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PROFESSOR EDWELL KASEKE
AND DR MATHIAS NYENTI

Marius Paul Olivier
Letlhokwa George Mpedi
& Evance Kalula

EDITORS

CHAPTER 8

Social Protection for Women Workers in the Informal Economy: A Regional Framework

Elmarie Susan Fourie

Abstract

Regional instruments are playing an increasingly important role in social protection of women workers in the informal economy, including in the empowerment of women, the promotion of equality and decent work for all women. When one considers the applicable regional instruments of the African Union (AU) and the Southern African Development Community, they contain provisions that address the specific challenges in the region as opposed to international instruments that are more generic. Regional instruments can, therefore, be more effective in addressing specific challenges that workers in a region may face. Regional instruments do not function in isolation and highlight the importance of international standards. This chapter recommends that regional standards must not become mere symbolic instruments with no reflection or enforcement in national legislation, policies and programmes. However, the success of regional institutions and instruments also depends on cooperation and support of all role players to end poverty and to ensure prosperity for all.

Keywords: Decent work, informal economy, social protection, women: regional instruments

8.1

Introduction

Regional instruments are playing an increasingly important role in social protection of women workers in the informal economy, including in the empowerment of women, the promotion of equality and decent work for all women.¹ When one

¹ Social protection of migrant workers in the informal economy is beyond the scope of this contribution.

LIBER AMICORUM

considers the applicable regional instruments of the African Union (AU) and the Southern African Development Community (SADC),² they contain provisions that address the specific challenges in the region as opposed to international instruments that are more generic. Regional instruments can, therefore, be more effective in addressing specific challenges that workers in a region may face. Regional instruments do not function in isolation and highlight the importance of international standards.

This chapter recommends regional standards must not become mere symbolic instruments with no reflection or enforcement in national legislation, policies and programmes. The success of regional institutions and instruments also depends on cooperation and support of all role players to end poverty and to ensure prosperity for all.

The purpose of this chapter is to identify and critically consider the impact of regional institutions and regional labour standards of the AU and the SADC regarding the wider conceptual framework of social protection³ for women workers in the informal economy.

8.2

Regional instruments

Regional instruments can play an important role in the extension of labour and social protection to vulnerable workers such as women in the informal economy. If we consider criticism against international standards such as ‘top-down’ and ‘one size fits all’, regional instruments are designed for the local circumstances and

2 The SADC form one of the eight African Union’s Regional Economic Committees. See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, p. 87.

3 In 2002 the Taylor Committee stated the following: “Moreover, the development paths of African economies and developing countries require a fresh look at social protection systems more appropriate to their environment and needs. The reality is that in the developing world, formal sector employment may never become the norm it is in Europe. The European concept primarily that of contributory social insurance, took its basic assumption that social security would develop around formal sector employment. As a result, social security is often described as measures to protect against ‘loss of (formal wage) income’. Such a conception is therefore of limited relevance to Africa and the developing world, where the risk of ‘insufficient’ income (formal or informal) is invariably more prevalent than ‘loss’ of income.” Committee of Inquiry into a Comprehensive System of Social Security in South Africa. 2002 *Transforming the Present – Protecting the Future*, p. 101. The wider notion is particularly important to workers in the informal economy where a regular employment relationship is absent. The term refers to a system of general welfare support and protection. Olivier, M. *et al.* (eds.). 2003. *Social Security: A Legal Analysis*. Durban: LexisNexis Butterworths, p. 26. The SADC Code on Social Security recognises that social protection is wider than social security and includes: “all forms of social security: and covers social services and developmental social welfare and is not restricted to protection against income insecurity caused by specific risks.” See article 1.4.

Member States have a direct self-interest.⁴ Many regional instruments in the AU and SADC were designed based on international standards and several similarities exist.⁵

8.2.1 The African Union (AU)

The African Union (AU) was established by section 2 of the Constitutive Act that came into force in 2011.⁶ The vision of the AU includes an integrated, prosperous and peaceful Africa driven by its citizens and representing a dynamic force in the global arena.⁷ Article 3 of the act provides for objectives and these objectives highlight the importance of human rights under the African Charter on Human and People's Rights,⁸ as well as other human rights instruments.⁹ In respect of women workers in the informal economy, article 4 creates a framework within which the AU must function, and this includes the promotion of gender equality, respect for human rights and the rule of law, respect for democratic principles, and the development of social justice.¹⁰ The AU has established numerous organs to monitor and enforce its instruments and to promote its focus on human rights.¹¹

The AU Agenda 2063 includes a prosperous Africa based on inclusive growth and sustainable development;¹² and an Africa whose development is people-driven, relying on the potential of African people and especially its women and youth, and caring for children.¹³ The empowerment of women in all spheres of life is envisaged, including access to purport, access to markets, access to financial resources, equal access to health and education and equal access to all rights, including human rights.¹⁴

4 Langille, B. 2010. "Imagining post Geneva Consensus labour law for post Washington Consensus development." *CLLPJ*, 523,533.

5 Olivier *et al.*, p. 21.

6 This was the result of a decision by its predecessor, the Organisation of African Unity, to establish a new organisation. African Union (AU). 2016. Agenda 2063. Available online: <https://bit.ly/3d1fvCV> [accessed on 5 June 2018].

7 *Ibid.*

8 The charter was adopted in 1981 and entered into force in 1986.

9 Article 3 provides for the objectives of the Union.

10 See also the Protocol on Amendments to the Constitutive Act of the African Union.

11 Article 5(1) provides for a number of AU decision making and policy organs. Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, 2015), p. 54.

12 This includes the eradication of poverty in the region and social and economic transformation. See African Union (AU). 2016. *Agenda 2063*. Available online: <https://bit.ly/3d1fvCV> [accessed 5 June 2018].

13 *Ibid.*

14 *Ibid.*

LIBER AMICORUM

The AU adopted a detailed first 10-year implementation plan for pursuing the above aspirations.¹⁵ The Member States must use the implementation plan as a framework for national visions, develop policy guidelines regarding the plan and ensure that legislatures adopt the Agenda for purposes of economic, social and political development in the region. Reporting structures are also established concerning the Agenda. Priority areas identified include employment generation for women, decent work, social protection and women empowerment. Regarding social security, the 2023 national targets include that at least 20% of workers in the informal economy and rural labour have access to social security and social protection packages for vulnerable groups.¹⁶ Concerning social security strategies, this will entail the implementation of a Social Protection Policy for Africa, the implementation of the UN Social Protection Floor Initiative¹⁷ and International Labour Organization (ILO) Social Protection Norms.¹⁸

In respect of women in the informal economy, the above aspirations are important, specifically the realisation of the potential of women and the respect for human rights. Two important commissions in respect of human rights were established, namely the African Commission on Human and People's Rights¹⁹ and the African Committee of Experts on the Rights and Welfare of the Child.²⁰

A Directorate of Women, Gender and Development was established as well to promote gender equality in the region and supervise the development and harmonisation of gender-related policies.²¹ Concerning the representation of vulnerable women workers, the Economic, Social and Cultural Council provides an opportunity for members' civil society organisations to be involved and play an active role in the AU's policies, programmes and principles.²² Women workers in the informal economy often prefer civil society groups to represent their needs as they are more sensitive to their diverse and specific needs and challenges. A

15 African Union Commission (AUC). 2015. *Agenda 2063. The Africa We Want: A Shared Strategic Framework for Inclusive Growth and Sustainable Development*. Available online: <https://bit.ly/30CVs94> [accessed on 15 September 2018].

16 Process action involved in this regard includes available information on vulnerable households and minimum social protection for vulnerable people. Ibid.

17 This initiative is driven by UN agencies and other developmental role players to promote universal access to essential social services and transfers. International Labour Organization (ILO). n.d. *Social protection floor*. Available online: <https://bit.ly/3nrwLGv> [accessed on 10 June 2018].

18 See African Union Commission (AUC). 2015. *Agenda 2063. The Africa We Want: A Shared Strategic Framework for Inclusive Growth and Sustainable Development*. Available online: <https://bit.ly/30CVs94> [accessed on 15 September 2018].

19 See article 30 of the African Charter on Human and People's Rights.

20 See article 32 of the African Charter on the Rights and Welfare of the Child.

21 African Union (AU). 2016. *Agenda 2063*. Available online: <https://bit.ly/3d1fvCV> [accessed on 5 June 2018].

22 Ibid.

Fund for African Women also exists in the region and this fund supports small and community-based women's organisations and initiatives to fight poverty, empower women and promote equality.²³

For vulnerable women in the region, the New Partnership for Africa's Development (NEPAD) agency, situated in South Africa, is of specific importance as it forms the Pan-African strategic framework for the socio-economic development of Africa. Its objectives include the alleviation of poverty and the empowerment of women.²⁴ Empowerment of women in the region is a high priority and a specialised agency of the AU was established, namely the International Centre for Girls' and Women's Education in Africa (CIEFFA).²⁵ This agency promotes the education of women and girls. The African Women's Decade (2010-2020) Make Every Woman Count, promotes gender equality and empowerment of women and has adopted a grassroots approach that combines a top-down and bottom-up approach.²⁶ Important focus areas identify challenges that many women in the region face, such as the eradication of poverty; food security; health and maternal mortality and HIV and AIDS.²⁷ Member States are required to establish the committee's representative of various role-players within communities to establish programmes to promote the focus areas. Regular reporting structures endeavour to hold African governments accountable to commitments made about gender equality.²⁸

8.2.1.1 *The African Charter on Human and People's Rights (1981)*

The African Charter on Human and People's Rights²⁹ provides in article 1 that the Member States must give effect to the provisions in the Charter through national legislation. Article 2 provides for equal enjoyment of rights and a prohibition of discrimination on listed grounds such as sex and race. Rights in respect of social protection include the right to physical and mental health, the provision of medical assistance when needed³⁰ and the right to education in article 17. Article 18 highlights the value of family life and obligates the state to ensure the elimination

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ United Nations (UN). 2010. *NGLS*. Available online: <https://bit.ly/3d4CItI>

²⁷ United Nations (UN). *NGLS* (2010). Available online: <https://bit.ly/3IfHWA1>. These areas were selected with reference to the thirteen critical areas identified by the Beijing Platform of Action and the then Millennium Developmental Goals.

²⁸ Reporting allows for the monitoring of progress in the African Union and evidence of examples of best practices with reference to gender equality. Make Every Woman Count (MEWC). 2016. *African Women's Decade, 2010-2020. Mid-Term Review*. Available online: <https://bit.ly/2Gsjcph>

²⁹ The Charter entered into force in 1986. All SADC member states have ratified this instrument. African Union (AU). 2017. *Introduction to the African Union Commission on International Law*. Available online: <https://bit.ly/2GI1xjA>

³⁰ Articles 16(1) and (2).

LIBER AMICORUM

of discrimination against women in line with applicable international instruments. This is the only article in the Charter that specifically refers to women. Drafters of the Charter are criticised for the inadequate protection of women rights in the Charter and the fact that women are only mentioned in the family context, thereby contributing to the unequal burden of women with regards to family responsibilities.³¹

An interesting feature of the Charter is that it places responsibilities on individuals for the harmonious development of family life, thereby establishing a framework of multi-actor responsibilities to realise these rights.³² There is no distinction in the Charter between civil/political and social/economic rights and there is no expressed right to social security.³³

8.2.1.2 *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa³⁴ is an important regional instrument for all women in the region and includes girls within its scope.³⁵ It is a legally binding document, supplementary to the *African Charter on Human Rights*. After the adoption of the Protocol, the AU adopted the *AU Solemn Declaration on Gender Equality in Africa*. This document is not binding, but states have committed to promote and protect women's right.³⁶ Important provisions about social protection for women workers in the informal economy include that economic activities of women are promoted and supported, specifically in the informal sector and value of work by women at home is recognised and maternity protection promoted;³⁷ social protection measures include aspects of health care,³⁸ food security, including clean drinking water and the right to adequate housing;³⁹ and social protection measures for elderly women, women with disabilities and vulnerable women.⁴⁰

31 Ayeni, V.O. 2016. *The impact of the African Charter and the Maputo Protocol in selected African States*. Pretoria: PULP, p. 7.

32 Article 27. See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, p. 56.

33 *Ibid.*, p. 56.

34 All SADC Member states have ratified this instrument. African Commission on Human and Peoples' Rights (ACHPR). 2017. Available online: <https://bit.ly/3ndLUuR>

35 Article 1(k).

36 Viljoen, F. 2009. "An introduction to the Protocol to the African Charter on Human and People's rights on the rights of women in Africa." *WashLJCRSJ*, 11:12, 14.

37 Article 13.

38 Article 14.

39 Article 15.

40 See articles 22, 23 and 24.

This Protocol endeavours to change deep-rooted societal norms and prejudices through public awareness and formal and informal educational programmes.⁴¹ A unique feature of the Protocol is that it addresses and highlights the challenges faced by African women, which is not the case in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴² The success of the Protocol will also depend on awareness and advocacy campaigns, as well as on its effect on legal reform and litigation.⁴³

8.2.1.3 Other AU instruments

The Social Policy Framework for Africa (2008) is not a legally binding document; however, it endeavours to create a framework that supports other programmes and policy initiatives such as the Poverty Reduction Strategy Papers, the New Partnership for Africa's Development and to address previously excluded issues in this respect.⁴⁴

Other instruments that promote social protection and specifically cover health issues include the Ouagadougou Declaration and Plan of Action (2000), the Africa Health Strategy (2016-2030), the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases (2001), the Maputo Declaration on HIV and AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases (2003) and the Gaborone Declaration on a Road Map Towards Universal Access to Prevention and Treatment and Care (2005). These instruments are examples of region-specific responses to health issues as opposed to international instruments addressing global issues and underline the appropriateness of regional instruments in this regard.

The Social Protection Plan for the Informal Economy and Rural Workers 2011-2015 (SPIREWORK) specifically identifies informal economy workers, including rural workers, as vulnerable, poor and often excluded from social security and adequate social protection. The notion that the informal economy is without social protection forms part of the definitional context in this Plan. Another key principle is the acknowledgement that tailor-made social insurance schemes might be better suited to deal with the specific needs of the informal economy and that equity in healthcare is a core principle in Africa's health strategy.⁴⁵ The document also highlights the unsafe working conditions of workers in the informal economy and the challenges

41 Make Every Woman Count (MEWC). 2016. *African Women's Decade, 2010-2020*. Mid-Term Review. Available online: <https://bit.ly/34p82Ka> [accessed on 20 August 2019].

42 See Viljoen. 2009. p. 46.

43 *Ibid.*

44 See also See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC* (Stellenbosch: African Sun Media, p. 72.

45 African Union (AU). 2011. *Social Protection Plan for the Informal Economy and Rural Workers 2011-2015 (SPIREWORK)*. Addis Ababa: African Union, p. 10, 12.

LIBER AMICORUM

of sexual harassment and violence against woman.⁴⁶ Implementation for improving, strengthening and extending social protection to the informal economy entails the removal of administrative, legal, fiscal and other obstacles and the facilitation of employment creation. Employment creation in this instance is supported by an integrated approach and includes the empowerment of these workers as it involves access to training, credit advisory services, applicable legislation, social protection and enhanced technology.⁴⁷ This document also highlights the importance of regional instruments in dealing with challenges specific to the region as it highlights the challenges that developing countries face in the implementation of ILO social security instruments. These instruments often refer to the nine classic risks of social security that are in general not the only risks relevant to the informal economy. The lack of adequate social protection of informal economy workers is then ascribed to factors such as the low contributory capacity and administrative and procedural challenges.⁴⁸

The instrument displays a clear understanding of the challenges and needs of the informal economy in that it provides for innovative and tailor-made social protection plans to accommodate workers within a very dynamic and diverse informal economy and not the mere extension of social security schemes applicable to the formal economy.⁴⁹ The diversity of the informal economy allows the Member States to adopt a cluster approach in respect of the implementation of this Plan.⁵⁰ The vulnerability of women and children is highlighted and a core principle is to eliminate these vulnerabilities and insecurities.⁵¹ The Plan recognises that when extending social protection (in this specific instance a minimum social protection package), representation, organisation and empowerment of informal economy workers are essential, as well as advocacy and recognition and policy dialogue.⁵²

A prominent feature of AU instruments, including the Social Protection Plan, is the acknowledgement of the value and role of civil society organisations in the extension of social protection measures to these workers as well as the empowerment of these workers under a more sustainable approach.⁵³ The AU instruments discussed above address the specific challenges faced by women in the Region, such as HIV

⁴⁶ *Ibid.*, p. 6.

⁴⁷ *Ibid.*, p. 15.

⁴⁸ *Ibid.*, p. 18.

⁴⁹ *Ibid.*, p. 18.

⁵⁰ See also Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC* (Stellenbosch: African Sun Media, p. 82.

⁵¹ African Union (AU). 2011. *Social Protection Plan for the Informal Economy and Rural Workers 2011-2015 (SPIREWOK)*. Addis Ababa: African Union, p. 10, 12.

⁵² *Ibid.*, p. 28.

⁵³ *Ibid.* Civil society organisations are required to lead the advocacy and capacity building activities at all levels in respect of the social protection minimum package.

and AIDS,⁵⁴ whereas international instruments are often not as clear and precise regarding distinct challenges and vulnerabilities experienced by women in the region. Regional regulation also supports “a shift from the universal to the local/contextual/embedded” approach.⁵⁵

8.3

The Southern African Development Community (SADC)

In 1992, state leaders agreed to transform the then Southern African Development Coordination Conference (SADCC) into the SADC with a core focus on the integration of economic development.⁵⁶ This marked the transfer from a coordination conference into a community.⁵⁷ Their vision, based on common values and principles, is one of a regional community, the improvement of standards of living, the alleviation of poverty, promotion of freedom and social justice, and peace and security for all people. Article 3 of the SADC Treaty (1992) affords the SADC legal personality and provides that the SADC is an international organisation.⁵⁸ The treaty is binding on all SADC Member States.⁵⁹ Article 5 provides for important objectives, including the alleviation of poverty and the enhancement of the standard and quality of life of the people as well as support for the socially disadvantaged in the region through integration.⁶⁰ Areas of cooperation in the area include social welfare, social and human development and special programmes that are crucial for the extension of social protection to vulnerable workers. The objectives of the SADC are not merely political and economic, but also include social objectives. Article 21(1) places an obligation on the Member States to cooperate in all areas to foster regional integration and development. When considering the plight of informal economy women workers in the region, article 21(3)(f) is relevant since it states that one of

⁵⁴ See also article 14 of the Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa.

⁵⁵ See Langille, B. 2010. “Imagining post Geneva Consensus labour law for post Washington Consensus development.” *CLLPJ*, 523:542. The African Charter on Human and People's Rights provides for contextualisation within the region and this includes provisions such as the individual's duty to preserve and strengthen the African cultural values and the promotion of African unity; see article 29(7) and (8).

⁵⁶ The following Member States are part of the SADC community: Angola, Botswana, Comoros, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Eswatini, United Republic of Tanzania, Zambia and Zimbabwe. Southern African Development Community [SADC] n.d. Available online: Available online: <https://bit.ly/34s9kUI>

⁵⁷ Mpedi, L.G. & Nyenti, M. 2012. “Perspectives towards the development of the Social Protection dimension of the SADC Regional Integration Agenda.” *SADC J*, pp. 164:165.

⁵⁸ See articles 3(1) and (2).

⁵⁹ See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, p. 89.

⁶⁰ See article 5(1).

LIBER AMICORUM

these areas that require cooperation is social welfare and this certainly embraces the notions of social protection, decent work for all and social integration in the region.⁶¹ To achieve this objective, Member States will have to cooperate in respect of an appropriate legal framework,⁶² the undertaking of an institutional framework⁶³ and the implementation of a programmatic framework.⁶⁴

Statistical trends indicate that women are often predominantly present in the informal economy in this region.⁶⁵ Gender-sensitive and anti-discrimination regional instruments in the SADC community can play an important role in the extension of labour and social protection to women workers in the informal economy. Although countries in the region, such as South Africa, have a legislative framework that promotes equality and more specific substantive equality, the scope of labour legislation is often limited to those in formal employment.⁶⁶ Concerning social protection measures, various challenges exist for women workers. These include narrow conceptual frameworks within existing social security schemes, limited access to social insurance schemes that often cover only those engaged in formal employment, and inadequate maternity protection,⁶⁷ specifically for women workers in the informal economy.⁶⁸

61 Mpedi, L.G. & Nyenti, M. 2012. "Perspectives towards the development of the Social Protection dimension of the SADC Regional Integration Agenda." *SADC J*, p. 167.

62 The legal framework can be modelled on the SADC Treaty or other regional instruments such as protocols with reference to the implementation of the Treaty. *Ibid*.

63 The SADC Treaty provides in article 9 for the Institutional Framework in this regard and this includes the Summit Heads of State of Government, the Council of Ministers, Commissions, the Standing Committee of Officials and the Secretariat. Four Directorates were formed and include Social and Human Development and Special Programmes, and Food, Agriculture and Natural Resources. *Ibid*, p. 179.

64 *Ibid*, p. 167. Specific programmes must be implemented to promote this agenda. The Protocol on Employment and Labour provides Member States with strategies and guidelines for the achievement of social protection; however, a two-thirds ratification majority by member states is required for implementation.

65 Mirand, T. 2015. *Women working in the informal economy: Challenges and policy considerations*. Open Society Initiative for South Africa (OSISA). Available online: <https://bit.ly/34pEcFk>

66 See the South African Constitution, s 9 and the Employment Equity Act 55 of 1998.

67 SADC Member States (see South Africa, Zambia, Zimbabwe, Malawi and Mozambique) do provide maternity protection within a labour law or social security framework, however often this is based on conceptual coverage within the legislative framework. See Olivier, M. "Gender discrimination in labour law and social security." In O. Dupper O. & Garbers C. (eds.). *Equality in the Workplace: Reflections from South Africa and Beyond*. Cape Town: Juta, p. 238.

68 Dupper, O. & Garbers, C. (eds.). 2009. *Equality in the Workplace: Reflections from South Africa and Beyond*. Cape Town: Juta, pp. 231-232.

8.3.1 Charter of the Fundamental Social Rights in SADC (2003)

The Charter of the Fundamental Social Rights in SADC was adopted in 2003 to facilitate, through social dialogue with role players,⁶⁹ a spirit that enhances harmonious labour relations in the region. The Charter copies the tripartite structure of the ILO and apart from the harmonisation of legal, economic and social policies, also provides for the promotion of labour policies; the provision of a framework for regional cooperation and the collection and dissemination of labour market information;⁷⁰ the harmonisation of social security schemes and the regulation of health and safety standards.⁷¹ This integrated approach to objectives also provides for the development of institutional capacities which is particularly important in developing countries when considering the extension of labour and social protection to vulnerable workers in the informal economy. Article 3 reinforces the constitution of the ILO, the Declaration of Philadelphia and other applicable international instruments. Important provisions in the Charter for women workers in the informal economy include the provisions in respect of gender equality,⁷² equal opportunities,⁷³ and the development of reasonable measures to enable women to reconcile their occupational and family responsibilities.⁷⁴ According to the Charter, the right to social protection is accorded to every worker and it is not linked to the status or type of employment. This means that all workers in the region, even those in the informal economy, do have a right to social protection. The improvement of working and living conditions should include paid maternity leave.⁷⁵ The implementation of the Charter is the responsibility of the national tripartite institutions and regional structures, and member states must report regularly on progress to the Secretariat.⁷⁶

8.3.2 Code on Social Security (2007)

In article 1, the Code on Social Security (2007) recognises the broader concept of social protection and its objective to enhance human welfare. Principles

69 Included are government representatives, workers' organisations and representatives of employers of all Member States.

70 In 2007, the establishment of a SADC Labour Market Information System was approved. This is extremely important in respect of labour market policies and legislative and regulatory reforms and will complement efforts by the ILO to obtain accurate statistics specifically for those working in the informal economy. See SADC. 2013. p. 12.

71 Health and safety standards are often a major challenge for women workers in the informal economy, whether they are informal traders, homeworkers or domestic workers.

72 Article 6(a).

73 Article 6(b).

74 Article 6(c).

75 Article 11(a).

76 Articles 16(1) and (2).

LIBER AMICORUM

underlying the development of social security systems in the region include solidarity and redistribution, multi-actor responsibility and variable geometry, as well as introducing flexibility in the achievement of social protection for all in the region.⁷⁷ Apart from the right to social security,⁷⁸ social assistance, social services and allowances⁷⁹ and social insurance,⁸⁰ the Code allows for an integrated approach in respect of social protection and provides that Member States should recognise indirect forms of support related to health, education, transport, water and electricity, as well as housing. Once again this integrated approach to social protection can be beneficial to women workers in the informal economy as opposed to a narrow interpretation of social security premised on the traditional employee-employer relationship. Particular mention of gender equality, the specific needs of women, the economic empowerment of women and the promotion of policies to assist women with all their responsibilities, provide an important framework to ensure social protection and gender equality of these workers.⁸¹ Member States must also ensure that national social security does not contain discriminatory provisions based on gender.⁸²

8.3.3 Protocol on Employment and Labour (2014)

The Protocol on Employment and Labour was signed in 2014 and will be implemented on reaching ratification by two-thirds of the Member States.⁸³ Included in the definition of vulnerable workers are women and informal economy workers.⁸⁴ This instrument also underlines the respect for basic human rights as reflected in international, regional and national instruments and the importance of decent work in the eradication of poverty.⁸⁵ Gender equality, regional cooperation, the setting of minimum standards on employment and labour, social security and safety and health at work are important objectives of this Protocol.⁸⁶ In respect of the informal economy the objective of promoting employment and income-generating opportunities for certain vulnerable groups based on achieving full, freely chosen

77 Article 2. See also Nyenti, M. & Mpedi, L.G. 2012. "The impact of SADC social protection instruments on the setting up for a minimum social protection floor in Southern African countries." *PER*, 244:257.

78 Article 4.

79 Article 5.

80 Article 6.

81 Article 13.

82 Article 13(2). Legislation must also be aligned with the 1997 SADC *Declaration on Gender Development and the 1999 Plan of Action for Gender in the SADC*.

83 See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, p. 105.

84 Article 1.

85 Articles 2(b) and (c).

86 Articles 4(a), (c) and (d).

productive and decent employment can be an important tool in the extension of labour and social protection. Regarding social protection, the Protocol ensures the improvement of working and living conditions,⁸⁷ decent work in line with the SADC Decent Work Programme,⁸⁸ social protection,⁸⁹ occupational safety and health,⁹⁰ health care,⁹¹ retirement provisions and protection of elderly persons,⁹² unemployment and underemployment,⁹³ maternity and paternity benefits,⁹⁴ persons with disabilities⁹⁵ and the protection of children and young persons⁹⁶ and migrant workers.⁹⁷

It is encouraging that nearly all the SADC instruments provide for reasonable measures to assist women to reconcile their occupational and family obligations.⁹⁸ Article 21 makes specific provision for informal employment and rural workers and includes the labour and social protection of these workers. State parties must have a comprehensive regulatory mechanism to promote decent work and the productivity of the informal and rural enterprise. The most valuable provision is the recognition and promotion of membership-based organisations to partake in social dialogue when considering policies and regulatory frameworks for these workers.⁹⁹ This section acknowledges that the needs of these workers may differ from those in regular employment and that special provisions are often required to provide these workers with social protection.

8.3.4 Protocol on Gender and Development (2008)

The Protocol on Gender and Development (2008) commits the Member States to acknowledge that gender equality is a fundamental human right.¹⁰⁰ The Protocol is an important document considering the role that patriarchal systems have played

⁸⁷ Article 9.

⁸⁸ Article 10.

⁸⁹ Article 11. This article establishes the right to adequate social protection to every worker.

⁹⁰ Article 12.

⁹¹ Article 13. This article qualifies the scope by providing adequate healthcare to residents.

⁹² Article 14.

⁹³ Article 15.

⁹⁴ Article 16. This provision is important for women workers in the informal economy as Member States must ensure maternity protection to all employed women, including those in atypical or dependent work. It also prohibits discrimination on the ground of maternity status (article 16(5)).

⁹⁵ Article 17. Specific provision is made for social protection measures for people living with HIV and AIDS.

⁹⁶ Article 18.

⁹⁷ Article 19.

⁹⁸ Article 4(c).

⁹⁹ Article 20(c).

¹⁰⁰ Article 4 calls for gender equality to be enshrined in the constitutions of Member States.

in contributing to gender-based discrimination in this region.¹⁰¹ The Protocol highlights the precarious position of women in the region in respect to new risks such as HIV and AIDS, human trafficking, the feminisation of poverty and gender-based violence.¹⁰² State parties are also obliged to adopt policies in respect of the burden of the multiple roles performed by women.¹⁰³ The nature of their work, such as care work, domestic work and other home-based work often results in a lack of worker identity as this kind of work is seen as part of their everyday duties. This document is progressive as it endeavours to influence policies and social practices by supporting public awareness programmes aimed at changing behaviour and eradicating gender-based violence.¹⁰⁴

8.3.5 Protocol on Health (1999)

The SADC Protocol on Health was signed in 1999 to coordinate regional efforts to prevent, control and eradicate communicable and non-communicable diseases through mutual support wherever possible.¹⁰⁵ Co-ordination, promotion and education are key themes through this Protocol. This SADC instrument once again identifies vulnerable groups, such as women and children, and provides for common strategies to address their health needs.¹⁰⁶ The Protocol provides for various institutional mechanisms to ensure the effective implementation of this instrument.¹⁰⁷

8.3.6 Code on HIV/AIDS and Employment (1997)

The SADC Code on HIV/AIDS and Employment is a non-binding instrument; it thus provides policy considerations and guiding principles to ensure a workplace without discrimination against individuals living with HIV and AIDS. This is achieved, for example, through providing access to job opportunities, medical testing at work, privacy, job security, occupational benefits and education and awareness programmes, including prevention programmes.

The Code provides guidelines to Member States on how to address HIV and AIDS in the workplace and ensure effective implementation. Member States are urged to incorporate these principles in national legislation. In its scope, the Code covers all

¹⁰¹ See Mirand, 2015.

¹⁰² Southern African Development Community (SADC). 2013. *Protocol on Gender and Development*.

¹⁰³ Article 16.

¹⁰⁴ Article 21.

¹⁰⁵ Article 3 lists the objectives.

¹⁰⁶ Article 3(g).

¹⁰⁷ Article 4 provides for the establishment of the Health Sector Co-ordinating Unit, Health Sector Committee of Ministers, the Health Sector Committee of Senior Officials as well as Technical Subcommittees.

employees and prospective employees. The narrow scope of coverage and the non-binding nature of this Code leaves many women workers vulnerable and without adequate protection. The Code is vague and of a non-binding nature; current regional regulations on HIV and AIDS are weak; informal border traders, for example, are not formally recognised in policies, and their specific needs are not addressed.

The SADC HIV and AIDS Strategic Framework 2010-2015 does focus on the harmonisation of cross-border health policies. It identifies these cross-border traders as a specific vulnerable group and requires action to address the needs of the mobile population.¹⁰⁸ This framework document recognises the value of an integrated approach and that the combination of HIV and AIDS, poverty and food insecurities threaten the livelihood of many households.¹⁰⁹

Other applicable instruments in this region include the Maseru Declaration on HIV and AIDS (2003) and the Abuja Declaration on HIV and AIDS, Tuberculosis and Other Related Infectious Diseases (2001).¹¹⁰

Regional regulation in the SADC region has a clear anti-discriminatory focus and many instruments focus on gender equality, the empowerment of women and various initiatives to ensure sustainable development. Nevertheless, various challenges remain in respect of regional regulation, such as high levels of poverty, HIV and AIDS, conflict and wars, the various levels of natural resources in SADC countries, the diverse levels of development and industrialisation in Member States, increased debts incurred by SADC countries and continued reliance on international aid.¹¹¹

8.4

Conclusion

Regional instruments can play an important role in the labour and social protection of women workers in the informal economy. When one considers the applicable regional instruments of the AU and the SADC, they contain provisions that address the specific challenges in the region as opposed to international instruments that are more generic. Regional instruments can, therefore, be more effective in addressing specific challenges that workers in a region may face. Regional instruments do not function in isolation and highlight the importance of international standards.

¹⁰⁸ Southern African Development Community (SADC). 2009. *SADC HIV and AIDS framework 2010-2015*, p. 2, 28. <https://bit.ly/33uzRBu>. This framework requires Member States to establish a sustainable response to these challenges and a reporting structure in respect of their targets.

¹⁰⁹ *Ibid.*, p. 10.

¹¹⁰ *Ibid.*, p. 14.

¹¹¹ Olivier, *et al.*, p. 677-678.

LIBER AMICORUM

They support the implementation of these standards in national legislation. The empowerment of women is a key theme in most regional instruments and they generally support an integrated approach to the provision of labour and social protection for these vulnerable women workers. A number of these instruments highlight the importance of assisting women with family responsibilities as well as the recognition of the value of their contribution to the economy in respect of care work and domestic work. This is of particular importance in regions characterised by patriarchal societies. These instruments endeavour to change societal norms by highlighting these principles.

Regional instruments, as discussed above, address the specific challenges faced by women in the region, such as HIV and AIDS,¹¹² whereas international instruments are often not as clear and precise regarding distinct challenges and vulnerabilities experienced by women in this region. Implementation and enforcement in the region remain problematic. A large number of regional instruments are not binding and are less effective. The AU faces many challenges in respect of the realisation of human rights, such as inadequate resources, lack of political support and appropriate enforcement mechanisms, and the many challenges that the region faces, namely poverty, unemployment, disease and conflict.¹¹³

Although enforcement remains problematic, AU instruments contain important integrated principles for the empowerment of vulnerable women and if these principles can be realised it will contribute to the protection of these workers in the region. The AU and SADC will have to address issues, such as enforcement mechanisms and report structures, as well as the implementation of international standards in national legislation.¹¹⁴ A major challenge for both remains the different development stages and governance models in the different Member States.¹¹⁵

Regional standards must not become mere symbolic instruments with no reflection or enforcement in national legislation, policies and programmes. If this is allowed, the impact of these standards will remain ineffective and a mere showcase for international organisations and the Member States.

¹¹² See also article 14 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

¹¹³ See Mpedi, L.G. & Nyenti, M.A.T. 2015. *Key International, Regional and National Instruments Regulating Social Security in SADC*. Stellenbosch: African Sun Media, p. 113.

¹¹⁴ *Ibid.*, p. 85.

¹¹⁵ *Ibid.*, p. 85.

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LIBER AMICORUM

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