

**THE PROTECTION OF CHILDREN FROM EXPLOITATIVE LABOUR WITHIN SADC:
HUMAN RIGHTS CHALLENGES OF THE REGIONAL INTEGRATION INITIATIVE**

**Submitted in partial fulfilment of the requirements for the degree LLM (Human
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DEDICATION

For my son, Kumbukani, and my niece Lindeni-Chelimwetala



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TABLE OF CONTENTS

DEDICATION	ii
ACKNOWLEDGEMENTS	iii
TABLE OF CONTENTS	iv
LIST OF ABBREVIATIONS	vi
CHAPTER 1: INTRODUCTION	1
1.1 Background to the study	1
1.2 Problem statement	2
1.3 Aims of the study	3
1.4 Significance of the study	4
1.5 Methodology	6
1.6 Literature review	6
1.7 Overview of the chapters	7
CHAPTER 2: AN OVERVIEW OF THE SADC INTEGRATION MECHANISM	8
2.1 Introduction	8
2.2 Aims and objectives of SADC	10
2.3 The role of trade in SADC	12
2.4 The role of human rights in SADC	14
2.5 Conclusion	17
CHAPTER 3: THE IMPACT OF CHILD LABOUR ON HUMAN RIGHTS PROTECTION AND ECONOMIC DEVELOPMENT	18
3.1 Introduction	18
3.2 SADC trade policy and the incidence of child labour	19
3.3 The impact of child labour on human rights	22
3.4 The impact of child labour on trade and economic development	26
3.5 Conclusion	29

CHAPTER 4: TOWARDS AN EFFECTIVE REGIME FOR THE ERADICATION OF CHILD LABOUR	30
4.1 Introduction	30
4.2 The inadequacy of human rights mechanisms	30
4.3 The inadequacy of trade mechanisms	32
4.4 An integrated response to child labour	35
4.4.1 The basis of the integrated approach	36
4.4.2 The structure of an integrated approach to child labour	38
4.4.3 Tackling child labour under the integrated approach	40
4.4.4 The benefits of an integrated approach	43
4.5 Conclusion	45
CHAPTER 5: CONCLUSION	46
BIBLIOGRAPHY	48
ANNEX	59



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LIST OF ABBREVIATIONS

CRC	Convention on the Rights of the Child
GATT	General Agreement on Tariffs and Trade
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
ILO/SAMAT	ILO-Southern Africa Multi-Disciplinary Advisory Team
MFN	Most Favoured Nation
OECD	Organisation for Economic Co-operation and Development
SADC	Southern Africa Development Community
SADCC	Southern Africa Development Co-ordination Conference
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
WTO	World Trade Organisation



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CHAPTER 1: INTRODUCTION

1.1 Background to the study

Childhood is a time for play, for growth, and for discovery. Sadly, for many of the world's children, the reality is different. They are denied their childhood and with it, their opportunity to develop. They are denied education and protection from hunger, and exposed to disease, abuse and exploitation.¹

The economic exploitation of children is one example of abuse that is prevalent nowadays and one that has been historically pervasive.² Everyday, millions of children are engaged in work that stunts their development, and interferes with their education, recreation and rest. Such work is called child labour and is unacceptable under international labour and human rights law.³

Child labour is a complex and multifaceted issue that defies simple solutions.⁴ It involves diverse dynamics and factors which include economics, human rights, trade and labour.⁵ Quick-fix measures are thus bound to fail or to exacerbate the problem. Consequently there is need for thoughtful and comprehensive approaches which are guided by the best interests of the child and by a commitment to children's rights. This contribution is an endeavour in that direction.

¹ W Schurink, C Molohe & S Tshabalala *Exploring some dimensions of child labour in South Africa: Working document* (1997) 1.

² H Cunningham & PP Viazza (eds) *Child labour in historical perspective, 1800-1985: Case studies from Europe, Japan and Columbia* (1996).

³ ILO *Child labour: Targeting the intolerable* (1996); V Muntabhorn 'Child rights and social clauses: Child labour elimination as a social cause?' (1998) 6 *International Journal of Children's Rights* 255.

⁴ UNICEF *The state of the world's children 1997* (1997) i.

⁵ V Muntabhorn 'A question of conditionality: Child labour and the social clause' available at <<http://lox2.loxinfo.co.th/~cwanet/labtrade.htm>> (accessed on 27 July 2002); F Lenzerini 'International trade and child labour standards' in F Francioni (ed) *Environment, human rights and trade* (2001) 287; H Cullen 'The limits of international trade mechanisms in enforcing human rights: The case of child labour' (1999) 7 *International Journal of Children's Rights* 1; DS Ehrenberg 'The labour link: Applying the international trading system to enforce violations of forced and child labour' (1995) 20 *Yale Journal of International Law* 361.

1.2 Problem statement

The issue of child labour has elicited increasing international attention in recent times due to the growing awareness of the economic exploitation of millions of children worldwide and its adverse effects upon the affected children.⁶ This awareness has generated sustained debates within governments,⁷ international organisations⁸ and the private sector⁹ to try and formulate policies aimed at addressing this problem. The Southern Africa Development Community ('SADC') and the governments that constitute it have equally placed the child labour issue high on their agendas.¹⁰

In response to the economic exploitation of children during the production of goods that enter the international trading system, part of the debate on child labour centres around the integration and tensions between human rights, international labour standards and the multilateral trade regime.¹¹ However, notwithstanding the fact that the constitutive instruments establishing the primary organisations for co-operation in these areas are premised on the interdependence of economic and social progress,¹² formal linkages between the multilateral trade regime and the supervisory bodies dealing with labour

⁶ See JM Diller & DA Levy 'Child labour, trade and investment: Toward harmonisation of international law' (1997) 91 *American Journal of International Law* 663; E Lee 'Globalisation and labour standards: A review of the issues' (1997) 136 *International Labour Review* 173. See also Cullen (n 5 above) 2.

⁷ South African Department of Labour *Green paper on child labour: Towards a national child labour action programme* (2002); US Department of Labour, Bureau of International Labour Affairs *Report on labour practices in Burma* (1998) available at <<http://www.dol.gov/dol/ibls/public/media/reports/ofr/burma.main.htm>> (accessed on 17 July 2002).

⁸ ILO *Child labour: What is to be done?* ILO Doc.ITM/1/1996 (1996); F Siddiqi & H Patrinos *Child labour: Issues, causes and interventions* (1995); OECD *Trade, employment and labour standards* (1996); UNICEF (n 4 above).

⁹ J Durai *Helping business to help stop child labour* (1997).

¹⁰ SADC *Child labour in SADC* SADC Doc.ELS/MSP/99/5 (1999); ILO/SAMAT *Situation of child labour in SADC member states* available at <<http://www.ilo.org/public/english/region/afpro/mdtharare/about/childlabour.htm>> (accessed on 27 May 2002).

¹¹ Diller & Levy (n 6 above) 664, Lenzerini (n 5 above) 287-295.

¹² UN Charter, adopted on 26 June 1946 (entered into force 10 January 1945) art 1(3), 1 *UNTS* xvi; ILO Constitution, preamble para 3; Declaration concerning the aims and purposes of the International Labour Organisation, adopted 10 May 1944, annex to ILO Constitution, part IV available at <<http://www.ilo.org/public/English/about/iloconst.htm>> (accessed on 20 October 2002); Agreement Establishing the World Trade Organisation, adopted 15 April 1994, preamble para 1, reprinted in (1994) 33 *International Legal Materials* 1263. The Agreement is part of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, 15 April 1994 ('the WTO Agreement') reprinted in (1994) 33 *International Legal Materials* 1; also available at <http://www.wto.org/english/docs_e/legal_e/ursum_e.htm> (accessed on 12 October 2002).

standards and human rights remain obscure.¹³ And most importantly, the legal norms governing the various regimes have not done much to clarify these linkages given that these regimes differ in their scope and extent of application to child labour.¹⁴

This essay therefore proposes that the protection of children's rights, particularly the protection of children from exploitative labour practices, is a precondition to sustainable social and economic development which is the main goal of the SADC regional integration mechanism.¹⁵ Based on this premise, the essay argues that the trade system adopted by SADC must be based on the need to ensure advances in human dignity, which depends not only on increases in the production of goods and services but also upon the qualitative improvement of the lives of people, especially vulnerable groups such as children.¹⁶

Consequently, the obligations under the SADC regional integration mechanism must be interpreted and implemented in keeping with fundamental international values, whose content and scope is informed by peremptory norms of international law, international human rights and labour law and which include the proscription against the economic exploitation of children.¹⁷

1.3 Aims of the study

This essay investigates the extent to which the SADC regional integration mechanism, in pursuit of its principal goal of achieving regional economic and social development, complies with fundamental international human rights values surrounding the eradication of child labour and the achievement of sustainable social and economic development.

¹³ Diller & Levy (n 6 above) 663.

¹⁴ As above.

¹⁵ V Seymour 'Regional economic integration and human rights: SADC and South Africa' in N Steytler (ed) *Democracy, human rights and economic development in Southern Africa* (1997) 377.

¹⁶ J Oloka-Onyango & D Udagama 'Human rights as the primary objective of international trade, investment and finance policy and practice' UN Doc.E/CN.4/Sub.2/1999/11 (1999); J Oloka-Onyango & D Udagama 'Realisation of economic, social and cultural rights: globalisation and its impact on the full enjoyment of human rights' UN Doc.E/CN.4/Sub.2/2000/13/ (2000).

¹⁷ R House & M Mutua 'Protecting human rights in a global economy: Challenges for the World Trade Organisation' available at <<http://www.ichrrd.ca>> (accessed on 12 October 2002); C Dommen 'Raising human rights concerns in the World Trade Organisation: Actors, processes and possible strategies' (2002) 21 *Human Rights Quarterly* 1.

1.4 Significance of the study

Although trade liberalisation has had deleterious effects on many vulnerable sectors of society within the region,¹⁸ this study focuses on child labour because of the relative paucity of analysis into and limited intervention against the problem.¹⁹ Although the problem features at different intensities within the various SADC states, it is generally pervasive.²⁰ Thus, despite the signing or ratification of a significant number of relevant international instruments²¹ by member states of SADC, the economic exploitation of children continues to be a problem.²²

The International Labour Organisation ('the ILO') estimates that at least thirty one percent of the children aged between ten and fourteen years in SADC are employed.²³ Nearly half of these children work full time.²⁴ Seventy percent of those who work full time are employed in the commercial farming sector,²⁵ whilst the rest are employed in other

¹⁸ Oloka-Onyango & Udagama (n 16 above) para 6; R McCorquodale & R Fairbrother 'Globalisation and human rights' (1999) 21 *Human Rights Quarterly* 735, 758.

¹⁹ SADC's institutional response to child labour has been limited to the taking of regular roll-calls to determine which members have ratified the so-called ILO core conventions and to encourage those that have not done so to take steps towards ratification. See ILO/SAMAT (n 10 above); SADC (n 10 above).

²⁰ As above.

²¹ These instruments include the Convention (No. 5) Fixing the Minimum Age for Admission of Children to Industrial Employment, adopted on 28 November 1919 (entered into force on 13 June 1921) available at <<http://iloex.ilo.ch:1567/scripts/convde.pl?c5>> (accessed on 11 June 2002); Convention (No. 138) Concerning Minimum Age for Admission to Employment, adopted on 26 June 1973 (entered into force on 19 June 1976) reprinted in G van Bueren (ed) *International documents on children* (1998); Convention on the Rights of the Child, adopted 20 November 1989 (entered into force on 2 September 1990) reprinted in (1989) 28 *International Legal Materials* 1448; African Charter on the Rights and Welfare of the Child, adopted in 1990 (entered into force on 29 November 1999) OAU Doc.CAB/LEG/24.9/49 (1990); Convention (182) on the Worst Forms of Child Labour, adopted on 17 June 1999 (entered into force on 19 November 2000) available at <http://www.afrol.com/archive/documents/child_labourdecl.htm> (accessed on 20 October 2002).

²² ILO/SAMAT (n 10 above).

²³ ILO/SAMAT (n 10 above) Table 1.

²⁴ ILO *Economically active population, 1950-2010, Vol II: Africa* (1997) 3; K Ashagrie *Statistics on working children and hazardous labour in brief* (1997) 3.

²⁵ ILO *Child labour in commercial agriculture in Africa* (Report of the Technical Workshop on child labour in commercial agriculture in Africa held in Dar es Salaam, Tanzania, 27-30 August 1997) (1997) 6-7.

sectors of the economy such as manufacturing, transport, construction, mining or domestic service.²⁶

The ILO further notes that there is a level of denial regarding the real extent of child labour within the region due to the dearly held belief that the African tradition prizes and protects children and that consequently children are not susceptible to the problem.²⁷ Obviously, this impacts negatively on the quality of statistics regarding child labour.²⁸ More importantly, however, such an attitude places limitations on the extent and quality of intervention.²⁹

Since child labour effectively hinders the education and proper development of children, it prevents them from developing their human resource potential and thereby robs states of a more highly educated and advanced workforce.³⁰ Consequently, the economic exploitation of children within the SADC labour market must be recognised as an obstacle not only to the protection of human rights but also the achievement of wider social and economic development in the region.³¹ Thus, there is need to find a lasting solution to this problem if the SADC regional integration mechanism is to achieve its objectives.

However, the quest for solutions has rarely emphasised the need for a holistic approach which takes into cognisance the linkages between trade, human and labour rights.³²

²⁶ Ashagrie (n 24 above) 3.

²⁷ ILO, *Child labour in Africa: Targeting the intolerable* (Report of the African Regional Tripartite Meeting on child labour held in Kampala, Uganda, 5-7 February 1998) available at <<http://www.ilo.org/public/english/standards/ipecc/conf/africa/targeting.pdf>> (accessed on 20 October 2002) 2. This view was vindicated when during the presentation of the ILO/SAMAT report to SADC, some member states sharply denied the existence or magnitude of child labour within their jurisdictions.

²⁸ The ILO cautions that 'reliable statistics on child labour in Africa are hard to come by' since estimates are based on national surveys which may have adopted different and sometimes conflicting methodologies. As above 3.

²⁹ Thus, only six member countries have sought technical assistance from the ILO in response to the report. These include Malawi, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. See ILO/SAMAT (n 10 above).

³⁰ C Diamond & T Fayed 'Evidence on the substitutability of adult and child labour' (1998) 34 *Journal of Development Studies* 62; R Weissman 'Stolen youth: Brutalised children globalisation and the campaign to end child labour' (1997) 18 *International Monitor* 10; L Tucker 'Child slaves in modern India: The bonded labour problem' (1997) 19 *Human Rights Quarterly* 572.

³¹ UNICEF (n 4 above) 24-25. See also E de Wet 'Labour standards in the globalised economy: The inclusion of a social clause in the General Agreement on Tariffs and Trade and the World Trade Organisation' (1995) 17 *Human Rights Quarterly* 443.

³² Lenzerini (n 5 above) 287-290; C McRudelen & A Davies 'A perspective on trade and labour rights' in F Francioni (ed) *Environment, human rights and trade* (2001) 179.

Consistent with the unsatisfactory international approach, the SADC regional integration framework has been devised and implemented within a context which does not establish clear formal linkages between trade, labour and human rights. This approach ignores the fact that child labour is a major input in the production of goods that enter into the international and regional trading systems.³³ It is, therefore, axiomatic that any policy aimed at eradicating child labour must identify and give content to the linkage between trade and child labour.

Unfortunately, no study has sought to systematically determine the proper place of human rights within the SADC regional integration and trade frameworks. In particular, there has been no investigation into the relationship between child labour, trade and human rights within the SADC context. The study will therefore constitute a significant contribution in this regard.

1.5 Methodology

The method employed to undertake this research is by way of literature review. Reliance will, therefore, be placed on relevant primary and secondary sources relating to trade, human rights and child labour. These include treaties, declarations, books and articles. The essay also makes use of data and statistics compiled by SADC and the ILO.

1.6 Literature review

Child labour within SADC has been recognised as a problem deserving of multilateral action.³⁴ However, studies commissioned by SADC or ILO have either been statistical or have focused solely on the ILO labour standards regime.³⁵ As was noted earlier, there have been no studies which have explored the linkage between human rights, labour standards and trade within the SADC context. In particular, no study has sought to advance a holistic approach which amalgamates trade, human rights and labour standards.

³³ Ehrenberg (n 5 above) 365.

³⁴ ILO/SAMAT (n 10 above).

³⁵ As above.

1.7 Overview of the chapters

This chapter has set out the context of the research, identified the problem and outlined the methodology.

Chapter 2 discusses the SADC regional integration mechanism, identifies the aims and objectives of the integration initiative and establishes the centrality of trade in the scheme. The chapter argues that the promotion and protection of human rights which includes the proscription of child labour must be a primary objective of the integration initiative.

Chapter 3 discusses the relationship between trade, child labour and human rights. The chapter investigates the impact of SADC trade policy on the incidence of child labour. It also analyses the impact of child labour on human rights protection and social and economic development. The chapter argues that trade-focused policies may lead to increases in the incidence of child labour which, in turn, militates against human rights protection and the achievement of social and economic development both which are primary goals of the integration mechanism.

Chapter 4 proposes a more effective regime for the eradication of child labour and the attainment of social and economic development within SADC by identifying or developing linkages between the SADC trade and human rights framework. The chapter recommends the adoption of human rights structures which ensure that primacy is accorded to the protection and promotion of human rights, as well as the protection of children from exploitative labour practices.

Chapter 5 summarises the recommendations and conclusions of the essay.

CHAPTER 2: AN OVERVIEW OF THE SADC INTEGRATION MECHANISM

2.1 Introduction

Most sub-Saharan countries possess limited development and economic potential³⁶ because they are very poorly endowed with human and physical capital.³⁷ Their plight is exacerbated because they are either denied much-needed investment due to their small market-size³⁸ or taken advantage of by foreign investors due to their unequal bargaining power.³⁹ Thus, such countries are caught in a vicious circle whereby poverty leads to inability to access foreign investment which only leads to further poverty.

To overcome these difficulties and break the circle, regional integration has been pursued as the means for creating larger markets and consolidating the resources and potential of these poor economies.⁴⁰ Such larger markets are expected to create greater economies of scale which will then attract investment and improve the development and economic potential of the countries concerned.⁴¹

In 1980, in recognition of the limited capability of their individual economies,⁴² governments of the nine independent states of Southern Africa⁴³ decided to utilise their unity and proximity for two basic objectives; first the joint co-operation for the sustainable social and economic development of their peoples and the economies of the nine states

³⁶ OS Saasa 'Economic cooperation and integration among developing countries' in OS Saasa (ed) *Economic integration and cooperation in Africa* (1991) 7, 8.

³⁷ F Foroutan 'Regional integration in sub-Saharan Africa: Past experience and future prospects' in J de Melo & A Panagariya (eds) *New dimensions in regional* (1993) 234.

³⁸ P Robson *Economics of international integration* (1998) 63-68 noting that such countries are not able to attract investment because it cannot be profitably utilised.

³⁹ T Kaime 'The legal framework for foreign direct investment in Malawi' (2001) 11-12.

⁴⁰ Robson (n 38 above) 63; Foroutan (n 37 above) 234 noting that '[t]he appeal of some form for regional integration in sub-Saharan Africa is almost intuitive.'

⁴¹ T Ostegaard *SADCC beyond transportation: The challenge of industrial cooperation* (1989) 13-16. See also S Haggard *Developing nations and the politics of global integration* (1995) 1-14; Foroutan (n 37 above) 234.

⁴² JH Wagao 'Trade relations among SADCC countries' in S Amir, D Chitala & I Mandaza (eds) *SADCC: Prospects for disengagement and development in Southern Africa* (1987) 147, 148.

⁴³ These were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.

as a whole; and secondly, the economic liberation of the member states from historical domination in the region by the then apartheid South Africa.⁴⁴

The institution that was born out of this initiative was called the Southern Africa Development Coordinating Conference ('SADCC') and was a somewhat loose arrangement with no formal treaty being signed to formalise the institutions of the coordinating conference.⁴⁵

However, it soon became apparent that the loose institutional framework adopted by SADCC would significantly constrain the achievement of the aims and objectives of the organisation.⁴⁶ This weakness, coupled with significant competition from other more organised integration arrangements in Southern Africa⁴⁷ and the imminent democratisation of South Africa, necessitated a reconstitution of the co-operation initiative.

The reorganisation of SADCC into SADC was achieved by way of Declaration and Treaty ('the SADC Treaty') which was signed in Namibia in 1992.⁴⁸ With the signing of the SADC Treaty, the regional integration initiative metamorphosed from a coordinating conference to a development community.

From the original ten countries that signed the SADC Treaty, the organisation's membership has expanded to fourteen nations which now include Angola, Botswana,

⁴⁴ Preamble to the Memorandum of Understanding of the Institutions of the Southern African Development Coordination Conference *reprinted* in SADCC *SADCC: A handbook* (Gaborone: SADCC, 1988) 3.

⁴⁵ SEA Mvungi *Constitutional questions in the regional integration process: The case of the Southern African Development Community with references to the European* (1994) 73-86.

⁴⁶ C Ng'ong'ola 'Regional integration and trade liberalisation in the Southern African Development Community' (2000) *Journal of International Economic Law* 485, 489.

⁴⁷ Mvungi (n 45 above) 89, 107-145 noting the competition brought to bear by the relatively more successful Southern African Customs Union, the Preferential Trade Area and the Common Market for Eastern and Southern Africa.

⁴⁸ The SADC Treaty is reproduced in *SADC Declaration, Treaty and Protocol of the Southern Africa Development Community* (1992) 5. SADC documents may also be accessed at the institution's official website <<http://www.sadc.int>> (accessed on 20 October 2002).

Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.⁴⁹

This chapter introduces the SADC regional integration mechanism, outlines its aims and objectives and demonstrates the pre-eminence of trade within the scheme. The chapter proceeds to highlight the secondary status ascribed to human rights protection by the SADC Treaty, institutions and programmes despite the human-centred conception of development within the Treaty. It is contended in this chapter that the promotion and protection of human rights, including the proscription of child labour must be the central objective of the integration initiative.

2.2 Aims and objectives of SADC

SADC departed considerably from the narrow conception of co-operation pursued by its predecessor and adopted a comprehensive development-oriented strategy.⁵⁰ The SADC Treaty envisages a wider context of interaction and therefore articulates a set of interrelated objectives which straddle the economic, social and political spectrum.⁵¹

The economic objectives include the achievement of regional economic integration through the achievement of self-sustaining development,⁵² economic growth, alleviation of poverty,⁵³ promotion and maximisation of productive employment of resources,⁵⁴ and the achievement of sustainable utilisation of natural resources.⁵⁵

Amongst the social objectives are the building of support mechanisms for the socially disadvantaged,⁵⁶ the consolidation of the longstanding historical, social and cultural

⁴⁹ For profiles of individual SADC member states, see <<http://www.sadc.int/english/memberstates/index.html>> (accessed on 20 October 2002).

⁵⁰ SADC 'Towards the Southern African Development Community, a Declaration by the Heads of State and Government of Southern African states' in SADC (n 48 above) 5.

⁵¹ Ng'ong'ola (n 46 above) 491-493; Mvungi (n 45 above) 93-94.

⁵² SADC Treaty, art 5(1)(a), (d).

⁵³ SADC Treaty, art 5(1)(a).

⁵⁴ SADC Treaty, art 5(1)(f).

⁵⁵ SADC Treaty, art 5(1)(g).

⁵⁶ SADC Treaty, art 5(1)(a).

affinities and links amongst the peoples of the SADC region,⁵⁷ the effective protection of the environment,⁵⁸ the combating of HIV-AIDS and other deadly communicable diseases⁵⁹ and the mainstreaming of gender in the process of community building.⁶⁰

The political objectives range from the evolution of common political values, systems and the strengthening of legitimate and effective democratic institutions⁶¹ to the consolidation and maintenance of democracy, peace, security and stability.⁶²

Similarly, the means of achieving these objectives are a combination of economic, social and political mechanisms and institutions. They include the harmonisation of political and socio-economic policies and plans of member states;⁶³ the encouragement of popular participation in SADC programmes and projects;⁶⁴ the creation of appropriate institutions and mechanisms;⁶⁵ the encouragement of free trade;⁶⁶ the development of human resources;⁶⁷ and the improvement of economic management and performance.⁶⁸

It is thus clear that the regional integration framework espoused by the SADC Treaty transcends mere economic integration and is aimed at political institution-building: to promote economic integration with the explicit purpose that social and political integration will accompany it and transform the region into a broader institutionalised community based on human rights, democracy and the rule of law.⁶⁹ Apart from the creation of new structures to co-ordinate economic development, the Treaty also envisages the existence of institutions which promote democratic values, encourage

⁵⁷ SADC Treaty, art 5(1)(b).

⁵⁸ SADC Treaty, art 5(1)(g).

⁵⁹ SADC Treaty, art 5(1)(i).

⁶⁰ SADC Treaty, art 5(1)(k).

⁶¹ SADC Treaty, art 5(1)(b).

⁶² SADC Treaty, art 5(1)(c).

⁶³ SADC Treaty, art 5(2)(b).

⁶⁴ SADC Treaty, art 5(2)(b).

⁶⁵ SADC Treaty, art 5(2)(c).

⁶⁶ SADC Treaty, art 5(2)(d).

⁶⁷ SADC Treaty, art 5(2)(a).

⁶⁸ SADC Treaty, art 5(2)(f).

⁶⁹ SADC Treaty, art 4(c).

social and political integration and qualitatively improve the lives of SADC citizens. However, it is argued that despite recognising the importance of human rights in the integration mechanism, trade is the only element which features highly whilst human rights are given almost cursory treatment.

2.3 The role of trade in SADC

Although not the only objective of the regional integration mechanism, trade features pre-eminently in the SADC Treaty, protocols⁷⁰ and programmes. The preamble notes of the SADC states' 'duty to promote interdependence and integration of [their] national economies for the harmonious, balanced and equitable development of the Region'⁷¹ and of 'the need to mobilise...resources to promote...economic integration.'⁷² In addition, the areas of co-operation⁷³ and the economic objectives of SADC are trade-oriented and are premised on the increase of regional and international trade for the achievement of economic growth.⁷⁴

Further, the majority of protocols adopted by SADC are intended to deepen regional economic integration and in this regard SADC has adopted Protocols on information and communications,⁷⁵ productivity,⁷⁶ standardisation,⁷⁷ mining, trade, transport, and meteorology,⁷⁸ finance and investment.⁷⁹ All of these Protocols are intended to enhance productivity, efficiency and encourage both intra- and extra-regional trade.

⁷⁰ SADC protocols are available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

⁷¹ SADC Treaty, preamble, para 4.

⁷² SADC Treaty, preamble, para 5.

⁷³ SADC Treaty, arts 21(1), (2), (3)(c).

⁷⁴ See SADC Treaty, arts 5(1)(a), (d), (e), (f), (h) and 5(2)(a), (b), (d), (f), (g), (i).

⁷⁵ SADC Protocol on Information and Communication, available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

⁷⁶ SADC Protocol on Productivity, available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

⁷⁷ SADC Protocol on SQAM, available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

⁷⁸ SADC Protocol on Mining, Trade, Transport and Meteorology available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

⁷⁹ 32+SADC Protocol on Finance and Investment available at <<http://www.sadc.int/english/protocols/index.html>> (accessed on 20 October 2002).

This bias towards economic integration is also evidenced in the way SADC's sectoral programmes are structured.⁸⁰ The trade oriented sectoral programmes include employment and labour, human resources development, energy, finance and investment, mining, trade and industry, and tourism.⁸¹

The reasons for the pre-eminence of trade within SADC's legal, institutional and programmatic framework may be classified into three categories. These are historical precedents, regional economic dynamics and international economic imperatives.

It must be noted that economic co-operation was the principal reason for the existence of SADC's predecessor SADCC⁸² and thus to a large extent, SADC inherited and continued this mandate albeit at a more profound level than mere co-operation. In this respect, the agenda of SADC had already been influenced and shaped at inception by the activities of SADCC before it. Further, regional integration arrangements in Southern Africa may be correctly described as the formalisation of historical economic linkages between the peoples of the region.⁸³ Since pre-colonial times, the people of the region have involved themselves in trade and other economic activities. The institution of formal linkages is thus intended to consolidate trade activities towards the achievement of economic growth.

Secondly, SADC is mainly composed of generally poor economies that rely chiefly on primary exports to developed economies. This being the case, they are very susceptible to external shocks due to the non-existence of alternative trade linkages with either developed markets or their neighbours.⁸⁴ Thus, the creation of alternative, durable and sustainable trade links amongst SADC members was imperative in ensuring the

⁸⁰ See SADC sectoral reports available at <<http://www.sadc.int/english/reports/index.html>> (accessed on 20 October 2002). See also SADC *The official SADC trade and investment review 2001* <<http://www.sadcreview.com/sectoral/20%freports%202001/industry.htm>> (accessed on 12 October 2002).

⁸¹ Other non-trade sectors include gender, health, legal, water, culture, sports and information. See SADC sectoral reports, as above.

⁸² See SADCC *Southern Africa: Towards economic liberation: A declaration by the Governments of the independence states of Southern Africa* (1980). See also SADC Treaty, preamble, para 1.

⁸³ Mvungi (n 45 above) 74-75.

⁸⁴ Wagao (n 42 above) 148.

economic growth of the region. It is intended that the creation of a bigger market will attract foreign and domestic investment and lead to economic prosperity for all member countries.

Lastly, developments in the world economy have necessitated the creation of integrated economies amongst proximate nations in order to take advantage of the increased movements of capital, labour and goods; and the economies of scale that result from such arrangements.⁸⁵ Integration arrangements trends now emerging in most regions of the world are all part and parcel of the global movement towards common regional markets and regional management of resources and institutions.⁸⁶ The focus of this global movement is on the creation of efficient trade systems which are intended to spur on and nurture economic growth. From this perspective then, SADC may be said to have been formed with the purpose of benefiting from these trends in the international political economy.

Thus the historical and economic pervasiveness of trade have influenced the posture of SADC's legal, institutional and programmatic frameworks. It is hoped that the effective implementation of trade policies will lead to sustainable economic growth and the reduction of poverty within the region.

2.4 The role of human rights in SADC

Although the SADC Treaty identifies the promotion of human rights as one of the core principles of the integration mechanism⁸⁷ and proclaims the observance of human rights as critical in ensuring people's participation in the initiative,⁸⁸ this unequivocal commitment to human rights is not translated with equal force into the normative framework established by the Treaty or into SADC's programmatic activities.⁸⁹ Thus the

⁸⁵ Robson (n 38 above) 63.

⁸⁶ L Alan Winters 'Regionalism vs multilateralism' in RE Baldwin, D Cohen, A Sapir & A Venables (eds) *Market integration, regionalism and the global economy* (1999) 39; J Bhagwati 'Regionalism versus multilateralism: an overview' in J de Melo & A Panagariya (eds) *New dimensions in regional integration* (1995) 22.

⁸⁷ SADC Treaty, art 4(1)(c).

⁸⁸ SADC Treaty, preamble, para 7.

⁸⁹ Mvungi (n 45 above) 149.

Treaty does not create any institution with the specific mandate to deal with human rights issues, neither are there any protocols or sectors especially entrusted with human rights protection.⁹⁰

However, given the people-centred nature of the integration mechanism, the inadequate attention accorded to human rights promotion and protection is neither conducive to the achievement of the aims and objectives of SADC⁹¹ nor is it in harmony with well-established principles of international law regarding the purpose of trading and development arrangements.⁹²

Deep integration as envisaged by the SADC Treaty is inevitably accompanied by high levels of economic, political and social interaction.⁹³ This increased interaction calls for the establishment of a coherent framework of rules for governing the relations that arise therefrom.⁹⁴ It is recognised that guaranteeing respect for human rights satisfies this need.⁹⁵ This is because 'in a society governed by law, [human rights] can be a means for people to protect themselves from bureaucratic abuse, commercial exploitation, and official lawlessness.'⁹⁶

The adoption of strong human rights values and institutions serves not only to give confidence to investors and trading partners but also ensures the effective participation of individuals in the scheme and assures protection from the negative consequences of trade.⁹⁷ Apart from positive aspects such as the generation of income, employment and foreign exchange, trade may also manifest negative consequences such as environmental damage, destruction and loss of livelihoods or unacceptable levels of

⁹⁰ See SADC's sectoral layout available at <<http://www.sadc.int/english/reports/index.html>> (accessed on 20 October 2002).

⁹¹ Seymour (n 15 above).⁹

⁹² Diller & Levy (n 6 above) 665.

⁹³ S Haggard *Developing nations and the politics of global integration* (1995) 1-15; W Wallace (ed) *The dynamics of European integration* (1990) 1-26.

⁹⁴ D Combs 'Problems of governance in the Union' in A Duff, J Pander & R Price (eds) *Maastricht and beyond: Building the European Union* (1994) 157-178.

⁹⁵ As above, 157.

⁹⁶ G Budlender 'Lawyers and poverty: Beyond access to justice' in *Second Carnegie inquiry into poverty and development in Southern Africa* (1994).

⁹⁷ Oloka-Onyango & Udagama (n 16 above) para 4.

exploitation.⁹⁸ Consequently, adherence to human rights values and norms serves to protect vulnerable groups such as women and children whose social protection is liable to be diminished by trade dynamics.⁹⁹

Further, international human rights law and practice has emphasised the centrality and primacy of human rights obligations in all areas of governance in development, including international and regional trade, investment and financial policies, agreements and practices¹⁰⁰ and requires all governments and economic policy forums to take human rights principles and obligations into account when formulating national, regional or international economic policies.¹⁰¹

This position is borne out of the recognition that trade arrangements such as the SADC integration mechanism are but processes that enable human persons to fully enjoy all economic, social, cultural and political rights.¹⁰² Increasingly, it is being accepted that it is unrealistic to measure development 'purely on the basis of economic indicia',¹⁰³ whilst ignoring the human dimension of development.¹⁰⁴ Thus, economic growth must translate into the qualitative improvement of the lives of people. Explicit recognition of the primacy and centrality human rights in the integration mechanism is the surest way of guaranteeing that economic growth results in the improvement of the quality of people's lives.

Consequently, it is critical that the SADC integration mechanism does more than pay lip service to the promotion and protection of human rights if its goal of holistic development

⁹⁸ K Watkins *The Oxfam Poverty Report* (1995) 109-110; McCorquodale & Fairbrother (n 18 above) 758 noting that 'it would appear that instead of creating order, the rule of law, and the protection of human rights [international trade] can create conditions of disorder, authoritarian rule, and the disintegration of the state entity with consequent violations of human rights.'

⁹⁹ McCorquodale & Fairbrother (n 18 above) 758.

¹⁰⁰ Oloka-Onyango & Udagama (n 16 above) para 47.

¹⁰¹ UN sub-Commission on the Protection and Promotion of Human Rights 'Trade liberalisation and its impact on human rights' Resolution 1999/30 (1999).

¹⁰² UN Declaration on the Right to Development, adopted 4 December 1986, art 1, UN GA Res 48/128 (1986); Copenhagen Declaration and Programme of Action, Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (1995) chap I, res.1, annex I and II, UN Doc.A/CONF.166/9 (1995).

¹⁰³ Oloka-Onyango & Udagama (n 16 above) para 49.

¹⁰⁴ J Bengoa 'The relationship between enjoyment of human rights, in particular economic, social and cultural rights and income distribution' UN Doc.E/CN.4/Sub.2/1998/8 (1998).

is to be reached. The promotion and protection of human rights must not be viewed as a mere condiment to the integration initiative but rather as its central or core purpose.

2.5 Conclusion

The development of a strong trade agenda within the SADC regional integration initiative is critical to the achievement of sustainable development within the region. However, the absence of an explicit human rights approach within the trade regime jeopardises the achievement of the objectives of the regional arrangement. The SADC Treaty acknowledges the crucial role of human rights in the pursuit of economic growth. This recognition must be built into the legal, institutional and programmatic framework of SADC. Without mainstreaming human rights into the SADC agenda, positive changes in economic growth will not result in qualitative changes amongst the region's citizens.¹⁰⁵

The insistence on trade and increased productivity without equal concern to human rights protection may result in distorted development whereby vulnerable groups such as women and children are exposed to adverse effects of trade such as child labour and diminished social protection. It is therefore important that the trade regime be implemented in accordance with international human rights norms which among other things proscribe child labour.

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Chap 4 proposes the structures which could be adopted to mainstream human rights within SADC. See chap 4, especially para 4.4.2 & 4.4.3.

CHAPTER 3: THE IMPACT OF CHILD LABOUR ON HUMAN RIGHTS PROTECTION AND ECONOMIC DEVELOPMENT

3.1 Introduction

The need to accord primacy to human rights promotion and protection within the SADC regional integration initiative comes to the fore when one is analysing the issue of child labour. In attempting to resolve this problem, questions relating to the relationship, interaction and linkage between human rights, labour and trade often arise.¹⁰⁶ Child labour is brought within the trade paradigm since it constitutes an input of the goods that flow into the trading regime¹⁰⁷ but more than that, child labour constitutes a violation of the human rights of children and a transgression of recognised labour standards.¹⁰⁸ Consequently, in discussing the issue of child labour within SADC, it is critical to investigate the relationships between child labour, trade and human rights and to discover how these impact on each other.

This chapter seeks to demonstrate that trade policies which are solely focused on economic growth and are not informed and shaped by human rights considerations increase the incidence of child labour. It is argued that such trade-focused policies not only erode human rights protection but also militate against the explicit aims of the regional integration initiative, namely the achievement of efficient trade and sustainable economic development within the region. Consequently, according primacy to human rights protection and ensuring the protection of children from child labour guarantees both the protection of human rights and the achievement of SADC's trade and economic development objectives.

¹⁰⁶ Diller & Levy (n 6 above) 263 noting that global economic competition has produced a curious interaction among the diverse aims of trade, labour and human rights. See also Muntabhorn (n 3 above) 255-256, noting that the debate concerning child labour has become more related to the question of trade and whether trade mechanisms may be used as means of eradicating child labour.

¹⁰⁷ Diamond & Fayed (n 30 above) 62-67; Ehrenberg (n 5 above) 379.

¹⁰⁸ G van Bueren *The international law on the rights of the child* (1995) 263; UNICEF (n 4 above) 18.

3.2 SADC trade policy and the incidence of child labour

Economic growth within the SADC integration initiative is premised on increased productivity, efficiency and competitiveness.¹⁰⁹ The quest for competitiveness leads producers to find production methods which involve the lowest costs and bring the highest returns.¹¹⁰ Whilst some employers utilise technological advances to lower costs, others have resort to pernicious methods such as the employment of child labour.¹¹¹ Such employers prefer employing children because they are docile, willing to work for lower wages and in undesirable work conditions, incapable of collective bargaining, and easier to manage.¹¹² These considerations give the employers a competitive edge over firms which employ adult labour.

Further, since the majority of SADC member states' economies are based on agriculture,¹¹³ the drive for increased trade and higher levels of productivity essentially translates into a call for enhanced agricultural output.¹¹⁴ Unfortunately, increased activity and productivity within the agricultural sector directly raises issues of child labour because it is precisely within this sector that the demand for child labour is highest.¹¹⁵ ILO estimates for the SADC region indicate that nearly seventy percent of child labour

¹⁰⁹ See generally, R Gibb 'Southern Africa in transition: Prospects and problems facing regional integration' (1998) 36 *Journal of Modern African Studies* 287-306; D van der Merwe 'Economic cooperation in Southern Africa: Structures, policies and problems' (1991) 24 *Comparative and International Journal of Southern Africa* 386-404; A Oyejide, I Elbadawi & P Collier (eds) *Regional integration and trade liberalisation in sub-Saharan Africa, Vol 1: Framework, issues and methodological perspectives* (1997).

¹¹⁰ D Rodrik 'Globalisation and labour, or: if globalisation is a bowl of cherries, why are there so many glum faces around the table?' in RE Baldwin, D Cohen, A Sapir & A Venables (eds) *Market integration, regionalism and the global economy* (1999) 117-152 arguing that globalisation has enabled firms to easily substitute unskilled labour in order to lower production costs.

¹¹¹ For a review of micro and macro-economic analyses of child labour practices, see C Grootaert & R Kanbur 'Child labour: an economic perspective' (1995) 13 *International Labour Review* 187; SL Bachman 'A new economics of child labour: Searching for answers behind the headlines' (2000) 53 *Journal of International Affairs* 545; SL Bachman 'The political economy of child labour and its impacts on international business' (2000) 35 *Business Economics* 30.

¹¹² US Department of Labour, Bureau of International Labour Affairs *Foreign labour trends report: International child labour problems* (1994) 8; UNICEF (n 4 above) 27-28.

¹¹³ See generally, the essays collected in B Oden (ed) *Southern Africa after apartheid: Regional integration and external resources* (1993); van der Merwe (n 109 above) 386-404.

¹¹⁴ Whilst one of the aims of regional integration and trade liberalisation is to diversify SADC economies, it is unlikely that the trade patterns will change in the near future.

¹¹⁵ ILO (n 24 above) 3; ILO (25) 6-7.

cases are employed within the commercial farming sector¹¹⁶ and the trends indicate that the figures are increasing.¹¹⁷

Although there is a lack of industry-specific data,¹¹⁸ SADC trade statistics indicate that intra-SADC trade grew from 930 million in 1990 to 6.6 billion in 1998.¹¹⁹ Similarly, extra-regional trade grew from 17.6 billion in 1990 to 46.7 billion in 1997.¹²⁰ Significantly, some of the sectors that have driven this trade growth, such as agriculture and manufacturing,¹²¹ have also been indicted by ILO statistics as child labour-prone.¹²² Thus, unless interventionist policies are adopted, unbridled regional integration and trade liberalisation necessarily entails the likelihood of increases in the incidence of child labour within SADC.

Further, the integration and liberalisation initiative has been accompanied within the various SADC economies by economic policy measures known as structural adjustment programmes. These adjustment programmes, which consist of a package of economic policy prescriptions, are imposed on indebted countries by the World Bank and the International Monetary Fund in return for loans and loan guarantees.¹²³ They are intended to curb recession by reorienting the countries economic policies towards the needs of the globalised economy by promoting exports and improving economic efficiency and productivity.¹²⁴

¹¹⁶ ILO/SAMAT (n 10 above). ILO, however, notes that reliable statistics on child labour in Africa are hard to come by and that the incidence of the phenomenon may actually be higher than these estimates. See ILO (n 27 above).

¹¹⁷ ILO 'Strategies and action for reducing and eliminating child labour' (paper presented at the OAU Seminar on the protection of the child and the elimination and abolition of child labour in Africa) (1997) available at <<http://www.ilo.org/public/english/standards/ipecc/conf/africa/index.htm>> (accessed on 12 October 2002).

¹¹⁸ The SADC Chief Statistician bemoans the general lack of quality statistics and submits that state of affairs impacts negatively on the aims and objectives of the integration initiative. See E Odirille 'Progress on the development of SADC statistics' available at <http://www.paris21.org/pdf/sadc_docs/Odirille.pdf> (accessed on 22 October 2002).

¹¹⁹ See World Bank *World development indicators* (2000) 326-328; SADC *The official SADC trade and investment review 2001* available at <<http://www.sadcreview.com/sectoral/20%freports%202001/industry.htm>> (accessed on 20 October 2002).

¹²⁰ As above.

¹²¹ SADC (n 119 above).

¹²² See n25 & 26 above and the text accompanying those footnotes.

¹²³ Except for South Africa where economic restructuring has been voluntary, these adjustment programmes have been imposed by the International Monetary Fund and the World Bank as 'shock-therapy measures' intended to reform the macroeconomic policies of developing countries. See Oloka-Onyango & Udagama (n 16 above) para 21.

¹²⁴ UNICEF (n 4 above) 28.

Economic policy initiatives implemented under structural adjustment have consistently necessitated reductions in government spending and privatisation of government enterprises.¹²⁵ While the reduction of government spending has typically entailed cutting down social expenditure and eliminating government subsidies on basic goods, privatisation has almost always resulted in job losses as the new owners seek to maintain competitiveness.¹²⁶

The result of these measures has been declining family income and purchasing power resulting in parents' inability to provide for their children's needs as well as their own. Consequently, such low-income households have been forced to resort to child labour for additional income.¹²⁷ Thus in Zimbabwe, for example, reports by both the government and the ILO linked the explosion of child labour directly to the impact of the country's structural adjustment programme.¹²⁸

Further, since social protection has diminished due to reduced public spending, the rising incidence of child labour has not been curtailed and an increasing number of children have found themselves being involved in exploitative or hazardous labour such as domestic work or prostitution.¹²⁹

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¹²⁵ B Sadasivam 'The impact of structural adjustment on women: A governance and human rights agenda' (1997) 19 *Human Rights Quarterly* 630.

¹²⁶ As above.

¹²⁷ See UNICEF (n 4 above) 28. See also ZF Arat 'Analysing child labour as a human rights issue: Its causes, aggravating policies and alternative proposals' (2002) 24 *Human Rights Quarterly* 177, 185-204.

¹²⁸ ILO *Towards action against child labour in Zimbabwe* (1992) 53 citing a report compiled by the government of Zimbabwe. UNICEF has also identified structural adjustments as a cause of child labour. See UNICEF (n 4 above) 28.

¹²⁹ For a perceptive analysis of the ways in which structural adjustment programmes have contributed to increased levels of insecurity and destabilisation in developing countries, see A Orford 'Locating the international: Military and monetary interventions after the Cold War' (1997) 38 *Harvard International Law Journal* 443; A Orford 'Globalisation and the right to development' in P Alston (ed) *Peoples' rights* (2000) 127, 145-157.

It is thus submitted that uncontrolled regional integration and trade liberalisation will increase the incidence of child labour within the region.¹³⁰ The absence of an explicit commitment to human rights within the integration framework exacerbates the problem and negatively impacts on both the protection of children from exploitative labour practices as well as the quest for sustainable economic development within the region.

3.3 The impact of child labour on human rights

Several international and regional human rights treaties to which SADC member states are parties recognise a range of state responsibilities with respect to child labour. Some treaty obligations are specific to children and their provisions explicitly require state parties to ensure that children are protected from child labour and/or to provide socio-economic conditions that will prevent child labour.¹³¹ The leading provision in this regard is article 32 of the Convention on the Rights of the Child ('the CRC')¹³² which provides as follows:

States parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The provision then enjoins states parties to 'take legislative, administrative, social and educational measures to ensure [its] implementation'¹³³ by, amongst other measures, 'providing for a minimum age or minimum ages for admission to employment',¹³⁴ 'appropriate regulation of the hours and conditions of employment'¹³⁵ and 'appropriate penalties or other sanctions to ensure effective enforcement of the [provision]'.¹³⁶ Other

¹³⁰ V Charoenloet 'Labour standards in Thailand: The impact of trade liberalisation' (1997) 7-8 observing similar trends in Thailand and other Asian economies.

¹³¹ Diller & Levy (n 6 above) 674.

¹³² CRC (n 21 above).

¹³³ CRC, art 32(2).

¹³⁴ CRC, art 32(2)(a).

¹³⁵ CRC, art 32(2)(b).

¹³⁶ CRC, art 32(2)(c).

provisions ensure more general rights relevant for the prevention of child labour¹³⁷ and for the recovery and social integration of child labour victims.¹³⁸

The CRC contains other provisions pertinent to child labour which include provisions prohibiting 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment',¹³⁹ sexual exploitation,¹⁴⁰ and the abduction, sale or trafficking of children.¹⁴¹

The African Charter on the Rights and Welfare of the Child ('the African Children's Charter')¹⁴² contains a similar prohibition against child labour¹⁴³ but explicitly requires that measures of implementation 'cover both the formal and informal sectors of employment' and that they be informed by 'relevant provisions of the International Labour Organisation's instruments relating to children.'¹⁴⁴

The relevant ILO instruments which flesh out the obligations in the CRC and the African Children's Charter include the Minimum Age Convention.¹⁴⁵ This Treaty obliges the parties 'to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.'¹⁴⁶ The minimum age for employment is generally fixed at fifteen years, but is reduced to fourteen for states 'whose economy and education facilities are insufficiently

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¹³⁷ See for example, CRC, arts 6 (ensuring the child's development to the maximum extent possible); 24 (right to the highest attainable standard of health); 26 (right to social security); 27 (right to adequate standard of living); 28 (right to education for the development of personality, talents and abilities). See generally, van Bueren (n 108 above) chaps 9, 10 & 11.

¹³⁸ CRC, art 39.

¹³⁹ CRC, art 19.

¹⁴⁰ CRC, art 34.

¹⁴¹ CRC, art 35.

¹⁴² African Children's Charter (n 21 above).

¹⁴³ African Children's Charter, art 15(1).

¹⁴⁴ African Children's Charter, art 15(2).

¹⁴⁵ Minimum Age Convention (n 21 above).

¹⁴⁶ Minimum Age Convention, art 1.

developed.¹⁴⁷ The Convention also establishes the limit of eighteen for hazardous labour¹⁴⁸ and that of thirteen for light work.¹⁴⁹

Another relevant ILO instrument is the Convention on the Worst Forms of Child Labour¹⁵⁰ which 'prioritises the struggle against the *worst forms of child labour* and calls for their elimination for all persons under the age of eighteen.'¹⁵¹ Article 3 of the Convention defines the worst forms of child labour as comprising: (a) all forms of slavery or practices akin to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced labour or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performance; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁵²

Further protection against child labour may also be sourced from the International Covenant on Civil and Political Rights ('the ICCPR')¹⁵³ and the African Charter on Human and Peoples Rights ('the African Charter').¹⁵⁴ In particular, the ICCPR recognises that every child has the right to 'such measures of protection as are required by his status as a minor, on the part of his family, society and the state'¹⁵⁵ whilst the Charter obligates states parties to protect the rights of children 'as stipulated in international

¹⁴⁷ Minimum Age Convention, art 2.

¹⁴⁸ Minimum Age Convention, art 3.

¹⁴⁹ Minimum Age Convention, art 7.

¹⁵⁰ Convention on the Worst Forms of Child Labour (n 21 above).

¹⁵¹ Arat (n 127 above) 178.

¹⁵² Convention on the Worst Forms of Child Labour, art 3. For a critique of this prioritisation by the ILO, see DM Smolin 'Strategic choices in the international campaign against child labour' (2000) 22 *Human Rights Quarterly* 942.

¹⁵³ International Covenant on Civil and Political Rights, adopted on 18 December 1966 (entered into force on 23 March 1976), UN Doc/A/6316 (1966).

¹⁵⁴ African Charter on Human and Peoples Rights, adopted on 27 June 1981 (entered into force on 21 October 1986), OAU Doc. CAB/LEG/67/3.Rev. reprinted in (1982) 21 *International Legal Materials* 58.

¹⁵⁵ ICCPR, art 24.

declarations and conventions.¹⁵⁶ These provisions may be interpreted as affording children protection against forms of labour that are prejudicial to their physical and psychological growth.¹⁵⁷

Thus, the prohibition against child labour finds basis in a wide normative framework. Since member states of SADC have assumed obligations under all or at least the majority of the instruments that constitute this framework, they are bound to take measures which eliminate the incidence of child labour within their jurisdictions and to desist from adopting any steps, whether severally or jointly, which allow the existence or increase the incidence of child labour within their jurisdictions.

This observation applies squarely to all policies that are planned and implemented under the SADC integration mechanism. Since the quest for increased productivity and efficiency has the effect of increasing the demand for child labour in some industries and reducing safety nets and thereby exposing children to exploitative labour practices,¹⁵⁸ such trade measures weaken SADC member countries' human rights obligations which, as has been argued, are paramount and constitute the primary objective of the integration mechanism.

Paradoxically, the trading system which has been identified as a beneficiary of child labour in SADC suffers adverse consequences from the phenomenon. The following review analyses the impact of child labour on trade and economic development.

¹⁵⁶ African Charter, art 18.

¹⁵⁷ According to the Human Rights Committee, the rights provided in article 24 are not the only ones that the Covenant recognises for children and ... as individuals, children benefit from all of the civil rights enunciated in the Covenant... It is for each state to determine them in the light of the protection needs of children in its territory and within its jurisdiction... For example, every possible economic and social measure should be taken... to prevent [children] from being... exploited by means of forced labour or prostitution.' See Human Rights Committee, General Comment No. 17; UN Doc.HRI/GEN/1/Rev.1/1994 (1989) para 1. See also Diller & Levy (n 6 above) 675; Lenzerini (n 5 above) 215.

¹⁵⁸ See para 3.2 above.

3.4 The impact of child labour on trade and economic development

The objectives of the SADC Protocol on Trade ('the Trade Protocol') include the liberalisation of intra-regional trade,¹⁵⁹ enhancement of efficient production,¹⁶⁰ economic development, diversification and industrialisation within SADC,¹⁶¹ and most importantly, the establishment of a free trade area.¹⁶²

In order to realise these goals, the SADC trade framework is anchored on several principles which are meant to ensure fair trade. These include general most favoured nation ('MFN') treatment of imports;¹⁶³ national treatment in respect of all laws, regulations and requirements;¹⁶⁴ and limitations on the use of quantitative restrictions.¹⁶⁵ These principles are complemented by rules which outlaw unfair trading practices.¹⁶⁶ Unfair trading practices that are proscribed under the Protocol are subsidies and

¹⁵⁹ Trade Protocol, art 2(1).

¹⁶⁰ Trade Protocol, art 2(2).

¹⁶¹ Trade Protocol, art 2(4).

¹⁶² Trade Protocol, art 2(5). The theoretical basis supporting the superiority of the free trade system is Adam Smith's famous theory of comparative advantage. See generally, A Smith *An inquiry into the nature and causes of wealth* (1789) 424 noting that '[i]f a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our industries.' The theory was presented in modern economics jargon in D Ricardo 'On the principles of political economy and taxation' in P Saffra (ed) *The works and correspondence of David Ricardo* (1951) 1.

¹⁶³ Trade Protocol, art 28. MFN treatment calls for each contracting party to grant to every other contracting party the most favourable treatment that it grants to any country with respect to imports and exports of products. See GATT *The most-favoured-nation provision* (1994); G Espiel 'The most-favoured-nation clause' (1971) 52 *Journal of World Trade Law* 273. MFN treatment under the SADC Trade is automatic and unconditional for all SADC states since art 28 simply provides that 'member states shall accord most favoured nation treatment to one another.'

¹⁶⁴ Trade Protocol, art 11. National treatment requires the even-handed treatment of both domestic and imported products, requiring that the products from any member state's territory be accorded 'immediately and unconditionally... the same treatment as to goods produced nationally in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.' See generally, JH Jackson *World trade and the law of GATT* (1969) chap 12; JH Jackson, W Davey & A Sykes *Legal problems on international economic relations* (1995) chap 11.

¹⁶⁵ Trade Protocol, arts 7 and 8. These provisions operate to prohibit the use of quotas as a measure for restricting trade. See Jackson, as above 309 observing that the use of quotas is prohibited because it leads to recession and constrictions in trade volume.

¹⁶⁶ Unfair trade is normally deemed to include trade which has been influenced or promoted by such activity as 'dumping' or government subsidies, or attempts by foreign sellers to evade legitimate regulations regarding the environment, fair competition, intellectual property protection, etc. See JH Jackson *The world trading system: Law and policy of international economic relations* (1997) 247.

dumping.¹⁶⁷ Subsidies occur when a government either makes payments, remits charges, or supplies commodities or services at less than cost or market price in order to supply to the market a product or service that could only be supplied, in the absence of the payment or remission, in the same quantity at a higher price.¹⁶⁸ Dumping, on the other hand, describes the practice of selling products for export at less than their domestic price.¹⁶⁹

Since child labour could constitute significant input into the production of goods that are traded within the SADC region, the use of child labour must be regarded as an unfair trading practice which gives states unfair competitive advantage.¹⁷⁰ This practice constitutes a form of subsidy¹⁷¹ or dumping in that the state has allowed products to be exported and sold at less than their normal value because the cost of labour has been artificially depressed by the exploitation of child labour.¹⁷²

Further, the employment of child labour is economically inefficient because it sustains companies which cannot compete against more efficient companies which rely on adult labour, thus preventing the movement of economic resources from inefficient to efficient uses.¹⁷³

¹⁶⁷ Art 18 allows member states to apply anti-dumping measures in conformity with the provisions of the WTO whilst art 19 prohibits the granting of subsidies which distort or threaten to distort competition in the region.

¹⁶⁸ See generally GC Hufbauer & J Shelton Erb *Subsidies in international trade* (1984) 8; HB Malmgren *International order and public subsidies* (1977).

¹⁶⁹ Article 1 of the Trade Protocol defines dumping as 'the introduction of a product into the commerce of another country at less than its normal value, if the price of the product exported from one country to another is less than the comparable price in the ordinary course of trade, for the like product when destined for consumption in the exporting country.' See generally J Viner *Dumping: A problem in international trade* (1966). Compare also GATT, art VI and Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, GATT, BISD 26 Supp (1980).

¹⁷⁰ Muntabhorn (n 3 above).

¹⁷¹ See International Confederation of Free Trade Unions, Statement to the Ministerial Round of Multilateral Trade Negotiations (1990) para 4: '[T]he failure to respect international norms with regard to [labour standards]... constitutes a means of subsidisation of exports equivalent to direct financial subsidy, but with the difference that it is derived from the exploitation of workers.' Quoted in Ehrenberg (n 5 above) 380.

¹⁷² This type of dumping is called 'social dumping' by which is meant 'the export of products that owe their competitiveness to low labour standards.' See S Charnovitz 'The influence of international labour standards on the world trading regime' (1987) 126 *International Labour Review* 565, 566.

¹⁷³ See Ehrenberg (n 5 above) 380.

It is, consequently, submitted that the competitive advantage arising from the use of child labour is unfair and inequitable¹⁷⁴ and economically inefficient.¹⁷⁵ It does not enhance economic development¹⁷⁶ and militates against the development of a free trade area.¹⁷⁷

Apart from the particular impacts on trade, child labour generally stunts economic and social development because it prevents the education of children and, with it, the development of an educated and skilled workforce. A life of unskilled work and ignorance condemns not only the child to a life of poverty but also makes it more likely that children of generations to come will be equally exposed to child labour.¹⁷⁸ This creates a vicious cycle of poverty and ignorance and robs the country of an educated and more advanced labour force.¹⁷⁹

Further, the employment of child labour creates a 'rush to the bottom' whereby competing industries which adhere to international labour standards are forced to relax their standards in order to remain competitive against those firms which are profiting from the exploitation of child labour. This only leads to the increase of child labour with all its consequences.¹⁸⁰

It is, thus, submitted that the short-term financial gains achieved by the employment of child labour within SADC are heavily outweighed by the cost in terms of exacerbation of poverty and ignorance and the prevention of the development of a skilled labour force. These factors impact negatively on the aims of the regional integration mechanism by prohibiting the realisation of sustainable economic development.

¹⁷⁴ Compare Trade Protocol, art 2(1).

¹⁷⁵ Compare Trade Protocol, art 2(2).

¹⁷⁶ Compare Trade Protocol, art 2(4).

¹⁷⁷ Compare Trade Protocol, art 2(5).

¹⁷⁸ Schurink, Molohe & Tshabala (n 1 above) 1.

¹⁷⁹ van Bueren (n 108 above) 263 noting that '[c]hild labour also forms part of a generational chain as exploited children become illiterate adults who in turn have to send their own children to work to help support their own families.'

¹⁸⁰ For a review of the evidence of races to the bottom, see H Grossman & G Koopman 'Social standards in international trade: A new protectionist wave?' in H Sandler & A Inotai (eds) *World trade after the Uruguay Round* (1996); E Lee 'Globalisation and employment: Is the anxiety justified?' (1996) 135 *International Labour Review* 485.

Consequently, non-prioritisation of human rights generally, and the rights of children in particular, results not only in violation of children's rights but also in failure to honour member states commitments to fair trade and in the non-achievement of the objectives of the regional integration mechanism.¹⁸¹

3.5 Conclusion

What, then, are the lessons that must be learned from all this? The first is that promotion of trade for its own sake may give rise to or increase the incidence of child labour. Secondly, such consequences impact not only on the protection and promotion of human rights but also on the achievement of sustainable social and economic development. Consequently, unless the protection of human rights, particularly the protection of children from exploitative labour is accorded primacy within the trade paradigm, the region will attain neither human rights protection nor sustainable social and economic development-both of which are the core purposes of the regional integration initiative.

However, the most important lesson is that unless the quest for solutions is informed by the linkages between the factors which are implicated in the child labour phenomenon, the problem will not go away. Consequently, there is need for a holistic approach which takes into account the linkages between trade, labour and human rights.

In the next chapter an attempt is made to develop such a holistic approach in the formulation of responses to child labour.

¹⁸¹ See chap 2 above.

CHAPTER 4: TOWARDS AN EFFECTIVE REGIME FOR THE ERADICATION OF CHILD LABOUR

4.1 Introduction

As has been shown, child labour is both a human rights concern as well as a trade issue. This chapter argues that the problem cannot be resolved by relying solely on human rights provisions or on trade mechanisms alone. It thus advocates an integrated approach which takes cognisance of the linkage between trade and child labour and, where appropriate, combines the SADC human rights and trade frameworks.

4.2 The inadequacy of human rights mechanisms

SADC member states are parties to various international instruments which proscribe child labour.¹⁸² However, this formal commitment has not done much to alleviate the incidence of child labour within the region. Indeed some studies indicate increasing trends in the incidence of the phenomenon.¹⁸³ The apparent inability of human rights norms to eradicate the incidence of child labour may be ascribed to several weaknesses which are characteristic of the international system of human rights protection.¹⁸⁴ These include the absence of effective sanctions against states that do not adhere to their human rights obligations, the ascription of primacy to economic considerations by states and the failure of states to implement human rights obligations within domestic jurisdictions after ratification of instruments.

The international instruments prohibiting child labour employ a variety of enforcement mechanisms. These include state reporting, complaint procedures, diplomatic contacts, publicity and moral persuasion.¹⁸⁵ These methods of enforcement do not tangibly affect

¹⁸² See para 3.3 above.

¹⁸³ See para 3.2 above; ILO (n 117 above).

¹⁸⁴ See generally the essays collected in P Alston & J Crawford (eds) *The future of UN human rights treaty monitoring* (2000).

¹⁸⁵ D Shelton 'International enforcement of human rights: Effectiveness and alternatives' (1980) 74 *Proceedings of the Annual Meeting of the American Society of International Law* 6, 7. For a comprehensive and systematic analysis of the shortcomings of human rights enforcement regime at international law, see A Bayefsky 'Making the human rights treaties work' in L Henkin & JL Hengrove (eds) *Human rights: An agenda for the next century* (1994) 229-295; A Bayefsky 'Report on the UN human rights treaties: Facing the implementation crisis' in Committee on International

states because they carry with them no economic sanction.¹⁸⁶ Consequently, there is weak incentive for states to take serious efforts aimed at ensuring the eradication of child labour within their jurisdictions.

Further, states are wont to give primacy to their economic interests and are reluctant to adopt policies or measures which impair those interests even when the consequences are adverse for their own citizens.¹⁸⁷ In the context of child labour, states often regard the depressed labour costs resulting from the exploitation of child labour as a species of economic comparative advantage.¹⁸⁸ Consequently, states are reluctant to relinquish such economic advantage despite the negative consequences on their children.

Lastly, despite ratification of human rights instruments, states are slow to implement them within their domestic jurisdictions.¹⁸⁹ In relation to child labour, SADC member states have been quick to ratify many of the instruments that prohibit child labour.¹⁹⁰ However, beyond this, precious little has been done to concretise the obligations contained in the instruments.¹⁹¹ Thus, policies¹⁹² and administrative practices¹⁹³ which are inimical to the eradication of child labour continue to exist and hamper the effective resolution of the problem.¹⁹⁴ Consequently, whilst formal commitment to the prohibition

Human Rights Law and Practice *First report of the Committee* (1996); AF Bayefsky 'The UN human rights regime: Is it effective?' (1997) 91 *Proceedings of the Annual Meeting of the American Society of International Law* 460-472. See also Alston & Crawford (n 184 above).

¹⁸⁶ J Donnelly 'International human rights: A regime analysis' (1986) 40 *International Organisations* 600, 618.

¹⁸⁷ McCorquodale & Fairbrother (n 18 above) 748 noting that some states like Zimbabwe and Brazil are pursuing 'damaging economic growth' whereby crops are planted for export to gain foreign exchange whilst people are deprived of their staple diet. Similarly, in Malawi maize reserves were sold in exchange for foreign exchange. The consequence was failure by the government to mitigate the effects of drought. Several people died from hunger due to the resulting food shortage. See I Panjwani 'Malawi faces food crisis' available at <<http://malawihere.com/viewnews.asp?id=209>> (accessed on 12 October 2002).

¹⁸⁸ Jackson (n 166 above) 223-230.

¹⁸⁹ Bayefsky (n 185 above); Lenzerini (n 5 above) 291.

¹⁹⁰ ILO/SAMAT (n 10 above).

¹⁹¹ As above.

¹⁹² For example, the absence of free compulsory primary education and persistence in improper economic policies which only serve to exacerbate poverty. See Arat (n 127 above) 185; UNICEF (n 4 above) 29.

¹⁹³ For example, weak or non-existent monitoring of the situation of child labour and lax enforcement mechanisms. See Arat (n 127 above) 185.

¹⁹⁴ ILO/SAMAT (n 10 above) noting the absence of legislative and administrative interventions to eradicate child labour.

against child labour is impressive, this is not translated into real gains in the fight against child labour at the practical level.

It is, therefore, submitted that campaigns directed at obtaining ratifications of the various anti-child labour instruments alone,¹⁹⁵ will not do much to eliminate child labour within the region as long as states perceive that the sanctions for deviance are almost negligible or that strict adherence to such norms will hurt their economic interests. Thus, it is fair to conclude that human rights provisions banning child labour will not of themselves achieve the eradication of child labour within SADC. There is need for mechanisms which induce more than mere formal commitment.

4.3 The inadequacy of trade mechanisms

In the previous chapter, the basis was established for arguing that child labour constitutes a form of dumping or subsidy.¹⁹⁶ Since subsidies and dumping constitute unfair trading practices, resort ought to be had to the provisions¹⁹⁷ of the Trade Protocol which provide remedies for such practices by allowing member states to derogate from the basic principles of the trade framework, namely the MFN principle, the principle of national treatment and the prohibition against quantitative restrictions.¹⁹⁸ However, the use of such provisions in order to combat child labour is fraught with difficulties.¹⁹⁹

A key principle within the SADC trade framework is that markets should not be distorted by goods 'dumped' in an importing market at prices lower than those for like goods in the domestic market of the exporting country or in third-country markets.²⁰⁰ In order to counter dumping, article 18 of the Trade Protocol allows member states to apply anti-

¹⁹⁵ The approach of the ILO in SADC has been to encourage the ratification of the core ILO instruments on child labour such as the Minimum Age Convention and the Convention on the Worst Forms of Child Labour and persuade states to adhere to their commitments. See ILO/SAMAT (n 10 above).

¹⁹⁶ See para 3.4 above, especially n 166-172 and the text accompanying those footnotes.

¹⁹⁷ Trade Protocol, arts 18 & 19.

¹⁹⁸ See para 3.4 above, especially n 163-165 and the text accompanying those footnotes.

¹⁹⁹ MA Tonya 'Baby steps toward international fair labour standards: Evaluating the Child Labour Deterrence Act' (1992) *Case Western Reserve Journal of International Law* 631, 651 noting the likelihood of conflict between GATT rules and trade measures introduced to combat child labour. See also Diller & Levy (n 6 above) 680-681; Lenzerini (n 5 above) 298-299.

²⁰⁰ See para 3.4 above, especially n 169 and text accompanying that footnote.

dumping measures which are in conformity with WTO provisions. The relevant WTO provisions in this regard are GATT article VI and the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade ('the 1994 Agreement on Dumping') which allow restrictions of trade benefits against violating states.²⁰¹

Unfortunately, within the WTO context, article VI has been restrictively interpreted to apply exclusively to 'price dumping'.²⁰² This position was expressly decided during the 1947 GATT negotiations, when the majority of states²⁰³ successfully opposed²⁰⁴ a suggestion by the Cuban delegate, according to which every form of dumping should be considered as included in article VI 'whether practised the mechanism of price, freight rates, currency depreciation, sweated labour or any other means'.²⁰⁵ This interpretation of article VI was not modified by the set of agreements reached during the Uruguay Round which includes the 1994 Agreement on Dumping.²⁰⁶

Further, even if dumping was held to apply to human resource dumping such as child labour, the application of anti-dumping measures would not be automatic because the 1994 Agreement on Dumping, which outlines the applicable procedures to be followed concerning allegations of dumping provides that special regard is to be given to the special situation of developing countries when considering the application of anti-dumping measures.²⁰⁷ Since almost all SADC countries are either developing or least

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²⁰¹ WTO Agreement (n 12 above) Annex 1A.

²⁰² Lenzerini (n 5 above) 299.

²⁰³ See GATT *Working party on technical articles* GATT Doc.E/PC/TWP.1/SR/8 (1947). See also Diller & Levy (n 6 above) 681.

²⁰⁴ Diller & Levy (n 6 above) 681.

²⁰⁵ See GATT *Secretarial note on article 17 (Anti-dumping and countervailing duties)* GATT Doc.E/PC/TW97 (1947). Draft art 17 later became GATT art VI.

²⁰⁶ Jackson (n 166 above) 257, 261-265.

²⁰⁷ 1994 Agreement on Dumping, art 15.

developed countries,²⁰⁸ it is likely that such special consideration would be accorded to them.²⁰⁹

It is, therefore, submitted that it is very difficult (if at all possible) to rely on the anti-dumping clauses within the SADC trade framework to eradicate child labour. Whilst the exploitation of child labour comes within the unrestrictive definition of dumping, the practice does not fall within WTO's interpretation of GATT article VI or the 1994 Agreement on Dumping.

With respect to subsidies, article 19 of the Trade Protocol allows member states to levy countervailing duties in accordance with WTO provisions in order to offset the effects of such subsidies.²¹⁰ The relevant WTO provisions in this regard are found in the Agreement on Subsidies and Countervailing Measures²¹¹ which defines subsidies to include revenue that a government fails to collect²¹² as well as direct financial subsidies.²¹³ It is difficult to construe child labour as falling within these financial definitions of subsidies.²¹⁴

It is, therefore, submitted that it is not possible to rely on the provisions relating to countervailing measures against subsidies to discourage the use of child labour within

²⁰⁸ Ng'ong'ola has classified SADC countries (with the exception of South Africa which is classified as developed) into developing and least-developed countries. See Ng'ong'ola (n 46 above) 489-490. For a classification of WTO members as developed, developing and least-developed, see also C Ng'ong'ola 'The world trade legal order and developing countries: An assessment of important concessions and commitments with special reference to sub-Saharan Africa (1999) 11 *African Journal of International and Comparative Law* RADIC 46-50; UN *The least developed countries, 1997 Report*, UN Doc.TD/B/44/6.UNCTAD/LDC/1997 (1997) Annex on Basic Data, 152-158.

²⁰⁹ For a general discussion on the preferential treatment given developing countries under the GATT framework, see RE Hudec *GATT and the developing countries* (1988); T Takase 'The role of concessions in the GATT trading system and their implications for developing countries' (1987) 21 *Journal of World Trade Law* 67; R Pomfret 'The effects of trade preferences for developing countries' (1986) 53 *Southern Economic Journal* 18.

²¹⁰ Under the Protocol, subsidies have the same meaning and interpretation as in the WTO Agreement on Subsidies and Countervailing Measures. See art 1.

²¹¹ WTO Agreement (n 12 above) Annex 1A.

²¹² Agreement on Subsidies and Countervailing Measures, art 1.1(i).

²¹³ As above, art 2.

²¹⁴ Diller & Levy (n 6 above) 681 propose that 'failure of the government to collect revenue arguably includes failure to enforce civil or criminal fines for violations of child labour laws.' However, this argument is somewhat tenuous in view of the definitions contained in the Agreement.

the SADC trade framework. The monetary bases of the definitions restrict the application of this regime to child labour.

In view of the foregoing, it is further submitted that trade mechanisms on their own are inadequate to eradicate child labour. Whilst the employment of child labour does have effects that are tantamount to subsidisation and dumping and which result in unfair and inefficient trade, the present trade framework is not robust enough to address this form of unfair trading practice.

This inadequacy may be ascribed more generally to the absence of formal linkages between trade rules and human rights.²¹⁵ However, it is illogical to overlook the existence of the linkage between human rights and trade,²¹⁶ especially in relation to the exploitation of child labour.²¹⁷ Consequently, the only approach that can effectively deal with child labour is not one that denies or ignores the link between trade and human rights but rather one which adopts an integrated approach to the issue and provides holistic solutions.

4.4 An integrated response to child labour

An integrated approach to resolving the child labour issue takes cognisance of the linkage between trade policy and human rights. This approach is not only consistent with the need to accord primacy to human rights protection within the integration initiative²¹⁸ but also allows the formulation of functional and effective solutions to the problem. Such an approach, it is submitted, not only finds basis in international law and within the SADC trade framework but also augurs well with the aims and objectives of the regional integration initiative.

²¹⁵ See para 1.2 above. See also UN sub-Commission on the Protection and Promotion of Human Rights 'Liberalisation of trade in services and human rights' UN Doc.E/CN.4/Sub.2/ 2002/9 (2002) para 4 noting that 'international trade law and human rights law have grown up more or less in isolation from each other.'

²¹⁶ As above, para 4 observing that 'trade rules increasingly broaden their scope into areas that affect the enjoyment of human rights.'

²¹⁷ Lenzerini (n 5 above) 298; para 3.2 above.

²¹⁸ See paras 2.4 & 2.5 above.

4.4.1 The basis of the integrated approach

Since the promotion and protection of human rights is the primary goal of the regional integration initiative,²¹⁹ every policy or activity that is formulated or pursued in order to achieve the aims and objectives of the initiative must conform to the human rights obligations of the member states,²²⁰ and in particular, the obligations relating to the protection of children from exploitative labour practices.

Further, the UN Charter²²¹ establishes general human rights obligations which affirm the need to respect human rights in the quest for economic development. Under the Charter, all members of SADC have undertaken to promote 'higher standards of living, full employment, and conditions of economic and social progress and development' as well as 'universal respect for and observance of, human rights and fundamental freedoms for all.'²²² The Universal Declaration of Human Rights²²³ which is widely viewed as the authoritative elaboration²²⁴ of the UN Charter obligations relating to human rights recognises the right to an adequate standard of living and to special care and assistance in childhood.²²⁵ This right, it is submitted, may not be rationed in the quest for economic development.²²⁶

Thus, it is not sufficient to determine that the conception of subsidies and dumping under the trade framework does not extend to instances of child labour. The approach in this case is to ensure that the provisions of the SADC Treaty as well as the protocols under it

²¹⁹ As above.

²²⁰ UN sub-Commission (n 215 above) para 5 noting that '[s]tates have concurrent human rights obligations under international law and should therefore promote and protect human rights during the negotiation and implementation of international rules on trade...'

²²¹ UN Charter (n 12 above).

²²² UN Charter, art 55 (a) & (c).

²²³ Universal Declaration of Human Rights, adopted on 10 December 1948, UNGA Res.217 A (II) 1948.

²²⁴ Some authors have argued that the Declaration has attained the status of customary international law. See B Sloan 'General Assembly Resolutions revisited (forty years later)' (1987) *British Yearbook of International Law* 39, 88; T Buergenthal 'International human rights: Accomplishments and prospects' (1988) 63 *Washington Law Review* 1, 9.

²²⁵ As above, art 25(1) & (2).

²²⁶ UN sub-Commission (n 215 above) 1-2.

are not construed in isolation of the human rights objective but rather are interpreted and implemented in a manner that furthers the promotion and protection of human rights.²²⁷

Indeed, article 31(3)(c) of the Vienna Convention on the Law of Treaties²²⁸ confirms the appropriateness of such an approach by providing that every international treaty must be interpreted by taking into account 'any relevant rules of international law applicable in the relations between the parties.' The SADC Treaty and the protocols under it do not escape this rule. Consequently, in their interpretation and implementation, SADC member states must ensure that primacy is given to their obligations to protect and promote human rights, especially provisions relating to the protection of children from exploitative labour.

In line with this international law prescription article 9 of the Trade Protocol identifies some 'general exceptions' to the MFN principle, the principle of national treatment and the prohibition against quantitative restrictions.²²⁹ It provides in particular that 'nothing under articles 7 and 8 of this Protocol shall be construed to prevent the adoption or enforcement of any measures by a member state:...(b) necessary to protect human, animal or plant life or health...(i) necessary to *ensure compliance with existing obligations under international agreements*.'²³⁰

Article 9(b) makes room for the introduction of the argument that productive activities conducted in circumstances which do not conform to minimum labour standards concerning the safety and working conditions of employees constitute a danger to human life. This argument is particularly pertinent to child labour because the practice jeopardises the health and development of children.²³¹

The application of this interpretation to the SADC framework confirms that a member state is entitled to invoke the exceptions under article 9 and derogate from the MFN

²²⁷ UN sub-Commission (n 215 above) para 7.

²²⁸ 1969 Vienna Convention on the Law of Treaties, adopted on 23 May 1969 (entered into force on 27 January 1980) 1155 *UNTS* 331 reprinted in 1969 *International Legal Materials* 679.

²²⁹ See para 3.4 above.

²³⁰ Trade Protocol, art 9. Emphasis supplied.

²³¹ Lenzerini (n 5 above) 300-301.

principle, the principle of national treatment and the prohibition against quantitative restrictions in order to discourage the exploitation of child labour in another member state.²³²

Another provision which permits the restriction of enjoyment of trade advantages for the purpose of protecting children against exploitative labour is article 9(i) of the Trade Protocol. This article allows the restriction of trade advantages in order to enforce measures 'necessary to ensure compliance with existing obligations under international agreements.'²³³ This provision clearly includes within its purview the international agreements which prohibit child labour and to which SADC states are parties.

It is, therefore, submitted that the SADC regional integration framework allows for the adoption of an integrated approach in designing responses to child labour. This not only takes into account the inadequacy of relying solely on either the human rights provisions or trade mechanisms but also enables the designing of solutions predicated upon the best interests of the child.

4.4.2 The structure of an integrated approach to child labour

In order 'to foster regional development and integration',²³⁴ the SADC Treaty identifies 'areas of co-operation through which member states 'co-ordinate, rationalise and harmonise their macroeconomic and sectoral policies and strategies and programmes and projects.'²³⁵ The implementation of these areas of co-operation is conducted at three levels, namely the provision of a legal framework, the assignment of an institutional framework and the design and implementation of a programmatic framework.

²³² An interpretation of GATT article XX(b) (which is analogous to article 9(b) of the Trade Protocol) by a GATT dispute resolution panel supports this observation. In *United States-Restrictions on Imports of Tuna*, Report of the Panel, June 1994, para 5 reprinted in (1994) 33 *International Legal Materials* 839 the GATT panel held that GATT article XX(b) may be applied without limits of jurisdiction because there was nothing in the provision which limits 'the location of the thing to be protected.'

²³³ It is worth noting that the provision does not limit the adoption of enforcement measures to the state holding the international obligations. Consequently, any member state may take measures which are necessary to ensure compliance of international obligations by any other member state.

²³⁴ SADC Treaty, art 21(1).

²³⁵ SADC Treaty, art 21 (2).

The legal framework is the constitutive basis of co-operation. It may be sourced from the SADC Treaty itself²³⁶ or from the protocols entered into under the Treaty.²³⁷ These constitutive documents identify and demarcate particular areas of co-operation which are viewed as vital to the achievement of the aims and objectives of the regional integration initiative.

Apart from elaborating the areas of co-operation, the legal framework also establishes the institutional structures which are mandated to oversee the defined areas of co-operation. These institutions are called sectoral coordinating units. According to SADC practice, these units are distributed to the various member states as coordinating agents.²³⁸

At the practical level, the areas of co-operation are implemented through programmes and projects designed and planned by the SADC Secretariat.²³⁹ These programmes and projects are then assigned to and co-ordinated by the various sectoral coordinating units.²⁴⁰

In relation to trade, SADC has prioritised this sphere by according it the status of an area of co-operation. The legal framework for co-operation is sourced from the SADC Treaty²⁴¹ and the Trade Protocol. At the institutional level, the programmes and projects under this area of co-operation are entrusted to Tanzania.²⁴² The programmes and projects, planned and developed by the Secretariat, have focused on trade liberalisation and the increase of intra-SADC trade.²⁴³

²³⁶ The Treaty identifies seven areas of cooperation. See SADC Treaty, art 21(3).

²³⁷ The Treaty provides for the elaboration of the scope of cooperation and the identification of new areas of cooperation through protocols approved by the SADC Summit of the Heads of State and Government on the recommendation of the SADC Council of Ministers and brought into effect by the signatures and ratification by the member state parties thereto. See SADC Treaty, art 22.

²³⁸ Ng'ong'ola correctly notes that the SADC 'Treaty does not specifically provide for the allocation of co-ordination responsibilities' and that the practice is a carry-over from SADC's predecessor, SADCC. See Ng'ong'ola (n 46 above) 493.

²³⁹ SADC Treaty, art 14(1)(a).

²⁴⁰ For a compilation of reports submitted to the Secretariat by the various coordinating units, see SADC sectoral reports (n 80 above).

²⁴¹ SADC Treaty, art 21(3)(c).

²⁴² See SADC sectoral reports (n 80 above).

²⁴³ T Bertelsmann 'Trade integration in Southern Africa' (1998) 6 *South African Journal of International Affairs* 47.

The enforcement of the obligations which member states have assumed under the Trade Protocol and the settlement of trade-related disputes is entrusted to the Panel of Trade Experts ('the Trade Panel' or 'the Panel').²⁴⁴ The Panel is an *ad hoc* adjudicating body appointed by the Council of Trade Ministers to deal with trade disputes when they arise.²⁴⁵

In contrast, however, the promotion and protection of human rights receives marginal attention within SADC's activities. Despite being the primary objective of the integration initiative, the protection and promotion of human rights receives little or no attention within SADC's legal, institutional or programmatic frameworks.²⁴⁶

An integrated approach to resolving the child labour issue, however, would require the elevation of human rights protection and promotion onto the SADC agenda. This prioritisation of human rights would require the adoption of a protocol on human rights; the establishment of a sectoral coordinating unit for the implementation of the protocol; and the formulation of programmes and projects relating to human rights protection by the SADC Secretariat.

In relation to enforcement of the human rights protocol, it is proposed that a SADC human rights court be established. The court could be commissioned with the duty to interpret the human rights protocol and to hear cases from the member states as a court of last instance. To ensure efficacy in the protection and promotion of human rights, individuals and non-governmental organisations could be allowed to have standing before the court.

4.4.3 Tackling child labour under the integrated approach

Since the human rights coordinating unit would co-ordinate all matters relating to human rights, the issue of child labour would fall under the jurisdiction of the unit. The unit would be mandated to oversee the implementation of projects and programmes designed by

²⁴⁴ Trade Protocol, art 32.

²⁴⁵ As above.

²⁴⁶ See para 2.4 above.

the Secretariat to combat child labour. In this regard, the Secretariat would have to formulate programmes and projects which address the root causes of child labour, which include among other things, poverty,²⁴⁷ the absence of educational opportunities,²⁴⁸ and the absence of effective laws.²⁴⁹

In view of the linkage between trade policy and the incidence of child labour, the integrated approach would necessitate co-ordination and interaction between the human rights and trade frameworks. In this regard, the mandate of the human rights coordinating unit could extend to the assessment of SADC trade policies to ensure that they conform to the obligations set out in the human rights protocol,²⁵⁰ and in particular to the obligations relating to the prohibition against the economic exploitation of children.

In cases where a human rights issue forms the basis of a complaint before the Trade Panel, the trade and human rights institutions and the enforcement mechanisms thereunder could come together to effect an integrated response to the problem and thus ensure compliance by the violating state of both its human rights and trade obligations.

Thus, in the case of trade-distorting child labour, the Committee of Trade Ministers²⁵¹ could appoint a Trade Panel which could be constituted by trade experts as well as some members of the human rights court. If it is established that there have been violations of the prohibition against the economic exploitation of child labour and that such violations have led to unfair trade, the Panel could determine the appropriate remedies. The remedies would be predicated upon the need to ensure compliance by the violating state of both its human rights and trade obligations. In accordance with the international law relating to the child, the Panel would ensure that the remedies which it

²⁴⁷ ILO *Child labour: Targeting the intolerable* (Report VI (I) of the International Labour Conference) (1998) available at <<http://www.ilo.org>> (accessed on 20 October 2002); UNDP *Human development report 2000* (2000); UNDP *Human development report 1999* (1999); UNICEF (n 4 above) 55.

²⁴⁸ UNICEF (n 4 above) 55.

²⁴⁹ UNICEF (n 4 above); Arat (n 127 above) 201.

²⁵⁰ It is submitted that such an approach would be consistent with the recommendations of the UN sub-Commission on the Protection and Promotion of Human Rights which has been advocating for a human rights approach to trade policy. See UN sub-Commission (n 215 above) 2.

²⁵¹ See n 245 above and the text accompanying that footnote.

orders augur well with the best interests of the children concerned. In this respect, the remedies could be constituted of prescriptive child labour-elimination programmes which the violating state would have to implement according to a strict deadline regime.²⁵² The implementation of such programmes could be monitored by a committee appointed for that purpose by the Panel.

In the event that the violating state does not comply with the programmes prescribed by the Panel, the monitoring committee could report such finding to the committee. Upon receipt of the committee's report, the panel could invite the violating state to show cause why economic sanctions and countervailing measures as prescribed in the Trade Protocol should not be imposed against it. Where the state fails to show cause, the countervailing measures would become operational against it.²⁵³

The imposition of countervailing measures would not exonerate the state from implementing the prescriptive programmes ordered by the Panel. Where the state continues to neglect implementing such programme, the Panel shall cause to be submitted to the Summit a recommendation for the suspension of the violating state on the ground that it has 'persistently fail[ed], without good reason, to fulfil obligations assumed under [the SADC] Treaty.'²⁵⁴

²⁵² The Panel may seek the expertise of the Secretariat or the ILO in the actual designing of such prescriptive programmes. See ILO *International Programme on the Elimination of Child Labour* available at <<http://www.ilo.org/public/english/standards/ipecl/index.htm>> (accessed on 20 October 2002).

²⁵³ The use of trade measures to enforce human rights is not a novel idea and has been relied on extensively by the two largest trading blocs in the world, namely the European Union and the United States. See B Brandtner & A Rosas 'Trade preferences and human rights' in P Alston (ed) *EU and human rights* (1999) 699; P Alston 'Labour rights provisions in US trade law: "Aggressive unilateralism"?' in LA Compa & SF Diamond (eds) *Human rights, labour rights and international trade* (1996) 71.

²⁵⁴ SADC Treaty, art 33 (1)(a). It must be noted that the adoption of a procedure which allows for the suspension of a member state from an international organisation on account of non-observance of human rights would not be unique to SADC. In the European Union, art 7 of the Treaty of the European Union establishes a procedure for the suspension of the rights of member states for violations of human rights. See Treaty of the European Union (Treaty of Amsterdam) adopted on 2 October 1997 (entered into force 1 May 1999), arts 6(1), 7, 205 available at <<http://europa.eu.int/eur-lex/en/treaties/index.html>> (accessed on 20 October 2002). See also M Nowak 'Human rights 'conditionality' in relation to entry to, and full participation in, the EU' in Alston (n 253 above) 687.

4.4.4 The benefits of an integrated approach

There are several functional benefits that may be ascribed to the adoption of an integrated approach in dealing with the problem of child labour. These include the explicit acknowledgement of the linkage between trade and human rights; the strengthening of the anti-child labour enforcement regime; the designing of elaborate solutions to combat child labour and the creation of an environment conducive to the achievement of both human rights and trade objectives.

Firstly, explicit recognition of the linkage between trade and human rights and allows for the comprehensive examination of trade law and policy to ensure that they do not only result in economic growth and market growth but that they also contribute to human well-being and the enjoyment of human rights.²⁵⁵

Secondly, such an approach allows the employment of trade measures to ensure human rights protection. In the context of child labour, it allows the recognition of the phenomenon as a trade-related issue and permits the restriction of trade advantages for the purpose of enforcing the prohibition against child labour.²⁵⁶ Thus member states which do not seriously take their obligation to eradicate child labour will be liable to forfeit benefits accruing under the SADC trade regime. This undoubtedly alleviates the weakness earlier identified as constraining the effectiveness of trade mechanisms in combating child labour.

Thirdly, the adoption of such an approach strengthens the international enforcement mechanisms for the prohibition against child labour because although the breach emanates from failure to observe the human rights of children and in particular the prohibition against child labour, the sanctions are economic and based on the SADC trade framework. Since such a scenario jeopardises the material interests of states, it is more likely that states will move to comply with their obligations to eradicate child labour. Such a position fundamentally alters the enforcement of the prohibition against child labour under the human rights instruments which, as was demonstrated, relies heavily

²⁵⁵ UN sub-Commission (n 215 above) para 7.

²⁵⁶ Muntabhorn (n 3 above) 266-275.

on non-punitive and diplomatic measures.²⁵⁷ It is, therefore, submitted that an integrated approach as is suggested here makes the enforcement of the prohibition against child labour stronger in that it compels states to abide by the standards set out in the various instruments relating to child labour.

Fourthly, an integrated approach results in the ability to fashion innovative responses which address both the human rights and trade issues raised by the phenomenon. This enables the designing of comprehensive and coherent solutions which are predicated on the best interests of children who are economically exploited and which give them a chance 'to realise their worth in a safe and supportive environment.'²⁵⁸ Such an approach is not only consistent with the CRC and the African Children's Charter which stipulate that in all actions concerning children, their best interests must be a primary consideration²⁵⁹ but also with the Trade Protocol which requires that member states 'co-operate in addressing any impediments to intra-SADC trade that may arise as a result of action or lack of action by any member state having material bearing and which are not covered elsewhere in [the] Protocol.'²⁶⁰

Fifthly, the integrated approach that has been proposed is appropriate for SADC because it draws a lot from existing SADC structures. It would therefore be more acceptable to member states as it does not constitute a radical departure from existing arrangements. Further, a system similar to the integrated approach has functioned efficaciously within the European Union and one would be inclined to vouch for the success of these proposed arrangements.²⁶¹

Lastly, an integrated approach makes it imperative for states to adhere to their human rights obligations as well as trade obligations and thus permits the achievement of trade objectives as well as the protection of children from exploitative labour practices.

²⁵⁷ See Ehrenberg (n 5 above); Shelton (n above).

²⁵⁸ World Declaration on the Survival, Protection and Development of Children (1990) para 15 quoted in UNICEF *State of the world's children, 1991* (1990) 54.

²⁵⁹ CRC, art 3(1), African Children's Charter art 4(1).

²⁶⁰ Trade Protocol, art 33(2).

²⁶¹ See n 253 & 254 above.

It is therefore submitted that an integrated approach such as has been advocated results in more efficacious responses which are not only shaped and informed by the best interests of the child but also backed by effective and tangible sanctions to ensure compliance. It allows the drawing of sophisticated plans which not only ensure the removal of children from exploitative work situations but also ensures that once removed, they receive social protection and services such as education. Since the solutions are backed by material sanctions, it is more likely that states will come through for their children who are being economically exploited.

4.5 Conclusion

Responses against child labour which do not acknowledge the link between child labour and trade will almost certainly fail. There is thus a need to develop response systems which ensure that the linkage between the two factors is given due consideration. Mechanisms which are drawn on this premise are able to draw on the strengths of both the trade mechanism and human rights provisions and are thus more efficacious in addressing the issue of child labour.



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CHAPTER 5: CONCLUSIONS

It is irrefutable that children are our most prized resource. It is equally incontrovertible that given their vulnerability, children require special protection. Thus, it seems rather obvious to state that children must be protected from the scourge of child labour. Unfortunately, however, the reality is not quite so simplistic, especially where economic interests are concerned. In such situations, children's rights often have been sacrificed in exchange for some economic gain. Thus, in order to guard against such scenarios, it becomes critical to state the obvious time and again. This is what this study has attempted to do: to emphasise that in the quest for development of the region, SADC must ensure the protection of children from child labour.

This study demonstrates that the SADC regional integration initiative is designed for the achievement of laudable objectives: to secure the sustainable social and economic development of the region and attain the qualitative improvement of the lives of the region's citizens. It is intended that, through economic, social and political integration, the people of the region will be better placed to enjoy more fully their economic, social, cultural, civil and political rights.

It has been shown that this conception of development requires the explicit recognition of human rights as the primary objective of the regional integration initiative. Such recognition, it was contended, needs to be translated into the adoption of a human rights approach in the implementation of SADC policies and programmes. In other words, the focus of SADC's efforts should not only be directed at the achievement of economic growth, but rather at the enhancement of the promotion and protection of human rights.

An attempt has been made to show that this approach is particularly relevant in the implementation of the SADC trade policies-the principal means for the achievement of the objectives of the integration initiative. It was contended that trade policies which are solely focused on economic growth and not premised on the promotion and protection of human rights are likely to impact adversely on vulnerable groups such as women and children. In particular, it was demonstrated that such trade policies are likely to result in the increased incidence of child labour. Consequently, there is a need to orientate SADC

trade policies in such a way that they do not impact negatively on the rights of children by exposing them to child labour.

In this regard, the challenge for the regional integration initiative remains the creation of formal linkages between its principal driving force (trade) and its primary objective (human rights) to combat child labour. To this end, the study has recommended the adoption of a set of institutions and processes which could be utilised to effect such linkage. This proposed 'SADC human rights regime' is critical in ensuring that in the implementation of SADC trade policies, children are protected from exploitative labour practices. This approach, it was submitted, does not sacrifice the best interests of SADC's children in return for economic gain.

Whilst the protection of children from exploitative labour is a complex issue demanding intricate solutions, the study has demonstrated that it remains principally a human rights challenge of the integration initiative. According primacy to human rights and the rights of children within the scheme is the first step towards eradicating the problem.

Word count: 16 501.

The logo of the University of the Western Cape, featuring a stylized classical building with columns and a pediment.

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ANNEX

DECLARATION AND TREATY ESTABLISHING THE SOUTHERN AFRICA DEVELOPMENT COMMUNITY*

PREAMBLE

WE, the Heads of State or Government of:

The People's Republic of Angola
 The Republic of Botswana
 The Kingdom of Lesotho
 The Republic of Malawi
 The Republic of Mozambique
 The Republic of Namibia
 The Kingdom of Swaziland
 The United Republic of Tanzania
 The Republic of Zambia
 The Republic of Zimbabwe

HAVING REGARD to the objectives set forth in "Southern Africa: Toward Economic Liberation - A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1st April, 1980";

IN PURSUANCE of the principles of "Towards a Southern African Development Community - A Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in August, 1992," which affirms our commitment to establish a Development Community in the Region;

DETERMINED to ensure, through common action, the progress and well-being of the people of Southern Africa;

CONSCIOUS of our duty to promote the interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

CONVINCED of the need to mobilise our own and international resources to promote the implementation of national, interstate and regional policies, programmes and projects within the framework for economic integration;

DEDICATED to secure, by concerted action, international understanding, support and co-operation;

* Declaration and Treaty Establishing the Southern Africa Development Community available at <http://www.dfa.gov.za/for-relations/multilateral/treaties/sadctrea.htm> (accessed on 30 October 2002).

MINDFUL of the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law;

RECOGNISING that, in an increasingly interdependent world, mutual understanding, good neighbourliness, and meaningful co-operation among the countries of the Region are indispensable to the realisation of these ideals;

TAKING INTO ACCOUNT the Lagos Plan of Action and the Final Act of Lagos of April 1980, and the Treaty establishing the African Economic Community signed at Abuja, on the 3rd of June, 1991;

BEARING IN MIND the principles of international law governing relation between States;

Have decided to establish an international organisation to be known as the Southern African Development Community (SADC), and hereby agree as follows:

CHAPTER ONE

Article 1 Definitions

In this Treaty, unless the context otherwise requires:

"Treaty" means this Treaty establishing SADC;

"Protocol" means an instrument of implementation of this Treaty, having the same legal force as this Treaty;

"Community" means the organisation for economic integration established by Article 2 of this Treaty;

"Region" means the geographical area of the Member States of SADC;

"Member State" means a member of SADC;

"Summit" means the Summit of the Heads of State or Government of SADC established by Article 9 of this Treaty;

"High Contracting Parties" means States, herein represented by Heads of State or Government or their duly authorised representatives for purposes of the establishment of the Community;

"Council" means the Council of Ministers of SADC established by Article 9 of this Treaty;

"Secretariat" means the Secretariat of SADC established by Article 9 of this Treaty;
"Executive Secretary" means the chief executive officer of SADC appointed under Article 10 (7) of this Treaty;

"Commission" means a commission of SADC established by Article 9 of this Treaty;

"Tribunal" means the tribunal of the Community established by Article 9 of this Treaty;

"Sectoral Committee" means a committee referred to in Article 38 of this Treaty;

"Sector Coordinating Unit" means a unit referred to in Article 38 of this Treaty;

"Standing Committee"
means the Standing Committee of Officials established by Article 9 of this Treaty;

"Fund"

means resources available at any given time for application to programmes, projects and activities of SADC as provided by Article 26 of this Treaty.

CHAPTER TWO: ESTABLISHMENT AND LEGAL STATUS

Article 2 Establishment

1. By this Treaty, the High Contracting Parties establish the Southern African Development Community (hereinafter referred to as SADC).
2. The Headquarters of SADC shall be at Gaborone, Republic of Botswana.

Article 3 Legal Status

1. SADC shall be an international organisation, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.
2. In the territory of each Member State, SADC shall, pursuant to paragraph 1 of this Article, have such legal capacity as is necessary for the proper exercise of its functions.

CHAPTER THREE: PRINCIPLES, OBJECTIVES AND GENERAL UNDERTAKINGS

Article 4 Principles

SADC and its Member States shall act in accordance with the following principles:

- a) sovereign equality of all Member States;
- b) solidarity, peace and security;
- c) human rights, democracy, and the rule of law;
- d) equity, balance and mutual benefit;
- e) peaceful settlement of disputes.

Article 5 Objectives

1. The objectives of SADC shall be to:

- a) achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- b) evolve common political values, systems and institutions;
- c) promote and defend peace and security;
- d) promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- e) achieve complementarity between national and regional strategies and programmes;
- f) promote and maximise productive employment and utilisation of resources of the Region;
- g) achieve sustainable utilisation of natural resources and effective protection of the environment;
- h) strengthen and consolidate the long standing historical, social and cultural affinities and links among the people of the Region.

2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

- a) harmonise political and socio-economic policies and plans of Member States;
- b) encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
- c) create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its Institutions;
- d) develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;
- e) promote the development of human resources;
- f) promote the development, transfer and mastery of technology;
- g) improve economic management and performance through regional co-operation;
- h) promote the coordination and harmonisation of the international relations of Member States;
- i) secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region;

j) develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

Article 6 General Undertakings

1. Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC, and shall refrain from taking any measure likely to jeopardise the sustenance of its principles, the achievement of its objectives and the implementation of the provisions of this Treaty.

2. SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability.

3. SADC shall not discriminate against any Member State.

4. Member States shall take all steps necessary to ensure the uniform application of this Treaty.

5. Member States shall take all necessary steps to accord this Treaty the force of national law.

6. Member States shall co-operate with and assist institutions of SADC in the performance of their duties.

CHAPTER FOUR: MEMBERSHIP

Article 7 Membership

States listed in the Preamble hereto shall, upon signature and ratification of this Treaty, be members of SADC.

Article 8 Admission of New Members

1. Any state not listed in the Preamble to this Treaty may become a member of SADC upon being admitted by the existing members and acceding to this Treaty.

2. The admission of any such state to membership of SADC shall be effected by a unanimous decision of the Summit.

3. The Summit shall determine the procedures for the admission of new members and for accession to this Treaty by such members.

4. Membership of SADC shall not be subject to any reservations.

CHAPTER FIVE: INSTITUTIONS

Article 9 Establishment of Institutions

1. The following Institutions are hereby established:

- a) The Summit of Heads of State or Government;
- b) The Council of Ministers;
- c) Commissions;
- d) The Standing Committee of Officials;
- e) The Secretariat; and
- f) The Tribunal.

2. Other institutions may be established as necessary.

Article 10 The Summit

1. The Summit shall consist of the Heads of State or Government of all Member States, and shall be the supreme policy-making Institution of SADC.
2. The Summit shall be responsible for the overall policy direction and control of the functions of SADC.
3. The Summit shall adopt legal instruments for the implementation of the provisions of this Treaty; provided that the Summit may delegate this authority to the Council or any other institution of SADC as the Summit may deem appropriate.
4. The Summit shall elect a Chairman and a Vice-Chairman of SADC from among its members for an agreed period on the basis of rotation.
5. The Summit shall meet at least once a year.
6. The Summit shall decide on the creation of Commissions, other institutions, committees and organs as need arises.
7. The Summit shall appoint the Executive Secretary and the Deputy Executive Secretary, on the recommendation of the Council.
8. Unless otherwise provided in this Treaty, the decisions of the Summit shall be by consensus and shall be binding.

Article 11: The Council

1. The Council shall consist of one Minister from each Member State, preferably a Minister responsible for economic planning or finance.
2. It shall be the responsibility of the Council to:
 - a) oversee the functioning and development of SADC;
 - b) oversee the implementation of the policies of SADC and the proper execution of its programmes;
 - c) advise the Summit on matters of overall policy and efficient and harmonious functioning and development of SADC;
 - d) approve policies, strategies and work programmes of SADC;

- e) direct, coordinate and supervise the operations of the institutions of SADC subordinate to it;
 - f) define sectoral areas of co-operation and allocate to Member States responsibility for coordinating sectoral activities, or re-allocate such responsibilities;
 - g) create its own committees as necessary;
 - h) recommend to the Summit persons for appointment to the posts of Executive Secretary and Deputy Executive Secretary;
 - i) determine the Terms and Conditions of Service of the staff of the institutions of SADC;
 - j) convene conferences and other meetings as appropriate, for purposes of promoting the objectives and programmes of SADC; and
 - k) perform such other duties as may be assigned to it by the Summit or this Treaty;
3. The Chairman and Vice-Chairman of the Council shall be appointed by the Member States holding the Chairmanship and Vice-Chairmanship of SADC respectively.
 4. The Council shall meet at least once a year.
 5. The Council shall report and be responsible to the Summit.
 6. Decisions of the Council shall be by consensus.

Article 12 Commissions

1. Commissions shall be constituted to guide and coordinate co-operation and integration policies and programmes in designated sectoral areas.
2. The composition, powers, functions, procedures and other matters related to each Commission shall be prescribed by an appropriate protocol approved by the Summit.
3. The Commissions shall work closely with the Secretariat.
4. Commissions shall be responsible and report to the Council.

Article 13 The Standing Committee of Officials

1. The Standing Committee shall consist of one permanent secretary or an official of equivalent rank from each Member State, preferably from a ministry responsible for economic planning or finance.
2. The Standing Committee shall be a technical advisory committee to the Council.
3. The Standing Committee shall be responsible and report to the Council.
4. The Chairman and Vice-Chairman of the Standing Committee shall be appointed from the Member States holding the Chairmanship and the Vice-Chairmanship, respectively, of the Council.

5. The Standing Committee shall meet at least once a year.
6. Decisions of the Standing Committee shall be by consensus.

Article 14 The Secretariat

1. The Secretariat shall be the principal executive Institution of SADC, and shall be responsible for:

- a) strategic planning and management of the programmes of SADC;
- b) implementation of decisions of the Summit and of the Council;
- c) organisation and management of SADC meetings;
- d) financial and general administration;
- e) representation and promotion of SADC; and
- f) coordination and harmonisation of the policies and strategies of Member States.

3. The Secretariat shall be headed by the Executive Secretary.

4. The Secretariat shall have such other staff as may be determined by the Council from time to time.

Article 15 The Executive Secretary

1. The Executive Secretary shall be responsible to the Council for the following:

- a) consultation and coordination with the Governments and other institutions of Member States;
- b) pursuant to the direction of Council or Summit, or on his/her own initiative, undertaking measures aimed at promoting the objectives of SADC and enhancing its performance;
- c) promotion of co-operation with other organisations for the furtherance of the objectives of SADC;
- d) organising and servicing meetings of the Summit, the Council, the Standing Committee and any other meetings convened on the direction of the Summit or the Council;
- e) custodianship of the property of SADC;
- f) appointment of the staff of the Secretariat, in accordance with procedures, and under Terms and Conditions of Service determined by the Council;
- g) administration and finances of the Secretariat;
- h) preparation of Annual Reports on the activities of SADC and its institutions;

- i) preparation of the Budget and Audited Accounts of SADC for submission to the Council;
- j) diplomatic and other representations of SADC;
- k) public relations and promotion of SADC;
- l) such other functions as may, from time to time, be determined by the Summit and Council.

2 The Executive Secretary shall liaise closely with Commissions, and other institutions, guide, support and monitor the performance of SADC in the various sectors to ensure conformity and harmony with agreed policies, strategies, programmes and projects.

3. The Executive Secretary shall be appointed for four years, and be eligible for appointment for another period not exceeding four years.

Article 16 The Tribunal

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.
2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.
3. Members of the Tribunal shall be appointed for a specified period.
4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.
5. The decisions of the Tribunal shall be final and binding.

Article 17 Specific Undertakings

1. Member States shall respect the international character and responsibilities of SADC, the Executive Secretary and other staff of SADC, and shall not seek to influence them in the discharge of their functions.
2. In the performance of their duties, the members of the Tribunal, the Executive Secretary and the other staff of SADC shall be committed to the international character of SADC, and shall not seek or receive instructions from any Member States, or from any authority external to SADC. They shall refrain from any action incompatible with their positions as international staff responsible only to SADC.

CHAPTER SIX: MEETINGS

Article 18 Quorum

The quorum for all meetings of the Institutions of SADC shall be two-thirds of its Members.

Article 19 Decisions

Except as otherwise provided in this Treaty, decisions of the Institutions of SADC shall be taken by consensus.

Article 20 Procedure

Except as otherwise provided in this Treaty, the Institutions of SADC shall determine their own rules of procedure.

CHAPTER SEVEN: CO-OPERATION

Article 21 Areas of Co-operation

1. Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.

2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of co-operation.

3. In accordance with the provisions of this Treaty, Member States agree to co-operate in the areas of:

- a) food security, land and agriculture;
- b) infrastructure and services;
- c) industry, trade, investment and finance;
- d) human resources development, science and technology;
- e) natural resources and environment;
- f) social welfare, information and culture; and
- g) politics, diplomacy, international relations, peace and security.

4. Additional areas of co-operation may be decided upon by the Council.

Article 22 Protocols

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.

2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.

3. Each Protocol shall be subject to signature and ratification by the parties thereto.

Article 23 Non-Governmental Organisations

1. In pursuance of the objectives of this Treaty, SADC shall seek to involve fully, the people of the Region and non-governmental organisations in the process of regional integration.
2. SADC shall co-operate with, and support the initiatives of the peoples of the Region and non-governmental organisations, contributing to the objectives of this Treaty in the areas of co-operation in order to foster closer relations among the communities, associations and people of the Region.

CHAPTER EIGHT: RELATIONS WITH OTHER STATES, REGIONAL AND INTERNATIONAL ORGANISATIONS

Article 24

1. Subject to the provisions of Article 6(1), Member States and SADC shall maintain good working relations and other forms of co-operation, and may enter into agreements with other states, regional and international organisations, whose objectives are compatible with the objectives of SADC and the provisions of this Treaty.
2. Conferences and other meetings may be held between Member States and other Governments and organisations associated with the development efforts of SADC to review policies and strategies, and evaluate the performance of SADC in the implementation of its programmes and projects, identify and agree on future plans of co-operation.

CHAPTER NINE: RESOURCES, FUND AND ASSETS

Article 25 Resources

1. SADC shall be responsible for the mobilisation of its own and other resources required for the implementation of its programmes and projects.
2. SADC shall create such institutions as may be necessary for the effective mobilisation and efficient application of resources for regional development.
3. Resources acquired by SADC by way of contributions, loans, grants or gifts, shall be the property of SADC.
4. The resources of SADC may be made available to Member States in pursuance of the objectives of this Treaty, on terms and conditions mutually agreed between SADC and the Member States involved.
5. Resources of SADC shall be utilised in the most efficient and equitable manner.

Article 26 Fund

The Fund of SADC shall consist of contributions of Member States, income from SADC enterprises and receipts from regional and non-regional sources.

Article 27 Assets

1. Property, both movable and immovable, acquired by or on behalf of SADC shall constitute the assets of SADC, irrespective of their location.
2. Property acquired by Member States, under the auspices of SADC, shall belong to the Member States concerned, subject to provisions of paragraph 3 of this Article, and Articles 25 and 34 of this Treaty.
3. Assets acquired by Member States under the auspices of SADC shall be accessible to all Member States on an equitable basis.

CHAPTER TEN: FINANCIAL PROVISIONS**Article 28 The Budget**

1. The budget of SADC shall be funded by contributions made by Member States, and such other sources as may be determined by the Council.
2. Member States shall contribute to the budget of SADC in proportions agreed upon by the Council.
3. The Executive Secretary shall cause to be prepared, estimates of revenue and expenditure for the Secretariat and Commissions, and submit them to the Council, not less than three months before the beginning of the financial year.
4. The Council shall approve the estimates of revenue and expenditure before the beginning of the financial year.
5. The financial year of SADC shall be determined by the Council.

Article 29 External Audit

1. The Council shall appoint external auditors and shall fix their fees and remuneration at the beginning of each financial year.
2. The Executive Secretary shall cause to be prepared and audited annual statements of accounts for the Secretariat and Commissions, and submit them to the Council for approval.

Article 30 Financial Regulations

The Executive Secretary shall prepare and submit to the Council for approval financial regulations, standing orders and rules for the management of the affairs of SADC.

CHAPTER ELEVEN: IMMUNITIES AND PRIVILEGES

Article 31

1. SADC, its Institutions and staff shall, in the territory of each Member State, have such immunities and privileges as are necessary for the proper performance of their functions under this Treaty, and which shall be similar to those accorded to comparable international organisations.
2. The immunities and privileges conferred by this Article shall be prescribed in a Protocol.

CHAPTER TWELVE: SETTLEMENT OF DISPUTES

Article 32

Any dispute arising from the interpretation or application of this Treaty, which cannot be settled amicably, shall be referred to the Tribunal.

CHAPTER THIRTEEN: SANCTIONS, WITHDRAWAL AND DISSOLUTION

Article 33 Sanctions

1. Sanctions may be imposed against any Member State that:
 - a) persistently fails, without good reason, to fulfil obligations assumed under this Treaty;
 - b) implements policies which undermine the principles and objectives of SADC; or
 - c) is in arrears for more than one year in the payment of contributions to SADC, for reasons other than those caused by natural calamity or exceptional circumstances that gravely affect its economy, and has not secured the dispensation of the Summit.
2. The sanctions shall be determined by the Summit on a case-by-case basis.

Article 34 Withdrawal

1. A Member State wishing to withdraw from SADC shall serve notice of its intention in writing, a year in advance, to the Chairman of SADC, who shall inform other Member States accordingly.
2. At the expiration of the period of notice, the Member State shall, unless the notice is withdrawn, cease to be a member of SADC.
3. During the one year period of notice referred to in paragraph 1 of this Article, the Member State wishing to withdraw from SADC shall comply with the provisions of this Treaty, and shall continue to be bound by its obligations.
4. A Member State which has withdrawn shall not be entitled to claim any property or rights until the dissolution of SADC.

5. Assets of SADC situated in the territory of a Member State which has withdrawn, shall continue to be the property of SADC and be available for its use.

6. The obligations assumed by Member States under this Treaty shall, to the extent necessary to fulfil such obligations, survive the termination of membership by any State.

Article 35 Dissolution

1. The Summit may decide by a resolution supported by three-quarters of all members to dissolve SADC or any of its Institutions, and determine the terms and conditions of dealing with its liabilities and disposal of its assets.

2. A proposal for the dissolution of SADC may be made to the Council by any Member State, for preliminary consideration, provided, however, that such a proposal shall not be submitted for the decision of the Summit until all Member States have been duly notified of it and a period of twelve months has elapsed after the submission to the Council.

CHAPTER FOURTEEN: AMENDMENT OF THE TREATY

Article 36

1. An amendment of this Treaty shall be adopted by a decision of three-quarters of all the Members of the Summit.

2. A proposal for the amendment of this Treaty may be made to the Executive Secretary by any Member State for preliminary consideration by the Council, provided, however, that the proposed amendment shall not be submitted to the Council for preliminary consideration until all Member States have been duly notified of it, and a period of three months has elapsed after such notification.

CHAPTER FIFTEEN: LANGUAGE

Article 37

The working languages of SADC shall be English and Portuguese and such other languages as the Council may determine.

CHAPTER SIXTEEN: SAVING PROVISIONS

Article 38

A Sectoral Committee, Sector Coordinating Unit or any other institution, obligation or arrangement of the Southern African Development Coordination Conference which exists immediately before the coming into force of this Treaty, shall to the extent that it is not inconsistent with the provisions of this Treaty, continue to subsist, operate or bind Member States or SADC as if it were established or undertaken under this Treaty, until the Council or Summit determines otherwise.

CHAPTER SEVENTEEN : SIGNATURE, RATIFICATION, ENTRY INTO FORCE, ACCESSION AND DEPOSITARY**Article 39 Signature**

This Treaty shall be signed by the High Contracting Parties.

Article 40 Ratification

This treaty shall be ratified by the Signatory States in accordance with their constitutional procedures.

Article 41 Entry into Force

This Treaty shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-third of the States listed in the Preamble.

Article 42 Accession

This Treaty shall remain open for accession by any state subject to Article 8 of this Treaty.

Article 43 Depositary

1. The original texts of this Treaty and Protocols and all instruments of ratification and accession shall be deposited with the Executive Secretary of SADC, who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Treaty with the Secretariats of the United Nations Organisation and the Organisation of African Unity.

CHAPTER EIGHTEEN: TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**Article 44**

This Treaty replaces the Memorandum of Understanding on the Institutions of the Southern African Development Coordination Conference dated 20th July, 1981.

IN WITNESS WHEREOF, WE, the Heads of State or Government have signed this Treaty.

DONE AT Windhoek, on 17th Day of August, 1992 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

THE PEOPLE'S REPUBLIC OF ANGOLA

REPUBLIC OF BOTSWANA

KINGDOM OF LESOTHO

REPUBLIC OF MALAWI

REPUBLIC OF MOZAMBIQUE

REPUBLIC OF NAMIBIA

KINGDOM OF SWAZILAND UNITED

REPUBLIC OF TANZANIA

REPUBLIC OF ZAMBIA

REPUBLIC OF ZIMBABWE



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