehabilitation services designed to prepare a disabled person to resume his/her previous activity (wherever possible). Where this is not possible, a member state must provide the most suitable alternative employment (having regard for his/her aptitudes and capacity) and take measures to facilitate the placement of disabled persons in suitable employment. However, such measures may not be undertaken where a temporary exception declaration is made.

### 2.2.4.9 Survivors’ benefits

Survivors’ benefits in terms of Convention 102 of 1952 are for the loss of support suffered by the spouse or child as the result of the death of the breadwinner. A spouse’s right to survivors’ benefits may be made subject to the presumption that he/she is incapable of self-support. A beneficiary’s right may be suspended if he/she is engaged in a gainful activity. In case of contributory benefits, the benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount. In case of non-contributory benefits, the benefit may be reduced where the earnings of the beneficiary or his/her other means, or the two taken together, exceed a prescribed amount.

The personal scope of coverage of any scheme providing survivors’ benefits must comprise:

- the spouse(s) and the children of breadwinners in prescribed classes of employees making up at least 50% of all employees; or
- the spouse(s) and the children of breadwinners in prescribed classes of the economically active population making up at least 20% of all residents; or

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88 Article 9 of Convention 128 of 1967.
91 Article 60 of Convention 102 of 1952.
Survivors’ benefits should be granted as periodical payments at the level of at least 40% of the reference wage. However, benefit rates must be revised, following substantial changes in the general level of earnings and/or in the cost of living.

Survivors’ benefits must be paid either to a person whose breadwinner has completed a qualifying period of 15 years of contribution or employment, or 10 years of residence, or (where all economically active persons are protected) to a person whose breadwinner has completed a qualifying period of 3 years of contribution and to whom the prescribed yearly average number of contributions have been paid. Where a person is expected to satisfy a minimum period of contribution or employment, a person whose breadwinner completes a qualifying period of 5 years of contribution or employment must be paid a reduced benefit. Where coverage is extended to all economically active persons, a person whose breadwinner has completed a qualifying period of 3 years of contribution and who made half the yearly average number of contributions, should also receive a reduced benefit. Survivors’ benefits must be paid throughout the period of survivorship.

Under Convention 128 of 1967, survivorship includes the loss of support suffered by the spouse or child as the result of the death of the breadwinner. It further provides that the spouse’s right to survivors’ benefits may be made conditional on the attainment of a prescribed age, which should not be higher than the age prescribed for old-age benefits. However, there cannot be an age requirement if the spouse is invalid or is caring for a dependent child of the deceased breadwinner. A minimum duration of marriage may be required for a spouse who is without a child in order for him/her to be entitled to survivors’ benefits.

The personal scope of coverage must comprise:

- the spouse(s), children and other dependants of all breadwinners who were employees or apprentices; or
- the spouse(s), children and other dependants of breadwinners in prescribed classes of the economically active population making up at least 75% of the whole economically active population; or

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92 Article 61 of Convention 102 of 1952.
93 Article 62 of Convention 102 of 1952.
94 Article 63 of Convention 102 of 1952.
95 Article 64 of Convention 102 of 1952.
- all spouse(s), all children and all other prescribed dependants who have lost their breadwinner, who are residents, and whose means during survivorship do not exceed prescribed limits.97

However, where a temporary exception is made, a survivorship benefit scheme must cover the spouse(s), children and other dependants of breadwinners in prescribed classes of employees that make up at least 25% of all employees; or the spouse(s), children and other dependants of breadwinners in prescribed classes of employees in industrial undertakings that make up at least 50% of all employees in industrial undertakings.

Survivors’ benefits should be granted as periodical payments at the level of at least 45% of the reference wage,98 with benefit rates revised, following any substantial changes in the general level of earnings and/or in the cost of living.

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Source: Schmitt, V. *ILO Convention 102 on Social security*. Presentation at the ILO DWT Bangkok Experts meeting in Jakarta, held on 12-15 December 2011
### TABLE 2.2 Ratification of up-to-date social security conventions by SADC countries

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✓ = ratified

x = not yet ratified

As of 12 May 2015

However, the situation is much different in relation to the ratification of other fundamental ILO human rights (labour) conventions.

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✓ = ratified
✗ = not yet ratified

As of 12 May 2015

2.2.5 Social protection floors

The Social Protection Floors Recommendation 202 of 2012 complements earlier ILO conventions and recommendations, and provides flexible but meaningful guidance to member states in building social protection floors within comprehensive social security systems tailored to national circumstances and levels of development. According to the ILO:

In the context of a crisis-shaken world marked by a perhaps unprecedented quagmire of political, environmental, economic and fiscal uncertainties, the Recommendation sends strong messages to decision- and policy makers in all corners of the world. The main messages are:

- social security is a human right and all people, regardless of where they live, should be guaranteed at least a floor of basic social protection;
- social security is a social and economic necessity to combat poverty and social exclusion and promote development, equality and equal opportunity;
- a floor of social protection is economically affordable and can be introduced, completed or maintained everywhere, in accordance with national circumstances;
- a floor of social protection should consist of at least four basic social security guarantees: essential healthcare and basic income security during childhood, adulthood and old age for all residents and all children; and
- all societies should also develop strategies to enhance their levels of social security, guided by ILO social security standards, as their economies mature and fiscal space widens.

The abovementioned messages all indicate that there is no excuse for any society to put off building social security for its members – the reason being that social security can be achieved at any stage of development, even if gradually.

Furthermore, the Recommendation provides guidance to member states on establishing the ILO’s two-dimensional (horizontally and vertically) strategy for the extension of social security. The overarching principle of Recommendation 202 of 2012 is that the state has the overall and primary responsibility of ensuring extension of social security.

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102 Paragraph 2 of Recommendation 202 of 2012.

103 Paragraph 3 of Recommendation 202 of 2012.
Other principles guiding the Recommendation include:

- universality of protection, based on social solidarity;
- entitlement to benefits prescribed by national law;
- adequacy and predictability of benefits;
- non-discrimination, gender equality and responsiveness to special needs;
- social inclusion, including persons in the informal economy;
- respect for the rights and dignity of people covered by the social security guarantees;
- progressive realisation, including the setting of targets and time frames;
- solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests amongst those who finance and benefit from social security schemes;
- consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems;
- transparent, accountable and sound financial management and administration;
- financial, fiscal and economic sustainability with due regard to social justice and equity;
- coherence with social, economic and employment policies;
- coherence across institutions responsible for delivery of social protection;
- high quality public services that enhance the delivery of social security systems;
- efficiency and accessibility of complaint and appeal procedures;
- regular monitoring of implementation, and periodic evaluation;
- full respect for collective bargaining and freedom of association for all workers; and
- tripartite participation with representative organisations of employers and workers, as well as consultation with other relevant and representative organisations of persons concerned.

According to the ILO, the first group of principles (first six bullets above) guides the design of the social security system and its components, the definition of entitlements and personal coverage, and the establishment of legal frameworks.¹⁰⁴

The second group of principles (last twelve bullets above) guides the delivery, financing, management, coordination and monitoring of social security systems.

The horizontal dimension of the ILO’s strategy would be achieved if member states were to establish and maintain their social protection floors which comprise basic social security guarantees as quickly as possible, in accordance with national circumstances.¹⁰⁵

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Furthermore, the national social protection floor should contain basic social security guarantees which ensure (at a minimum) that, over the life cycle, all in need have access to essential healthcare and to basic income security, together securing effective access to goods and services defined as necessary at the national level.¹⁰⁶

The national social protection floor should comprise at least the following basic social security guarantees:

- access to a nationally defined set of goods and services, constituting essential healthcare (including maternity care) that meets the criteria of availability, accessibility, acceptability and quality;
- basic income security for all children (at least at a nationally defined minimum level), providing access to nutrition, education, care, and any other necessary goods and services;
- basic income security (at least at a nationally defined minimum level) for persons in active age who are unable to earn sufficient income – particularly in cases of sickness, unemployment, maternity, and disability; and
- basic income security (at least at a nationally defined minimum level) for older persons.¹⁰⁷

In order to realise the vertical dimension of the social protection floor, countries must seek to provide higher levels of protection (e.g. a broader range of benefits provided, a wider scope of personal coverage, and higher benefit levels) to as many people as possible and as soon as possible, in accordance with the economic and fiscal capacities of the country. The range and levels of benefits should correspond to those set out in the Social Security (Minimum Standards) Convention 102 of 1952, or in other ILO social security conventions and recommendations which set out more advanced standards.

The basic social security guarantees should be provided to at least all residents and children as defined in national laws and regulations, subject to a country’s existing international obligations,¹⁰⁸ and should be established by law.¹⁰⁹ National laws and regulations establishing the social protection floor should specify the range, qualifying conditions, and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant, and systems that enhance compliance with national legal frameworks should also be in place.


¹⁰⁷ Paragraph 5 of Recommendation 202 of 2012.


¹⁰⁹ Paragraph 7 of Recommendation 202 of 2012.
In defining the basic social security guarantees, due consideration should be given to the following:\textsuperscript{110}

- persons in need of healthcare should not face hardship and an increased risk of poverty due to the financial consequences of accessing essential healthcare. Free pre-natal and post-natal medical care should also be considered for the most vulnerable;
- basic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance, or other comparable thresholds established by national law or practice. Regional differences may also be taken into account;
- the levels of basic social security guarantees should be regularly reviewed through a transparent procedure that is established by national laws, regulations or practice, as appropriate; and
- in regard to the establishment and review of the levels of these guarantees, tripartite participation with representative organisations of employers and workers, as well as consultation with other relevant and representative organisations of persons concerned, should be ensured.

Countries should consider different approaches in establishing the social protection floor.\textsuperscript{111} This is in order to implement the most effective and efficient combination of benefits and schemes in the national context. Benefits provided may include child and family benefits, sickness and healthcare benefits, maternity benefits, disability benefits, old-age benefits, survivors’ benefits, unemployment benefits and employment guarantees, and employment injury benefits as well as any other social benefits in cash or in kind. The schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax schemes, public employment schemes, and employment support schemes.

Paragraph 10 of the Recommendation envisages strategies that will extend social security to be coordinated with other public policies in order to ensure that they are consistent with and conducive to the implementation of wider national social, economic and environmental development plans. These strategies must also be complemented whenever appropriate by active labour market policies.

Paragraph 10 of Recommendation 202 of 2012 states as follows:

In designing and implementing national social protection floors, members should:

(a) combine preventive, promotional and active measures, benefits and social services;

(b) promote productive economic activity and formal employment through considering policies that include public procurement, government credit provisions,

\textsuperscript{110} Paragraph 8 of Recommendation 202 of 2012.

\textsuperscript{111} Paragraph 9 of Recommendation 202 of 2012.
labour inspection, labour market policies and tax incentives, and that promote education, vocational training, productive skills and employability; and

(c) ensure coordination with other policies that enhance formal employment, income generation, education, literacy, vocational training, skills and employability that reduce precariousness, and that promote secure work, entrepreneurship and sustainable enterprises within a decent work framework.

The necessary financial resources for the establishment of social protection floors can be mobilised through a variety of different methods to ensure the financial, fiscal and economic sustainability of national social protection floors, taking into account the contributory capacities of different population groups.112 Such methods (individually or in combination) may include the effective enforcement of tax and contribution obligations, reprioritising expenditure, or a broader and sufficiently progressive revenue base. Countries must consider the need to implement measures to prevent fraud, tax evasion and non-payment of contributions.

Countries must also finance social protection floors through national resources. However, countries with insufficient economic and fiscal capacities for such implementation may seek international cooperation and support that will complement their own efforts.113 The formulation and implementation of national social security extension strategies should be based on national consultations through effective social dialogue and social participation.114 In this regard, countries should:

(a) prioritise the implementation of social protection floors as a starting point for countries that do not have a minimum level of social security guarantees, and as a fundamental element of their national social security systems; and

(b) seek to provide higher levels of protection to as many people as possible, reflecting economic and fiscal capacities of members, and as soon as possible.115

In addition, countries should progressively build and maintain comprehensive and adequate social security systems coherent with national policy objectives, and seek to coordinate social security policies with other public policies.

In formulating and implementing national social security extension strategies, countries should:

- set objectives that reflect national priorities;
- identify gaps in, and barriers to, protection;

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113 Paragraph 12 of Recommendation 202 of 2012.
115 Paragraph 13(1) of Recommendation 202 of 2012.
- seek to close gaps in protection through appropriate and effectively coordinated schemes (whether contributory, non-contributory, or both), including through the extension of existing contributory schemes to all concerned persons with contributory capacity;
- complement social security with active labour market policies, including vocational training or other measures, as appropriate;
- specify financial requirements and resources as well as the time frame and sequencing for the progressive achievement of the objectives; and
- raise awareness of their social protection floors and their extension strategies, as well as undertake information programmes (including through social dialogue).\textsuperscript{116}

Social security extension strategies should apply to persons in both the formal and informal economy. It should support the growth of formal employment as well as the reduction of informality. These strategies should also ensure support for disadvantaged groups and people with special needs, and be consistent with (and conducive to) the implementation of the social, economic and environmental development plans of members.\textsuperscript{117}

The aim of each country – in building comprehensive social security systems that reflect national objectives, priorities and economic and fiscal capacities – must be to achieve the range and levels of benefits set out in the Social Security (Minimum Standards) Convention 102 of 1952, or in other ILO social security conventions and recommendations setting out more advanced standards.\textsuperscript{118} Therefore, countries must consider ratifying the Social Security (Minimum Standards) Convention as early as national circumstances allow, as well as ratifying (or giving effect to, as applicable) other ILO social security conventions and recommendations setting out more advanced standards.\textsuperscript{119}

National monitoring of progress in implementing social protection floors and achieving other objectives of national social security extension strategies, must be undertaken.\textsuperscript{120} This must be done through appropriate nationally-defined mechanisms, including tripartite participation with representative organisations of employers and workers, as well as consultation with other relevant and representative organisations of persons concerned. For this purpose, national consultations should be convened to assess progress and discuss policies for the further horizontal and vertical extension of social security.\textsuperscript{121} Countries should also regularly collect, compile, analyse and publish an appropriate range of social security data, statistics and indicators – disaggregated, in particular, by

\textsuperscript{116} Paragraph 14 of Recommendation 202 of 2012.
\textsuperscript{117} Paragraphs 15 and 16 of Recommendation 202 of 2012.
\textsuperscript{118} Paragraph 17 of Recommendation 202 of 2012.
\textsuperscript{119} Paragraph 18 of Recommendation 202 of 2012.
\textsuperscript{120} Paragraph 19 of Recommendation 202 of 2012.
\textsuperscript{121} Paragraph 20 of Recommendation 202 of 2012.
gender. In developing or revising the concepts, definitions and methodology used in the production of social security data, statistics and indicators, countries are urged to take into consideration relevant guidance provided by the ILO – in particular (and where appropriate) the resolution concerning the development of social security statistics adopted by the Ninth International Conference of Labour Statisticians in 1993. Private individual information contained in national social security data systems must be secured and protected.

Recommendation 202 of 2012 also encourages countries to exchange information, experiences and expertise on the implementation of the Recommendation amongst themselves and with the ILO. They may also seek technical assistance from the ILO and other relevant international organisations in accordance with their respective mandates. While there is widespread support for Recommendation 202 of 2012, the ILO cautions that “a strategy is only as good as its realisation, and successful implementation will depend on the commitment and action of many – within and beyond national boundaries.”

2.3 CONCLUDING OBSERVATIONS

ILO conventions only set down minimum standards for each branch of social security. Such conventions contain flexibility clauses that merely require a step-by-step extension of social security coverage by a ratifying country. Temporary exceptions are also allowed for countries of which the economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the conventions and the coverage of the benefits granted. Despite these, almost none of the SADC member states have ratified Convention 102 of 1952 or the later conventions. Exceptions are DR Congo, which has ratified Convention 102 of 1952, Equality of Treatment (Social Security) Convention 118 of 1962, and Employment Injury Benefits Convention 121 of 1964, while Madagascar has ratified the Equality of Treatment (Social Security) Convention 118 of 1962. This implies that the SADC member states cannot be compelled to implement ILO minimum social security standards. There is also no opportunity for external monitoring where social security rights are guaranteed at the national level.

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CHAPTER 3
AFRICAN UNION

3.1 INTRODUCTION

The African Union (AU) is the successor of the Organisation of African Unity (OAU), established in 1963 by agreement of the 32 African states that had achieved independence at that time.1 The OAU’s main objectives were to promote the unity and solidarity of African states; coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; safeguard the sovereignty and territorial integrity of member states; rid the continent of colonisation and apartheid; promote international cooperation within the United Nations framework; and harmonise members’ political, diplomatic, economic, educational, cultural, health, welfare, scientific, technical and defence policies.2

The OAU was transformed into the AU due to the need to amend the OAU’s structures to reflect the challenges of a changing world. African states aimed “to build on the OAU’s work by establishing a body that could accelerate the process of integration in Africa, support the empowerment of African states in the global economy, and address the multifaceted social, economic and political problems facing the continent.”3

The AU was established in terms of the Constitutive Act of the African Union (Constitutive Act), which was adopted by the 36th ordinary session of the Assembly of Heads of State and Government in Lome, Togo, on 11 July 2000, and came into force in 2001.4 The Constitutive Act reveals African states’ determination “to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world”; and “to promote and protect human and peoples’ rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law”.5

Some of the objectives of the AU, as laid down in the Constitutive Act, have a bearing on the development of social protection on the continent. Some of these include the objectives to:

- achieve greater unity and solidarity between the African countries and the peoples of Africa;
- accelerate the political and socio-economic integration of the continent;

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2 Ibid.
3 Ibid.
4 See Article 2 of the Constitutive Act of the African Union.
5 See Preamble of the Constitutive Act of the African Union.
promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples Rights, as well as other relevant human rights instruments;

- ensure the effective participation of women in decision making, particularly in the political, economic and socio-cultural areas;

- promote sustainable development at the economic, social and cultural levels, as well as the integration of African economies;

- promote co-operation in all fields of human activity in order to raise the living standards of African peoples; and

- work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.6

The establishment of the AU puts human rights firmly on the African agenda. This is evident through the explicit recognition of human rights, the promotion of social, economic and cultural development; an approach based on human-centred development; and gender equality.7 These also indicate that the social protection-related objectives of the AU are aimed at achieving social integration within the continent and making the continent a better place for life.

The Constitutive Act of the AU as well as its Protocol on Amendments to the Constitutive Act further outline principles informing the Union in undertaking its functions. Relevant social protection principles are the principles of promotion of gender equality; respect for democratic principles, human rights, the rule of law and good governance; and promotion of social justice to ensure balanced economic development.8

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6 In terms of Article 3 of the Constitutive Act of the AU and Article 3 of the Protocol on Amendments to the Constitutive Act of the AU, the other objectives of the AU are to defend the sovereignty, territorial integrity, and independence of its member states; promote and defend African common positions on issues of interest to the continent and its peoples; encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; promote peace, security and stability on the continent; promote democratic principles and institutions, popular participation, and good governance; establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations; coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union; advance the development of the continent by promoting research in all fields, in particular in science and technology; develop and promote common policies on trade, defence and foreign relations to ensure the defence of the continent and the strengthening of its negotiating positions; and invite and encourage the full participation of the African Diaspora as an important part of our continent, in the building of the AU.


8 Other principles guiding the AU are the principles of sovereign equality and interdependence amongst member states of the Union; respect of borders existing on achievement of independence; participation of the African peoples in the activities of the Union; establishment of a common defence policy for the African continent; peaceful resolution of conflicts amongst member states of the Union through such appropriate means as may be decided upon by the Assembly; prohibition
In order to achieve its human rights objectives, the AU has established various organs and bodies to monitor and enforce its instruments, and strengthened institutions established under the auspices of the OAU for the protection and promotion of human rights on the continent. The principal organs and bodies of the AU are the following (the Assembly is empowered to establish other organs that it deems necessary):  

- **Assembly**: The Assembly of Heads of State and Government, composed of Heads of State and Government or their duly accredited representatives, is the supreme organ of the Union. The functions of the Assembly are to determine the common policies of the Union; receive, consider and take decisions on reports and recommendations from the other organs of the Union; consider requests for membership of the Union; establish any organ of the Union; monitor the implementation of policies and decisions of the Union as well as ensure compliance by all member states; adopt the budget of the Union; give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace; appoint and terminate the appointment of the judges of the Court of Justice; and appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.

- **Executive Council**: The Executive Council, composed of Ministers or Authorities designated by the governments of members states, is responsible for the Assembly. It considers issues referred to it and monitors the implementation of policies formulated by the Assembly. Its functions are to coordinate and take decisions on policies in areas of common interest to the member states. Food, agricultural and animal resources, livestock production and forestry; water resources and irrigation; environmental protection, humanitarian action and disaster response and relief; insurance; education, culture, health and human resources development; nationality, residency and immigration matters; and social security, including the formulation of mother

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9 See Article 5 of the Constitutive Act and Article 5 of the Protocol on Amendments to the Constitutive Act of the African Union.

10 Article 6 of the Constitutive Act.

11 Article 9 of the Constitutive Act.
and child care policies, as well as policies relating to the disabled and the handicapped, are some of the issues dealt with by the Executive Council.12

- **Pan-African Parliament**: The Pan-African Parliament was established to ensure the full participation of African peoples in governance, development and economic integration of the continent.13 It is intended as a platform for people from all African states to be involved in discussions and decision making on the problems and challenges facing the continent.14 The Pan-African Parliament currently only exercises advisory and consultative powers, although the long-term aim is for it to exercise full legislative powers.

- **Court of Justice**: Article 18 of the Constitutive Act provides for the creation of the African Court of Justice. The Protocol of the Court was adopted in July 2003 and came into force in February 2009. As at 1 September 2013, the Court had not become operational. In 2008, the AU decided to merge the African Court of Justice with the African Court on Human and Peoples’ Rights into an African Court of Human Rights and Justice. Transition to the new Court is to begin after 15 member states have ratified the Protocol on the Statute of the African Court of Justice and Human Rights. As at 1 September 2013, 29 states had signed the Protocol and 5 had ratified it.

- **Commission**: The Commission is the Secretariat of the African Union.15 Therefore, it is responsible for the AU’s executive functions and day-to-day management. Its specific functions include to represent the AU and defend its interests under the guidance of and as mandated by the Assembly and Executive Council; initiate proposals to be submitted to the AU’s organs, as well as implement decisions taken by them; act as the custodian of the AU Constitutive Act and OAU/AU legal instruments; provide operational support for all AU organs; assist member states in implementing the AU’s programmes; work out AU draft common positions and coordinate member states’ actions in international negotiations; manage the AU budget, resources and strategic planning; elaborate, promote, coordinate and harmonise the AU’s programmes and policies with those of the Regional Economic Communities (RECs); ensure gender mainstreaming in all AU programmes and activities; and take action as delegated by the Assembly and Executive Council.16

- **Peace and Security Council**: The Peace and Security Council was established as the standing decision-making organ for the prevention, management and resolution of conflicts.17 It is ‘a collective security’ and ‘early warning’ arrangement with the ability to facilitate timely and efficient responses to conflict and crisis situations. Its core functions are to conduct early warning and preventive diplomacy; facilitate

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12 Articles 10 and 13 of the Constitutive Act.
13 Article 17 of the AU Constitutive Act.
15 Article 20 of the Constitutive Act.
17 Articles 5 and 9 of the Protocol on Amendments to the Constitutive Act.
peace-making; establish peace support operations and, in certain circumstances, recommend intervention in member states to promote peace, security and stability; support peace-building and post-conflict reconstruction; and humanitarian action and disaster management.\(^{18}\)

- **Permanent Representatives Committee**: The Permanent Representatives Committee conducts the day-to-day business of the AU on behalf of the Assembly and Executive Council. It reports to the Executive Council, prepares the Council’s work, and acts on its instructions.\(^{19}\) Its powers and functions are to act as an advisory body to the AU Executive Council; prepare its Rules of Procedure and submit them to the Executive Council; prepare Executive Council meetings, including the agenda and draft decisions; make recommendations on areas of common interest to member states, particularly on issues on the Executive Council agenda; facilitate communication between the AU Commission and member states’ capitals; consider the AU’s programme and budget as well as the Commission’s administrative, budgetary and financial matters, and make recommendations to the Executive Council; consider the Commission’s financial report and make recommendations to the Executive Council; consider the Board of External Auditors’ report and submit written comments to the Executive Council; monitor the implementation of the AU budget; propose the composition of AU organ bureaus, ad hoc committees and sub-committees; consider matters relating to the AU’s programmes and projects, particularly issues relating to the socio-economic development and integration of the continent, and make recommendations to the Executive Council; monitor the implementation of policies, decisions and agreements adopted by the Executive Council; participate in the preparation of the AU programme of activities and calendar of meetings; consider any matter assigned to it by the Executive Council; and carry out any other functions that may be assigned to it by the Executive Council.\(^{20}\)

- **Specialised Technical Committees**: Specialised Technical Committees are committees responsible for detailed consideration of thematic areas where AU members have shared interests. Their role is to prepare projects and programmes for the Executive Council’s consideration; ensure the supervision, follow up and evaluation of the implementation of AU organ decisions; ensure the coordination and harmonisation of AU projects and programmes Council; submit to the Executive Council, either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Constitutive Act.\(^{21}\)

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19 Article 21 of the Constitutive Act.


- **Economic, Social and Cultural Council**: The Economic, Social and Cultural Council (ECOSOCC) is an advisory organ that is composed of different social and professional groups (civil society organisations) of the member states of the Union.\(^{22}\) The ECOSOCC enables civil society to organise itself to work in partnership with the AU. Its functions are to contribute through advice to the effective translation of the AU’s objectives, principles and policies into concrete programmes, as well as evaluating these programmes; undertake studies and make recommendations; contribute to the promotion and realisation of the AU’s vision and objectives; contribute to the promotion of human rights, the rule of law, good governance, democratic principles, gender equality and child rights; promote and support the efforts of institutions engaged in reviewing the future of Africa and forge pan-African values in order to enhance an African social model and way of life; foster and consolidate partnership between the AU and civil society organisations (CSOs); and assume functions referred to it by other AU organs.\(^{23}\)

- **Financial Institutions**: Financial institutions of the AU are the African Central Bank; African Monetary Fund and African Investment Bank.\(^{24}\) The role of these institutions is to implement the economic integration called for in the 1991 Treaty Establishing the African Economic Community (Abuja Treaty).\(^{25}\)

- **African Commission on Human and Peoples’ Rights**: The African Commission on Human and Peoples’ Rights was also established as a Commission within the Organisation of African Unity to promote human and peoples’ rights and ensure their protection in Africa.\(^{26}\) The functions of the Commission are to promote human and peoples’ rights (in particular collect documents, undertake studies and research on African problems in the field of human and peoples’ rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights, and, should the case arise, give its views or make recommendations to governments; formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African governments may base their legislations; and co-operate with other African and international institutions concerned with the promotion and protection of human and peoples’ rights); ensure the protection of human and peoples’ rights under conditions laid down by the present Charter; interpret all the provisions of the present Charter at the request of a state party, an institution of the Organisation of African Unity or an African organisation recognised by the Organisation of African Unity; and perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.\(^{27}\)

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\(^{22}\) Article 22 of the Constitutive Act.


\(^{24}\) Article 19 of the Constitutive Act.

\(^{25}\) *Ibid*.

\(^{26}\) Article 30 of the African Charter on Human and Peoples’ Rights.

\(^{27}\) Article 45 of the African Charter on Human and Peoples’ Rights.
**African Committee of Experts on the Rights and Welfare of the Child:** The African Committee of Experts on the Rights and Welfare of the Child was established by the African Charter on the Rights and Welfare of the Child (ACRWC) as a Committee within the Organisation of African Unity to promote and protect the rights and welfare of the child. The functions of the Committee include to promote and protect the rights enshrined in the Charter (in particular collect and document information, commission interdisciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organise meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to governments; formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa; and cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child); monitor the implementation and ensure protection of the rights enshrined in the Charter; interpret the provisions of the Charter at the request of a state party, an AU/OAU institution or any other person or institution recognised by the AU/OAU; and perform other tasks as entrusted by the Assembly.

Furthermore, as was the case with its predecessor (the OAU), the AU has adopted various instruments, declarations, resolutions and policies. In the area of social protection, some of these include the African Charter on Human and Peoples’ Rights (ACHPR), the African Charter on the Rights and Welfare of the Child (ACRWC), the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Women’s Rights Protocol), the Social Policy Framework for Africa (SPF), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the African Youth Charter, the Ouagadougou Declaration and Plan of Action, the Livingstone and Yaoundé Calls for Action, the Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa, the Africa Health Strategy: 2007-2015, the African Regional Nutritional Strategy: 2005-2015, the Agreement for the Establishment of the African Rehabilitation Institute (ARI), etc. The AU institutions and instruments reveal the intentions of the organisation for human rights to be mainstreamed in all its organs, activities and programmes.

### 3.2 SOCIAL SECURITY (RELATED) INSTRUMENTS

#### 3.2.1 African Charter on Human and Peoples’ Rights (1981)

The African Charter on Human and Peoples’ Rights seeks to protect the human rights and basic freedoms of Africans. Although it was inspired by other international instruments and contains many of the rights protected in such instruments, it does not follow the traditional distinction between civil/political rights and social/economic rights.

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The Charter enshrines ‘third generation’ rights or ‘rights of solidarity’, such as the right to Economic, Social and Cultural Development, the right to National and International Security and Peace\textsuperscript{30} and the right to a General Satisfactory Environment.\textsuperscript{31}

It guarantees collective rights of the community instead of individual rights, and lays down obligations/duties on individuals, families and communities.\textsuperscript{32} This implies that the Charter envisages multi-actor responsibility to realise social protection rights (the obligation vests on not only the state but also other non-state actors, including individuals, families and communities).

Despite affirming the interrelated, interconnected and mutually-supporting nature of civil/political rights and social/economic rights\textsuperscript{33} and reaffirming its commitment to the Universal Declaration of Human Rights,\textsuperscript{34} the African Charter does not directly guarantee a right to social security. However, other social protection rights are protected.\textsuperscript{35}

In addition, the African Commission recognises the indivisibility and interdependence of the rights protected in the Charter. In \textit{SERAC v Nigeria}, the Commission held that:

Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.\textsuperscript{36}

\textsuperscript{30} Article 23 of the African Charter.
\textsuperscript{31} Article 24 of the African Charter.
\textsuperscript{32} In terms of Article 27, every individual shall have duties towards his family and society, the state and other legally recognised communities and the international community. The individual also has the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need [Article 29(1)]; and to preserve and strengthen social and national solidarity, particularly when the latter is threatened [Article 29(4)].
\textsuperscript{33} The Preamble of the Charter states that “[…] Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights […]”
\textsuperscript{34} According to the Preamble, member states reaffirm the pledge they solemnly made “[…] to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights […]”. Promotion of the Charter of the United Nations and the Universal Declaration of Human Rights entails promotion of the rights enunciated therein (including social protection rights).
\textsuperscript{35} Such as the right to enjoy the best attainable state of physical and mental health (Article 16), the right of the family to physical and moral health [Article 18(1)] and the right of the aged and the disabled to special measures of protection in keeping with their physical or moral needs [Article 18(1)].
The African Charter is monitored and implemented by the African Commission on Human and Peoples’ Rights, and enforced by the African Court of Human Rights.\textsuperscript{37} The role of the African Commission on Human and Peoples’ Rights is “to promote human and peoples’ rights and ensure their protection in Africa.”\textsuperscript{38} To achieve these, the Commission has the right to receive communications from member states as well as other sources.

In promoting human and peoples’ rights, the Commission is empowered to collect documents, undertake studies and researches on African problems, organise conferences, and encourage domestic human rights institutions.\textsuperscript{39} The Charter further provides that, should the case arise, the Commission may give its views or make recommendations to governments. It is also able to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights.”\textsuperscript{40} It is required to cooperate with other African and international institutions concerned with the promotion and protection of these rights.

In the protection of human and peoples’ rights under conditions laid down by the Charter, the Commission is able to receive communications from member states and other sources, and is also empowered to “interpret all the provisions of the [...] Charter at the request of a state party, an institution of the OAU, or an African Organisation recognised by the OAU”.\textsuperscript{41}


Through the Protocol, the African Commission on Human and Peoples’ Rights has set down principles and rules promoting the rights and freedoms of women. Social protection-related rights guaranteed in the protocol include the rights to freedom from discrimination;\textsuperscript{42} to dignity;\textsuperscript{43} to access to justice and equal protection before the law;\textsuperscript{44} the right to peace;\textsuperscript{45} the right to education and training;\textsuperscript{46} economic and social welfare

\textsuperscript{37} The African Court of Human Rights was established by the Protocol to the Charter on the Establishment of an African Court of Human Rights (adopted in 1998).
\textsuperscript{38} Article 30 of the African Charter on Human and Peoples’ Rights.
\textsuperscript{39} Article 45(1) of the African Charter on Human and Peoples’ Rights.
\textsuperscript{40} Article 45(1)(b) of the African Charter on Human and Peoples’ Rights.
\textsuperscript{41} Articles 45(2) and 45(3) of the African Charter on Human and Peoples’ Rights.
\textsuperscript{42} Article 2 of the African Women’s Rights Protocol.
\textsuperscript{43} Article 3 of the African Women’s Rights Protocol.
\textsuperscript{44} Article 8 of the African Women’s Rights Protocol.
\textsuperscript{45} Article 10 of the African Women’s Rights Protocol.
\textsuperscript{46} Article 12 of the African Women’s Rights Protocol.
rights;\textsuperscript{47} health and reproductive healthcare rights;\textsuperscript{48} the right to food security;\textsuperscript{49} the right to adequate housing;\textsuperscript{50} right to healthy and sustainable environment;\textsuperscript{51} right to sustainable development;\textsuperscript{52} right to inheritance;\textsuperscript{53} the special protection of elderly women;\textsuperscript{54} special protection of women with disabilities;\textsuperscript{55} and special protection of women in distress.\textsuperscript{56}

In order to eliminate discrimination against women, state parties undertake to combat all forms of discrimination against women at all levels and in all fields. This compels each state to take concrete steps to all forms of discrimination against women in its constitution, the highest law of the land, and all other laws; to enact and effectively implement appropriate laws or regulatory measures that prohibit and punish harmful practices which endanger the health and general well-being of women; and ensure that the opinions of women are taken into account in all endeavours at a village, city, suburban or national level. Each state party must also pass laws or take corrective action to ensure that women and men enjoy the same rights in areas or situations in which women are still treated unjustly.

The right to dignity requires women to be respected and protected as human beings, and to be respected as persons and for the complete respect of their personality. Women and men should be equal before the law and should have the right to equal protection and benefit of the law. In order to realise this, state parties must take all appropriate measures to ensure the promotion of the right of women to seek justice in the cities and villages throughout the country and continent; to give support to local and national initiatives directed at providing women access to justice in case their rights are violated; to establish services to train women and also the entire society on the rights of women; to train judges and law enforcement organisations (the gendarmes, the policemen, lawyers, public prosecutors, immigration officers, and notaries public) to effectively protect gender equality rights; to promote the adequate representation of women amongst the notaries public, judges, magistrates, lawyers, bailiffs, prosecutors, policemen and gendarmes; and review existing discriminatory laws and practices in order to promote and protect women’s rights.

Obligations under the right of women to live peacefully wherever they may be, include (amongst others) the obligations to take all appropriate measures to ensure the participation of women in the local, national, regional, continental and international

\begin{itemize}
\item Article 13 of the African Women’s Rights Protocol.
\item Article 14 of the African Women’s Rights Protocol.
\item Article 15 of the African Women’s Rights Protocol.
\item Article 16 of the African Women’s Rights Protocol.
\item Article 18 of the African Women’s Rights Protocol.
\item Article 19 of the African Women’s Rights Protocol.
\item Article 21 of the African Women’s Rights Protocol.
\item Article 22 of the African Women’s Rights Protocol.
\item Article 23 of the African Women’s Rights Protocol.
\item Article 24 of the African Women’s Rights Protocol.
\end{itemize}
decision-making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women; and on all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular women.

Under the right to education and training, there is the obligation for state parties to take all appropriate measures in ensuring that young girls and boys are guaranteed equal opportunity and access to education and success. This includes specific positive action to ensure that adult women who were unable to attend school are given the opportunity to learn to read and write through adult education; that girls attend school and learn professions at all levels and in all disciplines, particularly in the fields of science and technology; and that girls are enrolled in schools and other training institutions and pursue their training until they attain the required diplomas, certificates or degrees.

Article 13 on economic and social welfare rights envisages the enactment of laws to guarantee equal opportunities for women and men in work and career advancement and access to other economic opportunities. In attainment of these, states must promote equal access to employment; promote the right to equal pay for jobs of equal value for both women and men; ensure transparency in recruitment, promotion and dismissal of women; combat and punish sexual harassment in the workplace; encourage women working in the informal sector to have social security; and take the necessary measures to recognise the value of the work of women in the home.

The right to health of women, including the right for their sexual and reproductive health to be respected and promoted, engenders duties on states to provide health services to women in hospitals and health centres (hospitals and health centres that are not far from their villages or places of residence and is affordable in relation to costs); to establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breastfeeding; and to protect the reproductive rights of women by authorising the right to a medical abortion when the pregnancy she carries is the result of rape, forced sexual relations, incest, or when continuing with the pregnancy endangers the mental and physical health of the mother or the life of the foetus.

Women have the right to food, and states must ensure that women have the right to nutritious and adequate food. Specific state duties include the adoption of appropriate measures to provide women with access to clean drinking water, sources of energy for cooking, land, and the means of producing nutritious food; and to establish adequate systems of supply and storage to ensure food security, guarantying that women never lack the necessary food for themselves and their families.

In terms of the right to adequate housing, women are afforded the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, state parties shall grant to women, whatever their marital status, access to adequate housing.
The right to sustainable development entails that women must always live in suitable material, physical and psychological conditions – they should always be able to have their basic needs met and be free from physical and mental health problems.57

Elderly women, women with disabilities, and women in distress are entitled to special protection. Elderly women must be provided protection by making decisions that take into account their welfare needs in order to provide support for their economic and social needs. For women with disabilities, this involves facilitating access to employment, professional and vocational training, and promoting handicapped women’s participation in decision making. The provision of protection of such women should take into account their health and welfare needs. The social (physical and economic) protection of women in distress (poor women, women who are heads of families, and women from marginalised population groups) should also be undertaken.

3.2.3 African Charter on the Rights and Welfare of the Child (1990)

The adoption of the African Charter on the Rights and Welfare of the Child (ACRWC) was based on the desire for the “culturisation of children’s rights” (a children’s rights charter “reflective of and informed by African cultural values and heritage”).58 As a result, the Charter provides “a distinctly African framework for the protection and promotion of children’s rights”.59

As an example, the Preamble of the Charter notes that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity he/she needs special safeguards and care;60 recognises the unique and privileged position that the child occupies in the African society;61 and takes into consideration the virtues of their cultural heritage, historical background, and the values of the African civilisation which should inspire and characterise their reflection on the concept of the rights and welfare of the child.62

The Charter follows a more ‘human rights centred’ approach as it confers rights directly to the child, as opposed to simply conferring obligations on the state parties.63 In reaffirming

60 Paragraph 3 of the Preamble of the Charter.
61 Paragraph 4 of the Preamble of the Charter.
62 Paragraph 6 of the Preamble of the Charter.
adherence to international instruments protecting the rights of the child,\textsuperscript{64} it embraces all children’s rights principles enshrined in every international and African regional human rights instrument.\textsuperscript{65}

The Charter does not prescribe that the standards of the rights it protects should not be considered as the highest possible standards. It encourages member states to aim for higher standards by stating that:

Nothing in this Charter shall affect any provisions that are more conducive to the realisation of the rights and welfare of the child contained in the law of a state party or in any other international Convention or agreement in force in that state.\textsuperscript{66}

Social protection rights guaranteed by the Charter include the right to survival, protection and development,\textsuperscript{67} and the right to enjoy the best attainable state of physical, mental and spiritual health.\textsuperscript{68} Special protection is also accorded to children with disabilities\textsuperscript{69} and refugee children.\textsuperscript{70}

\textsuperscript{64} The Preamble of the Charter states that it reaffirms adherence ‘to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government’s Declaration on the Rights and Welfare of the African Child.’


\textsuperscript{66} Article 1(2) of the African Rights Charter.

\textsuperscript{67} Article 5(2) of the African Charter on the Rights and Welfare of the Child.

\textsuperscript{68} Article 14(1) of the African Charter on the Rights and Welfare of the Child. In realisation of the right to enjoy the best attainable state of physical, mental and spiritual health, state parties are required to pursue the full implementation of the right and, in particular, to reduce infant and child mortality rate; ensure the provision of necessary medical assistance and healthcare to all children, with emphasis on the development of primary healthcare; ensure the provision of adequate nutrition and safe drinking water; combat disease and malnutrition within the framework of primary healthcare through the application of appropriate technology; ensure appropriate healthcare for expectant and nursing mothers; develop preventive healthcare and family life education and provision of service; integrate basic health service programmes in national development plans; ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents; ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of a basic service programme for children; and support, through technical and financial means, the mobilisation of local community resources in the development of primary healthcare for children.

\textsuperscript{69} Article 13 provides that “every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.”

\textsuperscript{70} According to Article 23, state parties are required to take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable
Similar to the African Charter, the African Charter on the Rights and Welfare of the Child also prescribes obligations and adopts a multi-actor responsibility approach. Obligations are prescribed for state parties, parents and children. The Charter lays down a general obligation on member states to realise the rights protected therein. It states in Article 1 that:

Member states of the Organisation of African Unity Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

In relation to some socio-economic rights, state obligations are limited to the resources available for such realisation. As an example, although the Charter guarantees every child the right to an education, it further adds that state parties must take all appropriate measures with a view to achieving the full realisation of the right, and must in particular (inter alia) provide free and compulsory basic education; encourage the development of secondary education in its different forms and progressively make it free and accessible to all; and make higher education accessible to all on the basis of capacity and ability by every appropriate means.

In addition, although the Charter provides that every child who is mentally or physically disabled has the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community, state parties are only required to “ensure, subject to available resources, to a disabled child and to those responsible for his care, assistance for which application is made and which is appropriate to the child’s condition and, in particular, shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.” Member states must also “use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.”

However, no limitation is provided for the state's obligation to ensure that every child enjoys the best attainable state of physical, mental and spiritual health.\textsuperscript{76} State parties are obliged to pursue the full implementation of the right.\textsuperscript{77}

Parents or other persons responsible for the child have the primary responsibility of the upbringing and development of the child. They have the duty to (amongst others) secure, within their abilities and financial capacities, conditions of living that are necessary for the child's development.\textsuperscript{78} The use of the words 'parents' or other persons responsible for the child' as opposed to ‘parents or legal guardians’,\textsuperscript{79} indicates that it includes persons who provide care for a child but may not be a parent or legal guardian. This is important as it “assumes a special meaning in the African context, where the care of children in remote areas lies with the extended family or with the tribal or rural community rather than with parents or legal guardians or with the often non-present state.”\textsuperscript{80}

Parents or other persons responsible for the child have the primary responsibility of the upbringing and development of the child, and the state’s obligations are limited to providing assistance to parents. In terms of Article 20(2), state parties must take all appropriate measures, in accordance with their means and national conditions, to assist parents and other persons responsible for the child and, in case of need, provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing; assist parents and others responsible for the child in the performance of child-rearing; ensure the development of institutions responsible for providing care of children; and ensure that the children of working parents are provided with care services and facilities.

\textsuperscript{76} Article 14 of the African Charter on the Rights and Welfare of the Child.

\textsuperscript{77} Article 14(2) of the African Charter on the Rights and Welfare of the Child. Particular measures to be taken are to reduce infant and child mortality rate; ensure the provision of necessary medical assistance and healthcare to all children with emphasis on the development of primary healthcare; ensure the provision of adequate nutrition and safe drinking water; combat disease and malnutrition within the framework of primary healthcare through the application of appropriate technology; ensure appropriate healthcare for expectant and nursing mothers; develop preventive healthcare and family life education and provision of service; integrate basic health service programmes in national development plans; ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents; ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of a basic service programme for children; and support through technical and financial means, the mobilisation of local community resources in the development of primary healthcare for children.

\textsuperscript{78} Article 20 of the African Charter on the Rights and Welfare of the Child.

\textsuperscript{79} See for example the use of ‘Parents or legal guardians’ in Article 9(2), Article 10, Article 11 and Article 19 of the African Charter on the Rights and Welfare of the Child.

According to Article 31, every child has responsibilities towards his/her family and society, the state and other legally recognised communities as well as the international community. Subject to his age and ability, and any limitations contained in the Charter, a child has the duty (inter alia) to work for the cohesion of the family, to respect his/her parents, superiors and elders at all times, and to assist them in case of need; serve his/her national community by placing his/her physical and intellectual abilities at its service; and to preserve and strengthen social and national solidarity.

The Charter established an African Committee of Experts on the Rights and Welfare of the Child. The Committee is to promote and protect the rights and welfare of the child, and to monitor the implementation and ensure protection of the rights. In order to promote and protect the rights and welfare of the child, the Committee must collect and document information, organise meetings, make recommendations to governments, formulate rules and principles aimed at enhancing the protection of the rights and welfare of the African child, and cooperate with other African regional and international institutions in the same field. It can also interpret the terms of the Charter at the request (inter alia) of a state party or institution of the OAU. The Committee monitors the implementation of the Charter through reporting and complaints procedures. The Committee can also adopt any ‘appropriate method’ to investigate any matter falling within the ambit of the Charter. It shall further submit regular reports on its activities to the Ordinary Session of the Assembly of Heads of State and Government every two years – a report that shall be published after having been considered by the Assembly.

However, it has been argued that:

The effective promotion and protection of the rights of the child in Africa will not be achieved unless the substantive protections are perceived as culturally legitimate by local communities, and unless the implementation procedures are aimed at enhancing such legitimacy as opposed to merely ensuring mechanistic adherence to form.

83 Article 42(a) of the African Charter on the Rights and Welfare of the Child.
84 Article 42(c) of the African Charter on the Rights and Welfare of the Child.
85 Article 43(1) of the African Charter on the Rights and Welfare of the Child obliges every state party to submit reports on the measures it has adopted to give effect to the provisions of the Charter within two years of the entry into force of the Charter, and thereafter every three years. In addition, in terms of Article 44, the Committee may receive communications from any person, group or non-governmental organisation (NGO) recognised either by the OAU (now AU), a member state, or the United Nations relating to any matter covered by the Charter.
3.2.4 Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

The Convention Governing the Specific Aspects of Refugee Problems in Africa was developed partly to take account of the unique aspects of the refugee situation in Africa. It is a recognition of the need for an essentially humanitarian approach towards solving the problems of refugees. Article 1 of the Convention defines a ‘refugee’ as:

[… ] every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Refugees are also considered as persons who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or nationality, are compelled to leave their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality.

The Convention compels African states to member states to use their best endeavours consistent with national legislation to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.

The non-discrimination clause requires states to apply the provisions of the Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group, or political opinions.

The effectiveness of the Convention has been hampered by the reluctance of most countries to replace their domestic legislation with the Convention itself – despite the fact that their national laws (which are governing immigration, aliens, and national security) are mostly contrary to the protective regime provided for by the Convention. Another factor that hinders the Convention’s effectiveness, is the lack of human resources (adequately trained personnel) which is needed to implement the Convention. It has been observed that the government agencies charged with refugee protection are often the police, immigration authorities, and, at times, even the army – the very agencies responsible for the plight of the refugees.88

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3.2.5 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)

The Kampala Convention is an instrument that seeks to protect the fundamental rights and freedoms of internally displaced persons. It thus takes into account the humanitarian, human rights, development, and security dimensions of the phenomenon of internal displacement. The Convention binds African governments to provide legal protection for the rights and well-being of those forced to flee inside their home countries due to conflict, violence, natural disasters, and other human rights abuses. The Convention creates a legal framework for preventing or mitigating internal displacement, protecting and assisting internally displaced persons, and promoting durable solutions and mutual support amongst the state parties. It has thus been described as “a beacon of hope for the almost 12 million people in Africa, internally displaced by conflict, and the many more internally displaced by natural disasters”.

The Convention portrays African states’ commitment to share a common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance. Furthermore, it gives an indication of these states’ determination to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes – especially persistent and recurrent conflicts – as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development. It also indicates African states’ recognition of the inherent rights of internally displaced persons, as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement (which is recognised as an important international framework for the protection of internally displaced persons). Lastly, it points toward African states’ affirmation of their primary responsibility and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, without discrimination of any kind.

The Convention reflects the norms included in the 1998 United Nations Guiding Principles on Internal Displacement. However, it contains innovations such as articulating the

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92 Preamble of the Kampala Convention.
93 Ibid.
94 The Preamble recognises the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United
obligations and roles of African states, as well as a host of other actors – including the AU, armed groups, international organisations, and civil society – to prevent and respond to internal displacement.

Article 1(k) of the Convention defines internally displaced persons as:

[...] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.

In terms of Article 2, the objectives of the Convention are to:

- promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement, as well as provide for durable solutions;
- establish a legal framework for preventing internal displacement, and for protecting and assisting internally displaced persons in Africa;
- establish a legal framework for solidarity, cooperation, promotion of durable solutions, and mutual support between the state parties in order to combat displacement and address its consequences;
- provide for the obligations and responsibilities of state parties, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons; and
- provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organisations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.95

State parties have general obligations as well as obligations relating to protection from internal displacement,96 obligations relating to protection and assistance,97 and obligations relating to protection and assistance during internal displacement.98

Amongst the general obligations which state parties undertake to respect and ensure respect for, are the following:

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Nations Guiding Principles on Internal Displacement, which is recognised as an important international framework for the protection of internally displaced persons, and affirms member states’ primary responsibility and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, without discrimination of any kind.

95 Article 2 of the Kampala Convention.
96 Articles 3 and 4 of the Kampala Convention.
97 Article 5 of the Kampala Convention.
98 Article 9 of the Kampala Convention.
• prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion, or political opinion;
• respect and ensure respect for the principles of humanity and the human dignity of internally displaced persons;
• respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
• respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons; ensure assistance to internally displaced persons by meeting their basic needs, as well as allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel; and
• promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance.99

In order to achieve these, state parties are required to undertake the following:

• incorporate their obligations under the Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
• designate an authority or body (where needed) that will be responsible for coordinating activities aimed at protecting and assisting internally displaced persons, for assigning responsibilities to appropriate organs for protection and assistance, and responsible for cooperating with relevant international organisations or agencies and civil society organisations (where no such authority or body exists);
• adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of the host communities;
• provide (to the extent possible) the necessary funds for protection and assistance without prejudice to receiving international support; and
• endeavour to incorporate the relevant principles contained in the Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.100

Obligations on member states relating to protection from internal displacement include the obligations to:

99 Article 3(1) of the Kampala Convention.
100 Article 3(2) of the Kampala Convention.
• respect and ensure respect for their (states’) obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
• devise early warning systems, within the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures, and, where necessary, provide immediate protection and assistance to internally displaced persons; and
• protect communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands – except for compelling and overriding public interests.

State parties bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind. They must (inter alia) cooperate with each other; respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to internally displaced persons; provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations, and other relevant actors; take the necessary steps to effectively organise relief action that is humanitarian, impartial in character, and guarantee security; and allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. The measures to protect and assist persons who have been internally displaced must be adopted – whether the displacement is due to natural or human-made disasters, including climate change.

During internal displacement, state parties must protect the rights of internally displaced persons – regardless of the cause of displacement – by refraining from and preventing (amongst others) discrimination in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons. State parties must also protect such persons from starvation. In this regard, state parties are compelled to:

• take the necessary measures to ensure that internally displaced persons are received, without discrimination of any kind, and live in satisfactory conditions of safety, dignity and security;
• provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and, where appropriate, extend such assistance to local and host communities;

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101 Article 5 of the Kampala Convention.
102 Ibid.
• provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
• take special measures to protect and provide for the reproductive and sexual health of internally displaced women, as well as appropriate psycho-social support for victims of sexual and other related abuses;
• respect and ensure the right of internally displaced persons to seek safety in another part of the state and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk; and
• guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order, and public health.

The Convention specifically deals with the issue of development-induced displacement. This is addressed in Article 10 which states that:

• state parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
• state parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects; and
• state parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

In providing protection and assistance to internally displaced persons, international organisations and humanitarian agencies are compelled to do so in conformity with international law and the relevant country laws; and to respect the rights of such persons in accordance with international law.103 They are also bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and are to ensure respect for the relevant international standards and codes of conduct.104

Members of armed groups are prohibited from hampering the provision of protection and assistance to internally displaced persons under any circumstances. They may not deny internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter, nor separate members of the same family. Members of armed groups are furthermore prohibited to impede humanitarian assistance and passage of all relief consignments, equipment and personnel (amongst others) to internally displaced persons.105

103 Article 6(1) and (2) of the Kampala Convention.
104 Article 6(3) of the Kampala Convention.
105 Article 7 of the Kampala Convention.
Obligations relating to the African Union include supporting the efforts of the state parties to protect and assist internally displaced persons under the Convention. This involves, in particular, strengthening the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons; coordinating the mobilisation of resources for protection of and assistance to internally displaced persons; collaborating with international organisations and humanitarian agencies, civil society organisations and other relevant actors, in accordance with their mandates, to support measures taken by state parties to protect and assist internally displaced persons; and directing cooperation with African states, international organisations and humanitarian agencies, civil society organisations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons.\(^{106}\)

The Convention does not only envisage temporary protection and assistance to internally displaced persons, but requires long-term solutions. To this end, Article 11 requires African states to “seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.”

This will ensure that internally displaced persons are able to regain or establish new sustainable livelihoods. The Convention further requires states parties to “enable internally displaced persons to make a free and informed choice on whether to return, integrate locally, or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.”\(^{107}\)

Criticism of the Convention relates to the lack of effective enforcement mechanisms and insufficient guarantees for equality, non-discrimination, and other human rights. In addition, it is doubtful to what extent non-state actors and armed groups can be compelled to abide by the provisions of the Convention that relate to them.\(^{108}\) The implementation of the objectives of the Convention is to be monitored and reviewed by a conference of state parties to the Convention. State parties are required to enhance their capacity for cooperation and mutual support under the auspices of the conference of the state parties, which is to be convened regularly and facilitated by the African Union.\(^{109}\) In their reports submitted under Article 62 of the African Charter on Human and Peoples’ Rights, and (where applicable) under the African Peer Review Mechanism, state parties must indicate legislative and other measures taken to give effect to the Convention.

\(^{106}\) Article 8 of the Kampala Convention.

\(^{107}\) Article 11(2) of the Kampala Convention.


\(^{109}\) Article 14 of the Kampala Convention.
3.2.6 Social Policy Framework for Africa (2008)

The Social Policy Framework for Africa (SPF) was developed to complement and supplement ongoing national and regional programme and policy initiatives, such as the Poverty Reduction Strategy Papers (PRSP) and the New Partnership for Africa's Development (NEPAD), and to close the gap where it was deemed that these did not adequately address social issues.\(^{110}\)

The SPF “sets out a vision for African societies based on social solidarity, equity of choice, and freedom from discrimination and poverty.”\(^{111}\) The main purpose of the SPF for Africa, is to provide an overarching policy structure to assist AU member states in the development of their national social policies to promote human empowerment, as well as in their ongoing quest to address the multiple social issues facing their societies.\(^{112}\) The AU Commission Programme on social development is based on a human-centred approach that seeks to promote human rights and dignity.\(^{113}\)

The guiding principles for the SPF state that:\(^{114}\)

- social policies must encapsulate the principles of human rights and development imperatives, and should be embedded in the African culture of solidarity;
- it (social policies) must be intimately linked to economic and political policies aiming at advancing a society’s well-being;
- a policy for social development as a broader goal should be coordinated with, but not subordinate to, economic growth and political development;
- a social policy formulation must include bottom-up approaches to allow the participation of beneficiaries and recipients in decision making;
- social policies should have a long-term development perspective;
- the different stakeholders should work together in well-coordinated partnerships that enable them to complement and not compete with one another.

The framework is said to be a comprehensive and integrated reference document and an important tool for assisting AU member states in implementing the various continental and international commitments that they, and other organs of the OAU and the AU, have ratified or adopted over the years.\(^{115}\)

It is not intended to legally bind, dictate, or impose any obligations emanating from treaties or conventions not ratified by member states. It is a framework to guide AU

member states as they develop and/or implement appropriate national strategies and programmes. Therefore, member states can utilise elements of the framework that they deem fit, appropriate and applicable to their country-specific social challenges and situations.\textsuperscript{116}

It guides African countries in promoting the rights and ensuring the welfare of their people, especially marginalised and excluded categories (including orphans and other vulnerable children, youths, people with disabilities, refugees and displaced persons, poor families, the elderly, and people living with HIV/AIDS).\textsuperscript{117}

The SPF is informed by Africa's need to combine economic dynamism (including ‘pro-poor’ growth), social integration (societies that are inclusive, stable, just, and based on the promotion and protection of all human rights, non-discriminative, and have respect for diversity and the participation of all peoples), and the active role for government in the provision of basic services at local and national levels.\textsuperscript{118}

Social protection and health is one of eighteen key thematic social issues addressed in the SPF.\textsuperscript{119} The interventions falling under a social protection framework include social security measures and furthering income security; also the pursuit of an integrated policy approach that has a strong developmental focus, such as job creation, equitable and accessible health and other services, social welfare, and quality education.\textsuperscript{120}

Social protection and social security are to be built gradually, based on comprehensive longer term national social protection action plans. Measures include extending existing social insurance schemes (with subsidies for those unable to contribute); building up community-based or occupation-based insurance schemes on a voluntary basis; social welfare services; employment guarantee schemes; and introducing and extending public-financed, non-contributory cash transfers.\textsuperscript{121}

Member states are encouraged to choose the coverage extension strategy and combination of tools most appropriate to their circumstances. However, there is consensus that a minimum package of essential social protection should cover essential healthcare and benefits for children, informal workers, the unemployed, older persons, and persons

\textsuperscript{116} Ibid.


\textsuperscript{118} Ibid.

\textsuperscript{119} Other key thematic social issues are population and development; labour and employment; HIV/AIDS, TB, malaria and other infectious diseases; migration; education; agriculture, food and nutrition; the family; children, adolescents and youth; ageing; disability; gender equality and women's empowerment; culture; urban development; environmental sustainability; the impact of globalisation and trade liberalisation in Africa; and good governance, anti-corruption, and rule of law (African Union. Social Policy Framework for Africa. 4).

\textsuperscript{120} African Union. Social Policy Framework for Africa. 16.

\textsuperscript{121} African Union. Social Policy Framework for Africa. 17.
with disabilities. This minimum package provides the platform for broadening and extending social protection as more fiscal space is created. It can also have a significant impact on poverty alleviation, improvement of living standards, reduction of inequalities, and promotion of economic growth, and has been shown to be affordable (even in low-income countries) within existing resources, if properly managed.\textsuperscript{122}

Africa states are thus encouraged to:\textsuperscript{123}

\begin{itemize}
\item build political consensus and recognise that social protection should be a state obligation, with provision made for it in national legislation;
\item include social protection in National Development Plans and Poverty Reduction Strategy Processes, with links to Millennium Development Goals (MDGs) outcomes and processes;
\item review and reform existing social protection programmes;
\item develop and operationalise costed national plans for social protection, based on the concept of a ‘minimum package’;
\item accelerate the implementation of Key Priority Area 4 of the Ouagadougou Plan of Action on Employment Promotion and Poverty Alleviation;
\item design and deliver effective impact assessments, monitoring and evaluation of social protection programmes;
\item guarantee long-term funding for social protection through national resources with specific and transparent budget lines;
\item ensure the coordination and strengthening of development partner support for sustainable financing of social protection;
\item develop and coordinate social protection programmes through inter-ministerial and inter-sectoral coordination bodies at the highest level of government;
\item enhance the technical, infrastructural, and institutional capacities of ministries responsible for social protection;
\item take advantage of regional and South-South cooperation, and regional and international best practice;
\item include civil society in policy making on social protection, as well as in programme design, implementation, monitoring and impact evaluation; and
\item utilise social protection instruments as a means of safeguarding the poor from global financial and economic shocks.
\end{itemize}

3.2.7 Ouagadougou Declaration and Plan of Action (2004)

The Ouagadougou Declaration and Plan of Action – adopted at the African Union’s third extraordinary session of the Assembly of Heads of State and Government, held in September 2004 in Ouagadougou, Burkina Faso – deals with poverty and

\begin{flushleft}
\textsuperscript{122} \textit{Ibid.}
\end{flushleft}
unemployment. The overall aim of the Declaration is to empower people, open opportunities, and create social protection and security for workers through building a people-oriented environment for development and national growth. The Ouagadougou Declaration and Plan of Action promotes the Decent Work Agenda of the ILO, including the enhancement of the coverage and effectiveness of social protection for all sectors in society – particularly for the poor and vulnerable.

The Declaration is based on mobilising resources for implementation of the plans of action at the national, regional, and international levels. It recognises the need to address social development, poverty alleviation, and employment creation in a coherent and integrated manner, and emphasises the need for action at the national, regional and international levels. It furthermore highlights the need to enhance the capacity of Regional Economic Communities (RECs) to promote productive employment and social protection within the framework of regional and inter-regional cooperation in Africa. The Declaration commits governments to “improving and strengthening the social protection schemes and extending them to workers and their families currently excluded, as well as occupational safety, health and hygiene.”

3.2.8 Charter for Social Action (1999)

The Charter for Social Action is informed by the principles of respect for basic human rights, the basic needs and aspirations of the population, pursuit of the goals of social justice and equity, and accessibility of social services to all. It calls for the formulation of national social policy and the incorporation of the social dimension at all levels of planning, programming, and implementation.

3.2.9 Africa Health Strategy: 2007-2015

The vision of the Africa Health Strategy is an integrated and prosperous Africa – free of its heavy burden of disease, disability and premature death. In addition, its mission is to build an effective African-driven response to reduce the burden of disease and disability through strengthened health systems, scaled-up health interventions, inter-sectoral action, and empowered communities.

The overall objective of the Strategy is to strengthen health systems in order to reduce ill-health, and to accelerate progress towards attainment of the Millennium Development Goals in Africa. More specifically, it aims to facilitate the development of initiatives to strengthen national health systems in member states by 2009; to facilitate stronger collaboration between the health and other sectors to improve the socio-economic and political environment for improving health; and to facilitate the

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126 Ibid.
scaling up of health interventions in member states, including through regional and intergovernmental bodies.\textsuperscript{127}

The AU, member states and the RECs are to use the Strategy as the inspirational framework within which they will fulfil their roles.\textsuperscript{128} The Strategy provides a focus for all health initiatives to converge around. Multilateral agencies, bilateral development partners, and other partners in Africa’s development are encouraged to build their health contribution around the Strategy. As such, a coordinated response is critical to ensure maximum benefit from the resources mobilised, and to prevent fragmentation and duplication. The Strategy thus provides an overarching framework to enable coherence within and between countries, civil society, and the international community.

The Strategy proposes strengthening of health systems with the goal of reducing disease burden through improved resources, systems, policies and management. This is to contribute to equity through a system that reaches the poor and those most in need of healthcare.

The Strategy also proposes an approach for addressing avoidable disease, disability and death in Africa, and for strengthening health systems for equity and development, especially for the poorest, most marginalised and displaced people.\textsuperscript{129} It states that in order to achieve its goals, a number of strategic interventions need to be concurrently implemented towards achieving an effective and sustainable health sector, synchronised with an integrated focus on the major health burdens and vulnerable groups. This is to incorporate best practices for promotion, prevention, care, and rehabilitation into country health plans in line with national circumstances. It proposes that special attention be paid to post-conflict countries as well as those caring for refugees and internally displaced persons, and that the life-cycle approach for cost-effective disease prevention should be applied.

These strategic interventions are the establishment of a fully functional health system (which includes human resources for health, transport, information and communication technology (ICT), facilities and medicines and supplies);\textsuperscript{130} adoption of an integrated approach and linkages;\textsuperscript{131} and adoption of measures to address broader issues that are

\begin{thebibliography}{9}
\bibitem{127} Africa Health Strategy. 2007-2015. 6.
\bibitem{128} Africa Health Strategy. 2007-2015. 1.
\bibitem{129} Africa Health Strategy. 2007-2015. 6.
\bibitem{130} Ibid.
\bibitem{131} This requires each country, based on its specific circumstances, to define, cost and implement a basic healthcare package that addresses the major part of its disease burden through appropriate interventions using an integrated approach. The interventions would take care of the priority health problems – both communicable and non-communicable diseases and conditions, including neglected diseases, injuries and trauma. Joint planning with other sectors like water, education, agriculture, environment, social welfare and justice should be undertaken. National policies and plans should address the needs of the elderly, the disabled, women, children in school, and other vulnerable groups. There should be a strong emphasis on behaviour change. The interventions should be comprehensive, addressing promotion, prevention, treatment and care, support
undermining health, including poverty, HIV/AIDS, marginalisation and displacement, poor governance, socio-political instability, economic underdevelopment, lack of infrastructure (energy, transport, water and sanitation), low educational levels, agricultural vulnerability, environmental degradation, and gender inequality.\textsuperscript{132}

In relation to social protection as a strategic intervention, the Strategy advocates for social safety nets at country and community levels, as well as national health plans to be encouraged and enhanced in a way that meets the needs of the vulnerable and that is compatible with traditional and cultural norms and practices of the society.\textsuperscript{133} It recommends that measures for identifying people who fall through the cracks should be put in place in a participatory manner. In addition, all social protection mechanisms should be mobilised, including social health insurance. Due to the importance of user fees to social protection, the Strategy requires a review of user fees, with a view to abolish such fees. National solidarity mechanisms for social protection should be put in place. Enhanced inter-sectoral action should provide for a continuum of care, and it should be delivered as such. However, the Strategy concedes that there are certain areas which are clearly the responsibility of the health sector, and that these areas should be included in National Health Plans or in social pensions. It further requires that poverty reduction strategies rather than mere social welfare be at the core of social protection.

The Strategy allocates roles to the various stakeholders in the provision of health. These include the AU,\textsuperscript{134} RECs,\textsuperscript{135} member states\textsuperscript{136} and partners,\textsuperscript{137} and civil society organisations.

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\textsuperscript{132} Africa Health Strategy. 2007-2015. 21.
\textsuperscript{133} Africa Health Strategy. 2007-2015. 10.
\textsuperscript{134} The African Union is to (\textit{inter alia}) undertake advocacy, resource mobilisation, and dissemination of best practices at a continental level in support of the implementation of the Strategy; assist Regional Economic Communities and member states to develop their own costed implementation plans, monitoring and evaluation frameworks; and organise a meeting of stakeholders to develop an action plan for the overall implementation of the Strategy (Africa Health Strategy. 2007-2015. 22).
\textsuperscript{135} Regional Economic Communities are to (\textit{inter alia}) provide technical support to member countries, including training in the area of strengthening health systems; advocate for increased resources for the strengthening of health systems; harmonise the implementation of national action plans; monitor progress; and identify and share best practices (Africa Health Strategy. 2007-2015. 23).
\textsuperscript{136} Member states must review their health plans and address issues of accountability within the health sector; put in place advocacy, resource mobilisation and budgetary provisions as a demonstration of ownership; undertake monitoring and evaluation at a country level, as well as report to the Regional Economic Communities and AU Commission; ensure participation of civil society and the private sector in the development and review of national health programmes, and create a conducive environment for this to happen; and harmonise their policies and strategies to ensure coherence (Africa Health Strategy. 2007-2015. 23).
\textsuperscript{137} Multilateral and bilateral organisations, international and national civil society organisations, and other development partners must align their financial and technical assistance and cooperation plans with national and regional needs and priorities for implementation of the Strategy. The World
3.2.10 Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (2001)

The Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases was adopted at a special summit of the OAU in April 2001, which was convened to specifically address the exceptional challenges of HIV and AIDS, tuberculosis (TB), and other related infectious diseases. The summit was aimed at undertaking “a critical review and assessment of the situation and the consequences of the diseases in Africa.”

The summit was also an opportunity for African leaders to reflect further on new ways and means to take the lead in strengthening successful interventions that existed at the time, and to develop new and more appropriate policies, practical strategies, effective implementation mechanisms, and concrete monitoring structures at national, regional and continental levels, with a view to ensure adequate and effective control of HIV/AIDS, TB and other related infectious diseases on the continent.

African states resolved to place the fight against HIV/AIDS at the forefront and as the highest priority issue in national development plans. This is to be achieved through the consolidation of the foundations for the prevention and control of HIV/AIDS, TB and other related infectious diseases through a comprehensive multi-sectoral strategy which involves all appropriate development sectors of governments. It also involves the broad mobilisation of society at all levels, including community level organisations, civil society, the private sector, trade unions, the media, religious organisations, schools, youth organisations, women organisations, organisations of people living with HIV/AIDS, as well as individuals who care for, support and sensitisie the population to the threat of HIV/AIDS and associated opportunistic infections. Persons not yet infected (particularly women, children and youth) are also to be protected through appropriate and effective prevention programmes.

African leaders vowed to take personal responsibility and to provide leadership for the activities of National AIDS Commissions/Councils, as well as for leadership roles to be exercised by everyone in his/her area of responsibility in the fight against HIV/AIDS and other related diseases.

The AU Secretariat is requested to assist member states in formulating a continent-wide policy for an international assistance strategy for the mobilisation of additional financial resources. This is to be done in collaboration with the Asian Development Bank (ADB), the United Nations Economic Commission for Africa (UNECA), and other partner organisations, such as the World Health Organisation (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

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Health Organisation, other UN agencies, and international organisations should provide technical support for the Strategy. Civil Society (which include non-governmental organisations, faith-based organisations, community-based organisations, traditional leaders and healers, as well as media organisations), and the private sector must be included in national programmes (Africa Health Strategy, 2007-2015. 23).

3.2.11 Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases (2003)

The aim of the Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases was to reaffirm the commitments made in the Abuja Declaration and Plan of Action on Roll Back Malaria, and in the Abuja Declaration and Framework Plan of Action on HIV/AIDS, TB and other related infectious diseases, and to reiterate their commitment to intensify and consolidate efforts for their implementation. It urged the international community to honour those pledges made in relation to programmes for the prevention, case, support and treatment of HIV/AIDS, TB, malaria and other related diseases. It furthermore called on the Global Fund, UNAIDS, and fund recipients to develop simpler and expeditious mechanisms to ensure that funds are available quickly and easily for the effective fight against these diseases.

3.2.12 Gaborone Declaration on a Road Map towards Universal Access to Prevention, Treatment and Care (2005)

This Declaration is evidence of Africa states’ concern about the increasing disease burden on the continent, particularly due to HIV/AIDS, malaria, TB and other communicable diseases. This is borne out of awareness that, despite the various efforts by member states, access to prevention, treatment and care still remains limited and costly; and that the success of such efforts largely depends on well-functioning health systems that are accessible to all corners of the respective countries. The Declaration is also an acknowledgement that more than a third of the people on the continent do not have adequate access to essential medicine and healthcare.

The Declaration reaffirms the commitment of African states to develop sustainable access to prevention, treatment and care for the achievement of the Millennium Development Goals (MDGs), and for the realisation of the goals and objectives of the International Conference on Population and Development (ICPD).

Governments are committed to achieve universal access to prevention, treatment and care by 2015 through the development of an integrated close-to-client healthcare delivery system which is based on essential health package delivery. This is to be achieved by:

- promoting a pro-poor healthcare system through the strengthening of primary healthcare;
- scaling up the treatment of HIV/AIDS, TB and malaria through proven effective drug combinations;
- distributing free insecticide-treated bed nets to pregnant women and all children under the age of 5 who reside in malaria-endemic zones, as well as encourage the use of indoor residual spraying (where applicable);
- strengthening health systems to promote universal access by implementing the Abuja Recommendation of allocating at least 15% of the national budget to health;
- preparing and implementing costed human resources for health development plans; and
strengthening partnerships for improving access to treatment and care with communities, local governments, youth networks, civil society, RECs, development partners, and other stakeholders.

Other relevant resolutions and commitments include the local production of generic medicines on the continent; the eradication of polio and ensuring that every child is protected from this disease, and urging RECs to initiate and intensify synchronised polio vaccination campaigns.

The AU Commission is mandated to alert the Heads of State of the imminent threat of an avian influenza pandemic. It is also to seek technical guidance and assistance for member states on strengthening their integrated disease surveillance and response strategies, community education, and procurement and stockpiling of anti-viral agents and vaccines. The AU Commission is further requested to:

- develop mechanisms for the advocating and sharing of best practices in the delivery of pro-poor treatment and care for the achievement of the MDGs;
- accelerate the development and facilitation of implementing a Pharmaceutical Manufacturing Plan for Africa;
- produce a Roadmap for Sustainable Universal Access to Prevention, Treatment and Care for the Achievement of the MDGs within one year; and
- report on progress made on Sustainable Universal Access to Prevention, Treatment and Care for the Achievement of the MDGs at the next Ordinary Session of the Conference of African Ministers of Health and other relevant organs of the AU.

The international community is urged to honour its pledges in order to ensure the availability of resources for sustainable access to treatment and care for the achievement of the MDGs, as well as the Group of Eight Industrialised Nations (G8) and other donor countries to fulfil their commitment for an additional US$50 billion in global aid by 2010.

3.2.13 Livingstone and Yaoundé Calls for Action (2006)

During conferences held in Livingstone (Zambia) in March 2006 and in Yaoundé (Cameroon) in September 2006, African Union member states committed themselves to implement schemes that will help deliver regular income through cash transfers. The Livingstone and Yaoundé Calls for Action on social protection in Africa recognises that the promotion of an approach that links employment policies and poverty alleviation is critical to a comprehensive social development agenda. The Calls for Action adopted the guiding principle that social protection is embedded in both a human rights and an empowerment agenda, and agreed that a sustainable basic package of social transfers is affordable within current resources of governments with the support of international development partners.

The Calls for Action encourage governments to undertake the following:

- strengthen their social protection and social (cash) transfer interventions;
• develop costed plans within three years, engage in capacity building, and experience sharing in order to strengthen social protection and social (cash) transfer interventions;
• explore linkages with national programmes on social protection, Africa-wide social development programmes, and targeted AU policies;
• adopt comprehensive social protection schemes for older people;
• introduce universal social pensions; coordinate the implementation of social protection measures involving various ministries through a comprehensive national coordination framework; and
• hold bi-annual conferences under the auspices of the AU to ensure that follow-up dialogue takes place.

3.2.14 Social Protection Plan for the Informal Economy and Rural Workers 2011-2015 (SPIREWORK)

The purpose of the Social Protection Plan for the Informal Economy and Rural Workers (SPIREWORK) is to advance the effective implementation of the vision and commitments made by the AU Heads of State and Governments. The vision and commitments are reflected in the AU Constitutive Act, the Ouagadougou Plan of Action on Employment Promotion and Poverty Alleviation of 2004, and the Social Policy Framework (SPF). These instruments highlight empowerment and protection of the vulnerable and marginalised groups, and emphasise consideration of the specific social protection needs of the working poor in the informal economy and the rural sector when social protection policies are devised.\(^\text{139}\)

The rationale for the introduction of SPIREWORK includes low and inadequate social security coverage for workers in Africa – both in the formal and informal economies; the social protection of the informal economy workers being an essential concern for the AU Heads of State; AU initiatives to address the challenges of HIV/AIDS, TB, malaria, and maternal and child health; the UN Social Protection Floor Initiative and the ILO Social Protection Norms; commitments of the Africa-EU Partnership to social protection for the informal workers; and promising innovative schemes in Africa for better protection of the informal and rural workers.\(^\text{140}\)

The Strategy Towards Social Security for the Informal Economy and Rural Workers encompasses three components: Core guiding principles, a Minimal Social Protection Package, and the enablers for achieving the Minimum Package. The core guiding principles are the following:\(^\text{141}\)


- building blocks of the AU SPIREWORK are inspired by the AU's SPF based on freedom, equity, security and human dignity;
- upgrading the informal economy is part of human development and of human security, meaning freedom from fear, minimal income security, being in control of one's development, and voice representation;
- the informal economy is considered as a catalytic vehicle which can serve as accelerator of the attainment of most of the MDGs. Considering that a large number of workers are in the informal economy, extending/enlarging their access to basic needs and economic needs will lead to the broadest and most sustainable diffusion of growth into the population. Most of them are self-employed, bearing the household shocks and risks. Therefore, being self-employed means being at the centre of social network, with huge responsibilities vis-à-vis any events affecting the dependants;
- the upgrading of the informal economy is considered as a critical lever of 'attaining a middle-income status country', and expanding the necessary wealthy middle class for the AU member states. As such it is a powerful vehicle for a generalised, accelerated and sustainable expansion of basic social protection services to the African people. In this sense, it is the main instrument for a poverty alleviation approach, strengthening social cohesion by achieving near-universal social protection;
- the dynamic diversity of the informal economy allows the development of a cluster approach in the implementation of SPIREWORK by the AU member states;
- address and eliminate the particular vulnerability and insecurities of youth and women in the informal economy; and
- the traditional 'Leap Frog' project approaches should be replaced by normal approaches towards the development by mainstreaming the informal economy needs and expectations in national policies, with a focus on education, health and security in the areas of workplace, productivity and health priority.

In order to progressively achieve the Minimum Social Protection Package, member states are urged to:\textsuperscript{142}

- define and implement a Minimum Protection Substantive Package for informal and rural workers and members of their families, encompassing measures on access to market and land for stable workplace, health, maternity, death and retirement. This will be done through conducting a comprehensive study that will support the preparation of a Minimum Package of Social Protection for Rural and Informal workers, and their families;
- reassess their social protection policies and programmes for better targeting and aligning with SPIREWORK, and reallocate existing resources to those schemes of protection which are most effective in terms of poverty alleviation and the reduction of vulnerabilities and insecurity;

in association with all stakeholders, using the Value Chain Analysis method, determine five informal economy clusters for quick impact interventions, and launch special social protection projects with significant breakthroughs that can serve as engines for the expansion of social protection measures for informal and rural workers and members of their families;

- review their laws and regulations, policies, strategies and programmes, as they relate to access of informal and rural workers to social protection measures, and undertake reform measures for more inclusive social protection systems. This entails an evaluation of their budget with regard to the social protection needs coverage for informal and rural workers and members of their families;

- undertake special initiatives on promoting the implementation of the AU Campaign on Accelerated Reduction of Maternal Mortality (CARMMA), HIV/AIDS, TB and malaria policies in the informal and rural workplaces. They must also develop appropriate mechanisms, strategies, targets and indicators for the implementation of CARMMA, HIV/AIDS, TB and malaria programmes in the informal economy;

- assess national, regional and international (global/World Trade Organisation) trade policies in their relationship with the informal economy’s marketing activities; and

- combat child labour, forced labour, eradication, and human trafficking interaction in order to break the intergeneration reproduction of poverty.

In relation to the enablers for achieving a Minimum Social Protection Package, SPIREWORK is based on the following concrete building blocks that enable achieving an extension of the social protection coverage to informal and rural workers:143

- Organisation of informal and rural workers for their effective empowerment and participation in the policy formalisation processes with a strong and effective voice; networking of Informal and Rural Workers’ Organisations which includes cooperatives for advocacy and recognition; alignment of legal and regulatory frameworks; policy dialogue and recognition; statistics and data base management on social protection of informal and rural workers; knowledge management and experience sharing; and registration.

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For its implementation and promotion, SPIREWORK allocates responsibilities to member states (as enablers for the institution of a Minimum Social Protection Package for Workers in the Informal and Rural Economies); the AU Commission; other AU Organs and AU Commission structures; United Nations Agencies and development partners; RECs; and civil society organisations.144

3.3 CONCLUDING OBSERVATIONS

The human rights instruments adopted by the AU and the institutions established or institutions in existence at the formation of the AU and strengthened for the implementation of these instruments, have enriched the African human rights protection system. They have also “provided an enabling environment within which to pursue human rights promotion and protection vigorously”145

However, there are concerns about the AU’s ability to realise social protection and other rights.146 This has led to the contention that:

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[...] the AU, in contrast to the OAU, made human rights an explicit part of its mandate, as embodied in its Constitutive Act, and mainstreamed human rights in all its activities and programmes. However, it is clear that the current methodologies require strengthening with a view to developing a holistic, comprehensive and integrated approach to ensure that all human rights are respected.147

Questions about the AU’s ability to realise human rights are due to (inter alia) the lack of the necessary resources and political backing by human rights institutions and mechanisms to compel the respect of human rights; organisational and financial challenges faced by the AU; the fragmented and uncoordinated nature of human rights institutions, which affects their effectiveness; the challenges of endemic poverty, unemployment, corruption, disease and conflicts; the varying levels of development and governance by African countries; toothless implementation and enforcement mechanisms; varying approaches to the domestication of international and regional instruments; failure of countries to comply with requirements to report on the domestic implementation of ratified instruments; and a lack of political will (such as through the failure to implement agreed policies, values and standards). Compliance with AU social protection (and other human rights) instruments is thus fundamental in order to successfully extend these rights on the continent. As one commentator remarked, “[...] unless African states address the gap between assumption of international legal obligations, their implementation and domestication, adoption of additional instruments [...] will not alleviate human rights violations.”148

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Legal Perspectives on their Protection and Promotion. Windhoek: Konrad-Adenauer-Stiftung and the Authors. 135-162.


CHAPTER 4
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

4.1 GENERAL BACKGROUND

4.1.1 The genesis of the Southern African Development Community

The Southern African Development Community (SADC) is a relatively young sub-regional organisation of a wholly inter-governmental nature, anchored in the southern part of the African continent. The SADC, which is constructed on the principle of the sovereign equality of all member states, is recognised as one of the eight African Union’s (AU) Regional Economic Communities. It consists of fifteen member states, namely Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The SADC’s headquarters are situated in Gaborone, Botswana. The roots of the SADC can be traced back to the Southern African Development Coordination Conference (SADCC), which was established in 1980 by Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. The primary purpose of the SADCC was to achieve regional cooperation amongst its member states. The eventual objective was to reduce economic, technological and transport dependence on the then apartheid South Africa. The demise of apartheid in South Africa resulted in the SADCC transmuting into a development-focussed regional organisation, currently known as the SADC.

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4 See the Preamble and Article 1 of the SADC Treaty. The SADC Treaty (as amended) came into effect on 12 September 2000.
4.1.2 Aims and purpose of the Southern African Development Community

The objectives of the SADC are to:

- achieve development and economic growth by alleviating poverty, enhancing the standard and quality of life of the people of southern Africa, and by supporting the socially disadvantaged through regional integration;
- evolve common political values, systems and institutions;
- promote and defend peace and security;
- promote self-sustaining development on the basis of collective self-reliance, and the interdependence of member states;
- achieve complementarity between national and regional strategies and programmes;
- promote and maximise productive employment and utilisation of resources of the SADC region;
- achieve sustainable utilisation of natural resources and effective protection of the environment; and
- strengthen and consolidate the long-standing historical, social and cultural affinities and links amongst the people of the region.\(^5\)

In a quest to transform its objectives into reality, the SADC undertakes to:

- harmonise political and socio-economic policies and plans of member states;
- encourage the people of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region, and to participate fully in the implementation of the programmes and projects of the SADC;
- create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of the SADC and its institutions;\(^6\)
- develop policies aimed at the progressive elimination of obstacles for the free movement of capital and labour, goods and services, and for the people of the region in general, amongst member states;
- promote the development of human resources;
- promote the development, transfer and mastery of technology;
- improve economic management and performance through regional cooperation;

\(^5\) Article 5(1) of the SADC Treaty.  
\(^6\) The institutions of the SADC are listed in Chapter Five of the SADC Treaty (as amended) as the Summit of the Heads of State and Government (Article 10), the Organ on Politics, Defence and Security Co-operation (Article 10A), the Council of Ministers (Article 11), the Integrated Committee of Ministers (Article 12), the Standing Committee of Officials (Article 13), the Secretariat (Article 14), the Tribunal (Article 16), and the SADC National Committees (Article 16A).
promote the coordination and harmonisation of the international relations of member states;
secure international understanding, cooperation and support, and mobilise the inflow of public and private resources into the region; and
develop such other activities as member states may decide in furtherance of the objectives of the Treaty of the Southern African Development Community (the SADC Treaty).7

4.2 MAIN SOCIAL SECURITY INSTRUMENTS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

4.2.1 Key social security (related) instruments: An overview

The provision for social security is made directly and, in some instances, indirectly in a number of documents. These documents are generally in the form of the SADC Treaty, protocols, charters, pacts, memoranda of understanding, declarations, and regional codes and policies. A selection of instruments and/or documents pertinent to social security at a SADC level, will now be reviewed. They are as follows: The SADC Treaty, Charter of Fundamental Social Rights in the SADC, Code on Social Security in the SADC, Code on HIV/AIDS and Employment, and Code of Conduct on Child Labour.

4.2.2 The Treaty of the Southern African Development Community

The SADC Treaty is the cornerstone of the SADC social security framework. This view is largely informed by the fact that the SADC Treaty is ‘hard law’, i.e. it is legally binding on all SADC member states. Furthermore, its provisions – particularly those concerning the SADC’s objectives – have a social security orientation, for example, the objective to alleviate poverty and improve the standard and quality of life of the people of the region.8

The SADC region also aspires to support the socially disadvantaged and marginalised through regional integration.9 To this end, SADC member states have committed themselves to develop policies directed at the progressive elimination of obstacles for the free movement of capital and labour, goods and services, and for the peoples of the region in general.10 The free movement of labour, goods, services and people has social security implications. This is often seen as giving rise to the so-called social security dimension of regional integration in the SADC region.11 The long and short of it is that regional

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7 Article 5(2) of the SADC Treaty.
8 Article 1(a) of the SADC Treaty.
9 Ibid.
10 Article 5(2)(d) of the SADC Treaty.
integration characterised by social insecurity will most definitely defeat the purpose. Therefore, for SADC citizens to freely take advantage of the freedom of movement and its related benefits, they need to be socially secured. Thus, member states need to develop and coordinate their social security systems and ensure that SADC citizens do not forfeit their social security entitlements as they move about in the region. Most importantly, they need to ensure that non-nationals from other SADC member states are not precluded from participating in national social security schemes on unfair discriminatory grounds. This will be in the spirit of Article 6(2) of the SADC Treaty which prohibits member states from discriminating against any person on the basis of gender, religion, political views, race, ethnic origin, culture or disability.

4.2.3 Charter of Fundamental Social Rights in the Southern African Development Community (2003)

4.2.3.1 Objectives of the Charter of Fundamental Social Rights in the Southern African Development Community

The Charter of Fundamental Social Rights in the SADC, which was adopted in August 2013, seeks to achieve, amongst other objectives, to:

- 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;
- promote the establishment and harmonisation of social security schemes; and
- harmonise regulations relating to health and safety standards in work places across the SADC region.\(^\text{12}\)

The Charter of Fundamental Social Rights in the SADC obliges member states to provide an enabling environment so as to ensure that its objective are realised.\(^\text{13}\) Furthermore, it requires member states to:

- 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), the minimum age of entry into employment (No. 138), and other relevant instruments;
- take appropriate action to ratify and implement relevant ILO instruments and, as a priority, the core ILO Conventions; and
- establish regional mechanisms to assist member states in complying with the ILO reporting system.\(^\text{14}\)

\(^{12}\) Article 1(1) of the Charter of Fundamental Social Rights in the SADC.

\(^{13}\) Article 1(2) of the Charter of Fundamental Social Rights in the SADC.

\(^{14}\) Article 5 of the Charter of Fundamental Social Rights in the SADC.
4.2.3.2 Equal protection for men and women

The Charter of Fundamental Social Rights in the SADC embodies a variety of basic rights and enjoins member states to observe such rights. It makes provision for equal protection for men and women. Member states are directed to create an enabling environment to ensure equality of treatment between men and women, particularly regarding access to employment, remuneration, working conditions, social protection, education, vocational training, and career development. In addition, the Charter of Fundamental Social Rights in the SADC requires member states to ensure that reasonable measures are put in place to empower men and women to reconcile their occupational and family obligations.

4.2.3.3 Children and young people

Children and young people are, in addition to women, afforded protection by the Charter of Fundamental Social Rights in the SADC. The Charter calls upon member states to 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. The purpose of such an exercise is to safeguard the following:

(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 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.

15 Article 3 of the Charter of Fundamental Social Rights in the SADC.
16 Article 6 of the Charter of Fundamental Social Rights in the SADC.
17 Ibid.
18 Ibid.
19 Article 7 of the Charter of Fundamental Social Rights in the SADC.
20 Ibid.
4.2.3.4 Elderly persons

Member countries are obliged to create an empowering setting so as to guarantee 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 apply to all workers.\(^{21}\)

4.2.3.5 Persons with disabilities

Member states are required to create an enabling environment so as to ensure that persons with disabilities are entitled to additional concrete measures aimed at improving their social and professional integration.\(^{22}\) The aforementioned measures must relate to, taking the capacities of the beneficiaries into account, vocational training, accessibility and mobility, means of transport and housing, and appropriate organisation of work and workplaces to take into account their needs.\(^{23}\)

4.2.3.6 Social protection

Article 10 of the Charter of Fundamental Social Rights in the SADC provides that:

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. 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.

4.2.3.7 Safety and health at work

The Charter of Fundamental Social Rights in the SADC imposes a number of health- and safety-related directives. Member states are directed to create an enabling environment so as to ensure that:

- every worker has the right to health and safety at work and to a healthy and safe environment that sustains human development, as well as access to adequate shelter;\(^{24}\)
- employers in the member states provide safe workplaces that do not pose a risk to the health of employers or any other persons exposed;\(^{25}\)

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\(^{21}\) Article 8 of the Charter of Fundamental Social Rights in the SADC.

\(^{22}\) Article 9(1) of the Charter of Fundamental Social Rights in the SADC.

\(^{23}\) Article 9(2) of the Charter of Fundamental Social Rights in the SADC.

\(^{24}\) Article 12(a) of the Charter of Fundamental Social Rights in the SADC.

\(^{25}\) Article 12(b) of the Charter of Fundamental Social Rights in the SADC.
• 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;26
• 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;27 and
• 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.28

4.2.4 Code on Social Security in the Southern African Development Community (2007)

4.2.4.1 Aims of the Code on Social Security in the Southern African Development Community

The Code on Social Security in the SADC, which was approved in June 2007, is aimed at providing the SADC 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 region.29 In addition, it aspires to provide member states with a set of general principles and minimum standards of social protection, as well as a framework for monitoring of social protection at national and regional levels, and an effective instrument for the coordination, convergence and harmonisation of social security systems in the region.30

4.2.4.2 Right to social security

The Code on Social Security in the SADC extends a right to social security (both social assistance31 and social insurance32) to every person in the SADC region.33 In accordance with the Code on Social Security in the SADC, the concept ‘social security’ refers to public and private, or mixed public and private, measures designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, invalidity, old age and death. The main objectives of social security are: (a) to maintain income, (b) to provide healthcare, and (c) to provide benefits to families.34 From a conceptual point of view, the Code on Social Security in the

26 Article 12(f) of the Charter of Fundamental Social Rights in the SADC.
27 Article 12(g) of the Charter of Fundamental Social Rights in the SADC.
28 Article 12(h) of the Charter of Fundamental Social Rights in the SADC.
29 Article 3 of the Code on Social Security in the SADC.
30 Ibid.
31 Article 6 of the Code on Social Security in the SADC.
32 Article 5 of the Code on Social Security in the SADC.
33 Article 4(1) of the Code on Social Security in the SADC.
34 Article 1(5) of the Code on Social Security in the SADC.
SADC asserts that its definition of social security includes *social insurance*, *social assistance* and *social allowances*.\(^{35}\) However, it should be mentioned that the Code on Social Security in the SADC, in addition to social security, does make reference to ‘social protection’. Social protection, according to the Code on Social Security in the SADC, “encompasses social security and social services, as well as developmental social welfare. Social protection, thus, refers to public and private, or to mixed public and private, measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs. The objective is to enhance human welfare.”\(^{36}\) Viewed from a conceptual perspective, or so the Code on Social Security in the SADC points out, social protection (a) includes all forms of social security; and (b) covers social services and developmental social welfare, and is not restricted to protection against income insecurity caused by particular risks.\(^{37}\) For that reason, social protection is broader than social security.\(^{38}\)

### 4.2.4.3 Establishment and maintenance of social security systems

The Code on Social Security in the SADC requires member states to establish and maintain systems of social security.\(^{39}\) In addition, it obliges member states to maintain their social security systems at a satisfactory level to that required for the ratification of the International Labour Organisation (ILO) Social Security (Minimum Standards) Convention 102 of 1952,\(^{40}\) and progressively raise the social security systems to a higher level, which could include achieving the meaningful coverage of everyone under the system.\(^{41}\) The latter obligation is subject to the realities and level of development in the member state.\(^{42}\) This is in the spirit of the principle of variable geometry which is embraced by the Code on Social Security in the SADC, where a group of member states could move faster on certain activities and the experiences learned replicated in other member states.\(^{43}\)

### 4.2.4.4 Contingencies covered

The Code on Social Security in the SADC covers a variety of contingencies which could be found in the ILO Social Security (Minimum Standards) Convention 102 of 1952, including health,\(^{44}\) maternity and paternity,\(^{45}\) death and survivors,\(^{46}\) retirement and old

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35 Article 1(5) of the Code on Social Security in the SADC.
36 Article 1(4) of the Code on Social Security in the SADC.
37 Ibid.
38 Ibid.
39 Article 4(2) of the Code on Social Security in the SADC.
40 Article 4(3) of the Code on Social Security in the SADC.
41 Article 4(4) of the Code on Social Security in the SADC.
42 Ibid.
43 Article 2(2) of the Code on Social Security in the SADC.
44 Article 7 of the Code on Social Security in the SADC.
45 Article 8 of the Code on Social Security in the SADC.
46 Article 9 of the Code on Social Security in the SADC.
age, unemployment and under-employment, and occupational injuries and diseases. It is notable that the Code endeavoured to cover the aforementioned risks in a manner which is sensitive to the social, economic and political realities in the SADC region. For example, the Code requires member states to, when dealing with the issue of health, address HIV/AIDS. Furthermore, it obliges member states to adopt proactive policies and measures towards inclusive economic and social development as to eradicate poverty, and to integrate the formal and non-formal aspects of the economy. In addition, the Code makes specific mention of specific risks that are common in the region, such as political unrests and natural disasters. Article 18(1) states that member states must make sure that their social security systems provide protection against special and collective risks, including political conflict and natural disasters.

4.2.4.5 Protection of vulnerable groups and categories of persons

The Code on Social Security in the SADC makes provision for the protection of vulnerable groups and categories of persons such as:

- persons with disabilities: The Code on Social Security in the SADC encourages member states to create an enabling environment that would make sure that persons with disabilities are entitled to social security. In addition, they are required to make sure that their social security instruments guarantee equality of access and coverage to persons with disabilities. Furthermore, the Code on Social Security in the SADC obliges member states to promote social and professional integration of persons with disabilities.

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47 Article 10 of the Code on Social Security in the SADC.
48 Article 11 of the Code on Social Security in the SADC.
49 Article 12 of the Code on Social Security in the SADC.
50 Article 7(8) of the Code on Social Security in the SADC.
51 Article 11(2) of the Code on Social Security in the SADC.
52 Article 11(3) of the Code on Social Security in the SADC.
54 The SADC is susceptible to natural disasters such as floods and drought.
55 Article 14(1) of the Code on Social Security in the SADC.
56 Article 14(2) of the Code on Social Security in the SADC.
57 Article 14(3) of the Code on Social Security in the SADC.
women: The Code requires member states to ensure that there is equal coverage of and access to social security – including equality in receiving social security benefits – between men and women.\textsuperscript{58} They are further compelled to ensure that social security legislation in their respective countries is not gender-discriminatory and is aligned with the 1997 SADC Declaration on Gender and Development, and the 1999 Plan of Action for Gender in SADC.\textsuperscript{59} Member states should support gender sensitisation in the social security system, inclusive of addressing women’s special needs and circumstances, and introducing appropriate affirmative action programmes.\textsuperscript{60} They must also abolish all discriminatory laws, customs and practices in their respective social security systems; introduce programmes and strategies for the eradication of poverty and the economic empowerment of women; and adopt and promote policies that ensure that workers, particularly female workers, are able to balance occupational and family obligations.\textsuperscript{61}

children and young persons:\textsuperscript{62} In relation to children and young persons, member states are required to recognise and acknowledge the UN Convention on the Rights of the Child as the main source of children’s rights; prevent child labour and child abuse, in accordance with United Nations and ILO Conventions; ensure that sufficient protection is extended to children who are lawfully employed; provide that the minimum employment age shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education; provide that persons who are still subject to compulsory education should not be employed in such work as would deprive them of the full benefit of their education; ensure that there is proper and adequate nutrition for children; adopt measures that ensure protection against mental, physical and emotional abuse of youth and children; provide adequate support to orphans and child-headed households, especially in relation to inheritance and family integration; and put in place effective measures and provision for adequate foster-care and adoption arrangements.

family: The concept of ‘family’, as found in social security instruments, is often criticised for being limited in the sense that it does not seem to take the African notion of family, as found in the region, into consideration. The concept of ‘family’ in its narrowest sense includes the father, the mother, and the children.\textsuperscript{63} This Eurocentric conception of a family\textsuperscript{64} is discernible in certain social security laws.

\textsuperscript{58} Article 13(1) of the Code on Social Security in the SADC.
\textsuperscript{59} Article 13(2) of the Code on Social Security in the SADC.
\textsuperscript{60} Article 13(3) of the Code on Social Security in the SADC.
\textsuperscript{61} Article 13(4)-(6) of the Code on Social Security in the SADC.
\textsuperscript{62} Article 16 of the Code on Social Security in the SADC.
of SADC member states.\textsuperscript{65} In an African traditional society, ‘family’ is much broader than that: “It comprises a whole group of persons: The head of the family with his wives and his children and grandchildren, and also his brothers and his sisters with their wives and children, his nephews and nieces; in a word, all those persons who descend from a common ancestor.”\textsuperscript{66} Owing to the foregoing, the word ‘extended family’ is frequently used instead of ‘family’ when referring to an African family.\textsuperscript{67} With foregoing pronouncements in mind, it is pleasing to note that the Code on Social Security in the SADC directs member states to ensure that the family, as a fundamental unit of society, is appropriately protected.\textsuperscript{68} In addition, it compels member states to guarantee that social security systems and programmes reflect the reality and importance of the extended family.\textsuperscript{69} Member countries are ordered to recognise and strengthen the extended family support system;\textsuperscript{70} and

- migrants, foreign workers and refugees: The Code on Social Security in the SADC calls upon member states to strive towards the free movement of persons and the progressive reduction of immigration controls.\textsuperscript{71} In addition, it requires member states to extend access to social security to immigrants legally employed in their territories through social security coordination principles which should be contained in both national laws of member states and in bi- or multilateral arrangements between member states. The aforesaid principles are as follows: Migrant workers should be able to participate in the social security schemes of the host country; there should be an aggregation of insurance periods and the maintenance of acquired rights and benefits between similar schemes in different member states; migrant workers should enjoy equal treatment with citizens within the social security system of the host country; member states should ensure the facilitation of exportability of benefits, including the payment of benefits in the host country; member states should identify the applicable law for purposes of the implementation of the above principles; and member states should ensure coverage of self-employed migrant workers on the same basis as employed migrants.\textsuperscript{72} Provision is also made for illegal residents, undocumented migrants, and refugees. Illegal residents and undocumented migrants should be

\begin{itemize}
\item \textsuperscript{65} See, for example, the South African Unemployment Insurance Act 63 of 2001.
\item \textsuperscript{67} See, for example, Ijere, N.O., 1967. Indigenous African social security as a basis for future planning – the case of Nigeria. 2 African Social Security Series 11. 27. Also see Segre, S., 1975. Family stability, social classes and values in traditional and industrial societies. 37 Journal of Marriage and the Family. 431-432.
\item \textsuperscript{68} Article 15(1) of the Code on Social Security in the SADC.
\item \textsuperscript{69} Article 15(2) of the Code on Social Security in the SADC.
\item \textsuperscript{70} Ibid.
\item \textsuperscript{72} Article 17(2) of the Code on Social Security in the SADC.
\end{itemize}
provided with basic minimum protection and should enjoy coverage according to local laws.\textsuperscript{73} What the refugees is concerned, the Code on Social Security in the SADC directs that social protection should be extended to this category of persons in accordance with the provisions of international and regional instruments.\textsuperscript{74}

### 4.2.4.6 Additional principled issues essential for social security provisioning

The Code on Social Security in the SADC embraces additional principled issues essential for social security provisioning, such as encouraging member states to ensure that their social security systems adequately incorporate preventative and (re)integrative measures. Furthermore, that such systems are not primarily compensation-oriented,\textsuperscript{75} and that proper administrative and regulatory frameworks are established.\textsuperscript{76}

### 4.2.5 Code on HIV/AIDS and Employment in the Southern African Development Community (1997)

#### 4.2.5.1 Aims of the Code on HIV/AIDS and Employment in the Southern African Development Community

The Code on HIV/AIDS and Employment in the SADC (1997) is not a binding instrument. Its provisions apply strictly to workplaces. Thus, the Code is clear in its general statement that its provisions cannot be interpreted as applicable to other fields of law, such as immigration laws. The Code strives toward ensuring that there is no discrimination between individuals living with HIV/AIDS and those without, as well as between HIV/AIDS and other analogous health or medical conditions. In addition, the Code seeks to ensure that SADC member states develop tripartite national codes on HIV/AIDS and employment that shall be mirrored in national laws. Consequently, the Code provides direction and guiding principles for the development of the aforementioned national codes on HIV/AIDS and employment. What is notable about the Code is that it embraces the fundamental principles of human rights and patient rights, and that it strives toward striking a balance in preserving the rights of all parties involved or affected. The aforesaid parties include persons living with and without HIV/AIDS, employers, employees, as well as the state and others.

#### 4.2.5.2 Scope of coverage

The Code applies to all employees and prospective employees, all workplaces and contracts of employment, and the specific policy components provided in the Code, as is mentioned below.

\textsuperscript{73} Article 17(3) of the Code on Social Security in the SADC.

\textsuperscript{74} Article 17(4) of the Code on Social Security in the SADC.

\textsuperscript{75} Article 19(1) of the Code on Social Security in the SADC.

\textsuperscript{76} Article 21(1) of the Code on Social Security in the SADC.
4.2.5.3 Policy development and implementation: A dynamic process

In appreciation of the fact that policy development and implementation are dynamic procedures, the Code requires that they be:

- communicated to all concerned;
- regularly reviewed in the light of epidemiological and scientific information; and
- monitored for successful implementation and evaluated for effectiveness.

4.2.5.4 Specific policy components

The Code makes provision for the following policy components: Access to job opportunities, workplace testing, confidentiality, job placement, job status, job security, occupational benefits, training, risk reduction, first aid, workers compensation, education and awareness, prevention programmes, managing illness, protection against victimisation, grievance handling, information, monitoring and review.77

4.2.6 Code of Conduct on Child Labour (2000)

4.2.6.1 Member states

The Code of Conduct on Child Labour provides guidelines to member states on the subject of child labour. It urges member states to ratify key international instruments pertaining to the elimination of child labour.78 These instruments include the following:

- ILO Minimum Age Convention 138 of 1973 and Recommendation 146;
- ILO Convention 182 of 1999 on the Elimination of the Worst Forms of Child Labour;
- United Nations Convention on the Rights of the Child (1989); and
- African Charter on the Rights and Welfare of the Child.79

Those member states that have ratified pertinent instruments are encouraged to implement their provisions. It should be noted that all SADC member states have ratified the ILO Conventions 138 of 1973 and 182 of 1999. In addition, member states are required to develop a clear national policy on child labour, and such policy should encompass the following elements:

- a delineation of the national goals with regard to the issue of child labour;
- an account of the nature and the setting of the problem;

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77 Articles 1-12 of the Code on HIV/AIDS and Employment in the SADC.
78 Article 2 of the Code of Conduct on Child Labour.
79 Ibid.
- an explanation of the strategic programme areas and type of intervention used; and
- the designation of the institutional role players to be involved.\textsuperscript{80}

In their quest to implement national policy, member states are directed to design comprehensive strategies and programmes of actions. These strategies and programmes must be time bound and include the following fundamental features pertinent to social security provisioning:

- collection of information for the development of priorities and monitoring progress;
- legislation and enforcement;
- education and training;
- health, welfare and social protection;
- advocacy and public awareness-raising and social mobilisation; and
- poverty alleviation and income generation.\textsuperscript{81}

4.2.6.2 Employers

Employers have a role to play in the efforts to eradicate child labour. This important fact is also appreciated in the Code of Conduct on Child Labour. Article 5(i) of the Code of Conduct on Child Labour obliges manufacturers to collaborate with governments in the identification and monitoring of child labour in industries. It points further in Article 5(ii) that “[e]mployers’ Organisations should assist companies in formulating policies on Child Labour and provide technical advice and support in implementation of these policies.”

4.2.6.3 Workers

The function of workers in endeavours to eradicate child labour is, as foreseen by Article 6 of the Code of Conduct on Child Labour, three-pronged. Firstly, workers are required to launch awareness campaigns highlighting the extent of the problem amongst a variety of people and institutions. Secondly, workers are obliged to set provision of micro-credit schemes to poor families. The rationale behind this directive is to try and remove young children from work. In the third place, workers are requested to include clauses in collective bargaining agreements which prohibit child labour.

4.2.7 Protocol on Health in the Southern African Development Community (1999)

4.2.7.1 Purpose of the Protocol on Health

The Protocol on Health in the SADC was signed by SADC member states on 18 August 1999. It enjoins member states to cooperate in addressing health problems and facing

\textsuperscript{80} Article 3 of the Code of Conduct on Child Labour.

\textsuperscript{81} Article 4 of the Code of Conduct on Child Labour.
challenges through effective regional collaboration and mutual support.\textsuperscript{82} According to the objectives outlined in Article 3 of the Protocol on Health in the SADC, the goals are to:

- identify, promote, coordinate and support those activities that have the potential to improve the health of the population within the SADC region;
- coordinate regional efforts on epidemic preparedness, mapping, prevention, control and, where possible, the eradication of communicable and non-communicable diseases;
- promote and coordinate the development, education, training and effective utilisation of health personnel and facilities;
- facilitate the establishment of a mechanism for the referral of patients for tertiary care;
- foster cooperation and coordination in the area of health with international organisations and cooperating partners;
- promote and coordinate laboratory services in the area of health;
- develop common strategies to address the health needs of women, children and other vulnerable groups;
- progressively achieve equivalence, harmonisation and standardisation in the provision of health services in the SADC region; and
- collaborate and cooperate with other relevant SADC sectors.

4.2.7.2 Guiding principles

Article 2 of the Protocol on Health in the SADC provides a list of principles that should guide its implementation. These principles include:

- striving for the formulation of regional health policies and strategies which are in accord with the principles contained in Article 4 of the Treaty;
- promoting, coordinating and supporting individual and collective efforts of state parties to attain an acceptable standard of health for all their people;
- a commitment to the Primary Health Care approach;
- promoting healthcare for all through better access to health services; and
- ensuring equitable and broad participation for mutual benefit in regional cooperation in health.

4.2.7.3 Institutional mechanisms

The Protocol on Health in the SADC makes provision for the establishment of institutional mechanisms by member states within the health sector to ensure its effective implementation.\textsuperscript{83} The aforesaid institutional mechanisms are as follows:

\textsuperscript{82} Article 3 of the Protocol on Health in the SADC.
\textsuperscript{83} Article 4(1) of the Protocol on Health in the SADC.
the **Health Sector Coordinating Unit**: This is the executing organ of the health sector, and it is headed by a director who shall be appointed by the member state responsible for coordinating the health sector. The director shall be assisted by a complement of qualified and experienced personnel in the relevant fields. The Health Sector Coordinating Unit’s functions include advising member states on matters pertaining to the development of the health sector, organising and managing all policy and technical meetings of the health sector, preparing annual reports of the health sector, drafting terms of reference for consultancies and studies as well as managing consultants hired by the health sector, mobilising financial and technical resources for the implementation of the programmes and projects of the health sector, and carrying out any other activity aimed at the promotion of the work of the health sector.

the **Health Sector Committee of Minister**: This Committee consists of ministers in charge of health issues in member states, and it is required to meet at least once a year under the chairpersonship of the member state coordinating the health sector. Its functions include providing guidance and coordination of policies, programmes and projects for the health sector, advising Council on policies to be addressed by the health sector, liaising with the secretariat on matters pertaining to the health sector, and establishing sub-committees and other institutional mechanisms for the work of the health sector.

the **Health Sector Committee of Senior Officials**: This comprises the permanent secretaries or persons of equivalent rank responsible for health in member states. The Health Sector Committee of Senior Officials is required to meet at least once a year under the chairpersonship of the member state coordinating the sector. Its functions include advising the Health Sector Committee of Minister on issues, proposals and projects to be presented to the Council for consideration and approval, reviewing the Health Sector Programme of Action to ensure that it is consistent with the objectives of the health sector and those of the SADC region, and reporting to the Health Sector Committee of Minister on matters relating to the implementation of the provisions contained in the Protocol on Health in the SADC; and

the **Technical Sub-Committees**: This institutional mechanism comprises technical sub-committees established to assist in the technical work of the health sector. The functions of the sub-committees are determined by the Health Sector Committee.

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84 Article 4(2) of the Protocol on Health in the SADC.
85 Article 4(3) of the Protocol on Health in the SADC.
86 Article 4(4) of the Protocol on Health in the SADC.
87 Article 4(5) of the Protocol on Health in the SADC.
88 Article 4(6)(e) of the Protocol on Health in the SADC.
89 Article 4(6) of the Protocol on Health in the SADC.
90 Article 4(7) of the Protocol on Health in the SADC.
91 Article 4(8) of the Protocol on Health in the SADC.
92 Article 4(10) of the Protocol on Health in the SADC.
93 Article 4(11) of the Protocol on Health in the SADC.
of Minister. The Health Sector Committee of Minister has the power to delegate this function to the Health Sector Committee of Senior Officials.

4.2.7.4 Other pertinent provisions

Other provisions contained in the Protocol on Health in the SADC concerns, amongst others, financial provisions, health information systems, health promotion and education, communicable disease control, malaria control, tuberculosis control, non-communicable disease control, chronic diseases and conditions of older persons, disabilities, reproductive health, childhood and adolescent health, health human resources development, healthcare resources, traditional health practitioners, prevention and treatment of trauma, mental health, environmental health, occupational health, emergency health services and disaster management, health laboratory services, health technology and equipment, referral systems and pharmaceuticals.

94 Article 4(12) of the Protocol on Health in the SADC.
95 Ibid.
96 Article 5 of the Protocol on Health in the SADC.
97 Article 6 of the Protocol on Health in the SADC.
98 Article 7 of the Protocol on Health in the SADC.
99 Article 8 of the Protocol on Health in the SADC.
100 Article 9 of the Protocol on Health in the SADC.
101 Article 11 of the Protocol on Health in the SADC.
102 Article 12 of the Protocol on Health in the SADC.
103 Article 13 of the Protocol on Health in the SADC.
104 Article 14 of the Protocol on Health in the SADC.
105 Article 15 of the Protocol on Health in the SADC.
106 Article 16 of the Protocol on Health in the SADC.
107 Article 17 of the Protocol on Health in the SADC.
108 Article 18 of the Protocol on Health in the SADC.
109 Article 19 of the Protocol on Health in the SADC.
110 Article 20 of the Protocol on Health in the SADC.
111 Article 21 of the Protocol on Health in the SADC.
112 Article 22 of the Protocol on Health in the SADC.
113 Article 23 of the Protocol on Health in the SADC.
114 Article 24 of the Protocol on Health in the SADC.
115 Article 25 of the Protocol on Health in the SADC.
116 Article 26 of the Protocol on Health in the SADC.
117 Article 27 of the Protocol on Health in the SADC.
118 Article 28 of the Protocol on Health in the SADC.
119 Article 29 of the Protocol on Health in the SADC.
4.2.8 Draft Protocol on Employment and Labour (2013)

The Draft Protocol on Employment and Labour was approved by the Council of Ministers and signed by the Summit of Heads of State and Government in August 2014. It will be implemented after ratification by two thirds of the SADC member states.

4.2.8.1 Purpose of the Draft Protocol on Employment and Labour

Some of the objectives of the Protocol are to provide member states with strategic direction and guidelines for the harmonisation of employment and labour, as well as social security, policies and legislation; enhance cohesion, encourage collaboration amongst member states and promote common approaches to labour market challenges for the attainment of sustainable development; ensure the achievement of minimum labour standards, social protection and creating sustainable social dialogue; promote the development of employment and labour, as well as social security, policies, measures and practices, which facilitate labour mobility, enhance industrial harmony and increase sustainable productivity and decent work in member states; create a legal and policy framework for labour migration within the SADC through harmonised labour and social security legislation, in the context of ILO Conventions on migrant workers and AU policy documents; 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 support the establishment of inclusive social security schemes in member states providing income maintenance and minimum income protection, and facilitating labour market integration.\(^{120}\)

4.2.8.2 Guiding principles of the Draft Protocol on Employment and Labour

General principles guiding member states in the implementation of the Protocol are recognition and respect for the equality of all state parties; respect for fundamental and basic human rights enshrined in international, regional and national legal instruments; 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 recognition of the challenge of unemployment and underemployment, and the need to promote decent employment as a priority in the SADC region.\(^{121}\) Its specific guiding principles include deciding all matters related to its implementation by consensus; cooperation within the framework of strengthened and institutionalised national and regional tripartite and broader social dialogue structures; variable geometry; and multi-actor responsibility.\(^{122}\)

4.2.8.3 Rights guaranteed by the Draft Protocol on Employment and Labour

The Protocol guarantees social protection and related rights. Article 11 on the right to social protection states as follows:

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120 Article 3 of the Protocol on Employment and Labour.
121 Article 2(1) of the Protocol on Employment and Labour.
122 Article 2(2) of the Protocol on Employment and Labour.
(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, amongst 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 re-integrative measures, including measures aimed at integrating and re-integrating workers into the labour force;

(d) encompasses coordinated 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.

Other social protection rights guaranteed in the Protocol include occupational safety and health, healthcare, protection during retirement and for the elderly, protection in case of unemployment and/or under-employment, protection during maternity and paternity, support for people with disabilities, protection of children and young

123 Article 12 of the Protocol on Employment and Labour.
125 Article 14 of the Protocol on Employment and Labour.
126 Article 15 of the Protocol on Employment and Labour.
127 Article 16 of the Protocol on Employment and Labour.
128 Article 17 of the Protocol on Employment and Labour.
people,\textsuperscript{129} protection of migrant workers,\textsuperscript{130} and the protection of informal sector and rural workers.\textsuperscript{131}

\subsection*{4.2.8.4 Institutional mechanisms}

The Draft Protocol lists the Committee of Ministers and Social Partners responsible for Employment and Labour Affairs and other relevant ministries; the Committee of Senior Officials and Social Partners responsible for Employment and Labour Affairs and other relevant ministries; and the SADC Secretariat and SADC National Committees as the institutions responsible for its implementation.\textsuperscript{132}

- The Committee of Ministers and Social Partners responsible for Employment and Labour Affairs and other relevant ministries are to oversee and monitor the implementation of this Protocol, and ensure that this Protocol is implemented; 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; establish any permanent or ad hoc sub-committees which may be required for the implementation of the Protocol; provide regular updates to the Council on the status of implementation of this Protocol; and provide advice to the Council on policy issues relating to the employment and labour sector.

- The Committee of Senior Officials and Social Partners responsible for the employment and labour sector is to 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 the Protocol, in particular the status of implementation of the Protocol; the development and harmonisation of policies at national and regional levels; and the establishment of technical sub-committees deemed necessary for the implementation of the Protocol. It must also translate policy decisions of the Committee of Ministers into specific projects and programmes at national and regional levels; formulate and recommend regional programmes that are consistent with the objectives of this Protocol; provide policy guidance and supervise the work of the Secretariat in respect of the implementation of the provisions of this Protocol; clear the documents prepared by the Secretariat for submission to the Committee of Ministers and Social Partners responsible for Employment and Labour Affairs; enable/facilitate the Secretariat to make representations/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 closely liaise with both the Committee of Ministers and Social Partners responsible for employment and labour, as well as other relevant ministries and the Secretariat.

\begin{itemize}
\item Article 18 of the Protocol on Employment and Labour.
\item Article 19 of the Protocol on Employment and Labour.
\item Article 20 of the Protocol on Employment and Labour.
\item Article 24 of the Protocol on Employment and Labour.
\end{itemize}
- The SADC Secretariat is to be responsible for facilitating and coordinating the implementation of the Protocol in accordance with Article 14 of the Treaty, and must facilitate and monitor reporting by state parties on the implementation of the Protocol; coordinate the implementation and application of the Protocol; identify areas of cooperation and research needs and other priorities connected with the application of the Protocol; and provide administrative and technical support to the Committee of Ministers and Social Partners and the Committee of Senior Officials and Social Partners.

- SADC National Committees created in each state party must 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. In the light of Article 16A of the Treaty, this Committee will 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 for creating sub-committees on employment and labour, composed of representatives of governments, workers and employers organisations.

The Protocol was adopted due to SADC member states’ desire to realise the aspirations of regional cooperation and integration in the employment and labour sector. It is hoped that the Protocol will, through employment and the cooperation of labour sectors, guide employment creation, help reduce and ultimately eradicate poverty, and help facilitate labour migration and the harmonisation of labour and social security legislation.133

4.3 APPLICATION OF KEY INTERNATIONAL AND REGIONAL INSTRUMENTS IN SADC NATIONAL SYSTEMS

International social security instruments have or should have an impact on the development of social security in SADC countries due to various reasons. In the first place, SADC countries are members of various international organisations and/or parties to international instruments that contain provisions relating to social security. These countries are, therefore, bound by the obligations arising from these instruments and must implement these standards in their domestic social security systems.

Furthermore, there are similarities in the formulation of the social security rights in some of the SADC national constitutions and the provisions of some international instruments.134 This implies that even where a country is not bound by the obligations arising from an international instrument, similarities in the formulation of the rights would require the consideration of such instruments in the interpretation of social security in the constitutions. The jurisprudence of the institutions charged with the

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133 Preamble of the Protocol on Employment and Labour.
134 An example is the similarity between the formulation of the right of access to social security in Section 27 of the South African Constitution and the right to social security in Article 9 of the International Covenant on Economic, Social and Cultural Rights.
monitoring and enforcement of these international instruments which provide guidelines on the nature and content of the right in these instruments, is helpful in interpreting the rights in the constitutions. Examples of these are the General Comments of the Committee on Economic, Social and Cultural Rights; the General Comments of the Committee on Civil and Political Rights; the guidelines of the African Commission on Human and Peoples’ Rights; and the judgments of the European Court of Human Rights. As the South African Constitutional Court has held:

[… ] public international law would include non-binding as well as binding law. They may both be used […] as tools of interpretation. International agreements and customary international law accordingly provide a framework within which [the Bill of Rights] can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission on Human Rights, and the European Court of Human Rights, and, in appropriate cases, reports of specialised agencies such as the International Labour Organisation, may provide guidance as to the correct interpretation of particular provisions of [the Bill of Rights].135

The provisions of international instruments relating to social security are in the form of standards, and act as benchmarks for the evaluation of domestic adjudication frameworks. SADC countries recognise the role of international standards in the development of national social security systems. This is indicated, for example, by the requirement in some SADC national constitutions for international standards to be taken into account in interpreting and giving effect to social security-related and other rights (such as in the case of the Constitutions of Angola, Malawi, South Africa and Zimbabwe); some Constitutions making international law part of national law (as in the case of Namibia); some Constitutions giving international law the force of domestic legislation (such as the case in Mozambique); and/or others promoting the dissemination of knowledge about international standards (such as the Constitution of the Democratic Republic of the Congo).

The Constitution of Angola states that constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, and international treaties on the subject ratified by the Republic of Angola. It also states that in any consideration by the Angolan courts of disputes concerning fundamental rights, the relevant international instruments must be applied, even if not invoked by the parties concerned.136


136 Article 26 of the Constitution of Angola.
The Constitution of the Democratic Republic of the Congo obliges civil and military courts and tribunals to apply all duly ratified international treaties (and the laws and regulatory measures), provided that they are in conformity with the laws as well as customary law, unless customary law is contrary to public order or morality.\footnote{Article 153 of the Constitution of the Democratic Republic of Congo.} In addition, the Constitution compels the state to ensure the dissemination and the teaching of the Constitution, the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights, as well as all duly ratified regional and international conventions relating to human rights and to international humanitarian law.\footnote{Article 45 of the Constitution of the Democratic Republic of Congo.}

The Constitution of Malawi provides that in interpreting its provisions, a court of law must have regard to current norms of public international law and comparable foreign case law (where applicable).\footnote{Article 11 of the Constitution of Malawi.} Any ratified international agreement forms part of the law of Malawi, if provided for in the Act of Parliament ratifying the agreement. International agreements entered into before the commencement of the Constitution that are binding on Malawi, form part of its law – unless Parliament subsequently provides otherwise or the agreement otherwise lapses. Customary international law is also applicable, except where it is inconsistent with the Constitution or an Act of Parliament.\footnote{Article 211 of the Constitution of Malawi.}

The Constitution of Namibia makes international law an integral part of Namibian law. Article 144 states that “unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”

The Constitution of South Africa requires that when interpreting fundamental rights, international law must be considered, while foreign law may be considered.\footnote{Section 39(1) of the Constitution of South Africa.} In addition, Section 233 of the Constitution of South Africa requires that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

The Constitution of Zimbabwe states that when interpreting Chapter 4 (Declaration of Rights), a court, tribunal, forum or body must take into account international law and all treaties and conventions to which Zimbabwe is a party.\footnote{Article 46(c) of the Constitution of Zimbabwe.} It further provides that when interpreting legislation, every court and tribunal must adopt a reasonable interpretation of the legislation that is consistent with customary international law applicable in Zimbabwe, in preference to an alternative interpretation that is inconsistent with that law.\footnote{Article 326(2) of the Constitution of Zimbabwe.} Every court and tribunal must also adopt a reasonable interpretation of legislation that is consistent with any international convention, treaty or agreement which is binding...
on Zimbabwe, in preference to an alternative interpretation that is inconsistent with that convention, treaty or agreement.\textsuperscript{144}

The Constitution of Mozambique grants international law the same effects as its domestic legislation. According to Article 18 of the Constitution, international law norms have the same force in the Mozambican legal order as national statutes.

Some SADC countries have adopted statutes in fulfilment of the countries’ international law obligations or in observance of international standards. Therefore, the provisions of such instruments are applied in these statutes. An example is Angola’s Decree No. 53/05 of 15 August 2005 – Legal Framework of Work Accidents and Occupational Diseases – which was adopted in observance of the principles enshrined in the ILO Social Security (Minimum Standards) Convention No. 102 of 1952.\textsuperscript{145}

These reveal that principles and standards in international social security instruments are being applied in SADC countries. The Committee of Experts on the Application of Conventions and Recommendations has stated that ILO Conventions, especially Convention 102, have had substantial influence on the development of social security in the various regions around the world. According to the Committee, many developing nations have embarked upon the road to social security due to the inspiration of ILO Conventions.\textsuperscript{146}

This means that ILO Conventions were applied when many of the social security systems of SADC countries were being established. This may explain why many SADC countries ratified the first-generation ILO Conventions shortly after their independence, such as the Workmen’s Compensation (Agriculture) Convention of 1921 (No. 12), ratified by eight countries;\textsuperscript{147} Workmen’s Compensation (Accidents) Convention of 1925 (No. 17), ratified by six countries;\textsuperscript{148} Equality of Treatment (Accident Compensation) Convention of 1925

\textsuperscript{144} Article 327(6) of the Constitution of Zimbabwe.

\textsuperscript{145} See Preamble of Angola’s Decree No. 53/05 of August 15 – Legal Framework of Work Accidents and Occupational Diseases.


Chapter 4: Southern African Development Community

At present, the application of international standards by SADC countries is hampered by the scope of ratification of these instruments; and by the domestication of ratified international instruments. As seen in Chapter 1, many SADC member states have ratified the United Nations Conventions. However, Chapter 2 reveals that SADC countries’ record of ratification of up-to-date ILO social security conventions is dismal. It is only DR Congo that has ratified both the Social Security (Minimum Standards) Convention 102 of 1952 and the Employment Injury Benefits Convention 121 of 1964; and only DR Congo and Madagascar have ratified the Equality of Treatment (Social Security) Convention 118 of 1962. All the other up-to-date ILO social security conventions are yet to be ratified. The failure of SADC countries to ratify many of the international social security instruments indicates that they may not be able to comply with their provisions; and non-ratification absolves them of any obligation to comply.

Even where countries have ratified an international instrument and are under an obligation to comply, compliance with the instrument is not necessarily guaranteed. As an example, although South Africa ratified the Convention on the Rights of the Child in 1995, the Committee on the Rights of the Child in its 2000 Concluding Observations found that the country was still to implement various provisions of the Convention. One of the concerns of the Committee was that the law, and in particular customary law, still did not fully reflect the principles and provisions of the Convention.151

The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEAR) has revealed some of the difficulties faced by countries in relation to the application and prospects of ratification of some ILO Conventions.152 The Committee remarked that:

Some governments state in general terms that there are difficulties involved in the ratification or application of Conventions Nos. 102 and 128. Many other governments

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report economic, financial or administrative difficulties. The economic crises and inflation, as well as the country’s level of development and the lack of human resources, were also mentioned as factors impeding the application of the Conventions. Some governments also referred to the difficulty of collecting the statistical information required by the instruments.153

This implies that countries in the SADC region will be able to ratify and apply international social security instruments as their level of development rises, making them more capable of addressing some of the difficulties they face in ratifying and/or applying these instruments. Recent initiatives by many of these countries in reforming their social security systems (such as Angola, Lesotho, Malawi, Mozambique, South Africa, Swaziland, Tanzania and Zimbabwe)154 confirm this assertion.

Despite non-ratification, standards laid down in international instruments are also being applied in SADC countries through technical cooperation by the ILO in the establishment and/or development of social security systems. Since ILO technical cooperation is based on principles laid down in its international standards, the social security legislation and practice in many of the SADC countries that have received such technical cooperation, are based on the principles of the relevant ILO instruments.155

Standards and principles in international social security instruments are also increasingly being applied through the jurisprudence of some of the SADC countries. This is especially the case in SADC national constitutions where there is a requirement for international standards to be taken into account in interpreting and giving effect to social security-related and other rights (such as in the case of the Constitutions of Angola, Malawi, South Africa and Zimbabwe). The South African Constitutional Court held in the case of Government of the Republic of South Africa and Others v Grootboom and Others that although the relevant international law can be a guide to interpretation, the weight to be attached to any particular principle or rule of international law will vary. However, it further held that where the relevant principle of international law binds South Africa, it may be directly applicable.156 The Court relied on international social security-related standards (in casu the International Covenant on Economic, Social and Cultural Rights and the General Comments of the United Nations Committee on Economic, Social and Cultural Rights) to delineate the nature and scope of the right of access to housing and of the state’s obligations in this regard, as is protected in Section 26 of the South African Constitution.


154 See Chapter 5 below on the social security systems of Southern African Development Community countries.


156 Government of the Republic of South Africa and Others v Grootboom and Others, 2000. 11 BCLR 1169 (CC).
4.4 CONCLUDING OBSERVATIONS

Provisions pertaining to social security can be found in both the hard and soft law of the SADC. The objectives of the pertinent instruments do, to a large degree, reflect the region’s desire to address the challenges it currently faces, such as social insecurity. The SADC’s social security and related instruments do not operate in isolation from the international (social security) instruments, particularly those of the ILO. This view is informed by the fact that SADC social security and related instruments often require member states to ratify and implement international (social security) instruments. To this end it could be said that the existing social security (related) instruments form an ideal foundation from which SADC member states can draw inspiration in setting up their national social protection floors. Notwithstanding the preceding observations, the SADC needs a legally binding instrument dealing specifically with social security to buttress the Code on Social Security in the SADC, which is non-binding. Such an instrument could take the form of a Protocol on Social Security within the SADC.

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157 See, for example, Article 5 of the Charter of Fundamental Social Rights in the SADC.
CHAPTER 5
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY COUNTRIES

5.1 INTRODUCTION

This chapter investigates the regulation of social security rights in each of the SADC countries. It, therefore, examines the way social security and rights ancillary to social security are protected in SADC national constitutions. It furthermore examines the organisation of social security in the various SADC national systems, the risks covered, and/or benefits provided.

5.2 MAIN NATIONAL LAWS REGULATING SOCIAL SECURITY IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY MEMBER STATES

5.2.1 The Republic of Angola

5.2.1.1 Guarantee of social security rights

The Constitution stipulates that Angola is a state based on the rule of law and the primacy of the Constitution and the law. The state will promote and defend the basic human rights and freedoms of individuals and members of organised social groups, and will ensure respect for them as well as guarantee their implementation through the legislative, executive and judicial powers, their organs and institutions, and on the part of all individuals and corporate bodies.¹

The Constitution is supreme, as Article 6 states:

1. The Constitution shall be the supreme law of the Republic of Angola.
2. The state shall be subject to the Constitution and shall be based on the rule of law, respecting the law and ensuring that the law is respected.
3. Laws, treaties and other acts of the state, local government bodies and public bodies in general, shall only be valid if they conform to the Constitution.

¹ Article 2 of the Constitution of Angola of 2010.
Some of the fundamental tasks of the state are to:

- ensure fundamental rights, freedoms and guarantees;
- gradually create the necessary conditions required to effectively implement the economic, social and cultural rights of citizens;
- promote the well-being, social solidarity and improved quality of life for the people of Angola, specifically amongst the most deprived groups of the population;
- promote the eradication of poverty;
- promote policies that will make primary healthcare universal and free;
- promote policies that will ensure universal access to compulsory free education under the terms defined by law;
- promote equal rights and opportunities between Angolans, regardless of origin, race, party affiliations, sex, colour, age, or any other form of discrimination;
- make strategic, large-scale, permanent investments in human capital, with particular emphasis on the full development of children and young people, as well as in education, healthcare, the primary and secondary economy, and other sectors that structure self-sustainable development; and
- promote equality between men and women.

Social protection is one of the rights accorded in Title II (fundamental rights and duties). Article 77 on health and social protection provides as follows:

1. The state shall promote and guarantee the measures needed to ensure the universal right to medical and healthcare, as well as the right to child care and maternity care, care in illness, disability, old age, and in situations in which they are unable to work, in accordance with the law.

2. In order to guarantee the right to medical and healthcare, the state shall be charged with:
   
   a. developing and ensuring an operational health service throughout national territory;
   b. regulating the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis; and
   c. encouraging the development of medical and surgical training and research into medicine and healthcare.

3. Private and cooperative initiatives in the spheres of healthcare, welfare and social security shall be overseen by the state and exercised under the conditions prescribed by law.

In addition to social security, the right to housing and quality of life is protected. According to Article 85, every citizen shall have the right to housing and quality of life.
The rights, freedoms and guarantees enshrined in the Constitution are to be enjoyed by everyone.\(^2\) Angolan citizens who are abroad also enjoy the rights, freedoms and guarantees, and the protection of the state. Foreigners and stateless persons also enjoy fundamental rights, freedoms and guarantees, and the protection of the state.\(^3\) However, they are forbidden from holding office in bodies that exercise sovereign power; electoral rights, under the terms of the law; founding or serving in political parties; entitlements to participation in politics, as stipulated by law; access to a diplomatic career; entry into the armed forces, the national police force, and the intelligence and security organisations; direct state administrative functions, under the terms of the law; and any other rights and duties reserved exclusively for Angolan citizens under the Constitution and the law. Fundamental rights not conferred on foreigners may be granted to citizens of regional or cultural communities to which Angola may belong or be associated with, through international conventions and on the basis of reciprocity, with the exception of the right to vote and stand for election to bodies that exercise sovereign power.\(^4\)

The fundamental rights established in the Constitution do not exclude others contained in the laws and applicable rules of international law.\(^5\) The constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on the Rights of Man and Peoples, and international treaties ratified by Angola. These international instruments must be applied by Angolan courts in the consideration of disputes concerning fundamental rights, even where they have not been relied on by the parties concerned. In addition, the constitutional principles in Title II apply to the rights, freedoms and guarantees, and to fundamental rights of a similar nature that are established in the Constitution or are enshrined in law or international conventions.\(^6\) The principles are directly applicable to, and binding upon, all public and private entities.\(^7\) The state is obliged to adopt legislative initiatives and other appropriate measures to ensure the gradual and effective realisation of economic, social and cultural rights, in accordance with the available resources.\(^8\)

### 5.2.1.2 Guarantee of rights ancillary to social security

Rights that have a bearing on social security are also protected. These include the right (principle) of equality\(^9\) and the right of access to law and effective judicial protection.\(^10\) In terms of the right of equality in Article 23, everyone is equal under the Constitution

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and by law. No one can be discriminated against, privileged, deprived of any right, or exempted from any duty on the basis of ancestry, sex, race, ethnicity, colour, disability, language, place of birth, religion, political, ideological or philosophical beliefs, level of education, or economic, social or professional status.

Article 29 on the right of access to law and effective judicial protection states:

(1) Everyone shall be ensured access to the law and the courts in order to defend their legally protected rights and interests, and justice shall not be denied to anyone due to a lack of financial means.

(2) Under the terms of the law, everyone shall possess the right to legal information and advice, to legal counsel, and to be accompanied by a lawyer before any authority.

(3) The law shall define and ensure adequate protection for the secrecy of legal proceedings.

(4) Everyone shall have the right to secure a ruling in any suit to which he/she is a party within a reasonable period of time, and by means of a fair process.

(5) For the purpose of safeguarding personal rights, freedoms and guarantees, the law shall ensure citizens judicial proceedings that are characterised by swiftness and given priority, in order to secure effective and timely judicial protection against any threats or violations of these rights.

5.2.1.3 An overview of the Angolan social security system

The Angolan social security system is regulated by the Lei de Bases da Protecção (Basic Law for Social Protection 7 of 2004), which provides for basic social protection (social assistance), compulsory social protection, and supplementary or voluntary social protection (both social insurance). The Basic Law for Social Protection is supplemented by Social Decree No. 38/08 on the judicial framework of compulsory social Protection, and Decree No. 40/08 on the definition and regulation of old-age social protection. The Financial Institutions Law (Law 13/05, 30 September 2005) further regulates the supplementary pensions element of the social protection system.

(a) Social assistance

Social assistance and other basic social protection measures constitute the basic social protection element of the Angolan social protection system. The aims of basic social protection include:

- national solidarity that reflects distributive characteristics and is financed through the tax;

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- the well-being of individuals, families and the community that is realised by promoting social and regional development, and by progressively reducing social inequalities and regional disparities;
- the prevention of situations of need, dysfunction and marginalisation, as well as organising (with the beneficiaries themselves) special protection measures to protect the most vulnerable groups; and
- guaranteeing minimum levels of subsistence and dignity through actions of assistance to persons and families in particularly serious situations, either by their unpredictability dimension, the total impossibility of recovery, or financial contribution of the receivers.  

Basic social protection covers people living under extreme poverty, women in a vulnerable situation, children and teenagers with special needs or living in environments of risk, the elderly in a situation of physical or economic dependency and isolation, people with special needs in an environment of risk, or social exclusion and unemployed individuals at risk of marginalisation.

Categories of benefits include support in a risk situation (cash or in-kind benefits to address serious or urgent circumstances such as primary health protection, pensions and social subsidies, basic goods distribution); social support (services, equipment, projects and programmes targeting the eligible groups in areas of housing, food, education and health); and solidarity support (benefits from professional groups, neighbours associations and others to perform a range of social services).

(b) **Social insurance**

Compulsory social protection is administered by the National Institute of Social Security, or *Instituto Nacional de Segurança Social* (INSS). It operates a mandatory contributory national social insurance programme that covers the contingencies of illness, maternity, accidents and occupational diseases, disability, old-age/retirement, death and unemployment.

The Basic Law for Social Protection also makes provision for supplementary pensions. These are regulated by the Institute for Pension Supervision under the Ministry of Finance, with the Ministry of Finance being advised by the Technical Council on Insurance and Pension Funds. These are, in turn, regulated by the Financial Institutions Law (Law 13/05, 30 September 2005).

Decree No. 40/08 of 2 July 2008 regulates the provision of old-age through the allocation of retirement pensions, early retirement pension, and old-age allowance. It states that for

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a person to be entitled to old-age benefits, he or she must be at least 60 years old or must have completed 420 months of contribution. Working mothers are entitled to a reduction in their age requirement at the rate of one year for each child, to a maximum reduction of five years of decline. A foreign worker registered for compulsory social protection and who meets the conditions, is also entitled to an old-age pension where there is an agreement between the respective states. A person employed in strenuous work is eligible for early retirement if he or she reaches 50 years of age.18

Decree No. 53/05 of August 15 2005 lays down the legal framework of work accidents and occupational diseases. It seeks to preserve the health and physical integrity of workers, as well as to reduce or eliminate the potential risks of work accidents and occupational diseases.19

It protects workers (and their families) covered under the system of compulsory social protection.20 It also covers Angolan workers who are temporarily abroad in the service of the state, Angolan companies, or institutions – unless the laws of the country in which they find themselves guarantees them the same or better rights. The same applies for foreign workers working in Angola. Self-employed individuals participate on a voluntary basis. Employees and agents of the public administration, and non-resident foreign workers who are entitled to occupational injury and disease compensation in their home country, are excluded.21

Benefits include temporary incapacity benefits, permanent disability benefits, death grants and funeral expenses, survivors’ pensions to the families of the injured, and an allowance for attending training courses. Medical and vocational benefits comprise medical and surgical, general or specialised care, including all elements of diagnosis and treatment as needed as well as home visits; drug and pharmaceutical assistance; nursing care, whether at home, in hospital, or in other medical institutions; hospitalisation and spa treatments; the provision of prosthetics and orthotics as well as renewal and repair; and recovery services, vocational rehabilitation and functional training. Travel expenses, food and accommodation costs are also refunded.22

Survivors’ benefits are paid to a spouse, a former spouse, or a spouse legally separated at the time of death but with a right to support; a child, including an unborn child and an adopted child; and ascendants or other surviving relatives. The allowance for funeral expenses can be paid to a person other than family members upon presentation of the death certificate and proof of expenses incurred on behalf of the deceased.23

18 See Decree No. 40/08 of 2 July.
19 See Decree No. 53/05 of 15 August.
20 Section 1 of Decree No. 53/05 of 15 August.
21 Ibid.
22 Decree No. 53/05 of 15 August.
23 Ibid.
5.2.2 The Republic of Botswana

5.2.2.1 Guarantee of social protection rights

Although the Constitution of Botswana protects fundamental rights and freedoms of the individual, social security rights are not guaranteed. Social protection rights are not even mentioned in the Constitution.

5.2.2.2 Guarantee of rights ancillary to social security

Some rights ancillary to social protection are protected as fundamental rights and freedoms of the individual. According to Section 3 of the Constitution:

Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely –

(a) […] the protection of the law […] the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

As part of the right to the protection of the law, Section 10(9) of the Botswana Constitution states that any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation, must be established or recognised by law and must be independent and impartial. In addition, where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case must be given a fair hearing within a reasonable time. The proceedings of a court or other adjudicating institution must also be in public, although the court or other adjudicating institution can exclude persons who are not the parties to the dispute or their legal representatives.

The Constitution prohibits discrimination on the grounds of race, tribe, place of origin, political opinions, colour or creed. In addition, there can be no provision in any law that is discriminatory, either of itself, or in its effect; and no person should be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. However, protection against discrimination does not apply to any law so far as that law makes provision for (inter alia):

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24 See Chapter II of the Constitution of Botswana.
25 Section 10(9) of the Constitution of Botswana.
26 Section 13 of the Constitution of Botswana.
the appropriation of public revenues or other public funds;
persons who are not citizens of Botswana; and
affirmative action measures.27

5.2.2.3 An overview of the Botswana social security system

(a) Social assistance

Botswana’s social assistance system provides old-age benefits, war veterans’ pensions, disability benefits, and children’s benefits.

- **Old-age pension:** The old-age pension is paid to all residents of Botswana who are 65 years of age and older. The old-age pension is adjusted periodically according to changes in the cost of living.28
- **War veterans’ allowance:** The World War II Veteran allowance is a universal programme specifically for World War II veterans or their surviving spouses or children under the age of 21 years.29
- **Assistance to the destitute:** The National Policy on Destitute Persons, adopted in 1980, provides minimum assistance to the genuine destitute persons to ensure their good health and welfare.30 Categories of persons who are eligible for this type of assistance include:
  - an individual who, due to disabilities or chronic health condition, is unable to engage in sustainable economic activities and has insufficient assets and income sources;
  - an individual who is incapable of engaging in sustainable economic activity and has unreliable and limited sources of income due to old age, mental or physical disability, emotional or psychological disability, or who is a terminally ill patient with no means of support; and
  - a child under the age of 18 years who is in need of care and may not be catered for under the orphan care programme, or has parent(s) who are terminally ill and are incapable of caring for the child, or has been abandoned and is in need of care.31

Beneficiaries receive monthly cash benefits and a food basket are provided to registered, destitute, disabled persons. They also have access to social services, including rehabilitation, provision for funeral expenses, and shelter.32

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27 Ibid.
29 Ibid.
31 Ibid.
Vulnerable group feeding programme: The vulnerable group feeding programme provides meals and nutritional supplements to people who are vulnerable to malnutrition and women of child-bearing age from poor or low-income households.\(^{33}\)

Orphan care benefit: Under the Short Term Plan of Action on Care of Orphans,\(^{34}\) an orphan care benefit is paid to all children under the age of 18 years who do not have parents – loss of one parent (single parent) or both parents (married couple) – or an orphan whose parents’ whereabouts are not known, and who is therefore lacking access to basic human needs such as food, clothing, toiletries and shelter (orphaned non-citizen children are assisted on a temporary basis). The child must be residing in Botswana. The orphan care benefit is a monthly food basket, a school uniform, subsidies for transportation, clothing and rent where applicable, counselling, protection from abuse, free medical fees in government health facilities, and assistance with bills for utilities such as water and electricity. The benefits are given to the orphan’s caregiver (guardian) or to an orphan acting as the head of the family (guardian) for younger siblings.\(^{35}\)

School feeding programme: The school feeding programme provides prepared food to children to alleviate short-term hunger, thereby enhancing classroom learning.\(^{36}\)

(b) Social insurance

Retirement and workers compensation: Social insurance consists of a special retirement system for public-sector employees and a workers compensation scheme. The workers compensation scheme is an employer-liability system which involves insurance with a private carrier. Coverage is extended to employed persons, including government and local authority employees and military personnel. However, casual workers, family labour, and self-employed persons are excluded. The scheme provides a disability pension and medical benefits. A temporary disability pension of 66% of the insured person’s earnings is paid for up to six months. It may be extended for additional three-month periods up to 24 months, with the approval of the Commissioner for Workmen’s Compensation. The benefit is paid after a seven-day waiting period until full recovery or certification of permanent disability. Where a person has a partial disability, a percentage of the total disability benefit is paid according to the assessed degree of disability. A permanent disability benefit is paid if a worker is assessed with a total disability. The latter is in the form of a lump sum payment of 60 months of the insured person’s earnings, minus the value of any temporary disability benefits previously paid to him/her. There is a minimum benefit and a maximum benefit. A constant-attendance supplement is paid to a disability benefit recipient if he or she requires the constant attendance of others to perform daily functions. The constant-

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34 Short Term Plan of Action on Care of Orphans of 1999.


attendance supplement is up to 25% of the permanent disability benefit. Where a person has a partial disability, a percentage of the full benefit is paid according to the assessed degree of disability, as determined by a schedule in law.37

Employers are required to provide medical benefits, which include medical and surgical care, hospitalisation and medicine up to a certain limit; the costs of prostheses up to a certain limit; and transportation costs up to a certain limit.38

Survivor benefits are paid to dependent survivors of a disability beneficiary. It is a lump sum of 48 months of the worker’s earnings, minus the value of any temporary disability benefits previously paid to the worker. There are minimum and maximum benefit thresholds. A reduced benefit is paid to survivors who were only partially dependent on the deceased worker. A funeral grant of up to a certain limit is paid as a lump sum. However, the amount is deducted from the survivor’s benefit.39

- **Sickness benefit:** Sickness benefits are provided by the employer in terms of the Employment Act of 2010. Employees receive up to 20 days of paid sick leave per year. The Employment Act also requires employers in designated areas to pay maternity benefits to female employees. The maternity benefit is at least 50% of the worker’s basic pay and those benefits she would otherwise be entitled to receive. Maternity benefits are paid for six weeks before and six weeks after the expected date of childbirth. It may be extended for two weeks if there are complications arising from pregnancy or childbirth. The Employment Act further requires employers in designated areas to provide certain medical services to employees and their dependants, including transportation to the nearest hospital.40

- **Severance benefit:** Under the Employment Order of 1984, employees with 60 months of continuous employment, are entitled to a severance benefit from their employer (unemployment benefits). Under the amended Employment Act of 2010, in case of termination of the employment contract before an employee has served a continuous period of 60 months, employees are entitled to a severance benefit that is proportionate to the length of service.

5.2.3 The Democratic Republic of the Congo

5.2.3.1 Constitutional guarantee of social protection

The Constitution of the Democratic Republic of the Congo (2005) guarantees social protection rights as fundamental human rights (Title II: Human rights, fundamental liberties and the duties of the citizen and the state). In terms of Article 36, “the state guarantees the right to work, protection against unemployment, and an equitable and satisfactory pay, thus ensuring the worker as well as his/her family of a life in accordance

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38 Ibid.
39 Ibid.
with human dignity, together with all other means of social protection, in particular retirement and lifetime pensions.”

In addition, the right to health and food security is guaranteed. Everyone also has the right to decent housing, the right of access to drinking water, and the right to electric energy. Aged and handicapped persons further have the right to special measures of protection with regard to their physical, intellectual and moral needs.

The enjoyment of fundamental rights by non-citizens (with the exception of political rights) is conditional on reciprocity. In terms of Article 50, “subject to reciprocity, foreign nationals who are legally present in the national territory, enjoy the same rights and liberties as the Congolese, with the exception of the political rights. They enjoy the protection granted to persons and their goods under the conditions prescribed by the treaties and the laws.”

5.2.3.2 Guarantee of rights ancillary to social protection

The Congolese Constitution also guarantees rights ancillary to social protection as fundamental human rights. Article 11 accords everyone the right to equality and human dignity. It states that “all human beings are born free and equal in dignity and rights. However, the right to enjoy political rights is granted to Congolese [nationals] only, save for the exceptions provided by the law.” In addition, according to Article 12, all Congolese are equal before the law and have the right to equal protection by the law.

A Congolese should not be discriminated against in education, access to public functions, or any other matter on the ground of his or her religion, family origin, social condition, residence, views or political convictions, or membership of a certain race, ethnicity, tribe, cultural or linguistic minority. The state is required to eliminate all forms of discrimination against women, and ensure the protection and promotion of their rights.

The right to a fair trial is also protected, as Articles 19 and 20 provide that:

All persons have the right to have their case heard by a competent judge within a reasonable time.

The right to defence is organised and guaranteed.

All persons have the right to defend themselves or to be assisted by counsel of their choice at all stages of the criminal procedure, including the police investigation and the pre-trial enquiry.

They may also be assisted [by counsel] before the security forces.

[...]

The hearings of the courts and tribunals are public unless this publicity is deemed to be dangerous for public order or public morality. In this case, the tribunal orders a court hearing in camera.

5.2.3.3 An overview of the Congolese social security system

(a) Social assistance

The National Strategy for Social Protection of Vulnerable Groups (2008) and the National Action Plan for Orphans and Vulnerable Children in the Democratic Republic of the Congo (2009) provide some form of support for these categories. The Ministry of Social Affairs, Humanitarian Action and National Solidarity (MINAS) provides basic skills training for vulnerable youth, support to orphans and street children in institutions, and programmes for the reintegration of the disabled. Destitute persons receive an entitlement card (carte d’ayant-droit) which gives them free access to public schools, justice services, and health consultations and examinations, but not medication.

(b) Social insurance

The National Institute for Social Security, or Institut National de la Sécurité Sociale (INSS), provides benefits to household and casual workers, sailors, and public-sector employees not covered by a special system for civil servants. There is voluntary coverage for unemployed persons who were previously insured for at least five years, and who request coverage in the six-month period after the end of their employment. However, self-employed persons are excluded. There is a special system for civil servants (including military personnel, magistrates, staff of higher education and research institutions, and members of parliament).46

Benefits under the Congolese social insurance system consist of retirement, invalidity and survivors’ benefits:

- **Old-age pension**: An old-age pension is paid to men aged 65 years and older and women aged 60 years and older. However, it is also paid to persons who are 55 years old whose employment is terminated and who have at least 60 months of coverage in the last ten years. Men aged 65 years and women aged 60 years with less than 60 months of coverage in the last ten years, but whose employment is terminated, receive an old-age settlement.47

- **Disability pension**: A disability pension is paid to a person who is older than the age of 55 but younger than the retirement age, assessed with at least a 66.7% loss of earning capacity, and who has at least 36 months of coverage in the last five years. There is no minimum qualifying period if the disability is the result of a non-

47 Ibid.
occupational accident. A constant attendance allowance is paid to a disability pension recipient who requires the constant attendance of others to perform daily functions.48

- **Survivors’ pension:** A survivors’ pension is paid to the eligible survivors of an INSS member who received, or was entitled to receive, an old-age or disability pension. Eligible survivors include a non-working widow aged 50 years or older (with no age limit if the widow is disabled), a dependent widower with a disability, and unmarried orphans younger than 18 years of age or younger than 25 years, if a student, with no limit if the orphan is disabled.49 A survivors’ benefit is paid to the eligible survivors of an INSS member who was not entitled to receive an old-age or disability pension. In addition to the eligible survivors for survivors’ pension, it is paid to a dependent widower with a disability. The widow or widower must have been married to the deceased for more than six months. If the death was the result of an accident, the widow or widower must have been married to the deceased before the date of the accident. The benefit ceases on remarriage and is suspended if the widow resumes paid employment.50

- **Sickness benefit:** Sickness benefits are provided by employers and not by the INSS or any other social security scheme. The Labour Code requires employers to pay 66.7% of wages during periods of illness. Medical care is available for old-age and disability pensioners and their dependants in government hospitals and clinics, as well as in the medical facilities of the National Social Security Institute. The Labour Code also requires employers to provide medical care for workers and their dependants. In addition, it requires employers to provide 14 weeks of paid maternity leave.51

- **Occupational injury and disease:** Occupational injury and disease benefits are available from the INSS to all employed persons, including household and casual workers, sailors, apprentices, students in vocational and craft schools, and public-sector employees not covered by the special system for civil servants (i.e. military personnel, magistrates, staff of higher education and research institutions, and members of parliament). However, self-employed persons are excluded. Benefits include disability, medical and survivor benefits.52

Temporary disability benefits are paid where a person is assessed with a disability of at least 60%. In this case, 66.7% of the member’s average daily earnings in the three months before the disability is paid from the day after the work injury or occupational illness began until full recovery or certification of permanent disability. The benefit is reduced by 50% during periods of hospitalisation if the insured has no dependants.53 A permanent disability pension is paid if a person is assessed with a partial or total

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48 Ibid.
50 Ibid.
53 Ibid.
disability. In the case of partial disability (degree of disability of at least 15%), a percentage of the full pension is paid according to the assessed degree of disability. For less than a 15% assessed degree of disability, a lump sum is paid (with the amount depending on the degree of disability). In the case of total disability, 85% of the person's average monthly earnings in the three months before the start of the disability, is paid. Where a beneficiary needs the constant attendance of others to perform daily functions, 50% of the disability pension is paid as a constant-attendance supplement. An injured worker also receives medical benefits, which include medical, dental, surgical, and hospital care; radiology; laboratory services; pharmaceuticals; prostheses; and transportation.54

Survivors (spouses and children) receive survivors' benefits. The spouse's pension is 20% of the pension the member received or was entitled to receive, if assessed with a permanent total disability. It is paid to a widow of any age, or to a dependent widower with a disability. The pension ceases on remarriage and a lump sum is paid. A lump sum of 12 months of pension is also paid as a remarriage settlement. Each unmarried child (or aged 25 years, if a student, with no age limit if the child is disabled) receive 15% of the pension the deceased would have received, if assessed with a permanent total disability. (The sum total of survivor benefits must not exceed the pension the deceased would have received, if assessed with a permanent total disability.) A lump sum of up to 90 times the legal minimum wage of the region is paid as a funeral grant.55

- **Family allowance**: Family allowances are paid for children. However, the age limit is 25 years, if the child is a student, with no age limits if the child is disabled and unmarried.56

5.2.4 The Kingdom of Lesotho

5.2.4.1 Protection of social security rights

Lesotho does not guarantee social security and related rights as fundamental human rights. Social security related rights are protected in Chapter 3 of the Constitution of Lesotho under the principles of state policy. Section 25 of the Constitution of Lesotho indicates that these principles do not create any legal rights and are not enforceable by any court. It states that:

The principles contained in this Chapter shall form part of the public policy of Lesotho. These principles shall not be enforceable by any court but, subject to the limits of the economic capacity and development of Lesotho, shall guide the authorities and agencies of Lesotho, and other public authorities, in the performance

54 Ibid.
of their functions with a view to achieving progressively, by legislation or otherwise, the full realisation of these principles.

Social security connected aspects of the principles of state policy include the protection of health, provision of education, provision of just and favourable conditions of work, protection of children and young persons, rehabilitation, training and social resettlement of disabled persons, and protection of the environment.

In terms of the principle of protection of health, the state is compelled to:

[... ] adopt policies aimed at ensuring the highest attainable standard of physical and mental health for its citizens, including policies designed to:

(a) provide for the reduction of stillbirth rate and of infant mortality, and for the healthy development of the child;
(b) improve environmental and industrial hygiene;
(c) provide for the prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) create conditions which would assure to all medical service and medical attention in the event of sickness; and
(e) improve public health.

Section 28 of the Constitution of Lesotho provides as follows:

Lesotho shall endeavour to make education available to all and shall adopt policies aimed at securing that:

(a) education is directed to the full development of the human personality and the sense of dignity, and is strengthening the respect for human rights and fundamental freedoms;
(b) primary education is compulsory and available to all;
(c) secondary education, including technical and vocational education, is made generally available and accessible to all by every appropriate means and, in particular, by the progressive introduction of free education;
(d) higher education is made equally accessible to all on the basis of capacity, by every appropriate means, and, in particular, by the progressive introduction of free education; and

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57 Section 27 of the Constitution of Lesotho.
58 Section 28 of the Constitution of Lesotho.
59 Section 30 of the Constitution of Lesotho.
60 Section 32 of the Constitution of Lesotho.
61 Section 33 of the Constitution of Lesotho.
62 Section 36 of the Constitution of Lesotho.
(e) fundamental education is encouraged or intensified as far as possible for those persons who have not received or completed their primary education.

Under Section 30 of the Constitution of Lesotho, the state is required to adopt policies aimed at securing just and favourable conditions of work and, in particular, policies directed to achieve (amongst others) remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind. In particular, women should be guaranteed conditions of work, including pension or retirement benefits not inferior to those enjoyed by men, with equal pay for equal work; a decent living for themselves and their families; safe and healthy working conditions; and the protection of women who are in employment during a reasonable period before and after childbirth.

In order to protect children and young persons, Lesotho undertakes to adopt policies designed to provide that (inter alia) protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions. To ensure the rehabilitation, training and social resettlement of disabled persons, Lesotho must adopt policies designed to provide for training facilities (including specialised institutions – public or private), as well as place disabled persons in employment, and encourage employers to admit disabled persons to employment.63

The need to protect the environment requires the adoption of policies designed to secure and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations. The state must also endeavour to assure to all citizens a sound and safe environment adequate for their health and well-being.64

5.2.4.2 Protection of rights ancillary to social security

Rights ancillary to social security are guaranteed in the Constitution of Lesotho as fundamental human rights. According to Section 4 (fundamental human rights and freedoms):

Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to fundamental human rights and freedoms, that is to say, to each and all of the following:

[...]

(h) the right [...] to a fair determination of his civil rights and obligations;

[...]

(n) freedom from discrimination; and

(o) the right to equality before the law and the equal protection of the law.

63 Section 32 of the Constitution of Lesotho.
64 Section 36 of the Constitution of Lesotho.
The right to a fair trial or hearing is further protected in Section 12, which states that any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation, shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within reasonable time. In addition, it provides that all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, must be held in public. However, a court or other adjudicating authority may exclude from proceedings those persons who are not the parties, and their legal representatives.

Sections 18 and 19 guarantee both freedom from discrimination and the right to equality before the law and the equal protection of the law. In terms of Section 19, every person shall be entitled to equality before the law and to the equal protection of the law. In terms of Section 18, no law shall make any provision that is discriminatory either of itself, or in its effect. In addition, no person is to be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. However, the provisions on non-discrimination do not apply to laws discriminating against persons who are not citizens of Lesotho, or laws providing for affirmative action measures.

5.2.4.3 An overview of the Lesotho social security system

(a) Social assistance

- **Old-age pension and war veterans’ pension:** Social assistance consists of the old-age pension and the war veterans’ pension regulated by the Old-Age Pension Act of 2005 and African Pioneer Corps (Pensions) Act of 2000, respectively. The Old-Age Pension Act is known as a universal system since it pays benefits to all citizens aged 70 years and older. The war veterans’ (African Pioneer Corps) pension is paid to citizens who took part in World Wars I and II, or their dependant (spouse). Since war veterans are over 70 years of age, they receive an old-age pension in addition to the war veterans’ pension. Payment of the war veterans’ pension terminates on the death of the beneficiary, or if the dependant (widow) remarries.

- **Survivors’ benefit:** Survivors’ benefits are paid to the dependants of an old-age pension beneficiary, or if the deceased was entitled to receive an old-age pension. Eligible survivors include a widow or a dependent widower, and children younger than the age of 18 years. The pension is split equally amongst eligible survivors.
- **Other social assistance benefits:** The Ministry of Health and Social Welfare provides assistance to the indigent through a means-tested monthly stipend, a medical exemption voucher for use at public health care facilities, food parcels, assistive devices, clothes, and assistance with funeral services.72

(b) **Social insurance**

- **Retirement:** Public servants employed on permanent and pensionable terms are eligible for the Public Servants Pension. They must have been employed for at least ten years prior to retirement. In addition, there is a Defined Contribution Pension Scheme for public officers for public servants who are 45 years and younger.73

- **Employment injuries and diseases:** Lesotho has separate schemes relating to employment injuries and diseases for public servants and other workers. The Pensions Proclamation of 1964 and Public Service Regulations of 1969 regulate the compensation of public servants for employment injuries and diseases. Occupational injury and disease compensation for all other employees is provided in terms of the Workmen’s Compensation Act of 1977. It is an individual employer liability scheme, as the employer is required to take an insurance cover with a private carrier approved by the Minister of Labour. A permanent disability benefit of up to a certain defined limit per month is paid if a worker has a total disability.

- **Survivors’ benefits:** Survivors’ benefits of up to a certain defined limit per month is paid to eligible survivors. Eligible survivors include a widow or dependent widower, children under the age of 18 years or disabled, dependent siblings and parents. A defined funeral or death grant is also paid as a lump sum.74

- **Medical care:** The workers compensation scheme also provides medical care (medical, surgical and hospital treatment, nursing and medicine), the maintenance, repair, and renewal of prosthetic devices or any other artificial appliances, and transportation costs.75

- **Maternity benefits:** Maternity benefits are provided under the Labour Code of 1992, which requires private-sector employers to provide twelve weeks of paid maternity leave, for up to two children for each employee. The employee must have more than one year of continuous employment with the same employer. Public-sector employers provide two months of paid maternity leave.76

- **Sickness benefits:** Sickness benefits are provided through paid sick leave. The Labour Code of 1992 requires employers to provide up to twelve days of sick leave, with full pay in the first twelve months of employment if the insured had at least six months

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75 Ibid.

of continuous employment with the same employer; or up to twelve days with full pay and twelve days with half pay for each subsequent twelve months of employment.77

5.2.5 The Republic of Madagascar

5.2.5.1 Guarantee of social security rights

The Constitution of Madagascar (2010) guarantees the freedoms, rights and duties of citizens in Chapter 2 (Title II). Economic, social and cultural rights and duties are protected in Part II (Subtitle II) of that Chapter. In terms of Article 30, the state undertakes to provide for the needs of every citizen who is unable to work due to old age or a disability.

The state is further compelled to ensure the protection of every person’s health from the moment of conception. This will be achieved through the provision of free public healthcare, within its available resources.78 Public education is free and accessible to all, with primary education being compulsory for everyone.79 Citizens have a right (and a duty) to work and professional training.80 The state undertakes to facilitate access to land through appropriate juridical and institutional mechanisms, and a transparent administration of information on land.81 It also facilitates access of citizens to housing through appropriate financing mechanisms.82

5.2.5.2 Guarantee of rights ancillary to social security

Rights ancillary to social security rights that are protected in the Constitution of Madagascar include the rights to equality, fair trial, and human dignity. In terms of Article 8, all individuals are equal before the law and enjoy the same fundamental freedoms protected by the law, without discrimination founded on gender, educational level, wealth, origin, religious belief, or opinion. Under Article 17, the state protects and guarantees the exercise of the rights that ensure every person integrity and dignity, as well as full physical, intellectual and moral development.

In relation to the right to a fair trial, the Constitution states that everyone will be guaranteed access to justice, and a lack of resources will not be an impediment to a person’s access to justice.83 In addition, the state is required to guarantee full, inviolable rights of defence in all jurisdictions and all stages of judicial procedure, including during preliminary investigations.84

77 Ibid.
78 Article 19 of the Constitution of Madagascar.
79 Article 24 of the Constitution of Madagascar.
80 Article 27 of the Constitution of Madagascar.
81 Article 34 of the Constitution of Madagascar.
82 Article 35 of the Constitution of Madagascar.
83 Article 13(6) of the Constitution of Madagascar.
84 Article 13(7) of the Constitution of Madagascar.
5.2.5.3 An overview of the Malagasy social security system

(a) Social assistance

Social assistance is limited mainly to nutritional supplements and school feeding. An example is the Tsena Mora initiative, launched in October 2010, to provide subsidised basic food (rice and cooking oil) to the urban poor.\textsuperscript{85} Faith-based and non-governmental organisations in partnership with the Ministry of Population and Social Affairs also provide assistance for very vulnerable children and women.\textsuperscript{86}

(b) Social insurance

Social insurance in Madagascar is mainly provided by the National Social Insurance Fund, or \textit{Caisse Nationale de Prévoyance Sociale} (CNaPS). The Fund provides coverage for employment injury and disease, retirement, and family benefits.\textsuperscript{87} Employment injury and disease benefits are available to employees and workers affiliated to CNaPS, apprentices, farmer workers employed by tobacco growers, members and self-employed managers of worker’s cooperatives, seasonal agricultural workers, pastors and catechists.\textsuperscript{88} Benefits include a daily allowance, medical expenses and a disability pension.\textsuperscript{89}

The daily allowance is an amount paid by the Fund to a worker or his/her dependants. It is paid from the day after an injury or disease until resumption of work or the death of the worker. It is equal to two thirds of the daily wage of the worker, but may not exceed a specified limit.\textsuperscript{90}

Medical expenses include expenses due to a work accident. They are supported by CNaPS according to well-defined rules. Medical expenses are all those expenses arising from the medical care required by the worker after an accident or a disease; hospitalisation to a fixed maximum per day, with the worker having the choice of the doctor and hospital where he or she wants to be treated; the purchase of drugs (where a worker buys the drugs him- or herself, he or she can ask for a refund by sending the receipts along with the prescription to the Fund); supply, repair or renewal of prosthetic and orthopaedic appliances (gloves, artificial limbs, shoes, crutches, glasses, dentures, etc.); transportation of the worker and the caregiver; transportation of the remains of a worker (who died due to a work accident) to the burial site chosen by the family; and professional or functional rehabilitation.\textsuperscript{91}


\textsuperscript{86} \textit{Ibid.}


\textsuperscript{88} \textit{Ibid.}

\textsuperscript{89} \textit{Ibid.}


A disability annuity is paid to workers who are partially physically or mentally disabled (at least 60% disability) due to a non-occupational reason. In this case, the worker gets a reduction in the age and membership requirements for eligibility to benefits (up to a maximum of five years). The amount of the annuity is 80% of the benefit from the old-age pension which the worker would have been able to receive, if this has been done at the normal age.92

A disability pension is paid as a lump sum or as periodic payments where a worker suffers from a permanent partial disability, and to his or her dependants in case of death of the worker. The amount of the annuity and the periodicity of payment depend on the rate of partial permanent disability and the consolidation date set by the Fund on the proposal of the attending physician.

<table>
<thead>
<tr>
<th>Partial Permanent Disability Rate (PPD)</th>
<th>Payment Periodicity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than or equal to 10%</td>
<td>Only once (redemption of the pension capital representative)</td>
</tr>
<tr>
<td>More than 10% but less than 75%</td>
<td>Quarterly (life annuity)</td>
</tr>
<tr>
<td>Equal to or more than 75%</td>
<td>Quarterly but can be paid monthly if requested by the victim</td>
</tr>
<tr>
<td>Equal to 100%</td>
<td>Monthly</td>
</tr>
</tbody>
</table>

The amount of the pension is increased by 40% if the victim is suffering from a total disability and requires the assistance of another person to perform daily tasks.93

If the accident results in the death of the worker, his or her dependants can claim the annuity and support for funeral expenses. The worker’s spouse receives 30% of the annual salary of the deceased worker (the marriage must have been recorded in the civil status registry before the accident). If the spouse is divorced and receives support, the pension does not exceed 20% of the worker’s annual salary. If there is a new spouse, he or she receives less than 15% of the annual salary.94

Children are eligible for family allowances which amount to 15% of the worker’s monthly average earnings in the twelve months before the disability for each of the first two children under the age of 15 years (or under the age of 19 years if an apprentice, and 22 years, if a student or with a disability), as well as 10% for each additional child. If the children lose both parents, they are each entitled to 20% of the worker’s monthly average earnings. Throughout the World: Africa, 2013. 118.


94 Ibid.
earnings in the twelve months before the disability. A worker’s ascendants (parents) each receive 10% of the worker’s monthly average earnings in the twelve months before the disability if they are able to prove that they were dependent on the deceased worker or are the only beneficiaries. Their benefit cannot exceed 30% of the worker’s monthly average earnings in the twelve months before the disability. Compensation for funeral costs is paid to the family of the worker who dies from a work-related accident or disease.95

Workers’ entitlement to retirement benefits varies depending on the labour law governing their employment. For workers whose employment is regulated by the Labour Code, the normal retirement age is 60 years. However, workers regulated by the Merchant Navy Code retire at the age of 55 years. For both groups, where there is a reduction in the age and membership requirement due to a permanent disability of at least 60%, the minimum age for retirement is 55 and 50 years, respectively. Retirement benefits are paid to workers who contribute to the Fund, and to their eligible survivors (spouse and descendants of the worker or the deceased retiree).96

An old-age pension is paid on a quarterly basis to workers who have reached retirement age and have their employment ended, and who have been members of the Fund for at least fifteen years. The pension is 30% of the legal monthly minimum wage plus 20% of the worker’s monthly average adjusted earnings in the last ten calendar years, plus 1% of the worker’s earnings for each year of contributions exceeding ten years. The basic pension cannot be below 60% of the minimum wage of a category M1 worker, while a pension cannot exceed 40% of the maximum wage (subject to contributions) or 75% of the mean annual wage used to calculate the pension.97

A dependant’s supplement equivalent to 10% of the old-age pension is paid to a spouse older than 59 years (for men) or 54 years (for women and merchant seamen). A special supplement is paid to a worker who receives a medal for long service at work (a bronze medal recipient gets 5% of the basic pension while a silver medal recipient receives 10% of the basic pension). CNaPS also pays retirement pensions to workers who were members of an earlier private scheme and whose benefits were due and paid before 1 January 1969 (private pension). The private schemes concerned are Mutuelle Interprofessionnelle de Retraite des Travailleurs de Madagascar (MIRTM), Caisse de Retraite du Personnel des Banques (CRPB), and Eclesia Episcopal Malagasy (EEM).

A survivors’ allowance is paid to eligible survivors (surviving spouse and children) in case of death of the retired person or a worker who meets all conditions for a pension. The spouse receives 30% of the pension while the first two children each receive 15%. Each child (from the third child onward) receives 10%.98

95 Ibid.
98 Ibid.
A supplementary or additional pension is paid to workers who, together with their employer, opt to join CNaPS.\(^99\) Admission depends on membership of the majority of workers in an enterprise (50% + 1) and all workers hired after the date of accession. The supplementary pension scheme includes the same benefits as the old-age insurance scheme. Depending on the conditions met, the beneficiary will be entitled to additional old-age pension, proportional additional old-age pension, additional solidarity allowance, additional disability annuity, or additional survivors’ allowance. The amount of the supplementary retirement benefits is equal to 1% of the average wage used in calculating the basic retirement pension up to a maximum of 30% of the average wage.

Family benefits include a pre-natal allowance, maternity allowance, family allowance, the refund of medical expenses after confinement related to childbirth, and half salary compensation. These benefits are paid to workers governed by the Labour Code and the Merchant Navy Code; institutions caring for orphans of beneficiaries; legal guardians who take on the guardianship, support and the effective custody of the children of beneficiaries; legal guardians to recipients of family benefits who are appointed by a Court at the request of the Fund when the benefits are not spent for the exclusive interest of the child; pastors and catechists who are exclusively devoted to the exercise of their religious duties; students under the age of 30 years who are in university; apprentices who are holders of an apprenticeship contract; students of technical colleges; directors of public companies; managers appointed for a limited period in private companies and who do not own more than the half the shares of the company; taxi drivers who do not own the cars they drive; and managers of dhows and schooners who are not the ship’s owners. However, excluded from family benefits are public servants and their spouses who already receive benefits from the national or provincial (Collectivités) budget; workers on temporary assignment in Madagascar, and their family workers if they are the only employees of the company or if they are not remunerated in accordance with the law.\(^100\)

Entitlement to family benefits is dependent on membership of CNaPS, the completion of six consecutive months of work at one or several employers, or (if a person is a seasonal agricultural worker) the completion of at least two consecutive work terms of four months each; or if a person undertakes work that lasts at least 20 days or 134 hours a month (for general workers or domestic workers); or if a person undertakes eighteen days or 144 hours a month (for agricultural workers); or if a person undertakes 100 hours a month (for permanent school teachers and professors), and 75 hours a month (for lecturers). Also covered are certain categories of civil servants, workers in public institutions, and organisations who have a certificate of non-payment of family benefits at administrative rates; those earning a salary at least equal to minimum of his or her professional category; and students who attended classes and have been successful in an official exam during the last two years.\(^101\)


\(^{100}\) Ibid.

\(^{101}\) Ibid.
Benefits are paid where a worker is on annual leave or out of work due to a work-related accident or an occupational disease; during maternity leave; during non-working days; in case of a lawful strike; for a maximum period of six months if a worker loses his or her job due to a staff reduction or the establishment closure; during six months in case of sickness certified by a licensed physician; if injured by a work-related accident and the permanent disability rate is at least 75%; if eligible for retirement and receiving one of the old-age benefits; in case of death of the worker (allowances are paid to the non-remarried widow of the beneficiary if she ensures the care and support of children); and in case of imprisonment of the worker (allowances are paid for a maximum of six months to the person who provides care and support to the children).102

A pre-natal allowance is granted to an expectant mother as soon as her application is received. It is a monthly family allowance that is open to a female employee, the legitimate wife of a male employee, a student, and the legitimate wife of a student.103

A maternity allowance is paid to women who have just given birth. It is paid in two parts. The first amount is a defined lump sum per child. The second part of the allowance is equal to six monthly payments of the mean monthly amount of the family allowance.104

The family allowance is a monthly benefit paid to workers who have dependent children and meet the required conditions. 'Dependent children' means children who are deemed to be the children of the beneficiary or his or her spouse; adopted children; orphans who the beneficiary provides for; and children under legal guardianship. The family benefit is paid to children under the age of 21 years.105

The medical expenses of a female worker who meets conditions to benefit from family allowances and who can justify that the expenses for delivery have been paid, are refunded. The refund of medical expenses for delivery is up to a maximum limit. Where a pregnancy is interrupted prematurely, it is paid for if an application has been made for pre-natal allowances.106

Compensation in the form of half of wages is also paid. It is a daily allowance equivalent to the salary paid by CNaPS during maternity leave of a worker who is eligible for family benefits. The first payment is on receipt of the application and covers the period from the interruption of work, within the limit of 42 days before the probable date of delivery, up to fifteen days after that date. The second payment is made as soon as the certificate of resumption of work is issued by the employer.107

102 Ibid.
104 Ibid.
105 Ibid.
107 Ibid.
5.2.6 The Republic of Malawi

5.2.6.1 Guarantee of social security rights

The Constitution of Malawi (1994) protects social security rights in unenforceable terms and as one of the Principles of National Policy. In terms of these principles, the state is required to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving gender equality, adequate nutrition, adequate healthcare, enhancing the quality of rural life, providing adequate resources to the education sector, to support the disabled, promote the full development of children, and respect and support the elderly.\(^\text{108}\)

Since the Principles of National Policy do not create fundamental rights, they are unenforceable. Section 14 states that:

The principles of national policy contained in this Chapter shall be directory in nature, but courts shall be entitled to have regard to them in interpreting and applying any of the provisions of this Constitution or of any law, or in determining the validity of decisions of the executive and in the interpretation of the provisions of this Constitution.

However, social security rights are also guaranteed as fundamental rights within the right to development. According to Section 30(1), all persons and peoples have a right to development and, therefore, to the enjoyment of economic, social, cultural and political development. It also implies that, in particular, women, children and the disabled should be given special consideration in the application of the right.

In addition, the state must take all necessary measures for the realisation of the right to development. Proposed measures include equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment, and infrastructure.\(^\text{109}\)

5.2.6.2 Guarantee of rights ancillary to social security

Rights that have a bearing on social security are guaranteed as fundamental rights. Examples include the right to human dignity\(^\text{110}\) and the right to equality.\(^\text{111}\) Section 19 provides that the dignity of all persons is inviolable. Section 20 states that:

Discrimination of persons in any form is prohibited, and all persons are, under any law, guaranteed equal and effective protection against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.

\(^{108}\) Section 13 of the Constitution of Malawi.
\(^{109}\) Section 30(2) of the Constitution of Malawi.
\(^{110}\) Section 19 of the Constitution of Malawi.
\(^{111}\) Section 20 of the Constitution of Malawi
However, the Constitution permits the adoption of legislation addressing inequalities in society and prohibiting discriminatory practices, as well as the propagation of such practices.112

The right of access to justice and legal remedies also has an impact on social security. Section 41 of the Constitution of Malawi stipulates that:

- every person shall have a right to recognition as a person before the law;
- every person shall have access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues; and
- every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this Constitution or any other law.

5.2.6.3 An overview of the Malawian social security system

(a) Social assistance

- **Assistance to the extremely indigent**: The Department of Social Welfare (Ministry of Gender, Children and Community Development) provides some assistance to extremely poor individuals and households. This is mostly in the form of technical support to the running of community-based organisations caring for orphans and vulnerable children through community-based childcare centres.113

- **Free medical services**: Government health centres and hospitals provide some free medical services to everyone in times of sickness and to women during maternity.114

(b) Social insurance

- **Retirement benefits**: The Pension Act of 2011 established a mandatory National Pension Scheme which is made up of a National Pension Fund and other licensed pension funds. The Act applies to all employers and employees in Malawi, unless expressly exempted. Excluded categories are employees earning below or above prescribed thresholds, employers employing less than five employees, seasonal workers, tenants, domestic workers, expatriates on valid temporary employment permits, and members of parliament. Workers who are already on pension with three years or less to retirement, are also excluded. Employees and employers exempted under the Pension Act are governed by the Employment Act (the payment of a gratuity on termination of employment).115

Retirement benefits are paid when a member reaches his or her retirement age; when a member retires on the basis of years of service or other conditions under the Fund.

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112 Section 20(2) of the Constitution of Malawi.
114 Social Security Administration. Social Security Programs Throughout the World: Africa, 2013. 120.
115 Malawi Pension Act of 2011.
rules as approved by the Registrar; when a member is incapacitated as certified by a medical practitioner registered with the Medical Council of Malawi; when a member is about to leave or has left Malawi permanently; when a member has permanently left the service of the employer; when the Registrar gives permission for benefits to be paid; and when a member dies (survivors’ benefits).116

When a member is about to leave, or has left Malawi permanently, 40% of the pension is paid on application. The balance is paid after twelve months from the date of the first payment, only if the trustee is satisfied that a member has left Malawi permanently. Where a member has permanently left the service of the employer, the benefits may only be paid out for transfer to another pension fund. The Registrar will give permission for the payment of benefits where a member has permanently left the service of the employer and has not secured another employment for a period of more than six months. In this case, the benefits paid to the member are limited to that part of the member’s contributions, and not of the employer and any income on the contributions. Where a member dies, the amount to be paid to a beneficiary who is under the age of 18 years is paid in a separate trust account for the beneficiary until he or she attains the age of 18 years. The fund trustees are allowed to pay to the parent or guardian of such a beneficiary any amount from the capital or income of the trust for the maintenance, education or welfare of the person.117

- **Workers compensation**: The occupational injury and disease (workers compensation) system is an employer-liability system which involves insurance with a private carrier. It is open to employed persons, although casual workers, self-employed persons, family workers, and military personnel are excluded. It provides disability cash benefits, medical benefits, and survivors’ benefits.118

- **Disability benefits**: Disability benefits are for temporary and permanent disability. Temporary disability benefits are a percentage of the worker’s earnings, according to a schedule in law. The benefit is paid after a three-day waiting period until full recovery or certification of permanent disability. Permanent disability benefits are paid if a worker is assessed with a total disability. It is in the form of a lump sum equal to 54 months of the worker’s earnings. In the event of partial disability, a percentage of the full benefit is paid, depending on the assessed degree of disability, according to a schedule in law. A constant-attendance allowance is also paid if the worker requires the constant attendance of others to perform daily functions. The latter is in the form of a lump sum, depending on individual circumstances.119

- **Medical benefits**: In relation to medical benefits, the employer pays the cost of reasonable medical expenses for medical, surgical, dental, and hospital treatment, for skilled nursing services, medicine, prostheses, mechanical aids, and transportation.120

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116 Ibid.
117 Ibid.
118 Social Security Administration. Social Security Programs Throughout the World: Africa, 2013. 120.
119 Ibid.
120 Ibid.
5.2.7 The Republic of Mauritius

5.2.7.1 Guarantee of social security rights

The Constitution of Mauritius (1968) guarantees the fundamental rights and freedoms of the individuals (Chapter 2). However, social security rights are not included in the Chapter, nor is it mentioned in any other part of the Constitution.

5.2.7.2 Protection of rights ancillary to social security

Although Chapter 2 of the Constitution of Mauritius does not guarantee social protection rights, it protects rights related to social protection. Article 3 on fundamental rights and freedoms of the individual states that:

> It is hereby recognised and declared that in Mauritius there have existed, and shall continue to exist, without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms:

(a) the right of the individual to life, liberty, security of the person, and the protection of the law; [...] and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

The right of access to justice forms part of the provisions to secure protection of law. It provides that any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation, shall be established by law and shall be independent and impartial. Where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time. It further requires that, except with the agreement of all the parties, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, must be held in public.

121 Ibid.
122 Article 10 of the Constitution of Mauritius.
However, a court or another authority is empowered to exclude persons who are not the parties to the dispute, or their legal representatives.\(^{123}\)

Article 16 of the Constitution of Mauritius on protection from discrimination, states that no law shall make any provision that is discriminatory, either of itself, or in its effect; and that no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law, or otherwise in the performance of the functions of any public office or any public authority.

However, the non-discrimination provisions do not apply to any law that makes provision, \textit{inter alia}, for the appropriation of revenues or other funds of Mauritius, or with respect to persons who are not citizens of Mauritius.\(^{124}\)

\subsection*{5.2.7.3 An overview of the Mauritian social security system}

The social security system of Mauritius is made up of social assistance and social insurance schemes. In addition, there are subsidies on food and other services, free education up to tertiary level, free healthcare, and free transport for the elderly, disabled persons and students.

(a) Social assistance

- \textit{Old-age pension}: A basic universal old-age pension is paid to all residents of Mauritius who are 60 years and older. Mauritian nationals must have resided in Mauritius for at least twelve years after the age of 18. There is no residence requirement if a person is aged 70 years or older. Non-citizens must have resided in Mauritius for at least fifteen years since the age of 40, including the three years prior to when the claim is made.\(^{125}\) A caregiver’s allowance is also paid to beneficiaries of the basic old-age pension who are assessed with at least a 60\% disability and who require the constant attendance of others to perform daily functions. A person confined to a government-subsidised institution, and who was entitled to a basic old-age pension before his or her admission to the institution, is paid an inmate allowance.\(^{126}\)

- \textit{Basic disability pension}: A universal basic disability pension is paid to all residents aged 15 to 59 years, and assessed with at least a 60\% disability that is expected to last for at least twelve months. There is no residence requirement for Mauritian nationals; non-citizens must have resided in Mauritius for at least five of the last ten years, including one year prior to when the claim is made. A caregiver’s allowance is also paid to beneficiaries of the basic disability pension who require the constant attendance of others to perform daily functions. The allowance is paid for children with severe disabilities and younger than the age of 15, whose parents’ annual income does not exceed fixed limits.\(^{127}\)

\textsuperscript{123} Social Security Administration. \textit{Social Security Programs Throughout the World: Africa}, 2013. 130.  \\
\textsuperscript{124} Article 16 of the Constitution of Mauritius.  \\
\textsuperscript{125} Social Security Administration. \textit{Social Security Programs Throughout the World: Africa}, 2013. 130.  \\
\textsuperscript{126} \textit{Ibid.}  \\
\textsuperscript{127} \textit{Ibid.}
• **Child allowance**: A universal child allowance is paid for the first three children of a basic disability pensioner. The children must be younger than 15 years of age, although the age limits are 20 years if he child is a full-time student at secondary level, and 23 years if the child is at tertiary level.\(^\text{128}\)

• **Survivor pension**: Survivor pensions consist of a basic widow pension, a child allowance, an orphan pension, and a guardian allowance. The universal basic widow pension is paid to widows younger than 60 years. If the widow and the deceased were non-citizens, either must have resided in Mauritius for at least five of the last ten years, including one year prior to when the claim is made. The pension ceases on remarriage. The child allowance is paid to beneficiaries of the basic widow pension for the first three children younger than 15 years of age, although the age limit is 20 years if the child is a full-time student. The allowance is paid until the widow remarries. The orphan’s pension is paid to a full orphan younger than 15 years of age, although the age limit is 20 years if the orphan is a full-time secondary school student, and 23 years if the orphan is a full-time university student. If the orphan is a non-citizen, he/she, or either of the deceased parents, must have resided in Mauritius for at least five of the last ten years, including one year prior to when the claim is made. The guardian allowance is paid to the orphan’s guardian.\(^\text{129}\)

• **Unemployment assistance benefit**: A means-tested unemployment assistance benefit is paid to heads of households and their dependants. The claimant must be willing and able to work, actively seeking employment, and registered as unemployed at the employment exchange for at least 30 days.\(^\text{130}\)

• **Social aid**: Social aid is paid to needy individuals and families with no income or limited income, where it is established that the head of the household is unable to earn a living because of ill health, sudden loss of employment, imprisonment, or abandonment by spouse. It consists of a claimant allowance, spouse allowance, child allowance, compassionate allowance (paid to persons with a serious illness certified by a medical doctor), rent allowance, a funeral grant (a lump sum for the cost of the funeral for the claimant or his/her dependants), and an allowance for purchase of rice and flour. These benefits are adjusted annually in January according to changes in the cost of living. In addition, an income support benefit is paid to beneficiaries of social aid so they can cope with rising prices of staple foodstuffs.\(^\text{131}\)

(b) **Social insurance**

• **Retirement**: The National Pensions Act extends access to the National Pensions Fund (NPF) to all residents of Mauritius working in the private sector, including non-citizens with valid work permits who have resided in Mauritius for at least two years. Persons who are not compelled to belong to the NPF may participate on a voluntary basis, including self-employed and non-employed persons. There are

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129 Ibid.
special contributory schemes for civil servants, employees of Local Authorities, and employees of parastatal bodies. Benefits for both the NPF and public sector schemes are provided at the age of 62 and 3 months, although this will rise progressively to 65 years by 2018. While there is no minimum qualifying period, contributions must have been made in the last year. A reduced pension may be paid at the age of 60. A pension may be deferred until five years after the normal retirement age. A disability pension is paid to a person who has been assessed with at least a 60% disability, which is expected to last for at least twelve months.

- **Survivors’ benefits**: Survivors’ benefits are in the form of a widow pension and an orphan’s pension. The widow pension is paid if the deceased was insured or was a pensioner at the time of death. The pension ceases on remarriage. A lump sum of twelve months of the deceased’s pension is paid to widows younger than the retirement age. The orphan’s pension is paid to a full orphan younger than 15 years (20 years if the orphan is a full-time student) if either of the deceased parents paid contributions.

- **Sickness benefits**: Sickness benefits are provided in terms of the Employment Act of 2008. It requires employers to provide up to fifteen days of paid sick leave each year to employees who have been in their continuous employment for at least twelve months. Government clinics and hospitals provide free medical services to everyone.

- **Maternity benefits**: Maternity benefits are also provided in terms of the Employment Act, which requires employers to provide twelve weeks of paid maternity leave (at least six weeks after the expected date of childbirth), and five days of paid paternity leave to employees who have been in their continuous employment for at least twelve months. Government clinics and hospitals provide free medical services to everyone.

- **Employment injuries and diseases**: Employment injuries and diseases benefits (Industrial Injury Benefits) are also provided in terms of the National Pension Act. The scheme is open to all employees in insured employment, excluding self-employed persons and persons working exclusively on weekends or public holidays. There are special systems for public-sector employees and certain other occupations.

The benefits are made up of the industrial injury allowance, a lump sum for permanent disablement of less than 20%, disablement pension for permanent disablement of at least 20%, a survivor’s pension, and allowances for constant care attendance, medical expenses, and replacement of damaged prostheses.

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133 *Ibid*.
136 *Ibid*.
138 *Ibid*.
Temporary disability benefits are 100% of the insured’s monthly earnings and are paid for the first two weeks of incapacity if the insured has a total temporary disability. After the first two weeks, the benefit is 80% for up to 36 months from the date of the accident. However, benefit payments may be extended if surgery is required. A constant-attendance supplement is paid to a temporary disability benefit recipient who requires the constant attendance of others to perform daily functions.\footnote{Ibid.}

A permanent disability benefit of 80% of monthly insurable earnings is paid for a total permanent disability. Workers aged 52 to 60 years with a total disability may receive a lump sum payment. The lump sum is the assessed degree of disability, multiplied by the insured’s average annual earnings, multiplied by the number of years of contributions, up to eight years. For partial disability, 65% of the worker’s monthly insurable earnings multiplied by the assessed degree of disability is paid for at least a 1% assessed degree of disability. If the assessed degree of disability is less than 20%, a lump sum may be paid. The lump sum is the assessed degree of disability multiplied by the insured’s average annual earnings, multiplied by the number of years of contributions, up to eight years. A constant-attendance supplement is also paid to a temporary disability benefit recipient who requires the constant attendance of others to perform daily functions. Medical benefits include medical and surgical care, hospitalisation, medicine, appliances, transportation, and private clinical expenses up to a prescribed threshold.\footnote{Ibid.}

- **Survivors’ benefits**: Survivors’ benefits (widow/widower pension, orphan’s pension, a dependant pension, and funeral grant) are also paid. For the widow/widower pension, 50% of the deceased’s earnings is paid to a widow/widower who is assessed with at least a 60% permanent disability. The widow/widower pension ceases on remarriage. The orphan’s pension is 7.5% of either the deceased parents’ average monthly insured earnings (whichever is greater), paid for each full orphan younger than 15 years (20 years if the child is a full-time student). A dependant’s pension is paid if there is no surviving spouse. It is paid to a dependent person living in the insured’s household. A funeral grant is also paid. However, if there are no eligible survivors, the cost of the burial is paid.\footnote{Ibid.}

- **Unemployment benefit**: A transitional unemployment benefit is paid to persons laid off due to economic, technological, or structural reasons affecting enterprises, or due to the illegal termination of the employment agreement. The claimant must have at least six months of continuous employment with the employer at the time of dismissal, and register with the Workfare Programme of the Ministry of Labour, Industrial Relations, and Employment within seven days of the dismissal. The transitional unemployment benefit is provided for a maximum of twelve months at a rate of 90% of insured salary for the first three months, at 60% for another three months, and at 30% for the next six months. The benefit is conditional upon registration with the Employment Service to secure alternative employment, joining

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\footnote{Ibid.}
a training programme for upgrading of skills to become re-employable, or setting up a business with the help of the Small Enterprises and Handicraft Development Authority.142

5.2.8 The Republic of Mozambique

5.2.8.1 Guarantee of social security rights

Various social security-related rights are protected by the Constitution of Mozambique (2004). The Constitution states that Mozambique is a state that is governed by the rule of law, and is based on pluralism of expression, democratic political organisation, and on the respect for and guarantee of fundamental human rights and freedoms.143 Some of the fundamental objectives of the Republic of Mozambique are:144

- the building of a society of social justice and the achievement of material and spiritual well-being and quality of life for its citizens;
- the promotion of balanced economic, social and regional development in the country;
- the defence and promotion of human rights and of the equality of citizens before the law; and
- the strengthening of democracy, freedom, social stability and social and individual harmony.

Fundamental rights, duties and freedoms are protected in Chapter 3 of the Constitution. Social security and other individual rights and freedoms are directly applicable; they bind both public and private entities; are guaranteed by the state; and are exercised within the constitutional framework and the law.145 These rights include the right to retribution and to safety at work,146 to health,147 to housing and urbanisation,148 as well as the right of the disabled and the aged to assistance.149

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143 Article 3 of the Constitution of Mozambique.
144 Article 11 of the Constitution of Mozambique.
145 Article 56 of the Constitution of Mozambique.
146 Pursuant to Article 85 of the Constitution of Mozambique, all workers have the right to fair remuneration, rest and vacation, and to retirement in accordance with the law. They also have the right to protection, health and safety at work.
147 All citizens have the right to medical and healthcare, within the terms of the law, and have the duty to promote and protect public health (Article 89 of the Constitution of Mozambique).
148 The right to housing and urbanisation in Article 91 of the Constitution of Mozambique states that all citizens have the right to a suitable home. It is the duty of the state, in accordance with national economic development, to create the appropriate institutional, normative and infrastructural conditions. In addition, the state is responsible for funding and supporting the initiatives of the local communities, the local authorities and the people, in order to promote private and cooperative construction as well as the accessibility of home ownership.
149 All citizens have the right to assistance in the case of disability or old age; and the state must promote and encourage the creation of conditions for realising the right (Article 95 of the Constitution of Mozambique).
5.2.8.2 Guarantee of rights ancillary to social security

The Constitution further protects rights that are related to social security. According to Article 35, all citizens are equal before the law, and they shall enjoy the same rights and be subject to the same duties, regardless of colour, race, sex, ethnic origin, place of birth, religion, level of education, social position, the marital status of their parents, their profession, or their political preference. In addition, men and women are equal before the law in all spheres of political, economic, social and cultural life.150

The rights of access to courts and of recourse to the courts are also guaranteed.151 In terms of Article 62:

1. The state shall guarantee that citizens have access to the courts and that persons charged with a crime have the right to defence and the right to legal assistance and aid.

2. The accused shall have the right to freely choose a defence council to assist in all acts of the proceedings. It shall be ensured that adequate legal assistance and aid are given to accused persons who, for economic reasons, are unable to engage their own attorney.

The right of recourse to the courts grants every citizen the right of recourse to the courts against acts that violate their rights and interests recognised by the Constitution and the laws.

5.2.8.3 An overview of the Mozambican social security system

The Social Protection Law (No. 4/2007 of 7 February 2007) established a right to social protection and a social protection system. The system consists of basic social security (social assistance), mandatory social security (social insurance), and complementary social security (voluntary social insurance). Cash for work programmes, community development programmes, health and education fee waivers, and drug subsidies are also part of Mozambique’s social security system. The Regulation for Basic Social Security of 2009 is the implementation instrument of the basic social security (social assistance) component of the Social Protection Law.

(a) Social assistance

Basic social security measures are provided by the basic social security system. The system covers citizens living in absolute poverty, without the means to satisfy their basic needs. These include children in difficult situations; the elderly (women from the age of 55 years and men from the age of 60 years); people with disabilities; people who are chronically ill and with degenerative diseases; and the working poor who are not able to provide a minimum income for their families. The system thus provides non-contributory transfers and other welfare services for the poorest households, elderly, disabled, those who are chronically ill, and households with orphans and vulnerable children.

150 Article 36 of the Constitution of Mozambique.
151 Articles 62 and 70 of the Constitution of Mozambique.
There are various programmes under the basic social security system, including the Basic Social Subsidy, or *Programa Subsídio Social Básico* (PSSB), formerly known as Food Subsidy Programme, covering households with members with disabilities (mainly households headed by the elderly); the Direct Social Support Programme, or *Programa de Apoio Social Directo* (PASD), for households that temporarily have no members who are able to work, and to provide emergency support in situations demanding direct intervention by the government to people who are in an absolute state of poverty, including transfers for households with members on anti-retroviral therapy; the Productive Social Action Programme, or *Programa de Acção Social Produtiva* (PASP); and Social Assistance Services, or *Programa de Apoio às Unidades Sociais* (PAUS). These are administered by the National Institute of Social Action, or *Instituto Nacional de Acção Social* (INAS).

- **Basic Social Subsidy**: The Basic Social Subsidy, or *Programa Subsídio Social Básico* (PSSB), is a monthly cash transfer for an unlimited period, targeted at households without any adult who is able to work (e.g. households headed by an elderly person, person with disabilities, or chronically ill, and without any able adult breadwinner). In practice the programme consists in a revision of the Food Subsidy Programme, or *Programa de Segurança Alimentar* (PSA), with increased coverage and transfer amount, and a more accurate definition of eligible households.

- **Direct Social Support Programme**: The Direct Social Support Programme, or *Programa de Apoio Social Directo* (PASD), has two components: the ad hoc component (*Componente Pontual*) and the long-term support component (*Componente de Apoio Prolongado*). It targets households that are temporarily lacking the capacity to participate in the labour market and include, amongst others, child-headed households, households headed by pregnant women, and households with breadwinners who are temporarily unable to work. It is also conceived as a means to provide support to selected groups of vulnerable households (e.g. households with children suffering from acute malnutrition, households with members receiving anti-retroviral therapy, etc.) that have residual labour capacity but are living in areas where the Productive Social Action Programme, or *Programa de Acção Social Produtiva* (PASP), is not operational, or at times of the year when the PASP is not running. According to Decree No. 52/2011, the PASD will provide mainly in-kind support.

- **Productive Social Action Programme**: The Productive Social Action Programme, or *Programa de Acção Social Produtiva* (PASP), is a seasonal transfer scheme associated with participation in a labour-intensive, public works initiative by poor and vulnerable households with limited labour capacity (i.e. households that are not entitled to receive support from the PSSB and PASD). It also envisages a component to establish linkages with interventions supporting income-generating activities (run by other ministries).


- **Social Assistance Services Programme**: The Social Assistance Services Programme, or *Programa de Apoio às Unidades Sociais* (PAUS), includes residential care and institutional support to vulnerable and abandoned children and the elderly, victims of violence, and the homeless who require intensive care services.

- **Food Subsidy Programme**: The Food Subsidy Programme, or *Programa de Segurança Alimentar* (PSA), provides a monthly cash transfer to people who are destitute and have no capacity to work, including the elderly, disabled, chronically ill (but not including those living with HIV/AIDS and TB), and pregnant women who are malnourished. Under the National Programme against HIV/AIDS, cash transfers and home-based care are provided for affected individuals.

(b) **Social insurance**

Social insurance consists of the compulsory (mandatory) and complementary (voluntary) social security schemes of the Mozambican social protection system. Membership of the compulsory social security scheme is made up of employees from the public and private sectors.\(^{154}\) The scheme is administered by the National Institute of Social Security (INSS) and provides old-age pensions, cash sickness and maternity benefits, hospitalisation, cash death grants, and allowances for burial expenses.\(^{155}\) There is also a sub-system for civil servants (including the military) under the responsibility of the Ministry of Finance. The complementary social security scheme offers additional benefits over and above the benefits of the compulsory scheme. It is managed by private or public entities and is designed for self-employed workers. Mozambique also operates a social insurance employment injury scheme, administered by the INSS.

Section 24 of Law 5 of 2002 states that during any sick leave cycle, an employee is entitled to one day’s sick leave for every 26 days worked during the employee’s first twelve months of employment; thereafter to no less than 30 working days, if the employee works no more than five days a week; and no less than 36 working days, in the case of any other employee. The employer must pay an employee on the employee’s agreed pay day an amount equal to the employee’s basic wage rate for each day’s sick leave. However, the employer is not required to pay an employee for sick leave where the employee has been absent from work for more than two consecutive days and fails to produce a medical certificate by a medical practitioner; where the employee is entitled to payment in terms of the Employees’ Compensation Act 30 of 1941, if the employee is absent from work during any period of incapacity arising from an accident or a scheduled disease; where the employee is entitled to payment in respect of that sick leave from a fund or organisation designated by the employee, and in respect of which the employer makes contributions at least equal to that made by the employee and that guarantees the payment of sick leave; or where the employee is entitled to payment in respect of that sick leave under any other legislation.


In terms of Section 12 of Mozambique’s Labour Law (Law No. 23/2007 of 1 August 2007), in addition to normal holidays, female employees are entitled to maternity leave of 60 consecutive days, which may commence 20 days prior to the expected delivery date and which may be enjoyed consecutively. Maternity leave applies equally to cases of full-term or premature births, regardless of whether it was a live birth or a stillbirth. In addition, where there is a clinical risk to the female employee or the child which prevents the employee from working, she is entitled to leave of absence before the birth for such period as is necessary to avert the risk and has been medically prescribed. This is without prejudice to her maternity leave. Where the mother or the child is admitted to hospital during the period of leave following the birth, the period of maternity leave is suspended for the duration of the hospitalisation, upon the employee notifying the employer.

5.2.9 The Republic of Namibia

5.2.9.1 Guarantee of social protection rights

Social security is not guaranteed in the Constitution of Namibia (1990) as a fundamental right, but as one of the Principles of State Policy in Chapter 11. Article 95 promotes the welfare of the people. It states that:

[...] the state shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at:

(a) the enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;

(b) the enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;

[...]

(e) the ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;

(f) the ensurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;

(g) the enactment of legislation to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the state;

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156 See Chapter 3 of the Constitution of Namibia on Fundamental Human Rights and Freedoms.
(h) a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the state;

(i) the ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities; and

(j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people, and to improve public health [...].

5.2.9.2 Protection of rights ancillary to social security

The Constitution of Namibia protects the rights necessary for the realisation of social security. These are the rights to human dignity, to equality and non-discrimination, to a fair trial or hearing, and to administrative action.

Article 8 of the Constitution of Namibia on the respect for human dignity, states that the dignity of all persons is inviolable. In addition – in any judicial proceedings or in other proceedings before any organ of the state, and during the enforcement of a penalty – respect for human dignity must be guaranteed, and no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The right to equality and non-discrimination requires all persons to be equal before the law and for no person to be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status.

In terms of the right to a fair trial or hearing, everyone has the right to seek redress in a court or tribunal. Article 12(1)(a) of the Constitution of Namibia stipulates as follow:

In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent court or tribunal established by law, provided that such court or tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order, or national security, as is necessary in a democratic society.

A trial must take place within a reasonable time, and all persons must be afforded adequate time and facilities to prepare and present their defence, before the commencement of and during their trial, and are entitled to be defended by a legal practitioner of their choice.

157 Article 8 of the Constitution of Namibia.
158 Article 10 of the Constitution of Namibia.
159 Article 12 of the Constitution of Namibia.
160 Article 18 of the Constitution of Namibia.
161 Article 8 of the Constitution of Namibia.
162 Article 10 of the Constitution of Namibia.
163 Article 12(1)(b) and (e) of the Constitution of Namibia.
The right to administrative justice compels administrative bodies and administrative officials to act fairly and reasonably, and to comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation. Persons aggrieved by the exercise of the acts and decisions of administrative bodies and administrative officials, have the right to seek redress before a competent court or tribunal.164

5.2.9.3 An overview of the Namibian social security system

(a) Social assistance

The Namibian social assistance system comprises an old-age pension, a war veteran’s pension, a foster child grant, and maintenance grants.

- **Universal old-age grant**: The universal old-age pension (basic state pension) is paid to all resident citizens and permanent residents of Namibia. The benefit is paid to persons aged 60 years and older, although persons aged 16 to 59 years who are blind or disabled and incapable of gainful activity are also paid the pension.165

- **Universal basic state pension**: A universal basic state pension is also paid to war veterans who are resident citizens of Namibia. A person must be 55 years and older, as well as a veteran of the Namibian independence war. A funeral benefit is paid if a deceased person received, or was entitled to receive, the basic state pension.166

- **Foster parent grant**: A foster parent grant is paid to all Namibian citizens and permanent residents who meet certain conditions. The grant, which is paid for the duration of the foster care period, has different amounts for the first child and for each additional child.167

- **Maintenance grant**: A means-tested maintenance grant is paid to Namibian citizens and permanent residents with children younger than the age of 18. It is paid for biological children to basic state pensioners, widows or widowers, or persons serving a prison sentence of six months or longer, and with an income of N$1 000 or less per month. Children older than the age of 7 must be attending school. The grant paid for the first child is different from that paid for each additional child, up to a total of six children. A special maintenance grant is paid to all Namibian citizens and permanent residents younger than 16 years with a disability or illness.168

(b) Social insurance

Social insurance consists of benefits provided by the Social Security Commission (SSC) (retirement, disability, sickness, maternity and survivors’ benefits),169 and workmen’s

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164 Article 18 of the Constitution of Namibia.
compensation by the Employees’ Compensation Fund. 170 Access to Social Security Commission benefits is open to all employed persons working at least one day a week on a regular basis, including household workers, casual workers, and part-time workers. There is also voluntary coverage for self-employed persons and special systems for civil servants. 171

Retirement benefits by the SSC are paid to a worker who is 60 years of age with six months of contributions and whose employment has ended. The benefit is a lump sum. A disability benefit is paid to a person who is assessed with a permanent disability and has at least six months of contributions. A survivors’ benefit is paid to the dependants of a deceased worker who had at least six months of contributions. Eligible survivors include the deceased’s spouse, children, and persons who were financially dependent on the deceased. A funeral benefit is also provided. 172

In terms of the Labour Act, the employer pays 100% of the insured’s basic earnings the first 30 days or 36 days (this is respectively if the worker works five days a week or works more than five days a week). 173 In addition, the SSC pays a sickness benefit to a worker who has at least six months of contributions. It is to the value of 75% of the worker’s basic earnings paid from the 31st or 37th day of incapacity for the first twelve months (this is respectively if the worker works five days a week or works more than five days a week). 174 Thereafter, the benefit is 65% for the next twelve months. The Ministry of Health and Social Services provides free public healthcare services for workers and their dependants. 175

Maternity benefits are also paid to a worker who has at least six months of contributions. The benefit is 100% of the worker’s basic earnings, paid for up to twelve weeks (four weeks before the expected date of childbirth and eight weeks after childbirth). 176 If the mother dies, the benefit may be transferred to the child’s primary caregiver. Free public healthcare services are also provided to pregnant workers and their dependants by the Ministry of Health and Social Services. 177

Employment injuries and diseases benefits are available to all employees, including apprentices, with earnings of up to a fixed amount per year. However, self-employed persons, casual workers, and persons employed temporarily outside of Namibia for more than twelve months at a time, are excluded. 178 The Act provides for the payment of benefits to an employee injured as a result of an accident arising out of and in

170 See Employees’ Compensation Act 30 of 1941.
172 Ibid.
174 Section 30 of the Social Security Act.
178 See Employees’ Compensation Act 30 of 1941.
the course of his/her employment. Compensation is paid in respect of temporary disablement, permanent disablement (according to the degree of disablement), and death. Reasonable medical expenses are payable for a period of two years, or longer if further medical or surgical treatment may reduce the extent of the disablement. The period of illness or injury must last for at least three days. For a total temporary disability (i.e. 100% disability), 75% of the worker’s last monthly earnings is paid for up to 24 months. For a disability lasting less than fourteen days, the benefit is paid for eleven days. If fourteen days or longer, the benefit is paid for the total period of disability. There is a fixed maximum earnings used to calculate the temporary disability pension; and the temporary disability pension per month also has a defined ceiling.\textsuperscript{179}

In the case of permanent disability, if a worker is assessed at more than 30% disability, up to 75% of the worker’s last monthly earnings before the disability began, is paid according to the assessed degree of disability. There is a ceiling on the maximum earnings used to calculate the permanent disability pension. In the case of partial disability, if a worker is assessed as up to 30% disability, a lump sum of up to fifteen times his or her last monthly earnings before the disability began, is paid according to the assessed degree of disability. There is also a ceiling on the maximum earnings used to calculate the partial disability pension; as well as on the maximum partial disability pension payable per month.\textsuperscript{180}

Medical benefits are also provided, which include the cost of transportation to a hospital or place of residence, and all reasonable medical expenses, according to the fee schedule of the Namibian Medical Aid Fund.\textsuperscript{181}

Survivors’ benefits are paid to the spouse and dependent child(ren). The spouse’s pension amounts to 40% of the total permanent disability pension which the deceased was entitled to receive. An orphan’s pension is 20% of the total permanent disability pension the deceased was entitled to receive, and is paid to each orphan younger than 18 years. The orphan’s pension ceases if the child marries before the age of 18. All survivors’ benefits combined must not exceed 100% of the total permanent disability pension which the deceased was entitled to receive. There is a maximum limit for total survivors’ benefits paid per month. A funeral grant of up to a defined limit is paid as a lump sum. In addition, a death benefit of a lump sum of up to a fixed limit or twice the deceased’s last monthly earnings before the death occurred, whichever is less, is paid to the spouse.\textsuperscript{182}

5.2.10 The Republic of Seychelles

5.2.10.1 Right to social security

The Constitution of Seychelles (1993) contains a Charter of Fundamental Human Rights and Freedoms.\textsuperscript{183} The right to social security is protected as one of the fundamental

\textsuperscript{179} Social Security Administration. Social Security Programs Throughout the World: Africa, 2013. 141.
\textsuperscript{180} Ibid.
\textsuperscript{181} Ibid.
\textsuperscript{182} Ibid.
\textsuperscript{183} Chapter 3 of the Constitution of Seychelles of 1993.
rights. Section 37 of the Constitution of Seychelles states that “the state recognises the right of every citizen to a decent and dignified existence and, with a view to ensuring that its citizens are not left unprovided for by reason of incapacity to work or involuntary unemployment, undertakes to maintain a system of social security.”

In addition, in terms of Section 29 of the Constitution of Seychelles, the state recognises the right of every citizen to healthcare protection and to the enjoyment of attainable standards of physical and mental health. With a view to ensuring the effective exercise of the right to health, the state undertakes to:

- take steps to provide for free primary healthcare in state institutions for all its citizens;
- take appropriate measures to prevent, treat and control epidemic and other diseases;
- take steps to reduce infant mortality and promote the healthy development of the child;
- promote individual responsibility in health matters; and
- allow, subject to such supervision and conditions as are necessary in a democratic society, for the establishment of private medical services.

Special protection is to be afforded to working mothers. The state undertakes to take appropriate measures in order to ensure that a working mother is afforded special protection with regard to paid leave and her conditions at work during such reasonable period, as provided by law before and after childbirth.184 The state also undertakes to promote the legal, economic and social protection of the family,185 and to provide free compulsory education in state schools, for a minimum period of at least ten years.186

The right of every citizen to adequate and decent shelter conducive to health and well-being is also guaranteed.187 To this end, the state undertakes either directly or through the cooperation of public or private organisations, to facilitate the effective realisation of this right.188

As part of the right to work in Section 35, the state undertakes to make and enforce statutory provisions for safe, healthy and fair conditions of work, including reasonable rest, leisure, paid holidays, remuneration which guarantees, as a minimum, dignified and decent living conditions for the workers and their families, fair and equal wages for work of equal value without distinction, and stability of employment.

The state further recognises the right of the aged and the disabled to special protection.189 In order to ensure the effective exercise of this right, the state undertakes to make

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184 Section 30 of the Constitution of Seychelles.
185 Section 32 of the Constitution of Seychelles.
186 Section 33 of the Constitution of Seychelles.
187 Section 34 of the Constitution of Seychelles.
188 Ibid.
189 Section 36 of the Constitution of Seychelles.
reasonable provision for improving the quality of life and for the welfare and maintenance of the aged and disabled, and to promote programmes specifically aimed at achieving the greatest possible development of the disabled.¹⁹⁰

5.2.10.2 Guarantee of rights ancillary to social security

In addition to social security rights, the Constitution of Seychelles protects the rights necessary for the realisation of the right to social security. Section 16 protects the right of every person to be treated with dignity worthy of a human being, and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

The right to a fair and public hearing states that any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation, must be established by law and must be independent and impartial.¹⁹¹ In addition, where proceedings are instituted by any person before such a court or other authority, the case must be given a fair hearing within a reasonable time. All proceedings must be held in public, although a court or other authority is empowered to exclude persons who are no the parties to the dispute, or their legal representatives.¹⁹²

Section 27 protects the right to equal protection of the law. It states that every person has a right to equal protection of the law, including the enjoyment of the rights and freedoms set out in this Charter, without discrimination on any ground except as is necessary in a democratic society.

5.2.10.3 An overview of the social security system in Seychelles

The Seychelles social security system comprises social assistance benefits provided by the Social Security Fund and social insurance benefits by the Seychelles Pension Fund.

(a) Social assistance

The Social Security Fund provides old-age, disability and survivors’ benefits to all citizens residing in Seychelles.¹⁹³

- **Old-age pension**: The old-age pension is paid to persons aged 63 years and who have been residents of Seychelles for at least five years prior to the date of retirement. However, the residency requirement may be waived under special circumstances. The old-age pension is reviewed and adjusted annually according to changes in the cost of living.¹⁹⁴

¹⁹¹ Section 19 of the Constitution of Seychelles.
• **Disability pension**: A disability pension is paid to a person who is assessed with at least a 66.7% loss of earning capacity and has resided in Seychelles for at least five years. As in the case of the old-age pension, the residency requirement may be waived under special circumstances. A partial disability is paid to a person who is assessed with at least a 50% loss of earning capacity and who has resided in Seychelles for at least five years. For partial disability, a reduced pension is paid until the retirement age after receiving sickness benefits for at least six months.\(^\text{195}\)

• **Dependant’s supplement**: A dependant’s supplement is paid to a family with an income below the official family subsistence level. The supplement is paid under certain conditions for each dependent child and for one adult who must be the spouse, a person caring for the insured person, or a dependent adult with a disability who is not receiving any other benefits. The pension is not payable abroad. Different dependant benefit amounts are paid to adults and for each child. The combined disability pension and dependant supplements must not exceed 80% of the insured’s previous earnings. All the benefits are reviewed and adjusted annually according to changes in the cost of living.\(^\text{196}\)

• **Survivors’ pension**: A survivors’ pension is paid to the dependants of a deceased who resided in Seychelles for at least five years. Eligible survivors include a widow aged 45 years or older or with a dependent child younger than 16 years (or younger than the age of 25 years if the child is a student), a dependent widower, and full orphans. The pension ceases on remarriage or cohabitation. A widow who does not qualify for a pension receives a limited benefit for up to 20 working days. A spouse’s pension is paid to an eligible widow or dependent widower for up to one year. A benefit is paid for up to 20 business days to a widow or widower who does not qualify for a pension. Fixed amounts of dependant benefit are paid for an adult and for each child. An orphan’s pension is paid for each full orphan. A funeral grant is paid as a lump sum. These benefits are also reviewed and adjusted annually according to changes in the cost of living.\(^\text{197}\)

(b) **Social insurance**

The Seychelles Pension Fund provides old-age, disability and survivors’ benefits to all employed persons, including casual workers.

• **Retirement benefit**: Benefits are provided to all workers, including casual workers and self-employed persons. The old-age benefit is for persons aged 63 years and older with at least ten years of continuous contributions to the Seychelles Pension Fund immediately before retirement, or a total of 20 years of contributions to the Social Security Fund and/or the Seychelles Pension Fund. However, a person aged 60 years with at least ten years of continuous contributions to the Seychelles Pension Fund immediately before retirement, or a total of 20 years of contributions to the Social

\(^\text{195}\) *Ibid.*

\(^\text{196}\) *Ibid.*

\(^\text{197}\) *Ibid.*
Security Fund and/or the Seychelles Pension Fund, can get early retirement benefits. An old-age settlement is paid if a worker does not qualify for the old-age benefit. A migration allowance is paid if the worker leaves the country permanently.

The old-age benefit is paid as a percentage of the worker’s average monthly earnings in the last five years before retirement, according to four earnings classes. Any voluntary contributions to the Fund may be used to calculate pensions or refunded as a lump sum with interest. There is a maximum pension per month. The old-age settlement is paid as a lump sum.

- **Disability benefit**: A disability benefit is paid to a person younger than 63 years and assessed with an incapacity for work of 80% to 100%. A medical board appointed by the Seychelles Pension Fund assesses the degree of incapacity for work and determines how long the pension is paid. The monthly disability pension is based on a worker’s average monthly earnings in the last five years before the disability is assessed. A disability settlement is paid where a worker does not qualify for the disability benefit. It is a lump sum of the total of the insured’s and the employer’s contributions plus 4% interest.

- **Survivors’ benefit**: A survivors’ benefit is paid to eligible survivors (a widow/widower or partner who lived with the deceased for at least three years, and children). The surviving spouse must have resided in Seychelles for at least five years, although this may be waived in special circumstances. Eligible surviving children must be younger than 18 years of age, or 26 if a full-time student.198

If there are no eligible surviving children, the spouse’s benefit is 80% of the old-age or disability pension the deceased received, or was entitled to receive, paid for life. However, the benefit is 70% of the old-age or disability pension the deceased received, or was entitled to receive, if the surviving spouse was at least ten years younger than the deceased. If there are eligible surviving children, the spouse’s pension is up to 50% of the deceased’s pension. If the deceased worker elected to pay a higher pension to surviving children, the spouse’s pension is reduced, but must not be less than 25% of the deceased’s pension.199

A minimum monthly pension of 40% of the old-age or disability pension the deceased received, or was entitled to receive, is paid as an orphan’s pension. However, if the deceased worker elected to pay a higher pension to surviving children, up to 75% of his or her pension is paid; and up to 80% is paid for full orphans. The pension is split equally amongst eligible orphans and paid to the child(ren)’s guardian.200

A death benefit is paid to a named survivor if there is no eligible surviving spouse or child and if the deceased received, or was entitled to receive, an old-age or disability pension. The death benefit is one month of the old-age or disability pension the deceased worker received, or was entitled to receive. A pre-retirement death benefit is paid to a named survivor if there is no eligible surviving spouse or child, and if the

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deceased was younger than the retirement age. Survivors’ benefits are payable abroad. The pre-retirement death benefit is a lump sum of the total of the deceased’s and the employer’s contributions plus 4% interest. Migration allowance of a lump sum of the total of the deceased’s and the employer’s contributions plus 4% interest, is also paid.

- **Subsistence income for unemployed persons**: The Agency for Social Protection provides subsistence income for unemployed persons in terms of the Unemployment Fund Act of 1980. The Agency for Social Protection provides wages for registered unemployed and young persons who work on approved projects, including the unemployment relief scheme (for both full-time and part-time unemployment), youth training scheme, apprenticeship scheme, and the skills acquisition programme.\(^{201}\)

- **Sickness benefit**: The Agency for Social Protection also provides sickness benefits of 80% of the worker’s full salary or a fixed amount per month that is paid for the first two months of sickness, whichever is lower.\(^{202}\) The employer pays the remaining 20% of sickness benefits. Sickness benefits are up to a certain amount per month, paid from the third month of illness for up to 130 working days. Medical services are provided by state clinics and hospitals under the National Health Plan. In addition, a dependant’s benefit is paid for an adult and for each child.\(^{203}\)

- **Maternity benefit**: Maternity benefits of 80% of the worker’s full salary or a determined amount (whichever is lower), is paid for two weeks before and eight weeks after the expected date of childbirth. The employer pays the remaining 20% of the maternity benefits. For a prolonged incapacity resulting from pregnancy or childbirth, a sickness benefit is paid. Medical services are provided by state clinics and hospitals under the National Health Plan. A dependant’s supplement is paid for an adult and for each child.\(^{204}\)

- **Workers compensation**: Occupational injury and disease compensation are also administered by the Agency for Social Protection. Compensation is available to all employed persons, excluding the self-employed. Benefits include disability, dependants’, survivors’, and medical benefits. Temporary disability benefits are paid for a worker with an assessed degree of disability of at least 50%. Up to a specified amount per month is paid for up to 130 working days. A monthly dependant’s benefit is paid for an adult and for each child.\(^{205}\)

For permanent disability, a disability pension is paid if a worker is assessed with a total disability. Up to a determined maximum is paid per month until the age of 63 after receiving a temporary disability benefit for up to 130 working days. For partial disability, a percentage of the total disability benefit is paid according to the assessed degree of disability. A dependant’s benefit per month is paid for an adult and for each child.


\(^{203}\) *Ibid.*

\(^{204}\) *Ibid.*

child. Medical benefits include medical and surgical care, hospitalisation, medicine, appliances, and transportation.\textsuperscript{206}

A survivors’ pension is paid to the widow/widower if the deceased provided at least 75% of the family income. The widow or widower must not be gainfully employed or self-employed. The pension ceases on remarriage or cohabitation. A dependant’s supplement is paid where the family income is below the official family subsistence level. The supplement is paid under certain conditions for each dependent child and for one adult, who must be the spouse, a person caring for the insured person, or a dependent adult with a disability who is not receiving any other benefits.\textsuperscript{207}

5.2.11 The Republic of South Africa

5.2.11.1 Constitutional guarantee of social security

The right of access to social security is guaranteed in the Constitution of South Africa (1996) as a fundamental human right. Section 27(1)(c) states that everyone has the right to have access to social security and, if they are unable to support themselves and their dependants, appropriate social assistance. The state has a duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.\textsuperscript{208}

The Bill of Rights (Chapter 2) further protects other socio-economic rights that are necessary for the realisation of social security. These include the rights to land,\textsuperscript{209} to adequate housing,\textsuperscript{210} and to healthcare, food and water.\textsuperscript{211} In \textit{Government of the Republic of South Africa and Others v Grootboom and Others},\textsuperscript{212} the Constitutional Court held that the right of access to social security cannot be interpreted in isolation, as there is a close correlation between it and other constitutional rights and values. The court pointed out that the rights in the Bill of Rights are interrelated, interdependent and mutually supporting.\textsuperscript{213} The court furthermore remarked that rights must be read together in the setting of the Constitution as a whole, and their interconnectedness needs to be taken into account in interpreting rights and in determining whether the state has met its obligations in terms of one of them. Together these rights are mutually supportive and have a significant impact on the dignity of people and their quality of life.

\textsuperscript{206} Ibid.

\textsuperscript{207} Ibid.

\textsuperscript{208} Section 27(2) of the Constitution of South Africa, 1996.

\textsuperscript{209} Section 25 of the Constitution of South Africa.

\textsuperscript{210} Section 26 of the Constitution of South Africa.

\textsuperscript{211} Section 27(1)(a) and (b) of the Constitution of South Africa.

\textsuperscript{212} Government of the Republic of South Africa and Others v Grootboom and Others, 2000. (11) BCLR 1169 (CC); 2001 (1) SA 46 (CC) (hereinafter referred to as the Grootboom case).

\textsuperscript{213} Grootboom case, Paragraph 24.
5.2.11.2 Protection of rights ancillary to social security

In addition, other rights protected in the Bill of Rights have a bearing on the realisation of the rights of access to social security. These rights include the right to equality, the right to human dignity, the right to just administrative action, and the right to have access to justice. According to Section 9:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination, may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

The right to human dignity provides that everyone has inherent dignity and the right to have their dignity respected and protected. Section 33 of the Constitution entrenches the right of everyone to administrative action which is lawful, reasonable and procedurally fair. A person whose rights have been adversely affected by administrative action has the right to be given written reasons. The state is compelled to pass national legislation to give effect to the right of administrative justice and to provide for the review of administrative action by a court or other independent and impartial tribunal. The provisions of Section 33 are relevant to the social security adjudication framework, as the Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state and, to the extent foreseen by the Constitution, natural and juristic persons.

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214 Section 9 of the Constitution of South Africa.
215 Section 10 of the Constitution of South Africa.
216 Section 33 of the Constitution of South Africa.
217 Section 34 of the Constitution of South Africa.
218 Section 33(1) of the Constitution of South Africa.
219 Section 33(2) of the Constitution of South Africa.
220 Section 33(3) of the Constitution of South Africa.
221 Section 8(1) of the Constitution of South Africa.
222 In terms of Section 8(2) of the Constitution of South Africa, a provision in the Bill of Rights binds a natural or a juristic person if, and to the extent that it is applicable, taking into account the nature
Section 34 of the Constitution guarantees the right of access to justice (courts). It states that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

5.2.11.3 An overview of the South African social security system

(a) Social assistance

In the area of social assistance, the Social Assistance Act provides for (inter alia) the administration of social assistance and the payment of social grants. It provides for the payment of a child support grant, care dependency grant, foster child grant, disability grant, older person’s grant, war veteran’s grant, and a grant-in-aid. The Act provides social assistance to South African citizens, permanent residents, or refugees residing in South Africa. In order to qualify for social assistance, a person must fall, therefore, into any of the aforementioned categories. Grants are only awarded if the applicant’s or, in the case of the foster care grant, the foster child’s financial resources are below a certain level.

A person is eligible for an old-age grant if he or she has attained the age of 60 years. In order to qualify for the grant, the applicant must be resident in South Africa at the time of application, he/she and the spouse must comply with the means test, must not be maintained or cared for in a state institution, must not be in receipt of another social grant, and must submit a 13-digit bar coded identity document.

224 Section 4 of the Social Assistance Act.
225 South African citizen, in terms of the Act, means a person who has acquired citizenship in terms of Chapter 2 of the South African Citizenship Act 88 of 1995.
226 See Regulations 2(e), 3(a), 6(g), 8(c), 7(c) and 9(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
227 Section 5(c) of the Social Assistance Act.
228 See Annexures A-D of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
229 The value of the grant (as on 1 April 2015) is R1 410 per month. However, if a person is older than 75 years, he or she receives R1 370 (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).
230 See Annexures A-D of the Government Gazette No. 31356. Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance.
231 Regulation 2(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
232 Regulation 11(a) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
A person is eligible for a war veteran's grant if he/she has attained the age of 60 years and, owing to physical or mental disability, is unable to provide for his/her maintenance.233 The person must also have performed any naval, military or air force service during World War I, performed any naval, military or air force service during World War II, or, while a member of the Union Defence Forces, assigned in Korea.234 The applicant must be resident in South Africa at the time of application,235 must be 60 years and older, or must be disabled.236 He/she and his/her spouse must meet the requirements of the means test,237 must not be maintained or cared for in a state institution,238 and must not be in receipt of another social grant.239

A person is eligible for a disability grant240 if he/she is above 18 years and, owing to a physical or mental disability, is unfit to obtain by virtue of any service, employment or profession, the means needed to enable him/her to provide for his/her maintenance.241 A person who is in prison does not qualify for the grant, nor those living in a state institution (such as a state old-age home), living in a psychiatric hospital, or those receiving care from a state treatment centre or state care for a drug habit.242 Also if one is refusing to undergo medical treatment.243

A person is eligible for a grant-in-aid244 if he/she requires full-time attendance by another person and, owing to his/her physical or mental disabilities, if he/she is not being cared

233 Section 11(a)-(b) of the Social Assistance Act.
234 Section 11(b)(i)-(iv) of the Social Assistance Act.
235 Section 5(b) of the Social Assistance Act.
236 Section 11(a)-(b) of the Social Assistance Act.
237 Regulation 2(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
238 Regulation 2(d) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
239 Regulation 2(c) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
240 The value of the disability grant (as on 1 April 2015) is R1 410 per month (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).
241 Regulation 2(a)-(c) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
242 Regulation 3 of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
243 Regulation 3(e) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.
244 The value of the grant-in-aid (as on 1 April 2015) is R330 per month (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).
for in an institution that receives subsidy by the state for the care or housing of such beneficiary, and is a social grant recipient.\textsuperscript{245} A grant-in-aid is an additional grant awarded to persons who are in receipt of either an old-age/disability/war veteran's grant.\textsuperscript{246} One cannot receive the grant-in-aid on its own. It must be in addition to one of these main grants.

The child support grant\textsuperscript{247} is paid to a primary caregiver of a child (a person older than 16 years who, whether related to the child or not, takes primary responsibility for meeting the daily needs of that child).\textsuperscript{248} The age limit for the eligibility of this grant is 18 years.\textsuperscript{249} In order to qualify for the grant, the applicant must be the primary caregiver of the child/children concerned;\textsuperscript{250} the applicant and the child must live in South Africa; the applicant and spouse must meet the requirements of the means test;\textsuperscript{251} the caregiver must be in possession of a 13-digit bar coded identity document, as well as a 13-digit birth certificate (of the child).\textsuperscript{252} The child must not be cared for in a state institution.\textsuperscript{253}

A care dependency grant\textsuperscript{254} is a grant payable to the parents, foster parents, guardians or custodians in respect of a child between the ages of 1 and 18 years in their care, who, due to severe mental and/or physical disability, needs full-time care.\textsuperscript{255} In order to qualify for this grant, the applicant and child must be resident in South Africa; the applicant must submit a medical/assessment report confirming disability of the child; the applicant, spouse and child must meet the requirements of the means test; the care-dependent child/children must not be permanently cared for in a state institution; and a 13-digit

\textsuperscript{245} Section 12 of the Social Assistance Act.

\textsuperscript{246} Regulation 5 of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

\textsuperscript{247} The value of the child support grant (as on 1 April 2015) is R330 a month per child (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).

\textsuperscript{248} Section 1 of the Social Assistance Act.

\textsuperscript{249} Section 1 of the Social Assistance Act defines a child as a person under the age of 18 years.

\textsuperscript{250} Regulation 6(1) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

\textsuperscript{251} Regulation 6(1)(c) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

\textsuperscript{252} Regulation 11(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

\textsuperscript{253} Regulation 6(e) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

\textsuperscript{254} The value of the care dependency grant is R1 350 per month (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).

\textsuperscript{255} Section 7 of the Social Assistance Act.
A foster parent is eligible for a foster child grant as long as the child is in need of care. A foster parent can apply for a foster care grant once the court has placed the child with him/her. The asset and income of the foster child is a determining factor for eligibility in this case. The means test depends on the income of the foster child, not on the income of the parents. The income of the foster parents is not counted. Foster grants are usually paid out until the child turns 18.

Social relief of distress programmes are aimed at the alleviation of both chronic and transient poverty. Social relief is provided for individuals in the event of an individual crisis, or for whole communities where they face a crisis. This grant is usually offered for three months, but this period may in exceptional circumstances be extended to six months. A beneficiary must be a citizen of South Africa and living in South Africa at the time of applying for the grant.

(b) Social insurance

The Unemployment Insurance Act provides protection to workers who become unemployed. It makes provision for unemployment benefits, maternity benefits, illness benefits, adoption benefits, and dependants’ benefits. The Act applies to all employers and workers. However, it does not apply to workers working less than 24 hours a

256 Regulations 8 and 11(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

257 The value of the grant is R830 per month (Social Assistance 13 of 2004: Increase in Respect of Social Grants. 30 March 2015. Government Gazette No. 38647 Notice 277).

258 Section 8 of the Social Assistance Act.

259 See Annexure C of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.

260 Ibid.

261 Regulation 28(3)(d) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.


263 Regulation 9(b) of the GNR. 898 of 22 August 2008: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance. Government Gazette No. 31356.


265 Section 12 of the Unemployment Insurance Act.

266 Section 3(1) of the Unemployment Insurance Act.
Benefits accrue at a rate of one day of benefits for every six completed days of employment, up to 238 days in the four-year period before the date of application for the benefit. An unemployed contributor is entitled to unemployment benefits for any period of unemployment lasting more than fourteen days, if the reason for the unemployment is the termination of the contributor’s contract of employment by the employer of that contributor, or the ending of a fixed term contract; the dismissal of the contributor, as defined by Section 186 of the Labour Relations Act of 1995 (Act 66 of 1995); insolvency in terms of the provisions of the Insolvency Act of 1936 (Act 24 of 1936); or (in the case of a domestic worker) the termination of the contributor’s contract of employment by the death of the employer of that contributor. The Act also requires the contributor to register as a work-seeker with a labour centre established under the Skills Development Act; and to be capable of and available for work.

A contributor is entitled to the illness benefits for any period of illness if the contributor is unable to perform work on account of illness, and the contributor fulfils any prescribed requirements in respect of any specified illness. A contributor is not entitled to illness benefits if the period of illness is less than fourteen days; for any period during which the contributor is entitled to unemployment or adoption benefits; or, without just reason, refuses or fails to undergo medical treatment or to carry out the instructions of a medical practitioner, chiropractor or homeopath.

A contributor who is pregnant is entitled to the maternity benefits for any period of pregnancy or delivery, and the period thereafter. The maternity benefit may not be more than the remuneration the contributor would have received if the contributor had not been on maternity leave, taking into account any maternity leave paid to the contributor in terms of any other law or any collective agreement or contract of employment. The maximum period of maternity leave is 17.32 weeks. However,
a contributor who has a miscarriage during the third trimester or bears a stillborn child, is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth.\textsuperscript{280}

One contributor of the adopting parties is entitled to the adoption benefits for each adopted child if the child has been adopted in terms of the Children's Act; the period that the contributor was not working was spent caring for the child; and the adopted child is below the age of 2 years.\textsuperscript{281} Entitlement for adoption benefits commences on the date that a competent court grants an order for adoption in terms of the Children's Act.\textsuperscript{282} The benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work, taking into account any leave paid to the contributor in terms of any other law or any collective agreement or contract of employment.\textsuperscript{283}

The surviving spouse or a life partner of a deceased contributor is entitled to the dependant's benefits within six months of the death of the contributor.\textsuperscript{284} However, where just cause is shown, the Unemployment Insurance Fund (UIF) Commissioner can accept an application after the six-month period.\textsuperscript{285} A dependent child of a deceased contributor is entitled to the dependant's benefits if there is no surviving spouse or life partner, or if the surviving spouse or life partner has not made application for the benefits within six months of the contributor’s death.\textsuperscript{286} The benefit payable to the dependant is the unemployment benefit that would have been payable to the deceased contributor if the contributor had been alive.\textsuperscript{287}

Different sets of legislation deal with employment injury and disease compensation in and outside the mining sector. These are the Compensation for Occupational Injuries and Diseases Act (COIDA)\textsuperscript{288} and Occupational Diseases in Mines and Works Act (ODMWA).\textsuperscript{289} In terms of COIDA, compensation for employment injuries and diseases is paid to employees and their dependants out of the Compensation Fund, to which employers contribute on the basis of industry-based risk assessments.\textsuperscript{290} Persons covered are employed persons, including contract workers and casual employees.\textsuperscript{291} However, household workers, self-employed persons, volunteers, and certain military personnel, are excluded.\textsuperscript{292}

\textsuperscript{280} Section 24(5) of the Unemployment Insurance Act.
\textsuperscript{281} Section 27(1) of the Unemployment Insurance Act.
\textsuperscript{282} Section 27(2) of the Unemployment Insurance Act.
\textsuperscript{283} Section 27(4) of the Unemployment Insurance Act.
\textsuperscript{284} Section 30(1) of the Unemployment Insurance Act.
\textsuperscript{285} Section 30(1)(b) of the Unemployment Insurance Act.
\textsuperscript{286} Section 30(2) of the Unemployment Insurance Act.
\textsuperscript{287} Section 30(3) of the Unemployment Insurance Act.
\textsuperscript{288} Compensation for Occupational Injuries and Diseases Act 130 of 1993.
\textsuperscript{289} Occupational Diseases in Mines and Works Act 78 of 1973.
\textsuperscript{290} Established in terms of the Compensation for Occupational Injuries and Diseases Act.
\textsuperscript{291} Section 1 of the Compensation for Occupational Injuries and Diseases Act.
\textsuperscript{292} Ibid. In: ER24 Holdings v Smith and Another, 2007. (6) SA 147 (SCA). It was held that a volunteer worker gaining vocational experience for the purpose of obtaining qualification was not an
Temporary and permanent disability cash benefits, medical benefits, survivors’ benefits and a funeral grant are provided. A temporary disability benefit is paid if a worker is assessed with a temporary total disability. It is valued at 75% of the worker’s earnings at the time of the accident. Periodical payments may be extended for up to 24 months (longer in special cases) after further assessment of the disability. A partial disability benefit is paid as a percentage of the worker’s earnings, as is determined by the Compensation Commissioner’s Office. The partial disability benefit is paid periodically.

A permanent disability benefit of up to 75% of the insured’s earnings is paid if a worker is assessed with a total disability. If the assessed degree of disability is 31% to 99% (partial disability), a percentage of the full pension is paid according to the assessed degree of disability. For an assessed degree of disability of 30%, a lump sum of fifteen times the insured’s monthly earnings is paid. A permanent disability that is less than 30% is compensated with a lump sum of fifteen times the insured’s monthly earnings.

Workers’ medical benefits include medical, surgical, and hospital care, rehabilitation, and appliances. Benefits are provided for up to two years, but may be extended in special cases. The compensation fund reimburses the cost of transporting an injured employee to a hospital, a doctor’s office, or to his/her place of residence.

Survivors’ benefits are paid to a widow/widower and to dependent children. A widow/widower with no dependent children is paid a lump sum of two months of the permanent total disability pension the deceased received or was entitled to receive. Where an employee dies leaving a widow/widower and a child, the widow/widower is paid a pension

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293 See Chapter 6 of the Compensation for Occupational Injuries and Diseases Act.
294 Section 47(1)(a) of the Compensation for Occupational Injuries and Diseases Act.
295 Item 1 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
296 Section 47(6) of the Compensation for Occupational Injuries and Diseases Act.
297 Section 47(2) of the Compensation for Occupational Injuries and Diseases Act.
298 Section 47(4) of the Compensation for Occupational Injuries and Diseases Act.
299 Section 48(1), read with Item 4 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
300 Section 48(1), read with Item 5 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
301 Section 48(1), read with Item 2 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
302 Section 48(1), read with Item 3 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
303 See section 73(1) of the Compensation for Occupational Injuries and Diseases Act.
304 Section 73 of the Compensation for Occupational Injuries and Diseases Act.
305 Section 72(1) and (2) of the Compensation for Occupational Injuries and Diseases Act.
306 Section 54 of the Compensation for Occupational Injuries and Diseases Act.
307 Section 54(1)(a), read with Item 6 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.
equal to 40% of the permanent total disability pension the deceased received or was entitled to receive.\textsuperscript{308} An orphan’s pension at the value of 20% of the permanent total disability pension the deceased employee was entitled to receive, is paid for each dependent child.\textsuperscript{309} All dependant’s benefits combined must not exceed the permanent total disability pension the deceased received or was entitled to receive.\textsuperscript{310} Funeral costs of a deceased employee are covered by the Fund. It is either a reasonable amount up to a maximum or the actual amount spent, whichever is less.\textsuperscript{311}

The Road Accident Fund is a non-employment based social insurance scheme established under the Road Accident Fund Act.\textsuperscript{312} The Fund is primarily funded from a compulsory fuel levy and pays out compensation to a third party for any loss or damage suffered as a result of any bodily injuries or death, caused by the negligent driving of motor vehicles. In terms of Section 17 of the Road Accident Fund Act, the Fund is obliged to compensate any affected person.

Healthcare for the bulk of the population is provided by the limited public measures in this area: free primary healthcare, as well as free hospital care for women with young children and the aged. For the rest, medical services are covered for a selected part of the population by private schemes, which are regulated by the Medical Schemes Act.\textsuperscript{313} Private sector health provision is mainly occupational- and insurance-based.

South Africa also does not have a national or public old-age insurance scheme. In the absence of a national or public retirement fund regime, occupational-based and private retirement funds are the preferred vehicle for ensuring financial support in old age by workers. Retirement coverage is regulated mainly in terms of the Pension Funds Act.\textsuperscript{314} The insurance industry also provides cover for those who can afford it.

5.2.12 The Kingdom of Swaziland

5.2.12.1 Guarantee of social protection rights

Social protection rights are not guaranteed under the Bill of Fundamental Rights and Freedoms (Chapter 3) of the Constitution of the Kingdom of Swaziland (2005), but are one of the objectives in Chapter 5 (Directive Principles of State Policy and Duties of the Citizen). The Directive Principles of State Policy guide all organs and agencies of the state, citizens, organisations and other bodies and persons in applying or interpreting the

\textsuperscript{308} Section 54(1)(b), read with Item 7 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.

\textsuperscript{309} Section 54(1)(c), read with Item 8 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.

\textsuperscript{310} Section 54(1)(b) of the Compensation for Occupational Injuries and Diseases Act.

\textsuperscript{311} Section 54(2), read with Item 10 of Schedule 4 of the Compensation for Occupational Injuries and Diseases Act.

\textsuperscript{312} Road Accident Fund Act 56 of 1996.

\textsuperscript{313} Medical Schemes Act 131 of 1998.

\textsuperscript{314} Pension Funds Act 24 of 1956.
Constitution or any other law as well as in taking and implementing any policy decisions, for the establishment of a just, free and democratic society.\textsuperscript{315} As a result, its provisions are not enforceable in any court or tribunal.

Amongst the social objectives are the following:

- The state shall guarantee and respect institutions which are charged by the state with the responsibility for protecting and promoting human rights and freedoms by providing those institutions with adequate resources to function effectively.
- The state shall guarantee and respect the independence of non-governmental organisations which protect and promote human rights.
- The state shall make reasonable provision for the welfare and maintenance of the aged and shall protect the family and recognise the significant role of the family in society.
- The state and society shall recognise the right of persons with disabilities to respect and human dignity.
- The state shall promote recreation and shall ensure that adequate facilities for sports are provided throughout the country and that sports are provided as a means of fostering national integration, health and self-discipline, as well as international friendship and understanding.
- Without compromising quality, the state shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic healthcare services to the population.
- The state shall institute effective machinery for dealing with any hazard or disaster arising out of natural calamities, or any situation resulting in general displacement of people or serious disruption of their normal life.\textsuperscript{316}

\section*{5.2.12.2 Protection of rights ancillary to social protection}

Section 14(1) of the Constitution of Swaziland lists the fundamental rights and freedoms of the individual that are protected and promoted therein. It states that:

The fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely:

(a) respect for life, liberty, right to fair hearing, equality before the law, and equal protection of the law;

[…]  

(f) respect for rights of the family, women, children, workers and persons with disabilities.

These fundamental rights and freedoms must be respected and upheld by the Executive, the Legislature and the Judiciary and other organs or agencies of government and, where

\textsuperscript{315} Section 56 of the Constitution of the Kingdom of Swaziland (Constitution of Swaziland of 2005).

\textsuperscript{316} Section 60 of the Constitution of Swaziland of 2005.
applicable to them, by all natural and legal persons in Swaziland, and are enforceable by
the courts.317

The right to equality entails that "all persons are equal before and under the law in all
spheres of political, economic, social and cultural life and in every other respect, and shall
enjoy equal protection of the law."318 This means a person should not be discriminated
against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion,
or social or economic standing, political opinion, age or disability. In addition, parliament
cannot enact a law that is discriminatory. It may, however, adopt affirmative active
measures (laws necessary for implementing policies and programmes aimed at redressing
social, economic or educational or other imbalances in society).

The right to a fair hearing is another fundamental right in the Constitution of Swaziland
that has a bearing on social protection. According to Section 21, “in the determination
of civil rights and obligations or any criminal charge, a person shall be given a fair and
speedy public hearing within a reasonable time by an independent and impartial court or
adjudicating authority established by law.” Proceedings must be held in public, although
in some circumstances the court or other adjudicating authority can exclude persons who
are not parties to the dispute, or their legal representatives.

The Constitution guarantees social protection rights of mothers, children, the needy,
and the elderly. It states that motherhood and childhood are entitled to special care and
assistance by society and the state.319 In addition, subject to the availability of resources,
the government must provide facilities and opportunities necessary to enhance the
welfare of the needy and the elderly.320 Every Swazi child has the right to free education in
public schools from the first grade to at least the end of primary school.321

While the rights of persons with disabilities are protected in Section 30, these do not
seem to include social protections rights:

Rights of persons with disabilities

30. (1) Persons with disabilities have a right to respect and human dignity, and the
Government and society shall take appropriate measures to ensure that those
persons realise their full mental and physical potential.

(2) Parliament shall enact laws for the protection of persons with disabilities so
as to enable those persons to enjoy productive and fulfilling lives.

This implies that persons with disabilities who are indigent would be covered in terms
of the provisions of Section 27(6) (protection of the needy and the elderly).

317 Section 14(2) of the Constitution of Swaziland of 2005.
318 Section 20 of the Constitution of Swaziland of 2005.
319 Section 27(4) of the Constitution of Swaziland of 2005.
320 Section 27(6) of the Constitution of Swaziland of 2005.
321 Section 29(6) of the Constitution of Swaziland of 2005.
The rights of workers include the right of women to protection before and after childbirth.\textsuperscript{322} In addition, parliament is obliged to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions.\textsuperscript{323}

The right to administrative justice is also important in relation to social security provided by public administrative institutions. According to Section 33, a person appearing before any administrative authority has a right to be heard and to be treated justly and fairly in accordance with the requirements imposed by law, including the requirements of fundamental justice or fairness, and has a right to apply to a court of law in respect of any decision taken against that person with which that person is aggrieved. The person also has a right to be given reasons in writing for the decision of the authority.

5.2.12.3 An overview of the Swazi social security system

The Swazi social security system consists of social insurance and social assistance schemes.

(a) Social assistance

- \textit{Old-age pension and free or subsidised healthcare}: Social assistance is in the form of an old-age pension and free or subsidised healthcare. An old-age pension is paid to persons aged 60 years and older.\textsuperscript{324} It is a means-tested benefit, paid only to persons considered to be needy. Beneficiaries receive a fixed amount, paid quarterly.

- \textit{Healthcare services}: Free healthcare services are provided to designated categories of persons, and subsidised healthcare services for the rest of the population. The Swaziland National Health Policy states that “health services shall be provided free of charge to eligible children, elderly persons, orphans and persons with disabilities.”\textsuperscript{325} In addition, the rest of the population receives subsidised healthcare, as the National Health Policy states that:

  [...] in order to increase revenue for health services, government-funded facilities shall commercialise some aspect of the service without rendering public health services and the essential clinical package unaffordable for the majority of the people. In commercialising such services, facilities shall be expected to comply with established guidelines.\textsuperscript{326}

- \textit{Subvention to non-governmental and faith-based organisations}: The state also offers a subvention to non-governmental and faith-based organisations, offering services that are deemed important according to established guidelines, subject to availability of resources.\textsuperscript{327}

\textsuperscript{322} Section 32(3) of the Swazi Constitution of 2005.
\textsuperscript{323} Section 32(4) of the Swazi Constitution of 2005.
\textsuperscript{324} Social Security Administration. \textit{Social Security Programs Throughout the World: Africa}, 2013. 175.
\textsuperscript{325} Swaziland National Health Policy Paragraph 4.30.
\textsuperscript{326} Swaziland National Health Policy Paragraph 4.29.
\textsuperscript{327} Swaziland National Health Policy Paragraph 4.31.
(b) Social insurance

Social insurance benefits are provided by the Swaziland National Provident Fund, Public Service Pensions Fund, workers’ compensation scheme, Motor Vehicle Accident Fund, and occupational schemes. Social insurance benefits available include retirement, disability and survivors’ benefits; occupational injury compensation; compensation to injured motorists, passengers and pedestrians, as well as survivor benefits to dependants; and sickness benefits.

- **Retirement, disability and survivors’ benefits**: The Swaziland National Provident Fund pays out retirement, disability and survivors’ benefits. The Fund is open to all employed persons in Swaziland, with voluntary coverage for employees not compulsorily covered and for members of religious organisations. However, self-employed persons, persons employed in households, casual employees and non-citizens, are excluded. A retirement benefit is paid from the age of 50 years, although an employee is eligible for old-age benefits at the age of 45 years if the member’s employment terminates. The benefit is paid at any age if a member is emigrating permanently. A disability benefit is paid if the member is assessed with at least a partial permanent physical or mental disability. A survivors’ benefit is paid to dependants (spouse and, if there is no spouse, other dependants or persons named by the fund member) for the death of the fund member before retirement.

  The Public Service Pensions Fund covers public service employees. It provides retirement, survivors’, disability and withdrawal benefits, as well as funeral cover for members and their dependants. The Fund has about 36,000 active (contributing) members and some 25,000 pensioners (principal pensioners and dependants).

- **Occupational injury compensation**: The occupational injury compensation (workers’ compensation) system is an employer-liability system, involving compulsory insurance with a private carrier. Access is open to public- and private-sector employees, trainees, and apprentices, but self-employed persons, household workers, certain types of contract workers, family labour, and casual workers are excluded. Benefits are for temporary and permanent disability. A constant-attendance allowance is also paid to a permanent disability benefit recipient if he/she requires the constant attendance of others to perform daily functions. Medical benefits include medical care, surgery, hospitalisation, medicine, dental and eye care, transportation, appliances, and medical care abroad, if necessary. Survivors’ benefits and a funeral grant are also paid.

- **Compensation to injured motorists, passengers and pedestrians, as well as survivor benefits to dependants**: The Motor Vehicle Accident Fund provides compensation for bodily injuries and/or death arising from a motor vehicle accident. It pays out

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329 Ibid.
compensation to injured motorists, passengers and pedestrians, as well as survivor benefits to dependants of such persons.

- **Sickness benefits**: Employers are required by the Employment Act to provide sickness benefits for those incapable of working due to ill health. The Act states that after three months’ continuous employment with the same employer, an employee is eligible, in each year of employment with that employer, for a maximum of fourteen days’ sick leave on full pay and a maximum of fourteen days’ sick leave on half pay. Public service workers can also take up to six months of sick leave at full pay, and another six months at half pay.

- **Maternity benefits**: The Employment Act also guarantees maternity benefits (maternity leave of twelve weeks with at least two weeks full pay). However, this has been extended for workers in some sectors. As an example, Section 12 of the Wages Order 2004 (Textile Industry) and Section 13 of the Legal Notice No. 5, 2008 Wages Order (Manufacturing and Processing Industry), state that an employee who has completed the probation period is entitled to 30 days’ maternity leave with full pay. The Regulation of Wages of Pre-Schools and Day-Care Centres Order 2006, also provides for six weeks’ maternity leave on full pay.

5.2.13 The United Republic of Tanzania

5.2.13.1 Guarantee of social security rights

The Constitution of the United Republic of Tanzania (2008) states that “the United Republic of Tanzania is a state which adheres to the principles of democracy and social justice and accordingly [...] the primary objective of the Government shall be the welfare of the people.” However, social security rights are not guaranteed as fundamental rights but are included in the Fundamental Objectives and Directive Principles of State Policy. In terms of Article 11:

1. The state authority shall make appropriate provisions for the realisation of a person’s right to work, to self-education and social welfare at times of old age, sickness or disability, and in other cases of incapacity. Without prejudice to those rights, the state authority shall make provisions to ensure that every person earns his livelihood.

2. Every person has the right to access education, and every citizen shall be free to pursue education in a field of his/her choice up to the highest level according to his/her merits and ability.

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333 Section 129 of the Employment Act 5 of 1980.
335 Sections 102 and 103 of the Employment Act.
(3) Every person has the right to access of education and every citizen shall be free to pursue education and technique. Since these rights are not fundamental rights, they are not justiciable. They act as guidelines for the conduct of state affairs. According to Article 7(1):

[...] it shall be the duty and responsibility of the Government, all its organs and all persons or authorities exercising executive, legislative or judicial functions, to take cognisance of, observe and apply the provisions of this Part of this Chapter (Part II of Chapter 1 on the Fundamental Objectives and Directive Principles of State Policy).

It also provides that “the provisions of this Part of this Chapter are not enforceable by any court. No court shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment, complies with the provisions of this Part of this Chapter.”

Constitutional principles and values in Article 9 further indicate the absence of obligations on the state in relation to the provision of social security:

The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasises the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring:

(a) that human dignity and other human rights are respected and cherished;
[...]
(e) that every person who is able to work does work, and work means any legitimate activity by which a person earns a living;
(f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights;
(g) that the Government and all its agencies accord equal opportunities to all citizens, men and women alike, without regard to their colour, tribe, religion, or station in life;
(h) that all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated; and
(i) that the use of national wealth places emphasis on the development of the people and, in particular, is geared towards the eradication of poverty, ignorance and disease.

337 Article 7(2) of the Constitution of the United Republic of Tanzania (2008).
5.2.13.2 Guarantee of rights ancillary to social security

Rights protected in the Constitution of the United Republic of Tanzania that are related to social security, are the rights to equality and non-discrimination, human dignity, and access to justice. The right to equality provides that all human beings are born free, and are all equal; and that every person is entitled to recognition and respect for his dignity. In terms of Article 13, all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law. It is prohibited for any law to make a provision that is discriminatory either of itself or in its effect; and for a person or any authority acting under any law, or in the discharge of the functions or business of any state office, to discriminate against any other person.

In order to promote access to justice, the Constitution requires that the civic rights, duties and interests of every person and community be protected and determined by the courts of law or other state agencies established by or under the law. Furthermore, to ensure equality before the law, the state is compelled to make procedures which are appropriate or which take into account (inter alia) the principle that when the rights and duties of any person are being determined by the court or any other agency, the person is entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency.

Articles 107A and 107B of the Constitution of the United Republic of Tanzania also require the courts to be impartial and independent, and to “dispense justice without being tied up with technicalities and provisions which may obstruct dispensation of justice.”

5.2.13.3 An overview of the Tanzanian social security system

(a) Social assistance

Social Assistance programmes in Tanzania are designed to provide assistance to a wide range of poor and vulnerable groups: the disabled, children, and the elderly. However, the programmes face challenges of limited financial and human resources and, therefore, cover only a part of the most vulnerable of the population. Social assistance funding from the government is only 0.5% GDP. Social assistance is also provided in terms of the third phase of the Tanzania Social Action Fund (TASAF III). The objective of TASAF III is "to enable poor households to

338 Articles 12 and 13 of the Constitution of the United Republic of Tanzania.
340 Article 13(1) of the Constitution of the United Republic of Tanzania.
341 Articles 13(2) and (4) of the Constitution of the United Republic of Tanzania.
342 Article 13(5) of the Constitution of the United Republic of Tanzania.
343 Article 13(6) of the Constitution of the United Republic of Tanzania.
increase incomes and opportunities while improving consumption.”^{345} It targets people living under the basic needs poverty line (currently 33.6% of the population). The Fund has a Productive Social Safety Net (PSSN), enhancement of livelihoods and increasing incomes, targeted infrastructure development, and a capacity-building component.^{346}

The coverage of TASAF III is national, covering all local government authorities on Mainland Tanzania as well as Unguja and Pemba islands in Zanzibar. However, the programme is rolling out gradually to enable the development of systems and required capacities. It targets the 13.5 million people living below the basic needs poverty line. During the period of 2012-2017, the programme is expected to reach 7.5 million direct beneficiaries from 1.2 million targeted households through the PSSN and livelihood support. The programme focuses on the poor and vulnerable households. Targeted households are eligible for different programme components on the basis of their differing needs and capabilities. The targeted households receive safety net support as well as the opportunity to participate in livelihood enhancing activities.^{347}

(b) Social insurance

Social insurance benefits are paid by the various statutory social security institutions: National Social Security Fund (NSSF), Parastatal Pensions Fund (PPF), Local Authorities Provident Fund (LAPF), Government Employees Provident Fund (GEPF), Public Service Pensions Fund (PSPF), and the Political Service Retirement Benefits (PSRB). Access to these funds is open to all employees and to self-employed persons on a voluntary basis.^{348}

- **Retirement benefits:** Retirement benefits are paid by each of the statutory social security institutions. Retirement benefits are paid by the National Social Security Fund when a member attains the age of 60 years and has contributed to the Fund for fifteen years.^{349} However, it can also be paid before the age of 60 years if a member has contributed to the Fund for fifteen years.^{350}

The Parastatal Pensions Fund offers retirement pensions when a member attains the age of 60 years and has contributed to the Fund for at least ten years before retirement.^{351} Where a member has less than ten years’ contributions, he or she is awarded a gratuity benefit.^{352} In addition, the Public Service Pensions Fund provides

352 Section 28 of the Parastatal Pensions Act.
retirement benefits at the age of 55 or 60 years, provided that a member has contributed to the Fund for an aggregate of fifteen years. Retirement benefits can also be paid to a member who has contributed for at least ten years and whose employment ends because the member reaches the retirement age; retires on medical grounds; is redundant or retrenched to facilitate efficiency of the employer; retires on public interest; is terminated by presidential decree; or transfers to public office and where the cessation of his or her employment entitles him or her for grant of old-age benefits.

The Political Service Retirement Benefits scheme offers retirement pensions for former presidents, vice-presidents, prime ministers, and the speakers of the National Assembly. Other political leaders are only entitled to a lump sum gratuity, which is dependent on the number of years they have spent in service. Retirement Pensions under PSRB are based neither on age nor contributory time, as they are non-contributory and political posts are not determined by age.

The Local Authorities Provident Fund and Government Employees Provident Fund do not offer retirement pensions but pay out lump sums. The GEPF offers a retirement package when a member reaches a prescribed retirement age, while the LAPF pays a member in the event of retirement.

- **Disability or invalidity benefits**: Disability or invalidity benefits are also offered by most social security schemes. Disability benefits are paid out by the NSSF when a member has contributed for at least fifteen years or has made at least 36 monthly contributions of which twelve months’ contributions or more must have been made immediately preceding the date of incapacity. A member must be suffering from a permanent invalidity and must be under the pensionable age. When a member of the NSSF does not satisfy the stated conditions, he or she is awarded a special lump sum.

- **Workers’ compensation**: Workers’ compensation (occupational injury and disease) benefits are awarded to a person who sustains an occupational injury or contracts an occupational disease. For temporary disability, the benefit payable is 60% of the average insurable daily earnings determined from the last six months’ contributions prior to the month of accident or disease. The benefit is paid for a maximum period of 26 weeks from the date of the accident or disease. However, no payment is made for the first three days of any incapacity.

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353 Sections 6, 9, 17, 22(1) and 25 of the Political Service Retirement Benefits Act 3 of 1999.
354 Section 28 (1) of the Political Service Retirement Benefits Act 3 of 1999.
358 Section 16(c)(iv) of the Revised Laws of Tanganyika, Cap 51.
359 Section 27 of Local Authorities Provident Fund Act 6 of 2000.
A permanent disability benefit is paid where a member has suffered a permanent disability at the rate of 100%. Benefits are to the value of 70% of the average insurable monthly earnings determined from the last six months’ contribution prior to the month of accident or disease. Assistive devices (e.g. artificial limbs) are provided by the NSSF if deemed necessary to enable an affected member to resume work or gain improved rehabilitation.

Survivors’ benefits are paid where a worker dies as a result of an employment injury before a claim for employment injury benefit is filed. The disability is assumed to have been 100% and survivors will be paid a pension equal to 60% of the deceased person’s average insurable monthly earnings. NSSF survivors’ benefits are paid to a spouse and/or child(ren) of the deceased insured person under 18 or 21 years, if in full-time education. If a deceased insured person had no surviving spouse and/or children, the pension is paid to his or her parents. If there are no surviving spouse, children or parents, a family member will be paid in accordance with the inheritance law of Tanzania. If the survivors are eligible to another survivors’ benefit under the NSSF Act, they will be entitled to receive a benefit that is the higher of the two, or more.363

The PPF grants survivors’ benefits to the dependants of a member who died while in service with at least 120 months of the contributing period. Section 39 of the PPF Act provides that his or her legal personal representative is granted a gratuity of an amount not exceeding either his annual pensionable emoluments, or his commuted pension gratuity if any, whichever is greater. LAPF survivors’ benefits are paid to the deceased’s widow or widower, children (any child under the age of 21 years, or up to the age of 25 years in the case of a disabled child), or parents. Where a member has made less than fifteen years’ (180 months) contributions, only survivors’ gratuity is paid.364

The PPF provides disability benefits where an employee can no longer discharge his or her duties and the member has made at least 120 monthly contributions to the PPF.365 Where these conditions are not met, a disabled member is awarded a gratuity.366 The PSPF offers a disability pension to a member who is ‘unemployable’ due to physical or mental disability.367 The employee must be unable to perform his or her duties due to infirmity.368 A disability benefit is paid to all members, provided a member is unemployable, irrespective of the duration of infirmity or contribution period.369

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365 Section 26(b) of the Parastatal Pensions Fund Act 14 of 1978.
366 Section 34 of the Parastatal Pensions Fund Act 14 of 1978 provides a payment of gratuity benefit which arises as a result of cessation of employment due to retrenchment, retired in public interest, or removal from employment by a Presidential decree or any other relevant authority. The member must have less than 120 months’ contributing period.
367 Section 13 of the Public Service Pensions Fund Act 2 of 1999.
368 Section 16(e) of the Public Service Pensions Fund Act 2 of 1999.
369 Ibid.
Disability benefits provided under other schemes: Disability benefits are also provided by the Political Service Retirement Benefits scheme. In terms of Section 5(d) of the Political Service Retirement Benefits Act,370 a political leader is entitled to the benefits stipulated in the Act upon medical evidence that he or she is incapable of discharging his or her official duties. In this instance, former presidents, vice-presidents, prime ministers, and speakers of the National Assembly would receive a disability pension while a gratuity will be paid to other political leaders.371

Disability benefits are awarded by the LAPF, GEPF and under the Workmen’s Compensation Ordinance of 1949 where termination of employment is on medical grounds.372 The disability benefits offered by the said schemes are a once-off lump sum. A funeral benefit or grant is provided by the LAPF to help meet certain funeral costs when a member dies. It is also paid by the NSSF as reimbursement to a family member who incurred burial expenses (costs) for a deceased insured person.373

Sickness benefits: Sickness benefits are offered only by the PSPF and NSSF. PSPF members are entitled to receive sickness benefits when they are unable to work and earn their monthly salaries. Sickness benefits are based on the conditions that a member must be medically unable to perform his or her duties; and that the incapacity should have lasted for at least six months before lodging the application for the benefits.374

Maternity benefits: Maternity benefits by the NSSF are payable to insured female members of the Fund who is expecting confinement.375 The worker must have made at least 36 months’ contributions, of which twelve credits must be immediately or before the expected week of confinement; and expects delivery of a child or has delivered a child. The benefit is payable after every three years, unless the pregnancy ended with a stillbirth or if the child died within the first twelve months. Benefits are in the form of cash and medical care. The maternity cash benefit is payable for a period of twelve weeks at the rate of 100% of average insurable daily earnings determined from the last six months of insurable employment immediately prior to the 20th week of pregnancy. The maternity medical care benefit covers medical treatment costs for ailments directly related to pregnancy. Treatment period begins from the 24th week of pregnancy and ends 48 hours after confinement, or seven days in the case of a caesarean delivery. Treatments are done by accredited medical providers.376

370 Section 5(d) of the Political Service Retirement Benefits Act 3 of 1999.
371 See Sections 9(1)(a), 12(1)(a), 14(1)(a), 16(1), 18(b), 20(1) and 21(1) of the Political Service Retirement Benefits Act 3 of 1999.
372 Section 27(c) of Act 6 of 2000 and Section 16(c)(i) of the Revised Laws of Tanganyika, Cap 51 and Cap 263.
375 Ibid.
LAPF maternity benefits are paid to a female member upon giving birth to a child. The member must have contributed to the Fund for two years, and must have given birth to a child. There must be a lapse of three years from the previous birth, except where the baby died.

- **Healthcare**: Healthcare is provided mostly by the public healthcare system, although health insurance is provided by the private sector. The public healthcare system is primarily subsidised by the government, and all members of the public are only supposed to contribute a particular percentage in order to receive the medical services. In addition, some public social security schemes offer medical insurance services. As an example, the NSSF has a Social Health Insurance Benefit. It is aimed at meeting the legal requirements of the NSSF Act, supporting the government’s efforts to increase access to healthcare services, to provide medical support to the insured and his or her dependants, and to provide relief to the employers on employees’ medical expenses. It is open to an insured person, spouse and up to four children (including biological and legally adopted children below the ages of 18 or 21 years, if in full-time education). Persons are eligible if they have made at least three months’ contributions. They can also receive benefits for a period of three months after stoppage of contributions. Pensioners willing to join after retirement are also accepted.

- **Special Diaspora coverage scheme**: A Welfare Scheme for Tanzanians in the Diaspora (WESTADÍ) has been established by the NSSF. It extends services to Tanzanians living abroad through a special Diaspora coverage scheme. It aims to cover all Tanzanians living abroad (including students) and four dependants, selected by the insured person for Social Health Insurance Benefits (SHIB) in Tanzania. Benefits include health benefits in Tanzania for four dependants, repatriation services (transfer of a deceased body to Tanzania as well as the cost of the return ticket to one accompanying person), and burial services for an insured person who opts to be buried in the respective Diaspora country. The health benefit covers the insured person while in Tanzania, as well as his or her four dependents left at home.

5.2.14 The Republic of Zambia

5.2.14.1 Guarantee of social security

Social protection in Zambia is not underpinned by a constitutional framework. The regulation of social security is as one of the “directive principles of state policy” in the Zambian Constitution. The Directive Principles of State Policy guide the Executive, the Legislature and the Judiciary in the development of national policies; implementation

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380 Ibid.
381 Ibid.
382 Part IX of the Constitution of Zambia of 1996.
of national policies; making and enactment of laws; and in the application of the Constitution and any other law. In addition, the Directive Principles of State Policy can be applied only where there are available state resources to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

This implies that the Directive Principles cannot be enforced as a fundamental right, and the government cannot be compelled to extend social protection. As Article 111 states, “the Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.”

Social security-related objectives that form part of the Principles of State Policy are the following:

- the state shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- the state shall endeavour to provide clean and safe water, adequate medical and health facilities, decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- the state shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- the state shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons, such social benefits and amenities as are suitable to their needs and are just and equitable;
- the state shall strive to provide a clean and healthy environment for all; and
- the state shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

The Bill of Rights of the Constitution of Zambia guarantees rights that have a bearing on social security as fundamental rights and freedoms of the individual. In terms of Article 11:

[...] it is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

(a) life, liberty, security of the person, and the protection of the law;
(b) freedom of conscience, expression, assembly, movement and association;

383 Article 110 of the Constitution of Zambia.
384 Article 112 of the Constitution of Zambia.
385 Part II of the Constitution of Zambia.
(c) protection of young persons from exploitation; and
(d) protection for the privacy of his home and other property, and from deprivation of property without compensation.

The provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

The right to a fair trial is protected as part of the right to secure protection of the law. Article 18(9) provides that any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation, must be established by law and must be independent and impartial. Where proceedings for the determination of the existence or extent of any civil right or obligation are instituted by any person before such a court or other adjudicating authority, the case must be given a fair hearing within a reasonable time. Proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, must be held in public. However, the court or other authority can exclude from the proceedings persons other than the parties to the dispute, and their legal representatives.386

5.2.14.2 An overview of the Zambian social security system

Zambia’s social security system consists mainly of social insurance schemes which are limited to the provision of protection against the loss of income resulting from retirement, disability and death. This implies that the scope of coverage is restricted to workers (and their dependants) in the formal sector.387

(a) Social assistance

The Zambian social assistance system is mainly assistance provided by the Public Welfare Assistance Scheme. Benefits are in the form of food, shelter, education, health, warm clothing and travel. Specifically targeted groups include households where the head is elderly; the chronically ill; people with disabilities; households with no productive assets, relatives who are to provide assistance or adults who are capable of working; victims of natural disasters; people with unsatisfactory housing; and orphans and children not at school, including street children.388

(b) Social insurance

Social insurance in Zambia is mainly provided by the National Pension Scheme Authority (NAPSA). Participation in NAPSA is mandatory for all formal sector workers who began

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386 Article 18(9) of the Constitution of Zambia.
387 See the discussion below.
working after 1 February 2000.\textsuperscript{389} Self-employed or informal sector workers can enrol on a voluntary basis. The National Pension Scheme provides protection against retirement, disability and death (survivors’ benefits).\textsuperscript{390}

There are also occupational pension schemes for civil servants and local authority workers. The Public Service Pensions Fund provides benefits for retirement, invalidity and survivorship. The Local Authorities Superannuation Fund also provides benefits for retirement, invalidity and survivorship. In addition, there are private occupational schemes and voluntary schemes mostly providing retirement benefits, a disability or invalidity pension, survivors’ or death benefits, and funeral expenses.\textsuperscript{391}

The old-age pension is paid by NAPSA to a person aged 55 years with at least 180 months of contributions and whose employment has ended.\textsuperscript{392} An early pension can be paid at the age of 50 years with at least 180 months of contributions to the Scheme. The minimum monthly old-age pension is 20% of the insured’s national average monthly earnings. The maximum monthly pension is 40% of the insured’s average adjusted monthly earnings. An early pension is reduced to at least 20% of the national average monthly earnings. A retirement lump sum is paid to a person who is 55 years old and has less than 180 months of contributions. A retirement lump sum of the total adjusted contributions from the insured and the employer plus accrued interest, is also paid.\textsuperscript{393}

For a person to receive a NAPSA disability pension, he or she must be assessed as permanently incapable of any work as the result of a physical or mental disability. He or she must have made at least 60 months of contributions, including at least twelve in the 36 months before the disability began. The disability pension is to the value of the worker’s monthly calculated old-age pension or the minimum pension (whichever is greater), plus compensation for lost years of work due to disability (the worker is credited with 1.5% of indexed monthly earnings for each year of work lost from the time the disability began until pensionable age). The minimum monthly pension is 20% of the national average monthly earnings.\textsuperscript{394}

A disability lump sum is paid to a person who is assessed as physically or mentally disabled and younger than the pensionable age, with less than 60 months of contributions. The disability lump sum is the total adjusted contributions from the insured and the employer, plus accrued interest.\textsuperscript{395}

\begin{thebibliography}{9}
\bibitem{389} See National Pension Scheme Act 40 of 1996.
\bibitem{390} \textit{Ibid.}
\bibitem{394} \textit{Ibid.}
\bibitem{395} \textit{Ibid.}
\end{thebibliography}
NAPSA also pays survivors’ pension where the deceased breadwinner received, or was entitled to receive, an old-age or disability pension, or had at least 60 months of contributions. Eligible survivors include the spouse and children younger than the age of 18 years (although the limit is 25 years if the child is a student, and no age limit if the child is disabled). A surviving spouse caring for one or more of the deceased’s children is eligible for a pension until death or remarriage. If the surviving spouse is younger than age 45 years and does not have children with the deceased, a reduced pension is paid for two years. The survivors’ pension is the old-age or disability pension the deceased received, or was entitled to receive, at the time of death. If the deceased was not of pensionable age at the time of his or her death, the disability pension is calculated using the date of death as the date of onset of disability. When there is more than one eligible survivor, the pension is split according to a schedule in law.396

A survivors’ lump sum is paid where the deceased was not entitled to receive the old-age or disability pension, had less than 60 months of contributions, and was eligible for the old-age or disability lump sum. The survivors’ lump sum is the old-age or disability lump sum the insured was entitled to receive.397

A funeral grant is paid if the deceased received, or was entitled to receive, an old-age or disability pension, or had at least twelve months of contributions in the 36 months before death. The funeral grant is a lump sum of ten times the minimum pension and is paid to the survivor. Where there is no survivor, the grant is paid to the person who paid for the funeral.398

Sickness and maternity medical benefits are available to all resident citizens of Zambia in government hospitals, clinics, and rural health centres at low cost. Selected medical institutions require the payment of fees for medical services.399

Occupational injury and disease protection is provided by the Workers’ Compensation Fund (WCF). It is a statutory scheme for the provision of compensation to formal sector workers who have been disabled or killed during an accident at work, or who contracted an occupational disease.400 It is an employer-liability social insurance system, involving compulsory insurance with a public carrier. It is open to all employed persons, including casual workers, household workers, and apprentices, self-employed, and public-sector employees not covered under the special system for public sector employees. There is a special system for public sector employees.401

396 Ibid.
397 Ibid.
398 Ibid.
It provides disability benefits (temporary and permanent), medical benefits, rehabilitation and vocational training, assistive devices, survivors’ benefits, and a funeral grant.\(^\text{402}\)

A temporary disability benefit is paid to a person assessed with a degree of disability of 10% or less. It is 50% of the monthly covered earnings and is paid for up to 24 months.\(^\text{403}\)

A permanent disability pension is paid if a worker is assessed with a total disability. It is 50% of the covered monthly earnings from the moment the disability began. A constant-attendance allowance is paid if the worker is assessed with a total disability and requires the constant attendance of others to perform daily functions. A partial disability is paid if the worker is assessed with more than a 10% degree of disability. The amount paid is 50% of the covered monthly earnings, multiplied by the assessed degree of disability. A lump sum is paid for disability of 10% or less.\(^\text{404}\) The Workers’ Compensation Fund Control Board refunds all employer expenses incurred as a result of hospitalisation and the treatment of occupational accidents and diseases at public and private health institutions.\(^\text{405}\)

Survivors’ benefits are a spouse’s and an orphan’s pension. The spouse’s pension is 80% of the disability pension that the deceased received or was entitled to receive. A remarriage settlement lump sum of 24 months of pension is paid when the spouse remarries, and the pension is terminated. An orphan’s pension of 15% of the disability pension the deceased received, or was entitled to receive, is paid for the first orphan; 5% is paid for each additional orphan younger than the age of 18 years. However, where the children lose both parents (full orphans), 30% is paid to the first child and 10% for each additional child. The orphan’s pension is paid for up to eight orphans.\(^\text{406}\)

Where there is no surviving widow, widower or child, an amount is paid to other eligible dependent survivors according to their degree of dependency on the deceased. A funeral grant is paid for covering the funeral expenses of workers who died while working.\(^\text{407}\)

5.2.15  The Republic of Zimbabwe

5.2.15.1  Guarantee of social security rights

The Constitution of Zimbabwe (2013) guarantees various social security-related rights as fundamental human rights.\(^\text{408}\) However, social security is not one of them. This is important as the Constitution is the supreme law of Zimbabwe and any law, practice,


\(^{404}\) *Ibid.*


\(^{408}\) Chapter 4 of the Constitution of Zimbabwe of 2013 on Fundamental Human Rights and Freedoms.
custom or conduct inconsistent with it is invalid to the extent of the inconsistency. The obligations imposed by it are binding on every person, natural or juristic, including the state and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.\textsuperscript{409} The founding values and principles of the Constitution are supremacy of the Constitution, the rule of law, fundamental human rights and freedoms, the nation’s diverse cultural and traditional values, recognition of the inherent dignity and worth of each human being, recognition of the equality of all human beings, gender equality, and good governance.\textsuperscript{410}

In addition, Section 44 of the Constitution of Zimbabwe states that the state and every person, including juristic persons, and every institution and agency of the government at every level, must respect, protect, promote and fulfil the rights and freedoms set out in Chapter 4. The Chapter further binds the state and all executive, legislative and judicial institutions and agencies of government at every level, as well as natural and juristic persons to the extent that it is applicable to them, to respect, protect, promote and fulfil the rights and freedoms set out in the Chapter, taking into account the nature of the right or freedom concerned and any duty imposed by it. Juristic persons as well as natural persons are entitled to the rights and freedoms set out in the Chapter to the extent that those rights and freedoms can appropriately be extended to them.

Social welfare and some other social security-related rights are protected as national objectives.\textsuperscript{411} The national objectives are not binding but “guide the state and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives.”\textsuperscript{412} Regard must be had to the objectives when interpreting the state’s obligations under the Constitution and any other law.

Under the national objective of social welfare, the state is compelled to take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who are in need.\textsuperscript{413} In addition to social welfare, various social security rights are also protected. These include the objectives of food security,\textsuperscript{414} gender

\textsuperscript{409} Section 2 of the Constitution of Zimbabwe.
\textsuperscript{410} Section 3 of the Constitution of Zimbabwe.
\textsuperscript{411} Chapter 2 of the Constitution of Zimbabwe on National Objectives.
\textsuperscript{412} Section 8 of the Constitution of Zimbabwe.
\textsuperscript{413} Section 30 of the Constitution of Zimbabwe.
\textsuperscript{414} In terms of Section 15 of the Constitution of Zimbabwe, the state must encourage people to grow and store adequate food, secure the establishment of adequate food reserves, and encourage and promote adequate and proper nutrition through mass education and other appropriate means.
balance, promotion of children, promotion of the rights of elderly persons, promotion of the rights of persons with disabilities, promotion of the rights of veterans of the liberation struggle, promotion of work and labour relations, protection of the family, the promotion of the right to shelter, provision of health services, and guarantee of legal aid.

415 Section 17 of the Constitution of Zimbabwe. The state must promote full gender balance in Zimbabwean society, and take positive measures to rectify gender discrimination and imbalances resulting from past practices and policies.

416 Section 19 of the Constitution of Zimbabwe. The state must adopt reasonable policies and measures, within the limits of the resources available to it, to ensure that children have shelter and basic nutrition, healthcare and social services.

417 Section 21 of the Constitution of Zimbabwe. The state and all institutions and agencies of government at every level must endeavour, within the resources available to them to provide facilities, food and social care for elderly persons who are in need, and to foster social organisations aimed at improving the quality of life of elderly persons.

418 Section 22 of the Constitution of Zimbabwe. The state and all institutions and agencies of government at every level must, within the limits of the resources available to them, assist persons with physical or mental disabilities to achieve their full potential and to minimise the disadvantages suffered by them. In particular, the state and all institutions and agencies of government at every level must develop programmes for the welfare of persons with physical or mental disabilities, especially work programmes consistent with their capabilities and acceptable to them or their legal representatives.

419 Section 23 of the Constitution of Zimbabwe. The state must take reasonable measures, including legislative measures, for the welfare and economic empowerment of veterans of the liberation struggle.

420 Section 24 of the Constitution of Zimbabwe. The state and all institutions and agencies of government at every level must endeavour to secure vocational guidance and the development of vocational and training programmes, including those for persons with disabilities, and the implementation of measures such as family care that enable women to enjoy a real opportunity to work.

421 Section 25 of the Constitution of Zimbabwe. The state and all institutions and agencies of government at every level must protect and foster the institution of the family and in particular must endeavour, within the limits of the resources available to them, to adopt measures for the provision of care and assistance to mothers, fathers and other family members who have charge of children.

422 Section 28 of the Constitution of Zimbabwe. The state and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter.

423 Section 29 of the Constitution of Zimbabwe. The state must take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe. The state must take appropriate, fair and reasonable measures to ensure that no person is refused emergency medical treatment at any health institution. The state must take all preventive measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease.

424 Section 31 of the Constitution of Zimbabwe. The state must take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice.
5.2.15.2 Guarantee of rights ancillary to social security

In addition to social security-related rights, the Constitution protects rights ancillary to social protection as fundamental rights. The right to human dignity provides that every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected. Everyone also has the right to equality and non-discrimination. In terms of the right, all persons are equal before the law and have the right to equal protection and benefit of the law. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock. Discrimination on any of the listed grounds is unfair unless it is established that the discrimination is fair, reasonable, and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom. The state is required to take reasonable legislative and other measures to promote the achievement of equality, and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination. Such measures must be taken to redress circumstances of genuine need; and they cannot be regarded as unfair in relation to the right to non-discrimination.

Labour rights are also protected, as Section 65 states that every person has the right to fair and safe labour practices and standards, and to be paid a fair and reasonable wage. Women employees have a right to fully-paid maternity leave for a period of at least three months.

The Constitution further protects the right to administrative justice. It grants every person a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial, and both substantively and procedurally fair. In addition, any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct, has the right to be given promptly and in writing the reasons for the conduct. An Act of Parliament must give effect to the rights, and must provide for the review of administrative conduct by a court or, where appropriate, by an independent and impartial tribunal. It must also impose a duty on the state to give effect to the rights and promote efficient administration.

The right to a fair hearing is also relevant for social security. It provides that every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court. In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum.

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425 Section 51 of the Constitution of Zimbabwe.
426 Section 56 of the Constitution of Zimbabwe.
427 Section 68 of the Constitution of Zimbabwe.
428 Section 69 of the Constitution of Zimbabwe.
established by law. Every person has the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute. Every person has a right, at his or her own expense, to choose and be represented by a legal practitioner before any court, tribunal or forum.

The right to healthcare provides that every citizen and permanent resident of Zimbabwe has the right to have access to basic healthcare services, including reproductive healthcare services. In addition, every person living with a chronic illness has the right to have access to basic healthcare services for the illness, and no person may be refused emergency medical treatment in any healthcare institution. The state is compelled to take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the right to healthcare.

Under the right to food and water, every person has the right to safe, clean and potable water, as well as sufficient food. The state is also required to take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

The Constitution further elaborates the rights of certain categories of persons. In terms of Section 79, this elaboration is to ensure greater certainty as to the application of those rights and freedoms to particular classes of people. Categories whose rights are elaborated are women, children, the elderly, persons with disabilities, and liberation war veterans.

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429 Section 76 of the Constitution of Zimbabwe.
430 Section 77 of the Constitution of Zimbabwe.
431 According to Section 80 of the Constitution of Zimbabwe, every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities. All laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement.
432 Under Section 81, every child, that is to say every boy and girl under the age of 18 years, has the right to family or parental care, or to appropriate care when removed from the family environment, and to education, healthcare services, nutrition and shelter.
433 People over the age of 70 years have the right to receive reasonable care and assistance from their families and the state; to receive healthcare and medical assistance from the state; and to receive financial support by way of social security and welfare (Section 82 of the Constitution of Zimbabwe). The state must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.
434 The state must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realise their full mental and physical potential, including measures to give them access to medical, psychological and functional treatment; to provide special facilities for their education; and to state-funded education and training where they need it (Section 83 of the Constitution of Zimbabwe).
435 Veterans of the liberation struggle are entitled to due recognition for their contribution to the liberation of Zimbabwe, and to suitable welfare such as pensions and access to basic healthcare. An Act of Parliament must confer on veterans of the liberation struggle the entitlements due to them (Section 84 of the Constitution of Zimbabwe).
5.2.15.3 An overview of the Zimbabwean social security system

(a) Social assistance

Social assistance in Zimbabwe is mainly by the Ministry of Public Service Labour and Social Welfare (Department of Social Welfare) in terms of the Social Welfare Assistance Act.436 The Act provides limited public assistance to needy persons incapable of work and to persons aged 65 years or older, or with a disability. The Ministry seeks to provide assistance and support to the vulnerable through (inter alia) the development and implementation of effective policies, legal instruments and training in order to promote self-reliance and social security; and to reduce poverty and enhance self-reliance through the provision of social protection services to vulnerable and disadvantaged groups in society.437 This is achieved through the care and protection of minors; the adoption of children; the establishment of corrective institutions and rehabilitation of beggars, vagrants and prostitutes; provision of therapy and counselling services for the physically and mentally handicapped; counselling on alcohol and drug abuses; provision of protection and care of refugees; provision of rehabilitation services for the disabled; care for the aged and supervision of the services given by private old people’s homes; the administration of the National Heroes Act; the administration of the War Veteran’s Act; the administration of the Disability Act; distribution of drought relief in drought-stricken areas; and provision of material assistance to the destitute, such as school, examination, health fees and maintenance allowances.

In addition, various laws regulate the social assistance position of vulnerable groups. These include the Older Persons Act,438 the Disabled Persons Act,439 and the Children’s Act.440 The Disabled Persons Act makes provision for the welfare and rehabilitation of disabled persons (amongst others). The Children’s Act makes provision for the protection, welfare and supervision of children and juveniles, and established a Child Welfare Fund. This Fund is aimed at developing and promoting the welfare and protection of children and young persons.

The Older Persons Act established an Older Persons Board with one of its functions being to ensure that older persons (citizens aged 65 years or older) have access to basic necessities as well as community, health and social services. The Act makes provision for social assistance by stating that:

1. the Director, or any person acting on his or her behalf, may, on application made by or on behalf of a destitute or indigent older person, grant social welfare assistance to such person where he or she is satisfied that such person

438 Older Persons Act 1 of 2012.
440 Children’s Act 22 of 1971.
(a) is handicapped, physically or mentally; or
(b) suffers continuous ill-health; or
(c) is a dependant of a person who is destitute or indigent or incapable of looking after himself or herself; or
(d) otherwise has need of social welfare assistance [...].

(b) Social insurance

Social insurance in Zimbabwe is provided mainly by the National Social Security Authority (NSSA). The NSSA administers the National Pension Scheme (Pension and Other Benefits Scheme) and Accident Prevention and Workers’ Compensation Scheme.\(^{441}\) Coverage in the National Pension Scheme is for persons above the age of 16 years and under the age of 65 years who are in permanent employment, seasonal, contract, or temporary employment. However, domestic workers, self-employed persons and informal sector workers are excluded.\(^{442}\) The National Pension Scheme offers retirement pension and grants, invalidity pension and grants, survivors’ pension and grants, and a funeral grant.\(^{443}\)

A retirement pension is paid to a person who is 60 years old (for normal retirement) or 65 years old (for late retirement). A person who has attained the age of 55 years but is below 60 years and has worked in arduous employment for at least seven of the last ten years immediately prior to attaining the age of 55 years, also qualifies for a retirement pension. A retirement pension may be deferred up to the age of 65 years. A retirement grant is paid to someone who is 60 years old (or 55 years if in arduous employment) who has more than one year but less than ten years of contributions.

A disability pension is paid to a person who is below 60 years of age, has contributed for at least six months, and is assessed as suffering from a permanent invalidity and incapable of any gainful employment as a result of physical or mental ill-health. A disability grant is paid to a person who is below 60 years, has contributed for less than six months, and is assessed as suffering from a permanent invalidity and incapable of any gainful employment as a result of physical or mental ill-health.

A survivors’ pension is paid to a dependant of a deceased contributor who, at the time of death, was entitled to an invalidity or retirement pension. The pension is paid according to the following order of priority:

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\(^{441}\) See National Social Security Authority Act 12 of 1989, Statutory Instrument SI 393 of 1993 which implemented the National Social Security Authority Act, and Statutory Instrument SI 68 of 1990 which established the Accident Prevention and Workers’ Compensation Scheme.


\(^{443}\) *Ibid.*
- widow or widower, provided the marriage was contracted before retirement or invalidity;
- dependent children of the deceased who are below 18 years and those who are below 25 years, provided they are in full-time education (dependent children are paid through their legal guardian if there is no widow or widower);
- permanently disabled dependent children who are incapable of supporting themselves, irrespective if their age;
- parents of the deceased contributor; and
- any other dependant.

The survivors’ pension is 40% of the old-age or disability pension the deceased received, or was entitled to receive, paid to a widow or widower and children up to the age of 18 years (and those who are below 25 years old, provided they are in full-time education, with no age limit for permanently disabled dependent children who are incapable of supporting themselves). If there is no widow or widower or surviving child, 12% is paid to the deceased’s parents. If there is more than one eligible widow or widower, the benefit is split equally. A survivors’ grant in the form of a lump sum payment is made to the surviving claimants of a deceased contributor who at the time of death was entitled to a retirement or disability grant. A lump sum of 40% of the retirement or disability grant the deceased received, or was entitled to receive, is paid to a widow or widower and children up to the age of 18 years (and those who are below 25 years, provided they are in full-time education, with no age limit for permanently disabled dependent children who are incapable of supporting themselves). If there is no widow or widower or surviving child, 12% is paid to the deceased’s parents. If there is no surviving parent, 8% is paid to other eligible dependants. If there is more than one eligible widow or widower, the benefit is split equally. A funeral grant is paid if the contributor had at least one year of contributions and the death is not work-related. A lump sum is paid to the person who paid for the funeral.

Sickness benefits are regulated by the Labour Act.\(^{444}\) In terms of Section 14 of the Act, if an employee is sick, he or she is entitled to sick leave for up to six months if he or she has a certificate from a qualified doctor. During any one year period of service, the employer may provide paid sick leave at 100% of wages during the first three months of sick leave, and 50% of wages for a further three months. For medical care, the national healthcare programme provides free primary healthcare for low-paid workers.

Maternity benefits are also regulated by the Labour Act. Section 18 of the Act provides for 98 days of paid maternity leave (at least 21 days before and 77 days after the expected date of childbirth). The maternity benefit is 100% of the worker’s wage. Medical care is also provided through the national healthcare programme.

Occupational injury and disease compensation is covered under the NSSA’s Accident Prevention and Workers’ Compensation Scheme. The Scheme is employer-funded, and

\(^{444}\) Labour Act (formerly Labour Relations Act) 16 of 1985, as amended.
covers all employed persons in the private sector, local authorities, parastatals, and non-governmental organisations. However, self-employed persons and household workers are excluded. There is also a special system for civil servants. The objectives of the Scheme are to provide financial relief to employees and their families when an employee is injured or killed in a work-related accident, or suffers from a work-related disease or dies thereof; create an awareness of, and promote health and safety at all places of work; to encourage the adoption of health and safety legislation through factory and machinery inspection; and to provide rehabilitation services to disabled employees so as to reduce their disablement and enable them to return to their former employment, or otherwise prepare them for a useful and meaningful place in society. The Scheme provides both short-term and long-term benefits. Short-term benefits include periodical payments for loss of earning, medical costs, and a funeral grant. Long-term benefits are in the form of a pension. Periodical payments for loss of earning are meant to provide compensatory income where this has been lost or stopped by work-related accidents; and to guarantee continual payment of normal monthly wages for the first 30 days following an accident, and a percentage thereof thereafter. A temporary disability benefit is 100% of a worker's monthly covered earnings, paid for the first 30 days. Thereafter 51% of monthly earnings is paid. The benefit is paid for up to eighteen months. Child's supplement: 12.5% of the insured's benefit is paid to the first child, and 5% each to the second up to the fifth child. The General Manager of the NSSA determines the amount paid for each subsequent child. The NSSA pays all medical fees, including transportation cost, medication and hospital cost, and also provides assistive devices.

A funeral grant is paid where a member dies as a result of a work-related accident. The Scheme currently pays out a maximum amount towards funeral expenses. Where an employee's injury results in permanent disablement, compensation will be paid to him or her as a lump sum if the disability is less than 30%. A children's allowance is included for children up to the age of 19 years.

Where an employee's injury results in 30% or more permanent disability, compensation is paid to the employee as a pension. If the insured's pension is less than a specified minimum per month, a lump sum is paid. A children's allowance is included in employee's pension for children up to the age of 19 years and/or those who are below 25 years, provided they are in full-time education. The benefit may also be given to permanently disabled dependent children who are incapable of supporting themselves, regardless of their age. The children's supplement is 12.5% of a worker's pension paid to the first child, and 5% each to the second up to the fifth child. The General Manager of the NSSA determines the amount paid for each subsequent child.

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448 Ibid.
A survivor pension is 66.7% of the old-age or disability pension the deceased received, or was entitled to receive, and is paid to a dependent widow or widower. If there is more than one eligible widow or widower, the pension is split equally. The pension ceases on remarriage, and a lump sum of 24 months of pension is paid. A children’s supplement is paid until the child is 19 years old or is self-supporting, whichever comes first. The first child receives 12.5% of the insured’s pension, and 5% each for the second up to the fifth child, is paid. The General Manager of the NSSA determines the amount paid for each subsequent child. The child’s supplement continues if the surviving spouse remarries.

A dependant’s allowance is also paid to dependent parents, brothers and sisters for the death of an unmarried worker. A defined lump sum amount as a funeral grant is paid for a work-related death.

5.3 CONCLUDING OBSERVATIONS

Social security and related issues are dealt with in a variety of ways in SADC national constitutions. While these are mentioned in some constitutions, other constitutions do not mention them. Where social security and correlated issues are mentioned, they are protected in different ways. Some SADC national constitutions protect these rights as fundamental human rights, with a corresponding obligation on the state to give effect to these rights. Some constitutions protect social security rights in more general terms or specific aspects of social security. They are protected either as Directive Principles of State Policy (Zambia), Principles of State Policy (Namibia), Fundamental Objectives and Directive Principles of State Policy (Tanzania), or Principles of National Policy (Malawi). These indicate the absence of obligations on the state in relation to the provision of social security, as they are merely guidelines for the conduct of state affairs and are not enforceable by any court. SADC constitutions further protect rights related or ancillary to social security rights. These include the rights to equality, non-discrimination and equal protection of the law, to human dignity, to (just) administrative action, and to access to justice.


INTERNATIONAL INSTRUMENTS

United Nations (UN)
Declaration of Philadelphia (1944).
Universal Declaration of Human Rights (1948).

International Labour Organisation (ILO)
Constitution of the ILO (1919).
Convention concerning Abolition of Forced Labour, 1957 (No. 105).
Convention concerning Forced or Compulsory Labour, 1930 (No. 29).
Convention concerning Migration for Employment, 1949 (No. 97).
Employment Injury Benefits Convention, 1964 (No. 121).
Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).
Equality of Treatment (Social Security) Convention, 1962 (No. 118).
Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128).
Maternity Protection Convention, 2000 (No. 183).
Medical Care and Sickness Benefit Convention, 1969 (No. 130).
Medical Care and Sickness Benefit Recommendation, 1969 (No. 134).
Recommendation concerning Migrant Workers, 1975 (No. 151).
Recommendation concerning Migration for Employment, 1949 (No. 86).
Social Security (Minimum Standards) Convention, 1952 (No. 102).
African Union (AU)
Maputo Declaration on HIV/AIDS, Tuberculosis and Malaria (2003).
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Southern African Development Community (SADC)

NATIONAL LEGISLATION

Angola
Decree No. 40/08, 2 July.
Decree No. 53/05, 15 August.
Financial Institutions Law (Law 13/05, 30 September 2005).
**Botswana**
Short Term Plan of Action on Care of Orphans (1999).

**Congo, Democratic Republic**

**Lesotho**

**Madagascar**

**Malawi**
Malawi Pension Act of 2011.

**Mauritius**
Constitution of Mauritius of 1968.

**Mozambique**

**Namibia**
Employees’ Compensation Act 30 of 1941.

**Seychelles**

**South Africa**
Compensation for Occupational Injuries and Diseases Act 130 of 1993.
Medical Schemes Act 131 of 1998.
Pension Funds Act 24 of 1956.
Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance (GNR. 898 in Government Gazette No. 31356 of 22 August 2008).

Road Accident Fund Act 56 of 1996.


**Swaziland**
Constitution of the Kingdom of Swaziland of 2005.
Swaziland National Health Policy.

**Tanzania**

**Zambia**
National Pension Scheme Act 40 of 1996.
Zambian Constitution of 1996.

**Zimbabwe**
Children’s Act 22 of 1971.
Constitution of Zimbabwe of 2013.
Older Persons Act 1 of 2012.

**CASES**

*ER24 Holdings v Smith and Another* 2007 (6) SA 147 (SCA)(South Africa).


Internet sources


This book provides a comprehensive discussion of key international, regional and national instruments that regulate social security in the Southern African Development Community (SADC). It deepens our understanding of the instruments that have been driving the evolution of social security in SADC and this should in turn provoke a robust discourse on social security from both legal and public policy perspectives.

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Finally! An authoritative source that provides a researcher with a ‘one-stop shop’ for information on the international and regional instruments that shape social security in the countries in the SADC region, as well as the relevant social security (and other) legislation from the SADC countries. Gone are the days that comparative research had to focus on European and South American countries due to a lack of comprehensive sources on other African countries’ regulation of social security.

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The Centre for International and Comparative Labour and Social Security Law (CICLASS) is a research centre attached to the Faculty of Law of the University of Johannesburg (UJ). It was established in 1994. CICLASS’ articulated mission is to drive the development of viable and sustainable labour law and social security (protection) systems to address inequality and bring about social justice in the emerging economies.

The Friedrich-Ebert-Stiftung (FES) is the oldest political foundation in Germany with a rich tradition dating back to its foundation in 1925. Today, it remains loyal to the legacy of its namesake and campaigns for the core ideas and values of social democracy: freedom, justice and solidarity. It has a close connection to social democracy and free trade unions. FES promotes the advancement of social democracy.