

Molao wa tšhireletso ya leago ka mo go ditšhaba tšeo di hlabologago tša borwa bja Afrika

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SUMMARY

Code on social security in the Southern African development community

The Code on Social Security in the Southern African Development Community (Code) was approved by the Integrated Committee of Ministers in June 2007 in Windhoek Namibia. This contribution critically examines how the Code attempts to develop sound social security systems in the Southern African Development Community (SADC) region. It pays special attention to the approach adopted by the Code in its quest to address pertinent issues such as the right to social security, social protection framework, and social risks as well as vulnerable groups and categories of persons protected. It concludes by observing that the ratification record of SADC member states of the officially current conventions in the field of social security is unsatisfactory. Accordingly, member states must be encouraged to ratify these important instruments. Secondly, preventative and (re)integrative measures are a part and parcel of a social security system. Thus, the call by the Code for the introduction of these measures is to be welcomed. Furthermore, social security coordination is an integral part of regional integration and the free movement of labour and persons. To this end, the provisions in the Code aimed at these matters are timely. Finally, the Code is not legally binding. Nonetheless, its adoption is commendable for it is a right step towards the improvement of social security systems in the SADC region which are largely undeveloped and, in some instances, underdeveloped.

1 Matseno

Molao wa Tšhireletšo ya Leago ka mo go Ditšhaba tšeo di Hlabologago ka mo Borwa bya Afrika o dumeletšwe ke Komiti ya Ditona yeo e Kopanetšwego (ICM) ka Phupu 2007 go la Windhoek Namibia.¹ Maikemišetšo a Molao ke go fa dinagamaloko (mohl. Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Afrika Borwa, Seychelles, Swaziland, Tanzania, Zambia le Zimbabwe) le (ge go lebelelwa(b) le (c)) Ditšhaba tšeo di Hlabologago ka mo Borwa bya Afrika (SADC) ka:

- (a) leano la tsela le ditlahlo ka go tlabollo le kaonafatšo ya ditsela tša tšhireletšo ya leago, gore o kgone go oketša pabalelo ya batho ba selete se;

¹ Lebelela Post-ICM Media Briefing Statement 2007-06-16 Windhoek, Namibia – e hweditšwe mo go <http://www.sadc.int>.

(b) melawana le maemo ao a hlokegago a tšhireletšo ya leago, gammogo le tlhako ya tekolo go maemo a bosetšhaba le a selete; le

(c) sedirišwa seo se šomago gabotse sa kgohlaganyo, kopanyo le go swana ga ditsela tša tšhireletšo ya leago ka mo seleteng se.²

Maikemišetšo a pele a Molao wo, go fihla bokgole bjo itšego, a laetša mathata a tšhireletšo ya leago le ditlhohlo tšeo di lebanego le selete sa SADC. Mohlala, tšhireletšo ya leago ka mo SADC ka kakaretšo, e fase ka tlhabologo.³ Go tlaleletša, ditsela tša tšhireletšo ya leago ka mo seleteng e fela e sa akaretše le go phaella thoko sehlopha sa batho ba bantši bao ba diilago le magoro a batho bjalo ka bahudugi, bašomi ba go tšwa ka ntle le bafaladi.⁴ Go tšwelapele, go na le hlokego e kgolo kudu ya kgohlaganyo ya ditsela tša tšhireletšo ya leago ka mo seleteng.⁵

Sengwalwa se, se lekola ka tsitsinkelo gore Molao o leka bjang go hlama ditsela tšeo di kwagalago tša tšhireletšo ya leago ka mo seleteng sa Ditšhaba tšeo di hlabologago tša ka Borwa bja Afrika. Se fa šedi ya go ikgetha go mokgwa wo o amogetšwego ke Molao ka go nyaka go šogana le ditaba tše di lego maleba bjalo ka tokelo go tšhireletšo ya leago, tlhako ya tšhireletšo ya leago, le dikotsi tša leago gammogo le dihlopha tšeo di lego kotsing le magoro a batho ao a šireleditšwego. Poledišano ka ga ditaba tšeo go boletšwego ka tšona ka mo godimo e tla latelwa ke kakaretšo ya bofelo.

2 Tokelo go Tšhireletšo ya Leago

2 1 Tokelo ya Kakaretšo go Tšhireletšo ya Leago

Molao o fa 'o mongwe le o mongwe' yo a lego ka mo SADC tokelo go tšhireletšo ya leago.⁶ Ka go dira bjalo, o tsenela ka boati didirišwa tša boditšhabatšhaba⁷ le melaotheo ya bosetšhaba⁸ yeo e hlokomelago tokelo go tšhireletšo ya leago bjalo ka tokelo ya motheo yeo e swanelwago ke go hwetšwa ke o mongwe le o mongwe.⁹ Go ya ka Molao wo, kgopolo ya 'tšhireletšo ya leago' e bolela ka mekgwa ya mmušo le

2 Temana ya 3 ya Molao wa Tšhireletšo ya Leago ka mo go Ditšhaba tšeo di Hlabologago ka mo Afrika ya ka Borwa.

3 Olivier le Mpedi "Co-ordination and integration of social security in the SADC region: Developing the social dimension of economic co-operation and integration" 2003 *Journal for Juridical Science* 10 mo go 12.

4 *Idem* mo go 13.

5 *Ibid.*

6 Temana ya 4(1) ya Molao.

7 Bjalo ka Income Security Recommendation (1944), Universal Declaration of Human Rights (1948) le International Covenant on Economic, Social and Cultural Rights (1966).

8 Lebelela, mohlala, s 27(1) (c) ya Molaotheo wa Repabliki ya Afrika Borwa, 1996.

9 Lebelela Eichenhofer *Social Security Reform and the Law* ka mo go Pieters (ed) *Confidence and Changes: Managing Social Protection in the New Millennium* (2001) 237; Schulte *Legal Protection of Social Benefits and Expectancies – Social Rights under International and National Law* ka mo go Kremalis (ed) *Simplification and Systematisation of Social Protection Rules*

continued on next page

poraebete, goba mekgwa yeo e kopantšwego ya mmušo le ya poraebete yeo e hlamilwego go šireletša batho le malapa kgahlanong le go se šireletšwe ga letseno mo go hlolago ke tšeo di bego di se tša emelwa bjalo ka go se šome, kgobalo ya mošomong, botswetši, bolwetši, bogole, botšofadi le lehu. Maikemišetšo a magolo a tšhireletšo ya leago ke: (a) go boloka letseno, (b) go fana ka tlhokomelo ya maphelo, le (c) go fana ka meholo go malapa (matseno). Go tšwa go tebelelo ya kgopolo, Molao o tiišetša gore tlhalošo ya wona ya tšhireletšo ya leago o akaretša inšorense ya leago, thušo ya leago le diputseletšo tša leago.¹⁰ Le ge go le bjalo, go swanetšwe go bolelwa gore Molao, ka tlaleletšo go tšhireletšo ya leago, o bolela ka 'tšhireletšo go leago'. Tšhireletšo go leago, go ya ka Molao, "o akaretša tšhireletšo ya leago le ditirelo tša leago, gammogo le pabalelo yeo hlabologago ya leago. Tšhireletšo ya leago ka gona e ra gore mekgwa ya mmušo le ya poraebete, goba mekgwa yeo e kopantšwego ya mmušo le ya poraebete yeo e hlamilwego go šireletša batho kgahlanong le mathata a bophelo ao a fokotšago bokgoni bja bona go ka fihlelela dinyakwa tša bona. Maikemišetšo ke go godiša pabalelo ya motho."¹¹ Ge e bonwa go tšwa ka kgopolong, ka gona Molao o laetša gore, tšhireletšo ya leago (a) e akaretša dibopego ka moka tša tšhireletšo ya leago, (b) e akaretša ditirelo tša leago le pabalelo ya leago yeo e hlabologago e bile ga e ganetšwe go tšhireletšo kgahlanong le tšhireletšo ya letseno yeo e hlolago ke dikotsi tšeo di itšeng.¹² Ka lebaka leo, pabalelo ya leago e feta tšhireletšo ya leago.¹³

2 2 Go Hloma le go Hlokomela Mokgwa wa Tšhireletšo ya Leago

Molao o nyaka gore dinagamaloko di hlome le go hlokomela tsela ya tšhireletšo ya leago go ya ka bopaki bya ona le tša temana ya semolao ya 10 ya Tšhata ya Tokelo ya Motheo ka go SADC (2003) (Tšhata).¹⁴ Temana ya semolao ya 10 ya Tšhata e hlagiša gore: "Dinagamaloko di tla hlola tikologo yeo e kgontšhago gore mošomi o mongwe le o mongwe ka mo Seleteng a be le tokelo go pabalelo ya leago yeo e lekanego e bile, go sa lebelelwe maemo le mohuta wa mošomo, a tla hwetša diputseletšo tšeo di lekanego tša tšhireletšo ya leago. Batho bao ba bego ba sa kgone go ka tsena goba go tsena gape mo mešomong e bile ba se na mekgwa ya go iphediša ba tla ba le maswanedi a go hwetša methopo yeo e lekanego le thušo ya leago." Go bohlokwa ka nnete gore dinagamaloko di hlome le go hlokomela ditsela tša tšhireletšo ya leago go mabaka a tokelo go tšhireletšo ya leago, bjalo ka ge e hwetšwa ka gare ga temana ya semolao

(1996) 137; Craven *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on its Development* (1995); Van Langendonck *The Right to Social Security and Allied Rights* ka mo go Ruland *et al* (eds) *Verfassung, Theorie und Praxis des Sozialstaats* (1998) 477; le Perrin "The recognition of the right to social protection as a human right" 1985 *Labour & Society* 239.

10 Temana ya 1(5) ya Molao.

11 Temana ya 1(4) ya Molao.

12 *Ibid.*

13 *Ibid.*

14 Temana ya 4(2) ya Molao.

ya 4(1) ya Molao, e tla hloka mohola ge go se na (tšhomo e botse) ditsela tša tšhireletšo ya leago.

Go tšwelapele, Molao o bea tlamo ya kgapeletšo go dinagamaloko ka moka go boloka ditsela tša bona tša tšhireletšo ya leago go maemo ao a kgotsofatšago ao a nyakegago gore a tle a tiišetše ke Kwano ya Boditšhabatšhaba ya Mokgatlo wa Bašomi (ILO) ya Tšhireletšo ya Leago ke (Kwano 102 ya 1952).¹⁵ Go ya le ka tebelelo ya dikgoeletšo tšeo di fetilego, go maleba go laetša gore palo ya tiišetšo ke dinaga tša SADC tša kwano tša bjale tše seswai tša semmušo ka go lefapha la tšhireletšo ya leago(mohl. Social Security (Minimum Standards) Convention, Equality of Treatment (Social Security) Convention, Employment Injury Benefits Convention, Invalidity, Old-Age and Survivor's Benefits Convention, Medical Care and Sickness Benefits Convention, Maintenance of Social Security Rights Convention, Employment Promotion and Protection against Unemployment Convention le Maternity Protection Convention)

Tiišetšo ya go fihla ga bjale ya dikwano tša tšhireletšo ya leago ke dinaga tša SADC

Naga	Social Security (Minimum Standards) Convention 102 of 1952	Equality of Treatment (Social Security) Convention 118 of 1962	Employment Injury Benefits Convention 121 of 1964	Invalidity, Old Age and Survivor's Benefits Convention 128 of 1967	Medical Care and Sickness Benefits Convention 130 of 1969	Maintenance of Social Security Rights Convention 157 of 1982	Employment Promotion and Protection against Unemployment Convention 168 of 1988	Maternity Protection Convention 183 of 2000
Angola	✗	✗	✗	✗	✗	✗	✗	✗
Botswana	✗	✗	✗	✗	✗	✗	✗	✗
DR Congo	☑	☑	☑	✗	✗	✗	✗	✗
Lesotho	✗	✗	✗	✗	✗	✗	✗	✗
Madagascar	✗	☑	✗	✗	✗	✗	✗	✗
Malawi	✗	✗	✗	✗	✗	✗	✗	✗
Mauritius	✗	✗	✗	✗	✗	✗	✗	✗
Mozambique	✗	✗	✗	✗	✗	✗	✗	✗
Namibia	✗	✗	✗	✗	✗	✗	✗	✗
Seychelles	✗	✗	✗	✗	✗	✗	✗	✗
Afrika Borwa	✗	✗	✗	✗	✗	✗	✗	✗
Swaziland	✗	✗	✗	✗	✗	✗	✗	✗
Tanzania	✗	✗	✗	✗	✗	✗	✗	✗
Zambia	✗	✗	✗	✗	✗	✗	✗	✗
Zimbabwe	✗	✗	✗	✗	✗	✗	✗	✗
☑ = e tiišeditšwe.								
✗ = ga se ya hlwa e tiišetšwa.								

Mothopo: IOLEX (go tloga ka la 2 Mopitlo 2011)

ga e kgotsofatše. Go dinagamaloko tše lesome hlano tša SADC, go tloga ka la 02 Mopitlo 2011, the Democratic Republic of the Congo e tiišeditše tše tharo tša kwano tša bjale (mohl. Social Security (Minimum Standards) Convention, the Equality of Treatment (Social Security) Convention le Employment Injury Benefits Convention). Madagascar, go tloga ka la 02 Mopitlo 2011, e latetše Democratic Republic of the Congo ka tiišetšo e tee ya dikwano tša bjale (mohl. Equality of Treatment (Social Security) Convention). Ka nnete go bohlokwa kudu go dinagamaloko tša SADC go tiišetša dikwano tše bohlokwa tše, e sego fela go mohola wa tšona ka go lefapha la tšhireletšo ya leago, eupša gape le go mabaka a gore maemo a

15 Temana ya 4(3) ya Molao.

boditšhabatšhaba a maswa a tšhireletšo ya leago ga bjale a swanetše go tseela hloko diteng tša dikwano tša bjale tše seswai pele di ka amogelwa.¹⁶

2 3 Tswetšo Pele ya go Godisetša Godimo Tsela ya Mokgwa wa Tshirelotšo

Ka ntle le mošomo wa go hloma le go boloka ditsela tša tšhireletšo ya leago, Molao o gapeletša tlamo go dinagamaloko go godiša gannyane ga gannyane ditsela tša tšhireletšo ya leago go ya go maemo a godimo ao a ka akaretšago go fihlelela kakaretšo yeo e nago le mohola go motho yo mongwe le yo mongwe ka fase ga tsela ye.¹⁷ Le ge go le bjalo, mošomo o tla laolwa ke dinnete le maemo a tlhabollo ka go nagaleloko.¹⁸ Tlhagišo ye e sepelelana le tumelo yeo e akaretšwago ke Molao wa dipalo tša dibopego tša go fapana, moo e lego gore sehlopha sa dinagamaloko seo se ka sepelago ka lebelo la mmutla ka go ditiro tše itšego le maitemogelo ao go ithutilwego go tšwa go wona ao a tla go šomišwa go dinagamaloko tše dingwe.¹⁹

3 Motheo wa Tshireletšo ya Leago

Molao o na le diritlha tšeo di ka tšewago ele ditšhupo tšeo dinagamaloko di swanetšego go hlahlwa ke tšona mo phegelelong ya tšona ya go hlabolla goba go kaonafatša metheo ya tšona ya tšhireletšo ya tša leago. Temana ya 20 ya Molao e gapeletša dinagamaloko: go ela šedi dikgokagano magareng ga tlhabollo ya leago le ya ekonomi e bile di swanetše gore ka maleba di kgonthise gore melao ya tšhireletšo ya leago le tlhabollo ya ekonomi e hlangwa ka mokgwa wa go nyalelana, wo o kopantšwego le wo o tiišwago mmogo;²⁰ di lemoge gore tšhireletšo ya leago e šoma ka gare ga motheo wwo o akaretšago wa tšhireletšo ya leago woo o ka bago ka mokgwa wa go ba thwii le wa go se be thwii, le gona o swanetše gore o netefatše gore, mekgwa ya go se be thwii, e thekga le go tlaleletša mekgwa ya go ba thwii;²¹ di lemoge go ba gona ga mehuta yeo e sego ya semmušo ya tšhireletšo ya leago le gore ba nyake go di tiiša le gore di kwagale (ka go, mohlala, fana ka tlhahlo ya bokgoni le dibopego tša maleba tša thekgo) le go di kopanya le mehuta ya semmušo ya tšhireletšo ya leago²² le go lebelela kudu go hlabolla pabalelo ya tšhireletšo ya leago yeo e kopantšwego e bile e le yeo e akaretšago yeo e nago le mehuta ya semmušo le yeo e sego ya semmušo

16 Javillier J-C "The impact of international social security standards" Letlakala leo le abilwego mo go Conference on the ISSA Initiative, Vancouver, Canada 2002-09-10 to 12.

17 Temana ya 4(4) ya Molao.

18 *Ibid.*

19 Temana ya 2(2)(b) ya Molao.

20 Temana ya 20(1) ya Molao.

21 Temana ya 20(2) ya Molao.

22 Temana ya 20(3) ya Molao.

yeo e kgohlagantšwego le dibopego tšeo di lego thwii le tšeo di sego thwii tša thekgo ya leago.²³

Ge o bala go tšwa go ditlhagišo tša temana ya 20 (le ditemana tše dingwe tšeo di lego ka gare ga Molao), go molaleng gore Molao o lemoga dibopego tše di latelago tša tšhireletšo ya leago, mohlala: tšhireletšo ya leago yeo e lego thwii goba ya semmušo, tšhireletšo ya leago yeo e sego thwii le tšhireletšo ya leago yeo e sego ya semmušo.

(a) Tšhireletšo ya leago yeo e lego thwii goba ya semmušo: Tšhireletšo ya leago ya thwii goba ya semmušo e ra gore tšhireletšo ya leago bjalo ka ge e hlalošitšwe ka gare ga Molao. Tšhireletšo ya leago e ka aroganywa ka mananeo goba ditsela tša tšhelete tša lekgetho le mananeo a go ithekga ka thušo ya mašeleng. Mekgwa goba mananeo a tšhelete ya lekgetho bogolo a bopilwe ke thušo ya leago, ditirelo tša leago le diputseletšo tša leago. Go ya le ka Molao motho o mongwe le o mongwe ka mo SADC yo a se nago ditsela tše di lekanego tša go iphedisa le bafepša ba bona ba swanetše go ba le maswanedi a go hwetša thušo ya leago, go sepelelana le maemo a tlhabollo ya leago le ya ekonomi ya nagaleloko leo le itšego.²⁴ Sa bobedi, Molao o gapeletša dinagamaloko go fana ka tikologo yeo e kgontšhago kabo ya ditirelo tša leago go batho le dihlopha tšeo di nyakago thekgo ka pabalelo le ka tlhabollo ka mo setšhabeng.²⁵ Ge re tlaleletša, go nyakega gore dinagamaloko di hlohleletše go tšeakarolo ga batho, mekgatlo ya setšhaba, bagkathatema bao e sego ba mmušo le mekgatlo yeo e sego ya mmušo gore di kgone go hloma le go hlokomela ditirelo tše bjalo.²⁶ Kgopolo ye e laeditšwego, e sepelelana le tumelo ya boikarabelo bja batho ba bantši yeo e lego ka gare ga temana ya 2(2)(c) ya Molao. Go ya ka tumelo ye, “kabo ya tšhireletšo ya leago ke mošomo wo o hlakanetšwego ke mebušo, ditheo tša setšhaba tša tšhireletšo ya leago le bagkathatema ba poraebete, re beile ka mogopolong gore mmušo ke wona o rwelego maikarabelo ka botlalo.”²⁷ Go tšwela pele, Molao o hlohleletša dinagamaloko “– moo go kgonegago ka ekonomi – go aba diputseletšo tša leago go batho bao ba welago ka go magoro ao a kgethilwego gore di kgone go ba thuša ka go fihlelela bokgoni bja bona ka botlalo.”²⁸ Mabapi le mananeo a go ithekga ka thušo ya ditšhelete, a ke mananeo ao bontši e lego mananeo a inšorense ya leago. Ka mo go legoro la inšorense ya leago, Molao o nyaka gore dinagamaloko di hlome mananeo a inšorense ya leago e bile di re gannyane le gannyane di katološe kakaretšo le khuetšo ya mananeo a.²⁹ Se se bohlokwa kudu, kudu kudu ge motho a ela hloko go hwa ga didirišwa tša inšorense ya leago yeo e lebišitšwego go tšhireletšo ya kgahlanong le dikotsi tša leago bjalo ka go se šome. Mo e lego gore di gona, bogolo bja kakaretšo ya tšona e ba bjo bo lekaneditšwego. Afrika Borwa ke mohlala wa ntlha ye.³⁰ Go tšwela pele, Molao o laela dinagamaloko go amogela tlhakamolao ya maleba le mekgwa e mengwe gore di kgone go dira bonnete bja gore go ba le taolo le tshepedišo ya maleba ya

23 Temana ya 20(4) ya Molao.

24 Temana ya 5(1) ya Molao.

25 Temana ya 5(2) ya Molao.

26 *Ibid.*

27 *Ibid.*

28 Temana ya 5(3) ya Molao.

29 Temana ya 6(1) ya Molao.

30 Lebelela Mpedi *Redesigning the South African Unemployment Protection System: A Socio-Legal Inquiry* (2006) 61-147.

mananeo a inšorensense ya leago;³¹ le go fana ka meholo ya inšorensense ya leago yeo e kwagalago le yeo e lekanego, yeo e lekanago le seo se šireleditšwego seo se tla go hlaga ka moso le mohuta wa bogolo bja tahlegelo yeo e tla go ba e diregile.³² Go tlaleletša, e šupetša dinagamaloko gore di katološe bogolo bja inšorensense ya leago go setšhaba ka moka seo se šomago;³³ go fana le go sepediša ka molao mekgwa ya inšorensense ya leago ka mo go lefapha leo e sego la semmušo;³⁴ le go hlohleletša le go sepediša ka molao bokgathatema bja lefapha la poraebete le la mmušo go inšorensense ya leago, mabapi le kabo le taolo ya inšorensense ya leago, gammogo le tefo ya meholo ya inšorensense ya leago.³⁵ Se se tla amogelwa, ka lebaka la gore gantši ka mo seleteng ga se batho ka moka bao ba šomago bao ba šireleditšwego ke mananeo a inšorensense ya leago. Mabaka ao a hlalago maemo a ke a go swana le go hloka melao yeo e fetišitšwego ya go tšekarolo ka lebaka la nnete ya gore bašomi ba bangwe ga ba wele ka go tlhalošo yeo e sesefaditšwego ya mošomi bjalo ka ge e hwetšwa ka gare ga melao ya bašomi. Ka tlaleletšo, ka maatla a ditlhagišo tšeo go boletšwego ka tšona pele, batho ba bantši ka mo seleteng bao ba dulago go ekonomi yeo e sego ya semmušo ba tla hwetša kimollo go mananeo a inšorensense ya leago a dinaga tša bona moo ba šomago gona. Se se bohlokwa ge go lebeleletšwe nnete ya gore bontši bja bašomi ba bjale ba tlogetšwe e bile ba phaetšwe ka thoko go tšwa go mananeo a mantši a inšorensense ya leago.

(b) Tšhireletšo yeo e sego thwii ya leago: Tšhireletšo ya leago yeo e sego thwii e ra gore “ditirelo tšeo di sa bopego karolo ya tšhireletšo ya leago yeo e sego thwii goba yeo e sego ya tlwaelo, eupša le ge go le bjalo e bohlokwa kudu ka go thibelo ya tshenyo ya motho, le go nyakega go thuša batho gore ba kgone go phela maphelo ao a tlotlegago.”³⁶ Tšhireletšo ya leago yeo e sego thwii le tšhireletšo ya leago yeo e lego thwii di nyalelana kudu. Kamano ya kgauswi ya magareng ga dilo tše pedi e swantšhitšwe ka tsela ya mohlala wo o bonalago ka tsela ye e latelago: “Kabo ya ditirelo tša tlhokomelo ya maphelo tša go se lefelwe go basadi bao ba ithwelego le bana ba ka fase ga mengwaga e tshela, mohlala, e ka fokoletšwa go ba toro ya go se fihlelelwe ge, magareng ga tše dingwe, go se na phihlelelo go: meetse a go hlweka le ao a lekanego *le tlhwekišo* (go boloka bomme bao ba ithwelego le bana ba mengwaga ya ka fase ga ye tshela kgole le go nwa meetse ao a tsenwego ke kholar); senamelwa sa ka mehla, *sa go bolokega le seo se fihlelelegago* (go sepediša basadi bao ba ithwelego le bana ba ka fase ga mengwaga e tshela go ya go disenthara tša maphelo); ntlo le bodulo (go fokotša dikgonagalo le tšhilafalo ya dijo ka lebaka la didirišwa tšeo di sego tša lekana tša polokelo); le dijo le phepo (go boloka basadi bao ba ithwelego le bana ba ka fase ga mengwaga e tshela ba tiile e bile ba phedile gabotse).³⁷

(c) Tšhireletšo ya leago yeo e sego ya semmušo: Dikelotlhoko tše dintši di hlalošitše ka seo se (swanetšego) go bopa tšhireletšo ya leago yeo e sego ya

31 Temana ya 6(2) ya Molao.

32 Temana ya 6(3)) ya Molao.

33 Temana ya 6(4) ya Molao.

34 Temana ya 6(5) ya Molao.

35 Temana ya 6(6) ya Molao.

36 Mpedi “Indirect social security” ka mo go Olivier *et al* (eds) *Social Security: A Legal Analysis* (2003) 537.

37 *Ibid* 557 n 106.

semmušo.³⁸ Go makatša kudu gore ga go na tlhalošo ya nnete ya tšhireletšo ya leago yeo e sego ya semmušo.³⁹ Ka ntle le seo, dibopego tše pedi tša dipeakanyo tša tšhireletšo ya leago yeo e sego ya semmušo di a bonagala. Tše di ithekgile ka malapa a poraebete goba kamano ya batho (mohl. Phetišetšo ya go tselelelana ga moloko) le mekgatlo ye e ithekgilego ka boeloko goba maano a go iphediša ao a ithekgilego ka kamano yeo e sego ya lešika (mohl. mekgatlo ya polokano). Tšhireletšo ya leago yeo e sego ya semmušo ke karolo ye bohlokwa ya tšhireletšo ya leago. Go tšwelapele, bontši bja batho le malapa a bona bao ba tlogetšwego e bile ba phaetšwe ka thoko ke mananeo a tšhireletšo ya leago a semmušo ba phefa dikotsi tša leago ka mekgwa ya tšhireletšo ya leago yeo e sego ya semmušo. Go ya ka maleba, kgoeletšo ya Molao go dinagamaloko gore di ele hloko go ba gona ga mekgwa ya tšhireletšo ya leago yeo e sego ya semmušo le go katanela go tliša le dira gore di kwagale le go di kopanya le dibopego tša tšhireletšo ya leago ya semmušo gore di amogelwe.⁴⁰

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- 38 Lebelela, mohlala, Olivier le Dekker “Informal social security” ka mo go Olivier *et al* (2003) 562; Kaseke “Informal social security in Eastern and Southern Africa” Letlakala le abilwe go SADC Social Security Conference, Johannesburg, Afrika Borwa, 17-19 Diphallane 2001; Freiberg-Strauss *Social Security for the Poor – Options and Experiences* (1999) 3; le Gsänger “Linking informal and formal social security systems” *Deutsche Stiftung für Internationale Entwicklung* – e hweditše mo go <http://www.dse.de/ef/social/gsaenger.htm>. Lebelela, go tšwela pele ka go bala ka ga kgopolo ya tšhireletšo ya leago yeo e sego ya semmušo, Van Ginneken (ed) *Social Security for the Excluded Majority: Case Studies of Developing Countries* (1999); Devereux S *‘Making Less Last Longer’: Informal Safety Nets in Malawi* (Institute of Development Studies Discussion Paper 373 (1999)); Dercon “Safety nets, savings and informal social security systems in crisis-prone economies” Letlakala le abilwe mo go Annual Bank Conference on Development Economics in Europe, Paris, 21 – 23 Ngwatōbošego 1999; Subarro *Namibia’s Social Safety Net: Issues and Options for Reform* (Policy Research Working Paper (1996)); McDonald *et al* *Income Distribution, Informal Safety Nets, and Social Expenditures in Uganda* (International Monetary Fund Working Paper (1996)); Clu le Gupta “Social safety nets in economic reform” ka mo go Clu le Gupta (eds) *Social Safety Nets: Issues and Recent Experiences* (International Monetary Fund (1998)) 7 mo go 27; Ahmad “Protecting the vulnerable: Social security and public policy” ka mo go Lipton le Van der Gaag (eds) *Including the Poor* (World Bank (1993)) 359 mo go 364-366; Platteau “Traditional systems of social security and hunger insurance: Past achievements and modern challenges” ka mo go Ahmad *et al* (eds) *Social Security in Developing Countries* (1991) 112; Von Braun “Social security in sub-Saharan Africa: Reflections on policy challenges” ka mo go Ahmad *et al* (1991) 395 mo go 406-410; Ahmad “Social security and the poor: Choices for developing countries” (1991) 6 *World Bank Research Observer* 105 mo go 111-112; le Von Benda-Beckmann *et al* (eds) *Between Kinship and the State: Social Security and Law in Developing Countries* (1988).
- 39 Olivier *et al* “Formulating an integrated social security response – Perspectives on developing links between informal and formal social security in SADC region” Letlakala le abilwe mo go EGDI-WIDER Conference on Unlocking Human Potential Linking the Informal and Formal Sectors, Helsinki, 2004-09-17 to 18.
- 40 Temana ya 20(3) ya Molao.

4 Dikotsi tša Leago tšeo di Šireleditšwego

Molao o šireletša tšeo di sego tša emelwa tšeo di ka hwetšwego go Kwano ya 102 ya 1952 ya ILO ya Tšhireletšo ya Leago (Bonnyane) tšona ke maphelo,⁴¹ botswetši le go ba ntate,⁴² lehu le baphologi,⁴³ go rola modiro le botšofadi,⁴⁴ go se šome le mošomo wo o sego wa lekana⁴⁵ le dikgobalo le malwetši a mošomong.⁴⁶ Go a bonagala kudu gore Molao o lekile go šireletša dikotsi tšeo go boletšwego ka tšona pele ka tsela yeo e elago hloko dinnete tša leago, ekonomi le politiki ka mo seleteng sa SADC. Go fa mohlala, Molao o nyaka dinagamaloko gore, ge di šogana le ditaba tša maphelo, di lebelele HIV/Aids.⁴⁷ Go tšwelapele, e gapeletša dinagamaloko go amogela melao le mekgwa ya go laola seemo go lebilwe go tlhabollo ya kakaretšo ya ekonomi le leago gore di kgone go fediša bodiidi⁴⁸ le go kopanya mahlakore a ekonomi a semmušo le ao e sego a semmušo.⁴⁹ Ka tlaleletšo, Molao o bolela ka dikotsi tše itšeng tšeo di tlwaelegilego ka mo seleteng bjalo ka dikhuduego tša dipolitiki le masetlapelo a tlhago. Temana 18(1) e bolela gore dinagamaloko di swanetše go dira bonnete bja gore mananeo a bona a tšhireletšo ya leago a fana ka pabalelo kgahlanong le dikotsi tša go ikgetha le tša mohlakanelwa, go akaretša dithulano tša dipolitiki⁵⁰ le masetlapelo a tlhago.⁵¹

41 Temana ya 7 ya Molao.

42 Temana ya 8 ya Molao.

43 Temana ya 9 ya Molao.

44 Temana ya 10 ya Molao.

45 Temana ya 11 ya Molao.

46 Temana ya 12 ya Molao.

47 Temana ya 7(8) ya Molao.

48 Temana ya 11(2) ya Molao.

49 Temana ya 11(3) ya Molao.

50 SADC ka kakaretšo ke selete seo se homotšego kudu. Le ge go le bjalo, go no le karolo tša dintwa tšeo di itemogelago ke dinagamaloko tša go swana le Democratic Republic of the Congo le seemo sa ka Zimbabwe (seo se hlotšego ke lenaneo la kabolefsa ya naga leo le bego le tletše ka dingangišano leo le phethagaditšwego ka 2000) se sa tekateka. Lebelela Olivier le Kalula "Regional social security" ka mo go Olivier *et al* (eds) *Social Security: A Legal Analysis* (2003) 655; Centre for International and Comparative Labour and Social Security Law le Institute of Development and Labour Law Developing and Integrated and Inclusive Framework for Social Protection in SADC (Centre for International and Comparative Labour and Social Security Law le Institute of Development and Labour Law (2003)); Taylor "Social protection challenges in southern Africa" (2001) 2 *Cooperation South* 49; Fultz le Pieris *Social Security Schemes in Southern Africa: An Overview and Proposals for Future Development* (ILO/SAMAT (1999)); le Von Benda-Beckmann le Kirsch "Informal security systems in Southern Africa and approaches to strengthen them through public policy measures" – yeo e hweditšwego mo go <http://www.gtz.de>.

51 SADC e hloile ke dikotsi tša tlhago bjalo ka mafula le komelelo.

5 Dihlopha tšeo di Lego kotsing le Magoro a Batho ao a Šireleditšwego

5 1 Batho Bao ba Sego ba Itekanela Mmeleng

Molao o hloholetša dinagamaloko go hlola tikologo yeo e kgontšhago yeo e tla go dira bonnete bja gore batho bao ba sego ba itekanela mmeleng ba na le maswanedi go tšhireletšo ya leago.⁵² Ka tlaleletšo, di nyakwa gore di dire bonnete bja gore didirišwa tša bona tša tšhireletšo ya leago di netefatša gore di tla ba le phihlelelo ya go lekana le go kakaretšo ya batho bao ba sego ba itekanela mmeleng.⁵³ Go tšwelapele, Molao o gapeletša dinagamaloko go tšwetšapele kopano ya leago le ya seprofešenale ya batho bao ba sego ba itekanela mmeleng.⁵⁴

5 2 Basadi, Bana le Baswa

Molao o amogela maemo ao a lego boima a basadi, bana le baswa. Magareng ga tše dingwe, o nyaka dinagamaloko go dira bonnete bja gore go ba le tekatekano magareng ga banna le basadi mo ditikologong tšeo di akaretšwego le phihlelelo go tšhireletšo ya leago.⁵⁵ Mabapi le bana le baswa, Molao o gapeletša dinagamaloko gothibela go šoma ga bana le tlaišo ya bana, magareng ga tše dingwe,⁵⁶ go dira bonnete bja gore tšhireletšo ye ntši e katološetšwa go bana bao ba fiwago mošomo ka tsela ya maleba,⁵⁷ go tiišetša gore go na le phepo ya maleba yeo e lekanego ya bana,⁵⁸ go fana ka thekgo go ditšhiwana le malapa ao a hlokometšwego ke bana⁵⁹ le go hloma mekgwa yeo e šomago gabotse le go fana ka tlhokomelo ya kgodišo le dipeakanyo tša go fepa.⁶⁰

5 3 Lapa

Lentšwana le 'lapa' bjalo ka ge le hwetšwa ka go didirišwa tša tšhireletšo ya leago gantši le a solwa gore le na le magomo ka kgopolo ya gore ga le bonale le akaretša le go ela hloko kgopolo ya Seafrika ya lapa yeo e hwetšwego ka mo seleteng. Lentšwana la 'lapa' ka mogopolo o mosese le akaretša tate, mme le bana.⁶¹ Lentšwana la Yuropa la lapa⁶² le elwa hloko ka go melao e mengwe ye itšego ya tšhireletšo ya leago ya

52 Temana ya 14(1) ya Molao.

53 Temana ya 14(2) ya Molao.

54 Temana ya 14(3) ya Molao.

55 Temana ya 13(1) ya Molao.

56 Temana ya 16(2) ya Molao.

57 Temana ya 16(3) ya Molao.

58 Temana ya 16(6) ya Molao.

59 Temana ya 16(8) ya Molao.

60 Temana ya 16(9) ya Molao.

61 Songuemas "Social security and indigenous institutions in African societies" (1967) 3 *African Social Security Series* 18 ka mo go 20; le Isizoh "African traditional religions: One stereotype less" (2003) 4 *African Societies* – e hweditšwe mo go <http://www.africansocieties.org/n4/eng/chidi.htm>.

62 Folbre *Women and Social Security in Latin America, the Caribbean and Sub-Saharan Africa* (International Labour Office (1993)) 6.

dinagamaloko tša SADC.⁶³ Ka go setšhaba sa setšo sa Seafrika 'lapa' ke leinakakaretšo go feta seo: "le bopilwe ke sehlopha ka moka sa batho: hlogo ya lapa le basadi ba gagwe le bana ba gagwe, le ditlogolo, gape le bagolle ba gagwe le dikgaetšedi tša gagwe le basadi ba bona le bana, batlogolo ba gagwe le batlogolo ba banenyana, ka lentšu le tee, batho bao ka moka ba tšwago go mogologolo o tee yo a swanago."⁶⁴ Ge re lebelela seo re šetšego re boletšego ka sona, lentšu le 'leloko leo le katološitšwego' gantši le šomišwa sebakeng sa 'lapa' ge re bolela ka lapa la Seafrika.⁶⁵ Ka dikgoeletšo tšeo go boletšwego ka tšona ka mogopolong go a thabiša gore ela hloko gore Molao o šupetša dinagamaloko go dira bonnete bja gore lapa, bjalo ka lekala la motheo la setšhaba, le šireleditšwe ka tsela ya maleba.⁶⁶ Ka tlaeletšo, e gapeletša dinagamaloko go tiišetša gore ditsela le mananeo a tšhireletšo ya leago a laetša nnete le bohlokwa bja lapa leo le katološitšwego.⁶⁷ Dinagamaloko di laetšwe gore di šetše le go tiiša mekgwa ya thekgo ya lapa leo le katološitšwego.⁶⁸

5 4 Bahudugi, Bašomi ba go Tšwa Ntle le Bafaladi

Molao o ipiletša go dinagamaloko go katanela tokologo ya mosepelo wa batho le phokotšo yeo e tšwelago pele ya ditaolo tša phalalelo.⁶⁹ Ka tlaeletšo, o nyaka dinagamaloko gore di katološe phihlelelo go tšhireletšo ya leago go bafaladi bao ba filwego mošomo mo mellwaneng ka metheo ya kgohlaganyo ya tšhireletšo ya leago yeo e swanetšego go hwetšwa ka gare ga melao ya bosetšhaba ya dinagamaloko le ka gare ga dipeakanyo tša dinaga tše pedi goba tše tharo magareng ga dinagamaloko. Metheo yeo go boletšwego ka yona ke ye e latelago: bašomi bao e lego bahudugi ba swanetše go tšea karolo ka go mananeo a tšhireletšo ya leago a dinaga tšeo ba lego go tšona; bašomi bao e lego bahudugi ba swanetše go fiwa tshwaro ya go lekana le ya badudi ba naga yeo ba lego ka yona ya mananeo a tšhireletšo ya leago e bile, go swanetše go ba le palomoka ya dipaka tša inšorense le tlhokomelo ya ditokelo le meholo yeo e hweditšwego ya magareng ga mananeo ao a swanago le a ka mo go dinagamaloko tša go fapana; dinagamaloko di swanetše go dira bonnete

63 Lebelela, mohlala, *Unemployment Insurance Act* 63 of 2001 (Afrika Borwa). Lebelela gape, go bala go tšwelapele,

64 Isizoh (2003) 4 *African Societies* – e hweditšwe mo go <http://www.africansocieties.org/n4/eng/chidi.htm>.

65 Lebelela, mohlala, Ijere "Indigenous African social security as a basis for future planning – the case of Nigeria" (1967) 2 *African Social Security Series* 11 mo go 27. Lebelela gape Segre "Family stability, social classes and values in traditional and industrial societies" 1975 *Journal of Marriage and the Family* 431 mo go 431-432.

66 Temana ya 15(1) ya Molao.

67 Temana ya 15(2) ya Molao.

68 *Ibid.*

69 Temana ya 17(1) ya molao. Go swanetše go bolelwa gore go na le SADC Draft Protocol on the Freedom of Movement of Persons (1998). Lebelela, go bala go tšwelapele, Oucho le Crush "Contra free movement: South Africa and the SADC migration Protocols" 2002 *Africa Today* 139; le Mengelkoch *The Right to Work in SADC Countries: Towards Free Movement of Labour in Southern Africa* (2000).

bja gore go ba le nolofatšo ya thomelontle ya meholo, go akaretša tefelo ya meholo ka go naga yeo ba lego ka go yona; dinagamaloko di swanetše go laetša melao yeo e lego maleba go mabaka a phethagatšo ya metheo ye e lego ka mo godimo, e bile dinagamaloko di swanetše go dira bonnete bja gore bašomi bao e lego bahudugi bao ba nago le dikgwebo tša bona ba a akaretšwa ka mabaka a go swana le a bahudugi bao ba šomago.⁷⁰ Tlhagišo gape e dirilwe go badudi bao e sego ba semolao, bahudugi le bafaladi bao ba se nago mangwalo a bohlatse. Badudi bao e sego ba semolao le bahudugi bao ba se nago mangwalo a bohlatse ba swanetše go fiwa tšhireletšo ya nnyane ya motheo le go ipshina ka go akaretšwa go ya ka melao ya selegae.⁷¹ Mabapi le bafaladi, Molao o laetša gore tšhireletšo ya leago e swanetše go katološetšwa go legoro le la batho go ya le ka ditlhagišo tša didirišwa tša boditšhabatšhaba le tša selete.⁷²

6 Ditabana tše Dingwe tša go Hlamatsega tša Ditumelo tša Motheo go Kabo ya Tšhireletšo ya Leago

6 1 Mekgwa ya Thibelo ye e Kopantšwego

Molao o hlohleletša dinagamaloko go dira bonnete bja gore ditsela tša bona di kopanya mekgwa ye e lekanego ya thibelo le ya kopanyo e bile ga se ya lebelela feela tefelo.⁷³ O fana go tšwelapele ka gore kopanyo e swanetše go ba ya leago le ka go mebaraka ya mošomo gore o kgone go hlohleletša go ipota le go thekga serithi sa motho.⁷⁴ Se, go ya ka kgopolo ya ka, ke kgato ya maleba go ya go tšhireletšo ya leago yeo e nyakegagago kudu ya kakaretšo. Ka go fana ka mekgwa ya thibelo le ya kopanyo, Molao o tlogela setlwaedi sa gore mananeo a tšhireletšo ya leago (kudu kudu mananeo a inšorensense ya leago) a lebeletše fela ditfefelo tša meholo. Ka go tlaletša, se se sepelelana le maemo a boditšhabatšhaba – kudu ao e lego a ILO.

6 2 Phethagatšo le Tlhokomelo

Temana ya 21(1) ya Molao e gapeletša dinagamaloko go katanela go hloma taolo le metheo ya taolo tša nnete. Mabaka a metheo ya taolo a swanetše “go dira bonnete bja gore go na le kabo ya meholo ya tšhireletšo ya leago yeo e kgontšhago le yeo e šomago gabotse, kudu kudu: (a) dibopego tšeo di kopantšwego, tšhomišano ya dikgoro le tšhomišano ya mafapha tšeo di nago le thekgo ya tšhelete ye e lekanego e bile e le ye ntši; (b) phihlelelo go o mongwe le o mongwe go ditheo tšeo di ikemego tša kahlolo tšeo di nago le maatla a mafelelo a go ahlola dingangišano tša tšhireletšo ya leago, ka ditsela tša go se bitše tšhelete ya

⁷⁰ Temana ya 17(2) ya Molao.

⁷¹ Temana ya 17(3) ya Molao.

⁷² Temana ya 17(4) ya Molao.

⁷³ Temana ya 19(1) ya Molao.

⁷⁴ Temana ya 19(2) ya Molao.

godimo, ka potlako le gona ka tsela e botse le gona ka ditshepedišo tše dinnyane tša semmušo; (c) kabo ya go se fele ya tšhireletšo ya leago yeo e kopantšwego le molao wa ekonomi; (d) dihlopha tšeo di lego kotsing di tla bewa pele ka go kabo ya mehola ya tšhireletšo ya leago; (e) ka ntle le tšhomišo ya dibopego tše tharo tša bosetšhaba le tša selete, maitapišo a mangwe le a mangwe a swanetše go dirwa go akaretša setšhaba le ditho tšeo e sego tša mmušo bjalo ka NGO's le CBO's ka go tlhamo, phethagatšo le tlhokomelo ya dipholisi tša tšhireletšo ya leago; le (f) tlhokomelo yeo e kaonafaditšwego le taolo ye botse ya dibopego tšeo di ikemego go tšwa go baabi ba tšhireletšo ya leago go dira bonnete bja gore go na le tšhireletšo ya maloko, go tšea diphetho ka go ikema le peeletšo e botse, magareng ga dinyakwa tše dingwe.”⁷⁵

Go tšwelapele, Molao o nyaka dinagamaloko le dibopego tša maleba tša SADC go hloma mekgwa ya tshepedišo mo maemong a bosetšhaba le a SADC go hlokomela kobamelo yeo e tšwelago pele ya ditlhagišo tša yona.⁷⁶ O laetša ICM go hloma Komiti ya go Ikema ya Ditsebi (komiti) ka mo go dibopego tša maleba tša SADC.⁷⁷ Mošomo wa komiti ke go “hlokomela kobamelo ya Molao le go dira ditigelo go dibopego tša maleba tša SADC le dibopego tša go swana le tšona tša bosetšhaba go phihlelelo ya ditlhagišo tša wona tšeo di tšwelago pele.”⁷⁸ Komiti e swanetše go bopa maloko ao a sego ka fase ga a šupa e bile ao a sa fetego a lesomepedi.⁷⁹ Maloko a yona a bewa ka bowona e bile e swanetše go ba batho bao ba nago le botshephegi le botsebi bjo bo bonalago bja maleba.⁸⁰ Ba swanetše go bewa gatee mo sebakeng sa mengwaga e tshela seo se ka mpshafatšwago.⁸¹ Ge go bewa maloko, go swanetše go tlhokomelwa dirwa go dira bonnete bja gore go na le kemedi ya go lekana ge go lebelelwa mabaka a bong, go se itekanele mmeleng, lefapha la tsebo le phatlalatšo ye e katologilego go ya le ka lefelo.⁸²

Kgopolo ya Komiti ya go Ikema ya Ditsebi ga se ya moswananoši mo go Molao. E ka hwetšwa gape ka go Lengwalo la Tumelelo ya Leago la Yuropa (1961). Molao ga o bolele ka ditlamorago tša tlamo tša dikutollo tša komiti. Go tšwela pele, ga go molaleng gore magato afe goba afe a kgalemo a ka bewa kgahlanong le nagaleloko yeo e palelwago ke go latela dikobamelo tšeo di bewago ke Molao. Le ge go le bjalo, go a belaetša gore go ka ba le magato afe goba afe a kgalemo ao Molao o nago le ona bjalo ka ge e le molao o boleta.

75 Temana ya 21(1) ya Molao.

76 Temana ya 21(2) ya Molao.

77 Temana ya 21(3) ya Molao.

78 *Ibid.*

79 Temana ya 21(4) ya Molao.

80 Temana ya 21(5) ya Molao.

81 Temana ya 21(7) ya Molao.

82 Temana ya 21(6) ya Molao.

7 Morumo Kakaretšo

Temana e sekasekile ka tlhokomelo gore Molao o leka bjang go hlama ditsela tša go kwagala tša tšhireletšo ya leago ka mo seleteng sa SADC. E file šedi ya go ikgetha go mokgwa wo o amogetšwego ke Molao ka go maitapišo a yona a go nyaka go šogana le ditaba tša maleba bjalo ka tokelo go tšhireletšo ya leago, tlhako ya tšhireletšo ya leago, le dikotsi tša leago gammogo le dihlopha tše di lego kotsing le magoro a batho bao ba šireleditšwego. E ile ya ela hloko gore rekoto ya tiišo ya dinagamaloko tša SADC a dikwano tša bjale tša semmušo ka go lefapha la tšhireletšo ya leago ga di kgotsofatše. Go ya ka maleba, dinagamaloko di swanetše go hlohleletšwa go tiišetša didirišwa tše bohlokwa tše. Sa bobedi, magato a thibelo le kopanyo ke setho le karolo ya tsela ya tšhireletšo ya leago. Ka gona, boipiletšo bja Molao gore go tsenywe dikgato tše bo swanetše go amogelwa. Go tšwelapele, kgohlaganyo ya tšhireletšo ya leago ke karolo e bohlokwa ya kopanyo ya selete le tokologo ya mosepelo wa bašomi le go batho. Go fihla mo, ditlhagišo ka gare ga Molao tše di lebišitšwego go ditaba tše di tlile ka nako e botse. La bofelo, Molao ga o tleme motho ka semolao. Le ge go le bjalo, kamogelo ya wona e a retwa ka lebaka la gore ke kgato e botse go kaonafatšo ya ditsela tša tšhireletšo ya leago ka mo seleteng sa SADC seo bogolo bja sona tlhabollo e lego fase e bile, go maemo a mangwe, tlhabollo e fase kudu.