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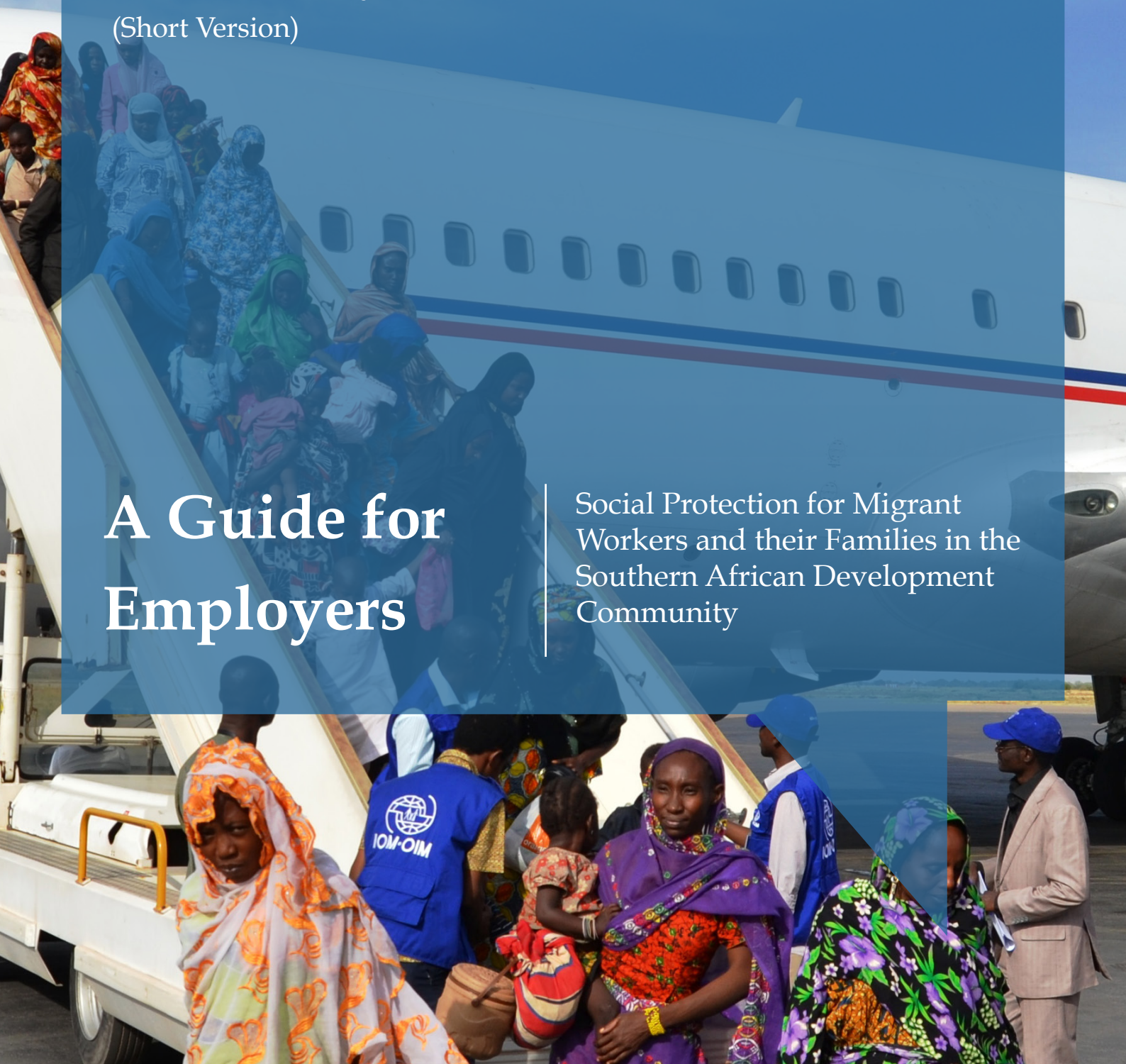


SADC Guidelines on the Portability of Social Security Benefits

(Short Version)

A Guide for Employers

Social Protection for Migrant
Workers and their Families in the
Southern African Development
Community



Social Protection for Migrant Workers and their Families in the Southern African Development Community

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Background

Having access to social protection is a human right and has been recognized by the UN Sustainable Development Goals as a key instrument to support social cohesion, reduce inequality and poverty and promote inclusive growth. It is widely recognized that migrant workers are major contributors to social and economic development and that they are vital to the SADC region's vision of prosperity. Their rights and those of their families, to accrue and receive social security benefits, needs to be secured. These rights also extend to self-employed migrant workers. However, in reality, migrants face huge challenges in exercising their rights to social security, compared to nationals working their entire lives in one country.

In response to the challenges faced by migrant workers and their families to access social protection, the SADC Ministers of Employment and Labour and Social Partners adopted in March 2020 **the SADC Guidelines on the Portability of Social Security Benefits**. The SADC Guidelines aim to support the creation of a favourable system across the SADC region that enables workers to accumulate and access social security benefits, regardless of which country they are in. Institutions responsible for social security across the SADC region will have the primary responsibility for implementing the Guidelines through appropriate policy measures. Before the Guidelines go into effect, benefits for social risks will be payable in accordance with existing legislation.

The guidelines are based on the principle of non-discrimination and equal treatment of nationals and non-nationals. Thus, Member States will guarantee migrant workers and their survivors the same social security rights and benefits as those accorded to citizens. The Guidelines are further inspired by ILO Conventions, in particular: Social Security (minimum standards) Convention, 1952 (n° 102); Equality of Treatment (social security) Convention, 1962 (n° 118); and Maintenance of Social Security Rights Convention, 1982 (n° 157). It is applicable to the 9 key branches of social security (listed below) and covers all workers, who are nationals of a SADC Member State, as well as members of their family and their survivors. It is further applicable to migrants with irregular status as well as workers in informal employment.

To enhance social security for migrant workers and their families in the SADC region, the SADC Secretariat and its 16 Member States are working with partners, notably the ILO, to increase awareness and knowledge of the Guidelines and support its implementation.



“The SADC Guidelines on the Portability of Social Security Benefits are based on the principle to treat migrant and citizens equally without discrimination based on nationality”



“Member States also agree to cooperate in facilitating payments across borders”

Are my employees, including migrant workers, covered by the SADC Guidelines?

All nationals of the SADC community (16 Member States) are covered by the SADC Guidelines:

1. Angola
2. Botswana
3. Union of the Comoros
4. Democratic Republic of the Congo
5. Eswatini
6. Lesotho
7. Madagascar
8. Malawi
9. Mauritius
10. Mozambique
11. Namibia
12. Seychelles
13. South Africa
14. United Republic of Tanzania
15. Zambia
16. Zimbabwe.



Story:

Jon, who is the owner of a grocery store in Cape Town, South Africa, decides to recruit Marisa, who is a migrant worker from Zimbabwe. As both Zimbabwe and South Africa are countries of the SADC community, Jon knows that Marisa and her family members who reside with her in South Africa will be treated equally to nationals in South Africa and that Marisa is entitled to benefits from the South African social security system as per legislation. Jon therefore registers Marisa with the South African Social Security Agency (SASSA) so that she can access benefits in case of income loss and continue accumulating social security entitlements and rights while working in South Africa.



The Benefits covered by the Guidelines may include the 9 key branches of social security:

1. Retirement benefits
2. Unemployment benefits
3. Survivors benefits
4. Occupational injury and disease benefits
5. Health insurance
6. Maternity benefits
7. Invalidity
8. Sickness benefits
9. Family benefits



In practice, the actual benefits covered depend on those included in the social security system of the country where the migrant worker is employed.

The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. Employers therefore have to cover at least 50 per cent of the contribution payments for any type of social security contingency (ILO Social Security (Minimum Standard) Convention 102).



Story:

Jon (employer) and Marisa (employee) are paying contributions to an equal share to the public pension scheme in South Africa. Jon advises Marisa that her contribution years from her employment in South Africa will later be accredited to the scheme where she will be retiring from. Therefore, even if Marisa leaves South Africa to work or live in another country of the SADC region, her contributions from South Africa will be reflected in her benefits. Marisa will also be able to combine her entitlements from different schemes in the SADC region.

Jon also registered Marisa with the unemployment scheme in South Africa. As Marisa has previously contributed to an unemployment scheme in Zimbabwe, her contribution years are taken into consideration in the scheme that she and her employer, Jon, are now contributing to. As her accumulated contribution periods qualify her for receiving benefits in the case of unemployment, she will not have any waiting period in South Africa before receiving unemployment benefits in full.

It is therefore important that Jon registers Marisa with the South African Social Security System, so that she can gain access to the full spectrum of benefits that she might already qualify for.



I. Applicable Legislation

The term *migrant worker* refers to a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker *ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Article 11(1)*.

Which State's Social Security legislation will apply to your migrant worker?

In general, the legislation of a worker's country of employment takes precedence over their country of residence. The same applies to the self-employed.

Workers sailing on board a ship flying the flag of a Member State will be subject to the ship's flag country's legislation.

Story:

Jon is no longer able to employ Marisa. Jon advises Marisa to apply to receive unemployment benefits which will help her maintain her standard of living and to continue supporting her family back home. While Marisa has been contributing to an unemployment insurance scheme in Zimbabwe prior to her employment in South Africa, she will be subject to the legislation of the South African unemployment insurance scheme, which she and her employer Jon have been contributing to since Marisa started work in South Africa.

It is therefore important that Marisa's employer Jon registers her with the South African unemployment schemes, despite her previous employment and affiliation with the Zimbabwe unemployment insurance scheme. Otherwise Marisa is not protected against the risk of unemployment and associated income loss.

For more details, please visit chapter 2 of the SADC Guidelines: [www....](http://www.sadcguidelines.org)

II. Maintenance of rights in the course of acquisition

If your employee, including migrant worker, worked in several countries, how are their benefits going to be calculated?

- Migrant workers can accumulate qualifying periods under different national social security schemes. This allows them to aggregate periods of insurance, employment or residence that may be necessary for the acquisition, maintenance or recovery of rights and benefits.
- One Member State should recognize and calculate the completed periods of contribution for a specific social security benefit.
- If a specific type of benefit depends on the completion of periods of employment, insurance, occupational activity or residence, the respective Member States will collate the periods completed by the migrant worker in other Member States.

Story:

Marisa has contributed five years to the public pension scheme the Zimbabwe before moving to South Africa. Yet in order to qualify for pension payments upon retirement, she will have to have accumulated 10 years of contribution payments according to Zimbabwe's pension insurance regulation.

She plans to retire in Zimbabwe and with the portability of social security benefits in the SADC region, her contribution that she and her employer Jon paid to the pension scheme in South Africa will be recognized and added to the contribution periods that she acquired with her previous employment in Zimbabwe.

With the portability of pension rights between Zimbabwe and South Africa, it is important that Marisa's employer Jon registers her with the South African public pension scheme, so that Marisa is able to qualify for receiving a pension when retiring, irrespective of where she chooses to retire.

For more details, please visit chapter 3 of the Guidelines: www....



III. Maintenance of acquired rights and provision of benefits abroad.

How are migrant workers benefits going to be paid abroad?

- Any acquired right to social protection benefits should be guaranteed to the migrant worker in the SADC country where they reside, even if their right has been acquired in another country. Acquired rights are therefore portable.
- Furthermore, there should be no restriction on the payment of benefits for which migrant workers qualify. Legislation restricting payment of benefits will not apply to migrants who are working or residing in a SADC Member State.

Story:

After Jon having employed Marisa for 10 years in South Africa, Marisa decides to move back to Zimbabwe. She has spent two more years working and contributing to the social security system in Zimbabwe following her employment with Jon.

Marisa is now retiring, also knowing that the social security system in Zimbabwe recognizes and collates her contribution periods from her employment in South Africa in addition to the contribution periods that she earned from the social security system in Zimbabwe. The funds from her pension scheme in South Africa are transferred without any restrictions or application of fees, thus allowing her to have the full amount accredited to her pension.

Without Jon having registered Marisa in the South African Social Security system, Marisa's pension benefits would have been much lower and she would have risked not to qualify for receiving her pension.

For more details, please visit chapter 4 of the Guidelines: www....



IV. Maintenance of rights between public social insurance schemes and provident insurance funds

How are migrant workers benefits transferred between a provident type insurance fund and a public social insurance scheme?

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- Migrant workers can request to withdraw or transfer funds accumulated under a pension scheme to the pension institution in the country where they are now a member. If the new institution is a provident fund, the amount transferred shall be credited to the account opened by this institution.
- By transferring funds, migrant workers will be able to buy contribution periods for the purpose of acquiring or improving their right to benefits with the new social security institution.

Story:

Carlos, who is Marisa's cousin from Mozambique, has also worked in South Africa for a period of 15 years. During his time working in South Africa, he and his employer contributed to a provident fund pension scheme. Previous to his employment in South Africa, he has earned pension credits when working in Mozambique, where he contributed to a public pay-as-you-go pension scheme.

When he decides to retire in South Africa and not return home, his pension entitlements from the scheme in Mozambique are transferred and credited to his provident fund pension account.

He is now receiving his full pension through the provident fund that he is affiliated to in South Africa, allowing him to cover his basic needs and maintain his lifestyle in old-age, while his children and grandchildren can focus on their work and schooling respectively. The portability of pension entitlements between the public pension scheme in Mozambique and the provident fund pension scheme in South Africa allow Carlos to receive higher levels of pension benefits, better protecting him against old-age poverty.

It is therefore important for employers to register their employees, including migrant workers, with the respective social protection schemes, even if they are employed on a shorter-term basis, to ensure that upon retirement they receive the best possible benefits.

For more details, please visit chapter 5 of the Guidelines: [www....](http://www...)

V. Administrative Measures

Which country's administration shall a migrant worker contact when applying for benefits?

- When migrant worker and their families apply for benefits, Claims will be submitted to competent institutions in countries where they reside.
- Applications will be submitted with the documentation required by the legislation of the Member State in which they (the applicant) are a resident.
- A claim will be processed by the competent institution that receives it.



In which currency will their benefits be paid?

- Benefits will be paid in the currency of the Member State whose social security institution is liable for the payment and in its full amount.

What do migrants have to do if they change their country of residence?

- If migrant workers move within the SADC Region they will have to notify the social security institution liable for the payment of a benefit when relocating to the territory of another Member State.

In which language will migrants have to submit their claim or other documents?

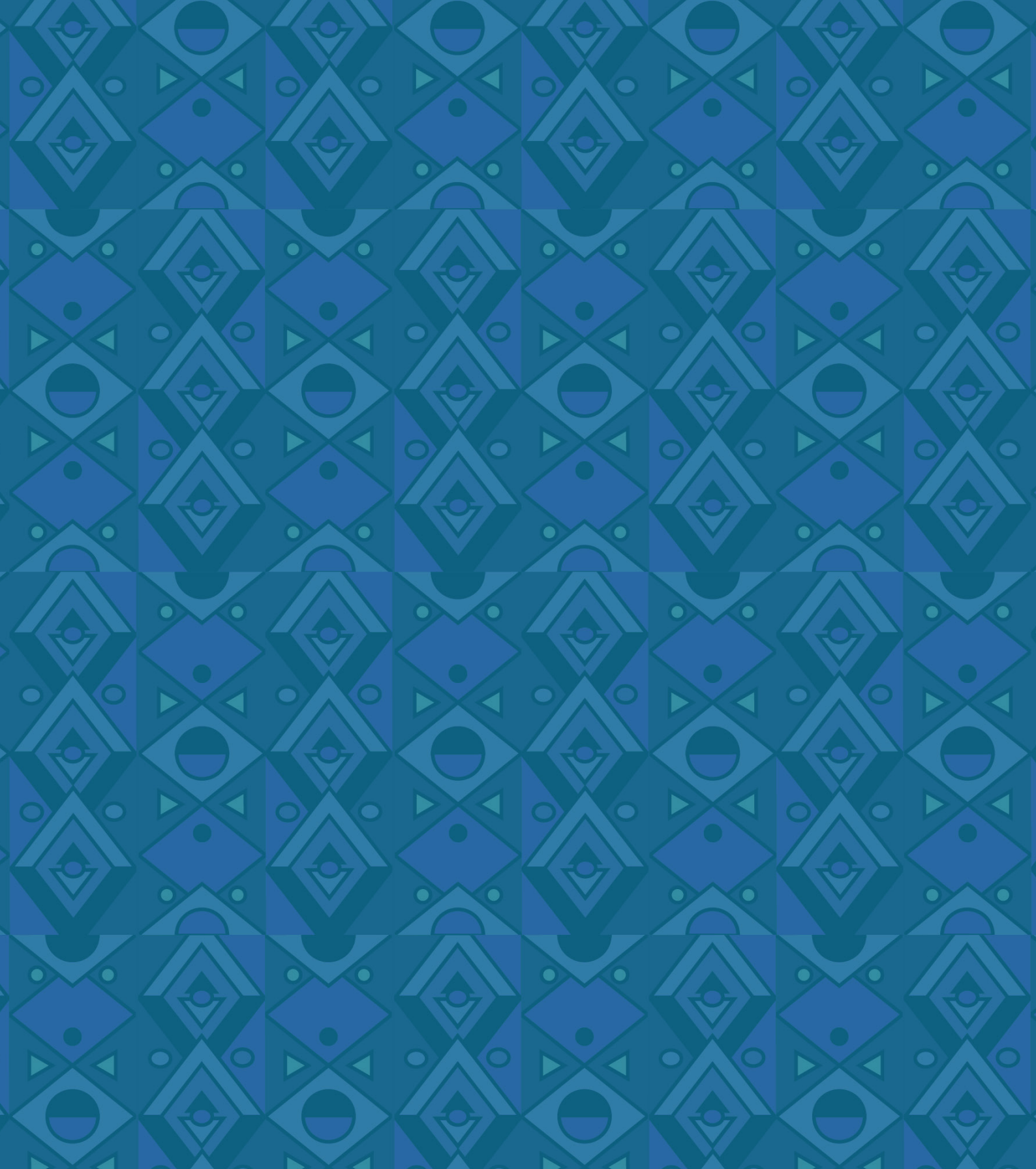
- Authorities will accept claims or other documents submitted to them in any of the official SADC Region languages (English, French and Portuguese).

Story:

Carlos, who decided to retire in South Africa is submitting his claim through the South African social security office. In order to get his contribution period from Mozambique accredited, Carlos is submitting the necessary documents to the South African social security office. The original documents from Mozambique are in Portuguese, which is an official language of the SADC region and therefore accepted by any SADC countries authorities.

A few years later, Carlos decides to move to Namibia. He is informing the South African social security office about his relocation, so that he can continue receiving his pension in Namibia. With the portability agreements across the SADC region, Carlos and Marisa have the possibility to relocate across the region without losing their acquired rights to social security.

For more details, please visit chapter 6 of the Guidelines: [www....](http://www.sadc-social-security.org)



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