



## **SADC CHARTER ON FUNDAMENTAL SOCIAL RIGHTS: FIRST STEP TO REGIONAL LABOUR STANDARDS**

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**What are regional labour standards?**

Regional labour standards or regional labour relations are also referred to as transnational labour standards or relations. Transnational relations influence world politics in almost every issue-area. Thousands of international non-governmental organisations (INGOs), lobby international regimes and inter-state organisations for their purposes and financial support. Many multi-national corporations with subsidiaries in other countries have annual financial turnovers larger than the gross national product (GNP) of several countries and create adaptation problems for the foreign economic policies of many states.<sup>2</sup> The original concept of transnational relations encompasses almost everything in world politics except inter-state relations. This has led to a situation where many sovereign nation-states were forced to choose a side where they are in establishing their political, economic, social and cultural relations and operations which in itself again led to **regionalism**.<sup>3</sup>

One can therefore rightly ask what is “transnational”. The term transnational would indicate that it is beyond what is considered to be national, in other words across national borders. Whereas transnational law is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one another. It differs from other legal systems in that it primarily concerns States rather than private citizens. In other words it is that body of law which is composed for its greater part of the principles and rules of conduct which States feel themselves bound to observe, and therefore, do commonly observe in their relations with each other and which includes also:

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<sup>2</sup> Kappen, T. R. (1995) *“Bringing Transnational Relations Back in: Non-state Actors, Domestic Structures, and International Institutions”* Cambridge: Cambridge University Press.

<sup>3</sup> Armando Aliu *“European industrial relations: transnational relations and global challenges”* (2012) Munich Personal RePEc Archive.

(a) The rules of law relating to the function of international institutions or organizations, their relations with each other and their relations with States and individuals; and

(b) Certain rules of law relating to individuals and non-state entities so far as the rights and duties of such individuals and non-state entities are the concern of the international community.<sup>4</sup>

A transnational labour relations "regime" would be a set of structures and norms operating across national borders to buttress national law and practices either by reinforcing national norms or superseding them.<sup>5</sup> Transnational labour relations or regional labour standards can therefore also incorporate a set of rules, guidelines and or principles that are observed by various States.<sup>6</sup>

### **Establishment and original aims of SADC**

It is important to have a look at the original aims and establishment of SADC and have a detail description of the contents of the SADC Charter on Fundamental Social Rights as I argue that the Charter can form the basis of the establishment of a Transnational Labour Relations regime and regional labour standards in the region.

Current members of SADC are: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Republic of South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

SADC was originally founded in April 1980 as the Southern African Development Coordination Conference (SADCC) by leaders of the so-called Frontline States in Southern Africa. The original aim was to create a mechanism whereby member states could formulate and implement projects of common interest in select area in order to reduce their economic dependence, particularly, but not only on the Republic of South Africa. It was conceived as an economic dimension of the struggle

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<sup>4</sup> <http://encyclopedia.thefreedictionary.com> down loaded on 23 January 2013

<sup>5</sup> David M. Trubek, Jim Mosher and Jeffrey S. Rothstein "Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks" (2002) *Law & Social Inquiry* 25(4) 1194.

<sup>6</sup> For a detail discussion on the concept of transnational labour relations also see Kevin Kolben "Transnational Labor Regulation and the limits of Governance" (2011) *Theoretical Inquiries in Law* 12(2)403; and Reiner Hoffmann, Otto Jacobi, Berndt Keller and Manfred Weiss (eds) *Transnational Industrial Relations in Europe* (2000) Hans-Böckler-Stiftung.

of liberation from colonial and white minority rule and the economic domination of the sub region by the apartheid regime in South Africa.<sup>7</sup>

The founders were clear that trade and market integration were not its priorities, the desire was for genuine and equitable regional integration. Trade liberalisation and market integration became part of the SADC common agenda when SADCC became SADC under the Windhoek Declaration and Treaty of 1992. This treaty provided for Regional Economic Communities (REC's) for the different sub regions of Africa and SADCC had to be repositioned as the REC for the Southern African sub region and by including South Africa as a member and prioritising trade liberalisation and market integration. A protocol on trade was signed by eleven member states, excluding Angola, in 1996, providing for the establishment of a free trade area (FTA). This protocol became into force in January 2000 when it was ratified by two thirds of the members.<sup>8</sup>

The basic structures of SADC can be described as follows:

- i. The Summit – It is the meeting of the Heads of States of member countries and is the supreme policy making body of SADC responsible for the policy direction and control of SADC. Decisions are taken by consensus.<sup>9</sup>
- ii. The Council – Consists of 1 Minister of every member state. It oversees the function and development of SADC, implements the policies, advises the Summit on matters of overall policies, reports and is responsible to the Summit. Decisions are taken by consensus.<sup>10</sup>
- iii. Commissions – Report and are responsible to the Council.<sup>11</sup>
- iv. Standing Committee of officials – technical and advisory committee to the Council, decisions are taken by consensus.<sup>12</sup>

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<sup>7</sup> Ngongola "SADC Law: Building Towards Regional Integration" (2012) 2(2) SADC Law Journal 124.

<sup>8</sup> Ngongola (2012) 125.

<sup>9</sup> Art 10 of SADC Treaty.

<sup>10</sup> Art 11 of SADC Treaty.

<sup>11</sup> Art 12 of SADC Treaty.

<sup>12</sup> Art 13 of SADC Treaty.

- v. Secretariat – Executive institution of SADC, responsible for planning, management of programmes, financial and general administration.<sup>13</sup>

The main economic objective of SADC is to promote sustainable and equitable economic growth and socio-economic development which will lead poverty alleviation. The main political objectives are to promote common political values and systems through institutions that are legitimate, democratic and to consolidate defend and maintain democracy, peace, security and stability. Social and cultural objectives include combatting HIV / AIDS and other communicable diseases.

In pursuit of these objectives member states are encouraged to ensure the harmonisation of political and socio-economic plans, to develop economic, social and cultural ties, to participate fully in the implementation of SADC projects, developing policies that can lead to the elimination of obstacles to the free movement of people, labour, capital, goods and services and to promote the development of human resources and also the development, transfer and mastery of technology.

Eight areas of cooperation have been identified and each area is administered by a protocol. A protocol enters into force if it has been ratified by at least two thirds of the member states and a protocol is only binding on a member state that has ratified it.<sup>14</sup> There is more to SADC than trade liberalisation and market integration.

The current members of SADC are indicated in figure 1 below:

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<sup>13</sup> Art 14 of SADC Treaty.

<sup>14</sup> See C Nogongola "The legal framework for regional integration in the Southern African Development Community" (2008) 8 *University of Botswana Law Journal* 3-46.



Current member States of SADC cover a land area of 554 919 km<sup>2</sup> and in 2010 had a combined population of about 277 million people. This would immediately indicate that an acceptable and mutually agreed upon system of Transnational Labour Relations and regional labour standards can be of benefit to a very large number of employees and people.

### **SADC CHARTER ON FUNDAMENTAL SOCIAL RIGHTS**

In 2003 SADC adopted a Charter on Fundamental Social Rights which amongst others seeks to provide a framework for regional labour standards. It obliges member states to create an enabling environment, consistent with ILO core conventions, to prioritise ILO core conventions and take the necessary action to ratify and implement these standards. The Charter further requires member states to create an enabling environment to ensure equal treatment for men and woman, and for the protection of children and young people.<sup>15</sup>

<sup>15</sup> See Van Niekerk, Christianson, McGregor, Smit and Van Eck *Law@work* (2012) 29-30.

Unfortunately the Charter cannot be enforced directly, and unlike ILO Conventions there is no independent supervisory mechanism to call members to account for any breach of the Charter.

The main objectives of this Charter are to:

1. ensure the retention of the tripartite structure of the three social partners, namely: governments, organisations of employers and organisations of workers;
2. promote the formulation and harmonisation of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes, in Member States;
3. promote labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States;
4. provide a framework for regional co-operation in the collection and dissemination of labour market information;
5. promote the establishment and harmonisation of social security schemes;
6. harmonise regulations relating to health and safety standards at work places across the Region; and
7. promote the development of institutional capacities as well as vocational and technical skills in the Region.

It is also important to pay attention to some of the most important articles of the charter that relates directly to labour relations and labour standards:

The article on universal and basic human rights as proclaimed by the UN Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, Constitution of the ILO and the Philadelphia declaration are to be observed (Art.3).

The article on Freedom of association and collective bargaining requires member States to create an enabling environment consistent with ILO Conventions on freedom of association, and the right to organise and collective bargaining (Art.4).

This would mean that:

- a. employers and workers in SADC shall have the right to form employers associations or trade unions;
- b. employees and employers would also have the freedom of choice to join or not to join a trade union or an employers association;
- c. trade unions and employers associations can conclude collective agreements according to the national laws of every member State;
- d. an independent labour dispute resolution system should be established through a process of tripartite consultation;
- e. employees have the right to strike or to participate in other forms of collective action;
- f. the organisational rights for representative trade unions shall include access to the employers' premises, deduction of trade union membership fees, right to elect own trade union representatives and union officials, leave for trade union representative and the right to disclosure of information;

The article on the Conventions of the International Labour Organisation (Art.5) requires member States to establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labour ( Nos. 29 and 105), freedom of association and collective bargaining (Nos. 87 and 98), elimination of discrimination in employment (Nos. 100 and 111), and the minimum age of entry into employment (No. 138). Member states must take the necessary steps, as a priority, to ratify and implement the core ILO Conventions.



The article on the Equal treatment of men and women requires that men and women must be treated as equals in all aspects of the work life (Art.6).

The Protection of children and young people in line with ILO Convention 138 deals with employment age, remuneration of children and young people and vocational training (Art.7).

The issues of Elderly people, retirement age and social benefits for elderly people who do not have a pension but have reached normal retirement age are also addressed (Art.8).

The treatment of Persons with disabilities in the work place and their access to training and social security are contained in Art. 9 of the Charter. Persons with disabilities in the workplace may not be discriminated against in any way and special effort must be made by employers to accommodate such persons in the work place.

All employees will have access to Social protection and social security benefits and social assistance irrespective the type of employment (Art.10).

All member States must strive towards the Improvement of living and working conditions of employees by addressing issues like working hours, rest periods, paid leave and maternity leave etc. (Art 11.).

Every employee in SADC has the right to a healthy and safe working environment. The basic work environment and occupational health and safety standards must meet the requirements as set out in ILO Convention No. 155 (Art.12).

Member States are also required to create an enabling environment so that industrial and workplace democracy is promoted. It also stipulates that employees have the right to be involved in a consultation process and the right to information with regards to restructuring of the work place and the termination of employment due to operational requirements of the employer (Art.13).

Member states are required to submit regular progress reports to the Secretariat regarding the implementation of the Charter. Unfortunately the Charter does not specify what is meant by regular reports nor what steps can be taken against a member State that fails to implement the Charter.

## The SADC Tribunal

The SADC Tribunal was established in 1992 by Article 9 of the SADC Treaty as one of the institutions of SADC. The Summit of Heads of State or Government which is the Supreme Policy Institution of SADC pursuant to Article 4 (4) of the Protocol on Tribunal appointed the Members of the Tribunal during its Summit of Heads of State or Government held in Gaborone, Botswana on 18th August 2005. The inauguration of the Tribunal (now disbanded) and the swearing in of the Members took place on 18th November 2005 in Windhoek, Namibia.<sup>16</sup>

The SADC Tribunal is regulated by the Protocol on the SADC Tribunal. Under international law the Tribunal is viewed as an international court similar to the European Court of Justice and is a permanent court. According to article 16 of SADC Treaty, the main objective is to ensure that member States are adhering to the provisions of the Treaty and other subsidiary instruments. The Tribunal should ensure that Member States do not fall foul of SADC law.<sup>17</sup>

The Tribunal is not a human rights court *per se* but has jurisdiction to entertain human rights matters, it is also not a criminal court and does not have criminal jurisdiction. Any person, natural or juristic, can bring a matter before the Tribunal alleging a violation of SADC law by a Member State. The working languages of the Tribunal are English, French and Portuguese. Decisions of the Tribunal are to be enforced in Member States in accordance with Member State's laws and rules of civil procedure for the enforcement of foreign judgments.

The decisions of the Tribunal are final and binding upon the parties and there is no appeal against the tribunal's decision. Should it appear that a party has no intention to comply with the Tribunal decision; the Tribunal will report the matter to the Summit, which is responsible for the overall policy direction and control of functions of the community, ultimately making it the policy-making institution of SADC and is made up of all SADC Heads of States or Government. The Summit is under legal duty to take 'appropriate action' against the recalcitrant party.<sup>18</sup>

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<sup>16</sup> [www.sadc-tribunal.org](http://www.sadc-tribunal.org) downloaded 30 January 2013

<sup>17</sup> Anon." The SADC Tribunal in 20 Questions" (2) from [www.sadc-tribunal.org](http://www.sadc-tribunal.org) downloaded 30 January 2013.

<sup>18</sup> The meaning of 'appropriate action' and its impact or effectiveness is not clear.

Zimbabwe became bound by the SADC Treaty and all its institutions after Pres. Mugabe signed it in August 1992 and it was ratified by the Zimbabwe parliament. The SADC Tribunal has made several judgments against Zimbabwe.

Numerous matters were brought against the government of Zimbabwe and Pres. Robert Mugabe by individuals to the Tribunal for adjudication.

The SADC Tribunal held with regards to the case of *Campbell v. Zimbabwe* as follows:

- (a) by unanimity, the Tribunal has jurisdiction to entertain the application;
- (b) by unanimity, the Applicants have been denied access to the courts in Zimbabwe;
- (c) by a majority of four to one, the Applicants have been discriminated against on the ground of race, and
- (d) by unanimity, fair compensation is payable to the Applicants for their lands compulsorily acquired by the Respondent.

The SADC Tribunal further held that Zimbabwe breached the SADC Treaty.

Pres. Robert Mugabe and the Zimbabwe government have refused to recognise the jurisdiction of the SADC Tribunal. In February 2009 the Deputy Chief Justice of Zimbabwe stated that the SADC Tribunal lacked jurisdiction to hear and determine the *Campbell* case. Pres. Robert Mugabe, during his birthday celebrations described the SADC Tribunal's decision as "nonsense" and "of no consequence" and stated that land distribution will continue and that it will not stop as Zimbabwe's land issues are not subject to the SADC Tribunal.<sup>19</sup>

Tragically the SADC Tribunal has been proven to be ineffective at enforcing its judgment against Zimbabwe. The judgment in *Campbell v Zimbabwe* was adjudicated on the premise of international law, contained elements of human rights and the SADC Tribunal had authority to hear the case, but it clearly illustrated how difficult it is to enforce judgments made by an international tribunal because it involves a sovereign nation.<sup>20</sup>

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<sup>19</sup> Jonathan Johnson. *Enforcing Judgments in International Law*. 24 October 2011. JD Supra Law News.

<sup>20</sup> Johnson (2011) 21.

After these judgements and rulings against the Zimbabwean government<sup>21</sup>, the Tribunal was de facto suspended at the 2010 SADC Summit. This decision was confirmed by The Council of Ministers of SADC at an extraordinary meeting in Windhoek on 20 May 2011 where the following was in effect decided:

- i. the non- reappointment of members of the Tribunal whose term of office expired on August 31, 2010;
- ii. the non-replacement of members of the Tribunal whose term of office will expire on October 31, 2011;
- iii. the dissolution of the Tribunal in its present form which is expressly barred from hearing any new or pending cases; and
- iv. the establishment of a new Tribunal, with a different jurisdiction and a new membership, after the Ministers of Justice/Attorneys General have amended the relevant SADC legal instruments e.g. the SADC Treaty and the Protocol on Tribunal(Protocol) and submitted a progress report to Summit in August 2011 and the final report to Summit in August 2012.<sup>22</sup>

On 17 August 2012 in Maputo, Mozambique, the SADC Summit addressed the issue of the suspended SADC Tribunal. The SADC Summit resolved that a new Tribunal should be negotiated and that its mandate should be confined to interpretation of the SADC Treaty and Protocols relating to disputes between Member States.<sup>23</sup> This in fact means that individual citizens of member States would be precluded from approaching the SADC Tribunal.

The suspension of the SADC Tribunal can create the impression that SADC in itself is nothing but a puppet in the hands of some powerful leaders within SADC and that some leaders, like Pres. Robert Mugabe of Zimbabwe, within the SADC community has the ability to force their will and or views onto other heads of State. The SADC member States have made no effort to put any pressure on the Zimbabwe

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<sup>21</sup> It was especially the *William Campbell and another v Republic of Zimbabwe* (SADC (T) 03/2009) ruling of the Tribunal that stipulated that the respondent, Government of Zimbabwe, is in breach of a former ruling of the Tribunal and in contempt of the Tribunal that led to the decision of the SADC summit in 2010.

<sup>22</sup> Speech delivered by the former-President of the SADC Tribunal, Ariranga Pilay, at a workshop of the Law Society of Namibia held in Windhoek on 22 July 2011.

<sup>23</sup> As on 30 January 2013 a new Tribunal has not yet been established and currently there is no mechanism to enforce and ensure compliance with SADC law, the Charter and or protocols.

government to adhere to the judgment of the SADC Tribunal but instead opted for the suspension of the Tribunal.

The question can rightly be asked if the Charter and SADC Treaty is only a paper tiger or whether it has any impact whatsoever in reality. Without an independent monitoring mechanism, like the SADC Tribunal, that can also enforce decisions, treaties, charters, protocols on member states, SADC will be nothing more than a very expensive and exclusive tea club where heads of governments get together for a nice meal.

### **ILO Core Conventions in SADC**

In 1998 the ILO adopted the Declaration on Fundamental Principles and Rights at Work, it is an expression of the commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives. The Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.

These categories are;

- i. freedom of association including the right to collective bargaining;
- ii. the elimination and prohibition of forced or compulsory labour;
- iii. the abolition and prohibition of child labour; and
- iv. the elimination of discrimination in respect of employment and occupation.<sup>24</sup>

The ILO Declaration of 1998, thereby makes eight core Conventions binding on member States irrespective if these Conventions have been ratified or not. There is currently a discussion within the ILO to include the Conventions on health and safety as well as the Convention on a living wage as part of the core labour rights.

Article 5 of the SADC Charter requires member States to establish a priority list of ILO Conventions and specifically to ratify and implement the core conventions of the ILO.

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<sup>24</sup> See [www.ilo.org](http://www.ilo.org) down loaded on 30 January 2013.

The table below indicates the 15 member States of SADC and in which year a particular core convention of the ILO has been ratified.<sup>25</sup>

Member	C29	C87	C98	C100	C105	C111	C138	C182
Angola	2001	1976	1976	1976	1976	1976	2001	2001
Botswana	1997	1997	1997	1997	1997	1997	1997	2000
DRC	2001	1969	1960	2001	1969	2001	2001	2001
Lesotho	1966	1966	1966	2001	1998	1998	2001	2001
Madagascar	1960	1960	1998	1962	2007	1961	2000	2001
Malawi	1999	1965	1999	1999	1965	1965	1999	1999
Mauritius	2005	1969	1969	1969	2002	2002	1990	2000
Mozambique	1996	1996	2003	1977	1977	1977	2003	2003
Namibia	1995	1995	2000	2000	2010	2001	2000	2000
Seychelles	1978	1999	1978	1978	1999	1999	2000	1999
South Africa	1996	1996	1997	1997	2000	1997	2000	2000
Swaziland	1978	1978	1978	1979	1981	1981	2002	2002
Tanzania	2000	1962	1962	1962	2002	2002	1998	2001
Zambia	1996	1996	1964	1965	1972	1979	1976	2001
Zimbabwe	2002	1998	1998	1998	1989	1999	2000	2000

It is argued that the SADC Charter of Fundamental Social Rights and the seven core ILO conventions that have been ratified by all member states of SADC can form the basis of a Transnational Labour Relations system in SADC. The main aims of the SADC Charter will not be achieved in as far as it concerns the place of work and employees if these core ILO Conventions have no real impact on the shop floor and the life's of employees.<sup>26</sup>

### **Regional Labour Standards in SADC**

After having a look at the EU “experiment” with regards to the integration of labour policies on an EU level and the structures of SADC, the SADC Charter on Fundamental Social Rights as well as the unfortunate demise of the SADC Tribunal it would seem that the following options are available for SADC:

<sup>25</sup> www.ilo.org downloaded 24 January 2013.

<sup>26</sup> Paul Smit “*Transnational Labour Relations: A Dream or Possibility in SADC*” (2013) paper delivered at the xi International Conference in commemoration of Prof Marco Biagi. Modena. Italy

## 1. Regional treaties

The main aim of transnational labour regulation should be to promote social justice across national borders in a regional context, like the EU or in SADC. The social and employment dimensions of regional economic treaties, like that in the EU, have broadened the scope of labour law to now include previously excluded groups in all member states. Based on these dimensions the EU has followed an open method of co-ordination and social dialogue against the background of fundamental rights. Hepple states as follows:

“Synchronised co-ordination (not convergence) of social and employment policies, through a social dialogue between the main interests groups, offers an important, even if not wholly adequate, means of overcoming competition for capital among national and regional workforces. Fundamental rights based on a European consensus about the essential values shared by the governments and peoples of the region; provide the necessary basic principle for these developments.”<sup>27</sup>

What is currently lacking in this form of European integration is collective labour law. The current EU treaties are a product of the negotiations between governments advancing their own national interests rather than a supra-national ideal. Collective bargaining across national borders in the EU is very limited and almost non-existent and there has been no democratic participation in this process from all the social partners. However, these treaties form a framework for reconciling market freedoms with social and labour rights under the rule of law.

It is also questionable given the demise of the SADC Tribunal if SADC “law”, fundamental social and labour rights, SADC protocols, the SADC Charter and the SADC Treaty can be enforced in member states. Given the huge differences on an economic development level, the rule of law, social development level, free market principles and democracy that exist between the member states of SADC it is doubtful that a system of synchronised co-ordination through social dialogue will be effective within SADC. The SADC Charter and the various protocols that have been adopted by SADC member states can however provide a framework for social and

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<sup>27</sup> Hepple (2005) 272.

labour rights on a regional level, but there seems to be a lack of willingness and the political will amongst certain member states to adhere to these instruments, Zimbabwe and Swaziland being prime examples.

## **2. Transnational Corporations and International Framework Agreements (TNC's and IFA's)**

Numerous TNC's and IFA's in the EU have a culture of corporate social responsibility and have adopted voluntary codes of conduct and collective agreements as well as 'best practices' principles.<sup>28</sup>

TNC's and IFA's usually provide better wages, working conditions and social security benefits as they tend to be concentrated in capital intensive, highly skilled professions and have excellent managerial and organisational techniques. The problems with the codes of TNC's and IFA's are ineffective implementation in host countries and the local workers have almost no means of reporting non-compliance. There is also very often an absence of monitoring to see that the TNC actually follows the code and that the IFA is implemented. Corporate codes and IFA's are private sector initiatives and tend to be selective in their choice of human and labour rights than those of the public regulatory frameworks.

In a SADC context the codes of TNC's and principles of IFA's can have a spill-over effect in domestic firms. For these codes of TNC's and the IFA's to have any real impact on the creation of regional labour standards these codes should specify as a minimum ILO core standards. The national laws of each member state should also place TNC's and the parties in IFA's under legal obligation to observe their own codes, and regional conventions like the SADC Treaty, SADC protocol and the SADC Charter should also be strengthened and be directed at TNC's and IFA's.<sup>29</sup> There should also be an independent monitoring system and an effective national and regional complaints mechanism within SADC to ensure that TNC's and IFA's comply with their own codes. The now defunct SADC Tribunal could have fulfilled such a role.

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<sup>28</sup> Hepple (2005) 272

<sup>29</sup> See Hepple (2005) chapter 3 and as well as on pages 272 – 273.



### **3. Empowering local actors**

Local actors like unions, social movements of women, consumers, students and human rights activists in the EU have the necessary skills and knowledge to create awareness of the abuses of labour rights. Their role in the creation of public awareness in the EU of human rights, social rights and labour rights can never be underestimated.

Within SADC the strong trade union movement as well as other human rights activists groups in South Africa have played a major role in the dismantling of apartheid and continue to have a major impact on the establishment of social and labour rights in South Africa. The political environment within South Africa is such that local actors, as mentioned above, can be a positive influence on the establishment of regional labour standards within SADC. The same can however not be said for the local actors in Zimbabwe, Swaziland, Madagascar and the DRC. These countries are either marked by internal conflict and war or governments that don't recognize trade union rights and no real democracy.

The empowerment of the local actors in all member states of SADC can contribute towards the establishment of regional labour standards for SADC if the local actors can operate freely in each country without fear of oppression or imprisonment in a free democratic society.

### **4. ILO Standards**

Another way of creating transnational labour standards or regional labour standards is to ensure the application of international labour standards set by the ILO. All member states of SADC have ratified the core conventions of the ILO but ratification does not mean implementation.

In recent years the ILO has attempted to revitalise international labour standards by promoting the 1998 Declaration of Fundamental Principles and Rights at Work, revising labour standards to ensure a more integrated and coherent approach and with its campaign for "decent work". For ILO standards to be effective in SADC it should not only focus and be limited to those employees in formal employment but should also cover those workers in the informal sector. It is also suggested that the cosmetic distinction between recommendations and conventions be replaced by a

few framework conventions that provide principles and includes codes of practice that is directed to very specific groups.<sup>30</sup> SADC should also follow a rights based approach to implement these by making compliance and implementation to these a condition of membership of SADC. There should also be a complaints-based enforcement mechanism. Persuasion and a soft law approach for member states to comply and implement ILO standards within the SADC region will not work unless there is ultimately a sanction that can be invoked.

### **Conclusion and recommendation**

The EU is very different to SADC in almost every aspect but there are a number of lessons for SADC.

1. The EU still recognises the differences between member states and the EU system accommodates these differences. If a system of regional labour standards is developed for SADC it must take recognition of differences between countries in terms of culture, language, history, legal system etc.
2. The system that has been designed for the EU and that is currently in place is a uniquely European system and cannot be transferred to SADC as is. SADC must not try to replicate the EU system of regional labour standards.
3. The proposed system of Transnational Labour Relations for SADC should be a combination of the following:
  - i. The SADC Treaty, different SADC protocols and the SADC Charter should be adapted, extended and strengthened to make provision for a SADC Treaty of minimum regional labour standards. This treaty on minimum regional labour standards should include as a bare minimum requirements the ILO core standards, the UN declaration of Human Rights and Employee Rights at work.
  - ii. A code of best practices for TNC's and IFA's should be established that provide minimum labour standards for any TNC and IFA that wants to establish business enterprises in any SADC member state.

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<sup>30</sup> Hepple (2005) 274.

- iii. The local actors in all SADC member states should be empowered through a process of training so as to provide them with the necessary skills, knowledge and expertise to create public awareness of human rights, social rights and labour rights. The local actors in each member state can play a major positive role to ensure that governments adhere and comply with the minimum regional labour standards.
- iv. An independent monitoring system should be established that bring governments, employers and TNC's as well as IFA's to task for their failure to comply with minimum regional standard. The SADC tribunal should become operational as soon as possible and the mandate of the Tribunal should be extended so that it can also act as labour standards watchdog. The new tribunal should have the powers to take appropriate steps against not only employers or TNC's but also governments these powers can include fines against the transgressors.

A regional labour standards regime or transnational labour relations system for SADC is possible and it can assist in providing certain minimum protections and labour rights for millions of people. It is however of the utmost importance to involve all role players from all the member states that must include not only governments or politicians but also the employers' associations, trade unions and other local actors. When issues and realities transcend national frontiers such as the free movement of capital, services and goods, of establishment and of workers in SADC, the restructuring of enterprises which affect workers in different member states of SADC it takes on a SADC dimensions. Rules are needed at the appropriate levels so that economic principles and justice go hand in hand and the standards, as well as the issues at stake, have a transnational or supra national character. Thus SADC must have its own unique social policy and consequently also its own full-fledged labour relations system and the SADC Charter can be the vehicle to create such a system.